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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JANE R. BRAIS,

Petitioner,

vs.

NO: 07 WC 41722

15IWCC0887

COUNTY OF KANKAKEE,

Respondent,

DECISION AND OPINION ON REMAND

This matter had previously been heard and the Decision of the Arbitrator had been filed December 18, 2009. Petitioner filed a timely Petition for Review. The Commission affirmed the Decision of the Arbitrator, denying accident. Petitioner then filed review in the circuit court of Kankakee County. The circuit court also affirmed the denial of accident. The claimant subsequently appealed to the Appellate Court of Illinois.

FACTUAL BACKGROUND

Petitioner was hired by Respondent as a Child Support Coordinator on April 15, 2002. Her office was located in the Kankakee County Courthouse. On December 20, 2006 at about 11a.m., she was returning to her office from a work-related meeting at the administration building, which is 2 blocks away from her office.

Employees customarily enter the Courthouse through an employee entrance in the back of the building. However, since that entrance is locked every day at 9:30a.m., Petitioner had entered the building through the front entryway after her meeting. She was wearing 2 inch heels, and when she approached the stairs leading up to the entrance, her heel caught a defect in the sidewalk and she fell.

Petitioner testified that the sidewalk had huge cracks, large enough to see the gravel underneath. The cracks were up to 1 inch deep. Petitioner fell and hit her left wrist and right knee. She felt sharp pain in her wrist.

After seeking medical assistance Petitioner was diagnosed with a left wrist scaphoid fracture in January 2007. In August 2007 the diagnosis was a scaphoid nonunion with avascular necrosis and early dorsal intercalated segment instability. A left wrist total fusion with proximal row carpectomy and scaphoid excision, as well as a left carpal tunnel release were performed on March 14, 2008. Physical therapy was prescribed.

On July 9, 2008 Dr. Fernandez opined that the fusion was successful with no hardware migration or failure. He advised that Petitioner could discontinue supervised therapy and embark on a home program. He also opined that Petitioner had reached maximum medical improvement. Petitioner was permanently restricted to lifting between 10-15 pounds, with no significant exposure to repetition over 2-3 hours daily. She was also restricted from significant use of tools. It was noted that Petitioner may require removal of the deep hardware, including plate and screws, in the future.

All related medical bills have been paid, and Respondent has accommodated all of Petitioner's work restrictions. Petitioner maintains the same job description as she did pre-accident.

Petitioner now has difficulty doing her hair, turning door knobs, grasping items, and has no range of motion in her left wrist.

ORDER ON REMAND

In keeping with the ruling of the Appellate Court, the Commission finds that Petitioner did suffer an accident arising out of and in the course of her employment on the date in question.

Regarding the remaining issues, the parties stipulated that Respondent paid all of Petitioner's medical expenses. There is no evidence in the record of Petitioner missing any time off work due to the accident, thus no temporary total disability benefits are awarded. Lastly, based on Petitioner's fusion surgery, the hardware still present in her hand, her permanent restrictions, and her ongoing difficulties adjusting to work and her daily living, the Commission awards Petitioner a 25% loss of use of her left hand.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner has proven she sustained an accident arising out of and in the course of her employment.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner permanent partial disability benefits at a rate of $251.35 per week for a period of 51.25 weeks, as Petitioner sustained a 25% loss of use of her left hand under §8(e) of the Act.

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: DEC 2 – 2015
DLG/wde
O: 10/15/15
45

David L. Gore

Mario Basurto

Stephen Mathis

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☐ 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

Laurie Chapman,

Petitioner,

vs. No. 08 WC 00182

Marion High School,

15IWCC0888

Respondent.

DECISION AND OPINION ON REVIEW UNDER SECTION 19(h)

This matter comes before the Commission on a Petition for Review Under Section 19(h) filed by Respondent. The Commission previously entered and continued Respondent's 19(h) petition pending final disposition in companion case No. 09 WC 29095.

The Commission has now decided the appeal in case No. 09 WC 29095. Only Petitioner petitioned for review of the Arbitrator's decision. The Commission has affirmed the Arbitrator's finding in case No. 09 WC 29095 that "the work accident of October 8, 2008 constituted an aggravation of a pre-existing condition under Sisbro and similar case law. While the medical evidence supports Respondent's contention that Petitioner had incomplete fusion at L5-S1 before October 8, 2008, Drs. Gornet and Bernardi also believed the work accident of October 2008 aggravated a pre-existing condition. This evidence is sufficient to establish medical causation in the instant case." Correspondingly, the Commission now denies Respondent's 19(h) petition in the instant case No. 08 WC 00182.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent's §19(h) petition is denied.

15IWCC0888

No bond is required for removal of this cause to the Circuit Court. 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:
d-11/05/2015 DEC 2 - 2015
SM/sk
44

Stephen J. Mathis

Mario Basurto

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

Joaquin Contreres,

Petitioner,

vs. NO: 09 WC 8766

Manuel Cisneros and Injured Workers' Benfefit Fund,

Respondent,

15IWCC0889

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 employment, permanent partial disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 1, 2014, is hereby affirmed and adopted.

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 Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

Bond for 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: DEC 7 - 2015
MJB/bm
o-11/24/15
052

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CONTRERAS, JOAQUIN
Employee/Petitioner

Case# **09WC008766**

151WCC0889

MANUEL CISNEROS AND INJURED WORKERS' BENEFIT FUND
Employer/Respondent

On 12/1/2014, 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:

3042 LAW OFFICES OF HECTOR ESPITIA
415 N LASALLE ST
SUITE 301
CHICAGO, IL 60654

0000 MANUEL CISNEROS
3547 W MEDILL AVE
CHICAGO, IL 60647

4390 ASSISTANT ATTORNEY GENERAL
ERIN DOUGHTY
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

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

Joaquin Contreres
Employee/Petitioner

Case # 09 WC 08766

v.

Consolidated cases: N/A

Manuel Cisneros and Injured Workers' Benefit Fund
Employer/Respondent

15IWCC0889

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 **Stephen Friedman**, Arbitrator of the Commission, in the city of **Chicago** , on **November 5, 2014**. 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 Notice of hearing to Respondent

Findings

On **October 10, 2008,** 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 **$24,960.00**; the average weekly wage was **$480.00**.

On the date of accident, Petitioner was **38** years of age, **married** with **2** dependent children.

Petitioner **has not** received all reasonable and necessary medical services.

Respondent **has not** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$0.00**.

Respondent is entitled to a credit of **$0.00** under Section 8(j) of the Act.

Order

Respondent shall pay Petitioner temporary total disability benefits of $320.00/week for 45 5/7 weeks, commencing October 11, 2008 through August 26, 2009, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $203,559.94, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $299.67/week for 6 weeks, because the injuries sustained caused the fractures of three facial bones, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $299.67/week for 37.5 weeks, because the injuries sustained to Petitioner's left shoulder caused the 7.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act

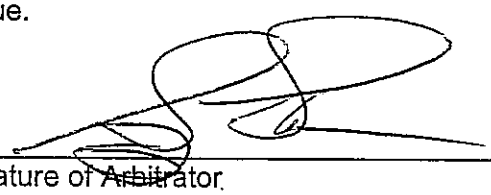
Respondent shall pay Petitioner permanent partial disability benefits of $299.67/week for 53.75 weeks, because the injuries sustained caused the 25% loss of the Right Leg, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $299.67/week for 86 weeks, because the injuries sustained caused the 40% loss of the Left leg, as provided in Section 8(e) of the Act.

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of this Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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~~

November 26, 2014
Date

ICArbDec p. 2

Statement of Facts 15IWCC0889

On October 10, 2008, Petitioner Joaquin Contreras, born April 1, 1970, was 38 years old. Petitioner testified that he was born in Mexico and has a first grade education. Petitioner testified that he was married and had two children under 18 years old on October 10, 2008. Petitioner testified that he had no prior injuries to his left shoulder, left leg or right knee. Petitioner testified that in 2008, he worked for various individuals doing roofing and installing siding and windows. Petitioner testified that he would work by the job. He would be hired by word of mouth. During the year before the accident, he had worked various projects for Respondent Manuel Cisneros and for another individual Juan Manuel. Petitioner testified that there was no paperwork or written agreements. He filled out no tax documents. He was always paid in cash. He did no jobs other that for these individual. He did no jobs on his own.

Petitioner testified that on October 10, 2008, he was working for Respondent Manuel Cisneros. Petitioner testified that Respondent called him on the telephone for a job installing roofing on a house. Petitioner testified that he had been on that job for that week. Petitioner testified that Respondent provided the equipment and machinery for the job. Petitioner testified that Respondent provided the materials for the job. Petitioner testified that there were five other employees working on the job. Petitioner testified that he was paid cash, $120.00 per day for the job.

Petitioner testified that he started work on October 10, 2008 at 8:00 AM. His duties were to install wood and special paper and the roofing. The building was a residence. It was four stories with a pitched roof. Petitioner testified that the accident occurred about 4:30 to 5:00 PM. There were still six persons working at the site. Petitioner testified that he was on the roof with two other men when the rope snapped and he fell backward. He grabbed the gutter. Petitioner testified that his shoulder snapped and he fell backward and ended up on the ground breaking his feet, left leg and knee. Petitioner testified that he fell about twenty-eight feet. Petitioner testified that another worker called an ambulance. Petitioner testified that Respondent was present on the job site. He was sweeping the garage. Petitioner testified that Respondent was aware of the accident.

A Chicago Fire Department ambulance arrived a 3547 Medill Ave, Chicago, Illinois at 4:42 PM. Petitioner was noted to have fallen about 30 feet and had a closed fracture of the left leg and a deformed left shoulder. He was transported to Illinois Masonic (Px 2).

Petitioner testified that he tore the tendons in his left shoulder. The fracture to his left leg was through the skin. He did not pass out. Petitioner testified that he was taken to Illinois Masonic Medical Center. Petitioner testified that he had surgeries to his right knee and left leg. Petitioner testified that he was released on October 27, 2008 in a wheelchair. Petitioner testified that he was in the wheelchair for six months and in physical therapy until he had the further operation on his right knee. Petitioner testified that the surgeries were performed by Dr. Whisler.

The complete records of Advocate Illinois Masonic Medical Center were admitted as Petitioner's Exhibit 23, with certain portions also admitted as Petitioner's Exhibits 2-10. Petitioner was admitted with a diagnosis of left shoulder dislocation, left femur fracture, multiple blunt trauma and a right patellar closed comminuted fracture. (Px 23, pg 9). Petitioner's shoulder was reduced in the emergency room. He underwent surgery on October 10, 2008 for a left femur intramedullary nailing. He had further surgery on October 15, 2008 for an open reduction and internal fixation of the right comminuted patella fracture. A Maxillofacial CT scan performed on October 13, 2008 found a fracture of the left zygomatic process of the temporal bone, a fracture of the left maxilla and a fracture of the left nasal bones (Px 23, pg 421). Petitioner reported significant reduction of his pain (Px 23, pg 458). He was released on October 28, 2008 with a platform walker and his family to assist with activities of daily living (Px 23, pg 468, 481). He was prescribed Norco for pain (Px 23, pg 389).

Petitioner testified that he had physical therapy on Dempster in Des Plaines until he could walk on his own in 2009 or 2010. Petitioner testified that the doctor did not recommend that he return to work.

The records of Dr. Whisler were admitted as Petitioner's Exhibit 11 and the records of Vital Rehabilitation were admitted as Petitioner's Exhibit 12. Dr. Whisler saw petitioner is follow up care which included periodic follow up x-rays of the right knee and left femur. Petitioner attended physical therapy at Vital from February 11, 2009 through July 3, 2009. On discharge from physical therapy, the record indicates Petitioner did not complain of any pain. He had improved range of motion in the left shoulder being almost symmetrical with the right shoulder. Strength is normal except for abduction. Petitioner was ready to be discharged. Petitioner underwent an additional surgery for removal of the hardware in the right knee on July 6, 2009. Right knee x-rays from Advocate Illinois Masonic show healing of the fractures with comminuted fracture off the inferior aspect of the patella. July 29, 2009 x-rays of the left femur show increased maturation of the callus in a nearly completely healed femoral fracture. Alignment is anatomic maintained by the intramedullary rod. The last office visit with Dr. Whisler is recorded on August 26, 2009.

Petitioner testified that Respondent never contacted him after the accident. Petitioner testified that one of the other workers came to see him with his earning. Petitioner testified that he did not try to contact Respondent. Petitioner testified that he looked for work on his own. In 2011, he found a job at Omega Restaurant. He works in the kitchen, part time making food.

Petitioner testified that he currently has no pain. He cannot make the movements he did before with his legs and feet. He cannot trot or walk fast. When he kneels, he must put his hand down. He cannot bend his knees and has trouble going up stairs. He does not do heavy lifting. He cannot lift with his left arm overhead. He does not have much strength. Petitioner testified that he has no current medical follow up scheduled. Petitioner testified that he has not returned to installing windows or roofing.

Conclusions of Law

In support of the Arbitrators finding with respect to O (Notice to Respondent of the hearing), the Arbitrators finds as follows:

While the Arbitrator questions the accuracy of initial address at which Respondent was served with the Application for Adjustment of Claim, the Citation from the City on the jobsite lists the address at which the notice was sent for the hearing to take place on November 5, 2014. The notice sent for that hearing included the necessary documents per the Act and was sent certified mail. The certified mailing was accepted and signed for. The Arbitrator finds that proper notice of hearing was sent to Respondent under the Act and Rules and therefore allowed the hearing to proceed in the absence of Respondent's appearance.

In support of the Arbitrators finding with respect to A (Operating under the Act), the Arbitrators finds as follows:

Petitioner testified that the Respondent has hired him to perform roofing work. There were six employees working on the job at the time of Petitioner's injury. The work being performed falls within Section 3.1 and 3.2 of the Act. Petitioner has established that the parties were operating under the Act.

In support of the Arbitrators finding with respect to B (Employer/Employee Relationship), the Arbitrators finds as follows:

Petitioner testified that he was hired by Respondent to perform roofing work on the jobsite where he was injured. Respondent supervised the work and provided materials, equipment and machinery. Petitioner was performing his work along with other employees and he considered himself an employee. Although Petitioner was paid cash and no tax documents were prepared, Respondent exerted supervision and control of the work. The Arbitrator finds that the Petitioner has established that, at the time of the accident, the relationship with Respondent was one of employer/ employee.

In support of the Arbitrators finding with respect to C (Accident) and D (Date of Accident), the Arbitrators finds as follows:

Petitioner's testimony and the medical records including the Chicago Fire Department ambulance report confirm that on October 10, 2008 while working on the roof at 3547 West Medill, Chicago, Illinois, Petitioner fell from the roof suffering accidental injuries. The record confirms that Petitioner suffered accidental injuries arising out of and in the course of his employment on October 10, 2008.

In support of the Arbitrators finding with respect to E (Notice), the Arbitrators finds as follows:

Petitioner testified that Respondent was personally present on the jobsite at the time of the accident. An ambulance was called to the scene at that time. Petitioner also testified that a fellow worker visited him and brought him his earnings for the job from Respondent. The Arbitrator finds Petitioner has proved that Respondent had notice of the accidental injuries on the date of the accident.

In support of the Arbitrators finding with respect to F (Causal Connection), the Arbitrators finds as follows:

Petitioner's testimony and the medical records confirm that as a result of the accidental injuries suffered on October 10, 2008, Petitioner suffered a comminuted fracture of the right patella, a fracture of the left femur, a dislocation of the left shoulder and fractures to the zygomatic arch, maxilla and nasal bones. The Arbitrator finds that these conditions, the medical care to treat these conditions and the disability resulting from these conditions is causally connected to the accidental injuries suffered on October 10, 2008

In support of the Arbitrators finding with respect to G (Earning), the Arbitrators finds as follows:

Petitioner testified that he was paid cash of $120.00 per day for his work with Respondent. He did not have any documentation to support his testimony concerning his earnings. He testified that he had been working on the job on which he was injured for that week. Based upon the unrebutted testimony of the Petitioner, the Arbitrator finds that the evidence supports the claim of earnings of $480.00 per week claimed by the Petitioner on the Request for Hearing form submitted at the time of trial.

In support of the Arbitrators finding with respect to H (Age) and I (Marital Status), the Arbitrators finds as follows:

Petitioner's unrebutted testimony, supported by the medical records is that he was born on April 1, 1970 and was 38 years old on the date of accident. Petitioner's unrebutted testimony was that on the date of accident he was married and had two dependent children under the age of 18 years old.

In support of the Arbitrators finding with respect to J (Medical), the Arbitrators finds as follows:

Petitioner's Exhibits 11 and 16 through 22 include claimed medical bills. The Arbitrator finds that the the bills submitted are supported by the medical records and are reasonable, necessary and causally related to the injuries sustained in the accident suffered on October 10, 2008. The Arbitrator awards the following medical bills pursuant to Sections 8(a) and 8.2 of the Act:

Dr. Curtis Whisler	$7,543.00
Advocate Illinois Masonic	$164,598.66
Vital Rehabilitation	$20,106.28
Advocate Medical Group	$3,826.00
Chicago Anesthesia	$5,610.00
Midwest Diagnostics	$1,410.00

Wellington Radiology Group $325.00
Cardiac Surgery Assoc. S.C. $141.00

Total Medical: $203,559.94

In support of the Arbitrators finding with respect to K (Temporary Benefit), the Arbitrators finds as follows:

The Petitioner's testimony and the medical records confirm that Petitioner was temporarily disabled as of the date of the accident. Petitioner underwent two surgeries while admitted to Advocate Illinois Masonic Medical Center in October, 2008 and was in active follow up treatment through July 3, 2009. He underwent additional surgery to remove the hardware from his right knee on July 9, 2009 and had further follow up care by Dr. Whistler through August 26, 2009. There is no further medical documentation to establish Petitioner was unable to work thereafter. The Vital Rehabilitation records document that Petitioner was discharged from care as of July 3, 2009. Petitioner's testimony confirms that once he began seeking work, he was able to find employment. The Arbitrator finds that Petitioner has sustained his burden of proving he was temporarily totally disabled from October 11, 2008 through the last date of medical care documented on August 26, 2009, a period of 45 5/7 weeks.

In support of the Arbitrators finding with respect to L (Nature and Extent), the Arbitrators finds as follows:

As a result of the accident sustained on October 10, 2008, Petitioner suffered multiple injuries including facial fractures, and injuries to his left shoulder, right knee and left leg.

The CT scan performed October 13, 2008 documents 3 facial fractures. Petitioner is entitled to 2 weeks for each fracture pursuant to Section 8(d) 2 of the Act for a total of 6 weeks of compensation.

Petitioner suffered a dislocation of the left shoulder which was reduced in the Emergency Room. Petitioner has physical therapy for his shoulder though July 3, 2009. On discharge, he reported no pain and improved range of motion. Strength was improved. Petitioner testified that he cannot lift with his left arm overhead. He does not have much strength. Based upon the medical records submitted and Petitioner's testimony, the Arbitrator finds that Petitioner suffered a loss of 7.5% of the whole person as a result of the injury to the left shoulder.

As a result of the accident sustained on October 10, 2008, Petitioner suffered a comminuted fracture of the right knee. He underwent surgery for an open reduction and internal fixation. He had subsequent surgery to remove the hardware. Based upon the totality of the evidence including the medical records and Petitioner's testimony, the Arbitrator finds that Petitioner has sustained a 25% loss of use of the right leg.

As a result of the accident sustained on October 10, 2008, Petitioner suffered a fracture of the left femur. He underwent surgery with the insertion of a rod in the left leg. Based upon the totality of the evidence including the medical records and Petitioner's testimony, the Arbitrator finds that Petitioner has sustained a 40% loss of use of the left leg.

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

Maricela Garcia,
Petitioner,
vs.
WaterSaver Faucet,
Respondent,

15IWCC0890

NO: 13WC 22035

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 accident, medical expenses, temporary total disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 15, 2015, is hereby affirmed and adopted.

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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: DEC 7 - 2015
MJB/bm
o-11/24/2015
052

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GARCIA, MARICELA
Employee/Petitioner

Case# **13WC022035**

WATER SAVER FAUCET
Employer/Respondent

15IWCC0890

On 4/15/2015, 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:

4069 JONATHAN SCHLACK
200 N LASALLE ST
SUITE 2830
CHICAGO, IL 60601

0481 MACIOROWSKI SACKMANN & ULRICH
ROBERT E MACIOROWSKI
105 W ADAMS ST SUITE 2200
CHICAGO, IL 60603

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

Maricela Garcia
Employee/Petitioner
v.
WaterSaver Faucet
Employer/Respondent

Case # 13 WC 22035

15IWCC0890

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 **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago, IL**, on **January 30, 2015**. 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 **Prospective Medical Care**

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FINDINGS

On **1/21/2013**, 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 not 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 not causally related to the accident.

In the year preceding the injury, Petitioner earned $**28,314.00**; the average weekly wage was $**544.40**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **1** dependent child.

Petitioner's medical care is not related to an accidental injury arising out of and in the course of employment.

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

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

ORDER

Petitioner's claim for medical benefits, prospective medical care and temporary total disability benefits is denied for failure to prove an accidental injury arose out of and in the course of employment.

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

APR 14, 2015
Date

APR 15 2015

MARICELA GARCIA v. WATERSAVER FAUCET
13 WC 22035

15IWCC0890

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth on January 30, 2015. Disputed issues were: ***C.*** Did an accident occur that arose out of and in the course Petitioner's employment by Respondent? ***F.*** Is Petitioner's current condition of ill-being causally related to the injury?; ***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? **TTD**; ***O.*** Whether Petitioner is entitled to prospective necessary medical care.

Petitioner and Respondent's employee Javier Correa testified at the hearing. Evidence depositions of Dr. James O'Keefe and Dr. Prasant Atluri were admitted into evidence as well as their clinical records. Other evidence admitted included clinical medical records and billing records of Physicians Immediate Care, Dr. Kathleen Maloul and MRI report. Also admitted was a video disc recording offered by Respondent.

The Arbitrator took all evidence under consideration.

FACTS

Petitioner testified that she has worked for Respondent for 10 1/2 years. She worked for over 9 years as a tester of fluid valves, faucets, hoses, and other parts. After her claimed work-related injury Petitioner has worked light duty as an assembler.

Petitioner testified that in 2012 she was working as a tester. She described the activities and process involved in testing small valves. Valves are tested with air pressure under water. The small valves weighed anywhere from a few ounces to 4 or 5 pounds. Her workstation consisted of a sink table that came up to about 6 inches above her waist. The sink is filled with water for air pressure testing. There are various connectors on the sink table. Petitioner tested about 120 valves over an 8 hour day.

Petitioner testified that when testing a valve, she would hold the valve with her left hand at chest level. While holding the valve she would use her right arm to tighten or loosen parts with a wrench. She testified that when testing, she would always hold the valve with her left hand and turn the wrench with her right hand. The valves are tested for leaks under water in the sink.

Petitioner also testified that she would use air screwdrivers, manual screwdrivers and battery screwdrivers. The air screwdrivers were hanging from cables that were attached to a metal bar overhead. The air screwdriver weighed about 5 pounds. In order to use these screwdrivers she would have to reach up, grab the screwdriver, and pull it down. She used screwdrivers to attach handles to the tested valves. She used the overhead screwdrivers every time she tested valves in 2012. Petitioner also testified that there were battery powered screwdrivers and manual screwdrivers that were not

attached overhead. She then testified later that sometime in 2011 or 2012, WaterSaver stopped using the overhead air screwdrivers and after that only used the battery powered and manual screwdrivers.

Petitioner testified that she would sometimes have to hold certain parts, VT-751 and VT-753, over her head to drain out water. She demonstrated this process without apparent discomfort. She testified there was a lot of this overhead testing in December 2012 and January 2013. After testing a valve, Petitioner placed the part in a pan about the size of a cafeteria tray. This pan would contain between 35 to 40 parts when full. Once the pans were full Petitioner put the pans on a cart located next to her workstation. If the pan was too heavy she would ask for help to move the pan. She testified that the cart was about 5 feet high. Petitioner further testified that many times her supervisor placed the full pans on the cart.

Petitioner testified that she also tested hoses. When she was done testing and draining the hoses, she would drape the hoses over the cart to dry.

On cross-examination Petitioner viewed a video that showed another WaterSaver employee performing Petitioner's job duties. (Respondent's Exhibit 5) Petitioner testified that the video showed some of her job activities. The job depicted in the video was similar to the job she was performing on January 21, 2013. Petitioner testified that if valve parts were too tight, she would have to open up the upper part of the stem. In doing so, she would hold the part about six to twelve inches above her waist and open the upper part with a screwdriver. She testified that the video did not show how the valve handles were tightened or loosened. The video did not show the air-powered screwdrivers or how trays with tested parts were placed on the carts. The video did not show the process of testing hoses. Petitioner testified that regardless of the different parts she was testing, the work process was essentially the same as shown on the video. The video did show how the parts are manually screwed onto the testing arm. She also pointed out that the work sink was higher on her body than shown in the video because she is so short.

Petitioner testified that on January 21, 2013 she experienced a stabbing sensation in her right shoulder. This pain was unlike temporary pains she had had before. She was testing small valves, as an air tester, on that day. She felt the pain while testing parts and told her supervisor, Alex Rosario. She testified that she was not working with hoses when she felt pain. She also testified that she had not placed any full pans of tested product on the top shelf of any carts. She attributed her pain to her twisting and tightening parts with a wrench. She filled out a report and was directed to seek medical care at the company clinic.

On January 24, 2013, Petitioner went to Physicians Immediate Care, the company clinic. She complained of constant throbbing 8/10 pain in her right shoulder. Petitioner reported that the injury was work-related and that it was a sudden onset of pain. It was noted elsewhere in the chart that Petitioner had had similar problems in the past which had disrupted her sleep. She had not sought care for those prior

complaints because they had not been as severe as the current complaints. Petitioner was examined by Physician's Assistant Julianne Wong. Ms. Wong noted that Petitioner reported that she was working three days ago and had work-related right shoulder pain. Petitioner reported that she had been doing more repetitive twisting and tightening with a wrench and since then, the pain had gotten very severe. Petitioner was able to return to work with restrictions. On exam Petitioner had reduced right shoulder range of motion, joint line tenderness, right biceps groove tenderness, and 5/5 strength. Petitioner was diagnosed with a shoulder sprain. She was prescribed Prednisone for relief of symptoms. Petitioner was released for work with 40 pound restrictions to lifting overhead and waist to shoulder, and no pushing/pulling over 20 pounds.

Petitioner followed through with care and treatment, including physical therapy, at Physicians Immediate Care. She had physical therapy through June 2013. She continued to work with restrictions throughout the course of her physical therapy. She was also prescribed Ultram, naproxen and a muscle relaxant. Petitioner was also taking 600 mg ibuprofen. Petitioner realized modest relief through therapy, although her work restrictions were gradually lessened over time to 5 pound lifting limitations.

On April 15, 2013 an MRI of the right shoulder was ordered. The MRI, done May 3, 2013, was interpreted as showing mild intrasubstance tendinosis of the supraspinatus tendon and a bone cyst at the humeral head.

Petitioner also saw her primary physician, Dr. Kathleen Maloul, on January 28, 2013. Petitioner reported her complaints were related to a work injury on January 21, 2013. Dr. Maloul noted that the pain had been gradual over time. Dr. Maloul's exam of the shoulders revealed a normal range of motion no abnormalities and no abnormalities. She told Petitioner she had inflamed tendons. On February 4, 2013 Petitioner complained to Dr. Maloul of pain on shoulder movement. Dr. Maloul gave Petitioner a steroid injection in her right shoulder to relieve the pain. Dr. Maloul's diagnosis then was shoulder bursitis. Petitioner testified that she continued to treat with Physicians Immediate Care and Dr. Maloul in February, March, and April of 2013. Petitioner's Exhibit 3, Dr. Maloul's chart, contained a note dated June 24, 2013. On that third visit Petitioner reported that "work" had put her on 30 mg of Prednisone without significant relief. On exam at that visit Dr. Maloul's assessment was supraspinatus sprain with a cyst in the humeral head. She planned a consultation with a Dr. Miller.

In addition to consultation for her right shoulder Dr. Maloul also provided Petitioner with birth control services and assessment of thyroid function testing at the February 4 and June 24 visits.

Petitioner was referred to Prasant Atluri, M.D. for a §12 examination. Dr. Atluri saw Petitioner on May 22, 2013. In his report of June 13, 2013, Dr. Atluri noted Petitioner's history that her symptoms first became significant in January 2013. Petitioner attributed her complaints to the repetitive nature of her work activities. Petitioner reported pain throughout her shoulder with pain radiating into her neck. She

had been treated with medication, including cortisone injections, and therapy without substantial relief. She denied having any prior shoulder problems.

Petitioner described her work activities involved tightening and adjusting connections. This included forceful rotation of her forearm to tighten pieces with wrench and screwdriver. Pushing and pulling of "quick connects" parts was also involved. She also had to lift pans with parts weighing about 30 pounds.

On exam Dr. Atluri found normal rotator cuff strength. Shoulder range of motion was reduced on the right as compared to the left. There was pain on testing of range of motion. There was no crepitus on motion. He did not note finding joint laxity. Dr. Atluri reviewed the May 3 MRI and found no obvious rotator cuff or labral tears. He saw mild AC joint arthrosis. Also, he saw no effusion. He found that the cyst was a chronic degenerative condition.

Dr. Atluri also reviewed other records as part of his assessment. He reviewed clinical records of Physicians Immediate Care dated 4/2/13, 4/23/13, and 4/30/13. In addition, Dr. Atluri reviewed a video recording depicting a person at a sink attaching and detaching a faucet in a testing process (apparently Respondent's Exhibit 5). The video did not depict heavy lifting or activity above shoulder level.

Dr. Atluri's impression was that Petitioner's right shoulder condition was an impingement syndrome and possible internal derangement.

Dr. Atluri noted Petitioner did not report a specific accident on January 21, 2013. Rather, Petitioner reported that her complaints had a gradual onset. Dr. Atluri also noted that Petitioner's complaints were somewhat out of proportion to the minimal objective signs.

Based on his exam and review of records documented in his June 13 report Dr. Atluri opined that Petitioner's right shoulder condition was not work related. However, he did recommend that Petitioner have another cortisone injection. If symptoms were not relieved he would consider surgical intervention, along with post-operative care. He also advised against Petitioner engaging in frequent overhead use of the right arm as well as lift above shoulder level.

Dr. Atluri saw Petitioner for another §12 exam on January 29, 2014. Petitioner described her modified work activities that did not include heavy lifting or significant pushing or pulling or overhead use of her arms. Petitioner reported her care with a shoulder specialist. Dr. Atluri examined Petitioner again. His findings were similar to those of the prior exam. He again did not find crepitus and did not note a finding of joint laxity. He also reviewed images of Petitioner's arthrogram dated December 18, 2013, clinical notes from Central Medical Specialists, and therapy notes. The arthrogram showed contrast material in the glenohumeral joint. Dr. Atluri saw not obvious rotator cuff tear. He did note narrowing of the acromioclavicular joint.

Based on this exam and his understanding of Petitioner's work activities Dr. Atluri continued in his opinion that Pettioner's work activities did not cause or

aggravate the right shoulder impingement or derangement. He repeated his opinion that Petitioner's right shoulder condition was not related to her usual work activities.

Dr. Atluri authored an addendum to his January 29, 2014 report on February 28, 2014. He had reviewed Dr. O'Keefe's arthrogram procedure note dated 12/18/2013 and miscellaneous perioperative notes. Dr. Atluri noted Dr. O'Keefe's report that contrast material had extravated into the subacromial space. Dr. Atluri continued with his diagnosis of impingement syndrome but noted that the arthrogram findings were consistent with a rotator cuff tear. Dr. Atluri did not otherwise alter his opinion regarding causation of Pettioner's right shoulder condition.

Dr. Atluri testified at evidence deposition on October 29, 2014. His testimony was consistent with his written reports. He conceded that his opinion on causation might change if he knew Petitioner's usual job activities involved overhead use of the arms. He also conceded that lifting 40–60 pound loads over shoulder height could cause the pathology Petitioner suffered from. He noted that Petitioner's shoulder deteriorated over the span of time he saw her. Dr. Atluri opined that surgical intervention should be considered such as a shoulder arthroscopy with a subacromial decompression. He did add that a staff nurse acted as translator during his examinations of Petitioner.

Dr. Atluri relied on the video of work activities he reviewed, in addition to Petitioner's own description of her work activities. He testified that Petitioner had chronic, degenerative changes in her right shoulder which were not aggravated by work activities.

On referral from her attorney Petitioner consulted with orthopedic surgeon James O'Keefe, M.D. at Central Medical Specialists. Petitioner first saw Dr. O'Keefe on July 11, 2013. Dr. O'Keefe noted Petitioner's report that she had worked 9 years at a faucet company as a tester/deburrer. He noted that Petitioner's work was "brutally monotonous and extremely difficult". Petitioner reported that she had to pull hoses from the ceiling "near constantly". Petitioner reported that she torqued with a wrench weighing 1-2 pounds. She had to use manual friction to debur devices she tested. Petitioner also reported that she had to handle 40-60 pound tubs containing tested devices.

Petitioner adamantly denied that she had no injury or debility "prior to working at this place". Petitioner developed right shoulder pain January 21, 2013. She reported that she had been treated by "oc. med" (occupational medicine?) doctor who told her the injury was not work related. Petitioner was also complaining of left shoulder pain. She reported that she had an IME with Dr. Atluri, with interpreter, on May 22, 2013. Dr. Atluri sent her back to work without restriction despite Petitioner's intense bilateral shoulder pain and debility. It was noted that the "oc. med" had Petitioner on restricted duty. Petitioner also reported the cortisone injection by Dr. Maloul.

On right shoulder examination Dr. O'Keefe noted intense tenderness over the anterolateral aspect and anterior capsule. Impingement and supraspinatus testing was

intensely painful and with giving way. He also noted laxity with subluxation. The biceps tendon was intensely tender also. Supraspinatus testing also produced deep crepitance. Examination of the left shoulder revealed similar, though less severe, findings. Range of motion of both shoulders was reduced, right more than left. Dr. O'Keefe's diagnoses were severe overuse with intense rotator cuff symptoms, right worse that left, from work duties. He ordered Relafen and Norco for pain, and also Prilosec. He also ordered physical therapy and wanted a copy of Dr. Atluri's IME report.

Petitioner began physical therapy on July 12, 2013 and continued through March 2014. Petitioner followed with Dr. O'Keefe and his Physician's Assistant from time to time. She saw Dr. O'Keefe again on August 27, 2013. Dr. O'Keefe noted Petitioner's left-sided complaints. He also referred to Dr. Atluri's report, noting:

> "We only have some of that report. I'm not going to address it other than to say that he did note that she had tenderness and that she did have abnormal MRI. Of course he says these are not related to her work activities. He misses completely the fact that she has to lift 40-60 lb. loads 2-3x a day above the height of her head."

On exam Petitioner still had reduced ranges of motion in her shoulders, right greater than left. Dr. O'Keefe continued with his impression of work-relate overuse symptoms. Dr. O'Keefe recorded his interpretation of Petitioner's May 3 MRI. He noted a partial rotator tear and a traumatic cyst on the subsurface of the acromion at the supraspinatus. He requested authorization for ultrasound-guided cortisone injection.

Petitioner returned to Dr. O'Keefe on October 124, 2013. Petitioner was noted as miserable that day. She was working with a 5 pound restriction. Her clinical presentation was improved, although ranges of motion were still reduced. Dr. O'Keefe still wanted to see Dr. Atluri's complete report, noting:

> "We need the entire report so that we can make cogent observations. It's my guess that he doesn't have a clue about her normal work activities or how she was hurt at such a young age with such severe injuries. In truth, it's a brutal job that she had to do and it produced tremendous symptoms of which she complained on a weekly basis to her supervisors."

Dr. O'Keefe again noted that Petitioner reported that she never "missed work or debility with these shoulders prior to the 01/13 injuries". He further noted that as a tester "she'd have to lift rubber hoses that would be entangled below waist level and she'd lift this load above the height of her head on a common basis. It was this effort that produced the cuff tears."

Dr. O'Keefe saw Petitioner again on November 21, 2013. Pettioner's reduced ranges of shoulder motion persisted, but were now bilaterally equal. He noted his clinical impression as sprain of right shoulder with mechanical derangement and laxity.

Dr. O'Keefe performed a right shoulder arthrogram with contrast on December 18, 2013. Dye extravated from the glenohumeral joint into the subacromial space indicating incompetence of the rotator cuff.

Petitioner returned for a clinical visit on January 21, 2014. Dr. O'Keefe noted that Petitioner had rotator cuff sprain symptoms with an abnormal MRI and failed therapy at Immediate Care. He also noted that Petitioner had 6 hours of pain relief following the arthrogram. Dr. O'Keefe again commented on Dr. Atluri's opinions, noting:

> "**We're still waiting for the final complete copy of the IME done by Dr. Atluri 05/13.** Unbelievably, he says this isn't work-related. I can't glean what he's thinking is from an incomplete report. **We need the complete IME report.**" (emphasis in the original)

Dr. O'Keefe's stated impression was "**It's my board-certified orthopedic opinion that her present debility and need for outpatient arthroscopic assessment is a direct result of the duties that she performed testing faucets and lifting 40-60 lb. loads each day, often above the height of her head.**" (emphasis in the original)

Petitioner was back to Dr. O'Keefe on February 20, 2013. He was awaiting authorization for the recommended arthroscopy. Petitioner's right shoulder range of motion was improved. He commented on Dr. Atluri's report of January 29, 2014:

> "His recorder is stuck on fibromyalgia as most of his examinations reveal. In truth, this is a 9-year veteran at the job site without ever having had a history of debility or problems before the 01/13 complaints and episode of injury. Dr. Atluri states that although he looked at the arthrogram, he did not see the extravasation of dye into the subacromial space. ... I believe Dr. Atluri's training is in hands, not shoulders, which would corroborate his impression."

On examination Dr. O'Keefe found Petitioner's right shoulder was unstable. He continued with recommendation for arthroscopic assessment. Petitioner returned on April 22, 2014. Dr. O'Keefe again commented on Dr. Atluri's opinions:

> "She had an ultrasound-guided cortisone injection 12/13 showing extravasation of dye from the glenohumeral joint into the subacromial space. This is objective proof of incompetency of the cuff. **She tried to show this to her IME doctor, Dr. Atluri, 01/14. He said fine but didn't want to see the pictures. It's unbelievable that an IME would preclude objective testing.** Happily he did realize that she was hurt and need surgery and documented that in his IME. Of course, her work activities did not produce the trauma." (emphasis in the original)

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Dr. O'Keefe noted Petitioner's intense pain and debility, although she was working within the previous 5 pound restriction. She continued with Mobic and Prilosec, although not having to use the narcotic as much. Dr. O'Keefe provided Ultram. His plan was for therapy on a monthly basis.

Petitioner saw Dr. O'Keefe again on June 24, 2014 and August 26, 2014. Petitioner's presentation was essentially unchanged on both occasions. Dr. O'Keefe continued to recommend surgical intervention and stated that Petitioner could continue working light duty Petitioner saw Dr. O'Keefe again on September 25, 2014, October 30, 2014, and December 30, 2014. On all 3 occasions Dr. O'Keefe continued to recommend surgical intervention and stated that Petitioner could continue working light duty. Petitioner's clinical presentation was essentially unchanged, although it was noted that she was relying on OTC medications for relief.

At his evidence deposition of May 29, 2014, Dr. O'Keefe testified consistently with his written chart notes. He noted that Petitioner was approximately 4'11" and weighed about 120 pounds, which when lifting a 1/3 to 1/2 of her body weight is "a great way to get hurt".

Dr. O'Keefe testified that overuse often happens in an industrial setting where a job is repetitive, which may lead to microscopic breakdown of the tissue and/or ligament tearing. Dr. O'Keefe went on to testify that Petitioner stated she had no injuries outside of the workplace and that Petitioner worked for Respondent for 9 years and never had shoulder problems until the beginning of 2013 when she began doing this job as a tester. Dr. O'Keefe testified to his recollection that Petitioner's workloads, activities, and frequencies were increased, which is what overuse is and that too frequently the tissue eventually breaks down.

Dr. O'Keefe testified that the December 18, 2013 ultrasound-guided cortisone injection provided temporary relief followed by a rapid return of high leveled symptoms. The dye test from this injection revealed the dye from the shoulder joint going up into the subacromial space, meaning there is an incompetency of the rotator cuff. Dr. O'Keefe testified that this is an additional objective test other than the May 3, 2013 that shows a tear in the rotator cuff. The May 3, 2013 MRI showed a partial thickness tearing, which is "very consistent with a worker that has a heavy, highly repetitive job that can produce an overuse syndrome". Dr. O'Keefe testified that the MRI is "very abnormal" and correlates very precisely with her clinical findings.

Dr. O'Keefe testified that Petitioner is a candidate for surgery and that he had been recommending an arthroscopic procedure since January of 2014. He also testified that Dr. Atluri recommended surgery in his IME report, as well. Dr. O'Keefe testified that Petitioner is a surgical candidate because the MRI revealed a partial tear, has not done well clinically and has high pain, and that the arthrogram revealed dye moving into space that it should not be, which is a more objective affirmation that Petitioner needs surgery. Dr. O'Keefe testified that all reasonable conservative non-operative treatment

options have been exercised and that Petitioner needs surgery or she will not be able to tolerate a moderately repetitious job at an extremely light duty category, and there would be no hope of her returning to her pre-injury job.

Dr. O'Keefe testified that Petitioner's highly repetitive and monotonous work activities along with lifting 40-60 pound loads overhead for 9 years caused Petitioner's shoulder condition. He commented that Dr. Atluri did not note that Petitioner has to lift heavy loads to the chest and above head height and that he reported that she was only lifting 30 pound loads. Dr. O'Keefe testified that Petitioner had been "consistent, reliable, and I think a very high veracity factor".

On cross-examination Dr. O'Keefe admitted that the cause of the cyst shown on the MRI cannot be determined just from the image itself. Likewise one cannot date the partial rotator cuff tear he diagnosed from the image itself. Specifically, he could not tell that the rotator cuff tear occurred on January 21, 2013.

On further cross-examination he repeated his understanding that Petitioner's work-activities involved overhead grabbing and pulling. He did not review the video depicting Petitioner's work activities. He relied on Petitioner's description of her work activities.

Petitioner further testified at hearing that she has been working light duty. Since working light duty, she has noticed that her shoulder does not hurt as much. She experiences less pain in the assembly department rather than the testing department. However, she testified that she cannot lift items above chest level and that she cannot lift heavy items. She cannot work as fast as she did before her injury. She wants the surgery Dr. Keefe recommends.

Respondent's production manager Javier Correa testified on behalf of Respondent. He testified that he had been a production manager for approximately 6 years. His job consisted of overseeing 5 departments of the assembly area. Mr. Correa testified that Petitioner was employed as an air tester. The job of an air tester was to make sure that valves did not have any leaks. The process involved using air pressure to test for leaks. Mr. Correa was familiar with Petitioner's job because he had to learn and perform her job as part of his own training.

Mr. Correa testified that testers would use a number of tools. He testified that overhead pneumatic screwdrivers were used eliminated around 2011. The pneumatic screwdrivers were only used for about 6 months, during a period of construction. He further testified that in 2012 and 2013, testers used manual and battery powered Phillips screwdrivers. The employee could choose which type of screwdriver to use. He testified that a tester would test between 100 to 115 parts per an 8-hour day. Of those 100 to 115 parts, about 30 to 40 of them would require adjustment with a screwdriver.

Mr. Correa viewed the same video (Respondent's Exhibit 5) that Petitioner viewed. He testified that the job shown on the video was the same type of work that Petitioner performed. He testified that Petitioner's job did not involve above shoulder level movement. The only time a tester would reach overhead was to use the pneumatic

screwdriver, which were eliminated in 2011. He testified that the parts Petitioner tested weighed about 1 to 1 ½ pounds.

Respondent's Exhibit 5 shows a person working at a water-filled sink testing valves. The valves are attached by hand to swing-arm tubing. The valves are screwed on using both hands. The handle of the valve is opened in the normal fashion of opening a valve. The valve body is tightened onto the swing-arm with a wrench in the left hand to steady the valve while the right hand applies little force for final tightening. A lever to the side attached to the swing-arm tubing is then opened, apparently introducing pressurized air. The valve is the immersed in water to check for leaks. The valve is then removed from the water and air pressure is released. The valve opening is then oriented upward and a liquid from a squeeze bottle is squirted into the opening for further testing for leaks. The liquid from the squeeze bottle is then emptied into a small plastic tub, apparently for reuse. The majority of the activities shown in Respondent's Exhibit 5 were at waist level. Activities shown are predominately use of hands and wrists. None of the activities shown was above chest level.

Mr. Correa testified that after Petitioner tested a part, she would place the part in an empty pan. Once the pan was full, it would be taken to a cart that measured about four or five feet high. Mr. Correa testified that a pan with one layer of parts would weigh between eighteen and twenty pounds. There was a company policy in place that a pan could not weigh more than 35 pounds. He testified that employees were instructed to ask for help if they could not lift a full pan by themselves. Mr. Correa testified that there would be no reason for an employee to lift a full pan over their head. He further testified that he had never seen an employee place a full pan on the top shelf of a cart.

Mr. Correa testified that if an employee was testing hoses, the testing would be done below shoulder level. Since the hose is flexible, the only way to plug the hose would be at or below shoulder level. He testified that once a hose was tested, they would be put into pans or hung on the side of the cart. The hoses weighed between 2 and 3 pounds.

Mr. Correa testified about parts 751 and 753. About 8 inches of copper tube are added to those valves. He testified that in order to remove the water from parts 751 and 753 after testing, there would be no reason to lift the part overhead. One would simply lift the part out of the water and the water would drain out.

Mr. Correa testified that he reviewed the IME report prepared by Dr. Atluri. He testified that Dr. Atluri's description of Petitioner's job duties was accurate. Mr. Correa also testified that Dr. Atluri accurately described the video showing Petitioner's work duties.

C. Did an accident occur that arose out of and in the course Petitioner's employment by Respondent?

The Arbitrator concludes that Petitioner did not prove by the preponderance of the evidence that an accident arose out of and in the course of her employment by Respondent. The Arbitrator finds that Petitioner's evidence, her own testimony and the records and testimony of Dr. O'Keefe, was not reliable and therefore not persuasive.

At hearing Petitioner testified to her daily work activities as a tester for Respondent. She testified to various hand and arm movements which she claims caused injury to her right shoulder. She testified that her job required use of screwdrivers in the testing process. She described use of a pneumatic screwdriver attached by hoses over her head which she had to reach up and pull down to use. Petitioner initially testified to use of the pneumatic screwdrivers in the present tense, particularly testifying that she used theme throughout 2012. However, in later testimony she acknowledged that the pneumatic screwdrivers had been removed in 2011 or 2012. Respondent's witness, production manager Javier Correa, testified that the pneumatic screwdrivers were suspended above Petitioner's work area but were only used for a 6 month period in 2011 during a construction phase.

Petitioner initially testified at hearing that she had not injured her right shoulder before the date of her claimed injury, January 21, 2013. However, in later testimony she alluded to prior complaints with her right shoulder in that then current complaints were different from those before. She disclosed prior right shoulder complaints to her caregivers at Physicians Immediate Care, describing the prior complaints as disrupting her sleep. Petitioner did not disclose this history to Dr. O'Keefe or to Dr. Atluri. In addition, Petitioner complained of left shoulder problems to Dr. O'Keefe when she made no mention whatever of such complaints at Physicians Immediate Care, to Dr. Maloul or to Dr. Atluri. Petitioner made no mention of left shoulder comaplints at hearing.

At hearing Petitioner testified that she had to lift pans filled with tested valves that weighed about 30 pounds. She testified that she had to lift these pans onto a cart which was 5 feet tall. She also testified that she did not lift the pans up to the top shelf on the cart. She testified that she would get help from co-workers if the pans were too heavy for her to lift onto the cart. Dr. O'Keefe documented Petitioner's report that she had to lift pans of tested valves weighing 40-60 pounds over her head. The Arbitrator takes note of Petitioner's modest stature, being 4 feet 11 inches tall and weighing approximately 120 pounds. Dr. O'Keefe commented at deposition that this would involve Petitioner lifting 1/3 to 1/2 of her body weight over her head. The Arbitrator finds it is incredible that a woman of such stature could repetitively perform that feat as documented by Dr. O'Keefe.

Finally, Petitioner's testimony at hearing was not consistent with Respondent's Exhibit 5, the video recording of the pressure testing process which was part of Petitioner's job. While the video recording did not depict all of the work activities involved in Petitioner's job, what was depicted was not consistent with Petitioner's testimony. The video did not depict any overhead movement of the arms or forceful torqueing of wrenches or screwdrivers. Respondent's witness Javier Correa, on the other hand, was credible in testifying that the video was accurate in depicting Petitioner's job activities as well as the limited time in which pneumatic screwdrivers were in use. He was equally credible when testifying that helping testers lift pans of t4ested valves onto the cart was routine.

The Arbitrator is faced with competing opinions of whether Petitioner's right shoulder condition is work related. Dr. O'Keefe, Petitioner's treating physician, relied on the accuracy of Petitioner's history for the basis of his opinion that the condition was work-related. The record shows that Petitioner was not a reliable historian. Dr. O'Keefe relied on Petitioner's report that she had not had similar complaints before, which was not accurate. Petitioner did not accurately report the weight of pans of tested valves or the extent of overhead reaching or lifting. Petitioner did not accurately report the nature of the arm and hand movements required in testing valves. Also, Dr. O'Keefe documented that Petitioner "deburred" parts that she tested "with friction", a fact Petitioner did not testify to as part of her job activities. Most compelling is the fact that Dr. O'Keefe did not review the video recording of the valve testing process. Opinions based on incorrect and inaccurate patient reports and histories lack any reliability.

Of the 4 physicians who treated or examined Petitioner Dr. O'Keefe was the only one to find crepitus or joint laxity. The Arbitrator finds it unlikely that other presumably competent physicians would fail to note these clinical signs.

Dr. Atluri's opinions were based in large part on his review of the objective depiction of the valve testing process which was a key part of Petitioner's job. While he did find a clinical condition in Petitioner's right shoulder requiring medical intervention, Dr. Atluri's opinion that that condition was not work-related is more credible than the contradictory opinion of Dr. O'Keefe.

The Arbitrator also takes note of Dr. O'Keefe's inappropriate use of hyperbolic modifiers and bold font in his various chart notes. The Arbitrator also noted an adversarial tone in Dr. O'Keefe's notes regarding Dr. Atluri's findings and opinions. This lack of clinical objectivity detracted from the credibility of Dr. O'Keefe's opinions.

Therefore, based on Petitioner's lack of credibility and the lack of reliability of Dr. O'Keefe's opinion that Petitioner's right shoulder condition is work-related the Arbitrator concludes that Petitioner failed to prove by the preponderance of the evidence that she sustained accidental injuries that arose out of and in the course of employment by Respondent.

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

Based on the Arbitrator's conclusions stated above this issue is moot, although the Arbitrator did conclude that Petitioner's current claimed condition of ill-being was causally related to her job activities.

***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?**

Based on the Arbitrator's conclusions stated above Petitioner failed to prove by a preponderance of the evidence that the medical services provided were reasonable and necessary.

***K.* What temporary benefits are in dispute? TTD**

Based on the Arbitrator's conclusion stated above Petitioner failed to prove by a preponderance of the evidence that she is entitled to any additional temporary total disability benefits.

***O.* Whether Petitioner is entitled to prospective necessary medical care.**

Based on the Arbitrator's conclusion stated above Petitioner failed to prove by a preponderance of the evidence that she is entitled to the prospective medical care recommended by Dr. O'Keefe.

***K.* As to the issue of TTD, the Arbitrator finds:**

Based upon the Arbitrator's previous finding that Petitioner failed to prove causal connection between her condition of ill-being and job duties, no temporary disability benefits are due and owing.

***O.* Other: As to the issue of prospective medical, the Arbitrator finds:**

Based on the Arbitrator's previous finding that Petitioner failed to prove causal connection between her condition of ill-being and her job duties, that Respondent is not obligated to authorize or pay for prospective medical care for Petitioner's claimed injury.

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

Maria Ortiz,
Petitioner,
vs.
Bretford Manufacturing, Inc.,
Respondent,

NO: 12WC 8904

15IWCC0891

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under §19(b) by the Petitioner, herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary total disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 13, 2015, is hereby affirmed and adopted.

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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: DEC 7 - 2015
MJB/bm
o-11/24/15
052

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

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

ORTIZ, MARIA
Employee/Petitioner

Case# **12WC008904**

BRETFORD MANUFACTURING INC
Employer/Respondent

15IWCC0891

On 4/13/2015, 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:

0815 LUIS A ACEVES & ASSOC
MICHAEL J PERRETTA
1931 N MILWAUKEE AVE
CHICAGO, IL 60647

1109 GAROFALO SCHREIBER HART ETAL
JAMES R CLUNE
55 W WACKER DR 10TH FL
CHICAGO, IL 60601

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)

Maria Ortiz
Employee/Petitioner

v.

Bretford Manufacturing, Inc.
Employer/Respondent

Case # **12** WC **08904**

15IWCC0891

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 **Milton Black**, Arbitrator of the Commission, in the city of **Chicago**, on **January 21, 2015 and February 17, 2015**. 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. ☒ 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

FINDINGS

On the date of the alleged accident, **October 19, 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 not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

In the year preceding the injury, Petitioner earned $**25,060.36**; the average weekly wage was $**481.93**.

On the date of accident, Petitioner was **60** years of age, ***single*** with **1** dependent child.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

ORDER

Benefits are denied, because the petitioner has not proved by a preponderance of the credible evidence that an accident occurred that arose out of and in the course of her employment by the respondent.

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

April 13, 2015
Date

APR 13 2015

ICArbDec19(b)

FACTS

The petitioner testified through a Spanish interpreter. The petitioner testified that on October 19, 2011 she was carrying a conference table with another person when she felt some sort of numbness on her right shoulder and a little bit of discomfort on her left hip. She testified that the conference table was thick and wooden weighing approximately 100 pounds. She testified that usually it takes four people to lift such a table.

The petitioner testified that she reported the accident on October 24, 2011, the following Monday. She testified that she then began her medical treatment and that her treatment is ongoing.

On cross-examination the petitioner testified that the table was actually half of a conference table. She further testified that she does not remember if her hands were at her waist when she lifted. She further testified that she was standing and that the tabletop was in her hands. She further testified that when she picked up the conference table it was on another table.

When she testified, the petitioner compared the size of the conference table to the lawyers' tables in the trial room. The attorneys stipulated that the petitioner testified that the conference table was probably longer than four feet and was about three feet wide.

The petitioner was seen at Advanced Occupational Medicine Specialists on October 26, 2011. That history is of helping a co-worker carry half of a wooden conference table approximately three to four feet at waist height (PX1, p9).

The petitioner was seen at Franklin Chiropratic on October 29, 2011. In that history the petitioner stated that she was having a "lot of pain" in her right shoulder since October 19, 2011 when she had to lift and turn heavy shelving material (PX2, p4).

The petitioner was examined by Dr. Atluri on January 22, 2013, at the respondent's request. Dr. Atluri confirmed with the petitioner that her arms were positioned against her body and elbows flexed in front of her when she and a co-worker were lifting a table to move it to the side (RX1, p1).

The respondent called three witnesses. One witness, Juan Bustos, testified that he was a lead man and that he moves people around for specialty jobs. He testified that a conference table is approximately 48 inches wide, about 96 inches long, and about 36 inches high. He testified and indicated that a table top is transferred by slipping or sliding from a pedestal to a cart, a distance of about 14 inches.

On cross-examination Juan Bustos testified that it requires two persons to move the table.

On redirect examination Juan Bustos testified that when he referred to a conference table he was referring to a table top.

ACCIDENT

The petitioner was not a credible witness, particularly when she testified about her accident. Her cross-examination testimony regarding the alleged accident was essentially evasive and nonresponsive (T 1/21/15, 33-35).

Juan Bustos contradicted the petitioner's testimony that it usually takes four people to lift a table top, when he testified that it requires two people.

The history that the petitioner gave at Franklin Chiropractic was of lifting and turning heavy shelving material, not of lifting a table.

The petitioner confirmed with Dr. Atluri the exact positioning of her body and elbows during the alleged lifting episode, but had a memory loss about that mechanism of accident when she testified on cross examination.

The petitioner's testimony strongly suggests that she was required to lift and carry a heavy table. However, Juan Bustos testified and indicated that a table top is transferred by slipping or sliding from a pedestal to a cart, a distance of about 14 inches.

Ultimately, there are too many inconsistencies. The petitioner has not carried her burden of proof on the issue of accident. Therefore, the arbitrator finds that an accident did not occur that arose out of and in the course of the petitioner's employment by the respondent.

The remaining issues are moot.

11 WC 42676
Page 1

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

MARTIN CORRO,

Petitioner,

vs. NO: 11 WC 42676

SUN FRESH MARKET,

15IWCC0892

Respondent.

DECISION AND OPINION ON REVIEW

This cause comes before the Commission pursuant to Petitioner's timely Petition for Review. The parties appeared for oral argument on October 13, 2015. At hearing, Petitioner's counsel made an oral Motion to withdraw its Petition for Review; Respondent did not object. The Commission therefore grants Petitioner's Motion to Dismiss its Petition for Review.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Petitioner's Petition for Review of case 11 WC 42676 is hereby dismissed.

DATED: DEC 7 - 2015

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB/tdm
O: 10-13-15
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CORRO, MARTIN
Employee/Petitioner

Case# **11WC042676**

SUN FRESH MARKET LLC
Employer/Respondent

15IWCC0892

On 1/26/2015, 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:

0243 JAMES ELLIS GUMBINER & ASSOC
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180 N MICHIGAN AVE SUITE 2100
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1109 GAROFALO SCHREIBER HART ETAL
JASON CUTLER
55 W WACKER DR 10TH FL
CHICAGO, IL 60601

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

Martin Corro
Employee/Petitioner

v.

Sun Fresh Market LLC.
Employer/Respondent

Case # **11** WC **42676**

Consolidated cases: **N/A**

15IWCC0892

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 **Stephen Friedman**, Arbitrator of the Commission, in the city of **Chicago**, on **January 9, 2015**. 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 _____

15IWCC0892

FINDINGS

On **January 5, 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 $**22,877.40**; the average weekly wage was $**439.95**.

On the date of accident, Petitioner was **43** 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 $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**25.00** for other benefits, for a total credit of $**25.00**.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

Petitioner's claim for further medical after April 11, 2011 is denied.

Respondent shall pay Petitioner permanent partial disability benefits of $263.97/week for 20 weeks, because the injuries sustained caused the 4% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall be given credit for $25.00 for the travel expense check sent for the missed Section 12 examination as an advance against permanency awarded herein.

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

January 26, 2015
Date

JAN 26 2015

ICArbDec p. 2

Statement of Facts

Petitioner Martin Corro testified that on January 5, 2011 he was employed by Respondent Sun Fresh Market as a butcher. On that date, he was walking on top of a cooler to find some paper and fell injuring his low back. Petitioner testified that he was sought medical treatment the same day.

The records of St. Mary and Elizabeth Medical Center were admitted as Petitioner's Exhibit 1. The records reflect treatment on January 5, 2011. The history states Petitioner fell through a second floor and complains of low back pain. X-rays show minimal degenerative arthritis. Petitioner was diagnosed with a contusion and referred to Dr. Treister. On January 10, 2011, Petitioner returned with pain complaints. The history records that pain was relieved on first visit but not adequately at home. The diagnosis was back sprain. He was again recommended to follow up with Dr. Treister.

Petitioner did seek treatment with Dr. Treister. His records were admitted as Petitioner's Exhibit 2. Petitioner saw Dr. Treister on January 19, 2011. He reported the low back injury at work on January 5, 2011. Petitioner complained of sharp pain. Dr. Treister took additional x-rays which showed no evidence of fracture. He prescribed medication and physical therapy. On February 3, 2011, Petitioner noted improvement in his back pain. He also complained of left elbow pain. Dr. Treister prescribed an MRI and continued physical therapy.

The MRI performed on February 8, 2011 noted no focal disc herniation or significant stenosis (Px 1). There were findings of disc bulging and degenerative spurring with facet degeneration from L3-S1 as well as disc desiccation and endplate degenerative changes in the lower lumbar spine. Dr. Treister reviewed the MRI during his February 17, 2011 office visit and allowed Petitioner to return to work with a lifting restriction of 50 pounds. On April 14, 2011, Petitioner is noted to be back to full duty and not taking any medication. He reports no pain. The examination is found to be completely benign and Petitioner is having no symptom. He was discharged from care.

Petitioner testified that he retained his current attorneys in November, 2011. He sought additional treatment for his low back with Dr. Magnan at Affiliated Chicago Physicians beginning November 22, 2011. The records of Affiliated Chicago Physicians were admitted as Petitioner's Exhibit 3. Petitioner was seen on November 22, 2011 with complains of back pain with radiation into the left lower extremity. Petitioner underwent treatment at this facility for his back as well as his left ankle and left shoulder including various modalities through April 9, 2012.

Petitioner saw Dr. David Shapiro, a board certified orthopedic surgeon, for a Section 12 examination at Respondent's request on February 9, 2012. Dr. Shapiro's report of the examination was admitted as Respondent's Exhibit 2. Dr. Shapiro took a history of the accident and initial complaints of back pain. Petitioner stated that approximately four months before the exam he also began to complain of pain and weakness of the left leg. The physical examination of the low back noted some stiffness on extension, but straight leg raising, and all neurological testing was normal. Petitioner noted pain in the left knee radiating into the shin. Dr. Shapiro noted tenderness in the medial joint line. Dr. Shapiro reviewed the medical records including a request for an injection from Dr. Hussein (which is not included in the evidence of this matter). Dr. Shapiro opined that Petitioner has degenerative disc disease with a very minor L5 radiculopathy. He also notes a possible torn meniscus in the left knee. He further opines that neither condition is causally connected to the work accident. He finds Petitioner reached MMI in April, 2011 based upon the finding of Dr. Treister.

Treatment up to that time was reasonable and necessary. The new symptoms are unrelated to the work accident.

Dr. Shapiro provided a supplemental report on February 17, 2012 which was admitted as Respondent's Exhibit 3. He reviewed the initial MRI taken February 8, 2011 and a subsequent MRI performed January 3, 2012. He finds no substantial difference in these two MRI studies. He finds bulging discs and degenerative changes. He states that there is no evidence of nerve compression or severe spinal stenosis or foraminal stenosis. Dr. Shapiro confirms his prior opinions that Petitioner sustained a lumbar strain in the accident from which he completely recovered by April, 2011 and that any new symptoms are completely unrelated to the accident that he suffered on January 5, 2011.

Petitioner was subsequently scheduled for a follow up examination with Dr. Shapiro set initially on March 21, 2013 and changed to April 4, 2013 with travel expenses sent of $25.00 (Rx 5, 6). Petitioner did not attend the examination and Respondent was charged a $675.00 no show fee (Rx 7).

Petitioner testified that he sought further treatment from Dr. Malek. Dr. Malek's records were admitted as Petitioner's Exhibit 4. Dr. Malek saw Petitioner on October 10, 2012. The record reflects a referral for a neurosurgical consult from Dr. Hussein. He took a history of the accident. Petitioner stated that his symptoms have progressed with time and now he has pain in the low back radiating into the lower extremity to the foot with tingling, numbness and weakness. Dr. Malek's physical examination notes lumbar tenderness. He reviewed the January 3, 2012 MRI report and opines a finding of a herniation at L4-5. He notes that Petitioner had an epidural injection from Dr. Hussein. Dr. Malek diagnosed a lumbar sprain/strain and left lumbar radiculopathy and possible knee injury. He recommended orthopedic work up of the left knee and a discogram and post discogram CT scan for the low back.

Petitioner underwent an L3-4, L4-5 and L5-S1 discogram on January 12, 2013. The report finds the L5-S1 level positive. The post operative CT scan report found all three levels abnormal. Dr. Malek saw Petitioner on January 23, 2013. He reviewed the discogram and CT studies and recommended a fusion at L5-S1, probably also L4-5 and possibly to include L3-4. Petitioner saw Dr. Malek for further follow up thereafter on several occasions through a last visit on January 13, 2014. Dr. Malek's notes record persistent complaints and his continued recommendation for surgery, which was not authorized by Respondent. The records do not reflect any treatment provided by Dr. Malek other that the follow up visits to determine if surgery would be authorized.

Petitioner testified that he has continued pain in his back and down his left leg and hip. He rates this as a nine out of ten. He wants to undergo the surgery recommended by Dr. Malek. Petitioner continues to work as a butcher. He testified that he does not carry boxes. He has not returned to Dr. Malek, who Petitioner testified has retired. He has seen no other doctors for treatment.

Conclusions of Law

In support of the Arbitrator's decision with respect to (F) Causal Connection, the Arbitrator finds as follows:

Petitioner suffered an undisputed accident on January 5, 2011 arising out of and in the course of his employment with Respondent. He sought immediate medical care for complaints of low back pain. The Arbitrator notes that there are no complaints raised by Petitioner to any body part other that the low back

during Petitioner's initial care (except for a single elbow complaint on February 3, 2011). Petitioner was treated by Dr. Treister through April 11, 2011 at which time the notes comment multiple times that Petitioner has no complaints, symptoms or findings and Dr. Treister released Petitioner to regular duty and discharged him from care. The MRI performed on February 8, 2011 finds no disc herniation or significant central canal stenosis.

Petitioner sought no treatment until November, 2011, a period of seven months, and then sought essentially chiropractic care. The Arbitrator notes the timing of the Petitioner's decision to seek additional treatment with respect to the filing of the Application for Adjustment of Claim in this matter. Dr. Mangan notes complaints of low back pain radiating into the left leg as well as left ankle and left shoulder pain. The treatment records from Affiliated Chicago Physicians do not provide any opinions on causation. The records note referral to Dr. Hussein in the January 16, 2012 note, but no records of Dr. Hussein were offered. Treatment by Dr. Hussein, including possible injections, and the January 3, 2012 MRI are referred to by Dr. Shapiro and Dr. Malek, but not in evidence.

Dr. Shapiro, a board certified orthopedic surgeon examined the Petitioner, reviewed the medical records and MRI reports in February, 2012 and opined that Petitioner sustained a lumbar sprain. He opined that Petitioner's current complaints were unrelated to the accidental injuries and that he had reached MMI as of his discharge by Dr. Treister in April, 2011.

Dr. Malek's first treatment is not until October, 2012. His review of the MRI studies is not in agreement with the radiologist, Dr. Treister or Dr. Shapiro. His criticism of Dr. Shapiro's report does not adequately consider the records of Dr. Treister upon which Dr. Shapiro relied. The Arbitrator notes the history of continued complaints which Mr. Malek records is contradicted by the records of Dr. Treister. Dr. Malek's opinions that Petitioner should undergo the discogram and is a surgical candidate are in sharp contracts to the opinions and finding of both Dr. Treister and Dr. Shapiro.

After reviewing the record as a whole including the testimony of Petitioner, the treating records admitted and Dr. Shapiro's reports, the Arbitrator finds the opinions of Dr. Treister and Dr. Shapiro more persuasive that those of Dr. Malek and that Dr. Shapiro's opinions are supported by other medical evidence, particularly the records of Dr. Treister. The Arbitrator finds that, as a result of the accidental injuries suffered on January 5, 2011, Petitioner suffered a low back sprain superimposed on pre-existing degenerative changes. The Arbitrator finds that the complaints in the elbow, left shoulder, left ankle and left knee and leg are not causally connected to the accidental injuries suffered on January 5, 2011.

Based upon the records of Dr. Treister and the opinions of Dr. Shapiro, the Arbitrator finds that the Petitioner reached maximum medical improvement as of April 11, 2011. All medical care and complaints thereafter are not causally connected to the accidental injuries suffered on January 5, 2011.

In support of the Arbitrator's decision with respect to (J) Medical, the Arbitrator finds as follows:

Based upon the Arbitrator's findings with respect to causal connection, the Arbitrator finds that Petitioner received reasonable and necessary medical treatment causally connected to the accidental injuries suffered on January 5, 2011 through his release from care by Dr. Treister on April 11, 2011. The parties have stipulated that the bills for these services have been paid. The claimed bills for treatment at Affiliated Chicago Physicians are denied.

15IWCC0892

The Arbitrator further finds that, based upon the opinions of Dr. Shapiro, which the Arbitrator finds persuasive, that the treatment rendered after April 11, 2011 including the treatment from Affiliated Chicago Physicians and Dr. Malek was not reasonable or necessary.

In support of the Arbitrator's decision with respect to (L) Nature and Extent, the Arbitrator finds as follows:

The Petitioner's accident in this matter occurred before September 1, 2011 and therefore the provisions of Section 8.1b of the Act do not apply.

Petitioner sustained an undisputed accident resulting in a contusion and sprain to his low back. MRI studies did not demonstrate any disc herniation, although degenerative changes were noted. Petitioner received conservative treatment through his release by Dr. Treister on April 11, 2011. Petitioner was noted to be back to full duty and not taking any medication. He reported no pain. The examination was found to be completely benign and Petitioner was having no symptom. He was discharged from care.

The Arbitrator notes that Dr. Shapiro does find that Petitioner has degenerative disc disease with a very minor L5 radiculopathy in February, 2012.

Petitioner advanced complaints at trial of continued pain in his back and left hip and leg. He rated these complaints at nine out of ten. The Arbitrator notes that even in the records of Affiliated Chicago Physicians and Dr. Malek, that his complaints were less than that. After reviewing the medical records and observing the Petitioner's testimony and recognizing that he has continued to work his regular job as a butcher for Respondent, the Arbitrator discounts Petitioner's subjective complaints finding that his testimony is not persuasive and contradicted by the credible medical records submitted.

Based upon the testimony of the Petitioner and the exhibits submitted including the treating records and the reports of Dr. Shapiro, the Arbitrator finds that Petitioner has sustained a loss of the person as a whole to the extent of 4% pursuant to Section 8(d)2.

In support of the Arbitrator's decision with respect to (N) Credit, the Arbitrator finds as follows:

Respondent has sought credit of $700.00 for the cost of the April, 2013 examination scheduled with Dr. Shapiro that Petitioner failed to attend. The claimed credit is for the $25.00 travel check payable to the Petitioner plus the $675.00 no show fee charged by the doctor. The Workers' Compensation Act provides no sanction as sought by Respondent, and no authority to allow for the credit sought has been provided by Respondent. The Arbitrator does note that the travel check was payable to the Petitioner and therefore can be considered an advance against permanent partial compensation owing, since the travel was in fact not undertaken.

The Arbitrator awards Respondent a credit against permanent disability of $25.00.

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

☒ 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

Leon Foxen,

Petitioner,

vs.

NO: 13 WC 11360
13 WC 11361
13 WC 11362

15IWCC0893

F.E. Moran,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, medical, causal connection, penalties, benefit rates, prospective medical 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. IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 24, 2015 is hereby affirmed and adopted.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $2,400.00. 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: DEC 7 - 2015

Mario Basurto

David L. Gore

Stephen Mathis

MB/mam
o:10/22/15
43

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

FOXEN, LEON
Employee/Petitioner

Case# **13WC011360**

13WC011361
13WC011362

F E MORAN
Employer/Respondent

15IWCC0893

On 2/24/2015, 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 0.06% 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:

1131 GESMER LAW OFFICES PC
BRAD A REYNOLDS
630 N CHURCH ST SUITE 201
ROCKFORD, IL 61103

2284 COZZI & GOGGIN-WARD
MARK ZAPF
27201 BELLA VISTA PKWY #410
WARRENVILLE, IL 60555

15IWCC0893

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

- ☐ 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)

LEON FOXEN ,
Employee/Petitioner

v.

F.E. MORAN ,
Employer/Respondent

Case # 13 WC 11360

Consolidated cases: 13 WC 11361, 13 WC 11362.

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was consolidated with claim no. 13 WC 11361 and 13 WC 11362, and heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Rockford**, on **January 14, 2015.** 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. ☒ 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: Is Petitioner entitled to receive certain vocational rehabilitation at the expense of Respondent?

FINDINGS

On the date of the accident, **November 17, 2012**, 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 not* causally related to the alleged accident.

In the year preceding the injury, Petitioner earned **$85,204.28**; the average weekly wage was **$2,028.67**.

On the date of the accident, Petitioner was **45** years of age, ***single*** with **no** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $ **0.00** for TTD, $ **0.00** for TPD, $ **0.00** for maintenance, and $ **0.00** for other benefits, for a total credit of $ **0.00**.

Respondent is entitled to a credit of $ **34,449.45** under Section 8(j) of the Act.

ORDER

Petitioner failed to prove that the condition of ill-being after December 28, 2012, is causally related to any accidental injury sustained on November 17, 2012, while in the employment of Respondent.

Respondent shall pay to Petitioner reasonable and necessary medical expenses of **$2,327.56**, subject to the provisions of the Medical Fee Schedule and pursuant to Section 8(a) and 8.2 of the Act. All other medical charges incurred after December 28, 2012 in this matter are hereby denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of temporary total disability, medical benefits, or compensation for 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 JOANN M. FRATIANNI

February 19, 2015
Date

ICArbDec19(b)

FEB 2 4 2015

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

Petitioner testified that he worked for Respondent as a sprinkler pipefitter foreman. He was required to install pipe fittings in commercial buildings and supervise other workers when necessary.

Petitioner was seen in the emergency room of St. Anthony Hospital on November 17, 2012, where he reported right lower back pain through the course of the day that worsened. He reported lifting 8" by 6' pipe in the morning. The pain was described as being in the right lower lumbar area just below his ribs, down to his buttock and down to the back of his right knee. Petitioner denied numbness, tingling or direct trauma. His neurological examination revealed no focal deficits and strength of 5 out of 5 in his legs. He was found to have a normal range of motion with negative straight leg raising test bilaterally. Diagnosis was back pain and sciatica.

Petitioner next saw Dr. Lynch, a chiropractor, on November 23, 2012. He reported right back pain and neck pain. By November 28, 2012, he reported his back pain was doing great and on November 30, 2012 he reported his back was still sore, but not painful. On December 3, 2012, he reported to Dr. Lynch that he had been involved in a minor motor vehicle accident while employed by Respondent which is the subject matter of one of the consolidated filings and decisions to this matter.

Petitioner testified that he was not having treatment in his lower back as a result of this injury with Dr. Lynch, but only received treatment to his neck and shoulders. Petitioner testified his last day of work for Respondent was on December 7, 2012. At that time he voluntarily left Respondent's employment for a better offer with Shambaugh & Sons, where he also worked as a foreman pipe fitter. (Rx15)

Petitioner after that date continued to seek treatment with Dr. Lynch. By December of 2012, Dr. Lynch was noting improvement in symptoms to the low back and legs. By December 28, 2012, Dr. Lynch was reporting no symptoms to the lower back or both legs.

On January 2, 2013, Petitioner reported to Dr. Lynch he had low back and worsening leg pains after he moved a safe. Petitioner testified that when he bought a heavy gun safe from a retailer, the retailer lifted it with a forklift into the back of his pickup truck. Thereafter, Petitioner and three friends slid the safe from the back of his pick up truck to the basement of his house. Petitioner testified that he did not assist in moving the safe at that time. After his friends left, he attempted to move the safe by himself when he experienced increased low back pain.

Mr. Andrew Helms testified on behalf of Petitioner. Mr. Helms testified he is a social friend of Petitioner. Mr. Helms testified he and two other individuals, a Mr. Cox and a Mr. Yates, slide the safe from the back of Petitioner's pick up truck to his basement. Mr. Helms testified that Petitioner was not involved in lifting or moving the safe at that time.

Petitioner testified that while he was working for Shambaugh & Sons, he saw Dr. Jacalyn Go-Lim on January 30, 2012. He reported pain in his lower back going down both legs for a few days to the doctor on that date. He denied giving a history that the pain began last week when performing construction work for Shambaugh. He also denied telling Dr. Go-Lim that he had another incident in the past week where he had pain in his lower back, rested it and returned to work.

Petitioner also saw Dr. Edison Lim on February 8, 2013. He reported back pain having started on November 15, 2012 when he lifted a 20 pound pipe at work and hurt his back. He reported he treated this medically and then seemed to be okay. Petitioner then reported a worsening of his symptoms starting two weeks ago. (Rx9)

Dr. Go-Lim also referred Petitioner to see Dr. Marie Walker at the Rockford Spine Center on February 1, 2013. An MRI performed on that date revealed a large disk extrusion at L4-L5 with severe bilateral foot drop. Petitioner was then referred by Dr. Walker to Dr. Michael S. Roh. Petitioner saw Dr. Roh on February 5, 2013. Petitioner gave him a history of having lumbar back and leg pain for the past two months. Petitioner reported a sudden onset of bilateral lower extremity weakness one week prior to his office visit. Petitioner reported that he was unable to stand as a result of the weakness in his feet.

Petitioner underwent surgery on February 6, 2013 with Dr. Roh consisting of a microdiscectomy at L4-L5, laminectomy, facetomy and foraminotomy. Post operative diagnosis was an L4-L5 left massive annular tear.

Petitioner was seen post surgery by Dr. Roh on March 14, 2013, where he stated he was happy with his recovery as he no longer was experiencing bilateral foot drop. Dr. Roh prescribed physical therapy.

Dr. Roh testified by evidence deposition that it was his opinion the pipe lifting episode caused the condition of ill-being that was surgically treated. Dr. Roh testified he did not know how much the pipe weighed. Dr. Roh further was of the opinion that the automobile accident of December 3, 2012 did not cause the lumbar spine condition and surgery. Dr. Roh did admit that his report dated Febuary 5, 2012 reflected that a week and a half ago, Petitioner started to experience quite severe lower extremity pain forcing him to crawl. Dr. Roh agreed that if Petitioner was working at that time his work could have been a possible cause of his condition. Dr. Roh reviewed the chiropractic records of treatment and admitted they showed significant improvement in the lower back and legs from December up to the safe lifting injury in January, 2013. Dr. Roh never discussed the safe moving incident with Petitioner and admitted that lifting such a safe can cause a herniated disc.

Dr. Edward Goldberg examined Petitioner. This was at the request of Respondent. The examination took place on February 17, 2014. Dr. Goldberg testified his opinions changed as to causation based on information that was provided to him, causing him to author multiple addendums to his report. Dr. Goldberg was of the opinion the lumbar condition was not related to the pipe lifting accident of November 17, 2012, based upon his improvement of symptoms the following month while receiving chiropractic care. Dr. Goldberg felt the herniation occurred shortly before Petitioner saw Dr. Roh and after the safe moving incident.

Based upon the above, the Arbitrator finds that Petitioner failed to prove the condition of ill-being herniated lumbar disc and need for surgery is causally related to any work activities performed on behalf of Respondent on November 17, 2012. Petitioner failed in his burden of proof in this matter and the conflicting medical records and opinions fail to show causation in this matter to the herniated disc condition. At best, Petitioner suffered a lower back strain which was treated with a chiropractor through December 28, 2012, and it would appear the diagnosis of a herniated disc occurred after the moving of the safe on December 28, 2012.

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?

See findings of this Arbitrator in "F" above.

Based upon said findings, all claims made by Petitioner for medical expenses in this matter after December 28, 2012 are hereby denied.

Based further upon the above, the charges of Dr. Lynch in the amount of $2,327.56 that were incurred between November 17, 2012 through December 28, 2012 are found to be responsibility of Respondent. Respondent is to pay to Petitioner those charges, subject to the provisions of the medical fee schedule as created by the Act.

K. Is Petitioner entitled to any prospective medical care?

See findings of this Arbitrator in "F" above.

Based upon said findings, all claims made for prospective medical care in this matter by Petitioner at the expense of Respondent are hereby denied.

L. What temporary benefits are in dispute?

See findings of this Arbitrator in "F" above.

Based upon said findings, all claims made for temporary total disability benefits in this matter are hereby denied.

M. Should penalties or fees be imposed upon Respondent?

See findings of this Arbitrator in "F" above.

Based upon said findings, all claims made by Petitioner for penalties or fees against Respondent are hereby denied.

N. Is Respondent due any credit?

See findings of this Arbitrator in "F" above.

Based upon said findings, all credits requested by Respondent against this award are moot, and thus hereby denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☒ 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

Elliott Scott Gordon,
Petitioner,

vs.

Keystone Steel & Wire,
Respondent,

NO: 14 WC 07442

15IWCC0894

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, temporary total disability, causal connection, medical, permanent partial disabilityand being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 20, 2015 is hereby affirmed and adopted.

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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $10,100.00. 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: DEC 7 - 2015

Mario Basurto

David L. Gore

Stephen Mathis

MB/mam
o:10/15/15
43

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GORDON, ELLIOTT SCOTT
Employee/Petitioner

Case# **14WC007442**

15IWCC0894

KEYSTONE STEEL & WIRE
Employer/Respondent

On 3/20/2015, 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 0.14% 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:

0192 CUSACK FLEMING GILFILLAN ET AL
DANIEL P CUSACK
415 HAMILTON BLVD
PEORIA, IL 61602

0507 RUSIN & MACIOROWSKI LTD
JOHN MACIOROWSKI
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606-3833

15IWCC0894

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

☐ 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

Elliott Scott Gordon
Employee/Petitioner

Case # **14** WC **7442**

v.

Keystone Steel & Wire
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 **Anthony C. Erbacci**, Arbitrator of the Commission, in the city of **Peoria**, on **February 13, 2015**. 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 **February 12, 2014**, 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 $**61,484.28**; the average weekly wage was $**1,182.39**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **1** dependent child.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent is entitled to a credit of $**696.43** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $**787.47**/week for **2 3/7** weeks, commencing **February 13, 2014** through **March 3, 2014**, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,377.45 to OSF St. Francis Medical Center, $113.00 to Illinois Plastic Surgery, and $175.00 to Dr. Daniel Hoffman, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**709.43**/week for **10** weeks, because the injuries sustained caused the disfigurement of the right arm, as provided in Section 8(c) of the Act.

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.

Arbitrator Anthony C. Erbacci

March 16, 2015
Date

MAR 20 2015

FACTS:

On February 12, 2014, the Petitioner sustained injuries to his right arm when, while he was adjusting a "cross-lock" machine, his shirt sleeve got caught in a moving gear. The Petitioner testified that he was employed by the Respondent in the fence department and had been so employed for 16 years prior to his injury. The Petitioner described the "cross-lock" machine that he operated and he identified it as "machine 201". The Petitioner testified that machine 201 was installed in the Respondent's facility approximately 12 years ago and that he has operated that machine since that time.

The Petitioner testified that at that time machine 201 was installed, he was trained how to operate the machine by a representative of the machine's manufacturer. The Petitioner testified that during that training, the manufacturer's representative showed him how to adjust the machine "on the fly". The Petitioner explained that from time to time the machine needed to be adjusted to facilitate the flow of wire through the machine and the production of fencing that the machine was designed to produce. He testified that adjusting the machine "on the fly" was done with the machine running and without turning the machine off or "tagging out" the machine. The Petitioner testified that he had been adjusting machine 201 "on the fly" since the time it was installed 12 years ago and that he was never specifically told not to adjust that machine "on the fly". The Petitioner acknowledged that the Respondent has a "tag out" procedure that is supposed to be used when maintenance is performed on a machine but he indicated that he didn't think that tagging out the machine was required to make the adjustments on machine 201.

The Petitioner testified that on February 12, 2014 he was directed by his supervisor to run machine 201. The Petitioner testified that as he was running the machine, an adjustment needed to be made so he began to make the adjustment "on the fly". The Petitioner testified that, as he made that adjustment, his shirt sleeve got caught in the gears of the machine and he sustained injuries to his right forearm. The Petitioner reported his injury and was directed to the Respondent's medical facility, Prompt Care, where he was seen by Dr. Pena. The Petitioner was then transported to OSF St. Francis Medical Center where he was noted to have a left medial forearm avulsion and his wound was cleaned and debrided. The Petitioner was apparently taken off work at that time.

On February 13, 2014 the Petitioner followed up with Dr. Pena and Dr. Pena referred the Petitioner to Dr. Bradow, a plastic surgeon. On February 25, 2014 the Petitioner saw Dr. Hoffman, his primary care physician. Dr. Hoffman noted the Petitioner's history of injury and treatment with Dr. Pena, as well as the referral to a plastic surgeon. Dr. Hoffman noted that the Petitioner had an open wound to the right forearm which measured 4cm in length and 3cm in width. Dr. Hoffman released the Petitioner to return to unrestricted, full duty, work as of February 26, 2014. The Petitioner returned to Dr. Pena on February 27, 2014. Dr. Pena noted that a skin graft procedure was recommended for the Petitioner but he had rejected that procedure due to financial reasons. Dr. Pena released the Petitioner to return to work as of March 3, 2014 with instructions to keep the wound covered, clean, and dry.

The Petitioner testified that he does not currently have any problems with his right forearm other than a scar. The Arbitrator observed the Petitioner's right forearm at the time of hearing and notes that the Petitioner does have an area of disfigurement which is discolored, raised, and wrinkled, about the size of two quarters next to each other.

Tim Marit, a sixteen year employee of the Respondent, testified that he also operated machine 201 on occasion and that he had been trained how to operate machine 201 by the Petitioner. Mr. Marit testified that when he would operate machine 201 he would, on occasion, make adjustments to the machine "on the fly". Mr. Marit testified that he did not think that adjusting the machine "on the fly" violated any of the Respondent's safety rules.

Brian Stirnaman, one of the Respondent's foremen, testified that he had no knowledge that any operators were making adjustments on machine 201 while it was running. Mr. Stirnaman testified that the proper protocol was a lockout/tagout procedure where the machine would be shut down and de-energized before any adjustments or maintenance was performed on the machine. Mr. Stirnaman testified that the Petitioner was present at safety meetings where the Respondent's lockout/tagout safety rules were discussed.

Timothy Heaton, the Petitioner's supervisor, testified that the Respondent's safety rules required that a machine be shut off prior to making any adjustment. Mr. Heaton testified that he had given the Petitioner a copy of the Respondent's handbook which contains that safety rule and that, at a safety meeting, he told everyone present that they should not adjust machines while they were running. Mr. Heaton testified that after the Petitioner's injury occurred, the Petitioner told him that he had adjusted the machine "on the fly" because that was how he was trained and how he had always done it.

Jeff Klokkenga, a general supervisor in the Respondent's Wire Mill Finishing section, testified that the Petitioner's employment with the Respondent was terminated on March 6, 2014 for violation of a safety rule. Mr. Klokkenga also testified that the Petitioner's termination is the subject of a pending grievance.

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to (C.), Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, and (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

It is not really disputed that the Petitioner sustained an injury to his right arm while he was operating a machine in the performance of his regular job duties for the Respondent. The

evidence demonstrates that operation of the machine was part of the Petitioner's regular job activities and that, at the time of his injury, the Petitioner was operating that machine at the specific instruction of his supervisor. The evidence also demonstrates that while he was operating that machine, the Petitioner determined that the machine needed to be adjusted and he made the needed adjustments without turning the machine off. As he was making the adjustments, the Petitioner's shirt got caught in a moving gear and he sustained injuries to his right forearm.

The Petitioner immediately reported his injury and was directed to the Respondent's medical facility where he was seen by Dr. Pena. The Petitioner was then transported to OSF St. Francis Medical Center where he was noted to have a left medial forearm avulsion. On February 25, 2014 the Petitioner saw Dr. Hoffman, his primary care physician. Dr. Hoffman noted the Petitioner's history of injury and treatment with Dr. Pena, and he noted that the Petitioner had an open wound to the right forearm which measured 4cm in length and 3cm in width. The Petitioner returned to Dr. Pena on February 27, 2014 and Dr. Pena noted that a skin graft procedure was recommended for the Petitioner but he had rejected that procedure due to financial reasons. The Petitioner testified that he currently has a scar on his right forearm as a result of his work injury. The Arbitrator observed the Petitioner's right forearm at the time of hearing and noted that the Petitioner does have an area of disfigurement which is discolored, raised, and wrinkled, about the size of two quarters next to each other.

The Respondent argues that the Petitioner violated a safety rule when he adjusted the machine while it was running and that, therefore, his injury did not arise out of his employment with the Respondent. In support of its argument, the Respondent cites Saunders v. the Industrial Commission, 189 Ill.2d 623, 727 N.E.2d 247 (2000). In Saunders, an employee hitched a ride on a forklift operated by another employee so that he could travel from the shipping department to an office to retrieve his lunch. The employer had a safety rule which expressly prohibited employees from riding more than one person on a forklift. The employee violated this rule and as a result thereof sustained an injury to his left foot. The Supreme Court denied compensability, finding that the employee violated a safety rule and that the sole purpose for the conduct was the Petitioner's personal convenience. The Court concluded that the accident did not arise out of the employee's employment.

The Arbitrator notes, however, that in J.S. Masonry, Inc. v. Industrial Commission, 369 Ill.App.3d 591, 861 N.E.2d 202, (1st Dist. 2006) the Illinois Appellate Court upheld an award of benefits where the employee violated a safety rule finding that Saunders stands for the proposition that an employee's injury does not arise out of his employment when the injury is a result of an activity prohibited by company rules and is conducted solely as a personal convenience. The Court held that since the claimant was performing the duties for which he was hired and was not in an area where he was forbidden to be nor engaged in activities not authorized by his employer, he remained in the scope of his employment even though he may have performed his duties in a negligent manner or in violation of the employer's policy.

In the instant case, the Petitioner's conduct was not solely for his own personal convenience, it was not outside the scope of his employment duties, and it was in furtherance

of the purposes of the Respondent. He was keeping the machine running efficiently and producing the product it was designed to produce for the Respondent. The Petitioner was performing the duties for which he was hired and was not in an area where he was forbidden to be nor engaged in activities not authorized by the Respondent. While the Petitioner's conduct may have been negligent or in violation of the Respondent's policy, his actions were consistent with what was expected of him as part of his regular job duties.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing as well as the applicable precedential case law, the Arbitrator finds that on February 12, 2014 the Petitioner sustained accidental injuries arising out of and in the course of his employment by the Respondent. The Arbitrator further finds that the Petitioner's current condition of ill-being, disfigurement to his right forearm, is causally related to the Petitioner's February 12, 2014 work injury.

In Support of the Arbitrator's Decision relating to (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, the Arbitrator finds and concludes as follows:

The Arbitrator's findings and conclusions relating to the issues of accident and causal connection are adopted herein.

The Petitioner introduced evidence of the charges for medical services rendered to him as a result of his work injury by OSF St. Francis Medical Center in the amount of $1,377.45, Illinois Plastic Surgery in the amount of $113.00 and Dr. Daniel Hoffman in the amount of $175.00. The Arbitrator finds that the medical services rendered to the Petitioner by OSF St. Francis Medical Center, Illinois Plastic Surgery, and Dr. Daniel Hoffman were reasonable, necessary, and causally related to the Petitioner's right forearm injury and that the Respondent is liable for payment of those medical expenses pursuant to the Medical Fee Schedule provided for in the Act.

In Support of the Arbitrator's Decision relating to (K.), What temporary benefits are due, the Arbitrator finds and concludes as follows:

The Arbitrator's findings and conclusions relating to the issues of accident and causal connection are adopted herein.

The Arbitrator finds that the Petitioner is entitled to Temporary Total Disability benefits from February 23, 2014, thru March 2, 2014, a period of 2 4/7 weeks. The medical evidence reflects the company doctor, Dr. Pena, took the Petitioner off work on February 13, 2014, and that Dr. Daniel Hoffman released the Petitioner to return to work on February 26, 2014, The Petitioner was, however, not allowed to return to work until he

was released by Dr. Pena to return to work on March 3, 2014.

In Support of the Arbitrator's Decision relating to (L.), What is the nature and extent of the injury, the Arbitrator finds and concludes as follows:

The Arbitrator's findings and conclusions relating to the issues of accident and causal connection are adopted herein.

The Arbitrator finds that as a result of this injury, the Petitioner sustained a deep avulsion to his right forearm which measured 4cm in length and 3cm in width. The Petitioner testified that he does not currently have any problems with his right forearm other than a scar. The Arbitrator observed the Petitioner's right forearm at the time of hearing and notes that the Petitioner does have an area of disfigurement which is discolored, raised, and wrinkled, about the size of two quarters next to each other.

The Arbitrator finds that the Petitioner's work injury resulted in serious and permanent disfigurement to the Petitioner's right forearm for which the Petitioner is entitled to 10 weeks of compensation. The of Respondent shall pay Petitioner permanent partial disability benefits of $709.43 for 10 weeks, because the injury sustained by Petitioner caused the disfigurement of the right arm, as provided in Section 8(c) of the Act.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CLARANCE HANNA,

Petitioner,

vs. NO: 14 WC 1646

MARTEN TRANSPORT LTD.,

Respondent.

15IWCC0895

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and prospective medical, 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. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

So that the record is clear, and there is no mistake as to the intentions or actions of the Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical/legal perspective.

The Commission modifies the Decision of the Arbitrator with respect to prospective medical treatment only. The Commission finds that Mr. Hanna is entitled to a foraminal micro decompression of the bilateral L4-L5 level with decompression of the bilateral L5 nerve root as recommended by Dr. Michael Kornblatt. The Commission finds Dr. Kornblatt's opinion, in this respect, persuasive. Dr. Kornblatt's Section 12 examination did not reveal any significant

15IWCC0895

disabling low back pain or lumbar instability. Because of this, Dr. Kornblatt found that a decompression was more appropriate than the lumbar fusion recommended by Dr. Kern Singh. The Commission therefore awards Mr. Hanna prospective medical treatment as recommended by Dr. Kornblatt.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on March 26, 2015, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorize and be responsible to pay for the foraminal micro decompression of the bilateral L4-L5 level with decompression of the bilateral L5 nerve root as recommended by Dr. Michael Kornblatt.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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: DEC 9 - 2015

MJB/tdm
O: 10-13-15
052

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b)/8(a) ARBITRATOR DECISION

HANNA, CLARANCE
Employee/Petitioner

Case# **14WC001646**

15IWCC0895

MARTEN TRANSPORT LTD
Employer/Respondent

On 3/26/2015, 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:

1067 ANKIN LAW OFFICE LLC
HOWARD H ANKIN
162 W GRAND AVE
CHICAGO, IL 60654

1120 BRADY CONNOLLY & MASUDA
MARK F VIZZA
10 S LASALLE ST SUITE 900
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Clarance Hanna
Employee/Petitioner

v.

Marten Transport, Ltd.
Employer/Respondent

Case # 14 WC 01646

15IWCC0895

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **March 4, 2015**. 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. [x] 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. [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 _____

15IWCC0895

FINDINGS

On the date of accident, **1/9/2014**, 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 $**39,610.48**; the average weekly wage was $**761.74**.

On the date of accident, Petitioner was **40** years of age, ***single*** with **4** dependent children.

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

The Parties agreed that TTD benefits were being appropriately paid.

ORDER

Medical benefits

Respondent shall authorize and be responsible to pay for the L4-5 revision laminectomy/transforaminal lumbar interbody fusion/posterior spinal fusion procedure proposed by Dr. Kern Singh on November 5, 2014, along with all related services.

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

March 25, 2015
Date

ICArbDec19(b)

MAR 2 6 2015

15IWCC0895

FINDINGS OF FACT

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of Petitioner's employment by Respondent on January 9, 2014. Petitioner was employed by Respondent as a truck driver and he fell in a hole, injuring his left leg, left ankle and low back.

The first medical treatment was the next day at Ingalls Family Care. The diagnosis was lumbar strain and left ankle sprain. (PetEx. 4)

Petitioner then had treatment with Dr. Scott Glaser. Dr. Glaser treated both the low back and left ankle condition. The back treatment consisted of medications, therapy and injections. (PetExs. 2 & 3)

Petitioner was referred to Dr. Kern Singh at Midwest Orthopaedics at Rush for treatment regarding his low back. Dr. Singh first saw Petitioner on June 23, 2014. Dr. Singh performed low back surgery on Petitioner on July 29, 2014. The post operative diagnosis was: 1. Spinal stenosis, L4-5; and 2. Central disc herniation, L4-5. The procedure was: Minimally invasive L4 and L5 laminectomy with bilateral partial facetectomy and foraminotomy and right sided L4-5 microscopic diskectomy. Petitioner had a FCE on September 30, 2014, which was found to be valid and did not reveal that he was capable of the physical activities of his job. Work conditioning began and Petitioner had complaints of back and left leg pain. A repeat MRI of the lumbar spine is said to show a L4-5 laminectomy defect and a large recurrent central disc herniation at L4-5 causing moderate to severe stenosis. Dr. Singh has offered Petitioner the option of another surgery and recommends a revision laminectomy at L4-5 with a transforaminal lumbar interbody fusion as of the last visit on November 5, 2014. Petitioner remains disabled from work and is taking Meloxicam. (PetEx. 1)

Petitioner was examined at Respondent's request by Dr. Michael Kornblatt on three occasions. Dr. Kornblatt believed that there was a causal connection between the injury of January 9, 2014 and Petitioner's low back condition (spinal stenosis and exacerbation of spinal stenosis) and concurred that the first surgery was appropriate. (ResExs. 1 & 2) Dr. Kornblatt thinks that Petitioner is a candidate for further back surgery, but disagrees that lumbar fusion is appropriate. Dr. Kornblatt feels that fusion is not warranted because Petitioner does not present with significant disabling low back pain and does not have lumbar instability. Dr. Kornblatt recommends a formal (foraminal?) micro decompression of bilateral L4-L5 with decompression of bilateral L5 nerve roots as the correct procedure.

Petitioner testified that the first surgery helped some and he currently has pain in his low back and left leg. He would like to have the procedure that Dr. Singh has recommended. He wants to get better. Petitioner trusts Dr. Singh and thinks that he is a good doctor.

The issues in dispute at trial were causal connection and prospective medical care.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner has proven that there is a causal connection between the accidental injuries of January 9, 2014 and his current condition of ill-being, to wit: resolved left ankle sprain and status post L4-5 laminectomy and discectomy with recurrent herniated disc at L4-5 causing moderate to severe spinal stenosis.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds Petitioner to be credible and his desire to have the fusion surgery recommended by Dr. Singh to be genuine. After being informed of the risks of surgery, Petitioner wants to go forward with the recommended fusion procedure in order to get better (and hopefully get back to work).

Petitioner testified that he wishes to pursue the surgical option that Dr. Singh has provided. He trusts Dr. Singh. Dr. Singh charted that surgical risks were discussed with Petitioner at the November 5, 2014 visit. Dr. Singh performed the first surgery and believes that the proposed fusion is the correct procedure for Petitioner.

Dr. Kornblatt believes that a fusion is not the correct procedure in this case. Dr. Kornblatt proposes a more conservative surgery, which will not involve a fusion. It is likely that if the procedure proposed by Dr. Kornblatt does not alleviate Petitioner's complaints, the next option would be a fusion.

The Parties did not submit utilization review evidence.

The Arbitrator finds that the proposed fusion is reasonable and is necessary to cure or relieve the effects of the injuries in this case. The Arbitrator declines to find that this procedure, recommended by the treating surgeon in this case, is not reasonable and necessary. Accordingly, Respondent shall authorize and be responsible for the fusion procedure offered by Dr. Singh in his chart note of November 5, 2014, along with all related services.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ferdinan Melendez,

Petitioner,

vs. NO: 14 WC 25033

James McHugh Construction Co.,

Respondent.

15IWCC0896

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under §19(b) by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, and prospective medical care, hereby reverses the Arbitrator's Decision and finds that Petitioner sustained accidental injuries arising out of and in the course of his employment on June 5, 2014, and that his current condition of ill-being is causally related to the June 5, 2014 accident. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

In reversing the Arbitrator's decision that Petitioner failed to prove that that he suffered a repetitive trauma injury at work, i.e. bilateral carpal tunnel syndrome, the Commission notes that the Arbitrator found that "the actual time" Petitioner worked with power tools "was too short to establish a causal relationship between the condition of ill-being complained of and this alleged accidental injury. This dispute between using the heavier power tools in this case and the time they were used also remains unresolved." (Arbitrator.Dec.4)

With regard to repetitive trauma claims, the court in *A.C. & S. v. Industrial Commission*, 304 Ill. App. 3d 875, 879 (1999), stated that:

> "An employee who suffers a gradual injury due to a repetitive trauma is eligible for benefits under the Act, but he must meet the same standard of proof as a petitioner alleging a single, definable accident. Proof that the relationship of employer and employee existed at the time of the accident is one of the elements of an award under the Act."

The court further explained:

> "Both parties agree that claimant suffers from carpal tunnel syndrome, and that this was caused by repetitive stress due to his employment as an insulation installer. The primary factual dispute is whether claimant's condition is attributable to his work for AC & S or his work for other employers. The evidence was sufficient to support the Commission's findings that the work for AC & S caused the injury. It is the role of the Commission to resolve conflicting testimony and determine the credibility of witnesses. *Scott v. Industrial Comm'n,* 76 Ill. 2d 183, 184-85, 390N.E.2d 906, 907, 28 Ill. Dec. 547 (1979).Claimant's testimony that his pain started after he started working for AC & S is consistent with much of Schlenker's testimony. Claimant and Kerns both testified the work for AC & S was not a normal job for insulation installers, and that it involved unusually heavy equipment and unusually long hours.
>
> That claimant's prior work as an insulation installer may have predisposed him to this type of injury is a factor to be considered. However, an employer is not relieved of liability because the injury arose from a preexisting condition. *Illinois Valley Irrigation, Inc. v. Industrial Comm'n,* 66 Ill. 2d 234, 240, 362 N.E.2d 339, 342, 5 Ill. Dec. 868 (1977). Employers take their employees as they find them. *General Electric Co. v. Industrial Comm'n,* 89 Ill. 2d 432, 434, 433 N.E.2d 671, 672, 60 Ill. Dec. 629 *(1982).*
>
> Nor does the evidence that claimant continued to work as an insulation installer after his work for AC & S foreclose recovery. There was no evidence his brief work before seeking medical treatment had any effect on the diagnosis. The Commission could also properly consider that claimant made his appointment with Schlenker before he left AC & S." *A.C. & S,* 304 Ill.App. 3d at 882-883.

Just as the claimant in *A.C. & S*, Petitioner has worked as a laborer all his life. The Commission acknowledges that Petitioner most likely developed bilateral carpal tunnel during his many jobs before beginning his work for Respondent. As explained by Respondent's Section 12 examiner, Dr. Vender, "carpal tunnel syndrome takes a long time to develop." (RX1) However, the Commission finds that it was his job with Respondent as a laborer and operating a jackhammer

for at least two hours on June 4, 2014 and about five to six hours on June 5, 2014, as testified to by his boss, Ryan Miller, that made Petitioner's preexisting carpal tunnel syndrome symptomatic. Petitioner testified that he did not have any hand problems prior to June 5, 2014 and the Commission notes that there is nothing in the record to indicate that he had any hand problems prior to June 5, 2014. Furthermore, having considered Petitioner's diabetes, obesity and years of smoking, the Commission notes that Petitioner had these conditions and habits prior to working for Respondent and did not have any documented problems with his hands prior to his employment with Respondent.

As explained by Petitioner's treating physician, Dr. DeLeon, Petitioner's bilateral carpal tunnel syndrome was "directly caused by his work with using vibratory equipment as this is one of the occupational exposures that has been definitively linked to carpal tunnel syndrome." (PX4) As previously noted, Petitioner used vibratory tools in previous jobs, but it is unrebutted that he used a jackhammer for a significant amount of time two days in a row while working for Respondent and that it was after this use that Petitioner started suffering from symptomatic bilateral carpal tunnel syndrome. As explained by the court in *A.C. & S*, Respondent takes employees as they find them. Therefore, based on Petitioner's testimony, Ryan Miller's testimony, the medical records, the diagnostic exams, and the findings and opinions of Dr. DeLeon, the Commission finds that Petitioner has established that he suffered a compensable work accident as a result of his employment with Respondent on June 5, 2014.

Regarding workers' compensation benefits, the Commission notes that the record shows that Petitioner has incurred medical expenses totaling $6,951.00 and still requires treatment in the form recommended, that being carpal tunnel releases ordered by Dr. DeLeon. Therefore, the Commission finds Respondent is liable for Petitioner's medical expenses, totaling $6,951.00, and prospective medical care in the form of the recommended carpal tunnel releases.

On the issue of temporary total disability benefits, the Commission notes that text messages sent by Ryan Miller, and read into the record at hearing, indicate that he offered Petitioner modified, clerical work on June 11, 2014 and on June 20, 2014. (T.38-40) Apparently, nothing was done regarding these offers. The only other offer of restricted duty in the record is the June 30, 2014 job offer sent by Respondent to Petitioner by mail, which Petitioner denies receiving. (RX3,T.44-45) The Commission notes that the letter, despite being dated June 30, 2014, notified Petitioner of a job offer by which Petitioner was required to report to work by June 23, 2014. (RX3) This makes no sense.

Furthermore, the letter references restrictions imposed on Petitioner by Dr. DeLeon on June 21, 2014. Considering that the offer of work was for June 23, 2014, it does not appear that the letter contemplated the restrictions of no driving placed upon Petitioner by Dr. DeLeon on June 27, 2014. (PX4) Therefore, based on the lack of any real or clear job offer that fell within the work restrictions placed on Petitioner, Petitioner is entitled to temporary total disability benefits from June 6, 2014, the last day Petitioner worked, through September 22, 2014, the date of hearing.

So that the record is clear, and there is no mistake as to the intentions or actions of this Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical / legal perspective. Furthermore, we have considered all of the testimony, exhibits, pleadings and arguments submitted by the Petitioner and the

Respondent. Finally, one should not and cannot presume that we have failed to review any of the record made below. Though our view of the record may or may not be different than the arbitrator's, it should not be presumed that we have failed to consider any evidence taken below. Our review of this material is statutorily mandated and we assert that this has been completed.

IT IS THEREFORE ORDERED BY THE COMMISSION that that the Decision of the Arbitrator, filed on February 11, 2015, is reversed as stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $913.30 per week for a period of 15-4/7 weeks, from June 6, 2014 through September 22, 2014, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $6,951.00 for medical expenses pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for prospective medical care in the form of bilateral carpal tunnel releases as recommended by Dr. DeLeon.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $12,600.00. 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: DEC 9 - 2015
MJB/ell
o-10/13/15
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

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

MELENDEZ, FERDINAN
Employee/Petitioner

Case# **14WC025033**

JAMES McHUGH CONSTRUCTION CO
Employer/Respondent

15IWCC0896

On 2/11/2015, 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:

0152 LINN CAMPE & RIZZO LTD
JOHN J RIZZO
215 N MARTIN L KING JR AVE
WAUKEGAN, IL 60085

2965 KEEFE CAMPBELL BIERY & ASSOC
MATTHEW IGNOFFO
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

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
19(b)

FERDINAN MELENDEZ,
Employee/Petitioner

v.

JAMES McHUGH CONSTRUCTION CO.,
Employer/Respondent

Case # 14 WC 25033

Consolidated cases: NONE.

15IWCC0896

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 **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Waukegan**, on **September 22, 2014.** 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. ☒ 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: Is Petitioner entitled to receive certain vocational rehabilitation at the expense of Respondent?

FINDINGS

On the date of accident, **June 5, 2014**, 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 not* sustain an accident that arose out of and in the course of employment.

Timely notice of this alleged accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the alleged accident.

In the year preceding the alleged injury, Petitioner earned $**71,237.40**; the average weekly wage was $**1,369.95**.

On the date of the alleged accident, Petitioner was **34** years of age, ***single*** with **one** dependent child.

Petitioner *has not* received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $ **0.00** for TTD, $ **0.00** for TPD, $ **0.00** for maintenance, and $ **0.00** for other benefits, for a total credit of $**8,636.49**.

Respondent is entitled to a credit of $ **0.00** under Section 8(j) of the Act, and under Section 8(a) of the Act.

ORDER

Petitioner failed to prove that he sustained an accidental injury that arose out of and in the course of his employment with Respondent on June 5, 2014.

Petitioner further failed to prove that the condition of ill-being complained of is causally related to any accidental injury sustained while in the employment of Respondent.

All claims for benefits in this matter for this alleged accident made by Petitioner are hereby denied.

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 JOANN M. FRATIANNI

February 2, 2015
Date

ICArbDec19(b)

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C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

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

Petitioner testified that he worked for Respondent as a union and non-union laborer. Petitioner testified this work involved using heavy-duty power tools including pneumatic drills, chipping guns, and directional boring equipment. Petitioner has worked as a laborer for various employers since he was 17-18 years old. Petitioner began working for Respondent in May of 2014 at a work site in Stickney, Illinois. While there he cleaned up various debris, picked up garbage, used pumping tanks and power washers, used a partner saw to cut concrete, used a surface grinder, and used a 30 pound jack hammer. A photograph of the jackhammer was introduced into evidence. (Rx4)

In addition to this work, Petitioner testified he also rode a large "fat boy" Harley Davidson motorcycle when weather permitted. Petitioner testified he would experience a vibratory force in both hands when operating the motorcycle.

Petitioner testified he reported to work and worked on June 5, 2014. Petitioner testified there was no specific incident or event on June 5, 2014 that caused him pain. Petitioner further testified he did not begin operating the partner saw and jackhammer until June 4, 2014, and only operated the jackhammer on June 4, 5 and 6. The number of hours Petitioner actually used these tools on those dates is disputed, however there is no dispute that the power tools were used.

Mr. Ryan Miller, Respondent's supervisor, testified that Petitioner only used the jackhammer for the last few hours on June 4, 2014. On June 6, 2014, at 4:26 a.m., Petitioner sent Mr. Miller a text message stating his hands hurt. Later, during the morning of that same day, Petitioner stopped working after 40-45 minutes. Mr. Miller testified that when this happened, he went looking for Petitioner. They both had a brief discussion whether Petitioner was cut out for the work and he ended up surrendering his access pass to the worksite to Mr. Miller. Mr. Miller testified that when he received the access pass, he understood it to mean that Petitioner was quitting work. Petitioner did not return to work for Respondent after that date.

On June 6, 2014, after leaving the job site, Petitioner sought treatment at Northwestern Lake Forest Hospital. A history was recorded of bilateral hand numbness and pain which started the previous night when he woke from sleep and discovered he was unable to turn the knob to the bathroom door. (Rx2) Petitioner was diagnosed as being diabetic and was advised to follow up with his family physician. Petitioner also gave a history of smoking cigarettes and was weighed at 301 pounds. (Px3)

Petitioner next sought treatment with Dr. Serafin DeLeon, an orthopedic surgeon, where he complained of bilateral hand numbness. This visit occurred on June 9, 2014. Petitioner gave a history that his symptoms began on June 5, 2014 using jackhammers for several days, causing the development of numbness and tingling. Dr. DeLeon diagnosed bilateral carpal tunnel syndrome and restricted Petitioner to no lifting with either hand to utilize a splint. Should symptoms persist, a steroid injection would be considered at a later date. (Px4)

Petitioner testified that following his appointment with Dr. DeLeon, he had several discussions with Mr. Miller concerning performing some office work.

Petitioner then saw Dr. DeLeon on June 20, 2014 with continuing bilateral hand complaints. Dr. DeLeon diagnosed acute bilateral carpal tunnel syndrome and felt the symptoms were causally related to the date Petitioner used vibratory equipment. Dr. DeLeon administered a steroid injection bilaterally and prescribed an EMG/NCV study. Dr. DeLeon restricted Petitioner to no lifting/pushing/pulling/carrying with his hands. (Px4)

On June 20, 2014, Respondent made a light duty job offer consistent with the restrictions imposed by Dr. DeLeon. (Rx3) Petitioner testified that he and Mr. Miller exchanged text messages about reporting for office work on June 23, 2014. Mr. Miller testified that Petitioner was offered a job of coming into the office and performing sedentary tasks.

Petitioner underwent the EMG/NCV study on June 25, 2014. This revealed evidence of demyelinating and axonal sensorimotor median mononeuropathies bilaterally at the wrists with conduction block consistent with severe carpal tunnel syndrome. (Px4) Petitioner then saw Dr. DeLeon on June 27, 2014, who reviewed the EMG results and prescribed endoscopic carpal tunnel releases. (Px4) Dr. DeLeon continued the same medical restrictions to both hands.

Petitioner was examined by Dr. Michael Vender, an orthopedic surgeon. This was at the request of Respondent. Dr. Vender saw Petitioner on August 8, 2014 and diagnosed bilateral carpal tunnel syndrome and bilateral polyneuropathy. Dr. Vender noted that carpal tunnel syndrome takes a long time to develop through repetitive trauma, and the short term job Petitioner worked for Respondent in this case in his opinion did not cause or aggravate such conditions. Dr. Vender noted Petitioner had many significant risk factors for carpal tunnel syndrome, including increased body mass index, diabetes and smoking. (Rx1) Dr. Vender was also made aware of the motorcycle driving. (Rx1)

After consideration of the facts in this case, including the medical findings and conclusions of Dr. DeLeon and Dr. Vender, the Arbitrator concludes that Petitioner has failed to prove that his bilateral condition to both hands is causally related to or aggravated by employment activities performed on behalf of this Respondent. The Arbitrator feels that the actual time worked in this matter was too short to establish a causal relationship between the condition of ill-being complained of and this alleged accidental injury. This dispute between using the heavier power tools in this case and the time they were used also remains unresolved.

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?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made by Petitioner for medical expenses in this matter are hereby denied.

K. Is Petitioner entitled to any prospective medical care?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made for prospective medical care in this matter by Petitioner at the expense of Respondent are hereby denied.

L. What temporary benefits are in dispute?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made for temporary total disability benefits in this matter are hereby denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☐ 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 down	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Susanne Mitchell,

Petitioner,

vs. NO: 13 WC 30838

Gateway Regional Medical Center,

Respondent.

15IWCC0897

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Petitioner herein and notice given to all parties, the Commission after considering the issues of medical expenses, prospective medical care and temporary total disability benefits, and being advised of the facts and law, modifies and corrects 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. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

So that the record is clear, and there is no mistake as to the intentions or actions of this Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical / legal perspective. We have considered all of the testimony, exhibits, pleadings and arguments submitted by the Petitioner and the Respondent, and based on our complete review of the record we find that Petitioner reached maximum medical improvement on August 5, 2013, when she returned to work full duty.

The Commission notes that despite Petitioner's claims to the contrary at hearing, the medical records clearly indicate that Petitioner was suffering from sciatica ten days before the July 19, 2013 incident. (T.22,RX1) The medical records clearly state that Petitioner saw her primary care physician, Dr. Almasalmeh, on May 23, 2013 for right hip pain and sciatica and on

July 9, 2013 for ongoing sciatica. (RX1) Furthermore, Dr. Almasalmeh prescribed pain medication for her ongoing symptoms. The Commission notes that on the May 23, 2013 visit note, Dr. Almasalmeh placed Petitioner's complaint of sciatica in quotes, quoting Petitioner. (RX1) Despite these records, Petitioner testified at hearing that she did not suffer from any low back pain prior to the July 19, 2013 incident. As noted by the Arbitrator in his decision, Petitioner is, at the very least, an "unreliable historian regarding her prior complaints." (Arbitrator.Dec.7) In light of the contradictory testimony from Petitioner indicating that she did not have any low back pain or treatment for low back pain prior to July 19, 2013, the Commission finds Petitioner's claims of being asymptomatic prior to July 19, 2013 not credible.

The Commission next notes that Petitioner was released to return to work, full duty, on August 2, 2013 and that she did so on August 5, 2013. (T.12-13,27,PX2) The record indicates that Petitioner stopped working for Respondent due to the termination of her employment for unrelated reasons, and not due to any ongoing low back issues. (T.15) As such, the Commission finds that Petitioner reached maximum medical improvement regarding the July 19, 2013 incident on August 5, 2013, when she returned to work full duty. Therefore, the Commission finds that Petitioner is entitled to temporary total disability benefits and medical expenses through August 5, 2013 only.

Finally, the Commission notes that under the Order Section of the Arbitrator's Decision, the Arbitrator lists the date of accident as July 7, 2013. The actual date of accident is July 19, 2013. Therefore, the Commission hereby corrects the Arbitrator's Decision to reflect the date of accident as July 19, 2013.

One should not and cannot presume that we have failed to review any of the record made below. Though our view of the record may or may not be different than the arbitrator's, it should not be presumed that we have failed to consider any evidence taken below. Our review of this material is statutorily mandated and we assert that this has been completed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on February 23, 2015 is hereby modified and corrected as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay for medical expenses under Sections 8(a) and 8.2 of the Act through August 5, 2013.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

15IWCC0897

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: DEC 9 - 2015
MJB/ell
o-10/26/15
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

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

MITCHELL, SUSANNE
Employee/Petitioner

Case# **13WC030838**

GATEWAY REGIONAL MEDICAL CENTER
Employer/Respondent

15IWCC0897

On 2/23/2015, 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 0.06% 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:

1239 KOLKER LAW OFFICES
DAN BROOM BAUGH
9423 W MAIN ST
BELLEVILLE, IL 62223

0560 WIEDNER & McAULIFFE LTD
KHRIS DUNARD
ONE N FRANKLIN ST SUITE 1900
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF **MADISON**)

☐ 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)

Susanne Mitchell
Employee/Petitioner

v.

Gateway Regional Medical Center
Employer/Respondent

Case # 13 WC 30838

Consolidated cases:

15IWCC0897

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 **Collinsville**, on **December 18, 2014**. 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. ☒ 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

FINDINGS

15IWCC0897

On the date of accident, **7/19/13**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $94,754.40; the average weekly wage was $1,822.20.

On the date of accident, Petitioner was years of age, ***married*** with **1** dependent children.

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

Respondent shall be given a credit of **$24,293.60** for TTD, $ **n/a** for TPD, $ **n/a** for maintenance, and $ **n/a** for other benefits, for a total credit of $ **24,293.60**.

Respondent is entitled to a credit for any payments made in accordance with Section 8(j) of the Act.
Respondent is also entitled to a credit for the medical expenses listed in Respondent's Exhibit 4.

ORDER

- Petitioner failed to prove that her current lower back condition, thoracic condition, or the recommendation for surgery is causally related to her alleged July 7, 2013 work incident.

- The Arbitrator finds that petitioner suffered a lower back strain as a result of her the July 7, 2013 incident, for which she reached maximum medical improvement on August 17, 2013.

- All medical benefits are denied subsequent to petitioner's placement at MMI on August 17, 2013.

- All temporary total disability benefits are denied subsequent petitioner's placement at MMI on August 17, 2013.

- 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

2/17/15
Date

ICArbDec19(b)

FEB 23 2015

RESPONDENT'S PROPOSED FINDINGS ON SUSANNE MITCHELL V. COMMUNITY HEALTH SYSTEMS/GATEWAY REGIONAL MEDICAL CENTER; 13 WC 30838.

Petitioner is a 51 year old nurse who alleges that she injured her lower back and left hip on July 19, 2013 after attempting to move a patient's bed. She testified that although she believed the bed was on rollers, it was actually in a locked position, and did not move when she went to push it. She described a sharp pain after the incident, and stated that she reported it to her supervisor, who filled out an accident report. As a nurse, petitioner's job duties included triage, treating patients, completing discharge, and transferring patients.

Prior to the incident petitioner was diagnosed with right sided sciatica by her primary care physician, Dr. Almasalmeh. Dr. Almasalmeh also noted that petitioner experienced muscle spasms. Due to petitioner's complaints, she was prescribed narcotic medication just weeks prior to the work incident. (RX 1). Despite petitioner's diagnosis of right sided sciatica, petitioner maintained at trial that she did not experience any lower back pain.

Petitioner presented to the emergency room at Gateway Regional Medical Center on July 20, 2013 for initial treatment after the incident. (PX 1) She gave a history of trying to move a patient while in bed which caused pain in her right mid-back and left hip. The diagnosis that day was acute low back pain and acute lumbar myofascial strain. (PX 1).

Petitioner followed up with Dr. Christopher Knapp at Gateway Regional on July 22, 2013. (PX 2). She was prescribed prescribed pain medication, muscle relaxants, and physical therapy and diagnosed with left sacroiliac sprain. She was placed on modified duty for that day only, with sit down duties, but released to resume full duties the following day. (PX 2). Although she returned to work, she testified that she had to ask for additional assistance with her job duties.

An MRI of the lumbar spine was ordered on July 31, 2013. It was interpreted to show a left posterior lateral disc protrusion at T11-T12 that was compressing the lateral aspect of the spinal cord on the left side. A severe degree of central spinal stenosis was also seen at L4-L5 and a mild degree of central spinal stenosis was seen at L3-L4. (PX 2).

It appears Dr. Knapp saw petitioner in follow up on August 5, 2013. Dr. Knapp noted degenerative changes in her lower thoracic and lumbar spine region but no significant radicular symptoms other than pain to the left hip. As petitioner had only treated with an initial evaluation in physical therapy, she was encouraged to restart physical therapy to work on the SI joint (PX 2).

Petitioner testified that she was sprayed in the eyes with chemicals by a patient while working in the emergency room on September 1, 2013. She was suspended due to the incident and was ultimately terminated from her nursing position. The Arbitrator notes that petitioner has filed a separate claim relating to the September 1, 2013 incident that is not at issue here.

In a follow up on September 17, 2013, petitioner presented to PA-C Horn. She reported ongoing low back pain and essentially no improvement. She reported to PA Horn that she had been back to her primary care physician, where she had been prescribed additional Tramadol. Petitioner's diagnosis at that time was left sacroiliac dysfunction. From a medical standpoint, she had been cleared to work full duty, however, she was not working secondary to personnel issues. At that time, she was going to discontinue physical therapy but continue with the anti-inflammatories and follow up in two weeks. (PX 2).

On September 30, 2013, petitioner presented to her family doctor, Dr. Almasalmeh who placed her on work restrictions and prescribed additional medication. (PX 3).

Petitioner followed up once again with PA Horn on October 1, 2013. During this visit, a discussion was had about proceeding with epidural steroid injections. To that end, a call was placed to Dr. Khan in order to schedule the injection. In the interim, it was noted petitioner could continue to work full duty.

In December of 2013, petitioner fell at a restaurant in Branson, and suffered an injury to her thoracic spine. She stated that the fall was due to a missed step. She acknowledged that she did not experience any thoracic spine pain prior to that incident. Although she complained of thoracic spine pain, she did not believe that the incident changed her lower back symptoms.

Petitioner presented Dr. Almasalmeh on December 19, 2013. She gave a history of falling at the beginning of December and requested a referral to an orthopedic, as she has been told she had a compression fracture in the thoracic spine between T7 and T8. Petitioner also reported left hip pain since the fall. The plan was for her to be referred to Dr. Gornet. (PX 3).

On February 20, 2014, petitioner presented to Dr. Matthew Gornet for an initial spine examination. Petitioner presented with a chief complaint of low back pain central to the left side, left buttock, left hip, and left thigh as well as a newer onset of mid back pain. She reported her current problem began on July 19, 2013 while working at Gateway Regional Hospital as an emergency room nurse. Significantly, no prior history of lower back complaints or her diagnosis of sciatica was reported to Dr. Gornet. While there had been a recommendation for steroid injections, petitioner reported that Dr. Khan disagreed with the prescription for steroid injections, and therefore, none were ever undertaken. (PX 4).

Dr. Gornet also referenced petitioner's December fall in Branson indicating that petitioner reported her leg gave out while she was in a restaurant, and she fell. Dr. Gornet stated that petitioner had pre-existing degeneration in her facet joints and spinal stenosis. However, based on petitioner's history, she was asymptomatic prior to the work incident. Accordingly, it was Dr. Gornet's opinion that petitioner aggravated her underlying condition at L4-L5 making her symptomatic. This was despite the fact that he had not had the opportunity to review petitioner's diagnostic imaging.

He stated it was also possible petitioner sustained a new injury at L4-5, but he was unable to say so definitively until he had an opportunity to review the actual imaging studies or her MRI. Regardless, he did conclude her current requirement for treatment, her current impairment, and her current symptoms, were all causally connected to the event. Dr. Gornet recommended a new MRI of the lumbar spine and thoracic spine. He felt petitioner was capable of working light duty with a ten pound lifting restriction in the interim. Following his review of the MRI studies, he planned to outline a formal treatment plan for her. (PX 4).

On June 2, 2014, petitioner was seen by Dr. Boutwell for a left L4-L5 epidural steroid injection. (PX 4).

On June 26, 2014, petitioner was seen by Dr. Gornet in follow up. Dr. Gornet noted that petitioner underwent injections in May at T6-T7 and T7-T8. He believed the petitioner would be a candidate for surgical intervention in the form of an L4-5 fusion if she continued to decrease her weight down to the 225 pound level. If she could hit the goal weight of 225, the next step would be a CT myelogram. (PX 4).

Dr. Bernardi performed an Independent Medical Examination at respondent's request on September 10, 2014. (RX 2). After taking petitioner's history, reviewing her medical records and diagnostic imaging, and conducting a physical examination Dr. Bernardi diagnosed multi-level thoracic degenerative disc disease, multi-level lumbar degenerative disc disease, congenital lumbar stenosis, L4-5 degenerative spondylolisthesis, L5-5 spinal stenosis, mid back pain of uncertain etiology, and low back/left buttock pain of uncertain etiology. He believed that petitioner suffered a lower back strain as a result of her alleged July 19, 2013 work incident. (RX 2).

However, he did not believe that petitioner's current lower back complaints were work related. He noted that her complaints from the July 19, 2013 incident should have been self limiting based on her mechanism of injury. He further noted that petitioner had a prior history of lower back treatment as evidenced by her diagnosis of right sciatica in Dr. Almasalmeh's 5/23/13 and 7/9/13 notes. Additionally, petitioner had been prescribed a narcotic analgesic Nucynta for her complaints just eight days prior to her alleged injury. This was despite the fact that she denied any prior lower back symptoms upon presenting to Dr. Bernardi. Based on petitioner's prior history, and the relatively minor mechanism of injury, Dr. Bernardi stated that petitioner simply suffered a lumbar strain, or temporary aggravation of her pre-existing L4-5 spondylosis. He believed she would have returned to her baseline within 6-8 weeks. (RX 2).

With respect to petitioner's thoracic spine, Dr. Bernardi did not believe petitioner's current condition was work related. He noted that petitioner did not begin experiencing any pain until she fell in a restaurant after missing a short step in December of 2013. (RX 2).

With respect to petitioner's treatment, Dr. Bernardi believed that it had largely been reasonable and necessary. However, he would not have recommended thoracic spine injections as there was no evidence of neurological involvement. In regard to petitioner's future treatment, Dr. Bernardi did not believe that a myelogram of the lumbar spine would be necessary, as the

April 25, 2014 MRI provided adequate information regarding the anatomy of petitioner's back. He further indicated that an L4-5 decompression and fusion could potentially be considered. However, he would not offer the surgical procedure in this case as petitioner did not have complaints or physical findings consistent with symptomatic spinal stenosis to necessitate surgery. Additionally, petitioner had other factors, including obesity, congenital stenosis and multi-level degenerative disc disease, that increased her risk of developing recurrent lower back pain even with surgery. (RX 2).

Dr. Gornet's last office visit with petitioner was on November 20, 2014. At that time, he continued to recommend surgery after petitioner lost some additional weight. He also noted that he had the opportunity to review Dr. Bernardi's September 10, 2014 IME report. Dr. Gornet agreed that petitioner did not require thoracic surgery. However, he believed that a CT scan of the lumbar spine would be reasonable to determine whether there was any bony pathology or facet morphology. He further believed that petitioner had spinal stenosis based on her complaints of hip, buttock, and upper leg pain. Finally, he noted that Dr. Bernardi had previously indicated in a different IME report that trauma was capable of aggravating spinal stenosis, which is what Dr. Gornet believed happened here. (PX 4). Petitioner testified at trial that she wished to proceed with the surgery recommended by Dr. Gornet.

Dr. Robert Bernardi Deposition Testimony

Dr. Bernardi testified that he is a board certified neurosurgeon who first examined petitioner on September 10, 2014. (RX 3, p. 4-5). Dr. Bernardi testified consistent with his IME report. Namely, he noted that petitioner gave a history of injuring her lower back on July 19, 2013 after attempting to move a patient's bed with her hip. Petitioner reported her symptoms worsened after falling in a restaurant in Branson, Missouri in December of 2013 due to missing a short step. After the incident she had left hip, ankle, wrist, and new mid-back pain. (RX 3, p. 5-8). When asked whether she had any prior history of lower back complaints, she denied the same. (RX 3, p. 9).

Dr. Bernardi also testified that he reviewed petitioner's medical records relating to her treatment between May 23, 2013 and June 26, 2014. Significantly, despite petitioner's denial of prior lower back symptoms, the records revealed a prior diagnosis of right-sided sciatica. Additionally, Dr. Bernardi noted that petitioner had been prescribed narcotic medication just eight days prior to her alleged July 19, 2013 incident. (RX 3, p. 9-10).

With respect to petitioner's physical examination, Dr. Bernardi found it significant that petitioner was five feet, 250 pounds, and therefore, considered obese. He found no objective abnormalities suggestive of radiculopathy or myelopathy on examination such as weakness or atrophy. Although petitioner had complaints of lower back pain with straight leg raising on the left, Dr. Bernardi believed this to be a non-specific finding and noted it was not consistent with radiculopathy. (RX 3, p. 11).

Dr. Bernardi also reviewed petitioner's lumbar spine X-ray from February 20, 2014, and thoracic/lumbar spine MRI's from April 25, 2013. After reviewing the imaging, he noted that

petitioner had degenerative changes at several levels in her lumbar spine and significant spinal stenosis at L4-5. However, petitioner had no evidence of any acute findings on the MRI. (RX 3, p. 12-13). In regard to the thoracic spine, Dr. Bernardi noted that petitioner had diffuse degenerative joint disease and a T6 central disc extrusion resulting in spinal stenosis. (RX 3, p. 14).

After reviewing all relevant information, Dr. Bernard diagnosed petitioner with multi-level thoracic degenerative disc disease, multi-level lumbar degenerative disc disease, congenital lumbar stenosis, L4-5 degenerative spondylolisthesis, L4-5 spinal stenosis, mid-back pain of uncertain etiology, and low back and left buttock pain of uncertain etiology. (RX 3, p. 15). He believed that petitioner suffered at most a lower back strain or temporary aggravation of a pre-existing degenerative condition as a result of the alleged July 19, 2013 work incident. (RX 3, p. 15). However, he believed that petitioner's current low back complaints were due to her pre-existing symptomatic degenerative disc disease, rather than her July 19, 2013 incident. (RX 3, p. 16). This was due to the fact that the natural progression of back pain from incidents such as petitioner's is typically self limiting, and therefore, petitioner should have returned to her baseline within six to eight weeks. (RX 3, p. 15). Dr. Bernardi's opinion is further supported by the fact that petitioner was released to return to work full duty shortly after the incident by Dr. Knapp. (PX 2).

Dr. Bernardi further explained that this opinion was primarily based on three factors. (RX 3, p. 16-17). First, there were no acute abnormalities on petitioner's diagnostic imaging to suggest a new injury, and all findings were present prior to July 19, 2013. There was also no evidence of injury on petitioner's objective physical examination. (RX 3, p. 16). Second, despite petitioner's denial of previous lower back symptoms, the records suggested that petitioner was symptomatic prior to her alleged work incident and had even received narcotic medication for her complaints. (RX 3, p. 17). Finally, Dr. Bernardi noted that petitioner's symptoms were non-specific in nature and most likely due to changes at the L4-5 level. (RX 3, p. 17). This, in combination with petitioner's significant symptoms immediately before the incident, suggested that petitioner's current complaints were not work related. (RX 3, p. 17).

In regard to the thoracic spine, Dr. Bernardi did not believe petitioner's current condition was work related as she reported falling in a restaurant after missing a short step in December of 2013. (RX 3, p. 20). Although petitioner indicated that she experienced left hip pain and her leg gave way after her foot hit the ground, Dr. Bernardi noted that petitioner also told him she simply missed a step, a phenomenon which was typical to any member of the general public. (RX 3, p. 20).

In regard to the reasonableness and necessity of petitioner's treatment, Dr. Bernardi believed that it had been reasonable and necessary for the most part. However, he would not have recommended the thoracic spine epidural injections as there was no evidence of any neurological involvement. (RX 3, p. 22).

In regard to future treatment, Dr. Bernardi did not believe that the myelogram of the lumbar spine would be necessary, as the current x-rays provided adequate information regarding petitioner's bony anatomy, and the MRI imaging was of high diagnostic quality. (RX 3, p. 23).

With respect to the recommended L4-5 decompression and fusion, he believed that it could potentially be considered. (RX 3, p. 24). However, he would not view the procedure as reasonable and necessary here as petitioner had not had any complaints or physical findings consistent with symptomatic spinal stenosis necessitating surgery. (RX 3, p. 24-26). Additionally, petitioner had several other risk factors such as obesity, congenital stenosis and multi-level degenerative disc disease that would increase her risk of developing recurrent lower back pain with surgery. (RX 3, p. 25). He reiterated that even if petitioner were to undergo the surgery, it would not be work related. (RX 3, p. 26).

Dr. Bernardi ultimately believed that petitioner reached MMI within six to eight weeks after the July 19, 2013 incident and could return to work full duty without restrictions as of that time. (RX 3, p. 26).

On cross-examination, Dr. Bernardi acknowledged that he was unsure whether there was a patient on the bed at the time petitioner attempted to move it. (RX 3, p. 29). However, he indicated that this would not change his opinion as the bed was in a locked position. (RX 3, p. 37). Dr. Bernardi also admitted that he did not review the July 31, 2013 MRI report of the lumbar spine. (RX 3, p. 30). However, he noted that the MRI he reviewed from April 25, 2014 was of good diagnostic quality, and reiterated that it failed to reveal any acute changes. (RX 3, p. 30, 37).

With respect to petitioner's medical records, Dr. Bernardi stated that he did not review Dr. Knapp's or petitioner's initial emergency room visits. (RX 3, p. 31). Further, the only medical records prior to petitioner's incident that he reviewed were the notes listed in his report. (RX 3, p. 29). In regard to petitioner's pain, he acknowledged that those records did not specifically mention lower back pain, only right hip symptoms. (RX 3, p. 32). That being said, since petitioner's subsequent diagnosis was right-sided sciatica, this suggested buttock pain. (RX 3, p. 33). He candidly acknowledged that there was nothing in the prior medical records indicating left leg pain/weakness, or indicating that petitioner was unable to work. (RX 3, p. 33). Further, there was no prior recommendation for injections, surgery or physical therapy. (RX 3, p. 34). He was also unaware of any prior diagnostic imaging. (RX 3, p. 34).

CONCLUSIONS OF LAW:

As to C, whether petitioner suffered an accident arising out of her employment, the Arbitrator concludes as follows:

The Arbitrator finds that petitioner suffered an accident in the course of and arising out of her employment on July 19, 2013 after attempting to move a patient's bed. Specifically, petitioner testified that she attempted to move a patient's bed on rollers, but the bed was in a locked position, and failed to move when she went to push it. She described right sided lower

back immediately after the incident, and stated that she reported it to her supervisor, who filled out an accident report.

With respect to the thoracic spine condition, the Arbitrator finds that petitioner failed to prove she suffered an accident arising in the course of/out of her employment. This is based on the fact that petitioner testified at trial that she simply missed a step while at a restaurant in Branson in December of 2013. As petitioner was not working at the time of her incident, the fall did not occur in the course of her employment.

As to F, whether the petitioner's present condition of ill-being is causally related to the injury, the Arbitrator concludes as follows:

The Arbitrator finds that petitioner failed to prove that her current lumbar condition, thoracic condition, and recommendation for surgery are causally related to her July 19, 2013 work incident. The Arbitrator's decision is based on 1) Petitioner's lack of credibility regarding her prior complaints, 2) Dr. Gornet's questionable causation opinion, and 3) Dr. Bernardi's credible causation opinion.

First, the Arbitrator notes that it is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical testimony. Caterpillar Tractor Co. v. Industrial Comm'n, 124 Ill. App. 3d 650 (1984). Testimony under oath and subject to cross-examination is the benchmark of credibility." Chicago Messenger Service v. Industrial Comm'n, 356 Ill. App. 3d 843, 850 (1st Dist. 2005). If the claimant did not testify truthfully under oath, then she had no credibility. Id.

In this case, the Arbitrator finds that petitioner is an unreliable historian regarding her prior complaints. Specifically, petitioner was diagnosed with right sided sciatica and muscle spasms just weeks prior to the incident. (RX 1). Petitioner was also experiencing significant symptoms and was taking Flexeril and the narcotic analgesic Nucynta just eight days prior to her July 19, 2013 incident. (RX 1). Despite the fact that her complaints were significant enough to warrant narcotic medication, petitioner failed to inform any of her physicians of her prior diagnosis of right sided sciatica. Further, when specifically asked by Dr. Bernardi whether she had received any prior treatment for symptoms referable to her lower back, she specifically denied the same. (RX 2). The Arbitrator finds that this inconsistent testimony raises doubts as to the exact nature of Petitioner's complaints prior to her July 19, 2013 incident, and therefore, it is difficult to compare Petitioner's post-incident complaints to her pre-incident complaints.

Second, in conjunction with petitioner's lack of credibility, the Arbitrator finds Dr. Gornet's causation opinion is not persuasive. The Arbitrator notes that a claimant has the burden of proving by the preponderance of credible evidence all elements of the claim, including that any alleged state of ill-being was caused by a workplace accident. See, e.g., *Parro v. Industrial Commission*, 260 I11.App.3d 551 (1993). The existence of health problems of an employee prior to a work-related injury neither deprives the employee of a right to benefits nor relieves the employee of the burden of proving a causal connection between the employment and the subsequent health problems. *Neal v. Industrial Comm'n*, 141 Ill. App. 3d 289 (1986).

The courts have established that when a pre-existing condition is aggravated by employment, it may constitute a work-related accident. *Peoria Motors v. Industrial Comm'n*, 92 Ill. 2d 260 (1982); *Cook Co. v. Industrial Comm'n*, 68 Ill. 2d 24 (1977). However, the claimant bears the burden of showing that the pre-existing condition was aggravated by the employment and that the aggravation occurred as a result of an accident which arose out of and in the course of his employment. *Lawless v. Industrial Comm'n*, 96 Ill. 2d 260 (1983); *Lyons v. Industrial Comm'n*, 96 Ill. 2d 198 (1983). Additionally, compensation will be denied where an injured employee's health has deteriorated so that any normal daily activity is an aggravation. *Sisbro, Inc. v. Industrial Comm'n*, 207

The basis for Dr. Gornet's opinion that petitioner's current lower back condition is work related is from his medical records. Dr. Gornet first rendered an opinion regarding causation during his February 20, 2014 visit with petitioner. (PX 4). At that time, he believed that petitioner had aggravated her pre-existing degenerative condition at L4-5 and he attributed petitioner's continued symptoms to her aggravation. Significantly, Dr. Gornet rendered his opinion without reviewing petitioner's MRI imaging. Further, he had no knowledge of petitioner's prior complaints as petitioner reported she was asymptomatic immediately prior to the incident. (PX 4).

In contrast to Dr. Gornet, Dr. Bernardi provided a credible opinion which was based on his review of the relevant medical records, diagnostic imaging, and physical examination. (RX 2). He believed that petitioner could have suffered at most a lower back strain and noted that petitioner could have also have suffered a temporary aggravation her pre-existing degenerative condition as a result of the alleged July 19, 2013 work incident. (RX 3, p. 15). However, he believed that petitioner's continued complaints were due to her pre-existing symptomatic degenerative disc disease, rather than her July 19, 2013 incident. (RX 3, p. 16). This was due to the fact that the natural progression of back pain from incidents such as petitioner's is typically self limiting. Therefore, if petitioner did suffer an injury as a result of the incident she would have returned to her baseline within six to eight weeks. (RX 3, p. 15). He further testified that there were no objective findings which would allow him to say to a reasonable degree of medical certainty, what level of petitioner's spine were causing petitioner's symptoms. (RX 3, p.18).

Dr. Bernardi ultimately explained that his opinion was primarily based on three factors. (RX 3, p. 16-17). First, there were no acute abnormalities on petitioner's diagnostic imaging to suggest a new injury, and all of the findings on the imaging were present prior to July 19, 2013. There was also no evidence of injury/stenosis on petitioner's objective physical examination such as weakness or other neurologic deficits. (RX 3, p. 16). Second, despite petitioner's denial of previous lower back symptoms, the records suggested that petitioner was symptomatic prior to her alleged work incident and had even received narcotic medication for her complaints. (RX 3, p. 17). Finally, Dr. Bernardi noted that petitioner's symptoms were non-specific in nature. (RX 3, p. 17). These considerations, in combination with petitioner's significant symptoms immediately before the incident, suggested to Dr. Bernardi that petitioner's current complaints were not work related. (RX 3, p. 17).

The Arbitrator notes that Dr. Gornet commented on Dr. Bernardi's IME report in a November 20, 2014 office note. (PX 4). However, Dr. Gornet's assessment of Dr. Bernardi's

opinion does little to undermine Dr. Bernardi's opinion. Dr. Gornet's primary issue is that he believes petitioner has subjective complaints suggestive of stenosis such as hip, buttock, and upper leg pain. Further, Dr. Gornet notes that Dr. Bernardi had previously opined that trauma could aggravate pre-existing spinal stenosis in another IME report. (PX 4).

Both of these concerns were addressed in Dr. Bernardi's deposition testimony, which Dr. Gornet did not have the opportunity to review. Specifically, Dr. Bernardi acknowledged that petitioner had subjective complaints of pain. However, these complaints were diffuse in nature, and there were no objective findings on examination which could correlate them to a specific level. (RX 3, p. 18). Thus, although it was possible that petitioner's work incident aggravated her pre-existing condition at L4-5, Dr. Bernardi could not say to a reasonable degree of medical certainty that it did. (RX 3, p. 18).

With respect to the thoracic spine condition, the Arbitrator finds that it is not work related. Petitioner acknowledged at trial that she fell simply after missing a step while at a restaurant in Branson. She also reported the same history to Dr. Bernardi, who noted that such falls were commonly experienced in the general public. (RX 2). Further, Dr. Bernardi did not believe that petitioner's fall was a result of the lower back condition, or left leg weakness. Accordingly, petitioner's fall occurred outside of her employment.

Based on petitioner's lack of credibility regarding her prior complaints, Dr. Gornet's questionable causation opinion, and Dr. Bernardi's credible opinion, the Arbitrator finds that petitioner simply suffered a lumbar strain as a result of the July 19, 2013 incident. The Arbitrator further adopts Dr. Bernardi's opinion that petitioner reached MMI as of August 17, 2013. As such, all benefits subsequent to August 17, 2013 relating to the alleged lower back condition are denied. Additionally, all benefits related to petitioner's thoracic spine treatment are denied.

As to J and K, whether the medical services that were provided to Petitioner were reasonable and necessary, and whether petitioner is entitled to any future medical, the Arbitrator concludes as follows:

Incorporating the aforementioned finding that the petitioner failed to prove that her lower back and thoracic conditions are causally related to her job duties, petitioner is owed no medical expenses subsequent to August 17, 2013.

Even assuming that Petitioner's current condition of ill-being is related to her work incident, the Arbitrator denies the recommended lumbar CT scan, L4-5 fusion, and thoracic injections as unreasonable and unnecessary.

First, the Arbitrator denies the recommended CT scan based on Dr. Bernardi's opinion that the current diagnostic studies provide adequate diagnostic information. (RX 2). Although Dr. Gornet recommended the CT scan to address petitioner's bony pathology, petitioner has already undergone x-rays to address this concern.

Second, the Arbitrator denies the recommended L4-5 fusion based on Dr. Bernardi's opinion. Specifically, Dr. Bernardi did not view the procedure as reasonable and necessary here since petitioner had not had any complaints or physical findings consistent with symptomatic spinal stenosis necessitating surgery. (RX 3, p. 24-26). Additionally, petitioner had several other risk factors such as obesity, congenital stenosis and multi-level degenerative disc disease that would increase her risk of developing recurrent lower back pain with surgery. (RX 3, p. 25).

Finally, the Arbitrator denies the thoracic spine injections based on Dr. Bernardi's opinion that he would not have recommended the same without evidence of any neurological involvement. (RX 3, p. 22).

Assuming petitioner's claim is compensable, Respondent shall receive a credit for the medical payments outlined in RX 5.

As to L, what amount of compensation is due for temporary total disability, the Arbitrator concludes as follows:

Incorporating the aforementioned finding that the Petitioner failed to prove that her injuries are causally related to her job duties, the Arbitrator finds the Petitioner is owed no TTD benefits.

Respondent shall receive a credit for the TTD payments of $24,293.60 outlined in RX 5.

As to N, whether Respondent is due any credit under Section 8(j) of the Act, the Arbitrator concludes as follows:

The Arbitrator finds that Respondent is entitled to a credit for any payments made under Section 8(j) of the Act by stipulation of the parties.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt	☐ 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

Anthony Borrelli,
Petitioner,
vs.

15IWCC0898
NO: 14 WC 20432

Insulated Panel Company,
Respondent.

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 vocational rehabilitatin plan, permanent partial disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 1, 2015, is hereby affirmed and adopted.

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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: DEC 10 2015
KWL/vf
O-12/7/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0898

BORRELLI, ANTHONY
Employee/Petitioner

Case# **14WC020432**

IVSULATED PANEL COMPANY
Employer/Respondent

On 4/1/2015, 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 0.13% 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:

1752 LAW OFFICES OF RAYMOND L ASHER
200 W JACKSON BLVD
SUITE 1050
CHICAGO, IL 60606

0560 WIEDNER & McAULIFFE LTD
KAREN E COON
ONE N FRANKLIN ST SUITE 1900
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

15IWCC0898

Anthony Borrelli
Employee/Petitioner

v.

Insulated Panel Company
Employer/Respondent

Case # **14** WC **20432**

Consolidated cases: **D/N/A**

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 **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **February 26, 2015**. 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 **8(a) petition, additional vocational rehabilitation**

FINDINGS

On **9-12-13**, 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 $**5,102.40**; the average weekly wage was $**1,700.80**.

On the date of accident, Petitioner was **31** years of age, ***single*** 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 $**$53,789.97** for TTD, $**$12,676.44** for TPD, **$8,746.99** for maintenance, and $**0** for other benefits, for a total credit of $**$75,213.40**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act. The parties have stipulated that there are no over or under payments of accrued benefits.

ORDER

For the reasons set forth in the attached decision, the Arbitrator denies Respondent's 8(a) petition for additional vocational rehabilitation and finds that Petitioner's current auto inspector job is suitable employment.

Respondent shall pay Petitioner permanent partial disability benefits, commencing 2/27/15, of $782.67/week until Petitioner reaches age 67 or five years from the date of the final award, whichever is later, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

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.

Molly E Mason
Signature of Arbitrator

4/1/15
Date

APR 1 - 2015

Anthony Borrelli v. Insulated Panel Company
14 WC 20432

Summary of Disputed Issue

The dispute in this case is very narrow. The parties agree that Petitioner, a union carpenter, ruptured his right biceps tendon at work on September 12, 2013. Arb Exh 1. While Respondent contested causation at the hearing, its Section 12 examiner, Dr. Kornblatt, found causation and agreed with the permanent restrictions imposed by Petitioner's surgeon, Dr. Burra. RX 2. Those restrictions included no use of vibratory tools. There is no dispute that Petitioner was required to use such tools while working for Respondent. Nor is there any dispute that Petitioner fully cooperated with vocational rehabilitation efforts following a failed attempt to resume full duty and a valid functional capacity evaluation. Petitioner developed job leads on his own and pursued leads supplied by Samantha Allen, Respondent's certified vocational rehabilitation counselor. Petitioner secured a car inspector job paying $14 per hour in October 2014, within a few weeks of starting the job search process. There is no dispute that Allen provided a lead for this job, that the salary was within, albeit at the low end of, the range projected by Allen and that Allen instructed Petitioner to accept the job after she conferred with Respondent's adjuster. Nor is there any dispute that Allen closed her file at the adjuster's direction as soon as Petitioner began performing this job.

On January 23, 2015, Respondent filed a motion to re-start vocational rehabilitation efforts (RX 3), citing new carpentry-related potential jobs identified by Allen in mid-November 2014. The case proceeded to hearing on February 26, 2015, with Petitioner testifying he contacted all of the newly identified prospective employers for whom Allen provided contact information and received no offers. Petitioner seeks a wage differential award based on his current job and earnings while Respondent seeks renewed vocational rehabilitation.

Arbitrator's Findings of Fact

Petitioner initially called Samantha Allen as an adverse witness. Allen testified she obtained a master's degree in rehabilitation counseling from Northern Illinois University in 2006. T. 9-10. She obtained certification in vocational rehabilitation the same year and became a licensed professional counselor three years later. T. 10-11. RX 1A.

Allen testified she performed a vocational assessment of Petitioner on July 15, 2014 and subsequently administered a battery of tests to Petitioner. T. 12-13. [The tests included the WRAT 4 and Careerscope aptitude testing. On the WRAT 4, Petitioner scored at the 12.9 grade level in word reading and spelling and above the 12.9 grade level in sentence comprehension and math computation. On the aptitude testing, Petitioner scored in the 99th percentile on spatial aptitude and in the 89th percentile on form perception. RX 1B.] After performing a transferable skills assessment and a labor market survey, Allen started job placement. She testified that Petitioner was cooperative with the job search process.

Allen acknowledged she projected Petitioner could earn between $13.42 and $24.00 per hour. T. 15. She also acknowledged it was she who provided Petitioner with a lead for his current job. She thought it was appropriate for Petitioner to accept this job. The job was consistent with both the transferable skills analysis and the labor market survey. T. 19. After Petitioner was offered the job, he called her and asked if he should accept. She told Petitioner he was the first person she had placed that year. On October 2, 2014, she informed the adjuster, Evelyn Martinez, of the job offer, via E-mail, and told Martinez she felt the job was a "good opportunity" for Petitioner. After Martinez expressed happiness with the offer and job, she advised Petitioner to go ahead and accept the offer. On October 14, 2014, she sent Martinez an E-mail indicating Petitioner passed his drug test and background check and would start the new job with an initial day of training on October 20, 2014. Martinez responded as follows: "great – thank you." PX 1. On October 21, 2014, she sent Martinez another E-mail indicating Petitioner completed training the previous day and asking whether she should continue efforts or close her file. Martinez responded as follows: "go ahead and close your file – you did a great job." PX 1. T. 16-18.

Allen testified she had no additional contact with Petitioner thereafter. About a month after she closed her file, she was asked to re-open the file and identify additional job leads. T. 15. On November 14, 2014, she issued a report identifying a number of potential employers. Two of the leads she identified were anonymous, with no accompanying contact information. T. 21. Since re-opening her file, she may have provided a couple of the same job leads to another injured construction worker. T. 21. To her knowledge, no one she has worked with secured a job with any of the potential employers she identified in her November 14, 2014 report. T. 22.

Allen testified it would not surprise her if Petitioner contacted the newly identified prospective employers and none of them expressed interest. T. 22. Petitioner's permanent restrictions are "pretty severe," for him. T. 22.

Petitioner then took the stand. He testified he obtained his GED in 2000. T. 41

Petitioner testified the work accident of September 12, 2013 involved his dominant right arm. T. 25. He denied having any right arm problems before the accident. T. 26. He was able to perform all of his journeyman carpenter duties. He worked out of Local 174 in Will County. T. 27.

Petitioner testified he began working for Respondent about two months before the accident. T. 27. Throughout most of that two-month period, he worked on the ceiling of a "multi-thousand square foot cooler." He and a co-worker, Corey, worked off of a lift, twenty feet in the air, installing panels that were stacked on a raised forklift. T. 29. A panel was similar to a sandwich in that it consisted of foam layered between two pieces of sheet metal. Each piece of sheet metal was about 10 feet by 4 feet in size. Each panel weighed about 40 to 50 pounds. The panels had foam sandwiched between them. They tended to stick together and had to be broken apart during the installation process. He had to lift a panel overhead, "slam

it tight to a groove" (using both hands) and use an impact gun and "peck" screws to fix it in place. He typically used an 18-volt impact gun. This device had torque. He also used circular saws, panel saws and Sawzalls. All of these tools vibrated when in use. Due to the presence of columns and other obstructions, he was not always able to lift a panel directly overhead. He sometimes had to reach around objects during the installation process. T. 31-32.

Petitioner testified he and Corey worked at a good pace before the accident. They were "kicking butt," installing more than 100 panels per day. T. 40. Shortly before the accident, he and Corey began cutting panels down so as to be able to fit them into the edge of the ceiling. They used a saw with a big blade to cut two feet off the end of each panel.

Petitioner testified that, immediately before the accident, he was kneeling with his left hand positioned at the bottom of a panel and his right hand positioned at the top. As he started lifting and rising to his feet, he heard a pop in his right arm. The popping sound scared him. He looked at his right arm and realized his biceps was out of place.

Petitioner sought Emergency Room treatment at Adventist Bolingbrook Hospital the same day. The Emergency Room records set forth a consistent history of the accident. The records reflect Petitioner complained of right elbow pain extending down his arm into his fingers. The examining physician noted Petitioner was very tender at the insertion site of the biceps tendon medially. He diagnosed a likely partial biceps tendon rupture. He prescribed Vicodin for pain, placed Petitioner's right arm in a sling and recommended Petitioner stay off work and seek follow-up care the next day. PX 5.

Petitioner saw a physician's assistant at Hinsdale Orthopedics the following day, September 13, 2013. On examination, the assistant noted emptiness in the cubital fossa suggestive of a distal biceps tendon rupture and a "Popeye" deformity of the distal biceps area. He ordered a right elbow MRI and instructed Petitioner to stay off work, wean off the sling and perform gentle range of motion exercises.

The right elbow MRI, performed on September 16, 2013, showed a full-thickness biceps tendon rupture (with tendon retraction of 5.7 centimeters) and a focal, partial-thickness tear of the common extensor origin.

Petitioner saw Dr. Burra at Hinsdale Orthopedics the same day he underwent the MRI. After reviewing the MRI and examining Petitioner, Dr. Burra recommended surgery.

On September 25, 2013, Dr. Burra performed a right elbow open distal biceps tendon repair at Silver Cross Hospital. PX 7.

On September 27, 2013, Petitioner was fitted for a hinged elbow brace and was instructed to begin passive range of motion exercises.

Petitioner underwent an initial physical therapy evaluation at Newsome Rehabilitation on September 30, 2013. He attended multiple therapy sessions thereafter. In a progress note dated January 10, 2014, his therapist indicated he had participated in 45 sessions to date. The therapist described Petitioner as "motivated and compliant" with a home exercise program.

On January 13, 2014, Petitioner saw David Tan, a physician's assistant, at Hinsdale Orthopedics. In his note of that date, Tan indicated he and Petitioner discussed the heavy demands of Petitioner's job. Tan released Petitioner to one-handed work.

At the next visit, on January 27, 2014, Tan indicated that Petitioner had not returned to work because his employer was not able to accommodate the restriction. He recommended that Petitioner participate in work conditioning five days a week for four weeks and remain off work during that period.

Petitioner underwent an initial work conditioning evaluation on February 3, 2014, with the evaluator finding him capable of performing 78.4% of the physical duties of his job.

On March 24, 2014, Petitioner returned to Tan and indicated that his biggest problem, in terms of work conditioning, was carrying panels. Tan recommended additional work conditioning.

On April 22, 2014, Tan noted that Petitioner had made progress but was complaining of mild subjective loss of active pronation and supination. He released Petitioner to work.

Petitioner testified he attempted to resume full duty for Respondent on May 7 and 8, 2014. T. 46. On these dates, he was assigned to a different jobsite, where workers were installing cooler panels up on the roof of a building. T. 47. The panels at this site were "really big, probably close to 20 feet." T. 47. He was given the specific task of installing 2-inch screws into the "tongues" of the panels. In order to accomplish this, he had to use his right hand to hold a vibrating hammer drill overhead and drill through steel, applying "continuous pressure" in intervals lasting two to five minutes. T. 49. He performed this task throughout the 8-hour workday. As the hours passed, it started taking longer and longer for him to install each screw. T. 49. His right arm began feeling "dead" and he started experiencing pain in his right shoulder and arm, especially the elbow area. The fingers of his right hand also started getting sore. He tried using his non-dominant left hand and arm instead but this was awkward. He began inadvertently breaking drill bits. T. 50. This was not looked upon too favorably, since each drill bit costs $40. T. 50.

Petitioner returned to Dr. Burra on May 8, 2014 and described his unsuccessful attempt to resume working. The doctor recommended a functional capacity evaluation and imposed restrictions of no lifting over 20 to 25 pounds, no repetitive motion of the elbow and no repetitive flexion/extension of the elbow. PX 6.

Petitioner underwent the functional capacity evaluation on May 14, 2014. The evaluator, Heather Thompson, PT, rated the results as valid. She described Petitioner as putting forth full and consistent effort. She found that Petitioner demonstrated the ability to perform 92% of the physical demands of his union carpenter job. She described this job as falling within the heavy physical demand category. She noted that Petitioner was unable to perform certain simulated tasks. For example, she observed that, when Petitioner attempted to carry a 31-pound panel on his right side, his right forearm was partly supinated and he was "not carrying square with his body as he would need to on the job." When using a Bennett tool overhead, Petitioner was only able to sustain the effort for 4 minutes and 15 seconds out of a requested 5 minutes. PX 6.

Petitioner testified he tried to do as much as he could during the functional capacity evaluation. T. 52. He did not use any vibratory tools during the evaluation because the evaluator did not have any such tools. T. 52. His right arm was sore after the evaluation. The evaluation lasted four to five hours. T. 52-53.

Petitioner returned to Dr. Burra on June 9, 2014, with the doctor noting the valid results of the recent functional capacity evaluation. The doctor addressed work capacity as follows:

> "[The evaluation] clearly shows limitations in more than one area of his required physical demand level for his pre-injury job. The [functional] capacity evaluation was limited because they did not have the ability to test him with vibratory tools, especially the heavy vibratory tools. I had attempted to return him to work on a trial basis and he developed significant symptoms when he used such vibratory tools. It is to this effect that I would put him on permanent restrictions primarily as those identified in the FCE with an additional restriction against the use of these heavy and intensive vibratory tools."

Dr. Burra released Petitioner to work as of June 10, 2014 with the following restrictions: occasional overhead lifting no greater than 45 pounds, frequent overhead lifting no greater than 35 pounds, occasional bilateral carry no greater than 85 pounds, frequent bilateral carry no greater than 45 pounds, unilateral bucket carry of 50 pounds at occasional frequency, panel carry with right arm at 31 pounds only at occasional frequency, panel carry with left arm at 61 pounds only at occasional frequency and no use of heavy power or vibratory tools.

Dr. Burra found Petitioner to be a "candidate for alternate job placement or vocational rehabilitation." He also found Petitioner to be at maximum medical improvement. PX 6.

At Respondent's request, Petitioner underwent a Section 12 examination by Dr. Ira Kornblatt on February 2, 2015. Dr. Kornblatt is affiliated with the Illinois Bone & Joint Institute.

Dr. Kornblatt noted that Petitioner was currently working as a vehicle inspector and had "ongoing complaints of aching in his elbow of moderate severity in addition to weakness."

Dr. Kornblatt described Petitioner as pleasant, oriented and "cooperative throughout the exam."

On examination, Dr. Kornblatt noted that the circumference of Petitioner's upper right arm was only 15 ¼ inches versus 16 inches on the left. He muscle strength testing, he noted residual weakness on flexion of the elbow and supination.

Dr. Kornblatt indicated he reviewed various treatment records, including the functional capacity evaluation and Dr. Burra's permanent restrictions. He also reviewed a job analysis and notes from Robert Deppen concerning tools used by Respondent employees, including saws, drills and Sawzalls.

Dr. Kornblatt diagnosed a "biceps tendon tear, distal at the right elbow with residual weakness and pain."

Dr. Kornblatt indicated his examination revealed "clear objective findings consistent with weakness, i.e., there was significant atrophy of the right upper arm as compared to the left and Mr. Borrelli is right-hand dominant."

Dr. Kornblatt found a clear causal relationship between the work accident and Petitioner's current condition, noting Petitioner was working as a union carpenter without problems until the accident.

Dr. Kornblatt characterized the treatment to date as reasonable and necessary.

Dr. Kornblatt found the restrictions imposed by Dr. Burra to be appropriate. While noting he is not an expert in the use of power tools, he opined: "it does appear that [Petitioner] is not capable of carrying out a job which requires recurrent use of vibratory or impact type tools."

Dr. Kornblatt found Petitioner to have reached maximum medical improvement. He provided an AMA impairment rating. RX 2.

Petitioner testified he experiences a lot of pain in his right arm if he stretches the arm or makes a quick motion to reach for something. If, for example, he reaches across the dinner table or tries to catch a falling object, such as a fork or remote control, his "arm is sore for the rest of the night." T. 65, 76. At his new job, he has to reach down into vehicles and depress levers in order to release the hoods. When he does this, his arm gets sore. T. 75. He also experiences right arm soreness when he shaves his head or reaching behind his body to wipe himself after going to the bathroom. When his arm gets sore, his fingers hurt and this affects his grip. T. 66. His girlfriend loves to bowl but he has not tried this since the accident since he

is unsure he could bowl as a "lefty." T. 77. When his right arm is "really bugging" him, he will take Naproxen. T. 78.

Petitioner testified he compensates for his right arm weakness and soreness by using his left arm more. When he carries bags of grocery items, for example, he "loads up" his left arm. T. 76. He avoids using his right arm because "it can't take it." T. 66. His life is "different now." T. 66.

Petitioner testified union scale was $42.52 per hour as of his accident. As of the hearing, and through May 31, 2015, union scale is $43.35 per hour. T. 67.

Petitioner testified he obtained his current auto inspector job via a lead supplied by Samantha Allen. T. 67. Since starting this job, he has averaged between 30 and 40 hours per week. He also worked a few overtime hours in a couple of weeks. T. 68. His job title is inspector, or "condition report [CR] writer." He inspects all types of vehicles in connection with dealer auctions. T. 69. While conducting inspections, he uses a Panasonic touch screen tablet, a stylus, a small flashlight and a digital camera. T. 69-70. He is not required to use any vibratory tools. T. 76. He inspects the interiors and exteriors of a variety of cars and trucks. He turns the key to determine whether the vehicle will start but otherwise does not perform any mechanical work. T. 70-71. When he first started the job [in October 2014], he did not notice many problems with his right arm but, now that it is winter, he is noticing some right arm soreness. He does not know whether this is due to the cold or because he has to brush snow off the vehicles. T. 71. He initially uses his right hand to brush off the snow but later switches to his left. He makes the switch after he starts noticing right arm soreness and numbness in his right ring and small fingers. T. 72. He also experiences some numbness just below the thenar eminence. T. 73. When he has to get up into the cab of a truck, he uses his left hand to grab the "grab bar." He sometimes uses his right hand to grab the bar on the passenger side but he does not do this often enough to create a problem. T. 74-75.

Under cross-examination, Petitioner testified there is no indication that Patrick of Elite Trim Carpentry ever called him back. T. 93. If records show he started working for Respondent on August 22, 2013, he would agree with that date. T. 93. He had never previously worked for Respondent but had worked as a union carpenter for about ten years. T. 94. He did not work continuously that whole time. Throughout his union career, he would get jobs through the union hall or by networking with other carpenters. He did not have any work injuries before the accident at issue. He has not reinjured his right arm or elbow since the accident. T. 97. After Dr. Burra imposed permanent restrictions, he did not look for any carpentry jobs. In his opinion, there are no carpentry jobs within those restrictions. He did not discuss his restrictions with his union. There are a thousand guys without restrictions looking for union jobs so he thinks it is very unlikely the union would be able to place him. He received unemployment benefits during some of his ten years as a union carpenter. T. 99. Between the ages of 18 and 21, he installed cable lines. This required him to drive around in a truck, climb up telephone poles and run "drops" inside customers' homes by drilling into brick walls. T. 99. He also worked at a cabinet shop. His job there involved stacking sheets of wood, feeding the stacks

into a computerized machine and delivering finished cabinets. He does not believe he could perform this job now because carrying sheets and cabinets would place a huge strain on his arm. T. 101. He also worked as a telemarketer between the ages of 16 and 18. He is "good at talking." T. 103. After he began working with Samantha Allen, he interviewed at All-Tech Decorating. He was nervous during the interview but believed the interview went well. T. 104. He also interviewed at Lowe's but afterward received an E-mail indicating he was not going to be hired. T. 105. He also interviewed with Feldco Windows. He believes that Feldco offered him a job but the job was in DesPlaines and would have required lengthy driving on his part. The job paid between $30,000 and $35,000 per year but he would have had to use his own car. T. 107. After he landed the job with his current employer, he asked Allen whether he had to continue looking for work and she said no. T. 109. Since landing this job, he has not been contacted by any other employers. He no longer checks the E-mail account that Allen created for him. T. 109. During the time he worked with Allen, he indicated he wanted to find a job with benefits. His current job offers benefits. Those benefits recently went into effect. T. 110. He likes his current job. T. 110. He and Allen briefly discussed the idea of retraining but he does not remember retraining being offered as an option. There was definitely no conversation in which he told Allen he did not want to undergo retraining. T. 110. It would be nice if he could earn more than $14 per hour but it would be hard to find such a job. Finding any job is hard. T. 111.

In addition to the exhibits previously summarized, Petitioner offered into evidence copies of earning statements received from his current employer, Alliance Inspection Management, from the period beginning October 8, 2014 through the period ending February 7, 2015. These earning statements reflect a regular hourly rate of $14.00 and an overtime hourly rate of $21.00. They reflect Petitioner worked 27 regular hours during the two-week period ending October 22, 2014, 87.42 regular hours and 3.77 overtime hours during the two-week period ending November 7, 2014, 70.27 regular hours during the two-week period ending November 22, 2014, 58.95 regular hours during the two-week period ending December 7, 2014, 86.53 regular hours and 8.38 overtime hours during the two-week period ending December 22, 2014, 56.37 regular hours during the two-week period ending January 7, 2015, 59.55 regular hours during the two-week period ending January 22, 2015 and 74.15 regular hours during the two-week period ending February 7, 2015. PX 10.

Arbitrator's Credibility Assessment

Petitioner came across as a very likeable and motivated individual. It is apparent that his injury has had a significant effect on his life but he is not a complainer. His therapists described him as fully cooperative, as did Respondent's vocational rehabilitation counselor. His attempt to resume full duty for Respondent weighs in his favor, credibility-wise, as does his active participation in the job search process.

Arbitrator's Conclusions of Law

Did Petitioner establish a causal connection between his undisputed work accident and his current right arm condition of ill-being and need for permanent restrictions?

The Arbitrator finds that Petitioner established causation as to his current right arm condition and the need for the permanent restrictions established by Dr. Burra and ratified by Respondent's examiner, Dr. Kornblatt. In so finding, the Arbitrator relies on the following: 1) Petitioner's credible denial of any pre-accident right arm problems; 2) Petitioner's credible testimony that he worked successfully as a union carpenter for a number of years before the accident; 3) Petitioner's credible account of the mechanism of injury; 4) the causation-related comments and opinions set forth in the treatment records; 5) Petitioner's credible testimony concerning the vibratory tools he used in his trade and the fact that the functional capacity evaluator lacked access to such tools; 6) the permanent restrictions imposed by Dr. Burra following the failed attempt to resume full duty and functional capacity evaluation; 7) Dr. Kornblatt's documentation of objective atrophy and right arm weakness; 8) Dr. Kornblatt's causation opinion and ratification of the permanent restrictions.

Should vocational rehabilitation be reinstituted or is Petitioner entitled to a wage differential award based on his current vehicle inspector job?

The Arbitrator makes the following findings: 1) Respondent's tacit approval of Petitioner's current auto inspector job is tantamount to a judicial admission that the job constitutes "suitable employment"; 2) even if Respondent's approval of the job does not amount to an admission or waiver, the job is appropriate for Petitioner and the 8(a) petition is moot by virtue of the additional job search Petitioner conducted on his own shortly before the hearing; and 3) Petitioner qualifies for wage differential benefits.

In finding that Respondent's approval of Petitioner's current job amounts to a judicial admission that the job is suitable, the Arbitrator relies in part on Yellow Freight Systems v. Industrial Commission, 351 Ill.App.3d 789, 796 (2004). In that case, the Circuit Court reversed the Commission's denial of wage differential benefits, noting that the claimant was performing a security guard job that his employer had endorsed. The Appellate Court affirmed this result, noting that the claimant had applied for the job after a vocational expert retained by his employer suggested it and that the claimant accepted the position "only after the employer approved it." The Court held that, "under these circumstances, the Circuit Court's determination that the Commission's refusal to award a wage differential was against the manifest weight of the evidence was proper."

The Arbitrator also relies on two Commission decisions: Manring v. Continental Plastics, 95 IIC 1072 and Christopher Caban v. M. J. Electric LLC, 14 IWCC 970. In Manring, the Commission held that the employer was barred from arguing that a job was not suitable when it had placed the claimant in that job:

> "Respondent cannot claim to have satisfied its vocational rehabilitation responsibilities by placing Petitioner in a job

> and then later claim that the job Petitioner was placed in is not 'suitable' or does not pay what Petitioner is capable of earning. Respondent is estopped from claiming that the job is not 'suitable' for purposes of a wage differential claim. Respondent cannot dispute a wage differential when Petitioner remains employed where Respondent placed him. At a minimum, the security job is prima facie a 'suitable employment' within the meaning of 8(d)1 and Respondent presented no affirmative evidence to overcome this prima facie showing."

In the instant case, Respondent maintains it did in fact present affirmative evidence that Petitioner could and should be working elsewhere, potentially earning more money, but Petitioner put that argument to rest via his testimony as to what happened when he contacted, or tried to contact, the additional employers identified by Allen. In Caban, as in the instant case, the employer's rehabilitation counselor testified that the claimant accepted a job offer at her direction and only after she obtained approval from the employer. [The claimant in Caban, like Petitioner, was a union tradesman whose upper extremity injury resulted in permanent restrictions that prevented him from resuming his former job. The job he accepted, at his employer's direction, was a job at a gaming café paying $8.25 per hour. By the time of the hearing, he had been promoted to a managerial position paying $9.25 per hour.] A unanimous Commission (Lamborn, Tyrrell and Brennan) recently affirmed and adopted Arbitrator Simpson's reliance on Yellow Freight and Manring as well as her finding that the managerial job was "suitable employment" and her award of wage differential benefits in the amount of $957.91 per week.

The Arbitrator alternatively finds that, even if Respondent's approval of Petitioner's current job does not constitute an admission, the job is still "suitable employment." In making this finding, the Arbitrator relies on Allen's expert opinions, Petitioner's testimony and the fact that Petitioner's formal education ended with a GED. Allen conceded that Petitioner's current job is within both his permanent restrictions and the salary range she projected for him. The Arbitrator notes that Petitioner's $14.00 hourly wage is substantially higher than the wage being earned by the claimant in Caban. Allen consistently opined that the job is appropriate for Petitioner. Petitioner testified he likes his current position. He demonstrated interest in, and knowledge about, various kinds of vehicles. Even more significantly, he is able to meet the physical requirements of the job. Petitioner also testified the job met one of his priorities in that it offers benefits, which recently went into effect. The same cannot be said of every job on the current market.

The Arbitrator denies Respondent's 8(a) petition based on the foregoing and because the petition is moot. Respondent has already been afforded the remedy it seeks, i.e., additional job search efforts. Shortly before the hearing, Petitioner made those efforts, on his own time and while performing his current job, by contacting the prospective employers Allen identified after Respondent asked her to re-open her file. Petitioner testified none of these prospective

employers offered him work. Allen conceded she did not find this surprising, given Petitioner's multiple restrictions. She also acknowledged she did not contact any of the newly identified employers.

Turning to the issue of permanency, the Arbitrator finds that Petitioner has met his burden of proving entitlement to a wage differential award. In order to qualify for such an award, a claimant must establish: 1) partial incapacity which prevents him from pursuing his "usual and customary line of employment"; and 2) an impairment of earnings. There is no dispute that Petitioner's right arm injury resulted in the need for permanent restrictions which preclude him from resuming his former trade. No one contradicted Petitioner's detailed testimony concerning the demands of that trade and Respondent's examiner took no issue with Dr. Burra's permanent restrictions. Petitioner has also established an impairment of earnings. Respondent did not contest Petitioner's testimony that he would currently be earning $43.35 per hour if he were still working as a union carpenter.

The Arbitrator turns to the issue of benefit calculation. Petitioner testified he has averaged between 30 and 40 hours per week since starting his current job but his actual wage records tell a somewhat different story. Petitioner's hours have varied quite a bit, with no discernible pattern emerging and with two of the last three pay periods reflecting fewer than 30 hours per week. Petitioner did not explain why his schedule fluctuates and there is no evidence indicating that any physician has restricted the number of hours he can work per week. Rather than basing the second part of the equation on Petitioner's average weekly wage in his current job, as Petitioner suggests, the Arbitrator elects to base that part on 40 hours x $14.00/hour, or $560. The Arbitrator arrives at a weekly wage differential benefit of $782.67 by subtracting $560 from $1734 ($43.35 x 40 hours/week), arriving at $1174 and dividing that amount by 2/3. The Arbitrator views $560 as the amount Petitioner "is able to earn" in his current suitable employment. The Arbitrator awards wage differential benefits of $782.67 per week commencing February 27, 2015 (the day after the hearing), noting the parties' agreement that no maintenance or other weekly benefits were due and owing as of the hearing. T. 178. The Arbitrator awards such benefits until Petitioner reaches age 67 or five years from the date of the final award, which is later. The Arbitrator notes that $782.67 does not exceed 100% of the State's average weekly wage in covered industries under the Unemployment Insurance Act, the maximum wage differential benefit allowed under Section 8(b)4 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEBAGO

☒ Affirm and adopt	☐ 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

Adan Casique,
Petitioner,
vs.

15IWCC0899
NO: 10 WC 41051

Spider Sushi Bar, and Illinois State Treasurer as
Ex Officio Custodian of the Injury Workers' Benefit Fund,
Respondent.

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 accident, medical expenses, notice, permanent partial disability, insurance coverage and compliance 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 30, 2014 is hereby affirmed and adopted.

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.

DATED: DEC 10 2015
KWL/vf
O-11/23/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0899

CASIQUE, ADAN
Employee/Petitioner

Case# 10WC041051

SPIDER SUSHI BAR AND ILLINOIS STATE TREASURER AS EX OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Employer/Respondent

On 10/30/2014, 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 0.05% 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:

0009 ANESI OZMON RODIN NOVAK KOHEN LTD
HAYLEY K GRAHAM
161 N CLARK ST 21ST FL
CHICAGO, IL 60601

0563 WILLIAMS McCARTHY LLP
CAROL A HARTLINE
120 W STATE ST SUITE 400
ROCKFORD, IL 61101

4987 ASSISTANT ATTORNEY GENERAL
LAURA HARTIN
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

STATE OF ILLINOIS)
)SS.
COUNTY OF Winnebago)

☒ 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 15IWCC0899

Adan Casique
Employee/Petitioner

Case # 10 WC 41051

v.

Consolidated cases: _____

Spider Sushi Bar, and Illinois State Treasurer as Ex Officio Custodian of the Injured Workers' Benefit Fund.
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 **George Andros**, Arbitrator of the Commission, in the city of **Rockford**, on **September 16, 2014 and October 1, 2014**. 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 **insurance coverage and compliance**

FINDINGS

On **July 26, 2010**, 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 not*** sustain an accident that arose out of and in the course of employment.

Petitioner's current condition of ill-being ***isnot*** causally related to the accident.

In the year preceding the injury, Petitioner earned $15,600.00; the average weekly wage was **$300.00**.

On the date of accident, Petitioner was **23** years of age, ***single*** with **0** dependent children.

ORDER

The Arbitator finds that the petitioner failed to prove by a preponderance of the evidence that he sustained an accident arising out of and in the course of his employment. Wherefore, no benefits are awarded.

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.

#01 George J. Andros
Signature of Arbitrator

October 22, 2014
Date

OCT 30 2014

STATEMENT OF FACTS 10 WC 41051

Petitioner, was an employee at Spider Sushi as a server. A few days prior to July 26, 2010 he attended a scheduling meeting at the restaurant with three other servers; Miriam Garcia, the owner's niece; , Petitioner's girlfriend, also the owner's daughter; and another server, Deena. Petitioner testified that Miriam arrived at the meeting late and was in a bad mood. Adan Casique testified the he told Miriam a to "take the stick out of her ass and to calm down.". Mariam appeared to be upset by the comment, and left the meeting before receiving her schedule. Mariam and Rubi testified that Casique made additional sexually vulgar comments to Garcia at the meeting, so Garcia left. Garcia testified that when she arrived home she was crying and told her father what had occurred. She testified that she later learned that her father told her brother, Edgar what had occurred.

On July 26, 2020 Petitioner Casique was at work when Garcia's brother, Edgar came into the restaurant. Petitioner knew Edgar from his past visits to the restaurant, and also through family gatherings, as Casique dated the owner's daughter, and knew the family. Edgar did not work at the restaurant. Edgar came in and punched Casique in the side of his face, and then took out a gun and struck him twice in the head. Edgar then pointed the gun at Casique. Casique testified that Edgar made it clear that if Casique ever disrespected his sister again he would kill him. Edgar fled the restaurant. Casique testified that after Edgar fled, he received a call from Edgar's mother asking Casique if he was okay. Casique testified that the owner's son and another cousin drove up and came into the restaurant and wanted to know what happened. Neither of them was employed at the restaurant.

Casique was taken to Rockford Memorial Hospital by ambulance. He had multiple lacerations that were treated with 16-17 staples. He was seen for follow up on July 30, 2010, and at that time he was experiencing migraine headaches. On August 2, 2010 the staples were removed. He continued to be seen for follow up for headaches. On December 14, 2014 he underwent an MRI which was read as normal. He was not seen for follow up after that date. Casique testified that He has two scars under his hairline at the right side of the head, each the size of a nail, and one on the back of his head. Casique testified that he continued to work at Spider Sushi until he obtained a job at UPS on August 9, 2010 making $13.50 per hour.

Conclusions

C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Based upon the totality of the evidence , the Arbitrator finds as a matter of fact and law the Petitioner did not sustain an accident in the course and scope of his employment. The assault in this case did not arise between two co-employees at work, but rather the assault was perpetrated by a third party. The assailant was not an employee. Although the statements to Miriam Garcia were made by the claimant at a work meeting, it does not establish the later assault arose out of the employment. The assailant's motive was a personal vendetta. There is highly conflicting testimony in this unfortunate circumstance. The Arbitrator finds that the Petitioner given those conflicts did not proof his case by a preponderance of the testimony.

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

☒ Affirm and adopt	☐ 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

Daniel Bane,
Petitioner,
vs.

15IWCC0900

NO: 12 WC 15898

A. AMERICAN ABORIST,
Respondent.

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 accident, medical expenses, temporary total disability, permanent partial disability, wages, rate 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 24, 2014 is hereby affirmed and adopted.

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: DEC 10 2015
KWL/vf
O-12/8/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION

NOTICE OF ARBITRATOR DECISION

15IWCC0900

BANE, DANIEL
Employee/Petitioner

Case# 12WC015898

A AMERICAN ABORIST
Employer/Respondent

On 10/24/2014, 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 0.05% 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:

1315 DWORKIN & MACIARIELLO
ADRIAN CHERIKOS
134 N LASALLE ST SUITE 1515
CHICAGO, IL 60602

0507 RUSIN & MACIOROWSKI LTD
CHRIS JARCHOW
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF MCHENRY)

☐ 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

15IWCC0900

DANIEL BANE,
Employee/Petitioner

v.

A. AMERICAN ABORIST ,
Employer/Respondent

Case # 12 WC 15898

Consolidated cases: NONE.

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 **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Woodstock**, on **August 8, 2014**. 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 **March 31, 2012**, 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 not* sustain an accident that arose out of and in the course of employment.

Timely notice of this alleged accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the alleged injury, Petitioner earned **$125.00**; the average weekly wage was **$125.00**.

On the date of accident, Petitioner was **21** years of age, *single* with **one** child under 18.

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

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $ **0.00** for TTD, $ **0.00** for TPD, $ **0.00** for maintenance, and $ **0.00** for other benefits, for a total credit of $ **0.00**.

Respondent is entitled to a credit of $ **0.00** under Section 8(j) of the Act.

ORDER

Petitioner failed to prove he sustained accidental injuries that arose out of and in the course of his employment b

All claims made by Petitioner for benefits in this matter are hereby denied.

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.

JOANN M. FRATIANNI
Signature of Arbitrator

October 17, 2014
Date

OCT 24 2014

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

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

Petitioner testified he worked for Respondent as a laborer on March 31, 2012. He began working for Respondent one week preceding March 31, 2012, and worked 5 days of 8 hour shifts for a total of 40 hours. Petitioner testified he was paid $10.00 an hour in cash by Respondent.

Petitioner testified he was injured while working for Respondent on March 31, 2012. On that date, he was working with Respondent's owner at a residence in Woodstock, Illinois. Petitioner testified he could not recall the name of the owner, but believed it may have been "Mike." Petitioner throughout his testimony referred to the owner as "the boss." Petitioner testified he and the boss were removing two trees on that date. Petitioner testified he was injured while removing the second tree.

Petitioner testified the boss would use a truck with a lift to cut branches. Due to the location of the tree in relation to the house, the boss would tie a rope around the branches to safely lower them to the ground. Petitioner testified his job was to stand holding the rope while facing the trunk of the tree, and then lower the tree pieces. Petitioner testified that at approximately 5:30 p.m., he was struck in his lower back by a branch that weighed approximately 50 pounds. Petitioner testified that he then felt immediate pain and fell to the ground. Petitioner rated his pain at a 10 using a scale from 1-10. Petitioner testified the boss witnessed this event and asked if he was all right. Petitioner responded that he wanted to go home.

Petitioner testified that the boss became angry and threatened to withhold his pay unless he finished the job. Petitioner testified the boss then offered him a marijuana cigarette. Although Petitioner testified that only he and the boss were present at work on that date, he later testified his friend or cousin witnessed the event while standing in a set of bushes near the job site. Petitioner testified that he then went to sit in the boss' truck until the job was completed at 6:25 p.m.

Petitioner then testified his father picked him up at a parking lot approximately a block away from the job site. Petitioner was given a ride by the boss to the parking lot. Petitioner testified that his friend or cousin, Mr. Kevin Ludvigsen, accompanied his father. Petitioner testified his father had a brief conversation with the boss, who told him Petitioner had a little incident.

Petitioner testified he went home that evening. The next day he sought treatment at Centregra Memorial Medical Center where a history was recorded of attempting to catch a tree. (Px2) Petitioner testified he did not have any lower back injuries following the March 31, 2012 incident.

Mr. Kevin Ludvigsen testified on behalf of Petitioner. Mr. Ludvigsen testified that has been friends with Petitioner for approximately 10 years. He lived with Petitioner and they considered themselves cousins, although not biologically related. Mr. Ludvigsen testified he would be willing to lie for Petitioner depending on the situation, and admitted to lying for him in the past when he was accused of taking items from his father.

Mr. Ludvigsen testified that on March 31, 2012, he went to pick up Petitioner from the job site with Mr. Charles Bane, Petitioner's father. Mr. Ludvigsen testified Petitioner was supposed to be off of work by 4:00 p.m. When he did not appear by 5:00 p.m., Mr. Ludvigsen testified he went to check on him.

When he arrived on the job site, he stood behind a set of nearby bushes. Mr. Ludvigsen testified he had an unobstructed view of Petitioner, who was 20-30 feet away Mr. Ludvigsen testified he stood in the bushes for a few minutes, and saw a tree branch attached to a rope swing down from a tree and strike Petitioner in the back, causing him to fall to the ground. Mr. Ludvigsen testified that Petitioner's back was facing the tree trunk at that time.

Mr. Ludvigsen testified he then "freaked out" and ran to tell Mr. Charles Bane that Petitioner was hurt. Mr. Ludvigsen testified he did not come to Petitioner's aid after witnessing the tree branch strike Petitioner. After he returned to where Mr. Charles Bane was waiting, they both waited for Petitioner to finish working. Mr. Ludvigsen testified that Petitioner was dropped off by the boss at 6:30 p.m.

Mr. Charles Bane, Petitioner's father, was called to testify by Petitioner. Mr. Bane testified Petitioner lived with him on March 31, 2012 and still lives with him as of the trial date. Mr. Bane testified that on March 31, 2012, he was supposed to pick up Petitioner approximately one block from the job site. Mr. Bane testified he was driving a gray SUV. Mr. Ludvigsen described the SUV as being tan. Mr. Bane testified that after they waited for approximately one hour, Mr. Ludvigsen went to go check on Petitioner.

Mr. Bane testified that approximately 15 minutes later, Mr. Ludvigsen returned and informed Mr. Bane he witnessed Petitioner being struck by a tree branch. Mr. Bane further testified he received a phone call from Petitioner who told him he thought he got hurt but that he was okay. Mr. Bane testified that following all that, he continued to wait for Petitioner in the parking lot until 6:30 pm., when Petitioner was dropped off by the boss in an aerial truck. Mr. Bane testified the boss told him that Petitioner was involved in a little incident. Mr. Bane testified no further conversations were had that evening with the boss.

Mr. Greg Murphy, a/k/a "the boss," testified he is the self-employed owner of Respondent, a tree trimming and removal service. Mr. Murphy testified his business is primarily located in McHenry and Lake Counties. Mr. Murphy testified he services homeowners, business owners and municipalities, including the City of Woodstock. Mr. Murphy testified he and his wife are the sole employees of Respondent. Mr. Murphy performs the actual tree trimming and removal while his wife answers calls and sets up appointments. Mr. Murphy testified that he will seek temporary help with specific jobs from time to time on weekends, if his children were not available.

Mr. Murphy testified he first met Petitioner for a job interview on March 30, 2012. Petitioner responded to a job advertisement for part time help for the weekend of March 31, 2012. Petitioner was then hired to work on an as needed basis, and was not guaranteed any hours or days. Mr. Murphy agreed to pay him $10.00 an hour, and if he was happy with his performance, he would consider having him work additional jobs.

Mr. Murphy testified he was hired to remove three trees from a residence in Woodstock on March 31, 2012. Petitioner arrived at Mr. Murphy's home approximately at 8:00 a.m. He was dropped off by his father. Mr. Murphy then drove Petitioner to the job site. Once at the job site, they began removing the first tree, located in the front yard. Mr. Murphy testified he cut the tree into pieces no larger than 4 feet long and weighing approximately 20 pounds. Petitioner was then to organize and arrange the tree trimmings into neat piles for disposal. Mr. Murphy testified Petitioner was a slow worker. Mr. Murphy testified they eventually moved to the second tree, and Petitioner continued to move slowly, causing the job to take much longer than anticipated.

Mr. Murphy testified that due to the location of the third tree, they had to use an aerial truck and rope to lower the cut branches safely to the ground. Mr. Murphy testified he roped off 3-5 branches and lowered them to the ground. Petitioner was required to help lower the branches steadily and organize them into piles for disposal. Mr. Murphy testified he did not witness any pieces of the tree fall on Petitioner, nor did he see him fall to the ground, nor observe any pain symptoms. Mr. Murphy testified that Petitioner reported no pain complaints on that day.

Mr. Murphy testified that after the trees were removed, he retrieved a stump grinder and ground the stump of the third tree. Mr. Murphy testified he and Petitioner finished the job around 6:00 p.m. Mr. Murphy testified he agreed to drive Petitioner to a parking lot one block away where Petitioner's father and Mr. Ludvigson were waiting in a green SUV. Also present were Petitioner's girlfriend and an infant child. Mr. Murphy testified Petitioner did not show any signs or symptoms of pain when exiting the aerial truck. Mr. Murphy further testified he had no conversations with anyone in the green SUV at that time. Mr. Murphy further testified that he did not offer Petitioner marijuana.

On April 1, 2012, Mr. Murphy telephoned Petitioner to see if he was available to work on April 2, 2012. Petitioner agreed to meet him at his home at 7:45 a.m. on April 2, 2012. During that telephone conversation, Mr. Murphy testified Petitioner did not mention any injuries at work the day before. When Petitioner failed to arrive at Mr. Murphy's home on April 2, 2012, Mr. Murphy testified he telephoned him again. Petitioner at that time requested he be picked up at 8:00 a.m. at Woodstock Town Square. When Petitioner failed to show at the Town Square, Mr. Murphy testified he called him yet again. Petitioner at that time informed him he was at the McHenry County Courthouse and asked if he could be picked up there at 9:00 a.m. Mr. Murphy refused. Mr. Murphy testified there were no mentions of a work injury during those phone calls.

Mr. Murphy testified that at 9:15 a.m. on April 2, 2012, he received a telephone call from Petitioner who informed him he was being held at the McHenry County Courthouse, and could not be released until he paid a fine. Petitioner requested that Mr. Murphy come to the courthouse to pay his wages due from the job performed on March 31, 2012. Mr. Murphy testified he then went to the courthouse, found Petitioner's lawyer, and gave him $125.00 for the work performed on March 31, 2012. Mr. Murphy testified he obtained a receipt from the lawyer. (Rx2) Mr. Murphy testified there was no mention of a March 31, 2012 work injury during this courthouse encounter.

Mr. Murphy testified that he first received notice that Petitioner was claiming a work injury when he received a letter from Petitioner's attorney dated May 8, 2012, informing him Petitioner filed a workers' compensation claim for an accident that allegedly occurred on March 31, 2012. (Rx3) When asked why he carried workers' compensation insurance while having no employees, Mr. Murphy testified such coverage was mandatory so work could be obtained with the City of Woodstock.

The records of Dr. Kern Singh in evidence for the office visit of June 27, 2012 (Px4) reflect a history of working for Respondent for 2-3 weeks prior to the alleged accident. Dr. Singh recorded a history that the offending tree branch weighed between 200-300 pounds. The records of Dr. Dasgupta for the office visit of April 10, 2012 recorded a history of the offending tree branch weighing approximately 150 pounds striking him in his lower back while he was bent over at a 90 degree angle. (Px3)

The Arbitrator has carefully considered the testimony of Petitioner, Mr. Ludvigsen, Mr. Charles Bain and Mr. Murphy, along with the medical evidence. Considering the demeanor of these witnesses, and considering the totality of the evidence, the Arbitrator finds that Petitioner failed to prove that he sustained an accidental injury that arose out of and in the course of his employment with Respondent on March 31, 2012.

Of all the witnesses who testified in this matter, the Arbitrator finds Mr. Murphy to be the most credible. Petitioner's testimony varied widely as to how long he actually worked for Respondent. The father's SUV was described as having three different colors, the testimony of standing in bushes and witnessing an accident, and then returning a block away instead of offering assistance is beyond far-fetched, and the records of Centegra Memorial Medical Center reflect subsequent lower back injuries after Petitioner denied having them. The fanciful testimony of Mr. Ludvigsen reflects Petitioner was facing away from the tree, while Petitioner testified he was facing towards the tree.

G. What were Petitioner's earnings?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, the Arbitrator finds the average weekly wage to be $125.00 week, based upon the receipt given to Respondent and the amount tendered in court on April 2, 2012.

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?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made by Petitioner for medical charges in this matter are hereby denied.

K. What temporary benefits are in dispute?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made by Petitioner for temporary total disability benefits in this matter are hereby denied.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made by Petitioner for permanent partial disability benefits in this matter are hereby denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt	☐ 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

Shawna Young-Bendorovich,

Petitioner,

vs.

15IWCC0901

NO: 09 WC 17313

Illinois Department of Employment Security,

Respondent.

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 medical expenses, temporary total disability, permanent partial disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 15, 2014 is hereby affirmed and adopted.

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.

DATED: DEC 10 2015
KWL/vf
O-12/7/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION

NOTICE OF ARBITRATOR DECISION

15IWCC0901

YOUNG-BENDOROVICH, SHAWNA Case# 09WC017313

Employee/Petitioner

IL DEPT OF EMPLOYMENT SECURITY

Employer/Respondent

On 12/15/2014, 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:

0062 TEPLITZ & BELL
JOEL BELL
221 N LASALLE ST SUITE 1900
CHICAGO, IL 60601

5204 ASSISTANT ATTORNEY GENERAL
CHRISTOPHER FLETCHER
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0499 CMS RISK MANAGEMENT
801 S SEVENTH ST, 6M
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy pursuant to 820 ILCS 305/14

DEC 15 2014

RONALD A. RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

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

15IWCC0901

Shawna Young-Bendorovich
Employee/Petitioner

v.

Illinois Department of Employment Security
Employer/Respondent

Case # 09 WC 17313

Consolidated cases: N/A

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 **Joshua Luskin**, Arbitrator of the Commission, in the city of **Chicago**, on **10/8/14**. 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 **8/21/08**, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned $**69,791.80**; the average weekly wage was $**1,342.15**.

On the date of accident, Petitioner was **51** years of age, ***single*** with **1** dependent child.

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 $**3067.86** for TTD, $**0** for TPD, $**0** for maintenance, and $**17,288.05** for other benefits, for a total credit of $**20,355.91**.

Respondent is entitled to a credit for payments made by group medical insurance under Section 8(j) of the Act, but shall hold the petitioner harmless for any recoupment efforts for those payments.

ORDER

The petitioner proved accidental injuries on August 21, 2008, but the requested disability and medical benefits are denied as not being causally related to the original injury for reasons set forth in the attached decision.

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

Dec 15, 2014
Date

DEC 15 2014

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SHAWNA YOUNG-BENDOROVICH, Petitioner, vs. STATE OF ILLINOIS, DEPARTMENT OF EMPLOYMENT SECURITY, Respondent.	)	15IWCC0901 No. 09 WC 17313

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner began working for IDES in approximately 2001, beginning in HR and recruiting, and then later as a Business Service Coordinator. This position involved interaction with employers to provide them information on IDES services. She would travel across the state making these presentations, and testified approximately 50% of her work was on the road and 50% in the office.

The petitioner testified that on August 21, 2008, she was transferring presentation brochures to a file cabinet. She testified one of the full drawers imbalanced the cabinet, causing it to tip over and hit her. She fell to the floor, striking her left side. She testified that most of the cabinet hit the cart and did not land atop her.

The petitioner has had a lengthy pre-accident history of a variety of orthopedic and neurological problems, including a diagnosis of a lumbar herniated disk in 2003 for which she was first treated by Dr. Ciric. See RX5. She had significant treatment at Illinois Bone and Joint Institute with Dr. McMillan and other personnel for various concerns, including that herniated disk and lumbar radiculopathy. PX5, RX2. She treated for cervical radiculopathy due to herniated disks which was diagnosed in 2004 and left shoulder rotator cuff tearing and adhesive capsulitis in 2005 and 2006 resulting in surgery. PX5, RX3. She also has had a longstanding history of diabetic neuropathy and has had an insulin pump for many years. See PX2, PX4, PX5. She reported right hip pain in August 2007; X-rays noted joint space narrowing and degeneration at that time. PX5. In October 2007, she was assessed with right epicondylitis, which was injected at that time and again on July 1, 2008. PX5.

On July 14, 2008, the petitioner reported to Dr. McMillan at Illinois Bone & Joint Institute that she had right hip and buttock pain radiating past the knee. He recommended MRI studies. PX5. On July 18, 2008, the petitioner underwent a lumbar MRI scan due

to a diagnosis of lumbago (low back pain). It was compared to a prior lumbar MRI scan of October 25, 2003. It noted a worsening of a disk herniation at what was referred to as the L4-5 level (which her physicians noted later should have been referred to as the L5-S1 level due to the radiologists' assessment of sacralization of the vertebrae) producing canal stenosis at that level, with facet changes at adjacent levels. PX5, RX3. An MRI of the hip was also done that day and was compared to an August 27, 2007 MRI. It noted tendinitis in the hip, which was new, but with stable degenerative changes. PX5.

On July 21, 2008, Dr. McMillan reviewed the MRI scans and assessed a herniated disk which had worsened since 2003, and he recommended epidural steroid injections. The first such injection was performed on July 24, 2008. On August 11, 2008, the petitioner reported some improvement but symptoms had persisted. The second epidural injection was done that day. See PX5, RX2. The claimant testified the second injection provided no relief and a third injection had been scheduled but had not transpired at the time of the file cabinet incident.

On the date of the asserted accident, August 21, 2008, she was seen at Highland Park Hospital that day. Bruising was noted on the left arm, hip and knee. The petitioner reported a prior history of a herniated L4-5 disk. However, X-rays were negative. She was assessed with contusions. See PX1.

On September 5, 2008, the petitioner presented for a physical therapy intake evaluation at the request of Dr. McMillan. It was noted she had a history of low back pain with radiating symptoms beginning in May/June of 2008; no reference to the file cabinet incident, or any August 2008 accident, is present. PX5.

On September 30, 2008, the petitioner saw Dr. Ciric, a neurosurgeon. Dr. Ciric noted the petitioner reported low back and right buttock pain in 2003 which resolved with conservative care at that time. The petitioner reported a recurrence of the pain spreading down the leg, which had begun while playing golf "[t]his past spring" and had persisted. The petitioner also reported an extended history of poorly controlled insulin-dependent diabetes which had caused diabetic neuropathy in all four extremities, for which she had been prescribed Neurontin. Dr. Ciric noted the petitioner had two epidural injections, which did not help and which upset her diabetes. Examination noted decreased sensation in the right L5 dermatome. Dr. Ciric reviewed the July 2008 MRI and noted a disk herniation at the L4-5 level and also noted a right hip MRI which suggested right hip arthropathy. He opined the right groin pain was secondary to the hip pathology and recommended a new MRI scan of the back given worsening complaints. He opined if the new MRI confirmed the herniation, he would recommend microdiskectomy. No history of the filing cabinet incident is apparent in this report. See PX2.

On October 3, 2008, the petitioner underwent a lumbar MRI scan, which noted a protrusion at L5-S1 with moderate/marked canal stenosis. The radiologist compared these films to the July 18, 2008 study and concluded "there does not appear to be significant interval change." See RX3.

The petitioner thereafter underwent a lumbar laminectomy and removal of a herniated disc at L5–S1. On November 21, 2008, Dr. Ciric noted the herniation occurred at the last large intervertebral disk space level above what was interpreted as a partially lumbarized S1 segment, explaining why the herniation was originally assessed at L4-5. He noted an uneventful surgery and postoperative course and released her to work as of November 24, 2008. There is again no reference to the file cabinet. See PX2.

The petitioner testified she returned to work following the surgery. She testified while she was out a customer service phone department had been originated, to which she was assigned upon her return; she testified this was a desk job.

On December 11, 2008, Dr. Ciric authored a note where he reported her symptoms worsened on or about August 21, 2008, when a file cabinet tipped over and pushed her to the floor. This is the first reference to a work injury in Dr. Ciric's notes. PX2. Dr. Ciric further noted ongoing pain complaints by the petitioner. He reviewed a December 6, 2008 MRI which noted postoperative changes with a possible small recurrent or residual herniation, but Dr. Ciric noted there had been osteodegeneration in that area and opined the most likely explanation was scar tissue. He recommended against any further surgery, but gave her a Tramadol prescription and noted she was considering acupuncture. PX2, PX4.

On January 20, 2009, the petitioner saw Dr. John Liu, a neurosurgeon. He noted leg pain but no back pain. Straight leg raising was negative. He reviewed pre- and post-operative MRI scans and could not clearly identify any recurrent disk pathology on the postoperative study. He noted the second study was "suggestive of routine postoperative findings" and suggested an EMG given possible other etiologies, but recommended against further surgery unless additional structural pathology was identified. See PX6.

On March 3, 2009, the petitioner had another lumbar MRI, which was compared to the December 2008 MRI. The radiologist noted the mild bulging at L5-S1 was decreased compared to the December 2008 MRI and the MRI no longer confirmed the possible recurrent L5-S1 disk hernation. See PX4.

On March 4, 2009, Dr. Ciric noted persistent pain, which had prompted the claimant to seek advice from Dr. John Liu, a neurosurgeon, and noted she had undergone a March 2009 MRI and been recommended for an EMG/NCV. He noted Dr. Liu had recommended against surgery. Dr. Ciric noted the March 3, 2009 MRI showed no further suggestion of the disk fragment which had been observed on the December 2008 MRI scan and opined "all the nerve roots appearing free and unencumbered." Dr. Ciric recommended against surgical intervention but opined the EMG study was reasonable and suggested a pain management consultation. PX2.

The petitioner underwent the lower extremity EMG study on March 5, 2009. The neurologist noted findings "consistent with borderline or mild peripheral neuropathy, which is disproportionate to and probably not causing patient's clinical symptoms." PX4.

The claimant, during and after this period, treated for various unrelated issues, including an EMG study of the hands on February 6, 2009, revealing bilateral carpal tunnel syndrome, worse on the right than the left; it was also noted that she had a history of Dupuytren's contracture in the hands. She was thereafter scheduled for right carpal tunnel and trigger finger release surgery, which took place on March 18, 2009. See PX5, RX2. The petitioner underwent physical therapy beginning in September 2009 to address various issues, and on January 22, 2010, the petitioner underwent right shoulder surgery with physical therapy extending through the middle of 2010. See PX3, PX5. She also underwent left hand sugery for Dupuytren contracture and trigger finger release on January 28, 2010. PX5, RX2. On March 10, 2010, she underwent a cervical spine MRI demonstrating multilevel degeneration with spondylosis and mild stenosis at C5-6. PX5.

On August 2, 2010, the petitioner had a lumbar MRI scan which was compared to the October 2, 2009 MRI and which was assessed as a stable postoperative examination. RX3. On August 4, 2010, Dr. Ciric saw the petitioner, who asserted chronic postoperative pain which had increased despite therapy and epidural injections; Dr. Ciric opined the pain was neuropathic in nature. Dr. Ciric reviewed postoperative MRIs from 2009 and 2010 and noting some scar formation with no evidence of recurrent herniation or extrusion. He recommended bed rest for ten to fourteen days and recommended that she be able to lie down at will to relieve her pain, which he believed would prevent her from ever returning to work. PX2. A handwritten note from Dr. Ciric notes that these symptoms flared up beginning on Friday, July 30. PX4. The petitioner testified she ceased working on August 4, 2010, and never returned to work.

In September 2010, the claimant was seen by her primary care physician, Dr. Kanter, who noted an extensive history of medications for diabetes, peptic ulcer disease, arthritis and osteoporosis and noted she had been hospitalized in July 2010 for a right shoulder arthroscopic acromioplasty (this may refer to the January 2010 surgery) and was pending another left hand surgery. That surgery took place on September 29, 2010, releasing two trigger fingers on the left hand. See PX5, RX2. The petitioner has continued to treat for orthopedic concerns including a right shoulder manipulation in November 2011 and ongoing bilateral hand care from 2010 through 2013. See RX2.

On December 10, 2013, the petitioner was seen for a Section 12 evaluation at the respondent's request by Dr. Michael Lewis. Dr. Lewis examined the petitioner and took a history of complaints. He was also able to compare the films of the MRIs from July 2008 and October 2008. He noted the reports of the radiologist indicated that the disk herniation had remained stable, and upon his review of the films, he concurred and opined that there had been no interval change to the pathology identified. He concluded that the claimant's condition was pre-existing and not related to this incident. See RX1.

Dr. Ciric provided the claimant a form which he signed on October 28, 2010, which appears to be for SSDI or group disability purposes, in which he wrote she could not sit for even thirty minutes at a time and was permanently and totally disabled from employment. In addition, Dr. Michelle Melyn has seen the claimant, apparently for medication management, and signed disability support forms for her on September 5,

2012 and March 14, 2013. Both forms noted diagnoses of chronic radiculopathy and pain, "possibly" secondary to injury. See PX4. The Arbitrator notes the petitioner was able to testify while seated for over an hour and she testified she can drive, does not use a cane, and took the train downtown for the hearing. She testified she is a college graduate with bachelor's degrees in business and psychology. The petitioner testified she ceased work on August 4, 2010, sought SSDI and never looked for any alternate employment. She took supplemental retirement until her application for SSDI was approved. She is presently receiving Social Security Disability benefits and is Medicare eligible.

OPINION AND ORDER

The petitioner acknowledged having had orthopedic and back problems for a number of years prior to this incident which are well laid out in the medical records. Her treatment had consistent of multiple and varied attempts at nonoperative treatment, which had not been successful at eliminating her symptoms. While conservative treatment had at one point provided transient relief, the petitioner returned to her treating physicians complaining of low back pain which was increasing in intensity over the course of the year leading up to the accident at issue herein. The most recent such visit was less than two weeks before the asserted date of loss; that day, she had the second in a prescribed course of three epidural injections and was set for the third.

Following this incident, a new MRI scan was prescribed to evaluate whether there had been any structural damage to the petitioner's spine. The pre- and post-accident films were compared and the physicians concluded they were effectively identical.

The petitioner asserts this incident did cause a progression in her symptoms, but the Arbitrator does not find her assertion credible. Her clinical presentation does not appear to have markedly changed in any neurologic sense, and more importantly, she did not even mention the incident to Dr. Ciric or her physical therapist at the time, noting only a longstanding and chronic condition. She had described to multiple treating providers a long history of radiating pain and symptoms which were progressing over time despite their various attempts at curing, relieving or controlling it.

Dr. Lewis reviewed the MRI scans from before this accident and after it, and agreed with the radiologist that there had been no worsening of the pre-existing spinal pathology. Dr. Lewis concluded that there was no evidence that there had been any worsening of the condition and that the petitioner was at a status that had not changed from where it would have been absent this accident. Dr. Lewis' assessment appears thorough and logical, and the Arbitrator does find his conclusion credible.

While treating physicians are often granted a degree of deference over examining ones, in this case, the treating radiologist determined no structural damage had been done to the petitioner. While she was treated for contusions, all indications suggest this was not a major incident. Moreover, the medical records clearly demonstrate that the petitioner's complaints were becoming progressively and significantly worse over the

year prior to the work injury. Had the petitioner been symptom-free following her 2003 treatment until the August 2008 injury, or had she demonstrated a significant change in her condition after it, a workplace aggravation may well have been shown. However, the evidence clearly and conclusively shows that was not the case.

The medical records and evidence submitted do not persuasively demonstrate that this incident caused any significant pathology or need for ongoing treatment. The medical expenses and treatment incurred at Highland Park Hospital on August 21, 2008, are reasonable and appropriate, but appear to be paid in their entirety. The respondent shall hold the claimant harmless from any recoupment efforts related to these expenses, per Section 8(j). Her other medical expenses, as well as temporary and permanent disability benefits, are denied due to the lack of any causal relationship.

STATE OF ILLINOIS	)	☒ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
	) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF COOK	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ronald Sutton,
Petitioner,
vs.

15IWCC0902

NO: 08 WC 10826

City of Chicago,
Respondent.

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 medical expenses, temporary total disability, permanent partial disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 17, 2014 is hereby affirmed and adopted.

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: DEC 10 2015
KWL/vf
O-11/24/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0902

SUTTON, RONALD
Employee/Petitioner

Case# 08WC010826

CITY OF CHICAGO
Employer/Respondent

On 11/17/2014, 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 0.06% 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:

1377 PARENTE & NOREM PC
BENJAMIN SWETLAND
221 N LASALLE ST SUITE 2700
CHICAGO, IL 60601

0010 CITY OF CHICAGO LAW DEPT
ELIZABETH MANNION
30 N LASALLE ST 8TH FL
CHICAGO, IL 60602

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

15IWCC0902

Case # 08 WC 10826

Ronald Sutton
Employee/Petitioner

v.

City of Chicago
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 **Milton Black**, Arbitrator of the Commission, in the city of **Chicago** on **August 26, 2014**. 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

15IWCC0902

On **December 9, 2007**, Respondent ***was*** operating under and subject to the provisions of the Act.

On each date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On each date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of each accident ***was*** given to Respondent.

Petitioner's current condition of ill-being regarding her low back only ***is*** causally related to each accident.

In the year preceding the injury, Petitioner earned $**79,601.60**; the average weekly wage was $**1,530.80**;

On the dates of accident, Petitioner was **56** years of age, ***married*** with **no** 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 $**0** for TTD, **0** for TPD, $ **0** for maintenance, and $ **18,971.52** for other benefits, for a total credit of $**18,971.52**.

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $636.15/week for 12.5 weeks, because the injuries sustained caused the 2.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

November 16, 2014
Date

NOV 17 2014

FACTS

Petitioner testified that he was clearing a blockage of salt on the plow truck, and slipped off the back of the truck, landing on the ground. Petitioner testified his back made contact with the ground, but his left hip did not strike the ground.

Petitioner reported the incident to his supervisor the date of the incident. A Report of Occupational Injury was completed, and then signed by the Petitioner. (Px 1). This Report details the incident as resulting in Petitioner falling on his back. (Px 1).

Petitioner did not report to MercyWorks for treatment until four days later on Dec. 13, 2007. Petitioner was initially diagnosed with a "contusion and strain, neck, thoracic and lumbar spine and right shoulder." (Px 2, p. 6). At trial, the Petitioner only testified to remaining complaints to his left hip and low back.

When he reported to MercyWorks, Petitioner denied any history of back injury in the past. (Px 2, p.6). Petitioner admitted on direct examination, however, that he did in fact have a history of back problems, which he did not report to MercyWorks, as he "forgot." Petitioner treated for his back prior to the incident, within that same year. Medical records dated Dec. 13, 2007 from MercyWorks following the incident note that an X-ray of Petitioner's lumbroscaral spine was taken, which showed no acute fracture or subluxation, but did show "marked degenerative change with bone spurs notes from L2 to S1." (Px 2, p.6).

Petitioner treated for his low back with MercyWorks, and attended physical therapy. An MRI was done of Petitioner's lumbar spine on January 26, 2008, which showed (1) multilevel spondylosis of lumbar discs with the disc bulges at L3-4, L4-5, and L5-S1; (2) facet joint osteoarthritis at L4-5, (3) encroachment of the foramina and possibly existing nerve roots noted at the L4-5 and L5-S1 levels, and (4) negative findings for fracture deformity in the lumbar spine. (Px 3, p. 62). Petitioner received two ESIs to his low back on Feb. 19, 2008, and March 12, 2008. (Px 3, p. 39, 60). Petitioner saw Dr. Avi Bernstein on March 20, 2008, who reviewed the MRI scan, and noted "multi-level degenerative change with some disc bulging with foraminal narrowing." (Px 5, p. 89). Dr. Sheth at MercyWorks further diagnosed Petitioner's back with "degenerative disk disease L3-4, L4-L5, and L5/S1" on Sept. 11, 2008. (Px 2, 14).

Petitioner also saw Dr. Julie Wehner of the Spine and Orthopedic Surgery Center on Feb. 29, 2008, more than over two and a half months after the incident, with complaints of pain to his low back. (Px 4, p. 71). Again, Petitioner denied any prior back problems. At trial, Petitioner said he again "forgot" that he had pre-existing back problems. Dr. Wehner found no reason why Petitioner could not continue to work full duty. (Px 4, p. 72).

Petitioner followed up with Dr. Wehner on June 27, 2008. Dr. Wehner obtained X-Rays of Petitioner's lumbar spine, which showed pathology consistent with DISH, form of degenerative arthritis or osteoarthritis. Dr. Wehner also obtained X-rays of Petitioner's hip, which she notes "show fairly advanced degenerative changes." (Px 4, p. 73). The hip X-ray, dated June 27, 2008, showed "severe bilateral hip osteoarthritis with loss of joint space." (Px 4, p. 74).

Petitioner did not seek treatment for his left hip until July 8, 2008, seven months after the incident. Petitioner treated with Dr. Dirk Nelson of Midland Orthopaedics, who examined Petitioner and assessed that Petitioner has "preexisting changes of osteoarthritis in both hips and he also has degenerative arthritis findings in the lumbar spine." (Px 6, p. 112.). Petitioner followed up with Dr. Nelson on Sept. 12, 2008, who stated,

> "Based on my review of the records, it appears that his back and radicular symptoms which were his initial complaints, were primarily caused by his fall from the truck on 12/9/07. **It appears to me that his hip problem was secondary and uncovered during the course of his treatment and therefore I do not believe they are primarily causally related to his fall of 12/9/07. Furthermore he has bilateral hip disease which is significant and clearly was a pre-existing problem to the date of his work related injury. He is heading for hip replacement surgery in both hips in his future regardless of this work event."** (Rx 3, Px 6, p. 169, Rx 4, p. 8).

Petitioner eventually elected to have a hip replacement surgery on June 17, 2009, over a year and a half following the incident. (Px. 6, 233). The FMLA application completed by Dr. Nelson for Petitioner's procedure states the need for the hip replacement surgery as caused by Petitioner's osteoarthritis in both hips. (Px 6, 170, 173).

Petitioner attended an IME performed by Dr. Mitchell B. Sheinkop, of the Weil Foot-Ankle & Orthopedic Institute on Nov. 19, 2012. Dr. Sheinkop found the Petitioner's condition to be unrelated to the work incident. (Rx 1, p.5). Dr. Sheinkop confirmed that Petitioner's diagnosis was osteoarthritis of the hip on both the left and the right side. Dr. Sheinkop further found Petitioner to be long past MMI, and any ongoing complaints more probably than not are related to spinal degenerative disease and arthritis of the right hip. (Rx 1, p.5).

Dr. Nelson was deposed, pursuant to dedimus, on March 16, 2012. Dr. Nelson confirmed that the fall did not cause Petitioner's degenerative arthritis, which was pre-existing. (Px 8, p. 263). Dr. Nelson also admitted on cross-examination that Petitioner's X-Rays showed "bone-on-bone arthritis and that condition takes months and years to develop" and "it is absolutely clear that his condition of arthritis existed prior to his accident of December of '07." (Px 8, p. 274).

Petitioner testified to missing time from work following his hip replacement surgery on June 17, 2009 through January 11, 2010. Parties also stipulated that Petitioner received ordinary disability benefits through his pension, from the time period Aug. 1, 2009 – January 11, 2010. (See Arb. Ex. 1 & Rx 2).

Aside from this period outlined above, Petitioner did not miss any time from work, and is currently working at the same job for the same pay.

Petitioner testified to limitations such as "touching his toes" and "playing basketball." He admitted on cross examination that in the time since the incident occurred in 2007, he has aged and cannot do things that he could seven years ago, regardless of the injury.

Petitioner only testified to remaining permanency in his low back and left hip. Petitioner testified that he has not received any additional treatment for his back since Summer 2009, and he last treated for his left him in 2010.

CAUSATION

Petitioner's testimony lacked credibility. Not only did he fail to tell two of his own treating physicians that he had prior back problems with the reason as "he forgot", he also was not credible as to describing his own limitations. Petitioner's medical records show clear signs of degenerative changes in the Petitioner's spine just months prior to the work incident.

Petitioner testified to limitation such as an inability to touch his toes, and inability to play "pick up basketball games" like he used to. Petitioner was 56 years old on the date of incident, and he admitted on cross examination that his body has changes in the seven years that followed since his work incident, which could very well be attributed to time.

Based upon the medical records, it appears Petitioner sustained accidental injuries to his low back related to the work incident of Dec. 9, 2007, which likely aggravated a pre-existing condition in his spine. Petitioner's treatment for his spine included two ESIs to his low back, and physical therapy. As Petitioner was not forthright with his providers on his preexisting condition to his back, which appears based on the medical records to have pre-existing degenerative conditions, this Arbitrator finds that the low back was aggravated by the accident. Petitioner sustained little permanency as a result of this incident to his low back.

Regarding petitioner's claims of left hip injury resulting in a need for a hip replacement, the Arbitrator finds the hip injury to be unrelated. Petitioner's treating physician, Dr. Nelson, noted in that Petitioner had bilateral hip disease which is significant and clearly was a pre-existing problem and that he is heading for hip replacement surgery in both hips in his future regardless of this work event. The reports of Dr. Sheinkop further affirmed that the Petitioner's condition is unrelated to the work accident.

TTD

Petitioner claims that he is entitled to TTD benefits for the period following his left hip replacement, from June 17, 2009 to Jan. 11, 2010. Petitioner acknowledges receiving benefits from Aug. 1, 2009 – Jan. 11, 2010 through his pension for ordinary disability benefits.

As Petitioner's left hip replacement surgery is not causally related to his work incident of Dec. 9, 2007, Petitioner is not entitled to TTD benefits for this time period.

NATURE AND EXTENT

Petitioner had prior back problems and treating for his back in the same year as the work incident, which he did not disclose to his treating physicians for this injury. Petitioner has degenerative disk disease. Petitioner underwent two ESIs and physical therapy for his back, missed no time from work as a result of the injuries to his low back, and worked full duty at the same tasks following the work incident. He has not sought any treatment for his back since 2009.

Based upon the foregoing, Petitioner has sustained to 2.5% loss of the person as a whole.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☒ Affirm and adopt	☐ 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

15IWCC0903

Melissa Gaffney,
Petitioner,
vs.

NO: 11 WC 33947

City of Peoria,
Respondent.

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 accident, medical expenses, temporary total disability, permanent partial disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 2, 2014 is hereby affirmed and adopted.

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: DEC 10 2015
KWL/vf
O-11/24/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0903

GAFFNEY, MELISSA
Employee/Petitioner

Case# 11WC033947

CITY OF PEORIA
Employer/Respondent

On 12/2/2014, 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:

1824 STRONG LAW OFFICES
HEATHER CALVERT
3100 N KNOXVILLE AVE
PEORIA, IL 61603

0980 HASSELBERG GREBE SNODGRASS
BOYD ROBERTS
124 S W ADAMS ST
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
COUNTY OF **PEORIA**)

☐ 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

15IWCC0903

MELISSA GAFFNEY
Employee/Petitioner

v.

CITY OF PEORIA
Employer/Respondent

Case # **11** WC **33947**

Consolidated cases: **None**

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 **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Peoria**, on **October 22, 2014**. 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 **May 18, 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 not*** 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**37,160.82**; the average weekly wage was $**714.63**.

On the date of accident, Petitioner was **54** 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 $**-0-** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**-0-**.

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

ORDER

As the Petitioner did not sustain an accident which arose out of and in the course of employment with Respondent, no benefits are awarded.

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.

D. D. McGinty
Signature of Arbitrator

Nov. 25, 2014
Date

DEC 2 - 2014

15IWCC0903

FINDINGS OF FACT:

At the time of arbitration, the Petitioner testified she was 58 years old. (Tr. P. 11) She began working for the City of Peoria in 1998 for the Police Department. (Tr. P. 12) Later on she was moved into a job at the Peoria Fire Department. She worked with the inspectors in fire administrations and worked with the public. She handled fire permits, sprinkler permits, hood permits, she would also handle burn permits from the public. She also worked under the division for prior fire prevention. She answered phones and had to work with inspectors when they went to fires. She had to type their reports and perform transcriptions of meetings. (Tr. pp. 13-14)

After about two years in the fire department, she began to feel uncomfortable around some of the firemen. (Tr. P. 17) She felt that they were disrespectful with her with sexual overtones and it was on a regular basis. (Tr. P. 18) There was a fire inspector who worked kitty corner from her and he could look directly at her while she was working, but she would have to turn to look at him. He was continually staring at her while she was trying to work. (Tr. P. 18) The inspector's name was Phillip Macklin. (Tr. P. 20) She did not recall any specific dates as to when he may have spoken to her or behaved in such a manner that made her feel uncomfortable. (Tr. P. 20).

In addition, Petitioner testified that she felt uncomfortable when the Chief would have departmental meetings and they would be in the meetings screaming and yelling and swearing and throwing things against the walls. (Tr. P. 21) Petitioner did not recite a specific date and said this was regularly occurring. (Tr. P. 21). In regard to the specific incidents testified to on direct examination, the Petitioner could not recall specific dates or times when those incidents occurred. (Tr. P. 52)

Petitioner also indicated that certain firemen would come around her desk and stare at her and would keep talking to her when she would ask them to leave. (Tr. P. 22) She went to her supervisor with regard to the behavior of Assistant Chief Maclin. (Tr. P. 22)

Petitioner had a heavy work load and worked very hard. She testified that the Respondent was happy with her performance, but that changed in 2009. Her supervisor at the time was Melanie Anderson who Petitioner believed had no sympathy for her. At the end of her work day, she would feel exhausted and tired. After 2009, she became very anxious and scared and afraid to go to work. (Tr. P. 26) She was apprehensive and really, really unhappy. (Tr. P. 27).

In April 2011, she was feeling so anxious and afraid to go to work that she scheduled an appointment with her doctor to talk to her about getting a tranquilizer. (Tr. P. 27) This was Dr. Katherine Mulcahey.

Petitioner first saw Dr. Mulcahey on May 18, 2011. She complained about her work stress and that she was being harassed constantly by everyone there. Dr. Mulcahey gave her an anti-depressant and an anti-anxiety prescription and took her off work. (Tr. P. 30).

Being off work helped Petitioner and she was surprised when Dr. Mulcahey took her off work. Her emotional state began to change day by day as she was away from the job. She stayed on the medication for about five or six months until she didn't need it anymore. (Tr. P. 32) At that time she physically felt ready to return to work but not to work for the fire department. (Tr. P. 32-33).

Today, Petitioner feels pretty good except speaking about all of this past history. (Tr. P. 34) She is no longer seeking treatment for her anxiety or depression and is not on any prescriptions for anxiety or depression. (Tr. pp. 34-35) She has not sought the services of Dr. Mulcahey or any other counselor. She is currently working part-time at Marshall's. Petitioner last worked for the City on November 29, 2011.

Prior to 2011, Petitioner had sought counseling from Behavioral Health Advantage with regard to her employment issues according to her testimony. (Tr. pp. 37-38) On cross-examination, the Petitioner admitted seeing Behavioral Health Advantage since September 2010 for marital problems and sexual issues related to her husband. (Tr. P. 44) Petitioner disputes that she saw a counselor with Behavioral Health Advantage seven years prior to that date for anxiety and depression-related issues. (Tr. P. 45).

Petitioner saw counselor Ron Hill with Behavioral Health Advantage on November 8, 2010, March 1, 2011, March 21, 2011, March 28, 2011, for incidents of frustration, depression, and anxiety related to problems with her marriage. (Tr. P. 46). She discussed with counselor Hill that she was bothered by her husband looking at other women and being overly attentive to other women while with her. She also had issues with regard to her family of origin. (Tr. pp. 47-48) At that time, she did not talk with him with regard to any issues she had regarding her work or the City of Peoria, the fire department or her supervisor with the City of Peoria. (Tr. P. 48) .

After being taken off work by Dr. Mulcahey, she saw Ron Hill in July and September 2011, but did not discuss with him any issues related to her work with

15IWCC0903

Respondent. (Tr. pp. 48-49). In July 2011, she discussed with counselor Hill problems she was having with her son. (Tr. P. 47).

Petitioner's husband retired from work with the City of Peoria in 2008. Subsequently, Petitioner told her co-workers that she wanted to retire and spend more time with her husband at home. (Tr. P. 54)

Petitioner admitted that her condition has improved since she first saw Dr. Mulcahey and that she is no longer feeling anxious and depressed. (Tr. P. 56)

With regard to her work for the City of Peoria, Petitioner admitted that Respondent's Exhibit 8 is not a favorable review from her by her supervisor. (Tr. P. 60) She also admitted on cross-examination that Chief Tomlin was not happy with her that certain reports were not being done in a timely fashion and that she was four months behind. (Tr. P. 61) It was around this time that she scheduled her appointment with Dr. Mulcahey. She sought treatment due to her personal issues with work and issues at home and having received a bad review from her employer. (Tr. P. 64)

Petitioner also admitted that when she first sought treatment from Ron Hill with Behavioral Health Advantage, that she received a bad review from her supervisor, Melanie Anderson. Melanie Anderson was also requiring her to work harder than she had previously under prior supervisors and she wasn't used to the workload that was being demanded of her. (Tr. pp. 77-78)

Division Chief Phillip Maclin was then called by Respondent to testify. He is currently the Division Chief of Fire Prevention for the City of Peoria. He has been employed by the City of Peoria Fire Department for 24 years. (Tr. P. 80) Chief Maclin indicated that he worked in close proximity to the Petitioner as their offices were

horizontal to each other about 15 to 20 feet apart. Chief Maclin was aware of the allegations that Petitioner made against him and the Respondent relative to her employment. He has never engaged in any conduct to sexually harass or create a hostile work environment for the Petitioner. (Tr. P. 84) He never engaged in any course of action where he would stare at her for long periods of time during the work day. (Tr. P. 84) He never observed any type of conduct in the fire department that was in an insulting or provoking nature towards Petitioner. (Tr. P. 85)

With regard to the departmental meetings, he does not recall there being a lot of cursing and pounding that would occur during these meetings. He still participates in these meetings to this day. (Tr. P. 85) He has never observed anyone ever curse or scream at Ms. Gaffney and has not personally done so himself.

On cross-examination, Chief Maclin indicated that he had issues with Ms. Gaffney's job performance. (Tr. pp. 90-91) He did report these concerns to her supervisor, Melanie Anderson. (Tr. P. 92)

The evidence deposition of Dr. Catherine Mulcahey was offered into evidence by Petitioner at arbitration. The deposition was taken on March 22, 2014. Dr. Mulcahey is a physician in internal medicine at OSF Medical Group Center for Health. She is licensed to practice medicine in Illinois and has maintained that license for nine years. (Petitioner's Exh. 4, P. 3) She is board certified in internal medicine and practices general internal medicine. (Petitioner's Exh. 4, P. 4) Dr. Mulcahey has been Petitioner's primary care physician for at least six years and is still her primary care physician at the time of the deposition. (Petitioner's Exh. 4, P. 6)

Dr. Mulcahey did not treat Petitioner for any problems associated with depression, anxiety or stress issues prior to May 18, 2011. (Petitioner's Exh. 4, P. 7) On May 18, 2011, Dr. Mulcahey saw the Petitioner because the Petitioner had been feeling very depressed, agitated and anxious and having trouble eating and sleeping. Petitioner told Dr. Mulcahey that all of her symptoms were related to her work environment and the way she was being treated at work. She referred to work as a hostile environment and she had filed grievances with her union. Ms. Gaffney felt she had gotten to the point mentally and physically where she could not go on. (Petitioner's Exh. 4, P. 8)

Petitioner described to Dr. Mulcahey that her work load had been increasing and she felt she was doing the work of more than one person. Her co-workers were not supportive. Her co-workers would talk about her in unkind ways in front of her and behind her back. Her co-workers would sit at their desks and play computer games and talk about non-work related things while she tried to do her work. Petitioner felt there was an inappropriate relationship between one of her supervisors and a co-worker that created an uncomfortable work environment. She felt her supervisor was unkind to her, she had been yelled at, and she had poor work performance in reviews that she felt were unfair. (Tr. pp. 9-10) Petitioner also stated her supervisor would stand in front of her desk and yell that she was not finishing her work in a timely fashion and she felt that her workload had been unfairly increasing for several years, but the other situations seem to escalate in April, 2011. (Tr. P. 11)

Petitioner did not report any non-work related issues to Dr. Mulcahey that would have caused her medical problems. Dr. Mulcahey performed a mental status exam on

May 18, 2011. Dr. Mulcahey indicated Petitioner was very stressed and cried throughout most of her visit. Petitioner was visibly shaking. (Tr. P. 14) As a result of the May 18, 2011 exam, Dr. Mulcahey diagnosed the Petitioner with anxiety and situational depression which she attributed to Petitioner's work environment. Dr. Mulcahey prescribed medications and recommended Petitioner not return to that work environment. She provided the Petitioner with an off-work slip. (Tr. pp. 15-16)

Petitioner next met with Dr. Mulcahey on June 1, 2011. Dr. Mulcahey felt the Petitioner looked better and she did not cry during this visit. She still complained of some depression and anxiety. Dr. Mulcahey advised her to continue with her medication and kept her off work for four weeks. (Tr. P. 17) Petitioner returned to Dr. Mulcahey on July 12, 2011. She indicated she was feeling better and her mood was improving the longer she remained off work. (Tr. pp. 19-20)

Dr. Mulcahey felt Petitioner could return to work in some other capacity or some other position but not with the fire department. (Tr. pp. 22-23) Dr. Mulcahey recommended the Petitioner not return to the fire department. This is based on the fact that Petitioner would likely have a major exacerbation of her anxiety and depression if she returned to work in the same environment with the same co-workers. (Tr. P. 23) In Dr. Mulcahey's opinion if the Petitioner was exposed to her prior work environment she would redevelop her poor appetite, insomnia, anxiety, nervousness, depression and difficulty concentrating. (Tr. P. 24) Dr. Mulcahey found a direct correlation between the improvement in Ms. Gaffney's symptoms and her being away from her work environment.

Based upon the information the Petitioner provided, her examination and the recommendations, Dr. Mulcahey felt Ms. Gaffney's work environment caused her anxiety and situational depression. (Tr. P. 27) Dr. Mulcahey believes that her recommendation that the Petitioner remain off work was a result of the exposure she had at work and the mental stress she was experiencing. She felt the stressful situation caused Petitioner's problems and she did not want to return to that environment. (Tr. P. 29)

On cross-examination, Dr. Mulcahey admitted she is not board certified in psychology or psychiatry. Prior to May, 2011, the Petitioner had never reported any problems involving her mental health. (Tr. P. 33) Petitioner did not indicate to Dr. Mulcahey that she was seeking counseling for marital problems and other family problems. (Tr. P. 34) In fact, Ms. Gaffney never indicated to Dr. Mulcahey that she was receiving treatment for these non-occupational factors. (Tr. P. 35) In addition, at the May 18, 2011 exam the Petitioner indicated her work stress was the only current factor in her mental state. (Tr. P. 38) Dr. Mulcahey indicated she relied heavily on the history provided to her by the Petitioner in formulating her diagnosis and treatment plan. An inaccurate or incomplete patient history could change her diagnosis and her treatment plan and also cloud her perception of the patient. (Tr. P. 43)

Dr. Mulcahey then reviewed the Behavioral Health Advantage records. (Tr. P. 44) The progress note for March 1, 2011 indicates the Petitioner was not having any problems with work and that she was seeking help due to frustration with her husband. (Tr. P. 47) There was also no work related issues discussed in the March 21, 2011 note from Behavioral Health Advantage. (Tr. P. 48)

Dr. Mulcahey agreed that given her review of the Behavioral Health Advantage records that Ms. Gaffney's statements regarding a lack of non-occupational reasons for her stress were not true. (Tr. P. 50) However, she reiterated that the overwhelming reason that the Petitioner sought treatment from her was due to occupational factors. (Tr. P. 51)

Dr. Mulcahey indicated Petitioner currently had no ongoing need for mental health treatment, no need to seek treatment from a psychologist or psychiatrist, and no need for further prescriptions related to mental health issues.

Respondent offered the deposition of Dr. Moody into evidence at arbitration. The deposition of Dr. Edward Moody was taken on July 31, 2014. Dr. Moody is an occupational medicine physician at OSF St. Francis Center for Occupational Health in Peoria. (Respondent's Exh. 3, P. 4) Dr. Moody is board certified in occupational medicine and is licensed to practice medicine in Illinois. His current practice consists of general occupational medicine and his primary concern is health issues relating to the workplace. (Respondent's Exh. 3, pp. 5-6)

Dr. Moody performed a return to work evaluation of the Petitioner on September 20, 2011. Dr. Moody obtained a detailed history from the Petitioner. The Petitioner provided her with the statement she felt she was being mistreated, ridiculed and subjected to excessive criticism at work. (Respondent's Exh. 3, P. 9) She did not discuss any non-occupational incidents with Dr. Moody. (Respondent's Exh. 3, pp. 9-10) At the conclusion of the examination Dr. Moody recommended that Petitioner continue with Dr. Mulcahey's work recommendations until an investigation of her workplace could be performed. (Respondent's Exh. 3, P. 12) Dr. Moody believed that

he needed more information on Petitioner's workplace before he could opine whether or not her return to her prior workplace would threaten her health or the health of other persons. (Respondent's Exh. 3, P. 13) His primary concern was whether returning her to her prior workplace environment would have an adverse effect on her.

Dr. Moody then received a copy of a letter addressed to the Petitioner from the City of Peoria Office of Equal Opportunity. This letter indicated that the Petitioner's workplace conditions had been investigated and addressed. As such, Dr. Moody believed the Petitioner's health would not be threatened by returning to her prior work environment at the City of Peoria fire department. (Respondent's Exh. 3, P. 14)

Respondent also submitted into evidence the deposition of Dr. Paul Detrick. The deposition of Dr. Paul Detrick was taken on December 9, 2013. Dr. Detrick is a psychologist who is board certified in police and public safety psychology and is licensed in Illinois and Missouri. He is an Associate Clinical Professor at St. Louis University Medical Center in the Division of Behavioral Science. (Respondent's Exh. 5, P. 7)

Dr. Detrick examined the Petitioner on November 7, 2011. (Respondent's Exh. 5, P. 10) The reason for the referral was Ms. Gaffney's stated anxiety and stress related to work. (Respondent's Exh. 5, P. 11) Dr. Detrick chose to employ the Minnesota Multiphasic Personality Inventory-II ("MMPI-II"), which is the most commonly used objective personality inventory for identifying symptoms of psychopathology, the Beck Depression Inventory-II ("BDI-II"), which is a checklist for indicators of depression, and the NEO Personality Inventory ("NEO PI"), which is a measure of normal personality functioning, when he examined Ms. Gaffney. (Respondent's Exh. 5, P. 12)

Dr. Detrick also utilized a structured interview questionnaire and he formed a semi-structured mental status exam and informational interview. (Respondent's Exh. 5, P. 13) The complete examination and all its components took approximately five and one-half hours.

With regard to the MMPI-II, Dr. Detrick stated that Ms. Gaffney responded in a somewhat guarded fashion. She presented herself in a positive light describing herself as calm with minimal, if any, psychological problems and no possible faults. The primary finding of the MMPI-II was that Ms. Gaffney was functioning within normal limits and not endorsing any major symptoms of psychological distress. (Respondent's Exh. 5, P. 18)

With regard to the BDI-II, Dr. Detrick found that Ms. Gaffney reported no symptoms of depressed mood. (Respondent's Exh. 5, P. 19) The NEO PI is a measure of normal personality functioning that compliments the MMPI-II. The MMPI-II and NEO PI provide a pretty complete picture of the individual when used together. The MMPI-II measures abnormal functioning while the NEO PI measures more personality traits that may or may not be related to the abnormal functioning. (Respondent's Exh. 5, P. 21)

Based on the results of the NEO PI, the Petitioner described herself as very conscientious in her work, dependable, well organized, and self-disciplined. She indicated tendencies toward being prone to being anxious and concerned about how others perceive her. She also prefers working as a member of a team and possesses little need for variety in her work. She is also mistrustful of others. (Respondent's Exh. 5, P. 22)

Dr. Detrick also conducted a one on one interview of Ms. Gaffney. His interview observations were consistent with the written exam findings. Specifically, the Petitioner was calm, her thinking was unimpaired, her memory was fine and she reported no subjective symptoms of anxiety or depression. (Respondent's Exh. 5, P. 23)

According to Dr. Detrick, the Petitioner did not initially report to him any non-occupational sources of stress, but as the interview progressed, she acknowledged some marital problems. Dr. Detrick also reviewed the employee assistance program records which indicated marital and family problems along with troubles related to her son and his alcohol problems. (Respondent's Exh. 5, pp. 25-26)

Based on Dr. Detrick's review of the records, the questionnaire and the battery of assessment tests, he did not believe the Petitioner had a diagnosable mental disorder when he saw her on November 7, 2011. (Respondent's Exh. 5, P. 29) Dr. Detrick felt the Petitioner was capable of working in her normal capacity for the City of Peoria. (Respondent's Exh. 5, P. 30) Dr. Detrick specifically believed Ms. Gaffney was capable of working as an administrative specialist for the City of Peoria. In his professional opinion, Ms. Gaffney did not need any further psychological and medical treatment at the time examined her. (Respondent's Exh. 5, P. 31)

Ms. Gaffney discussed three specific incidents that contributed to her symptoms which occurred at work. (Respondent's Exh. 5, P. 33) Dr. Detrick does not believe that these three incidents would be major contributors to Petitioner's alleged stress (Respondent's Exh. 5, P. 35) In addition, he would have expected Ms. Gaffney to seek treatment or counseling in the event that the events caused her stress. An individual experiencing the level of stress she described would not typically wait several years

before seeking treatment or counseling. (Respondent's Exh. 5, P. 36) Moreover, the types of situations Ms. Gaffney allegedly endured would not typically produce a great deal of stress for a similarly situated employee. (Respondent's Exh. 5, P. 36) These events could have produced subjective stress in the Petitioner. (Respondent's Exh. 5, P. 36)

Dr. Detrick could not determine that the alleged instances described by Ms. Gaffney would not have objectively caused her undue stress as he could not determine the symptoms she presented at that time. (Respondent's Exh. 5, P. 37) In reviewing the EAP records, he noted that they stated a focus on treatment for marital and family issues and not work-related issues. Dr. Detrick found this to be significant and he would think that the content of the EAP visits would focus at least some on occupational issues if they were causing her anxiety and depression. (Respondent's Exh. 5, P. 38)

Dr. Detrick could not determine that Ms. Gaffney's work or the alleged instances she described were the primary and/or probable cause of her anxiety and depression she suffered in 2011. (Respondent's Exh. 5, P. 40) Dr. Detrick maintained the Petitioner was at MMI and capable of returning to work as an administrative specialist for the City of Peoria Fire Department. (Respondent's Exh. 5, P. 41)

Conclusions of Law

In support of the Arbitrator's decision related to (C.)Did an accident occur out of and in the course of employment by Respondent? and (F.) Is Petitioner's current

condition of ill being causally related to the injury? the Arbitrator finds and concludes as follows:

Mental illness resulting from a work-related physical injury has long been held compensable. However, a mental disability without physical injury or physical contact is only compensable under the Illinois Workers Compensation Act where the claimant suffers a severe, immediate emotional shock traceable to a definite time, place and cause even though no trauma or injury was sustained. Pathfinder Company v. Ind. Comm., 62 Ill.2d 556, 343 N.E.2d 913 (1976). In order for a so-called mental claim to be compensable, the employee must establish that:

1. *The disorder arose out of a greater stress than the day to day emotional strain and tension which all employees experience.*

2. *That from an objective point of view the conditions actually exist.*

3. *That employment conditions as opposed to non-employment conditions were the major contributing causes of the mental disorder.* Pathfinder v. Ind. Comm.

Here, the Petitioner's claim arose gradually, from a variety of both occupational and non-occupational factors rather than a sudden severe and shocking occupational encounter. Specifically, Ms. Gaffney sought psychological treatment for non-occupational factors related to marital issues with her husband along with problems with her son. At the same time, she was also seeking treatment from her primary physician, Dr. Mulcahey, related to work stress.

15IWCC0903

Similar to Chicago Bd. Of Education v Ind. Comm., 169 Ill.App.3d 459, 523 N.E. 2d 912, 120 Ill. Dec. 1, (1st Dist. 1988), the incidents described by the Petitioner are no greater than those that any other similar employee might face in an occupational setting similar to that of the Petitioner. In Chicago Bd. Of Education, the Court stated that "if non-traumatically induced mental disorders due to a gradual deterioration of mental processes are compensable under our Act, causal connection between the employment and the disability must be established by showing the employment exposed the employee to an identifiable condition of the employment that is not common and necessary to all or a great many occupations."

Here, the Petitioner testified as to two specific incidents she can recall which happened at work, neither of which she could recall the specific date or time of the incident. In the first incident, she claimed that Chief Macklin was staring at her while she was trying to work and in the second incident she complained there were meetings held near her office from which there were lots of wild noises, screaming and cursing, none of which was directed at her.

The Petitioner failed to provide any evidence that either of these stated events were the major contributory cause of her mental disorder. The Arbitrator also notes that Petitioner's testimony regarding the events regarding Chief Macklin were specifically denied and refuted by the testimony of Chief Macklin. In addition, the Petitioner herself testified that other employees heard and witnessed the actions which were going on during the meetings and did not believe that there was anything out of the ordinary going on. Moreover, the Petitioner was unable to provide a definite date, time, place

Petitioner failed to identify with any specificity the definite time, place and cause of any of these sudden, severe, emotional shocks which would have caused her psychological injury, and the alleged triggering stress factors she reported at arbitration were different than those to Dr. Mulcahey, her treating doctor. As such, the Arbitrator finds that the Petitioner's alleged condition did not arise out of or in the course of her employment with the City of Peoria. She has failed to meet her burden of proof of injury in a mental-mental claim, as defined by the Supreme Court in Pathfinder. The claim is denied. All other issues are moot.

and cause of these events as required by Pathfinder. In addition, the Petitioner did not relate either of the episodes to any of the treating or examining doctors who she saw in connection with her claim. Her complaints to Dr. Mulcahey included an increasing work load and lack of support from her co-workers, both of which occurred over a two year time frame.

The Arbitrator also notes that the testimony of Dr. Mulcahey indicates the Petitioner's performance review, oral reprimands, behavior write-ups and other confrontations with supervisors or co-workers contributed to causing the Petitioner's mental disorder. However, in the Pasha Hunt–Golliday v. Metropolitan Water Reclamation Dist. of Greater Chicago, 06 I.W.C.C.C. 0028, the Illinois Workers Compensation Commission denied compensation to an employee in a similar case and held that performance reviews, oral reprimands, behavior write-ups and confrontations with supervisors and co-workers are part of the usual stress experienced by all members of the general public who subject themselves to a work environment.

Similarly, here the Petitioner received a negative performance review from Melanie Anderson (Respondent's Exhibit 6). She then began seeking treatment through the Employee Assistance Program for issues related to her marriage. It was only after she received a reprimand from Fire Chief Tomlin (see, Respondent's Exhibit 7), that she sought treatment for her alleged disorder.

In sum, Petitioner failed to show that her disorder arose out of a greater stress than the day to day stress which all employees experience and that from an objective point of view, the negative employment conditions actually existed. Finally, the

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt	☐ 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

Sean A. Rankin,

Petitioner,

15IWCC0904

vs.

NO: 13 WC 34764

Martin Enterprises HVAC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of temporarty total disability, medical expenses 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 9, 2015 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $27,000.00. 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: DEC 10 2015
KWL/vf
O-12/8/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

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

15IWCC0904

RANKIN, SEAN A
Employee/Petitioner

Case# 13WC034764

MARTIN ENTERPRISES HVAC
Employer/Respondent

On 2/9/2015, 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 0.06% 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 240
MUNDELEIN, IL 60060

2965 KEEFE CAMPBELL BIERY & ASSOC
JOHN CAMPBELL
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

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)

15IWCC0904

Sean A. Rankin
Employee/Petitioner

v.

Martin Enterprises HVAC
Employer/Respondent

Case # 13 WC 34764

Consolidated cases: N/A

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 **Stephen Friedman**, Arbitrator of the Commission, in the city of **Chicago**, on **January 5, 2015**. 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. ☒ 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 _____

FINDINGS

On the date of accident, **January 16, 2013**, 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 $**45,212.44**; the average weekly wage was $**869.47**.

On the date of accident, Petitioner was **30** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**33,039.48** for TTD.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $579.65/week for 102 5/7 weeks, commencing January 17, 2013 through January 5, 2015, as provided in Section 8(b) of the Act. Respondent shall have credit of $33,039.48 for temporary total disability benefits paid.

Respondent shall be responsible for prospective medical care including authorization and payment for the treatment and surgery to the Petitioner's right knee as prescribed by Dr. Cole and any other reasonable, necessary and causally connected treatment.

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

February 9, 2015
Date

ICArbDec19(b)

FEB 9 - 2015

15IWCC0904

Statement of Facts

On January 16, 2013, Petitioner Sean Rankin was employed by Respondent Martin Enterprises HVAC as an HVAC technician and installer. Petitioner testified that he had been employed by Respondent for 10 years. His job activities included hanging ductwork, installing furnaces and air conditioning units. Petitioner testified that his work activities would include kneeling and squatting. He would be working on roofs, in attics, basements and crawl spaces. He was required to move furnaces up to 250 pounds using a dolly and load bundles of filters weighing 50-60 pounds. He was required to use various tools.

Petitioner testified that he had prior injuries to his right knee. He testified to his treatment by Dr. Jacker and Dr. Cole from 2000 through 2003. Dr. Jacker's records (Px 1) confirm treatment beginning November 1, 2000. Petitioner gave a history of a prior injury in third grade that was diagnosed as a partial tear of the ACL, but no treatment at that time. He reported injuring his right knee playing basketball on November 1, 2000. Dr. Jacker performed an ACL reconstruction on November 14, 2000. Petitioner was released on May 7, 2001 and advised to wear his knee brace for sports. Petitioner returned to Dr. Jacker on March 20, 2002 with additional complaints in the right knee. A second surgery was performed on November 15, 2002 to remove a screw from the initial surgery and perform an arthroscopic debridement. The post operative diagnosis found a torn right ACL graft and a large osteochondral defect on the lateral femoral condyle. Petitioner underwent another surgery on April 15, 2003 for a revision reconstruction of the ACL. Petitioner testified that he saw Dr. Jacker through April 30, 2003 and then saw Dr. Cole. Dr. Cole saw Petitioner on May 12, 2003 (Px 2, 237). His report notes the ACL reconstruction and chondral defect. He recommended conservative care.

Petitioner testified he was hired by Respondent in 2004. He performed all of the job duties of an HVAC technician/installer from his date of hire until January 16, 2013. Petitioner testified that during this period he had no treatment for his right knee. He did not wear a brace for work. He did not have any complaints in the right knee nor make any complaints of symptoms in the right knee to anyone at work.

Petitioner testified that on January 16, 2013, he was on top of a ladder. He had cut a vent into the ceiling tile. As he reached for it, he noticed a pop in his right knee. He felt pain and had trouble getting down the ladder. This history is consistent with the accident report completed on January 17, 2013 (Rx 12) and the January 17, 2013 history given to Dr. Zoellick (Px 1).

Petitioner had an MRI of the right knee on January 23, 2013. That MRI revealed degenerative disease predominantly in its lateral compartment with small joint effusion, a cyst in the posterior aspect of the interspinous region of the tibia, osteochondral lesions at the lateral femoral condyle. They noted the ACL repair but the ACL graft was not adequately visualized and probably chronically torn. There was either a chronic tear or prior partial tear of the meniscus. There was evidence of fixation of the patella tendon at the patellar and tibial attachments. On January 24, 2013, Dr. Zoellick read the MRI and noted it suggested possible lateral meniscal tear and significant arthritic changes in the lateral compartment. The ACL was not visualized. The doctor prescribed physical therapy and no plans to proceed with ACL reconstruction unless the pain persisted. His record stated: "sprain/strain of knee right onset: 01/16/2013. Problems Story: knee popped while he was up on a ladder at work, history of recurrent ACL reconstruction 10 years ago but no recent problems with the knee" (Px 1, 21-22).

The petitioner had surgery on February 27, 2013. The operative report noted that the patient suffered a left knee (parties stipulated should be right knee) injury at work when he was on a ladder reaching for something

and his knee popped and had the onset of pain. The right knee was remarkable for grade 3 chondromalacia of the patella and trochanteric gutter groove. The medial gutter was remarkable for osteophyte of the medial femoral condyle as well as synovitis. The medial compartment demonstrated a flap of articular cartilage on the weight-bearing surface of the medial femoral condyle which was loose. The intracondylar notch revealed what appeared to be a chronic tear of the ACL. The lateral compartment demonstrated a tear of the anterior horn of the lateral meniscus (Px 1, 76-79).

On March 7, 2013, Dr. Zoellick noted that this was the first date the patient was without crutches. The doctor prescribed physical therapy and no work (Px 1, 15). On April 4, 2013, Dr. Zoellick documented that the right knee symptoms were getting worse and the patient could not trust his knee (Px 1, 13). The doctor prescribed continued physical therapy and a new ACL brace as well as no work. On May 2, 2013, Dr. Zoellick noted that the knee was very unstable and buckles several times a day (Px 1,11). Dr. Zoellick referred the petitioner to Dr. Cole.

The petitioner saw Dr. Cole on May 13, 2013. Dr. Cole noted that Petitioner was there for a second opinion. He noted the work injury of January 16, 2013 as well as the remote history in 2000 – 2001 and the subsequent treatment. He noted that from that treatment through January 2013, the patient had no further complaints of knee pain or discomfort and was working in the capacity of his job in construction without difficulty. He noted that in January 2013 Petitioner was standing on a ladder, flat-footed, to reach for something and his knee popped and gave way. He noted a primary complaint of instability rather that pain. He prescribed ACL reconstruction with autograft (Px 2, 20, 23).

Surgery was performed June 4, 2013 by Dr. Cole. The operative report indicates there was an ACL reconstruction, revision bone to bone autograft with partial lateral meniscectomy and debridement of the articular cartilage (Px 2, 22-24). On the July 15, 2013 work status/quick report Dr. Cole indicates that the diagnosis/treatment is causally related to the alleged industrial accident (Px 2, 51). On September 16, 2013, Dr. Cole released the Petitioner to desk work duties with limited weight-bearing and flexion and no ambulating on uneven surfaces (Px 2, 10-11). The Petitioner testified that the Respondent did not offer work within those restrictions. On December 9, 2013, Dr. Cole prescribed another MRI of the right knee (Px 2, 45-46). Petitioner last saw Dr. Cole on December 16, 2013. Dr. Cole's report of that date (Px 2, 38; Rx 2) reviewed the MRI as showing intrasubstance signal changes in the lateral meniscus as well as an osteochondral defect on the lateral femoral condyle. Dr. Cole recommended further surgery consisting of a diagnostic arthroscopy and a potential option of osteochondral allograft as well as a lateral meniscus allograft transplant. He opines that it is difficult to assess that degree the injury is responsible for his pain or in the setting of a general degenerative change in his knee. Dr. Cole's December 16, 2013 quick report notes he is "unable to determine" if the diagnosis/treatment is causally related to the alleged industrial accident.

The respondent had the petitioner evaluated by Dr. Tonino on February 6, 2014. The transcript of Dr. Tonino's September 8, 2014 deposition was admitted at Respondent's Exhibit 1. Dr. Tonino opined that the accident of January 16, 2013 did not cause or aggravate the Petitioner's current condition of ill-being and need for surgery. He stated that the findings at the time of surgery looked like the normal progression of someone with his history. He based his opinion on the significant arthritis in the knee joint, the prior treatment records from 2000 through 2003 and the history he received from Petitioner that the injury occurred while standing on the ladder without any twisting motion. Dr. Tonino states that the incident as described was not a significant aggravating event. He does agree with the surgical options as prescribed by Dr. Cole. He would limit the Petitioner's functional capabilities to 20 pounds lifting, no squatting, twisting or climbing with the right knee.

The Petitioner was evaluated by Dr. Rubinstein on May 28, 2014. The transcript of Dr. Rubinstein's November 12, 2014 deposition was admitted as Petitioner's Exhibit 7. Dr. Rubinstein notes that the petitioner was doing well until the time of his injury of January 16, 2013. At the time his right knee popped on January 16, 2013, he injured the knee and his secondary restraints and tore something of the supporting structure of the knee as evidenced by the fact that he had a large effusion on exam the day after the injury. He noted the pre-existing degenerative changes in the knee prior to January 16, 2013 but noted that they were asymptomatic. He found it significant that there was no treatment to the right knee for nine years prior to the injury. He noted that it is not uncommon for people with arthritis and some cruciate deficiency to do reasonably well and not be terribly symptomatic but then get pushed over the edge by an acute injury and after that, not be able to have their knees restored to the previous injury state. Dr. Rubinstein opined that the injury of January 16, 2013 aggravated the preexistent but asymptomatic degenerative knee causing the need for all subsequent treatment since January 16, 2013 and Dr. Cole's December 16, 2013 prescription for surgery. He agreed with Dr. Cole's proposed treatment plan.

Respondent also offered video and surveillance reports of Petitioner's activities (Rx 9-11 and 9A-11A). The video documents Petitioner's walking, driving and working out. The Arbitrator has viewed the video and notes Petitioner riding a stationary bike and elliptical machine for up to 20 minutes per session. Petitioner does weight workouts for his upper body on each occasion.

Conclusions of Law

In support of the Arbitrator's decision with respect to (F) Causal Connection, the Arbitrator finds as follows:

It is undisputed that Petitioner felt a pop and immediate pain in his right knee on January 16, 2013 when standing on a ladder and reaching into the ceiling. Petitioner's testimony is consistent with the accident report submitted and all of the medical histories provided. The parties have stipulated that this was an accidental injury arising out of his employment. The facts support this conclusion. At the time of the injury, the Petitioner's activity was one which he was required to perform in the completion of his job duties. The question raised is whether the Petitioner's current state of ill being and the treatment proposed are causally connected to the accidental injuries sustained.

Petitioner's medical history documents significant prior treatment to the right knee. Dr. Jacker's records and Dr. Cole's May 12, 2003 note confirm the prior ACL injury and surgeries as well as the chondral defect. But Petitioner did not seek further medical care for almost ten years. He testified he was without symptoms in his knee until the injury on January 16, 2013. It is unrebutted that during that ten year period he was employed by Respondent as an HVAC technician and installer. Petitioner testified to the heavy, physical nature of the work that he was able to perform without difficulty until the date of the injury. Proof of prior good health and change immediately following an injury may establish that an impaired condition was due to the injury. In the instant case, the chain of events herein indicates that the petitioner was able to perform his job for many years without lost time or complaints prior to his work injury on January 16, 2013, but that after the work injury he was unable to perform his job duties and continues with symptoms to date. The medical evidence includes objective medical finding that substantiates Petitioner's complaints, the treatment rendered and surgeries performed.

Based upon Petitioner's testimony, including the description of his work accident and the chain of events between his 2003 treatment and the date of injury, and the treating medical evidence, including the histories provided, the testing and treatment rendered, the Arbitrator finds the causation opinion of Dr. Rubinstein more persuasive than the opinion of Dr. Tonino. The Arbitrator finds that the Petitioner's ability to perform his regular job duties for many years without treatment or symptoms coupled with the description of the accident and ongoing, continuous treatment thereafter lends credibility to the finding that the condition of Petitioner's right knee was aggravated by the work accident on January 16, 2013. The Arbitrator further notes that Dr. Cole's December 16, 2013 statement that he could not assess the degree of that the injury was responsible for the Petitioner's condition indicates that the injury was at least responsible in some degree.

The Arbitrator has viewed the surveillance video of Petitioner and does not find that the activities depicted therein are inconsistent with the Petitioner's testimony concerning his symptoms, the current work restrictions or the treatment recommended. The physical therapy records confirm that Petitioner would spend 20 minutes on a stationary bicycle in therapy and that Petitioner had advised the therapist that he was going to the gym.

Based upon the record as a whole, including the testimony, exhibits and deposition transcripts, the Arbitrator finds that Petitioner's current condition of ill being in the right knee is causally connected to the accidental injuries sustained on January 16, 2013 while in the Respondent's employment.

In support of the Arbitrator's decision with respect to (K) Prospective Medical, the Arbitrator finds as follows:

Dr. Cole, Dr. Rubinstein and Dr. Tonino all are in agreement that Petitioner is in need of further medical treatment and that the surgical recommendation outlined by Dr. Cole is reasonable. In light of the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that the treatment recommended by Dr. Cole including the surgical recommendation is reasonable, necessary and causally connected to the accidental injuries sustained on January 16, 2013 while in the Respondent's employment.

The Arbitrator finds that Respondent shall authorize and pay for further medical treatment including the surgical recommendation as outlined by Dr. Cole in his December 16, 2013 note and any other reasonable, necessary and causally connected treatment consistent with Dr. Cole's recommendations.

In support of the Arbitrator's decision with respect to (K) Temporary Compensation, the Arbitrator finds as follows:

Dr. Cole, Dr. Rubinstein and Dr. Tonino all agree that Petitioner is in need of further medical care and that he should have work restrictions which would preclude him from returning to his regular job duties as an HVAC technician/installer. Based upon the medical evidence and the need for additional surgery, Petitioner has not reached maximum medical improvement with respect to the condition of his right knee.

In light of the Arbitrator's findings with respect to Causal Connection and Prospective Medical, the Arbitrator finds that Petitioner has not reached maximum medical improvement with respect to the accidental injuries sustained on January 16, 2013, is still unable to return to regular work and has not been offered light duty by Respondent. Petitioner is therefore entitled to temporary total disability benefits for the period of January 17, 2013 through January 5, 2015, being a period of 102 5/7 weeks.

In support of the Arbitrator's decision with respect to (M) Penalties, the Arbitrator finds as follows:

Despite the Arbitrator's findings with respect to Causal Connection, Prospective Medical and Temporary Compensation, the Arbitrator notes that Respondent's decision to deny benefits and dispute Petitioner's entitlement to further medical care and compensation was based upon substantial evidence. Petitioner had significant prior injuries and treatment to his right knee documented by the records of Dr. Jacker and Dr. Cole. The findings at that time relate to the conditions for which Petitioner is now seeking treatment. Dr. Cole, in his December notes states that causation is difficult to assess. In response to this opinion by Dr. Cole, Respondent obtained the examination with Dr. Tonino who opined that the condition was not related to the accident. Only at that time were benefits suspended. Respondent also obtained the surveillance which documented that Petitioner was engaged in significant physical activity.

Based upon this, the Arbitrator finds that the denial of benefits in this matter was in good faith and was supported by substantial evidence. The petition for penalties and attorneys fees is denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☐ Affirm and adopt	☐ 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

TRISHA BARR,

Petitioner,

15IWCC0905

vs.

NO: 14 WC 32286

PEORIA PUBLIC SCHOOL DISTRICT 150,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, and prospective medical care, 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. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms and adopts the Arbitrator's finding of a causal connection between Petitioner's current condition of ill-being with respect to her right ankle and bilateral knees. However, with regard to Petitioner's current condition of ill-being with respect to her cervical spine and her complaints of ongoing headaches, the Commission reverses the Arbitrator's causal connection finding for the reasons stated herein.

On the date of accident, September 2, 2015, Petitioner sought treatment at IWIRC and was seen by Physician Assistant Korf, at which time Petitioner reported a slip and fall injury, at which time she landed on bilateral knees and twisted her right ankle. Petitioner complained of significant pain in her bilateral knees and right ankle, and she was diagnosed with a right ankle sprain, bilateral knee contusions, and a left knee abrasion. The office notes from that visit fail to indicate any history of Petitioner striking her head, or any complaints of cervical symptoms or headaches. [PX1].

The September 3, 2014 note from Illini Family Medical, Petitioner's personal physician, reflects that Petitioner called and spoke with Physician Assistant Jill Schertz, and reported that she fell at work yesterday, was seen at IWIRC, had sprained her right ankle, which was now swollen and painful, and inquired if she should see P.A. Schertz. Petitioner was advised to follow up at IWIRC. The phone note is void of any complaints with regard to Petitioner's neck or complaints of headaches, and contains no history of striking her head. [RX8].

On that same day, September 3, 2014, instead of following up at IWIRC, Petitioner sought treatment at Unity Point Health Emergency Room. At that time Petitioner gave a history of her slip and fall at work the day prior, and she only complained of right ankle pain. Petitioner denied any other symptoms or complaints. Significantly, the "Review of Symptoms" reflected no complaints of neck pain, back pain, or headaches. In addition, Petitioner's neck was noted to be supple on examination. Petitioner was diagnosed with a right ankle sprain, a knee contusion, and abrasion of the left knee. The records fail to reflect any complaints with regard to Petitioner's neck, or complaints of headaches, and fail to reflect that Petitioner hit her head during her slip and fall. [PX3].

On September 9, 2014, Petitioner sought treatment with P.A. Korf at IWIRC, at which time she complained of continuing right ankle and bilateral knee symptoms, and also made new complaints with regard to her right wrist, right shoulder, and cervical spine. Petitioner also made a new complaint of headaches. The office visit note contains no history of Petitioner striking her head at the time of her slip and fall. At the time of her September 9, 2014 office visit she was diagnosed with a right ankle sprain with marked hyper-exaggeration and symptoms magnification that could not be explained by objective findings. Petitioner was also diagnosed with bilateral knee contusions, and with general discomfort. Following this September 9, 2014 office visit, Petitioner continued to complain of neck pain and headaches in her follow-up office visits with IWIRC, improving right ankle symptoms, and resolving knee contusions. [PX1].

On September 25, 2014, Petitioner was examined by Dr. Hauter at IWIRC, at which time Petitioner reported her right ankle symptoms were improved, that her headaches and neck pain were worse as of September 20, 2014. The office visit note fails to reflect a history of Petitioner striking her head at the time of her injury. On examination, she was noted to have full range of motion of her right ankle, minimal swelling at the inferior aspect of the lateral malleolus, normal gait, and full range of motion of her neck. Dr. Hauter's assessment was a resolving right ankle

sprain, a resolved cervical sprain with full range of motion without pain, and complaints of headaches. He released Petitioner to return to work without restrictions, advised her to follow up with her personal physician for her non-work related headaches, and noted she was unable to work until released by her PCP. [PX1].

Petitioner then began treating at Illini Family Medicine on October 1, 2014. On that date Petitioner was examined by P.A. Schertz, at which time Petitioner provided a new history of injury, reporting that she hit her head on the floor or wall on her way down from her fall, that she was not sure how she landed but that she ended upon her back. Petitioner complained of severe headaches and neck pain down her spine, across her sternum and breastbone, and into her lower jaw. Petitioner reported her right ankle was improving, but that she had developed other complaints, including extreme fatigue. On examination, Petitioner was noted to have good range of motion of her neck with good flexion and extension, and no radicular symptoms. P.A. Schertz's assessment was status post fall, sprained ankle, and multiple complaints in every area of her body- neck, heels, feet, ankles, knees, shoulders, wrist, and headaches. Inderal was prescribed for headaches and Petitioner was advised to follow up with Dr. Lisa Snyder at IPRM. P.A. Schertz further noted, "Her mother was very firm that she wanted MRIs, CT scans, and x-rays done. I expressed to her that I really did not feel that was necessary at this point, but that would be up to Dr. Snyder." Blood work was ordered for Petitioner's fatigue complaints, and asked that her return to work status be addressed by Dr. Snyder. [PX3].

On October 20, 2014, Petitioner called P.A. Schertz to request that she be given an off work slip, that she couldn't get an appointment with Dr. Snyder at IPMR until October 30, 2014, that she needed a note from Schertz for her employer for the period of September 25, 2014 through October 30, 2014, authorizing her off work until cleared by Dr. Snyder. In response to Petitioner's phone call, P.A. Schertz advised Petitioner of the following: "I would recommend she go back to work, since this is no longer a w/c case. I will give her an excuse from 9/25/14 thru 10/22. Return to work 10/23/14... stay off any further meds for migraine." Petitioner then advised that she was "going to contact attorney Re: note & going back to work before she sees Dr. Snyder." [RX8].

On October 21, 2014, Petitioner called P.A. Schertz to advise that she had called her attorney, that the work comp attorney wanted her to attend an IME, and that her own attorney does not feel she can return to work until she is seen by Dr. Snyder or undergoes the IME. In response to same, P.A. Schertz indicated she would write an off work slip until Petitioner was seen by Dr. Snyder, but that she was unwilling to authorize Petitioner off any further time after that. [RX8].

On October 30, 2014, Petitioner was examined by Dr. Snyder, and complained of pain in her right ankle, right knee, neck, and headaches. Petitioner also provided a history of no prior headache problem. [PX5]. Petitioner's prior treating records from 2002 and 2005 reflect complaints of recurrent headaches and ongoing treatment for same. [RX8]. At the time of her October 30, 2014 office visit with Dr. Snyder, Petitioner was diagnosed with cervicalgia and

right knee pain, likely a strain or early osteoarthritis. Dr. Snyder recommended physical therapy for right knee pain and cervicalgia. On October 27, 2014, based upon Petitioner's continuing right knee complaints, an MRI of the right knee was ordered, and continued physical therapy was recommended. [PX5].

On November 18, 2014, Petitioner underwent a Section 12 examination with Dr. Lawrence Li, a board certified orthopedic surgeon. Dr. Li's examination was focused on Petitioner's right knee and ankle. Dr. Li opined that Petitioner's diagnosis was status post right ankle sprain, left knee contusion, and right knee contusion. He further opined that no further treatment was required for her right ankle or left knee, but that she was not at maximum medical improvement for her right knee and required seven additional physical therapy visits, for total of 12 visits, prior to her reaching maximum medical improvement for her right knee. Dr. Li further opined that there was no previous preexisting cause of Petitioner's problems with regard to her right ankle or knees, and that morbid obesity was causing a delay in recovery from her right knee contusion, but that all treatment for same to date had been reasonable, necessary and related to her work injury. [RX6].

Based upon Petitioner's initial complaints and consistent ongoing symptoms with regard to her right ankle and bilateral knees, as well as her diagnosis of injuries solely to her right ankle and bilateral knees injuries immediately following her September 2, 2014 work injury, and Dr. Li's opinion as to a causal connection between her work injury and her right ankle sprain, left knee contusion, and right knee contusion, the Commission affirms the Arbitrator's finding that Petitioner's right ankle and bilateral knee condition of ill-being is causally connected to her work injury. However, based upon the findings of fact as stated herein, which overwhelming evidence a lack of initial complaints of any cervical pain or headaches, and unremarkable examination findings with regard to the cervical spine immediately following her September 2, 2014 work injury, the Commission concludes that Petitioner's current cervical condition of ill-being and her ongoing headache complaints are not casually connected to her September 2, 2014 work injury. Petitioner was examined on the date of injury, September 2, 2014, and her complaints were limited to her right ankle and bilateral knees. Petitioner then contacted her personal physician's office the following day, September 3, 2014, and she reported only complaints with regard to her right ankle. When Petitioner sought treatment at the Unity Point Emergency Room later that same day, on September 4, 2014, her complaints again were limited to the right ankle and knees. None of the initial treating records contain a history of any cervical related complaints or of headaches, and the Commission is unable to reconcile Petitioner's testimony as to ongoing cervical complaints and headaches with these initial treating records.

With regard to the issue of temporary total disability benefits, the Commission modifies the Arbitrator's temporary total disability award from September 2, 2014 through January 26, 2015, to September 2, 2014 through January 21, 2015. The Commission modifies the temporary total disability award based upon the January 21, 2015 release to return to work full duty by Dr. Snyder, Petitioner's treating physician. (RX11). The Commission finds that record is void of

any additional authorization off work covering the period of January 22, 2015 through January 26, 2015.

With regard to the issue of medical expenses, and based upon the Commission's finding of no casual connection between Petitioner's work-related injury and her headaches and cervical condition of ill-being, the Commission vacates the Arbitrator's award of any and all medical expenses related to Petitioner's cervical condition and headaches, but otherwise affirms the Arbitrator's medical expense award with regard to Petitioner's right ankle and bilateral knees.

Based upon the Commission's finding herein with regard to causal connection, the Arbitrator's award of prospective medical in the form of cervical injections and physical therapy to her cervical spine and headaches is hereby vacated. The Commission affirms the Arbitrator's denial of Petitioner's request for prospective medical in the form of a cervical MRI based upon the Arbitrator's reasoning. Finally, the Commission affirms the Arbitrator's prospective medical award in the form of a referral to Midwest Orthopedics for evaluation and treatment of Petitioner's knees, as recommended by Dr. Snyder.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on March 13, 2015, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical expenses from Illini Family Medicine, Unity Point Health, IPRM, for the reasonable and necessary medical expenses provided to Petitioner between September 2, 2014 through January 21, 2014, related solely to Petitioner's right ankle and bilateral knees, under §8(a) and pursuant to §8.2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $917.84 per week, from September 2, 2014 through January 21, 2015, for a period of 20-2/7 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 this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $15,100.00. 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: DEC 10 2015
KWL/kmt
O-10/26/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

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

15IWCC0905

Case# 14WC032286

BARR, TRISHA
Employee/Petitioner

PEORIA PUBLIC SCHOOLS DISTRICT 150
Employer/Respondent

On 3/13/2015, 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:

5316 LeFANTE LAW OFFICES PC
JENNIFER HAHN
456 FULTON ST SUITE 370
PEORIA, IL 61602

5354 STEPHEN P KELLY
2710 N KNOXVILLE AVE
PEORIA, IL 61604

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

☐ 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)

15IWCC0905

TRISHA BARR
Employee/Petitioner

v.

PEORIA PUBLIC SCHOOLS DISTRICT 150
Employer/Respondent

Case # 14 WC 32286

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 **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Peoria, Illinois**, on **January 26, 2015**. 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. ☒ 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 _____

FINDINGS

On the date of accident, **9/2/14**, 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 $**45,547.84**; the average weekly wage was $**1,376.76**.

On the date of accident, Petitioner was **47** years of age, ***single*** with **1** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**3620.43** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**3620.43**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $20,979.20 for 22 6/7 weeks, commencing 9/2/14 through 1/26/15 as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $3,620.43 for temporary total disability benefits that have been paid.

Respondent shall pay all reasonable and necessary medical expenses from the following providers: Illini Family Medicine, UnityPoint Health, IPMR, for the reasonable and necessary medical services provided to Petitioner between October 1, 2014 and January 26, 2015 as provided in Section 8(a) and 8 (2) of the Act.

Petitioner's claim for prospective medical treatment for her knees is granted. Respondent shall authorize Petitioner's referral to Midwest Orthopedics for evaluation and treatment of her knees as recommended by Dr. Snyder at IPMR.

Petitioner's claim for prospective medical treatment for her neck and headaches is granted, to the extent of injections and physical therapy. Respondent is not ordered to authorize a cervical MRI for the reasons set forth in the Arbitrator's conclusions of law which are attached.

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.

15IWCC0905

Signature of Arbitrator

March 9, 2015
Date

ICArbDec19(b)

MAR 13 2015

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATOR'S DECISION

TRISHA BARR,

Employee-Petitioner,

vs.

PEORIA PUBLIC SCHOOLS DISTRICT 150,

Employer-Respondent.

15IWCC0905

Case No.: 14 WC 32286

STATEMENT OF FACTS

Petitioner testified she was employed as a music teacher for Peoria Public Schools District 150. She has been employed by the Peoria Public School system for 19 years. Her current assignment involves her teaching at Washington Gifted in the morning and teaching at Rolling Acres in the afternoon. Petitioner testified that at Washington Gifted she has a classroom which the students come to. Petitioner further testified that at Rolling Acres she did not have a classroom; instead, she would travel from classroom to classroom carrying a bag of teaching supplies, a chair to sit on, and on occasion, a cd player.

On September 2, 2014, Petitioner indicated she was at Rolling Acres, traveling from one classroom to another, when her feet suddenly slipped out from under her. Petitioner testified that as she fell, she heard a crack in her right ankle. She testified that she landed on her knees and then fell to her side. She testified that she experienced immediate pain in her right ankle and felt pain in her knees. She noted that the knees of her pants were wet. She testified that she could not get up due to the pain in her right ankle and knees.

Petitioner testified that someone got the principal. She testified she was given the option of going to the emergency room or IWIRC. She testified that she chose to go to IWIRC as she

was in a lot of pain and was told IWIRC was closer and faster. The principal of Rolling Acres and another teacher transported Petitioner to IWIRC.

Petitioner testified that once at IWIRC, she reported pain in her right ankle and knees. An x-ray was performed. Mr. Barr testified that she was advised to wear an ankle brace and to use ice packs/heat for pain.

Petitioner testified that the day after her fall she experienced increased pain and swelling in her right ankle and knees. She also noted bruising over her right ankle. She testified that due to concern over a possible fracture in her right ankle, she went to the Proctor emergency department. X-rays were performed and she was advised that there was no fracture. She was advised to wear an ankle splint, to stay off her ankle and to use crutches for ambulation. She testified she was advised to remain non-weightbearing.

Petitioner testified that she followed up at IWIRC, where she was seen by a nurse practitioner. She testified that she reported continued pain in her right ankle and both knees. She also testified that she reported developing neck pain and headaches a few days after her fall at work. Petitioner testified that during her subsequent follow up visits, her right ankle pain was addressed but that her knee pain, neck pain and headaches were not.

Petitioner testified that she was discharged from IWIRC on September 25, 2014. She testified that due to the continued and unresolved pain in her knees and neck and ongoing headaches, she contacted her primary care physician at Illini Family Medical, who referred her to Dr. Snyder at IPMR for further evaluation and treatment.

Petitioner testified that Dr. Snyder initially ordered a course of physical therapy and x-rays of her right knee. She was released to return to work with restrictions, which were not accommodated. Petitioner testified that when her pain did not improve with physical therapy,

Dr. Snyder ordered an MRI of her right knee and x-rays of her neck. Petitioner testified that Dr. Snyder advised her that she had a tear in her knee and that additional physical therapy was recommended. Petitioner testified that Dr. Snyder administered multiple injections which helped her neck pain and headaches some, but did not fully resolve her pain.

Petitioner testified that she visited Dr. Snyder in January 2015. At this visit, Petitioner said that Dr. Snyder released Petitioner to return to work without restrictions, but also referred her for an MRI of her cervical spine due to ongoing neck pain and headaches, and referred her to an orthopedic specialist for evaluation of her right knee. While there is a note concerning the work release, there are no records in evidence showing that Dr. Snyder ordered an MRI of the cervical spine.

On cross-examination, Petitioner testified that she did not recall specific dates or treatment regarding prior right shoulder injuries. Petitioner indicated that she would not dispute prior right shoulder injuries if the records reflected that she suffered such injuries in 1999 and 2008. Petitioner admitted that she had treated for plantar fasciitis of both feet and that she wore shoe inserts for that condition. On cross-examination, Petitioner testified that she did not recall specific dates or treatment regarding prior treatment for headaches. Petitioner indicated that she would not dispute treatment for headaches in 2002 if the records reflected that she suffered such injuries. Petitioner testified that she did not recall specific dates or treatment regarding a prior right ankle injury. Petitioner indicated that she would not dispute a prior right ankle injury in 2012 if the records reflected that she suffered such injury. Petitioner testified that she did recall a July 2014 visit to her primary care physician in which she reported a right knee injury during a softball game. Petitioner indicated that she would not dispute the doctor's narrative regarding the injury. On cross-examination, Petitioner testified that she lived alone and had significant

difficulty with everyday activities and upkeep of her home. She testified that her mother helped her out some. She testified that when she went grocery shopping she used a motorized cart. She testified that she used a riding mower to cut her grass.

On redirect examination, Petitioner testified that although she still had issues with plantar fasciitis of both feet, it in no way has ever caused ankle pain or symptoms. On redirect examination, Petitioner testified that she had not experienced any pain or residual symptoms nor had she received any additional treatment for her 2012 right ankle injury following the visit to Illini Family Medical in 2012. On redirect examination, Petitioner testified that she had not experienced or treated for chronic headaches since 2002. On redirect examination, Petitioner testified that she had never experienced prior neck pain. On redirect examination Petitioner testified that since she finished treatment for her right shoulder injury in 2008, she had not experienced or treated for any additional right shoulder pain or symptoms.

On redirect examination, Petitioner testified that she presented to her primary care physician in July 2014 for a regular check-up for her diabetes. She testified that the appointment was not made to specifically address her softball knee injury or any ongoing knee pain. She testified that the right knee injury was obtained while sliding into first base during a spring/summer softball game. Petitioner testified that it was more of a bad scrape than ongoing joint or muscle pain. She testified that it did not result in ongoing pain nor did it interfere with her day-to-day activities. On redirect-examination she testified that following the July 2014 visit she did not experience or treat for right knee pain.

The treatment records for IWIRC were entered into evidence. In Dr. Hauter's September 2, 2014 record, Petitioner reported severe pain in her knees and right ankle. Physical examination revealed edema about the right ankle with decreased range of motion due to pain and swelling.

Examination of Petitioner's knees revealed an abrasion over the anterior left knee with tenderness to palpation over the anterior knees bilaterally. Dr. Hauter assessed a right ankle sprain and bilateral knee contusion with left knee abrasion. Ms. Barr was placed on sedentary duty and advised to follow up in 5-7 days. (Pet. Ex. 1, Res. Ex. 9).

In the IWIRC report from September 9, 2014, the physician's assistant indicated that Petitioner presented with complaints of continued pain in her right ankle and both knees in addition to right wrist pain, right shoulder pain, cervical pain and headaches. The IWIRC records from Petitioner's subsequent follow up visit on September 22, 2014 indicates that although Petitioner reported improving right ankle pain, she continued to report unimproved pain in her knees and neck in addition to increasingly severe headaches. (Pet. Ex. 1, Res. Ex. 9). The IWIRC record from September 25, 2014 indicates that Petitioner reported improving right ankle pain, but swelling over the lateral malleolus was still noted on physical examination. (Pet. Ex. 1, Res. Ex. 10). Petitioner also reported headaches. On September 25, 2014, Dr. Hauter provided Petitioner with a work status sheet which indicated that Petitioner's diagnosis was a right ankle sprain, resolving, and a neck sprain, resolved. (Pet. Ex. 1). It indicated that Petitioner was released from IWRIC medical care but was unable to work until cleared by her primary care physician. Another box, "return to work without restrictions," appears to have been initially checked, but further appears to have been scribbled out. (Pet. Ex. 1).

The records of Illini Family Medicine were entered into evidence. Jill Schertz, PA-C's July 21, 2014 record noted that Petitioner presented for follow up for her diabetes. The report indicates that Petitioner sustained a right knee contusion 2 months prior (approximately May 2014) while playing softball. The record indicates that no edema was present and Petitioner's condition was noted to be resolving. (Res. Ex. 8). Jill Schertz, PA-C's October 1, 2014 record

indicated that Ms. Barr presented with complaints of bilateral knee pain, neck pain and headaches. Physical examination revealed palpable pain with deep compression medially, both on the right and left knees. Ms. Barr was referred to Dr. Lisa Snyder at IPMR for further evaluation and treatment. Ms. Barr was given an off work slip pending her evaluation with Dr. Snyder. (Pet. Ex. 4, Res. Ex. 8).

The records of Lisa Snyder, MD were entered into evidence. Dr. Snyder's October 20, 2014 record indicates that Ms. Barr presented with complaints of continued right knee pain, neck pain, and constant headaches. Physical examination of her knees revealed joint line tenderness along both knees. Examination of her upper back and neck revealed some tenderness to palpation along the left cervical perivertebrals and upper trapezius muscle region. Mild myospasm was noted in addition to tenderness to palpation along the left occipital ridge. Dr. Snyder diagnosed cervicalgia and right knee pain, likely a strain. Physical therapy was ordered for both her right knee pain and the cervicalgia. Dr. Snyder also ordered x-rays of Ms. Barr's right knee. Ms. Barr was advised to remain off work for the next 3-4 weeks pending reevaluation. (Pet. Ex. 5, Res. Ex. 5).

The records of Unity Point Health were admitted into evidence. The October 30, 2014 report by Dr. Clarissa Rhode indicates that Ms. Barr's right knee x-ray was negative for acute displaced fracture and further indicated that if she continued to report pain, an MRI would be appropriate for further evaluation. (Pet. Ex. 3, Res. Ex. 7).

Dr. Snyder's November 17, 2014 records indicate that Petitioner had participated in five physical therapy visits which had been addressing her right knee and left-sided neck pain. Petitioner reported continued right knee pain over the patella and just medial and lateral to the patella. Physical examination of the neck revealed myospasm and tenderness to palpation along

the left upper trapezius muscle. Examination of the knee revealed mild medial lateral joint line tenderness. Dr. Snyder diagnosed cervicalgia and right knee pain. Dr. Snyder ordered continued physical therapy in addition to an MRI of the right knee. Ms. Barr was placed on work restrictions of no lifting or carrying greater than 15 lbs. and assistance to carry items up and down stairs. (Pet. Ex. 5).

The medical records of Dr. Lawrence Li, Respondent's IME physician for Petitioner's right ankle and bilateral knee issues, were admitted into evidence. Dr. Li's records indicate that Petitioner reported that her right ankle pain had mostly resolved but that she experienced continued left knee pain and right knee pain, worse on the right, especially when using stairs. Dr. Li diagnosed Ms. Barr as status post right ankle sprain, left knee contusion and right knee contusion. Dr. Li indicated that she had not reached maximum medical improvement for her right knee and that physical therapy would be appropriate. Dr. Li further stated that there was no previous preexisting cause of her problems and that all medical treatment to date had been reasonable, necessary and **related to the work injury.** (Res. Ex. 6).

The Unity Point Health November 21, 2014 record of Dr. George Gentry indicated that Petitioner's right knee MRI revealed prepatellar bursitis with MR findings supportive of patellar tracking abnormality with Grade 2 chondromalacia, a tear of the midportion of the posterior cruciate ligament, and a partial tear at the origin of the popliteus tendon with ligamentous strain at the origin of the popliteus fibular ligament. (Pet. Ex. 3).

The Unity Point Health December 12, 2014, record of Dr. Clarissa Rhode, MD indicated that Petitioner's cervical x-rays revealed mild spondylosis but no acute abnormality was noted; however, Dr. Rhode indicated that if Petitioner continued to complain of pain, and MRI would be appropriate for further evaluation. (Pet. Ex. 3).

CONCLUSIONS OF LAW

The Arbitrator adopts the above findings of material facts in support of the following conclusions of law:

In support of the Arbitrator's Decision relating to F: "Is Petitioner's current condition of ill-being causally related to the injury?," the Arbitrator reaches the following legal conclusions:

Petitioner testified that following the September 2, 2014 work accident, she experienced immediate pain in her right ankle and both knees. On September 2, 2014, Dr. Hauter diagnosed Petitioner with a right ankle sprain and bilateral knee contusion with left knee abrasion. (Pet. Ex. 1, Res. Ex. 9). Petitioner's IWIRC records show that although she reported resolving right ankle pain, her bilateral knee pain did not improve. (Pet. Ex. 1, Res. Ex. 9). Despite Petitioner's ongoing complaints of bilateral knee pain, on September 25, 2014, Dr. Hauter diagnosed Petitioner with a resolved contusion to the knees and improving right ankle sprain and advised Petitioner to follow up with her primary care physician. (Pet. Ex. 1, Res. Ex. 10). Petitioner's primary care physician referred Petitioner to Dr. Snyder for further evaluation and treatment of her ongoing bilateral knee pain. (Pet. Ex. 4, Res. Ex. 8). Dr. Snyder subsequently ordered an MRI of Petitioner's right knee. (Pet. Ex. 5). Before the MRI was performed, Dr. Li, Respondent's IME, in his November 18, 2014 report diagnosed Petitioner as status post right ankle sprain, left knee contusion, and right knee contusion. Dr. Li stated that in regards to Petitioner right ankle and bilateral knee injuries – that her medical treatment to date had been reasonable, necessary, and related to her work injury. (Res. Ex. 6). The subsequent MRI performed on November 21, 2014 revealed prepatellar bursitis with MR findings supportive of patellar tracking abnormality with Grade 2 chondromalacia, a tear of the midportion of the posterior cruciate ligament, and a partial tear at the origin of the popliteus tendon with

ligamentous strain at the origin of the popliteus fibular ligament. (Pet. Ex. 3). Petitioner testified that at her January 2015 appointment Dr. Snyder referred her to an ortho for further evaluation and treatment of her right knee. Petitioner testified that she did not have symptoms relating to her right ankle or knees prior to the September 2, 2014 work accident. Although on cross examination Petitioner admitted receiving treatment for a right ankle injury in 2012 and reporting a 2014 right knee injury to her primary care physician at a regular diabetes checkup in July 2014, on redirect she indicated that she had not received any treatment for her right ankle since 2012, and that her right knee injury did not result in ongoing pain or disability. Of note, the July 21, 2014 record clearly indicates the visit was a follow-up on her diabetes and the doctor assessed a resolving right knee contusion for which no edema was noted. (Res. Ex. 8). The records indicated that the contusion was sustained during a May 2014 softball game and Petitioner testified that although she mentioned it to her PCP at her regular visit, it was not the reason she sought treatment that day. (Res. Ex. 8). In fact, given that the softball incident occurred in May 2014, it is reasonable to believe that had it caused severe pain or disability Petitioner would have sought treatment sooner. Furthermore, none of the records reflect ongoing pain or disability relating to Petitioner's right ankle or knees before the September 2, 2014 work injury. Therefore, Petitioner did provide evidence that her condition of ill-being, with relation to her right ankle and bilateral knees, is causally related to the September 2, 2014 accident.

Petitioner testified that a few days after her September 2, 2014 work accident, she developed neck pain and increasingly severe headaches. On September 9, 2014, the IWIRC records show that Petitioner reported the onset neck pain and headaches. (Pet. Ex. 1, Res. Ex. 9). Petitioner testified that she did not have symptoms relating to her neck or headaches prior to the September 2, 2014 work accident. Although on cross-examination Petitioner testified and the

records from Illini Family Medicine indicate that she had previously treated for headaches in 2002, on redirect she testified that she had not received any additional treatment for, nor experienced additional occurrences of chronic headaches after 2002. Both the medical records and Petitioner's testimony support that she did not have any previous occurrences of or treatment for neck pain. Therefore, Petitioner did provide evidence that her condition of ill-being, with relation to her neck pain and headaches, is causally related to the September 2, 2014. It should also be noted that the condition of ill being has been diagnosed as cervicalgia by Dr. Snyder. There are no findings to show any radiculopathy. The radiologist who performed the cervical x-ray on December 12, which is the last medical note in the record referring to the neck, found mild osteoarthritis.

The Arbitrator adopts the above findings of material facts in support of the following conclusions of law:

In support of the Arbitrator's Decision relating to 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?," the Arbitrator reaches the following legal conclusions:

The facts establish that Petitioner has continued to receive treatment for ongoing knee pain, neck pain and headaches. Although Dr. Hauter at IWIRC released Petitioner to return to work without restrictions and indicated that any ongoing symptoms were not related to her work injury, Respondent's own IME overturns this. In his November 18, 2014 IME report, Dr. Li addressed Petitioner's right ankle, right knee and left knee. Dr. Li diagnosed Petitioner as status post right ankle sprain, left knee contusion, and right knee contusion. Dr. Li indicated further therapy for the right knee would be appropriate as her right knee had not reached MMI. Dr. Li stated that there was no previous preexisting cause of her problems. Most importantly, Dr. Li stated that all medical treatment to date had been reasonable necessary and related to the work

injury. (Res. Ex. 6). Following Dr. Li's statement of causal connection between Petitioner's ongoing right knee pain and her work injury of September 2, 2014, an MRI of Petitioner's right knee revealed prepatellar bursitis with patellar tracking abnormality with Grade 2 chondromalacia, a tear of the midportion of the posterior cruciate ligament, and a partial tear at the origin of the popliteus tendon with ligamentous strain at the origin of the popliteus fibular ligament. (Pet. Ex. 3). Dr. Snyder, Petitioner's treating physician, has recommended continued treatment for Petitioner's neck pain and headaches, including an MRI, and has referred Petitioner to Midwest Orthopedics for further evaluation of her right knee based on the results of the November 21, 2015 MRI. Therefore, Petitioner did provide evidence that the medical services provided by Illini Family Medical, Unity Point Health, and IPMR were reasonable and necessary. As there are still outstanding bills from Illini Family Medical, Unity Point Health, and IPMR, Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

The Arbitrator adopts the above findings of material facts in support of the following conclusions of law:

In support of the Arbitrator's Decision relating to K, "<u>Is Petitioner entitled to any prospective medical care?,</u>" the Arbitrator reaches the following legal conclusions:

Petitioner seeks authorization for a referral to Midwest Orthopedics for right knee consultation. Petitioner testified that as of the date of hearing, she continues to experience right knee pain, which is aggravated by going up and down stairs. Petitioner's treating physician, Dr. Snyder at IPMR previously ordered an MRI which revealed right knee prepatellar bursitis with patellar tracking abnormality with Grade 2 chondromalacia, a tear of the midportion of the posterior cruciate ligament, and a partial tear at the origin of the popliteus tendon with ligamentous strain at the origin of the popliteus fibular ligament. (Pet. Ex 3, 5). Petitioner

testified that Dr. Snyder has referred her to Midwest Orthopedics for further evaluation and treatment and possible surgical consultation. Petitioner has presented evidence that further evaluation of her right knee is reasonable and necessary. Therefore Petitioner's request for continued right knee treatment is granted.

Petitioner also seeks authorization for an MRI of her neck and continued treatment with Dr. Snyder at IPMR due to continued neck pain and headaches. Petitioner testified that at her January 2015 visit, Dr. Snyder ordered an MRI of her cervical spine. No records were offered to support that assertion. No findings are in the record suggesting the petitioner has anything more than some mild osteoarthritis of the cervical spine. Under the circumstances, the Arbitrator finds the Petitioner has not met her burden of proof that a cervical MRI represents reasonably necessary treatment under Section 8 (a) of the Act.

Petitioner also seeks authorization continued treatment with Dr. Snyder at IPMR including additional epidural steroid injections to her neck for her continued neck pain and headaches. In her handwritten note of December 9, 2014, Dr. Snyder verifies that a cervical injection was performed and orders more physical therapy. (PX 5) Petitioner testified that the previous injections improved her neck pain somewhat and that the severity of her headaches had decreased. As the first three injections have improved her symptoms and offered some relief, Petitioner has presented evidence that continued injections would be reasonable and necessary. Therefore, Petitioner's request for continued treatment with Dr. Snyder at IPMR, including additional injections for her neck and physical therapy, is granted.

The Arbitrator adopts the above findings of material facts in support of the following conclusions of law:

In support of the Arbitrator's Decision relating to L, "<u>What temporary benefits are in dispute (TTD)?</u>" the Arbitrator reaches the following legal conclusions:

Petitioner was off work for her right ankle and bilateral knee pain from September 2, 2014 through January 21, 2015. On September 2, 2014, Dr. Hauter placed Petitioner on sedentary duty restrictions, which Dr. Hauter's records further indicate Petitioner's employer could not accommodate. (Pet. Ex. 1, Res. Ex. 9). Respondent claims Dr. Hauter released Petitioner to return to work without restrictions on September 25, 2014, but there are multiple issues with the claimed release. First, the work status note authored by Dr. Hauter on September 25, 2014 originally had checked the box labeled "return without restrictions," but the box was scribbled out and Dr. Hauter wrote "unable to return to work until cleared by PCP." (Pet. Ex. 1). Furthermore, Petitioner testified that due to continued pain in her knees she followed up with her primary care physician as instructed, and Petitioner's primary care physician indicated she should remain off work pending evaluation by Dr. Snyder at IPMR. (Pet. Ex. 4).

On October 30, 2014, Dr. Snyder indicated Petitioner should remain off work for an additional 3-4 weeks pending re-evaluation. (Pet. Ex. 5, Res. Ex. 5). On November 17, 2014, Dr. Snyder released Petitioner to return to work with restrictions of no lifting or carrying greater than 15 lbs. and assistance to carry items up and down stairs. (Pet. Ex. 5). Petitioner testified her restrictions were not accommodated and she did not return to work. On January 21, 2015, Dr. Snyder released Petitioner to return to work without restrictions. (Res. Ex. 11). Based on the findings regarding causal connection for Petitioner's right ankle and right and left knee, Petitioner has presented credible evidence that her right ankle and bilateral knee injuries are related to her September 2, 2014 work accident. Furthermore, Dr. Li's IME report made it clear that Petitioner's right ankle and bilateral knee injuries were directly related to her work injury on September 2, 2014. Therefore, Petitioner is entitled to TTD from September 2, 2014 until January 21, 2015, a total of 22 and 6/7 weeks.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt	☐ 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

Deborah Sillman,

Petitioner,

vs.

15IWCC0906

NO: 10 WC 18749

City of Chicago,

Respondent.

DECISION AND OPINION ON REMAND

This cause comes before the Commission pursuant to the Remand Opinion and Order of the Circuit Court of Cook County, Law Division, Tax and Miscellaneous Remedies Section, entered March 5, 2015.

Petitioner appealed the June 18, 2013 19(b) Decision of Arbitrator Kane finding that Petitioner failed to prove she sustained accidental injuries arising out of and in the course of her employment on October 15, 2009, that Petitioner's current condition of ill-being is not casually related to the alleged accident, and denying compensation. Relying on the opinions of Respondent's examiners, Dr. Wehner, an orthopedic and spine surgeon, Dr. Ghanayem, an orthopedic and spine surgeon, and Dr. Noren, a pain specialist, Arbitrator Kane found Petitioner had significant long-standing cervical, thoracic and lumbar spine chronic pain syndrome well-documented in treating records of Dr. Joseph and Chiropractor Regan from treatment from 2002 through October of 2009. The Arbitrator further found that that Dr. Joseph, Petitioner's treating physician, noted that on October 19, 2009, four (4) days after the alleged October 15, 2009 injury, Petitioner had severe worsening of her neck and upper back pain since her work-related injury on November 4, 2002, increasingly disabling and more severe even with less strenuous tasks. Dr. Joseph's office visit note of October 19, 2009 failed to mention any other work-related injury other than Petitioner's prior work injury of November 4, 2002. The Arbitrator concluded Petitioner failed to prove she sustained a compensable accident on October 15, 2009, and that there was no causal connection between Petitioner's present condition of ill-being and the alleged accident, rendering all other issues moot.

On July 3, 2013 Petitioner filed a Petition for Review of the Arbitrator's decision, raising issues of accident, notice, causal connection, medical expenses, TTD, and penalties and fees, and arguing that Petitioner sustained an aggravation and acceleration of her pre-existing cervical and myofascial condition and a new injury to her lumbar spine on the date of accident while lifting a bag or mortar.

The Commission, in a July 14, 2014 Decision, unanimously affirmed and adopted the decision of the Arbitrator. Petitioner sought review of the Commission's Decision and Opinion on Review.

In a March 5, 2015 Order, the Circuit Court of Cook County remanded the decision of the Commission "for the purpose of weighing the evidence to determine whether the 2009 Accident aggravated Employee's preexisting condition." The Court stated that within the Commission's decision "the only reference to a preexisting injury in the analysis is contained in the first paragraph of page eleven (11) of the adopted decision stating '...[Employee's] pain on October 15, 2009 was a manifestation of her pre-existing illness...'" The Court further stated that "this sentence alone, though reasoned by the Commission, does not weigh the evidence as to Employee's argument that the 2009 Accident aggravated a preexisting injury. The Commission failed to both address Employee's claim that the 2009 Accident aggravated Employee's preexisting condition, and make a permissible inference on the matter."

Pursuant to the Court's March 5, 2015 Remand Order, the Commission provides further addresses the Petitioner's claim that her October 15, 2009 alleged accident aggravated her preexisting condition. First the Commission addresses the Court's statement that "the only reference to a preexisting injury in the analysis is contained in the first paragraph of page eleven (11) of the adopted decision stating '...[Employee's] pain on October 15, 2009 was a manifestation of her pre-existing illness...'"

A review of the Commission decision indicates numerous references to a preexisting injury analysis:

1) page 8, paragraph 1- "The Arbitrator finds that Petitioner failed to prove that she sustained a compensable accident and/or aggravation of her pre-existing condition on October 15, 2009;"
2) page 8, paragraph 2- "The following is the basis of the Arbitrator's opinion: 1) Petitioner had been treating for the same pain complaints since 2002; 2) there are no objective findings to support an accident or aggravation on October 15, 2009; and, 3) the opinions of Dr. Wehner, Dr. Ghanayem and Dr. Noren are more credible than those of Chiropractor Regan and Dr. Joseph;"
3) page 9, paragraph 4, "The Arbitrator finds that here are no objective findings to support an accident and/or aggravation of Petitioner's pre-existing condition on October 15, 2009;"
4) page 10, paragraph 4, "In a report dated October 19, 2009, Dr. Joseph indicated that Petitioner had severe worsening of her neck and upper back pain since her work-related injury on November 4, 2002. The doctor noted that Petitioner's pain was increasingly

disabling and more severe with less strenuous tasks. There was no mention of any other work-related accident;"
5) page 10, paragraph 3, "The Arbitrator finds Dr. Ghanayem's opinion credible that Petitioner's subjective complaints of back pain were subjective, longstanding and pre-dated the alleged work injury of October 15, 2009. Although the doctor agreed that Petitioner had manifestations of her pain symptoms at work, he did not see any evidence of an injury...and concluded that there was 'no evidence of a distinct work injury causing structural changes to the integrity of her spine;'"
6) page 11, paragraph 1, "Dr. Wehner's diagnosis was chronic pain syndrome involving the cervical, thoracic and lumbar spine. The doctor opined that this was a pre-existing condition which was well-documented in the medical records by Chiropractor Regan and Dr. Joseph prior to the alleged accident of October 15, 2009; Petitioner's episode of back pain on October 15, 2009 was a manifestation of her pre-existing illness; there was no casual connection between Petitioner's condition of ill-being and the alleged work accident; work did not cause her chronic pain syndrome; and the alleged incident did not cause any change in Petitioner's condition."

So that the record is clear, the Commission has reviewed all of the evidence and has concluded that the Decision of the Arbitrator was more than sufficient in its explanation of the Commission's view of the evidence. The Court's concerns have been duly noted and considered.

Though Petitioner may aver that the Decision of the Commission on Review does not do justice to her arguments relative to an aggravation of a pre-existing condition, there can be no doubt that the Commission has considered and soundly rejected this argument. Petitioner's argument is undone by the records of her treating physician, Dr. Joseph. He did not attribute the problems about which the Petitioner complained to any work accident in 2009. His records note that this was a continuum of a myriad of problems that cascaded from 2002 until 2009.

The Commission trusts that the Court will recognize that the Commission has considered all of the Petitioner's arguments regarding an alleged accident and/or aggravation and rejected same. It is hoped that this Decision on Remand will allay any concerns that the Court may have regarding the Commission's consideration of the record and adoption of the Arbitrator's Decision as its own.

Pursuant to the Court's Remand Order, and upon receipt of the record of proceedings in this matter, the Commission finds the Arbitrator properly weighed the evidence to determine whether the 2009 accident aggravated Petitioner's preexisting condition, and hereby affirms and adopts the Arbitrator's decision, denying compensation based upon Petitioner's failure to prove she sustained an accidental injury arising out of and in the course of her employment on October 15, 2009, for the reasons stated therein and further expounded upon herein.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 18, 2013, is hereby affirmed and adopted.

15IWCC0906

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

No bond is set by the Commission based upon the denial of compensation herein. 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: DEC 10 2015
KWL/kmt
R- 12/08/15
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Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gregory Fry,
Petitioner,

vs.

NO: 14 WC 00735

United Parcel Service,
Respondent,

15IWCC0907

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical, prospective medical 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 21, 2015 is hereby affirmed and adopted.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $2,200.00. 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: DEC 10 2015

Mario Basurto

David L. Gore

Stephen Mathis

MB/mam
o:10/22/15
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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) ARBITRATOR DECISION

FRY, GREGORY
Employee/Petitioner

Case# **14WC000735**

15IWCC0907

UNITED PARCEL SERVICE
Employer/Respondent

On 4/21/2015, 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:

2553 LAW OFFICES OF JAMES McHARGUE
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CHICAGO, IL 60602

2461 NYHAN BAMBRICK KINZIE & LOWRY
FRANKLIN B SMITH
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602-4195

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)

Gregory Fry
Employee/Petitioner

v.

United Parcel Service
Employer/Respondent

Case # 14 WC 00735

Consolidated cases: _____

15IWCC0907

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 **Maria S. Bocanegra**, Arbitrator of the Commission, in the city of **Chicago, IL**, on **February 20, 2015**. 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. ☒ 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 _____

Gregory Fry v. United Parcel Service
14 WC 735

15IWCC0907

FINDINGS
On the date of accident, **11/1/13,** 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 **$60,320.00**; the average weekly wage was **$1,160.00**.

On the date of accident, Petitioner was **54** years of age, ***single*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**. Respondent is entitled to a credit of **$376.65** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, all bills claimed by the Petitioner in Arbitrator's Exhibit 1, the request for hearing form, as provided in Sections 8(a) and 8.2 of the Act. These are: Illinois Orthopedic Network - $184.35; Accelerated Rehabilitation - $2,290.00.

Respondent shall authorize and pay for the bilateral carpal and left cubital tunnel surgeries and all related care thereto as recommended by Dr. Irvin Wiesman.

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

4/20/15
Date

ICArbDec19(b)

APR 21 2015

15IWCC0907

FINDINGS OF FACT

Gregory Fry ("Petitioner") testified he first began working for United Parcel Service ("Respondent") on 5/23/78 and did so on 11/1/13. For approximately 21 years, he worked as a semi-driver, covering vacations and miscellaneous time slots for other employees. Job duties included taking loads or empties from one location to another, sometimes unloading stuff off of the trailers to the customers and operation of the semi itself. The type of semi and trailer varied depending upon the load. Most of his driving was inner city and highway driving. He worked 5 days per week, averaging 10.5 hours per day and at least half of day was spent driving.

Petitioner stated operation of his work semi included operation of shift gears, operation of the break lever, operation of the steering wheel and operating two key computers. In shifting, Petitioner described the part as a lever with flip switches on the lever. To operate, one must flip switches and move the lever, depending on the gear. As one moves up in gears, one must move the lever and the switch. Petitioner testified he uses his right hand and fingers to shift gears and shifts more than 100 times per work day.

In operation of the break lever, he described it as located at either the dashboard or near the steering column. Petitioner used his right hand to reach out and pull down with force on the lever when approaching things like stop lights or slowing down. Depending on the trailer, the break lever locks down in place or he must hold it down. He testified he operates the break lever at least 20 times per day.

In maneuvering a steering wheel, he stated one could either go hand over hand to turn, say, 90 degrees or could use one hand entirely and turn the wheel. While turning the wheel, Petitioner described his wrists as bent forward anywhere from 45-90 degrees. Driving was greater in the city than on the highway.

In describing working with computers, Petitioner stated there were two – one permanently stationed inside the cab of the tractor and one he manually held to input information. With the hand held, petitioner uses his right hand and fingers to input information using the keyboard and the other to grip and hold the computer. In using the tractor's stationary computer, Petitioner again uses his right hand to input information using the computer's keyboard.

Petitioner testified that as he worked for Respondent in November 2013, he began noticing numbness and tingling in his left hand, in his pinky/little finger and some of his other fingers. At that time, he did not have symptoms in his right hand.

On 11/25/13, Petitioner presented to Dr. Holtkamp complaining of left hand and finger numbness, tingling and pain located in the small and ring finger radiating into all fingers, particularly while holding a steering wheel. Px1. The numbness was described as occurring mostly during the day and causing trouble sleeping. Petitioner's past medical history was significant for acid reflux, high blood pressure and asthma. Left sided physical exam showed no

swelling, atrophy. Left grip was diminished on left compared to right and compression; Phalen's and Tinel's were all negative. However, left Phalen's elbow flexion test was positive. Right side testing showed normal appearance with positive compression test, positive Phalen's test, positive Phalen's elbow flexion test and negative Tinel's. Dr. Holtkamp diagnosed cubital and carpal tunnel syndromes and sent Petitioner for bilateral upper extremity EMG/NCV testing.

On 11/27/13, EMG/NCV results were positive for bilateral median mononeuropathies at the wrist, such as carpal tunnel, severe in nature. Maximal conduction loss was noted at the distal crease of the wrist progressing into the palm bilaterally. Px1, Px2.

On 12/11/13, Petitioner followed up with Dr. Holtkamp. He was now complaining of bilateral hand numbness and tingling. Petitioner indicated that holding or gripping made numbness worse with activity, night pains continued to wake him, symptoms were made worse with gripping his steering wheel and numbness and tingling was now extending into the 4th and 5th fingers bilaterally while driving. Dr. Holtkamp noted Petitioner continued to work normal duty at his job. Dr. Holtkamp, noting the severe nature of Petitioner's bilateral carpal tunnel, recommended open carpal tunnel release. The doctor noted that the median nerve could take as long as 12 months to heal with some expected permanency. The doctor held surgery until after "WC approval."

On 12/26/13, Petitioner testified he was sent by Respondent to Alexian Brothers. Px3. Petitioner appears to have completed a hand written questionnaire, citing numbing of fingers and both hands and that it was work related. The attending nurse noted constant numbness in both hands. The history documented included numbness and tingling sensation to the 4th and 5th digits bilaterally for the past month. James Erl, a nurse practitioner, conducted a physical exam and concluded there was no reproducible pain, numbness or tingling with any maneuvers and found negative Tinel's and Phalen's. He concluded that the exam was not consistent with carpal tunnel but did diagnose "intermittent bilateral hand paresthesias." Petitioner was referred to orthopedics, discharged and released to full duty work.

On 2/19/14, Petitioner returned to Dr. Holtkamp. Px1. Chief complaint included left hand pain, left thumb pain. The doctor noted she had submitted to workers compensation for approval of OCTR (open carpal tunnel release). Petitioner's hand continued to fall asleep while driving but he was no longer experiencing night pain. Tenderness was noted over the left A1 pulley near the left thumb. Dr. Holtkamp administered a trigger point injection to the left thumb. The doctor diagnosed carpal tunnel syndrome and left trigger finger. Petitioner continued to work in his normal capacity.

On 4/9/14, Dr. Holtkamp noted that Petitioner was doing worse and that the left and the right hand were unchanged. Physical exam showed normal appearance, diminished strength on left, greater than right. Left and right hand testing showed positive compression test and positive Phalen's. The doctor diagnosed severe bilateral carpal tunnel and noted that Petitioner's symptoms were worsening and aggravated by work activities. Cock up splints and physical therapies were prescribed.

On 4/19/14, Petitioner began physical therapy with Accelerated Rehab. Px4. Subjectively, Petitioner reported that numbness and tingling had begun in the 5th digit but that it had since traveled to all fingers in the hand bilaterally. He complained of constant numbness and tingling bilaterally, left greater than right. He reported that holding a steering wheel, carrying a lunch box, shaking hands with people and opening doors make symptoms worse. He reported driving worsened his pain immediately. Functional limitations noted that Petitioner constantly held the steering wheel to drive his truck at more than 200 times per day. Tinel's, Phalen's and Finkelstein's testing were all negative. Grip strength testing was lower on left and key pinch testing generally was lower on left compared to right. Flexion and extension were diminished bilaterally. Accelerated assessed bilateral "hand paresthesias consistent with Dr. Holtkamp's diagnosis of carpal tunnel syndrome." Additional therapy was prescribed, which continued on 4/21, 4/29, 4/30, 5/5 and 5/6. During this time, Accelerated noted that Petitioner was getting worse and was not performing home exercises as he did not believe it helped. Petitioner stated it helped a little bit but was not that noticeable. Accelerated also noted continuing tingling down bilateral upper extremities into hands and along plantar sides of thumbs. Functional limitations still included 200 plus times per day of holding a steering wheel. During this time, Petitioner continued to work full time and in his normal capacity.

On 6/13/14, Petitioner was evaluated by Dr. Ramsey Ellis at the request of Respondent. Rx1. The doctor conducted a review of medical records, obtained a history from Petitioner, performed a physical exam and answered certain questions put to him by Respondent. The review of records included a Liberty Mutual UR request which was deemed "non-contributory," the application for adjustment of claim alleging repetitive trauma, a job description of a Feeder Driver, medical notes from Dr. Holtkamp, Alexian Brothers, Dr. Grindstaff, records from Medical Review Institute of America which were also determined "non-contributory," a utilization review letter to Dr. Holtkamp and therapy notes from Accelerated.

Petitioner presented to Dr. Ellis complaining of bilateral hand numbness and tingling that started in the fall of 2013. Petitioner also complained of some nighttime waking, some weakness and pain with gripping the steering wheel of his work truck. Physical exam showed full range of motion about the hands and wrists, motor strength was 5/5 and Tinel's and Phalen's testing were negative. Dr. Ellis diagnosed bilateral carpal tunnel per the EMG/NCV study. The doctor stated that although Petitioner showed no "classic findings" of carpal tunnel it "could be due to the severe nature of his carpal tunnel." The doctor also opined that he could find no evidence that Petitioner's job contributed to the development of carpal tunnel syndrome because of a lack of use of vibratory or hand held tools and a lack of highly repetitive forceful gripping coupled with flexion/extension of the wrists. Dr. Ellis concluded Petitioner was capable of unrestricted work.

On 7/19/14, Petitioner sought a second opinion with Dr. Irvin Weisman of Illinois Orthopedic Network. Px5. At the first visit, Petitioner complained of bilateral upper extremity pain and weakness. Dr. Weisman noted a history of "prolonged periods of forceful gripping on the steering wheel as well as elbows that are constantly flexed. . ." along with progressive numbness. Physical exam was significant for Tinel's sign bilaterally along the ulnar nerve and

positive Tinel's, Phalen's and compression testing. The doctor assessed bilateral cubital and carpal tunnel syndrome, left greater than right. Dr. Weisman opined Petitioner had exhausted conservative care and recommended a left ulnar decompression and left median nerve decompression in the carpal canal. He opined that he believed that Petitioner's work and symptoms of cubital tunnel are associated with the constant flexed elbow while driving and the forceful gripping can aggravate symptomology, causing the median nerve to become symptomatic within the carpal canal. In short, the doctor believed the conditions to be work-related. Petitioner was released to unrestricted duty. Dr. Weisman testified via evidence deposition regarding his opinions in this matter. The doctor explained causes and symptoms of both cubital and carpal tunnel syndromes and that he believed Petitioner suffered from both based upon his work activities, his history and clinical presentation as well as EMG testing. The doctor testified that he believed Petitioner was in need of surgery.

On 9/5/14, Dr. Ellis conducted a record review at the request of Respondent. Rx2. Dr. Ellis disagreed with Dr. Weisman's cubital tunnel diagnosis, stating that when he performed testing on Petitioner it failed to show positive Tinel's or compression over the elbow. The doctor also disagreed with Dr. Weisman that the carpal tunnel was work-related, stating the job activities did not involve vibratory tools, hand-held tools or prolonged repetitive extension and flexion of the wrists coupled with forceful gripping. The doctor continued to state that Petitioner's carpal tunnel needed work up but it was not work related and could therefore return to work full duty.

Dr. Ellis testified that he did not believe Petitioner suffered from cubital tunnel syndrome based on his review of records and his physical examination. The doctor did believe Petitioner suffered from bilateral carpal tunnel syndrome but that it was unrelated to his job. In support, he testified carpal tunnel is typically associated with highly repetitive flexing and extension of the wrist couple with forceful gripping. He did not believe Petitioner's job to be highly repetitive in flexion, extension nor with forceful gripping based on Petitioner's job description.

As of trial, Petitioner's hands get tingling through both hands up his arm. He also notices that he gets resistance when he tries to stretch his fingers out. He says his symptoms go as far up as his elbow on the left side. He has not noticed anything going up his right arm. He says he currently y doesn't not take any medications. Dr. Holtkamp prescribed a brace for sleeping for both arms. He also notices symptoms keep him up at night. During the day he notices symptoms when driving, gear shifting and holding items. For work, he has not attempted to modify his work habits.

Petitioner stated he did not have treatment before November 2013, he is not diabetic, he has never operated a jackhammer and that he was previously diagnosed with high blood pressure approximately 15 years ago and does take medication for it.

On cross examination, Petitioner acknowledged he did not drive constantly in a work day and that he does exit his semi multiple times per day. He stated he could not recall any specific incident that precipitated or caused his symptoms. He also acknowledged he has used drills,

basic tools and pipe wrenches to work properties he owns. He stated he had been working on his properties since approximately 1986.

Patrick Roberts testified on behalf of Respondent. Employed for nearly 34 years for UPS and as an on road supervisor since 1994, Roberts testified he was familiar with the vehicles driven by Petitioner and familiar with Petitioner's job duties as a Feeder Driver. Roberts testified Respondent utilizes three types of tractors: Mac, International and Sterling, each of which is equipped with standard power steering, steering wheels that both tilt and are telescopic, seats that are adjustable forward and backward and whose suspension system consists of an air component mechanism allowing the seat to raise and lower. Vehicles are maintenance every 30,000 miles or year, whichever comes first. If a driver notices maintenance or mechanical issues, they are trained to prepare a vehicle inspection report at which time the tractor is taken out of service for possible inspection and/or repair.

In describing a typical day for a Feeder Driver such as Petitioner, Roberts stated it includes driving materials to dock, taking empty trailers out to various accounts and leaving it there and bring another trailer out, making deliveries with loaded skids and unloading skids at various customer locations. In this capacity, a driver would exit his tractor and wait behind the trailer as skids are unloaded. On average, a feeder driver would drive no more than an hour at a time with distance as short as fifteen minutes and shorter routes being five to ten minutes. Roberts stated these tasks and duties would be typical for someone like Petitioner.

On cross, Roberts admitted he is salaried and receives annual stock based on performance. Part of his performance is measured by safety, which would include any work injury or accident reports. Although Roberts himself has never been a feeder driver, he testified he has done ride alongs with Feeder Drivers as it is required at least once a year. He could not recall the last time he rode along with Petitioner.

CONCLUSIONS OF LAW

(C) Did An Accident Occur That Arose Out Of And In The Course Of Petitioner's Employment By Respondent?

Having considered all testimony and evidence submitted at trial, the Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that he sustained a compensable accident on 11/1/13 and arising out of and in the course of his employment with Respondent when he first began noticing numbness and tingling in his hands. Petitioner credibly testified that he had worked as a semi driver for Respondent for the last 21 years. He candidly described in great detail the nature of his duties, including driving semis for part of his 10.5 hour work day, making deliveries to various accounts, loading, unloading and exchanging trailers. He acknowledged that while he drove various types of semis, the cab was set up more or less the same. In this regard, he testified extensively on performing several tasks he believed were repetitive, namely, shifting the gear, steering the driver's wheel and operation of the break lever. He testified he extensively used his right hand, fingers and wrist to perform work related

activities such as gripping and grapping levers, gears, gripping and pinching switches, grabbing and squeezing levers, hand held computers and pushing keys, gripping, grabbing, holding a steering wheel with both hands and both wrists and rotating the steering wheel. The Arbitrator finds that Petitioner's description for each activity was candid, credible and consistent.

While the Arbitrator finds that Petitioner's activities of holding, gripping, grasping and pinching the steering wheel, the break lever and the gear shifter all have played a role and otherwise caused or contributed to Petitioner's repetitive trauma, the Arbitrator notes that Petitioner's repetitive activity of operation of the work truck's steering wheel alone is repetitive in nature so as to result in his compensable accident.

The testimony showed that Petitioner drove a semi truck up to half of a work day, or 5-1/4 hours, whereby he used both hands and wrists to hold, grip, grab and turn the steering wheel as needed. Accelerated Rehab noted that this was constant, in excess of 200 times per day. In gripping and grabbing the steering wheel, Petitioner stated his hands and wrists were flexed forward at approximately 45 degrees. In turning the steering wheel, which was bigger than a regular passenger car steering wheel, he described grip, grab and grasp with both hands and wrists the wheel to turn in either a one handed fashion or in a hand over hand fashion. He testified he drove 5 days per week and did so for almost 21 years. From a purely quantitative analysis, the Arbitrator notes Petitioner has operated his work truck steering wheel for more than 28,000 hours over the course of his employment with Respondent. Petitioner's doctors attributed the steering wheel activity and operation as the source of his symptoms. The Arbitrator infers that Petitioner described the same or similar steering wheel operation to his doctors. The Arbitrator is persuaded that this constant steering wheel holding, gripping, grabbing and grasping, along with wrist flexing is sufficiently repetitive to result in Petitioner's accident. See, *Moeller v. Nascote Indus.*, 06 WC 8135, 07 IWCC 358 (2007); *Capps v. USF Holland*, 98 WC 65656, 00 IIC 0346 (2000).

The Arbitrator has considered the testimony of Respondent witness Roberts and while it certainly was credible, it was so only to the extent Roberts testified as to the power steering features and mechanical issue reporting. Roberts did not directly contradict Petitioner's testimony on the nature of the handling of the steering wheel as it pertained to Petitioner's experience. Further, no doctor mentioned anything with respect to power steering or mechanical issues affecting the gripping, grasping, wrist flexing involved with operation of a steering wheel. In this regard, the Arbitrator does not find Roberts' testimony helpful on the issue of accident.

(F) Is Petitioner's Current Condition Of Ill-Being Causally Related To The Injury?

The Arbitrator concludes that Petitioner's current condition of ill-being, namely his left cubital tunnel syndrome, bilateral carpal tunnel syndrome and left trigger finger are causally related to the injury.

a. Left Cubital Tunnel Syndrome

Regarding Petitioner's left cubital tunnel diagnosis, Dr. Weisman testified that in classic presentation, one experiences numbness and tingling along the 4th (ring) and 5th (small) fingers, along with some grip weakness and possible symptoms upward into the upper affected extremity. In this case, Petitioner presented to both Drs. Weisman and Holtkamp with numbness and tingling bilaterally in small and ring fingers and while holding steering wheel. Both doctors diagnosed cubital tunnel. Positive Phalen's and Tinel's were noted at the elbow. Alexian noted numbness and tingling in 4th and 5th digits. Dr. Weisman diagnosed Petitioner with left cubital tunnel syndrome and concluded that his symptoms of cubital tunnel are associated with the constant flexed elbow while driving and the forceful gripping. He opined that Petitioner's repetitive use of the work truck steering wheel caused or contributed to his left cubital tunnel syndrome. The Arbitrator finds the opinions of Dr. Weisman credible and consistent with Petitioner's documented complaints in this regard. Finally, Petitioner also testified that as of the date of trial, he continues to experience bilateral symptoms of numbness and tingling, although only the left currently experiences symptoms up to the elbow. The Arbitrator finds these continued complaints consistent with what Dr. Weisman described as classic symptoms of cubital tunnel. In rejecting Dr. Ellis' opinion on this condition, the Arbitrator notes that Dr. Ellis stated that positive findings could wax and wane and negative testing could be the result of the severity of the condition itself. In this regard, the Arbitrator believes Petitioner's left cubital tunnel symptoms wax and wane and were present the date of trial. As such, this condition is causally related to Petitioner's accident.

b. Bilateral Carpal Tunnel Syndrome

Regarding bilateral carpal tunnel, EMG/NCV testing was positive for bilateral carpal tunnel. Subjectively, Petitioner's complaints of bilateral hand numbness, tingling, difficulty holding, gripping, grabbing, turning and otherwise operating his work truck's steering wheel and nighttime waking were all consistent with bilateral carpal tunnel. Further, that Petitioner presented with left greater than right symptoms suggests that his clinical presentation was consistent with his description that he used both hands to steer the driver's wheel but mostly used the right to control things like the break lever and gear shift. It can be reasonably inferred that Petitioner uses his left hand and wrist primarily if not only on the steering wheel. Objectively, Petitioner's Phalen's, Tinel's and compression testing were mostly positive. To the extent they were negative, the Arbitrator notes that Petitioner's condition was considered severe in nature per the EMG/NCV and noted to be extending into the palms. To the Arbitrator, this indicates Petitioner's numbness and tingling is so severe and/or constant to the point that there is nothing to "reproduce" in this testing because the symptom(s) is already presents thereby preventing a positive result. This similar conclusion was reached by Dr. Weisman in his deposition when he explained that if one is having a "good day" in terms of symptoms, you would expect to see positive Tinel's and positive Phalen's. This is also the similar conclusion reached by Dr. Ellis when he noted that although Petitioner showed no "classic findings" of carpal tunnel it could be due to the severe nature of his carpal tunnel. Rx1. Dr. Holtkamp diagnosed bilateral carpal tunnel syndrome and opined that Petitioner's symptoms were aggravated work activities and the

bilateral carpal tunnel syndrome was causally related to work. Similarly, therapists at Accelerated assessed that Petitioner presented with "bilateral hand paresthesias consistent with Dr. Holtkamp's diagnosis of carpal tunnel syndrome."

The Arbitrator acknowledges that Alexian's nurse practitioner concluded that Petitioner's symptoms were not consistent with carpal tunnel syndrome and diagnosed bilateral hand paresthesias. In rejecting this assessment, the Arbitrator notes that this assessment is at odds with the opinions of therapists at Accelerated and those of Drs. Holtkamp, Ellis and Weisman, all of whom agree Petitioner suffers from bilateral carpal tunnel. Of note, Dr. Ellis testified that the Alexian note was not significant to him.

The Arbitrator has also considered and rejects the ultimate conclusion of Dr. Ellis that Petitioner's carpal tunnel is not work related based upon his understanding of Petitioner's job duties. As an initial matter, the Arbitrator notes that there is no indication that the job description reviewed by and relied on by Dr. Ellis was reviewed with Petitioner for accuracy, no indication that he asked Petitioner probing questions in relation to the job description or that Dr. Ellis asked Petitioner to describe how he believed the steering wheel caused or led to his conditions. The Arbitrator is not persuaded that Petitioner failed to elaborate with Dr. Ellis – the doctor was paid to conduct a thorough exam and was in control of the process. To the end, Dr. Ellis failed to obtain a complete history from Petitioner of all of his work duties. In repetitive trauma claims, causal connection is normally established or rebutted by expert medical testimony. A medical expert's opinion must be based on a correct understanding of the Petitioner's repetitive physical activity alleged to cause the trauma. *Allen v. Pace Sub. Bus Svcs.*, 06 WC 7488, 11 IWCC 0129 (2011).

Dr. Ellis concluded that Petitioner's bilateral carpal tunnel was unrelated due to the lack of repetitive flexion and extension of the wrists coupled with a lack of forceful grasping. However, Petitioner's testimony regarding the operation and control of his work truck steering wheel was that he used both hands to hold, grip and otherwise grab the wheel. He used his wrists in a flexed position to hold, grip, grab and turn the wheel. Accelerated noted this was in excess of 200 times per day. Petitioner testified he spent more than half the day driving and had done so for nearly 21 years. The Arbitrator finds that this evidence points to the repetitive flexion, extension and forceful grasping Dr. Ellis was looking for. The Arbitrator finds and adopts the medial opinions of Drs. Holtkamp and Weisman as more persuasive than those of Dr. Ellis.

The Arbitrator also notes that there is no evidence that any prior conditions caused or contributed to Petitioner's conditions, that Petitioner's conditions were idiopathic in nature, that Petitioner suffered from metabolic or co morbidities that caused or contributed to his conditions. Further, no doctor in this case indicated Petitioner's work on his rental properties caused or contributed in any way to the conditions stated herein. In repetitive trauma claims, a claimant must show that the injury was work related and not the result of a normal degenerative aging process and not the result of some other, non-work-related, condition. *Allen v. Pace Sub. Bus*

Svcs., 06 WC 7488, 11 IWCC 0129 (2011). Therefore, Petitioner's bilateral carpal tunnel is causally related.

c. Left Trigger Finger

The Arbitrator concludes Petitioner's left trigger finger is causally related to his work injury. Evidence showed Petitioner complained of numbness and tingling in all fingers of the left hand, he complained of decreased left hand grip strength and decreased strength of the entire left hand. Dr. Holtkamp diagnosed left trigger finger and indicated in her bill that its onset date was in November 2013.

(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?

Having found in favor of Petitioner on the issues of accident and causal connection, the Arbitrator concludes that the medical services provided to Petitioner have been reasonable and necessary to treat or otherwise cure Petitioner of bilateral carpal tunnel, bilateral cubital tunnel syndrome and left trigger finger and further that Respondent has not yet paid all appropriate charges for this reasonable and necessary medical services. The evidence shows that Petitioner has attempted to exhaust all conservative care to obtain relief and has failed in this regard. Drs. Holtkamp, Weisman and Ellis all believed that Petitioner's carpal tunnel syndrome had ran its course and that he was in need of further care. Respondent shall pay directly to Petitioner reasonable and necessary medical services, pursuant to the medical fee schedule, all bills claimed by the Petitioner in Ax1, as provided in Sections 8(a) and 8.2 of the Act. These are: Illinois Orthopedic Network - $184.35; Accelerated Rehabilitation - $2,290.00.

(K) Is Petitioner Entitled To Any Prospective Medical Care?

Having found in favor of Petitioner on the issues of accident and causal connection, the Arbitrator concludes that Petitioner is entitled to prospective medical care in the form of bilateral carpal tunnel releases and a left ulnar nerve decompression or anterior transposition as previously recommended by Drs. Holtkamp and Weisman. Px6:16-17. Respondent is ordered to approve, authorize, provide and otherwise pay for Petitioner's bilateral carpal tunnel releases and left ulnar decompressive or anterior transposition surgery, along with any and all related medical care thereto, including but not limited to pre and post operative care as recommended by Dr. Weisman.

ARBITRATOR SIGNATURE 4/20/15 **DATE**

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

Marcus Hayes,
Petitioner,

vs.

NO: 11 WC 31056

Christ Medical Center,
Respondent,

15IWCC0908

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 accident 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 4, 2015 is hereby affirmed and adopted.

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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: DEC 10 2015

Mario Basurto

David L. Gore

Stephen J. Mathis

MB/mam
o:10/22/15
43

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HAYES, MARCUS
Employee/Petitioner

Case# **11WC031056**

15IWCC0908

CHRIST MEDICAL CENTER
Employer/Respondent

On 2/4/2015, 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 0.06% 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:

0592 POMPER & GOODMAN
CAROLINE WATSON
111 W WASHINGTON ST SUITE 1000
CHICAGO, IL 60602

2461 NYHAN BAMBRICK KINZIE & LOWRY
KAREN A HAARSGAARD
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

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

MARCUS HAYES,
Employee/Petitioner

Case # **11 WC 31056**

v.

Consolidated cases:
15IWCC0908

CHRIST MEDICAL CENTER,
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 **LYNETTE THOMPSON-SMITH**, Arbitrator of the Commission, in the city of **CHICAGO**, on November 18 and December 16, 2014. 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

15IWCC0908

FINDINGS

On **5/12/2011**, 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 not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was not*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**72,627.88**; the average weekly wage was $**1,396.69**.

On the date of accident, Petitioner was **59** years of age, ***single*** 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 $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of **$0.00**.

Respondent is entitled to a credit of $1,656.33 under Section 8(j) of the Act.

ORDER

The Petitioner has not proven, by a preponderance of the evidence, that an accident occurred, which arose out of and in the course of his employment, therefore no benefits are awarded, pursuant to the Act.

Respondent shall be given a credit of $1,656.33 under Section 8(j) of the Act.

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.

FINDINGS OF FACT

Petitioner's testimony

Mr. Marcus Hayes, ("hereinafter Petitioner"), testified that on May 12, 2011, he was employed by Advocate Christ Medical Center/Hope Children's Hospital as a respiratory therapist; and was working as a floater. This role required him to help other therapists or attend someone when called or paged. He stated that his typical employment requires him to take care of the emergency room, regular rooms, pediatrics, the nursery; and that he also maintains the equipment, including life support equipment, as he usually works in the intensive care unit. Petitioner testified that he typically works a twelve-hour shift, from 6:30 p.m. to 6:53 a.m., three days per week.

He testified that on May 12, 2011, he received a phone call from either PICU or PSHU, as there was a child not doing well and they needed him to bring equipment for the patient. He stated that he was on the opposite end of the hospital and that the hospital spans two blocks. He testified that he used the third floor pedway, and had to cross the surgical pavilion area, which was busy.

Petitioner stated that as he was walking, his knee buckled. He delivered the equipment and then called the supervisor, asking to go home however, she advised him that he could not go home, as someone had already requested off. He stated that he found a chair and propped his leg up for the rest of the shift, noting swelling and pain. He was off the next day and scheduled to work the next Sunday.

Petitioner testified that on Sunday he called his manager, Tim Gardner and advised him that his leg was hurting and that he was going to the emergency room. He acknowledged that he made no mention to Mr. Gardner, of being injured at work. Petitioner testified that after he learned he would be off work, he had conversation with Trina Schuch, the department manager. He stated that when he began losing time, he was paid 40 hours of PTO time, then received a disability check, which was approximately 60% of his income.

He testified that after he saw Dr. Canaday, he was provided a leg immobilizer and his pain went away. He also attended physical therapy and then went back to his regular job. Recently, Petitioner has undergone two strenuous physicals, which he passed, in order to apply for a position with the transport and flight department.

Petitioner's treatment

The emergency room records of South Suburban Hospital for service on May 16, 2011 notes that the petitioner alleges knee pain for the past five days, that he is 6 foot 1 inch tall and 250 pounds. An evaluation by Dr. Yassin notes a history of right knee pain for the past four to five days. It also indicates that the petitioner did not recall an injury, had no tingling or numbness down the leg, was very sensitive to the touch, had no swelling, limitation of range of motion due to pain was noted; and

he had a negative straight leg raise test. X-rays were taken noting no fracture or boney abnormality. Petitioner was provided medications and instructed to follow-up with his primary care physician in two days. He was restricted from working at that point. PX2.

Petitioner was seen by his family physician, Dr. Okafor, on May 17, 2011, complaining of right knee pain. It was noted that he stands a lot on his job, had tenderness in the right knee and was seen in the emergency room. X-rays of the knee were negative and he was given an Ace bandage, crutches and Tylenol #3, which did not help. Examination was normal except for tenderness of the right knee. Diagnosis was osteoarthritis and a knee sprain. He was given Vicodin and referred to Dr. Canaday or Dr. Davis. PX6.

On May 20, 2011, Petitioner presented to Dr. Canaday, stating that approximately nine days prior; he started to feel pain in the right knee. He notes that he was working at his job, which requires him to walk a significant amount each day; and that he noticed swelling and his knee got progressively worse. He stated he went home that day and put on an Ace wrap, took Ibuprofen but only received minimal relief. He told the doctor that his knee buckles and he feels like it is giving way.

Petitioner testified that he has been getting better in terms of his pain level and the swelling has gone down, but his symptoms had not resolved. Clinical examination demonstrated calves, soft and nontender; no medial or joint line tenderness; negative patellar apprehensive sign, positive patellar grind test, and exquisite tenderness to palpation along the quadriceps tendon. He did not have any warmth or increase in temperature. His knee was kept at approximately 30 degrees of flexion and he noted an inability to extend it. He was provided a referral for an MRI. An MRI was performed on May 24, 2011, noting moderately, advanced non-specific joint effusion; and a possible partial tear of the distal quadriceps tendon with patellar contusion.

On May 26, 2011, Petitioner followed-up with Dr. Canaday, who reviewed the radiologist's report and indicated that the petitioner had a partial quadriceps rupture. He was provided an immobilizer, one crutch; and it was recommended that he use a knee brace. The doctor indicated that Petitioner could work in a sedentary capacity.

On June 9, 2011, Petitioner followed-up with Dr. Canaday and the MRI scan was reviewed noting that the quadriceps tendon was only minimally, focally torn. Petitioner indicated he was feeling great with the brace, no longer required crutches, had good active extension, still had some tenderness, but the swelling had greatly improved. Physical therapy was anticipated.

On June 30, 2011, Petitioner followed-up, noting his pain and swelling were gone. He had residual stiffness and weakness and it was recommended that he continue using the brace for another three (3) weeks. On July 21, 2011, Petitioner was re-evaluated by Dr. Canaday who noted that Petitioner was feeling very well, was able to walk without the brace in the office, but had some weakness. The doctor

recommended physical therapy, three times a week, for four weeks; and that the petitioner perform home exercises.

On July 25, 2011, Petitioner underwent physical therapy at Maximum Rehabilitation. He had a diagnosis of non-traumatic rupture of the quadriceps tendon and pain in the joint involving the lower leg. The history provided complaints of weakness, buckling and loss of motion in the right knee. Petitioner said that he had a spontaneous injury when walking at work and that after he use a knee brace and medications, he felt a lot better. He stated at this point he was able to walk for about a mile but continued to have weakness in his knee. It was recommended that he perform conditioning and strengthening exercises; and a home exercise program. Petitioner concluded his care on September 8, 2011, at which time, he noted his pain at rest was 1/10 and he had no new complaints. PX5.

Petitioner was last seen by Dr. Canaday on August 18, 2011, noting he had good range of motion, had slight weakness in the right quadriceps compared to the left, full range of motion, 4/5 strength; and he was released to return to work, without restrictions. He was told to continue home exercises and given a note to continue physical therapy, for strengthening. He was told to follow-up in the clinic on an "as needed" basis. PX9, 12.

Respondent's Witness

Ms. Trina Schuch, manager of clinical operations of the pediatric respiratory care services department, testified on behalf of Respondent. Ms. Schuch testified that she had worked for Advocate Children's Hospital, in this capacity, for many years. She is familiar with the protocols relative to reporting a work accident, which includes completion of a work injury report, which can be obtained by any employee, at any of the workstations. If assistance were required to complete the form, upon reporting the work injury to the petitioner's supervisor, which was also a requirement, the supervisor would offer such assistance.

Ms. Schuch recalled that she had a telephone conversation with the petitioner, shortly after he had advised that he would be off work for a period. She testified that the petitioner apprised her of the fact that he would be unable to work for some time. Ms. Schuch testified that she specifically inquired as to how he hurt his knee and he stated he did not know. She stated that the petitioner never reported a work related accident to her, or to the best of her knowledge, never completed an injury report. She indicated that in the event Petitioner reported a work injury, and a supervisor failed or refused to complete the appropriate paperwork, that individual does have the capacity to go to Human Resources directly. Ms. Schuch testified that she has no input in the determination of whether or not someone sustained a compensable injury, but indicated that Petitioner never advised her he sustained a work-related injury. As such, she did not complete an accident report.

CONCLUSIONS OF LAW

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v Industrial Commission*, 47 Ill.2d 144, 265 N.E. 2d 129 (1970). A petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission*, 68 Ill.2d 236, 369 N.E.2d 853 (1977). Where a petitioner fails to prove by a preponderance of the evidence that there exists a casual connection between work and the alleged condition of ill-being, compensation is to be denied. Id. The facts of each case must be closely analyzed to be fair to the employee, the employer, and to the employer's workers' compensation carrier. *Three "D" Discount Store v Industrial Commission*, 198 Ill.App. 3d 43, 556 N.E.2d 261, 144 Ill.Dec. 794 (4th Dist. 1989).

The burden is on the Petitioner seeking an award to prove by a preponderance of credible evidence all the elements of his claim, including the requirement that the injury complained of arose out of and in the course of his or her employment. *Martin vs. Industrial Commission*, 91 Ill.2d 288, 63 Ill.Dec. 1, 437 N.E.2d 650 (1982). The mere existence of testimony does not require its acceptance. *Smith v Industrial Commission*, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much his testimony might be contradicted by the evidence, or how evident it might be that his story is a fabricated afterthought. *U.S. Steel v Industrial Commission*, 8 Ill.2d 407, 134 N.E. 2d 307 (1956).
It is not enough that the petitioner is working when an injury is realized. The petitioner must show that the injury was due to some cause connected with the employment. *Board of Trustees of the University of Illinois v. Industrial Commission*, 44 Ill.2d 207, 214, 254 N.E.2d 522 (1969); see also *Hansel & Gretel Day Care Center v Industrial Commission*, 215 Ill.App.3d 284, 574 N.E.2d 1244 (1991).
The Illinois Supreme Court has held that a claimant's testimony standing alone may be accepted for the purposes of determining whether an accident occurred. However, that testimony must be proved credible. *Caterpillar Tractor vs. Industrial Commission*, 83 Ill.2d 213, 413 N.E.2d 740 (1980). In addition, a claimant's testimony must be considered with all the facts and circumstances that might not justify an award. *Neal vs. Industrial Commission*, 141 Ill.App.3d 289, 490 N.E.2d 124 (1986). Uncorroborated testimony will support an award for benefits only if consideration of all facts and circumstances support the decision. *See generally, Gallentine v. Industrial Commission*, 147 Ill.Dec 353, 559 N.E.2d 526, 201 Ill.App.3d 880 (2nd Dist. 1990), *see* also, *Seiber v Industrial Commission*, 82 Ill.2d 87, 411 N.E.2d 249 (1980), *Caterpillar v Industrial Commission*, 73 Ill.2d 311, 383 N.E.2d

220 (1978). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence, and assign weight to the witness' testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v Workers' Compensation Commission*, 397 Ill.App. 3d 665, 674 (2009).

In order for an accident to occur "in the course of," one must look to the time, place and circumstances. In order for an accident to "arise out of" one's employ, it must originate out of the employment. Risk is categorized as either distinctly associated with employment, risks personal to the employee and neutral risks. *First Cash Financial Services,* 367 Ill. App. 3d 102. Employment risks are those inherent in one's employment and universally compensated; walking does not meet this criteria.

After review of the evidence presented, the Arbitrator finds and concludes the petitioner has not proven, by a preponderance of the evidence, that he sustain an accident that occurred and arose out of his course of employment with Respondent. Having found that the petitioner has not proven, by a preponderance of the evidence, that an accident occurred, which arose out of and in the course of his employment by Respondent, all other issues are moot and will not be addressed.

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
11WC31056
SIGNATURE PAGE

Signature of Arbitrator

February 4, 2015
Date of Decision

FEB 4 - 2015

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

☒ 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

Raquel Morales,

Petitioner,

vs.

NO: 12 WC 33739

15IWCC0909

Wauconda Health Care and
Rehabilitation Centre LLC Wauconda
Health Care and Rehabilitation
Lancaster Health Group DBA Lancaster, LTD.,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b)8(a) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, medical, prospective medical, penalties 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 14, 2015 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired

15IWCC0909

without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $1,700.00. 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: DEC 10 2015

Mario Basurto

David L. Gore

Stephen Mathis

MB/mam
o:10/29/15
43

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b)/8(a) ARBITRATOR DECISION

MORALES, RAQUEL
Employee/Petitioner

Case# 12WC033739

15IWCC0909

WAUCONDA HEALTH CARE AND REHABILITATION CENTRE LLC WAUCONDA HEALTH CARE AND REHABILITATION LANCASTER HEALTH GROUP DBA LANCASTER LTD
Employer/Respondent

On 4/14/2015, 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

0491 SOSTRIN & SOSTRIN PC
33 W MONROE ST
SUITE 1510
CHICAGO, IL 60603

2542 BRYCE DOWNEY & LENKOV LLC
TIMOTHY ALBERTS
200 N LASALLE ST SUITE 2700
CHICAGO, IL 60601

15IWCC0909

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
19(b) 8(A)

Raquel Morales
Employee/Petitioner

v.

Case # 12 WC 033739

Consolidated cases: N/A

Wauconda Health Care and Rehabilitation Centre LLC; Wauconda Health Care and Rehabilitation; Lancaster Health Group DBA Lancaster, Ltd.
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 Falcioni**, Arbitrator of the Commission, in the city of **Waukegan**, on **March 26, 2015**. 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. ☒ 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 _____

15IWCC0909

FINDINGS

On the date of accident, **July 9, 2012**, 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 **$19,448.00**; the average weekly wage was **$374.00**.

On the date of accident, Petitioner was **31** years of age, ***single*** with **4** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Petitioner has not received all reasonable and necessary medical services.

ORDER

The Arbitrator orders the Respondent shall pay for and provide written authorization to the Petitioner for prospective medical care including authorization for a cartilage restoration surgical procedure to be performed by doctors at Rockford Orthopedic, as provided in Section 8(a) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $179.17 to Dr. Izquierdo/Rockford Orthopedics, $312.64 to Town Square Anesthesiology, SC, and $1,102.93 to Open Advanced MRI of Round Lake, LLC, as provided in Sections 8(a) and 8.2 of 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

April 8, 2015
Date

ICArbDec19(b)

APR 14 2015

RIDER TO THE ARBITRATION DECISION

I. INTRODUCTION

Evidence in the above-captioned claim was presented to Arbitrator Falcioni on March 26, 2015. On that date, the Arbitrator heard testimony of Petitioner Raquel Morales and received into evidence various exhibits, including the evidence depositions of Dr. Izquierdo and Dr. Tonino, numerous medical records, reports, bills and other evidentiary documents. The Arbitrator is considering the following disputed issues in connection with case:

a. Causal connection;

b. Reasonable and necessary medical bills incurred;

c. Necessity of prospective medical services.

Before making conclusions of law in connection with the case, the Arbitrator makes the following findings of fact:

II. FINDINGS OF FACT

Petitioner testified on March 26, 2015, through the assistance of a translator AS FOLLOWS: The Petitioner was employed by Respondents, Wauconda Health Care and Rehabilitation Centre LLC; Wauconda Healthcare and Rehabilitation; Lancaster Health Group DBA Lancaster, Ltd. as a housekeeper. She was 31 years OLD at the time of her accident. On July 9, 2012, the Petitioner's duties included washing and drying blankets, sheets, and other cleaning duties at the facility. The materials that she would have to pull out of the washing machine weighed at least ten pounds which she had to place in a cart.

Prior to July 9, 2012, Petitioner testified that the condition of her health was good and that she had no problems with her right knee. Petitioner testified and respondent agrees that on July 9, 2012, Petitioner sustained an accidental injury that arose out of and in the course of her employment while pulling the wet blankets and sheets out of the washing machine at work. When Petitioner pulled the wet blankets out of the washing machine she turned in a twisting motion to put them into the cart, her right knee twisted and she felt and heard a "pop" in her right knee. Petitioner noticed immediate throbbing pain to her right knee and swelling. Petitioner soon after the incident notified her supervisor Arquilles Armas of her injury. Petitioner finished out the day, working in pain. Petitioner was scheduled for a six day vacation starting the day after her work injury. She testified she stayed at home for six days and did no activities because of her knee pain. She took over-the-counter medication and rested her knee.

On her return to work on July 17, 2012 she continued to do her job in pain. The pain and swelling had not subsided. She discussed her injury on her return with Arquilles Armas and made a written report with the human resource department. Petitioner sought medical treatment with Dr. Wilfredo Chevere on July 30, 2012. On that date, Petitioner complained of a sharp, aching, throbbing pain in the right knee from a work injury. (Pet.Ex.#8, p. 21) Dr. Chevere, a chiropractor, provided Petitioner with electrical stimulation and therapeutic exercise. The following day, July 31, 2012, after filing a written report, Petitioner was advised by her employer to be examined at Concentra Occupational Health, at the McHenry location.

Petitioner gave the doctors there a consistent history of how her right knee was injured, including feeling a snap and hearing and feeling a "pop" in the front of her right

knee. (Pet.Ex.# 6, p. 8, 12) She indicated her knee was unstable and she had a pain level of 10 out of 10. An x-ray was performed at Centegra Occupational Health. Petitioner was prescribed motrin, an MRI, a hinged knee brace, crutches, plus a restriction of sitting work only. Petitioner returned to light duty work. Petitioner continued to treat with Concentra Occupational Health over a one month period. Petitioner continued to treat with Dr. Chevere until August 22, 2012 receiving therapy with modalities such as electrical stimulation and trigger point therapy. (Pet.Ex.#8)

The doctors at Centegra Occupational Health prescribed Petitioner be on crutches and again prescribed an MRI of the right knee. The MRI was done on August 25, 2012 and confirmed a lateral meniscus tear, and joint effusion. Petitioner was prescribed by the Occupational Health doctors to be on restricted work and see an orthopedic surgeon, Dr. Rolando Izquierdo. (Pet.Ex.#6)

On September 13, 2012, Petitioner sought medical care from the orthopedic surgeon, Dr. Rolando Izquierdo, at Crystal Lake Orthopedics. Petitioner gave a history to the doctor of the work related injury. Petitioner and Dr. Izquierdo communicated in Spanish. Dr. Izquierdo testified the history given to him by Petitioner was that she was getting some materials in and out of the washer and dryer and she felt a "pop" in her right knee. (Pet.Ex.#12, p. 8) Dr. Izquierdo performed an examination, took x-rays, reviewed the MRI and assessed Petitioner with a lateral meniscus tear of the right knee. Dr. Izquierdo prescribed a right knee arthroscopic partial lateral meniscectomy and debridement. (Pet.Ex. #2) Petitioner was prescribed restricted work with no squatting, crawling, or repetitive stair climbing.

On October 10, 2012, Dr. Izquierdo performed a right knee arthroscopy and partial lateral meniscectomy at Centegra Memorial Medical Center. The surgeon found a radial tear of the body of the lateral meniscus but also found Petitioner had a 6mm by 16 mm osteochondral defect of her medial femoral condyle. (Pet. Ex. #2). Dr. Izqiqerdo simply debrided the cartilage during the October 10, 2011 surgery, but was of the opinion Petitioner was in need of a cartilage restoration type surgical procedure. (Pet. Ex.12, p. 12)

Dr. Izquierdo opined that there was a focal defect or essentially a hole in the cartilage over Petitioner's medial femoral condyle which did not to appear to be old, but was acute and traumatic. The doctor found no arthritic changes in this 31 year old Petitioner's knee, and opined that the opposite side of the cartilage or the tibial side of the cartilage was pristine. (Pet.Ex. #12, p. 14) Dr. Izquierdo opined that both the lateral meniscus tear and Petitioner's osteochondral defect of the medial the femoral condyle were directly related to Petitioner's work injury of July 9, 2012. (Pet.Ex.#12, p. 17, 18; Pet.Ex.#2 p.11) Dr. Izquierdo, on October 15, 2012, prescribed a Denovo cartilage transfer surgery which would be done in an open fashion or an ACI-Genzyme cartilage transfer procedure. Petitioner's treating surgeon believed that the cartilaginous transfer be done as soon as possible to facilitate her recovery. Dr. Izquierdo prescribed Petitioner off work and start physical therapy at Athletico. (Pet.Ex.#2, p. 10)

Petitioner continued to see Dr. Izquierdo but no authorization from Respondent was forthcoming for the necessary surgical procedure. Dr. Izquierdo strongly disagreed with opinions of Dr. Tonino, Respondent's IME doctor, and continued to

prescribe the allograft Denovo procedure and felt delay could see future consequences from deterioration of the knee. (Pet.Ex.#2, p. 14)

The Petitioner was given a prescription of seated work that specified Petitioner use no stairs or ladders. Petitioner did return to work in November, after the meniscal surgery, under light duty restrictions. On December 10, 2012, Petitioner was seen by Dr. Izquierdo who indicated Petitioner was progressing from the debridement and meniscus repair but the focal defect in the cartilage was still present and will progress to be symptomatic with significant problems if not addressed. (Pet.Ex.#2, p. 21) Petitioner was released to all work duties except ones including stairs and ladders.

Petitioner was seen by Dr. Izquierdo on January 31, 2013, complaining of increasing pain along the medial joint line of the right knee. Dr. Izquierdo assessed Petitioner's right knee as symptomatic medial femoral condyle, OCD. The doctors prescribed Petitioner obtain a second opinion from Dr. Geoffrey Van Thiel of Rockford Orthopedics. Petitioner was seen by Dr. Van Thiel on April 1, 2013. Dr. Van Thiel agreed with Dr. Izquierdo, that Petitioner would benefit from a cartilage transfer type procedure. (Pet.Ex.#9; Pet.Ex.#3, p. 8)

On May 9, 2013 Dr. Izquierdo again recommended an allograft cartilage type procedure to the medial condyle, in order to avoid the ACI-Genzyme process, which requires culturing of the cells and is expensive and requires two procedures. The surgeon's plan was to do one procedure in a cartilage transfer process. (Pet.Ex.# 3, p. 9) Petitioner was prescribed light duty with no climbing of stairs or squatting.

Petitioner was seen by her surgeon on August 26, 2013, Dr. Izquierdo again prescribed surgery and was still awaiting authorization. Petitioner continued to complain of persistent right knee pain and swelling, at that time Petitioner was moved to working in the kitchen which involved increased lifting and standing. Dr. Izquierdo prescribed light duty work and the doctor indicated to Petitioner there was no need to follow-up with him until the surgery was approved. (Pet.Ex.#3, p. 12) Petitioner testified she continued to work light duty until her job forced her to do heavy work, which she indicated she did, but in pain.

Dr. Izquierdo last saw Petitioner on March 5, 2015, when Petitioner complained of pain in the right knee on any extended activity or being on her feet for extended periods. Petitioner testified she currently had daily stinging pain and swelling in her right knee. She indicated she takes Ibuprofen and does home exercise. Dr. Izquierdo assessed Petitioner's right knee, again indicating a diagnosis of osteochronditis dissecans primarily in the medial femoral condyle of the right knee. Dr. Izquierdo opined that his original recommendation should stand, that Petitioner is in need of a cartilage restoration procedure and that Petitioner's cartilage defect of her right knee is directly related to her work injury of July 9, 2012. (Pet.Ex.#13, p. 2) Petitioner testified that her right knee condition is unchanged. Her knee gives her daily pain and swelling Petitioner testified she has an inability to do many normal activities including, playing with her children in her usual manner, and cannot run or be active because of the condition of her right knee.

The Arbitrator finds upon observing the testimony and demeanor of the witness that Petitioner's testimony is credible and supported by treating records and

evidence depositions, and that Petitioner subjective complaints are consistent with the medical records . The Arbitrator also finds credible the testimony of Dr. Rolando Izquierdo, the treating orthopedic surgeon, which supports the testimony of the Petitioner.

CONCLUSION

In support of the Arbitrator's decision relating to (f) whether Petitioner's present condition of ill being is causally related to the injury, the Arbitrator finds the following facts:

The Petitioner suffered an undisputed accident, which arose out of and in the course of her employment on July 9, 2012. On that date, Petitioner was unloading a washing machine, lifting ten pounds of heavy wet blankets and sheets to a cart. While pulling and lifting the wet blankets she turned and twisted her right knee. She felt a "pop" in her right knee at that time.

Petitioner complained of pain to her supervisor the same day of the incident. Petitioner testified that immediately prior to July 9, 2012 she had no pain or problems with her right knee. After resting at home for a week during a vacation she had previously scheduled, and when the pain and swelling in her right knee did not subside, Petitioner sought medical care at a chiropractor, Dr. Wilfredo Chevere on July 30, 2012. The doctor prescribed a regimen of physical therapy for the knee after she gave a consistent and specific history of a work injury. Petitioner made a formal report at work on July 31, 2012 and was sent to Concentra Occupational Health where she again gave a specific consistent history to the doctors. She indicated she injured her right knee at work when she felt a "pop" while unloading a washing machine. (Pet.Ex.#, p. 8)

Petitioner continued to treat with Centegra Occupational Health and Dr. Chevere; she was given light duty, a brace, crutches and prescribed an MRI. The MRI results indicated a meniscal tear, and Petitioner was referred from Centegra Occupational Health to Dr. Rolando Izquierdo, an orthopedic surgeon. (Pet.Ex. #6, p. 21) Petitioner continued to work light duty and was seen by Dr. Izquierdo, on September 13, 2012. Dr. Izquierdo read the MRI and prescribed an arthroscopic procedure which was performed on October 10, 2012. Dr. Izquierdo performed a partial lateral meniscectomy but in addition found an osteochondral defect in Petitioner's right knee, a defect of her medial femoral condyle. Dr. Izquierdo has opined that this 31 year old female has a focal defect or essentially a hole in the cartilage over the medial femoral condyle which did not appear old but was acute and traumatic. The surgeon opined that no arthritic changes were found in Petitioner's knee and found it significant that the opposite side of the cartilage from the defect was pristine. (Pet. Ex.#12, p. 14) Dr. Izquierdo opined that both the lateral meniscus tear and the osteochrondral defect of the medial condyle were directly caused and related to the work injury of July 9, 2012. (Pet.Ex. #12, p. 17, 18; Pet.Ex. #2, p. 11)

On October 15, 2012 Dr. Izquierdo prescribed Petitioner in need of a second surgery to address this osteochondral defect. The procedure prescribed was either a Denovo or ACI/Genzyme cartilage transfer type procedure. (Pet.Ex. #12, p. 15) Dr. Izquierdo has opined that a delay in authorizing this procedure will cause Petitioner more significant problems in the future. Dr. Izquierdo referred Petitioner to Dr. Van Thiel of Rockford Orthopedics for a second opinion. Dr. Van Thiel

concurred with Dr. Izquierdo, that Petitioner would benefit from the cartilage transfer procedure.

Respondent attempts to deny Petitioner's claim for treatment based solely on Dr. Tonino's IME opinions. Dr. Tonino indicated the chondral defect is present in petitioner's knee, but it is not from her work injury. Dr. Tonino in formulating his opinion relies on the fact that allegedly Petitioner only suffered a hyper-extension of the knee when removing materials from the washing machine. The IME doctor relies on the semantics or the wording of what he put down in his report to describe the accident to deny the claim. Dr. Tonino uses the word hyper-extended to explain what occurred, a term that Petitioner did not use. Dr. Tonino ignores the history and descriptions given to Centegra Occupational Health, by Dr. Chevere and Dr. Izquierdo. He ignores the fact that Petitioner reported that shefelt a snap and felt and heard a "pop" at the moment of the injury to three previous medical providers.

Dr. Tonino supports his opinions with a conclusion that petitioner did not make a formal complaint until weeks after the accident. Dr. Tonino ignores or was not aware that Petitioner orally reported this accident the same day as it occurred. Dr. Tonino, whose practice involves 23% of medical/legal issues, admitted the most of the history given to all the doctors were consistent, that Petitioner was injured at work while removing materials from the washing machine. (Resp.Ex. #1, p. 23) Dr. Tonino agrees the MRI revealed a lateral meniscus tear (Resp.Ex.#1 p. 30) He agrees Petitioner had an abnormal softening of the cartilage of the right knee (Resp.Ex.#1 p. 20) Dr. Tonino further agrees a defect in the cartilage over the medial condyle could be caused by a traumatic event. (Resp.Ex.# 1 p. 33) Dr.

Tonino agrees that the care and treatment Petitioner received was reasonable and necessary, including the surgical procedure that was done October 2012. (Resp.Ex.# 1 p. 38) He also agrees that an allograft Denovo procedure to repair the chondral defect is one of the procedures used to correct such a problem (Resp.Ex.#1 p. 40) Dr. Tonino agrees that if the surgical procedure is not performed for the chondral defect, it could lead to arthritis (Resp.Ex.# 1 p. 4).

Dr. Izquierdo addresses and refutes Dr. Tonino's opinions and states Petitioner had no symptoms prior to her injury. She started having mechanical symptoms after the injury and swelling. Dr. Izquierdo opined if Petitioner had a chondral defect prior to her injury, she would have been symptomatic. After the work injury she had symptoms, and the arthroscopy confirmed a femoral condyle defect that was directly related to the work injury. (Pet.Ex. #12 p. 19) Dr. Izquierdo states:

> ... the other tell-tale sign that this was a more recent injury is that the opposite side of the cartilage on the tibial side of the cartilage was pristine. (Pet. Ex. #12 at 14)

The treating orthopedic surgeon has an opinion that Petitioner sustained a work related injury and that accident was the proximate cause of the present condition of ill-being of the Petitioner. Dr. Izquierdo has opined that Petitioner had a lateral meniscal tear in her right knee. He has stated that Petitioner has a medial femoral condyle defect of the right knee. Dr. Izquierdo has opined that both these conditions were caused by the work injury of July 9, 2012. He has prescribed a cartilage transfer surgery for the chondral defect and has performed an arthroscopic procedure to address the meniscal tear.

The Arbitrator finds the testimony of the treating orthopedic surgeon Dr. Izquierdo credible and persuasive and notes thathis opinion may be given greater weight over the opinions of an examining physician. International Vermiculite Company v. Industrial Commission (1979) 77 Ill.2d 1, 394 N.E. 2d 1166 (1979). Based on the factors set forth above, the Arbitrator does find Dr. Izquerdo's opinions to be more credible than those of the examining doctor, Dr. Tonino.

The Arbitrator finds based on a review of the medical records, the testimony of the doctors, and Petitioner's testimony, that Petitioner's condition of ill being is causally related to the work injury.

In support of the Arbitrator's decision relating to (J) were the medical services that were provided to Petitioner reasonable and necessary and has respondent paid all appropriate charges for all reasonable and necessary medical services.

Having found in favor of Petitioner on the issue of (F), the Respondent admitting Petitioner sustained a work accident, the Arbitrator finds in favor of Petitioner regarding the issue of medical expenses. All treating medical records (Petitioner's Exhibits 2-3; 6-16) support a finding as to the reasonableness and necessity of medical care rendered as well as liability therefore. Dr. Izquierdo testified that the MRI, doctor visits, and hospital care were reasonable, necessary and related to the work injury of July 9, 2012. (Pet.Ex. #12 p. 26). Dr. Tonino agreed that MRI and a surgical procedure were reasonable and necessary to repair the knee. (Resp.Ex.#1 p, 38) Respondent did not object to the reasonableness, necessity, authenticity, or foundation the said bills.

The Arbitrator notes that Petitioner incurred total medical expenses of $2,523.00 that are unpaid to date. Accordingly the Arbitrator finds that medical bills set forth in Petitioner's Exhibits 14, 15, 16 are reasonable and necessary medical, surgical and

hospital expenses relating to Petitioner's injuries sustained at work. Any bills incurred after February 1, 2006 are to be paid pursuant to the medical fee schedule contained in the amendment to the Illinois Workers compensation Act Walsh v. Baker and Taylor (2000) 05 WC9709; 07 IWCC 0160; accordingly, the Arbitrator finds that the medical treatment that Petitioner received constituted reasonable, necessary, medical care. Respondent is responsible for and shall pay to Petitioner the sum of $1,594.74 for outstanding unpaid medical bills, Petitioner's Exhibits 14,15,16. Pursuant the fee schedule the bills are as follows:

Petitioner's Exhibit #14 Dr. Izquierdo/Rockford Orthopedic Assoc. Bill	$ 179.17
Petitioner's Exhibit #15 – Town Square Anesthesiology	$ 312.64
Petitioner's Exhibit #16 – Open Advanced MRI of Round Lake	$1,102.93

In support of the Arbitrator's Decision relating to (K) is Petitioner entitled to any prospective medical care under Section 12 and 8(a) of the Act, the Arbitrator makes the following conclusion:

Having found for Petitioner on the issue of causal connection, and accident being agreed, the Arbitrator finds the Petitioner's injury is ongoing and in need of further medical care. The Petitioner has complained of ongoing pain and problems with the right knee. Dr. Izquierdo has opined that Petitioner is in need of a cartilage restoration surgical procedure to her right knee (Pet.Ex.#13 p. 2) Dr. Van Thiel agrees with Dr. Izquierdo's conclusion. (Pet.Ex.#9)

The Arbitrator orders the Respondent shall pay for and provide written authorization to the Petitioner, for prospective medical care including authorization for a cartilage restoration surgical procedure to be performed by doctors at Rockford Orthopedic.

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

15IWCC0910

Jose Garcia,
Petitioner,
vs.
SYX Distribution Inc.,,
Respondent,

NO: 11WC 47634

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under §19 (b) by the Respondent, herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary total disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 23, 2015, is hereby affirmed and adopted.

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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $53,594.00. 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: DEC 1 1 2015
MJB/bm
o-12/7/15
052

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

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

GARCIA, JOSE
Employee/Petitioner

Case# **11WC047634**

SYX DISTRIBUTION INC
Employer/Respondent

15IWCC0910

On 2/23/2015, 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 0.06% 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:

0878 COLLISON & O'CONNOR LTD
MURIEL COLLISON
19 S LASALLE ST SUITE 1400
CHICAGO, IL 60603

0532 HOLECEK & ASSOCIATES
BARNALI ROY-MOHANTY
161 N CLARK ST SUITE 800
CHICAGO, IL 60601

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

15IWCC0910

- ☐ 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)

JOSE GARCIA
Employee/Petitioner

v.

SYSTEMAX DISTRIBUTION, INC.
Employer/Respondent

Case # 11 WC 47634

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 **Brian Cronin**, Arbitrator of the Commission, in the cities of **Chicago/Wheaton/Chicago**, on **May 9, 2014, June 6, 2014, and July 2, 2014**. 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. ☒ 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 ___

FINDINGS

15IWCC0910

On the date of accident, **November 9, 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, in part,* causally related to the accident.

In the year preceding the injury, Petitioner earned $**28,861.04**; the average weekly wage was $**555.02**.

On the date of accident, Petitioner was **39** years of age, *single* with **2** dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

o

Respondent shall be given a credit of $**37,899.59** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**37,899.59**.

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

ORDER

Respondent shall pay Petitioner temporary partial disability benefits of $**185.01**/week for **28** weeks, commencing **August 27, 2013** through **November 20, 2013** and **January 20, 2014** through **May 9, 2014**, pursuant to Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $**48,413.84** ($47,465.40, Px.17, plus $947.84 for ambulance bill, City of Naperville, Px.18a), pursuant to Section 8(a) and subject to Section 8.2 of the Act. Respondent is entitled to a credit for medical bills previously paid.

Respondent shall authorize and pay for the prospective medical care that Dr. Kolavo and Dr. Sterba have prescribed (in page 10 of Decision), pursuant to Section 8(a) and subject to Section 8.2 of 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

February 22, 2015
Date

FEB 23 2015

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jose Garcia,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 11 WC 47634
	)	
Systemax Distribution, Inc.,	)	
	)	15IWCC0910
Respondent.	)	

Findings of Fact

Petitioner is a 42-year-old male employed by Systemax as a Truck Shipping Driver since approximately 2009. Petitioner's average weekly wage was $555.02 per week. (Tr. 12) Prior to November 9, 2011, Petitioner had not sustained any injuries to his neck or left shoulder. He was not experiencing any pain to his lower back and did not have headaches or dizziness. (Tr. 11) On November 9, 2011, prior to the accident, Petitioner was not experiencing any pain and was not taking any medications. (Tr. 11) In May of 2009, over two years before the accident, Petitioner did sustain a minor injury to his right shoulder and forearm, which was treated conservatively.

On November 9, 2011, Petitioner entered a 53-foot long truck trailer to arrange wooden pallets that had fallen over. He started pushing the pallets to rearrange them and several pallets fell towards him smashing him against the other pallets in the trailer. (Tr. 14) Petitioner was in a kneeling position. He called out for help and tried to keep the pallets off of him with his shoulder, hand, arm and face until help arrived. (Tr. 14-15) The pallets were stacked the height of the semitrailer. The pallets made contact with his left shoulder, leg, knee, neck and side of his face. (Tr. 16) Petitioner estimated that 200-240 pallets fell on him. (Tr. 16)

Immediately following the accident, Petitioner felt, "extreme pain" in his shoulder, back, stomach and belly button. (Tr. 16) Petitioner reported the injury immediately to Beverly Zavala and was directed to go to Central DuPage Business Health (CDBH). (Tr. 17)

Petitioner was prescribed pain medication and released to light-duty work. (Px.1, pp. 6-7) He continued to have pain and returned to the clinic on November 11, 16, and 23. (Px.1) An MRI was performed and physical therapy and work restrictions were prescribed along with pain medication. (Px.1, pp. 9-20) Petitioner was paid TTD benefits during this time. (Tr. 20) Petitioner was referred to Dr. Kolavo with OAD Orthopedics and started physical therapy at Neustra Clinica. (Tr. 20)

On November 29, 2011, Petitioner presented to OAD Orthopedics with pain in his back, left side of neck, trapezius region, deltoid and upper arm. (Px.3, p. 41) Petitioner complained of abdominal pain. (Px.3, p. 37) Dr. Kolavo prescribed physical therapy, work restrictions and pain medication. (Px.3, p. 42) Respondent could not accommodate Petitioner's work restrictions. (Tr. 24) Dr. Kolavo treated Petitioner with pain medication and referred him to Dr. Wilson for an injection, which was performed on December 15, 2011. (Px.3, pp. 47, 52) Petitioner experienced some relief from the injection but the pain returned. (Tr. 25) Dr. Kolavo continued to keep Petitioner off work and ordered a CT myelogram. Additionally, Dr. Kolavo referred petitioner to Dr. Sterba for his shoulder condition. (Tr. 25)

Petitioner saw Dr. Sterba on December 29, 2011, and was prescribed more physical therapy and to remain off work. (Px.3, pp. 59-60) Petitioner saw Dr. Kolavo three times in January of 2012. Dr. Kolavo continued to prescribe pain medication and an off-work work status. (Px.3, pp. 63-79, Tr. 26) Dr. Kolavo recommended two-level, cervical fusion surgery. (Px.3, pp. 76, 81)

Petitioner was also referred to Dr. Mayer for an EMG, which revealed electromyographic evidence of cervical radiculopathy. Dr. Mayer found this to be most consistent with a left C6 radiculopathy that appeared to be acute and active. (Px.3, p.73)

Petitioner remained off work and saw Dr. Kolavo in March of 2012 and was prescribed Xanax in addition to the other pain medications. (Px.3, p. 80, Tr. 27) Petitioner continued to treat with Dr. Kolavo through August of 2012 while he was waiting for Respondent to approve his surgery. (Tr. 28) He remained off work and was taking pain medication and the Xanax that Dr. Kolavo had prescribed.

At Respondent's request, and pursuant to Section 12 of the Act, Petitioner submitted to an examination on April 4, 2012 by Dr. Wellington Hsu. (Rx.1) Dr. Hsu opined that Petitioner's "condition of ill-being is related to a cervical and lumbar strain that was caused from (sic) the November 9, 2011 incident." Dr. Hsu recommended more conservative care including physical therapy. Dr. Hsu indicated work restrictions of no lifting over 30 pounds and occasional bending, crouching and stooping activity and that after more therapy, he should be able to return to full-duty work. (Rx.1, p. 7)

On August 16, 2012, Petitioner underwent an anterior cervical diskectomy, osteophytectomy, and fusion at C5-C6, C6-C7 using structural banked bone allograft and anterior plate screw instrumentation including somatosensory evoked potentials and electromyogram monitoring. (Px.3, p. 102) Dr. Kolavo performed the surgery. Following surgery, Petitioner remained off work and followed up with Dr. Kolavo throughout August and September.

Petitioner started experiencing headaches and dizziness following the surgery. (Px.3, pp. 129, 135) Petitioner testified that he had not suffered from these type of headaches and dizziness prior to the accident and that they were very strong. (Tr. 31) Petitioner testified that he continues to suffer from headaches and daily dizziness. (Tr. 31) Dr. Kolavo

referred Petitioner to his primary care physician for treatment of his headaches and Dr. Altimari for treatment of his hernia. (Tr. 32) Petitioner was not able to see either of these physicians for approximately six weeks as Respondent would not approve the visits and Petitioner did not have group insurance. (Tr. 32)

In December of 2012, Dr. Kolavo prescribed work hardening. (Px.3, p. 133) Petitioner testified that he attempted work hardening, but experienced "extreme pain." He discontinued the regimen of work hardening at Dr. Kolavo's recommendation. (Tr. 33, Px. 3, p.135) Additionally, Dr. Kolavo prescribed Norco. (Px.3, p. 136)

Petitioner continued to treat with Dr. Kolavo through January and February of 2013 and had another cervical MRI at Dr. Kolavo's request. The MRI indicated, *inter alia*, that there may be a delayed union or fibrous union. (Tr. 34, Px.3, pp. 145, 148) Again Petitioner was prescribed pain medication and to remain off work. Additionally, he was again referred to his primary care physician for his headaches, which was not approved by Respondent. (Tr. 34)

On February 26, 2013, Petitioner went back to Dr. Sterba for continued shoulder pain and was given an injection into the subacromial space. (Px.3, p. 143)

Dr. Kolavo reviewed the results of the MRI with Petitioner and prescribed work hardening again, which Petitioner attended. (Tr. 35, Px.3, p. 148)

Petitioner saw Dr. Sterba on March 29, 2013. He reported to Dr. Sterba that the injection did not help and that he had tingling through the "trap" after the injection. At trial, however, Petitioner testified that this injection provided some relief but the pain returned after ten days. (Tr. 35) Dr. Sterba prescribed an MRI for the left shoulder. (Px. 3, p. 149) Dr. Sterba stated that if the MRI were negative, he would release Petitioner to full-duty work. If the MRI is positive, Petitioner is to return to Dr. Sterba to discuss options. To date, these images have not been taken of Petitioner's left shoulder, as Respondent has not approved it. (Tr. 36) Petitioner reports ongoing pain in his left shoulder. (Tr. 36)

Respondent had Petitioner examined again on April 26, 2013 by Dr. Wellington Hsu. (Rx. 2) Dr. Hsu opined that he still believe that the work-related injury on November 9, 2011caused cervical and lumbar strains that have since resolved. He also opined that the neck pain Petitioner is experiencing is most likely related to pre-existing cervical stenosis and spondylosis found on the imaging studies, but that his current neck pain is in no way related to the work-related injury of November 9, 2011. Dr. Hsu opined that regardless of causation, Petitioner is an excellent candidate for an FCE, and that if the FCE is valid, Petitioner should return to work within those restrictions. Dr. Hsu also offered a "permanent partial disability rating" that he "based on the AMA guidelines, sixth edition." (Rx.2)

Petitioner continued with work hardening and treated with Dr. Kolavo through June 2013 when he was prescribed an FCE. Such FCE was administered on June 18, 2013. The evaluator found the results to be valid. (Px.7, pp. 95-122, Rx.3, p. 3) It was noted that

Petitioner did not meet the indentified very heavy level physical demand of his target jobs as forklift driver and warehouse worker. His restrictions, based on this functional capacity evaluation, were no lifting or carrying greater than 20 pounds on an occasional basis. (Px.7, pp. 95-122) His performance was clinically consistent, which suggested a consistent effort on his behalf. (Rx.3, p. 3, Px.7, p. 96)

On August 13, 2013, Dr. Kolavo released Petitioner to return to work with the restrictions set forth by the FCE evaluator. (Px. 3, pp. 157e, 157f) Additionally, Dr. Kolavo referred Petitioner to a physiatrist and a neurosurgeon (Px.3, pp. 157e, 157f, 157k, 157l) Petitioner testified that when he returned to work, he was unable to do his job per the work restrictions that Dr. Kolavo had prescribed. (Tr. 39-40) Petitioner went back to see Dr. Kolavo and was released with work restrictions per the FCE plus a restriction of working only four hours per day. (Tr. 40, Px.3, p. 157i) From August 27, 2013 to May 9, 2014, Petitioner has been working four hours per day and with restrictions per the FCE. (Tr. 40)

Respondent again had Petitioner examined by Dr. Hsu on July 29, 2013. (Rx.3) Dr. Hsu reviewed the June 18, 2013 FCE report and job analysis for Petitioner that included the type of weight and the frequency with which Petitioner lifted those weights. (Rx.3, p. 3, Rx.5) Dr. Hsu was unable to review the job analysis because he could not open it. Dr. Hsu opined, based on his physical examination, medical records and the job analysis report, dated July 9, 2013, that Petitioner could return to work full duty. (Rx.3, p. 5)

On October 8, 2013, Dr. Hsu authored a supplemental report at Respondent's request. Dr. Hsu did not examine Petitioner for this report. (Resp. Ex. 4) Dr. Hsu reviewed photographs and a job analysis video in preparation of his supplemental report and determined that his previous opinions regarding Petitioner's ability to return to work as a fork lift driver remained unchanged. (Rx.4, p. 2, Rx.6)

Petitioner never saw a physiatrist, or Dr. Taras Masnyk, for his continued complaints of pain, as Respondent did not approve of these visits. (Tr. 40-41)

Petitioner saw Dr. Kolavo on November 6, 2013 at which time he complained of continued pain in his back and neck, and numbness and tingling into the left trapezius region. Additionally, Petitioner indicated he was having dizziness and difficulty working a four-hour day. Dr. Kolavo prescribed a new cervical MRI that was to be performed at a closed MRI facility. (Px.3, p.157m, 157n) Respondent has not approved such MRI. (Tr. 41)

Petitioner saw Dr. Sherman on July 9, 2013. Dr. Sherman opined Petitioner's cervical disc herniation at C5-6 and C6-7, cervical strain, cervical stenosis, thoracic strain, lumbar strain and umbilical hernia where all caused or aggravated by the accident on November 9, 2011. (Px.12)

Dr. Carsten, Petitioner's primary care physician, saw him on February 28, 2013. Dr. Carsten referred Petitioner to Dr. Altimari. (Tr. 43) Respondent agreed to approve Petitioner's hernia surgery, which Petitioner underwent on November 20, 2013. The umbilical hernia was repaired with mesh. (Px.6, p. 214) Petitioner remained off work for

two months following the surgery and was paid TTD benefits. (Tr. 42)

On March 14, 2013, Petitioner saw Dr. Carsten for dizzy spells and headaches. He ordered a CT of Petitioner's head, which Respondent approved. (Px.4, pp. 16-17, 25) Dr. Carsten prescribed physical therapy for Petitioner's headaches and dizziness. On March 20, 2013, Petitioner started therapy at DuPage Cadence Health. (Px.6, pp. 197-204) The therapy helped Petitioner, however, Petitioner was unable to continue as Respondent stopped paying for the sessions. (Tr. 44) Petitioner testified that he is still experiencing dizziness and headaches and would like to continue the physical therapy that was prescribed. (Tr. 44)

Petitioner was taken to Edward Hospital via ambulance March 19, 2014, after his pain medication ran out and he could not tolerate the pain. (Tr. 44, Px.14, pp. 49-52)

On April 3, 2014, Petitioner went to VNA Health Care in Aurora looking for treatment for his headaches and dizziness and depression. (Px.15) Petitioner was able to borrow money to get treatment at VNA. (Tr. 46) Petitioner went to VNA because his other treatment and therapy was not approved. (Tr. 46) Petitioner would like to treat for his anxiety and depression going forward. (Tr. 47)

Conclusions of Law

In support of his decision relating to issue (C) "Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?", the Arbitrator finds the following:

Petitioner's testified with the aid of an interpreter.

Petitioner testified that on November 9, 2011, as he was rearranging pallets in a trailer, several pallets fell on the left side of his body and injured him. Petitioner testified that he reported the accident to his supervisor, Beverly Zavala. Petitioner testified that he was sent to Central DuPage Business Health that day to treat for his injuries.

Phillip Abraham witnessed the accident and filled out a witness statement with which Kenneth Brown, Director of Operations for Respondent, testified he would have no reason to disagree. (Rx.9, Tr. 227) Respondent did not produce any witnesses to dispute Petitioner's accident.

As Petitioner's testimony is consistent with the Employee's Report of Injury (Rx.9) and the medical records of Central DuPage Business Health (Px.1), and as Petitioner's accident was witnessed (Rx.9), the Arbitrator finds that on November 9, 2011, Petitioner sustained an accident that arose out of and in the course of his employment by Respondent.

In support of his decision relating to issue (F) "Is Petitioner's current condition of ill-being causally related to the injury?", the Arbitrator finds the following:

As it relates to Petitioner's hernia condition, the Petitioner testified that after the pallets fell on him, he experienced "[e]xtreme pain in my shoulder, my back, my stomach, my belly button." (Tr. 16) Petitioner further testified: "When I noticed my belly button there was a small ball, after a while that small little ball increased in size; but the pain in my shoulder and my back was a lot stronger than that pain". (Tr. 22) Petitioner testified that he strained his body to keep the pallets from falling on top of him. He testified: "I tried to restrain, I tried to restrain the pallets with my shoulder, with my hand, with my arm, with my face until they arrived to help me. That's what happened, your honor". (Tr. 15)

In the Central DuPage Business Health records of November 9, 2011, there is a check mark in a box beside "G.I." in a chart entitled "Recent Abnormal (for your) Symptoms." (Px.1, p. 6) The next documented complaint of G.I. symptoms was on November 23, 2011, in the same type of chart entitled "Recent Abnormal (for your) Symptoms." (Px.1, p. 6) The next documented complaint was on November 29, 2011 in an intake form for Dr. Kolavo. (Px.3, p. 37) On such form, in the "Gastrointestinal" section under "Review of Systems," Petitioner checked "Yes" for heartburn and abdominal pain, but "No" for nausea.

Petitioner indicated to the Central DuPage Business Health staff and Dr. Kolavo that he was using his body to keep the pallets from falling on him. (Px.1, p. 6, Px.3, p. 13)

On July 25, 2012, during a pre-operative consultation, Dr. Carsten recorded that Petitioner had severe heartburn and can tolerate only water because any other liquid/food causes burning. He also recorded that Petitioner has no abdominal pain, no history of abdominal surgery, but a history of occasional GERD previously. (Px.3, p. 109)

When Dr. Kolavo saw Petitioner on November 9, 2012, he wrote, *inter alia*, the following:

> "He went on to tell me that he has noticed that ever since his injury that he has had increasing prominence of a small umbilical hernia. He is now having issues with tenderness over his umbilicus. He tells me that it is much bigger than it was before his injury and blames his injury for this. Obviously, our discussions focused around his spine issues and not this. He has apparently had a lot of time to think about this. I looked at his umbilicus today. It is tender. It is not inflamed. Certainly there is no evidence of incarceration. I told him he could see

Dr. Altimari for a general surgical opinion." (Px.3, p. 130)

When Dr. Kolavo saw Petitioner on December 21, 2012, he wrote, *inter alia*, the following:

> "He still has not had an umbilical hernia evaluation yet. I told him that he needs to have this evaluated and according to his story it sounds like it has possibly worsened by his work injury, although I am not the one to decide that completely. That would defer to the opinion of a general surgeon." (Px.3, p. 133)

Dr. Hsu testified on redirect examination that during the course of his three examinations of Petitioner, Petitioner did not complain to him about hernia pain, whether it was inguinal or umbilical. (Rx.7, p. 64) On re-cross examination, Dr. Hsu then testified that he did not remember Petitioner complaining of any hernia pain when Petitioner came to see him. (Px.7, pp. 64-65)

In his "Independent Medical Evaluation" report, dated July 9, 2013, Dr. Sherman wrote: "Office notes from Dr. Kolavo ... also indicated that Mr. Garcia was complaining of an umbilical hernia that was noted initially immediately following his accident, but was getting progressively larger. He was referred to a general surgeon for an opinion regarding that complaint." (Px.12, p. 2) Upon examining Petitioner, Dr. Sherman observed that the umbilicus demonstrated a 2-cm. umbilical hernia that was tender. In his "Independent Medical Evaluation" report, dated July 9, 2013, Dr. Sherman opined: "The umbilical hernia caused by straining the abdominal wall while attempting to keep the pallets from toppling over, will require surgical repair." (Px.12, p. 4)

When he was deposed, Dr. Sherman opined that abdominal pain almost three weeks after this type of straining incident is consistent with an umbilical hernia that he saw on Petitioner. (Px.12, Deposition Page 20)

Based on the foregoing, the Arbitrator finds that by a preponderance of the evidence, Petitioner sustained an umbilical hernia as a result of the November 9, 2011 accident.

As it relates to Petitioner's neck, the Arbitrator finds that Petitioner's current condition of ill-being of his cervical spine is causally related the November 9, 2011 accident.

The Arbitrator finds the opinions of Dr. Kolavo to be more persuasive than those of Dr. Hsu.

Petitioner's Counsel asked Dr. Hsu the following question: "Do you have an opinion as to why prior to the accident he had no complaints of (neck) pain and after the accident he still has pain?". Dr. Hsu responded: "No, I don't have an explanation for that." (Rx.7, pp. 60-61) Moreover, Dr. Hsu offered a "permanent partial disability rating" that he "based on the AMA guidelines, sixth edition." (Rx.2) Dr. Hsu testified that he is not certified for AMA. (Rx.7, p. 32)

As it relates to the shoulder, Petitioner was initially diagnosed with a shoulder contusion. X-rays were negative. The November 23, 2011, MRI of the left shoulder revealed no abnormalities. (Px.2, pg. 21) Dr. Sterba has treated Petitioner for his left shoulder.

On January 6, 2012, Dr. Kolavo noted that the physical examination of the shoulder revealed no weakness, no loss of strength and no sensory loss. (Px.3, pg. 63)

On February 26, 2013, Dr. Sterba diagnosed Petitioner with osteoarthritis of the left shoulder. The doctor noted a normal MRI of the shoulder and opined that he was not a surgical candidate. The doctor had "little further to offer" as the MRI was negative. (Px.3, pp. 142-143)

Petitioner saw Dr. Sterba on March 29, 2013. He reported to Dr. Sterba that the injection did not help and that he had tingling through the "trap" after the injection. At trial, however, Petitioner testified that this injection provided some relief but the pain returned after ten days. (Tr. 35) Dr. Sterba prescribed an MRI for the left shoulder. (Px.3, p. 149) Dr. Sterba stated that if the MRI were negative, he would release Petitioner to full-duty work. If the MRI is positive, Petitioner is to return to Dr. Sterba to discuss options. To date, these images have not been taken of Petitioner's left shoulder, as Respondent has not approved it. (Tr. 36) Petitioner reports ongoing pain in his left shoulder. (Tr. 36)

Dr. Sherman, Petitioner's examining physician who specializes in the shoulder, causally related Jose Garcia's left shoulder condition to the November 9, 2011 accident. At his July 9, 2013 examination of Petitioner, he found, *inter alia*, left shoulder pain and weakness. (Px.12, p. 3)

Based on the foregoing, the Arbitrator finds that Petitioner's current condition of ill-being of his left shoulder is causally related to the November 9, 2011 accident.

The Arbitrator further finds, based on the medical records and the opinions of Dr. Sherman, that Petitioner's lumbar strain is causally related to the November 9, 2011 accident.

As it relates to Petitioner's head condition, Petitioner reported dizziness after the cervical fusion surgery. Dr. Sherman testified that he did not know the cause of Petitioner's headaches. Furthermore, on April 4, 2014, Dr. Anne Liwonjo, who treated Petitioner for dizziness and depression, opined that she was "unsure of any correlation (regarding the dizziness) with the previous injury." (Px.15, pg. 4)

On January 18, 2013, Dr. Kolavo noted that Petitioner demonstrated "extremely self-limited range of motion." On February 22, 2013, Dr. Kolavo opined that the headaches are "unrelated to the neck issues." Dr. Kolavo repeatedly noted that while Petitioner made complaints of neck and head pain, he was able to move his head and neck freely.

On June 21, 2013, Dr. Kolavo wrote: "X-rays findings were discussed with Mr. Garcia. I told him that his fusion at one level may not have completely healed. This, however, does not explain all of the dramatic pain and disability Mr. Garcia displays, in my opinion." Dr. Kolavo prescribed a combination of anti-inflammatories and Flexeril, but avoidance of narcotics.

The Arbitrator finds that Petitioner failed to prove that Petitioner's alleged head condition is causally related to the accident.

In support of his decision relating to issue (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?", the Arbitrator finds the following:

The Arbitrator finds the opinions of Petitioner's treating physicians to be more persuasive than those of Respondent's Section 12 examining physician.

In his July 9, 2013 report, Dr. Sherman, Petitioner's examining physician, wrote that he reviewed the following medical records that were forwarded to him regarding Mr. Jose Garcia: Central DuPage Business Health, Nuestra Clinica de Aurora, notes of Dr. Jerome Kolavo and Dr. William Sterba, notes from Dr. James Wilson, Provena Mercy Medical Center, Central DuPage Hospital, Edward Hospital, Athletico PT, results of the functional capacity evaluation, notes from Dr. Carsten, and the IME from Dr. Wellington Hsu dated April 4, 2012 and April 26, 2013. (Px.12, p. 1)

Dr. Sherman testified, on August 27, 2013, that he reviewed all of Dr. Kolavo's records and found that all the treatment that Dr. Kolavo provided to Petitioner was reasonable, appropriate and related to the injury. Dr. Sherman also testified that the other doctors' records that he reviewed, including the pain specialist and pretty much all of the doctors, provided reasonable, necessary and related treatment to Petitioner for this accident. Dr. Sherman testified that he did not see any treatment that was provided to Petitioner that was not reasonable, necessary or related to the accident. (Px.12, pp. 30-31 of Deposition Transcript)

Based on the foregoing, the Arbitrator finds that the treatment rendered to Petitioner for injuries resulting from the November 9, 2011 accident was reasonable, necessary and related and orders Respondent to pay $48,413.84 in medical bills (Px.17 and Px.18a), pursuant to Section 8(a) and subject to Section 8.2 of the Act. Respondent is entitled to a credit for medical bills previously paid.

In support of his decision relating to issue (K) "Is Petitioner is entitled to any prospective medical care?", the Arbitrator finds the following:

Dr. Sterba prescribed a left shoulder MRI, which has not been approved. (Px.3, p. 149)

Dr. Kolavo prescribed treatment with a physiatrist, which has been approved. (Px.3, p. 157)

Dr. Kolavo prescribed a second opinion with Dr. Masnyk, a neurosurgeon, which has not been approved. (Px.3 p. 157l)

Dr. Kolavo prescribed a repeat cervical MRI at a closed MRI facility, which has not been approved. (Px.3 p. 157n)

As the Arbitrator has found the current conditions of ill-being of Petitioner's left shoulder and cervical spine to be causally related to the November 9, 2011 accident, and as the Arbitrator finds Dr. Sterba and Dr. Kolavo to be persuasive, he orders Respondent to provide the above reasonable and necessary prospective medical care, pursuant to Section 8(a) of the Act.

The Arbitrator denies prospective medical care from Dr. Carsten and Dr. Liwonjo.

In support of his the decision relating to issue (L)"What temporary benefits are in dispute? TTD, Maintenance and TPD," the Arbitrator finds the following:

On March 29, 2013, Dr. Sterba, Petitioner's treating physician for his shoulder condition, recommended an MRI for Petitioner's left shoulder. He stated that if the MRI is negative, he will return Petitioner to full-duty work and discharge Petitioner from his care. Otherwise, he will see Petitioner again to discuss options.

Petitioner testified that he has not undergone such left shoulder MRI because Respondent has not authorized it.

On May 2, 2012, Dr. Hsu, Respondent's Section 12 examining physician, found that Petitioner's cervical and lumbar strains had resolved, and released him to return to full-duty work.

Respondent argues that Petitioner is not entitled to TTD benefits after May 2, 2012, per Dr. Hsu's opinion.

On July 29, 2013, Dr. Hsu found Petitioner to be at MMI and again released him to return to full-duty work.

On August 13, 2013, Dr. Kolavo, Petitioner's treating physician for his spine, discharged Petitioner from care. Petitioner was released to work full time with restrictions. Petitioner was requested to return to work and testified that he did. At Petitioner's insistence, he scheduled an appointment on August 27, 2013 with Dr. Kolavo. The doctor noted that in spite of Petitioner's multitude of complaints, he is observed to move his head and neck freely. The doctor stated that Petitioner's perception of pain and his disability is disproportionate to both the physical exam and radiographic findings. However, he recommended that Petitioner work a four-hour day until a physiatrist evaluates him.

On November 6, 2013, Petitioner returned to Dr. Kolavo and complained that he has difficulty working a four-hour workday. Petitioner never followed up on Dr. Kolavo's recommendation to see a physiatrist. The doctor noted that he "could see no reason why (Petitioner) could not tolerate an 8-hour work day" and would have expected Petitioner to return to a full eight-hour work day. Nevertheless, Dr. Kolavo wrote: "I told him that I will keep him on work restrictions until he is evaluated by the physiatry service." (Rx.3, pp. 157m-157o) At that time, Dr. Kolavo also recommended a new cervical MRI to be performed at a closed MRI facility to ascertain whether or not there is a basis for Petitioner's progressive pain complaints.

There is no evidence that Petitioner has undergone the new cervical MRI that Dr. Kolavo recommended.

The Arbitrator has found the opinions of Dr. Kolavo, to be more persuasive than those of Dr. Hsu.

Petitioner asserts that he is entitled to maintenance benefits from August 27, 2013 through November 20, 2013 and from January 20, 2014 through "present." (Ax.1) The parties signed Ax.1 on May 9, 2014. However, Petitioner testified that he has worked four hours a day, from August 27, 2013 through the May 9, 2014 date of trial. (Tr. 40) At the June 6, 2014 date of trial, Petitioner testified briefly, but only with regard to outstanding medical bills. Petitioner did not testify at the July 2, 2014 date of trial.

It is well established that maintenance benefits are normally paid when the claimant is no longer temporarily totally disabled, but is involved in a vocational rehabilitation program or is performing a diligent, self-directed job search.

In this case, Petitioner has been working 4-hour days at restricted-duty work. Moreover, the Arbitrator finds that Petitioner is entitled to prospective medical care.

The Petitioner, Jose Rivera, Jesus Lamadrid, and Respondent's own witness, Kenneth Brown, all testified that the job analysis report and job video do not accurately reflect Petitioner's job. Dr. Hsu testified that if there were omissions to Petitioner's job description and job video that required much heavier lifting more frequently, that could change his opinion. (Rx.8, p. 17) On cross-examination, Petitioner testified that in the warehouse, he uses the power walker; the Drexel and the cherry picker are other machines used.

Notwithstanding such testimony, Petitioner has been working four-hour days in the position of a forklift driver for Respondent, per Dr. Kolavo's orders, from August 27, 2013 until the first date of trial.

Based on the foregoing, the Arbitrator finds that Petitioner is entitled to TTD benefits at a weekly rate of $370.01 (= $555.02 x 2/3) from November 10, 2011 through August 20, 2013, and TPD benefits at a weekly rate of $185.01 (= $555.02 – (.50 x $555.02) x 2/3) from August 27, 2013 through November 20, 2013 and from January 20, 2014 through May 9, 2014.

Respondent is entitled to a credit for TTD benefits previously paid in the amount of $37,899.59.

2-22-15
Date

Brian Cronin, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

☒ 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

Willie T. Franklin,
Petitioner,

vs. NO: 12WC 42248

Jacksonville School District 117,
Respondent,

15IWCC0911

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 causation, temporary total disability, medical, permanent partial disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 12, 2015, is hereby affirmed and adopted.

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: DEC 1 1 2015
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CJD/jrc
049

Charles J. DeVriendt

Joshua D. Luskin

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FRANKLIN, WILLIE T
Employee/Petitioner

Case# **12WC042248**
11WC014535

JACKSONVILLE SCHOOL DISTRICT #117
Employer/Respondent

15IWCC0911

On 1/12/2015, 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 0.11% 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:

0834 KANOSKI BRESNEY
CHARLES EDMISTON
129 S CONGRESS
RUSHVILLE, IL 62681

2396 KNAPP OHL & GREEN
L DAVID GREEN
6100 CENTER GROVE RD
EDWARDSVILLE, IL 62025

15IWCC0911

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ 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

Willie T. Franklin
Employee/Petitioner

v.

Jacksonville School District 117
Employer/Respondent

Case # 12 WC 42248

Consolidated cases: 11 WC 14535

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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on November 19, 2014. 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 _____

15IWCC0911

FINDINGS

On August 20, 2012, 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 not 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 not causally related to the accident.

In the year preceding the injury, Petitioner earned $38,419.32; the average weekly wage was $739.41.

On the date of accident, Petitioner was 60 years of age, married with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00.

Respondent is entitled to a credit of $0.00 paid under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's Conclusions of Law attached hereto, claim for compensation is denied.

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.

William R. Gallagher, Arbitrator

January 6, 2015
Date

JAN 12 2015

Findings of Fact

Petitioner filed two Applications for Adjustment of Claim both of which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. In case 11 WC 14535, the Application alleged a date of accident (manifestation) of July 21, 2010, and that Petitioner sustained repetitive trauma to the bilateral upper extremities (Arbitrator's Exhibit 2). In case 12 WC 42248, the Application alleged a date of accident (manifestation) of August 20, 2012, and that Petitioner sustained repetitive trauma to the left upper extremity (Arbitrator's Exhibit 3). The two cases were previously consolidated for trial.

Petitioner began working as a custodian for Respondent in March, 2000. Petitioner testified that during the regular school year he worked 3:00 PM to 12:00 AM. Petitioner was required to clean 23 classrooms per day. The classrooms were all carpeted and he had to vacuum them, remove the trash, clean the black boards, etc. It took approximately 15 minutes to clean one classroom. Petitioner actively used both of his hands/arms while performing these tasks. When vacuuming, he would switch between using his right hand and left hand or vacuum with one hand and lift a desk with the other. In addition to the preceding, Petitioner would periodically clean the gymnasiums and locker rooms. On occasion, cleaning the gym floor required the use of a machine that had brushes in the front that would rotate. Petitioner would have to squeeze the handles of the machine with both hands to operate it. When Petitioner cleaned the locker rooms and bathrooms, he would also remove graffiti.

Petitioner's working hours during the summer changed to 6:00 AM to 2:30 PM. During that period of time, Petitioner would work with crews of other custodians and they would perform a thorough cleaning of the entire school. This included shampooing of all of the carpeting, dusting vents and lights, stripping and waxing the floors, using a buffer on the floors, cleaning lockers, etc. Both the shampooer and buffer were machines that were operated by gripping and squeezing the handles. In addition to Petitioner's regular duties, he would also have to clean and set up for various events such as school board meetings, sports events, dance recitals, etc.

Petitioner testified that in July, 2010, he began to experience pain in his hands/arms as well as numbness/tingling in the fingers of both hands. In particular, he experienced these symptoms while at work when he was wringing out towels and cleaning the black boards. At that time, Petitioner was being treated by Dr. Ronald Romanelli, an orthopedic surgeon, who was treating him for bilateral shoulder problems.

Dr. Romanelli saw Petitioner on July 7, 2010, and noted that Petitioner was seven months post left rotator cuff repair and that he had recently sustained a strain to both shoulders as a result of a fall. Petitioner also informed Dr. Romanelli that he had been experiencing numbness/tingling in both hands but this was not related to the fall. The record did not contain any reference to Petitioner's repetitive work duties. Dr. Romanelli diagnosed Petitioner with bilateral carpal tunnel syndrome and ordered an EMG study. He stated in the record that the carpal tunnel syndrome and need for an EMG were not work-related (Petitioner's Exhibit 2; pp 59-60).

An EMG was performed on July 12, 2010, which was positive for bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. It was noted that there was evidence of a

moderate generalized large fiber axonal polyneuropathy associated with Petitioner's history of alcohol abuse and that this put Petitioner at a greater risk for compression neuropathy (Petitioner's Exhibit 2; pp 52-56).

Dr. Romanelli saw Petitioner on July 21, 2010 (the date of manifestation alleged in case 11 WC 14535). Dr. Romanelli reviewed the EMG study and examined Petitioner noting positive findings of both elbows and wrists. Dr. Romanelli noted that the EMG was consistent with bilateral carpal tunnel syndrome and bilateral moderate compression of the ulnar nerves at the elbows. He recommended Petitioner have bilateral carpal tunnel releases and ulnar nerve transpositions. He again noted that these conditions were not work-related but made no statement as to whether Petitioner had informed him of the nature of his job duties (Petitioner's Exhibit 2; pp 49-50).

Petitioner was again seen by Dr. Romanelli on August 18, 2010, for bilateral shoulder, low back and hand/arm symptoms. In regard to Petitioner's hand/arm issues, most of Petitioner's complaints were related to his right hand and elbow. Dr. Romanelli opined that Petitioner would need to undergo right carpal tunnel and ulnar release surgical procedures. He again opined that Petitioner's upper extremity problems were not related to a workers' compensation injury (Petitioner's Exhibit 2; p 43).

On September 2, 2010, Dr. Romanelli performed right carpal tunnel and right cubital tunnel surgeries, the procedures consisting of a carpal tunnel release and cubital tunnel release/transposition of the ulnar nerve, respectively. Dr. Romanelli saw Petitioner subsequent to the surgeries on September 10, and September 15, 2010, and authorized Petitioner to be off work (Petitioner's Exhibit 2; pp 35-41).

On September 21, 2010, Petitioner was seen by Dr. Mark Greene, an orthopedic surgeon, primarily because of symptoms in the left upper extremity. Dr. Greene noted that Petitioner had recently undergone right carpal and cubital tunnel surgeries. Petitioner also informed Dr. Greene that he had sustained a fall at work on June 18, but that, prior to that time, he had symptoms of numbness, tingling and aching associated with his work as a custodian. Dr. Greene's record noted that Petitioner's work included cleaning rugs and black boards. Dr. Greene reviewed the EMG study which he opined was positive for bilateral ulnar nerve and median pathology. On clinical examination, there were positive findings in regard to both the left elbow and wrist. Dr. Greene recommended Petitioner have a left carpal tunnel release. In regard to causality, he stated Petitioner's work can be an "aggravating factor" (Petitioner's Exhibit 3; p 79).

Petitioner was again seen by Dr. Greene on October 5, 2010, primarily for his right shoulder symptoms; however, Dr. Greene indicated that left carpal tunnel surgery was scheduled for October 14, 2010 (Petitioner's Exhibit 3; p 54). The following day, October 6, 2010, Petitioner was seen by Dr. Romanelli primarily for his shoulder symptoms. Dr. Romanelli noted that Petitioner's right hand and elbow symptoms had improved. In regard to causality, Dr. Romanelli's record of that date stated "I do think he definitely has had some aggravation from his work that he does in terms of his need for a carpal tunnel release and ulnar nerve release. I did tell him that I did not feel that this was the only cause for his carpal tunnel syndrome and his ulnar nerve compression." (Petitioner's Exhibit 2; p 26).

Dr. Greene performed left carpal tunnel release surgery on October 14, 2010. When seen by Dr. Greene on October 19, and October 26, 2010, Petitioner advised that his left hand symptoms had improved (Petitioner's Exhibit 3; pp 56-61).

Petitioner was again seen by Dr. Romanelli on October 27, 2010, primarily for his bilateral shoulder symptoms. Dr. Romanelli noted that Petitioner was doing well in regard to his right hand and elbow and that he had just recently had left carpal tunnel surgery performed (Petitioner's Exhibit 2; pp 9-10).

At trial, Petitioner testified that he returned to work in April, 2011, after having received additional treatment for his shoulders. Petitioner was able to return to work to his regular job and perform all of the duties required. Respondent did not have any light duty work available for him.

Petitioner was seen by Dr. Greene on May 16, 2011, and he advised Dr. Greene that he had returned to work on April 4, 2011. Petitioner was later seen by Dr. Greene on September 8, 2011, and complained of intermittent numbness in the middle, ring and little fingers of his left hand that had been present for the preceding three weeks. Dr. Greene prescribed a splint for Petitioner to use at night (Petitioner's Exhibit 3; pp 32-33).

Petitioner was again seen by Dr. Greene on August 20, 2012 (the date of manifestation alleged in case 12 WC 42248), complaining of left forearm pain. Dr. Greene ordered an EMG which was performed by Dr. Paul Smucker on August 29, 2012. Dr. Smucker opined that the test was normal; however, he also noted that there could be clinical evidence to support surgery (Petitioner's Exhibit 3; pp 7-9).

Dr. Greene saw Petitioner on September 13, 2012, and, on clinical examination, he noted that Tinel's and Phalen's signs on the left elbow were strongly positive even though the EMG study was essentially normal. On September 18, 2012, Dr. Greene performed an ulnar nerve transposition procedure on Petitioner's left elbow. Petitioner was subsequently seen by Dr. Greene who released him from treatment on October 15, 2012 (Petitioner's Exhibit 3; pp 12-17).

At the direction of Respondent, Dr. Christopher Kostman, an orthopedic surgeon, reviewed Petitioner's treatment records and a description of Petitioner's job provided to him by Respondent. Dr. Kostman been prepared a narrative report dated December 27, 2011, regarding his records review. Based on the preceding, Dr. Kostman opined that Petitioner had bilateral carpal tunnel syndrome and right cubital tunnel syndrome. In regard to causality, Dr. Kostman opined that Petitioner's work activities did not cause, aggravate, exacerbate or accelerate either the bilateral carpal tunnel syndrome or right cubital tunnel syndrome. Dr. Kostman noted that Petitioner had a prior onset of numbness in his hands in May/June, 2009 (which was, at that time, described as arthritic changes, not carpal tunnel syndrome) and that Petitioner had electrodiagnostic evidence of demyelination consistent with alcoholism as a contributing factor (Respondent's Exhibit 14; Deposition Exhibit 2).

Dr. Kostman was deposed on May 9, 2012, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Kostman reaffirmed his opinion that Petitioner's

bilateral carpal tunnel syndrome and right cubital tunnel syndrome were not work-related. Dr. Kostman's opinion was based, in part, on the presence of polyneuropathy which he attributed to Petitioner's alcoholism; however, he agreed that this condition was separate and distinct from the carpal tunnel and cubital tunnel syndrome conditions. When interrogated about Petitioner's custodial duties, he opined that these activities would not cause or exacerbate carpal tunnel syndrome (Respondent's Exhibit 14; pp 10-11; 13-15).

Dr. Romanelli was deposed on July 18, 2012, and his deposition testimony was received into evidence at trial. A significant portion of Dr. Romanelli's testimony was in regard to his treatment of Petitioner's bilateral shoulder problems. When questioned about the etiology of Petitioner's bilateral hand/elbow conditions, Dr. Romanelli testified that he discussed this with Petitioner and his wife on October 6, 2010, and that he informed them that while Petitioner's work was not the only cause for the carpal tunnel syndrome and ulnar nerve compression, that Petitioner's work aggravated these conditions. Further, Dr. Romanelli testified that lifting and repetitive motion could aggravate both carpal tunnel and cubital tunnel syndrome (Petitioner's Exhibit 6; pp 17-18; 26-27).

Again, at the direction of the Respondent, Dr. Kostman reviewed additional medical records and prepared a narrative medical report dated March 5, 2013. In regard to causality, Dr. Kostman's opinion as to this issue was consistent with his prior opinion. Dr. Kostman stated that Petitioner's complaints were related to peripheral polyneuropathy. He also noted that the EMG of September, 2012, was negative for left cubital tunnel syndrome (Respondent's Exhibit 15; Deposition Exhibit 2).

Dr. Greene was deposed on March 25, 2014, and his deposition testimony was received into evidence at trial. Dr. Greene's testimony regarding his treatment of Petitioner was consistent with his medical records and he stated that he performed a left carpal tunnel release and left cubital tunnel release on October 14, 2010, and September 18, 2012, respectively. When presented with a hypothetical question that described Petitioner's work duties as a custodian, Dr. Greene opined that they could aggravate the conditions of both carpal tunnel and cubital tunnel syndrome (Petitioner's Exhibit 7; pp 8-10; 24).

In regard to the left cubital tunnel syndrome, Dr. Greene acknowledged that the EMG was negative for this condition and revealed Petitioner had polyneuropathy; however, Dr. Greene's findings on clinical examination were markedly positive for left cubital tunnel syndrome. Further, the fact that Petitioner had a positive outcome following his left elbow surgery confirmed the presence of left cubital tunnel syndrome (Petitioner's Exhibit 7; pp 21-25).

At the direction of Respondent, Dr. Kostman examined Petitioner on May 7, 2014. In his report of that same date, Dr. Kostman reaffirmed his prior opinion that Petitioner's upper extremity conditions were not related to his work as a custodian (Respondent's Exhibit 15; Deposition Exhibit 3).

Dr. Kostman was deposed for the second time on May 21, 2014, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Kostman reaffirmed his prior deposition testimony and was briefly questioned about his most recent report of May 7, 2014.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

☒ 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

Willie T. Franklin,
Petitioner,
vs.

NO: 11WC 14535

Jacksonville School District 117,
Respondent,

15IWCC0912

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, temporary total disability, medical, permanent partial disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 12, 2015, is hereby affirmed and adopted.

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: DEC 1 1 2015
o120215
CJD/jrc
049

Charles J. DeVriendt

Joshua D. Luskin

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FRANKLIN, WILLIE T
Employee/Petitioner

Case# **11WC014535**

12WC042248

JACKSONVILLE SCHOOL DISTRICT #117
Employer/Respondent

15IWCC0912

On 1/12/2015, 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 0.11% 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:

0834 KANOSKI BRESNEY
CHARLES EDMISTON
129 S CONGRESS
RUSHVILLE, IL 62681

2396 KNAPP OHL & GREEN
L DAVID GREEN
6100 CENTER GROVE RD
EDWARDSVILLE, IL 62025

15IWCC0912

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ 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

Willie T. Franklin
Employee/Petitioner

v.

Jacksonville School District 117
Employer/Respondent

Case # 11 WC 14535

Consolidated cases: 12 WC 42248

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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on November 19, 2014. 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 July 21, 2010, 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 $38,419.32; the average weekly wage was $739.41.

On the date of accident, Petitioner was 58 years of age, married with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00.

Respondent is entitled to a credit of $19,845.05 paid under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 8, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of $19,845.05 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $492.94 per week for 5 6/7 weeks commencing September 2, 2010, through September 15, 2010; October 14, 2010, through October 26, 2010; and September 18, 2012, through October 1, 2012, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $443.65 per week for 114.5 weeks because the injuries sustained caused the 12 ½% loss of use of the right hand; 12 ½% loss of use of the left hand; 12 ½% loss of use of the right arm and 12 ½% loss of use of the left arm, as provided in Section 8(e) of the Act.

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.

William R. Gallagher, Arbitrator

January 6, 2015
Date

JAN 12 2015

Findings of Fact

Petitioner filed two Applications for Adjustment of Claim both of which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. In case 11 WC 14535, the Application alleged a date of accident (manifestation) of July 21, 2010, and that Petitioner sustained repetitive trauma to the bilateral upper extremities (Arbitrator's Exhibit 2). In case 12 WC 42248, the Application alleged a date of accident (manifestation) of August 20, 2012, and that Petitioner sustained repetitive trauma to the left upper extremity (Arbitrator's Exhibit 3). The two cases were previously consolidated for trial.

Petitioner began working as a custodian for Respondent in March, 2000. Petitioner testified that during the regular school year he worked 3:00 PM to 12:00 AM. Petitioner was required to clean 23 classrooms per day. The classrooms were all carpeted and he had to vacuum them, remove the trash, clean the black boards, etc. It took approximately 15 minutes to clean one classroom. Petitioner actively used both of his hands/arms while performing these tasks. When vacuuming, he would switch between using his right hand and left hand or vacuum with one hand and lift a desk with the other. In addition to the preceding, Petitioner would periodically clean the gymnasiums and locker rooms. On occasion, cleaning the gym floor required the use of a machine that had brushes in the front that would rotate. Petitioner would have to squeeze the handles of the machine with both hands to operate it. When Petitioner cleaned the locker rooms and bathrooms, he would also remove graffiti.

Petitioner's working hours during the summer changed to 6:00 AM to 2:30 PM. During that period of time, Petitioner would work with crews of other custodians and they would perform a thorough cleaning of the entire school. This included shampooing of all of the carpeting, dusting vents and lights, stripping and waxing the floors, using a buffer on the floors, cleaning lockers, etc. Both the shampooer and buffer were machines that were operated by gripping and squeezing the handles. In addition to Petitioner's regular duties, he would also have to clean and set up for various events such as school board meetings, sports events, dance recitals, etc.

Petitioner testified that in July, 2010, he began to experience pain in his hands/arms as well as numbness/tingling in the fingers of both hands. In particular, he experienced these symptoms while at work when he was wringing out towels and cleaning the black boards. At that time, Petitioner was being treated by Dr. Ronald Romanelli, an orthopedic surgeon, who was treating him for bilateral shoulder problems.

Dr. Romanelli saw Petitioner on July 7, 2010, and noted that Petitioner was seven months post left rotator cuff repair and that he had recently sustained a strain to both shoulders as a result of a fall. Petitioner also informed Dr. Romanelli that he had been experiencing numbness/tingling in both hands but this was not related to the fall. The record did not contain any reference to Petitioner's repetitive work duties. Dr. Romanelli diagnosed Petitioner with bilateral carpal tunnel syndrome and ordered an EMG study. He stated in the record that the carpal tunnel syndrome and need for an EMG were not work-related (Petitioner's Exhibit 2; pp 59-60).

An EMG was performed on July 12, 2010, which was positive for bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. It was noted that there was evidence of a

moderate generalized large fiber axonal polyneuropathy associated with Petitioner's history of alcohol abuse and that this put Petitioner at a greater risk for compression neuropathy (Petitioner's Exhibit 2; pp 52-56).

Dr. Romanelli saw Petitioner on July 21, 2010 (the date of manifestation alleged in case 11 WC 14535). Dr. Romanelli reviewed the EMG study and examined Petitioner noting positive findings of both elbows and wrists. Dr. Romanelli noted that the EMG was consistent with bilateral carpal tunnel syndrome and bilateral moderate compression of the ulnar nerves at the elbows. He recommended Petitioner have bilateral carpal tunnel releases and ulnar nerve transpositions. He again noted that these conditions were not work-related but made no statement as to whether Petitioner had informed him of the nature of his job duties (Petitioner's Exhibit 2; pp 49-50).

Petitioner was again seen by Dr. Romanelli on August 18, 2010, for bilateral shoulder, low back and hand/arm symptoms. In regard to Petitioner's hand/arm issues, most of Petitioner's complaints were related to his right hand and elbow. Dr. Romanelli opined that Petitioner would need to undergo right carpal tunnel and ulnar release surgical procedures. He again opined that Petitioner's upper extremity problems were not related to a workers' compensation injury (Petitioner's Exhibit 2; p 43).

On September 2, 2010, Dr. Romanelli performed right carpal tunnel and right cubital tunnel surgeries, the procedures consisting of a carpal tunnel release and cubital tunnel release/transposition of the ulnar nerve, respectively. Dr. Romanelli saw Petitioner subsequent to the surgeries on September 10, and September 15, 2010, and authorized Petitioner to be off work (Petitioner's Exhibit 2; pp 35-41).

On September 21, 2010, Petitioner was seen by Dr. Mark Greene, an orthopedic surgeon, primarily because of symptoms in the left upper extremity. Dr. Greene noted that Petitioner had recently undergone right carpal and cubital tunnel surgeries. Petitioner also informed Dr. Greene that he had sustained a fall at work on June 18, but that, prior to that time, he had symptoms of numbness, tingling and aching associated with his work as a custodian. Dr. Greene's record noted that Petitioner's work included cleaning rugs and black boards. Dr. Greene reviewed the EMG study which he opined was positive for bilateral ulnar nerve and median pathology. On clinical examination, there were positive findings in regard to both the left elbow and wrist. Dr. Greene recommended Petitioner have a left carpal tunnel release. In regard to causality, he stated Petitioner's work can be an "aggravating factor" (Petitioner's Exhibit 3; p 79).

Petitioner was again seen by Dr. Greene on October 5, 2010, primarily for his right shoulder symptoms; however, Dr. Greene indicated that left carpal tunnel surgery was scheduled for October 14, 2010 (Petitioner's Exhibit 3; p 54). The following day, October 6, 2010, Petitioner was seen by Dr. Romanelli primarily for his shoulder symptoms. Dr. Romanelli noted that Petitioner's right hand and elbow symptoms had improved. In regard to causality, Dr. Romanelli's record of that date stated "I do think he definitely has had some aggravation from his work that he does in terms of his need for a carpal tunnel release and ulnar nerve release. I did tell him that I did not feel that this was the only cause for his carpal tunnel syndrome and his ulnar nerve compression." (Petitioner's Exhibit 2; p 26).

Dr. Greene performed left carpal tunnel release surgery on October 14, 2010. When seen by Dr. Greene on October 19, and October 26, 2010, Petitioner advised that his left hand symptoms had improved (Petitioner's Exhibit 3; pp 56-61).

Petitioner was again seen by Dr. Romanelli on October 27, 2010, primarily for his bilateral shoulder symptoms. Dr. Romanelli noted that Petitioner was doing well in regard to his right hand and elbow and that he had just recently had left carpal tunnel surgery performed (Petitioner's Exhibit 2; pp 9-10).

At trial, Petitioner testified that he returned to work in April, 2011, after having received additional treatment for his shoulders. Petitioner was able to return to work to his regular job and perform all of the duties required. Respondent did not have any light duty work available for him.

Petitioner was seen by Dr. Greene on May 16, 2011, and he advised Dr. Greene that he had returned to work on April 4, 2011. Petitioner was later seen by Dr. Greene on September 8, 2011, and complained of intermittent numbness in the middle, ring and little fingers of his left hand that had been present for the preceding three weeks. Dr. Greene prescribed a splint for Petitioner to use at night (Petitioner's Exhibit 3; pp 32-33).

Petitioner was again seen by Dr. Greene on August 20, 2012 (the date of manifestation alleged in case 12 WC 42248), complaining of left forearm pain. Dr. Greene ordered an EMG which was performed by Dr. Paul Smucker on August 29, 2012. Dr. Smucker opined that the test was normal; however, he also noted that there could be clinical evidence to support surgery (Petitioner's Exhibit 3; pp 7-9).

Dr. Greene saw Petitioner on September 13, 2012, and, on clinical examination, he noted that Tinel's and Phalen's signs on the left elbow were strongly positive even though the EMG study was essentially normal. On September 18, 2012, Dr. Greene performed an ulnar nerve transposition procedure on Petitioner's left elbow. Petitioner was subsequently seen by Dr. Greene who released him from treatment on October 15, 2012 (Petitioner's Exhibit 3; pp 12-17).

At the direction of Respondent, Dr. Christopher Kostman, an orthopedic surgeon, reviewed Petitioner's treatment records and a description of Petitioner's job provided to him by Respondent. Dr. Kostman been prepared a narrative report dated December 27, 2011, regarding his records review. Based on the preceding, Dr. Kostman opined that Petitioner had bilateral carpal tunnel syndrome and right cubital tunnel syndrome. In regard to causality, Dr. Kostman opined that Petitioner's work activities did not cause, aggravate, exacerbate or accelerate either the bilateral carpal tunnel syndrome or right cubital tunnel syndrome. Dr. Kostman noted that Petitioner had a prior onset of numbness in his hands in May/June, 2009 (which was, at that time, described as arthritic changes, not carpal tunnel syndrome) and that Petitioner had electrodiagnostic evidence of demyelination consistent with alcoholism as a contributing factor (Respondent's Exhibit 14; Deposition Exhibit 2).

Dr. Kostman was deposed on May 9, 2012, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Kostman reaffirmed his opinion that Petitioner's

bilateral carpal tunnel syndrome and right cubital tunnel syndrome were not work-related. Dr. Kostman's opinion was based, in part, on the presence of polyneuropathy which he attributed to Petitioner's alcoholism; however, he agreed that this condition was separate and distinct from the carpal tunnel and cubital tunnel syndrome conditions. When interrogated about Petitioner's custodial duties, he opined that these activities would not cause or exacerbate carpal tunnel syndrome (Respondent's Exhibit 14; pp 10-11; 13-15).

Dr. Romanelli was deposed on July 18, 2012, and his deposition testimony was received into evidence at trial. A significant portion of Dr. Romanelli's testimony was in regard to his treatment of Petitioner's bilateral shoulder problems. When questioned about the etiology of Petitioner's bilateral hand/elbow conditions, Dr. Romanelli testified that he discussed this with Petitioner and his wife on October 6, 2010, and that he informed them that while Petitioner's work was not the only cause for the carpal tunnel syndrome and ulnar nerve compression, that Petitioner's work aggravated these conditions. Further, Dr. Romanelli testified that lifting and repetitive motion could aggravate both carpal tunnel and cubital tunnel syndrome (Petitioner's Exhibit 6; pp 17-18; 26-27).

Again, at the direction of the Respondent, Dr. Kostman reviewed additional medical records and prepared a narrative medical report dated March 5, 2013. In regard to causality, Dr. Kostman's opinion as to this issue was consistent with his prior opinion. Dr. Kostman stated that Petitioner's complaints were related to peripheral polyneuropathy. He also noted that the EMG of September, 2012, was negative for left cubital tunnel syndrome (Respondent's Exhibit 15; Deposition Exhibit 2).

Dr. Greene was deposed on March 25, 2014, and his deposition testimony was received into evidence at trial. Dr. Greene's testimony regarding his treatment of Petitioner was consistent with his medical records and he stated that he performed a left carpal tunnel release and left cubital tunnel release on October 14, 2010, and September 18, 2012, respectively. When presented with a hypothetical question that described Petitioner's work duties as a custodian, Dr. Greene opined that they could aggravate the conditions of both carpal tunnel and cubital tunnel syndrome (Petitioner's Exhibit 7; pp 8-10; 24).

In regard to the left cubital tunnel syndrome, Dr. Greene acknowledged that the EMG was negative for this condition and revealed Petitioner had polyneuropathy; however, Dr. Greene's findings on clinical examination were markedly positive for left cubital tunnel syndrome. Further, the fact that Petitioner had a positive outcome following his left elbow surgery confirmed the presence of left cubital tunnel syndrome (Petitioner's Exhibit 7; pp 21-25).

At the direction of Respondent, Dr. Kostman examined Petitioner on May 7, 2014. In his report of that same date, Dr. Kostman reaffirmed his prior opinion that Petitioner's upper extremity conditions were not related to his work as a custodian (Respondent's Exhibit 15; Deposition Exhibit 3).

Dr. Kostman was deposed for the second time on May 21, 2014, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Kostman reaffirmed his prior deposition testimony and was briefly questioned about his most recent report of May 7, 2014.

When asked about Dr. Greene's noting that following the left elbow surgery Petitioner's condition improved, Dr. Kostman opined that this was subjective because it was based on Petitioner's symptoms, but the EMG (which was negative for cubital tunnel syndrome) was more reliable because it was objective. He also noted that both EMG studies performed in 2010 and 2012 revealed polyneuropathy (Respondent's Exhibit 15; pp 11-12).

On cross-examination, Dr. Kostman agreed that Petitioner had carpal tunnel syndrome and cubital tunnel syndrome and that these conditions were separate from polyneuropathy and that the EMG studies distinguished the compression caused by the syndromes and the polyneuropathy (Respondent's Exhibit 15; pp 12-13).

At trial, Petitioner testified that the symptoms in both hands/elbows improved after the surgeries but that he still has some complaints. Petitioner stated that he has a lack of strength in both hands/arms, achiness in both hands primarily in the palms, and numbness in the areas of the surgical scars. Petitioner is no longer working for Respondent because he retired in July, 2014.

On cross-examination, Petitioner admitted to being a smoker and that he began this habit when he was 16 years old. He also admitted to a past history of alcohol abuse. Further, Petitioner agreed that he has had a number of other health issues, including problems referable to both shoulders.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury to his right and left hands and elbows arising out of and in the course of his employment for Respondent that manifested itself on July 21, 2010.

In support of this conclusion the Arbitrator notes the following:

Petitioner's testimony regarding the repetitive nature of his job duties was unrebutted.

Dr. Romanelli's medical records contained several entries by him that Petitioner's carpal tunnel and cubital tunnel syndrome conditions were not work-related; however, these statements did not include any description of Petitioner's repetitive job duties. When Dr. Romanelli became aware of Petitioner's job duties on October 6, 2010, he changed his opinion regarding causality stating that Petitioner's job duties aggravated these conditions. Dr. Romanelli reaffirmed this opinion when he was deposed on July 18, 2012.

When deposed on March 25, 2014, Dr. Greene also opined that Petitioner's work activities could aggravate both carpal tunnel and cubital tunnel syndrome.

In regard to the left cubital tunnel syndrome, this was initially diagnosed at the time of the EMG study of July 12, 2010, and when Dr. Romanelli noted moderate compression of the ulnar nerve at both elbows on July 21, 2010. Even though a subsequent EMG of September 13, 2012, was

negative for left cubital tunnel syndrome, Dr. Greene's findings on clinical examination were markedly positive for this condition. Based on the preceding, the Arbitrator finds that the left cubital tunnel syndrome manifested itself on July 21, 2010.

Dr. Kostman, Respondent's medical records examiner and subsequent Section 12 examiner, opined that Petitioner's bilateral carpal tunnel syndrome and right cubital tunnel syndrome conditions were not related to his work activities but that his symptoms were attributed to a polyneuropathy associated with Petitioner's prior alcohol abuse. Dr. Kostman agreed that Petitioner had bilateral carpal tunnel syndrome and right cubital tunnel syndrome and that these conditions were separate and distinct from polyneuropathy. Even in light of the fact that Dr. Kostman stated the bilateral carpal tunnel syndrome and right cubital tunnel syndrome were separate and distinct from the polyneuropahty, he appears to attribute all symptoms to the polyneuropathy.

In regard to the left cubital tunnel syndrome, Dr. Kostman opined that Petitioner did not have this condition because the EMG of September, 2012, was negative for this condition even though Dr. Greene made this diagnosis on clinical examination and Petitioner's symptoms improved subsequent to the surgery.

Based on the preceding, the Arbitrator finds the opinions of Dr. Romanelli and Dr. Greene to be more persuasive than that of Dr. Kostman.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical expenses incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 8, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of $19,845.05 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of 5 6/7 weeks commencing September 2, 2010, through September 15, 2010; October 14, 2010, through October 26, 2010; and September 18, 2012, through October 1, 2012.

In support of this conclusion the Arbitrator notes the following:

At trial, counsel for Petitioner and Respondent agreed to the aforestated period of temporary total disability.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner sustained permanent partial disability to the extent of 12 ½% loss of use of the right hand; 12 ½% loss of use of the left hand; 12 ½% loss of use of the right arm and 12 ½% loss of use of the left arm.

In support of this conclusion the Arbitrator notes the following:

Petitioner was diagnosed with bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome and surgeries were required.

Petitioner testified that his hand/arm symptoms improved subsequent to the surgery; however, he still has complaints of diminished strength in both hands/arms, achiness in the palms of both hands and numbness in the areas of the surgical scars. The Arbitrator finds these complaints to be credible and consistent with the injuries Petitioner sustained.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☐ 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 down	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Susan D. Switzer (widow of Dale Switzer, deceased),

Petitioner,

vs. NO: 07 WC 53788

Stateville Correctional Center,

15IWCC0913

Respondent.

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 accident date, occupational disease, permanent partial disability, casual connection, whether Dale Switzer's death was causally related to the accident, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

So that the record is clear, and there is no mistake as to the intentions or actions of this Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical / legal perspective. We have considered all of the testimony, exhibits, pleadings and arguments submitted by the Petitioner and the Respondent. One should not and cannot presume that we have failed to review any of the record made below. Though our view of the record may or may not be different than the Arbitrator's, it should not be presumed that we have failed to consider any evidence taken below. Our review of this material is statutorily mandated and we assert that this has been completed.

The Petitioner in this case, Susan D. Switzer, was married to Dale Switzer at the time of his death on October 5, 2007. According to Mr. Switzer's death certificate, he died from hepatocellular cancer of the liver, which was a result of being infected with Hepatitis C and resulting cirrhosis. (Px9).

The Petitioner testified that she and Mr. Switzer were married for 26 years at his death and had two 2 children together. The Petitioner testified to her familiarity with her husband and with his naked body. She knew that he did not have any tattoos, but he did have a scar on his left shoulder due to him being stabbed at work. To her knowledge, Mr. Switzer never had diabetes or took insulin, and never had a blood transfusion or kidney dialysis. She never observed any needle marks on his arms or legs, and she was never aware of her husband having a sexually transmitted disease. (Tr.11-20).

The Petitioner also testified that her husband was a correctional officer for the state of Illinois from 1987-2007, first at Stateville Correctional Center in Joliet ("Stateville"), and then at Robinson Correctional Center. She was aware of a prison riot at Stateville in 1991 due to it being in the news and from a conversation with her husband. (Tr. 11-18).

Petitioner's Exhibit 1 is a report filled out by Mr. Switzer regarding a prison riot that occurred on July 14, 1991 at 7:00 p.m. He and two other guards were attacked by 6 - 8 inmates at Stateville with pipes and shanks. Mr. Switzer "took a blow to the shoulder." The inmates tied up two of the guards, including Mr. Switzer, and they were trapped in the basement for 2.5 – 3 hours before help arrived.

Petitioner's Exhibit 2 is an incident report completed by M.B. Engel, RN at Stateville on July 14, 1991 at 10:08 p.m. She wrote that Mr. Switzer reported to the emergency room complaining of generalized discomfort. She noted that he had a "small puncture type wound, left shoulder," and one to two other abrasions. The areas were cleansed with Betadine and band-aids were applied. There is also a notation that both of his knees were reddened without a break in the skin on the knees. He reported that his Tetanus was up to date. Mr. Switzer was instructed to keep his wounds clean, dry, and follow up with his own physician.

Several exhibits entered into evidence contain medical records regarding Mr. Switzer's diagnoses and conditions (Petitioner's exhibits 3 – 6). He first reported to the emergency room regarding his medical conditions on July 31, 2007 – 16 years post-prison incident – and was ultimately diagnosed with cirrhosis. He was subsequently diagnosed with Hepatitis C and liver cancer in August 2007.

Petitioner's Exhibit 11 contained an Illinois Department of Corrections Hepatitis C Guideline, dated March 2010 that stated: "Hepatitis C is very prevalent within the Corrections population."

Dr. Jeffrey Coe

Dr. Jeffrey Coe, an occupational medicine specialist, performed a records review of Mr. Switzer's medical records pursuant to Section 12 of the Act on behalf of Petitioner. While being deposed for this case, Dr. Coe stated that when Mr. Switzer sustained his wound in the prison riot in 1991, specific diagnostic testing for Hepatitis C did not exist until about 1995. Mr. Switzer was diagnosed with chronic Hepatitis C infection associated with cirrhosis of the liver on July 31, 2007, and hepatocellular carcinoma of the liver in August 2007 . The cancer of the liver that Mr. Switzer suffered from is a recognized complication of chronic cirrhosis and chronic

liver infection. The latency period from the time of infection with Hepatitis C to the breakdown of the liver varies greatly in people. "But standard teaching is that it is at least more than 10 years...before anybody might develop cirrhosis or breakdown in their liver after a Hepatitis C infection, " according to Dr. Coe. (Px7, 4-12).

Dr. Coe opined that the time period from which Mr. Switzer sustained his wound to the time of his diagnosis with Hepatitis C and cirrhosis falls within the aforementioned minimum 10-year time frame because Mr. Switzer was stabbed in 1991 and was diagnosed in 2007. (Px7 13-15).

Dr. Coe also noted that Hepatitis C is a viral infection of the liver transmitted through blood or bodily fluids such as blood transfusions, hemodialysis, tattoos, needle sharing with drug abusers, and anything that introduces a needle into the body. It can also be sexually transmitted, but that is not a very common way of transferring it. A stab wound with a contaminated knife or other instrument could transmit Hepatitis C. (Px7, 10-12).

Additionally, Dr. Coe noted that from reviewing Mr. Switzer's medical records he had no tattoos, no history of blood transfusions, no history of kidney disease (thus, he did not undergo hemodialysis), and no other risk factors except for sustaining a stab wound during the prison riot on July 14, 1991. Dr. Coe also observed that it was significant that Mr. Switzer was stabbed in a prison riot because the prison population has a higher incidence of Hepatitis C than the general population: "Hepatitis C is a not-uncommon condition that may be present in up to 20-30% of prison inmates by later studies." Dr. Coe opined that sustaining a stab wound in a prison riot "Would be a recognized risk factor for [Hepatitis C] based on standard medical teaching and information that [Dr. Coe] learned about [Mr. Switzer]. (Px7 13-15).

Dr. Coe concluded that based upon all of the information that he reviewed on Mr. Switzer's case, he could opine: "To a reasonable degree of medical certainty that there was a causal relationship between the stab wound that Mr. Switzer suffered in a prison riot in 1991, and his later development of Hepatitis C complicated by cirrhosis and hepatocellular carcinoma that ultimately lead to his death on October 5, 2007." (Px7 17-18).

On re-direct examination, Dr. Coe stated that a 'small puncture-type wound' to the shoulder could be caused by a shank, and that anything that punctures the skin presents a risk for a Hepatitis C infection. If the shank that Mr. Switzer was stabbed with was contaminated with the Hepatitis C virus, then a puncture wound from that shank would be enough to transmit the virus. (Px7 34-35).

Betadine is an iodine-based skin disinfectant that is used for skin preparation and pre-operative cleaning of the skin. It is used to kill bacteria, but only on the surface of the skin. Dr. Coe opined that if a band-aid was applied to a wound, then that would suggest that the skin was broken. Further, Tetanus is a spore-related toxin that passes through the skin. Thus, if someone is asked about the status of their Tetanus shot, it would be presumed that the skin was broken due to a puncture or stab wound. (Px7 34-37).

Dr. Keith Logie

Dr. Keith Logie was also deposed regarding Mr. Switzer's case. An oncologist, he began treating Mr. Switzer when he already had advanced cancer in August 2007 until his death. Dr. Logie noted that he believed that Hepatitis C is a cause of hepatocellular carcinoma, which was the cause of Mr. Switzer's carcinoma. Dr. Logie obtained a history from Mr. Switzer regarding how Mr. Switzer contracted Hepatitis C. He asked Mr. Switzer about blood transfusions, needle sticks, illicit drug use with needles, heroin injectables, and shared needles; but, those risk factors did not apply to Mr. Switzer. Even though Hepatitis C can be acquired through sexual intercourse, he did not believe that it was applicable in this case. Dr. Logie noted that he is not a Hepatitis C expert, but he expects to see cirrhosis develop within 10 – 20 years after Hepatitis C exposure. (Px8 13-19, 21-23).

Dr. Logie also opined that the only likely mechanism by which Mr. Switzer developed hepatocellular cancer was the stabbing incident during the prison riot in 1991. That was the only exposure that Dr. Logie could detect; thus, it is his opinion, based on a reasonable degree of medical certainty that Mr. Switzer could have acquired Hepatitis C from being stabbed in the prison riot. Dr. Logie posited this opinion as it was the only conclusion he could reach based upon the evidence of record. (Px8 24-25).

Dr. Gordon Trenholme

Dr. Gordon Trenholme, an infectious diseases specialist, performed a records review of Mr. Switzer's medical records pursuant to Section 12 of the Act on behalf of Respondent. By his deposition testimony, Dr. Trenholme noted that he reviewed medical records including Dr. Logie's records and Dr. Coe's report. (Rx1 4-9).

By his report, Dr. Trenholme indicated: "Presentation after 15 years is early, and especially early from development of cirrhosis," which refers to the natural history of Hepatitis C. He noted that it is unknown how about 50% of patients with Hepatitis C acquire the infection because many people do not recall what they were doing 25-30 years ago. Thus, it is difficult to determine how they were infected with the virus. (Rx1 9-10).

Dr. Trenholme opined: "From the time of infection to the development of cirrhosis is at the minimum, 20 years. After you develop cirrhosis, the time to the development of end-stage liver disease, or hepatocellular carcinoma [Mr. Switzer] had, is another 5 years. So the time of infection to the development of hepatocellular carcinoma is 25 years." Dr. Trenholme did not think that a person could develop cancer in 10 years. Dr. Trenholme also stated in his report: "Transmission of Hepatitis C by laceration is extremely unusual." Hepatitis C is usually transmitted through blood "inoculation," and Dr. Trenholme was only able to find two cases in the world's literature of transmission by laceration. He has never had a transmission-by-laceration case. Dr. Trenholme disagreed with Dr. Coe that the latency period for cirrhosis is usually more than 10 years – he believes that it is 20 years. He also opined that Mr. Switzer had the Hepatitis C exposure prior to the prison riot based on the time sequence. (Rx1 11-15).

Dr. Trenholme was asked whether or not the puncture wound that is referred to in the prison nurse's report could be a competent way to transmit the Hepatitis C virus. Dr. Trenholme answered: "A puncture wound type, if the whatever was punctured was related to—was contaminated with the blood of somebody with Hepatitis C, it is possible." He agreed that if Mr. Switzer's injury was a puncture wound, it was a competent cause of the Hepatitis C transmission. But he also notes that the report states "small puncture type." (Rx1 23-26).

In his report, Dr. Trenholme referenced the incidence of Hepatitis C in the prison population. He opined that statistics show that the incidence is 10 – 30% among inmates, whereas it is 1.8% of the normal U. S. population. (Rx1 31-36).

Dr. Trenholme testified that very few things in medicine are absolute in terms of timing, and that it is more likely that things are expressed in a range with probabilities. Furthermore, during later testimony, he conceded that it was medically possible in Mr. Switzer's case for the incubation period of Hepatitis C to cirrhosis/ cancer to be 17 years. But Dr. Trenholme thinks that it is "very unlikely," "not probable," but "possible" that there was a 16 year incubation period in this case. He also agreed that it was medically possible that a puncture wound like the one documented by the prison nurse could have been the cause of entry of Hepatitis C into Mr. Switzer, if the instrument that caused the wound was contaminated with the virus. (Rx1 36-37, 49-50).

Dr. Trenholme opined to a degree of medical certainty that it is more likely than not that Mr. Switzer already had Hepatitis C prior to 1991, and he would want to know if Mr. Switzer was negative for the Hepatitis C antibodies before the prison riot. (Rx1 40-44).

The Illinois Workers' Occupational Diseases Act, Section 1(d) states:

> A disease shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin or aggravation in a risk connected with the employment and to have flowed from that source as a rational consequence.
>
> An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when, for any length of time however short, he or she is employed in an occupation or process in which the hazard of the disease exists.

In accordance with the provision of the Occupational Diseases Act cited above, the Commission finds that upon consideration of all of the circumstances of this case, there is a causal connection between Mr. Switzer's work as a correctional officer and his contraction of Hepatitis C. We find that his contraction of the virus originated from a stab wound that he sustained during a prison riot on July 14, 1991. We also find that Mr. Switzer was employed in an occupation in which the hazard of acquiring Hepatitis C existed.

It is uncontroverted that Dale Switzer died from hepatocellular cancer of the liver, which resulted from an infection of the Hepatitis C virus. The Commission finds that it is more likely than not that the instrument used to stab Mr. Switzer in the shoulder was contaminated with the Hepatitis C virus. We agree with Drs. Logie and Coe that the likely explanation for Mr. Switzer's infection with Hepatitis C was due to a contaminated weapon in the prison riot, as there is no other explanation for his infection.

Mr. Switzer gave a consistent medical history to his treating physicians in that he did not have any risk factors for acquiring Hepatitis C such as tattoos, blood transfusions, kidney disease, and illicit drug use. Petitioner also testified that Mr. Switzer did not have any tattoos or any medical condition where he would have been stuck with needles for medicinal purposes. She never observed him to have any needle marks on his body, nor was she aware of him having a sexually transmitted disease.

The record supports the finding that the Hepatitis C virus entered into Mr. Switzer's body via the stab wound he sustained. The incident report that was completed by the Stateville nurse noted that he had a "small puncture type wound" to his left shoulder. A 'puncture wound' signifies that the skin was broken, which allowed for the virus to enter Mr. Switzer's body. The fact that the nurse used the descriptive word 'type' does not diminish the fact that there was a 'puncture wound.' Furthermore, the nurse inquired about the status of Mr. Switzer's Tetanus shot. As Dr. Coe noted during his deposition, her question about the Tetanus shot indicates that something had passed through Mr. Switzer's skin. Dr. Coe also noted that the fact that a band-aid was applied to Mr. Switzer's wound suggests that his skin was broken.

Drs. Coe and Trenholme both testified about the prevalence of Hepatitis C in the prison population, with a 10 – 30% infection rate. Dr. Trenholme testified that the normal U.S. population only has a 1.8% infection rate. Moreover, the Illinois Department of Corrections Hepatitis C Guideline from 2010 (just 3 years after Mr. Switzer's death) noted that Hepatitis C is very prevalent within the prison population. With these facts in mind, the Commission finds that it is more probable than not that the instrument used to stab Dale Switzer was contaminated with the Hepatitis C virus.

The Commission finds that Dr. Coe's testimony was more persuasive than Dr. Trenholme's testimony regarding the progression of Hepatitis C to cirrhosis and cancer. Dr. Coe testified that the latency period from the time of infection of the virus to the breakdown of the liver varies greatly among people: "But that standard teaching is that it is at least more than 10 years" before a person might develop cirrhosis. However, Dr. Trenholme opined on direct examination that the latency period for cirrhosis to develop was a minimum of 20 years, and for cancer to develop would take another 5 years. But, contradictorily, he later conceded that it could have been possible that there was a 16 year incubation period for the development of Mr. Switzer's cirrhosis and liver cancer conditions. In this case, Mr. Switzer's latency period would have been 16 years.

Dr. Trenholme also stated that the "transmission of Hepatitis C by laceration is extremely unusual." His opinion was based upon the fact that Hepatitis C is usually transmitted through blood "inoculation," and Dr. Trenholme was only able to find two cases in the world's literature

of transmission by laceration. He has never had a transmission-by-laceration case. The Commission does not find Dr. Trenholme's view to be persuasive regarding his transmission-by-laceration opinion.

Based upon the totality of the evidence and the factual findings above, the Commission finds that Dale Switzer contracted Hepatitis C while working as a correctional officer for Respondent during a prison riot on July 14, 1991. The Petitioner in this case is due death and burial benefits as statutorily mandated.

The Commission concludes that the accident date for this case should reflect the date of death of Petitioner's spouse, Dale Switzer, on October 5, 2007. A surviving spouse's cause of action accrues on the date of death of the injured worker. *A.O. Smith v. Industrial Commission*, 109 Ill. 2d 52.

We find that Petitioner is due burial expenses in the sum of $8,000.00 per §7(f) of the Act. We further find that Respondent shall pay the sum of $658.46 per week (based on an average weekly wage of $987.60) to Petitioner as provided in §7(a) of the Act, for the reason that the injuries sustained caused the death of Dale Switzer on October 5, 2007 leaving surviving at the time of his death his widow, Susan Switzer, and their minor child. According to §8(b)4.2 of the Act, any provision to the contrary notwithstanding, the total compensation payable under Section 7 shall not exceed the greater of $500,000.00 or 25 years.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision, filed on May 12, 2014, is hereby reversed, as the Commission finds a causally related occupational disease that arose out of and in the course of Dale Switzer's employment with Respondent.

IT IS FURTHER ORDERED BY THE COMMISSION that the Date of Accident is October 5, 2007.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the sum of $658.46 per week to Petitioner as provided in §7(a) of the Act, for the reason that the injuries sustained caused the death of Dale Switzer on October 5, 2007 leaving surviving at the time of his death his widow, Susan Switzer, and their minor child. According to §8(b)4.2 of the Act, any provision to the contrary notwithstanding, the total compensation payable under Section 7 shall not exceed the greater of $500,000.00 or 25 years.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the widow or to the person or persons who incurred the burial expenses of Decedent the sum of $8,000.00 under §7(f) of the Act.

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

15IWCC0913

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 exposure.

DATED: DEC 1 1 2015

Thomas J. Tyrrell

Michael J. Brennan

TJT/ gaf
O: 10/13/15
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DISSENT

I respectfully dissent from the decision of the majority. Arbitrator Falcioni's findings are both thorough and well reasoned. This decision is correct and should be affirmed

Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt	☐ 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

JANIKA THOMAS,

Petitioner,

15IWCC0914

vs.

NO: 10 WC 009031

PACE BUS COMPANY,

Respondent.

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 penalties and attorney fees, 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.

~~On review, Petitioner argues that the Arbitrator erred in failing to award § 19(k)~~ penalties, § 19(l) penalties, and § 16 attorney's fees to Petitioner and failed to award the proper amount of temporary total disability benefits. On August 13, 2010, Petitioner filed a petition for penalties under 820 ILCS 305/19(l) and 820 ILCS 305/19(k) and attorney fees under 820 ILCS 305/16 of the ILWCA. (PX17).

Based upon a review of the record as a whole, and based upon the findings stated herein, the Commission modifies the Arbitrator's Decision, and finds that Petitioner is entitled to an award of award § 19(k) penalties, § 19(l) penalties, and § 16 attorney's fees.

At the time of the arbitration hearing in this matter, Respondent stipulated that Petitioner was temporarily totally disabled for the period of 40 weeks, from October 19, 2009 through July 25, 2010. Based upon Petitioner's stipulated average weekly wage of $462.00, temporary total disability rate of $308.00, stipulated period of temporary total disability of 40 weeks, the amount of temporary total disability benefits due totals $12,320.00. The parties further stipulated that

15IWCC0914

Respondent paid $7,948.80 in temporary total disability benefits as of the date of hearing. (ARB EX1). Based upon the parties' stipulations, the record clearly indicates Respondent underpaid $4,371.20 in temporary total disability benefits. The Commission awards § 19(l) penalties at the rate of $30.00 per day and in the maximum statutory amount of $10,000.00, based upon the Respondent's refusal, neglect, and unreasonable delay in the payment of temporary total disability benefits without just cause. Such penalties are in the nature of a non-discretionary late fee. McMahan v. Industrial Commission, 183 Ill.2d 499 (1998).

The Commission further finds Petitioner is entitled to an award of § 19(k) penalties, based upon Respondent's unreasonable and vexatious delay of payment of compensation. As noted above, the parties stipulated that Respondent paid $7,948.80 in temporary total disability benefits as of the date of hearing, and Respondent further stipulated that Petitioner was in fact temporarily totally disabled for a period of 40 weeks, from October 19, 2009 through July 25, 2010. Respondent stipulated to an underpayment of temporary total disability benefits in the amount of $4,371.20. The Arbitrator awarded temporary total disability benefits for a period of 49-2/7 weeks, from October 19, 2009 through September 28, 2010, at the rate of $308.00 per week, for a total of $15,179.99, under § 8(b). The Commission finds that Respondent had no reasonable basis for only partially paying temporary total disability benefits during the entire period of October 19, 2009 through July 25, 2010, as Petitioner's treating records and off work authorizations support her off work status as a result of her work-related injury during that period of time. In addition, Petitioner's treating physician, Dr. Ambrose, continued to authorize her off work through September 18, 2010. (PX2). While Respondent's Section 12 examiner, Dr. Ghanayem, opined Petitioner was capable of returning to work full duty as of August 17, 2010, this was based upon his review of additional records, that were not identified, and this opinion was issued almost one month after Respondent terminated temporary total disability benefits. (RX3). Based upon the above, the Commission finds Petitioner is entitled to an award of § 19(k) penalties in the amount of $3,615.56, representing 50% of $7,231.12, the amount of temporary total disability compensation payable at the time of the Arbitrator's award.

In addition, the Commission finds Respondent's nonpayment of benefits was vexatious within the purview of § 16. The March 12, 2010 "Communication Log" from Concentra Medical Center, reflects; that Respondent attempted to strong arm the medical provider, to whom Petitioner was directed for care per Respondent's protocol, into issuing a full duty return to work slip. The note reflects that Petitioner's supervisor screamed on the phone, demanded a full duty release, and demanded the medical provider agree with Petitioner's treating physician with regard to her return to work status. (PX5). Accordingly, the Commission finds Respondent's conduct in the delay in payment of temporary total disability benefits herein was unreasonable and vexatious, and awards§ 16 attorneys' fees in the amount of $2,278.21, representing 20% of $11,391.07, the amount of temporary total disability and permanent partial disability compensation payable at the time of the Arbitrator's award ($7,231.12 in temporary total disability; $4,159.95 in permanent partial disability).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on September 4, 2014, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

15IWCC0914

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $12,286.65 for medical expenses under §8(a) and per §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $395.79 per week for a period of 49-2/7 weeks, from October 19, 2009, through September 28, 2010, 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 pay to Petitioner the sum of $277.33 per week for a period of 15 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 3% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner additional compensation of $ 3,615.56 as provided in § 19(k) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner additional compensation of $ 10,000.00 as provided in § 19(1) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to the attorney for the Petitioner legal fees in the amount of $2,278.21 as provided in § 16 of the Act; the balance of attorneys' fees to be paid by Petitioner to his attorney.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $44,000.00. 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: DEC 1 4 2015
KWL/kmt
O-11/23/15
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Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0914

THOMAS, JANIKA
Employee/Petitioner

Case# **10WC009031**

12WC015369

PACE BUS COMPANY
Employer/Respondent

On 9/4/2014, 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 0.05% 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:

0147 CULLEN HASKINS NICHOLSON ET AL
JOHN POWERS
10 S LASALLE ST SUITE 1250
CHICAGO, IL 60603

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

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

15IWCC0914

Janika Thomas
Employee/Petitioner

v.

Pace Bus Company
Employer/Respondent

Case # 10 WC 09031

Consolidated cases: 12 WC 15369

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 L. Simpson**, Arbitrator of the Commission, in the city of **Chicago**, on **July 28, 2014**. 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 _____

15IWCC0914

FINDINGS

On **October 14, 2009**, 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 $**20,024.00**; the average weekly wage was $**462.00**.

On the date of accident, Petitioner was **27** years of age, ***single*** with **2** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**7,948.80** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**7,948.80**.

Respondent is entitled to a credit of $**1,578.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of $**12,286.65**, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**308.00**/week for **49-2/7** weeks, commencing **October 19, 2009** through **September 28, 2010**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $**7,948.80** for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits of $**277.33**/week for **15** weeks, because the injuries sustained caused the **3%** loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Attorney's fees and penalties are denied.

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.

Richard L. Simpson
Signature of Arbitrator

Sept. 3, 2014
Date

SEP 4- 2014

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Janika Thomas,	)	**15IWCC0914**
	)	
Petitioner,	)	
	)	
vs.	)	**No. 10 WC 9031**
	)	**12 WC 15369**
Pace Bus Company,	)	
	)	
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on October 14, 2009, 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. They agree that the Petitioner sustained accidental injuries that arose out of and in the course of employment on that date and that she gave the Respondent notice of the accident which is the subject matter of the dispute within the time limits stated in the Act. They further agree that in the year preceding the injuries, the Petitioner earned $20,024.00, and that her average weekly wage was $462.00.

At issue in this hearing is as follows: (1) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure; (2) Is the Respondent liable for the unpaid medical bills for Family Christian Health Center $1,446.26, Ingalls Memorial Hospital $2,575.00, ATI Physical Therapy $4,762.38, Orland Park Orthopedics $757.12 and Prairie Spine and Pain Institute $2,745.89; (3) Is Petitioner entitled to TTD from October 19, 2009 through November 6, 2010 or October 19, 2009 through July 25, 2010; (4) What is the nature and extent of the injury; and (5) Is Petitioner entitled to penalties and attorney's fees.

STATEMENT OF FACTS

On October 14, 2009, Petitioner worked for Respondent as a bus operator. Petitioner's job duties consisted of driving assigned routes picking up and dropping off passengers. On October 14, 2009, Petitioner experienced intense low back pain after driving over a pothole.

Petitioner testified that she had previously injured her back in September 2008 and December 2008. According to Petitioner, these accidents caused general back pain without radiation into her legs. She was released from medical care in February or March of 2009 and worked full duty until October 14, 2009. Although she occasionally noticed some back pain, the

symptoms were not severe enough for her to seek medical treatment from when she was discharged in February or March of 2009 to October 14, 2014.

On October 19, 2009, Petitioner reported to Respondent that she continued experiencing low back pain and was instructed to go to Ingalls Hospital's emergency room. The records indicate Petitioner's symptoms of pain radiating from her low back to her neck started after driving over a pothole. (PX. 1) Petitioner described her pain as being 7/10 that was not alleviated by anything. Petitioner was diagnosed as having a lumbar strain with paraspinal muscle spasm. She was discharged with instructions to remain off work until October 21, 2009, follow up with her primary care physician and possibly obtain an MRI to rule out radiculopathy if her symptoms persisted. (PX. 1)

On October 24, 2009, Petitioner followed up with her primary care physician's assistant Mark Ambrose, Ph. D. She had symptoms of dull continuous low back pain, which was made worse by flexion, extension, sitting and standing. (PX. 2) Dr. Ambrose instructed Petitioner to remain off work and follow up in 2 weeks. On November 4, 2009, Dr. Ambrose again instructed Petitioner to remain off work and ordered an MRI. (PX. 2)

On November 7, 2009, Petitioner underwent a lumbar MRI, which revealed no significant abnormalities. (PX. 3)

On November 11, 2009, Dr. Ambrose noted the film quality of the November 7, 2009 MRI was low. He instructed Petitioner to remain off work, undergo physical therapy and see Dr. Blaire Rhode for back and neck pain. (PX. 2)

On December 9, 2009, Dr. Ambrose noted Petitioner was unable to attend physical therapy or see Dr. Rhode, because Respondent was denying Petitioner's workers' compensation claim. Because Petitioner had to stay within her HMO's network of doctors, Dr. Ambrose referred her to Dr. Mark Nikkel. Dr. Ambrose also restricted Petitioner from working. (PX. 2)

On December 16, 2009, Dr. Nikkel's colleague, Dr. George Charuk, examined Petitioner. Dr. Charuk noted Petitioner had pain shooting up her back, pain radiating bilaterally into her buttocks and constant pressure. (PX. 4) Dr. Charuk noted the MRI was essentially normal, but opined there was a bulging disc at L4-5. (PX. 4) He ordered an EMG of Petitioner's bilateral lower extremities to rule out lumbar radiculitis and instructed Petitioner to remain off work until the study was complete. He also prescribed physical therapy. (PX. 4)

On January 25, 2010, at Respondent's direction, Petitioner was seen at Concentra Medical Centers. (PX. 5) The Concentra physician examined Petitioner and restricted her from long sitting and no driving. (PX. 5)

On February 3, 2010, Petitioner underwent an EMG at Ingalls Hospital. (PX. 6)

On February 17, 2010, Petitioner followed up with Dr. Charuk, who noted Petitioner continued having low back pain while walking and the EMG was essentially normal. (PX. 4)

On that date, Petitioner also saw Dr. Ambrose who restricted her from working for two more weeks. (PX. 2)

On February 23, 2010, Petitioner was again examined at Concentra for a "return to work physical." (PX. 5) The examination revealed Petitioner had pain over L5-S1 and decreased range of motion. Petitioner was released to return to work with her primary care physician's restrictions. (PX. 5)

On March 10, 2010, Petitioner returned to Dr. Ambrose requesting a release to return to work. Dr. Ambrose stated in his March 10, 2010 note:

> This is work related and they are giving pt a hard time at work and with work comp claim. I am more than willing to cooperate with the process and will provide and records, ect. Pt is to get PTX now and was put on work restrictions by ortho but her job will not honor it. She wants release to return to full duty against my advice.

Dr. Ambrose drafted a note dated March 10, 2010 indicating Petitioner was excused from work from October 19, 2009 to March 15, 2010. (PX. 2)

On March 11, 2010, Respondent again instructed Petitioner to be examined at Concentra for a fitness for duty physical. The Concentra physician reported Petitioner had no medical restrictions. However, on page two of the non-injury flow sheet the physician indicated the medical evaluation was not within normal limits, checked off medical restrictions and stated, "Unable to return to work – pending further evaluation with primary care doctor." (PX. 5)

On March 12, 2010, Concentra's Communication Log/Flow Sheet noted a telephone conversation between Concentra, Brenda Dillard (Respondent's safety supervisor) and Petitioner's supervisor. The handwritten note indicates Petitioner requested her treating physician release her even though Petitioner did not feel she was ready to return to full duty. Petitioner indicated she had difficulty standing and needed to get up and change positions. According to the handwritten note, this was discussed along with the information contained on the flow sheet from the March 11, 2010 exam. (PX. 4) The note goes on to state:

> Ms. Thomas' supervisor screamed on the phone. He expected release.
> Stated they expected us to just agree with the employee's treating physician.
> Their employees are sent here per protocol.

On March 24, 2010, Petitioner returned to Dr. Ambrose who referred Petitioner for physical therapy. (PX. 2)

Petitioner underwent physical therapy at ATI Physical Therapy from May 7, 2010 through August 12, 2010. (PX. 7)

On May 12, 2010, at Respondent's request, Dr. Alexander Ghanayem of Loyola University Medical Center examined Petitioner. Dr. Ghanayem indicated he was unsure as to

why Petitioner just started physical therapy a week prior to his exam. He opined a 3 to 4 week course of physical therapy would be medically reasonable to return Petitioner back to regular duty. Therefore, he opined, Petitioner could return to work after completing a 4 week course of physical therapy. (RX. 2)

On June 7, 2010, Petitioner returned to Dr. Ambrose, who noted Petitioner's continued back pain and recommended she continue physical therapy. (PX. 2) He restricted Petitioner from working through July 6, 2010. (PX. 2)

On June 23, 2010, Dr. Ambrose noted Petitioner's continued low back pain despite undergoing physical therapy and referred her to Dr. Anthony Rinella. (PX. 2)

On July 7, 2010, Dr. Rinella examined Petitioner. He noted Petitioner had lumbosacral tenderness extending into her right hip. (PX. 8) Petitioner described her pain varying between 3/10 to 7/10. Slight numbness was noted in the L3 nerve root distribution. Dr. Rinella diagnosed Petitioner as having a lumbar strain and encouraged her to continue therapy. (PX. 8) He opined Petitioner could return to work with restrictions of no lifting over 10 pounds, no driving more than one hour and no repetitive bending and twisting. (PX. 8)

On July 21, 2010, Respondent sent Petitioner to Concentra for another exam. The physician noted on the Return to Work Evaluation form Petitioner's pain was still 8/10 that was aggravated by exercise and alleviated by lying down. (PX. 5) Sitting caused pain to radiate down the posterior of the right thigh. A functional capacity evaluation (FCE) was recommended. The physician also noted Petitioner was "Not fit for duty." (PX. 5) Respondent, then, sent Petitioner back to Concentra for a second Return to Work Evaluation. The note for the second exam was dated by the physician on 07/21/10, but signed and dated by Petitioner on 07/22/2010. The physician signatures for each note do not appear to be signed by the same physician. The physician indicated in the second note, "Acknowledged the – [negative] MRI, EMG and IME." The physician indicated Petitioner had intense muscle spasms and was unable to move. He found Petitioner could return to her regular job so long as she did not take the Flexeril and Tylenol #3 she had been prescribed for her symptoms. (PX. 5)

Petitioner requested Respondent provide her with work that would allow her to take the Flexeril and Tylenol #3 prescribed by her medical providers. However, Respondent refused to accommodate said restrictions. (PX. 17)

On July 28, 2010, Dr. Ambrose indicated he disagreed with Concentra's recommendation that Petitioner return to work. (PX. 2) He referred Petitioner to Dr. Blaire Rhode for an evaluation and FCE. (PX. 2) Dr. Ambrose also restricted Petitioner from working.

On August 11, 2010, Dr. Rhode examined Petitioner. Dr. Rhode diagnosed Petitioner as having low back pain with lumbar radiculopathy and referred her to Dr. Richard Kube. (PX. 9)

On August 16, 2010, Petitioner filed with the Illinois Workers' Compensation Commission a Petition for Penalties and Attorneys Fees. (PX. 17) Petitioner alleged that as of August 16, 2010, her last temporary total disability check paid her from July 15, 2010 through

July 25, 2010. Petitioner alleged she had not been released to full duty, even by the Concentra physicians and Respondent had paid temporary total disability benefits for only part of the time she had been off work

On August 17, 2010, Dr. Ghanayem drafted an addendum report addressed to Respondent's counsel stating. "I reviewed the additional records provided to me regarding Janika Thomas." Dr. Ghanayem does not specify what additional records he reviewed or the dates of those records. He opined Petitioner should be off all medications and return to regular work activities. (RX. 2)

On August 20, 2010, Dr. Ambrose examined Petitioner and indicated he disagreed with Petitioner returning to work. (PX. 2)

On August 30, 2010, Dr. Kube performed a left sacroiliac joint injection on Petitioner. (PX. 10)

On September 13, 2010, Dr. Kube noted the injection significantly improved Petitioner's symptoms and she requested to return to work. Dr. Kube indicated Petitioner could return to half days for 2 weeks and then full days. (PX. 10).

On September 18, 2010, Dr. Ambrose examined Petitioner and noted her symptoms improved following the S1 injection and she also indicated she was ready to return to work. (PX. 2)

On November 8, 2010, Dr. Kube released Petitioner to full duty and discharged her from his care. (PX. 10)

As a result of injuries sustained on October 14, 2009, Petitioner incurred the following medical expenses, which remain unpaid: Family Christian Health Care $1,446.26 (PX. 11); Ingalls Memorial Hospital $2,575.00 (PX. 13); ATI Physical Therapy $4,762.38 (PX. 14); Orland Park Orthopedics $757.12 (PX. 15) and Prairie Spine and Pain Institute $2,745.89 (PX. 10). Petitioner also submitted an itemization from Blue Cross indicating her group health insurance through Respondent paid $1,578.00 for her 10/19/2009 initial visit at Ingalls Memorial Hospital's emergency room. (PX. 16)

CONCLUSIONS OF LAW

The burden is upon the party seeking an award to prove by a preponderance of the credible evidence the elements of his claim. *Peoria County Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987). This includes the nature and extent of the petitioner's injury.

"When the employer acts in reliance upon medical opinion or when there are conflicting medical opinions, penalties are not ordinarily imposed." *O'Neal Bros. Const. Co. v. Indus. Comm'n*, 93 Ill. 2d 30, 41, 442 N.E.2d 895, 900 (1982).

In support of the Arbitrator's decision with regard to whether Petitioner's present condition of ill-being is causally related to the injury, the Arbitrator makes the following conclusions of law:

In regards to whether Petitioner's condition of ill-being is causally related to the injury, the Arbitrator concludes Petitioner proved her condition of ill-being was causally connected to her October 14, 2009 accident.

Whether Petitioner's injuries are due to a work related accident arising out of and in the course of her employment with Respondent is a factual determination. *Gano Electric Contracting v. Industrial Comm'n.* 260 Ill.App.3d 92, 96 (1994).

> "This determination can be based upon direct or circumstantial evidence and the reasonable inferences which can be drawn from such evidence. [Cite] Moreover, medical evidence is not an essential ingredient to support the conclusion that an industrial accident caused the disability. [Cite] A chain of events which demonstrates a previous condition of good health, an accident and a subsequent injury resulting in disability can be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury."

Id at 96-97. A claimant's testimony, standing alone, may support an award when all of the facts and circumstances do not preponderate in favor of the opposite conclusion. *Id.* at 95.

Although Petitioner received prior medical treatment for low back pain, the evidence shows she was able to work full duty between March 2009 to October 14, 2009 without the need for medical treatment or work restrictions. Although Petitioner had a prior history of back pain, no evidence exists indicating she had symptoms of radiating pain until after her October 14, 2009 accident. Furthermore, no evidence exists indicating Petitioner's condition of ill-being was due to something other than her October 14, 2009 accident.

The Arbitrator concludes the October 14, 2009 event destabilized Petitioner's condition of ill-being requiring medical treatment and work restrictions.

In support of the Arbitrator's decision with regard to whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent paid all appropriate charges for reasonable and necessary medical treatment, the Arbitrator makes the following conclusions of law:

In regards to whether medical services that were provide to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator concludes Respondent shall pay to Petitioner $12,286.65 for medical expenses she incurred, which remain unpaid.

As a result of injuries sustained on October 14, 2009, Petitioner incurred the following unpaid medical expenses:

PX. 10	Prairie Spine and Pain Institute (Dr. Kube)	$2,745.89
PX. 11	Family Christian Health Center (Dr. Ambrose)	$1,446.26
PX. 13	Ingalls Memorial Hospital (02/03/10 EMG)	$2,575.00
PX. 14	ATI Physical Therapy	$4,762.38
PX. 15	Orland Park Orthopedics (Dr. Rhode)	$ 757.12
TOTAL		$12,286.65

Respondent instructed Petitioner to seek treatment at Ingalls Hospital's emergency room where Petitioner was instructed to follow up with Dr. Ambrose, which she did.

Although the EMG prescribed by Dr. Charuk was negative, it was a necessary diagnostic test to rule out sources of Petitioner's radicular symptoms.

Respondent's Section 12 examiner, Dr. Ghanayem, agreed with the necessity of physical therapy to cure or alleviate Petitioner's condition of ill-being.

Although Dr. Ghanayem opined on August 17, 2010 that Petitioner's did not require further medical treatment based upon his review of additional medical records, Dr. Ghanayem did not specify what additional medical records he reviewed or what time period they were from. Petitioner testified that the injection she received from Dr. Kube alleviated her condition of ill-being so much that she was finally able to return to full duty.

Based upon the above, the Arbitrator concludes these medical expense were reasonable and necessary to cure or alleviate Petitioner's condition of ill-being and orders Respondent to pay to Petitioner the negotiated rate or, if there is no negotiated rate, the amount required pursuant to the fee schedule.

In support of the Arbitrator's decision with regard to the amount due for temporary total disability, the Arbitrator makes the following conclusions of law:

In regards to the amount of temporary total disability benefits in dispute, the Arbitrator concludes Petitioner was temporarily totally disabled 49-2/7 weeks from October 19, 2009 through September 28, 2010.

Petitioner claimed she was temporarily totally disabled 54-5/7 weeks from October 19, 2009 through November 6, 2010 whereas Respondent alleged Petitioner was temporarily totally

disabled for only 40 weeks from October 19, 2009 through July 25, 2010. (AX. 1) Respondent paid to Petitioner $7,948.80 for temporary total disability. (AX. 1)

Although on July 21, 2010 a second Concentra physician eventually opined Petitioner could return to work after the first Concentra physician opined Petitioner required work restrictions and an FCE, the second physician opined Petitioner could return to work only so long as she was not taking her prescribed medication. Dr. Ghanayem opined on August 17, 2010 that after reviewing updated medical records Petitioner could return to full duty without restrictions or medications. However, it is not clear what medical records or what time period they were from that Dr. Ghanayem relied upon in making that determination. The injection administered by Dr. Kube allowed Petitioner to finally return to full duty. On September 13, 2010, Dr. Kube opined Petitioner could return to full duty for half a day for two weeks before returning to full days. (PX. 10) According to Dr. Kube's records, Petitioner was scheduled to follow up on October 11, 2010, but did not attend the visit. (PX. 10) Instead, Petitioner followed up on November 8, 2010 at which time Dr. Kube released Petitioner to return to work without restrictions and discharged her from his care. (PX. 10) Because Dr. Kube did not opine following the November 8, 2010 visit that Petitioner was unable to return to full days 2 weeks following his last visit on September 13, 2010, the Arbitrator concludes Petitioner was no longer temporarily totally disabled as of September 28, 2010, which would be 2 weeks after the start of half days on September 14, 2010.

In support of the Arbitrator's decision with regard to the nature and extent of Petitioner's injury, the Arbitrator makes the following conclusions of law:

In regards to the nature and extent of the injury, the Arbitrator concludes that as a result of injuries sustained on October 14, 2009, Petitioner sustained a permanent loss of **3%** person as a whole. Dr. Charuk opined the MRI revealed a bulging disc at L4-5. (PX. 4) Other physicians, such as Dr. Kube diagnosed Petitioner's condition of ill-being as a sprain/strain. (PX. 10) Petitioner testified that following her return to work, she continued experiencing periodic low back pain with spasm.

In support of the Arbitrator's decision with regard to Petitioner's petition for attorney's fees and penalties, the Arbitrator makes the following conclusions of law:

In regards to whether penalties should be imposed upon Respondent, the Arbitrator concludes that compensation pursuant to Sections 19(k), 19(l) and 16 of the Illinois Workers' Compensation Act is denied.

The Petitioner may be entitled to Penalties and Fees when the conduct of the Respondent demonstrates unreasonable or vexatious delay in the payment of benefits for a covered claim under the Act.

While the Arbitrator is concerned about the Respondent's behavior in this case, calling the medical provider to whom Respondent sent Petitioner and demanding the physician change his opinion to release Petitioner to return to full duty, suggesting that the medical provider is supposed to be a rubber stamp for the employer. According to the Concentra March 12, 2010

note, Respondent insisted the physician's job was basically to rubber stamp a return to full duty rather than exercise independent medical judgment. Then Respondent sent Petitioner to Concentra on July 21, 2010 and failed to secure a full duty release, so it sent Petitioner back to Concentra for a second exam to at least obtain some form of release to work. The second attempt did produce a full duty release with conditions. The physician predicated the release on Petitioner returning to full duty so long as she did not take her physician prescribed medication. Pursuant to the second Concentra physician's July 21, 2010 note, if Petitioner followed her medical provider's advice and took her medication as prescribed, then she would not be able to return to full duty. Respondent did have an opinion from Dr. Ghanayem that stated Petitioner would be able to work after four weeks of physical therapy had been completed.

Respondent reasonably relied on the qualified medical opinion of Dr. Ghanayem in denying medical benefits and the continued payment of TTD after July 25, 2010. "When the employer acts in reliance upon a medical opinion or when there are conflicting medical opinions, penalties are not ordinarily imposed." *O'Neal Bros. Const. Co. v. Indus. Comm'n*, 93 Ill. 2d 30, 41, 442 N.E.2d 895, 900 (1982). Respondent relied on the opinions of Dr. Ghanayem a board certified orthopedic surgeon who specializes in spinal injuries. (RX 2). There was a lack of objective findings both in his examination and in the MRI and EMG, which Petitioner's doctors also noted. Petitioner completed the physical therapy that Dr. Ghanayem opined was reasonable and necessary. Even though Dr. Ghanayem failed to identify what the additional medical records were that he reviewed, before issuing his August 17, 2010 addendum report, it was reasonable for Respondent to argue that Petitioner had reached MMI per Dr. Ghanayem. (RX 1 and PX 3, 6).

ORDER OF THE ARBITRATOR

Respondent shall pay reasonable and necessary medical services of **$12,286.65**, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$308.00**/week for **49-2/7** weeks, commencing **October 19, 2009** through **September 28, 2010**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **$7,948.80** for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits of **$277.33**/week for **15** weeks, because the injuries sustained caused the **3%** loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Attorney's fees and penalties are denied.

Deborah L. Simpson
Signature of Arbitrator

Sept. 3, 2014
Date

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Thomas Kaufmann,

Petitioner,

vs.

NO: 12 WC 43433
12 WC 43435
12 WC 43458

State of Illinois – Dept. of Financial & Professional Regulation,

Respondent,

15IWCC0915

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, extent of temporary total disability, nature and extent of permanent disability and medical expenses and being advised of the facts and law, corrects the computational error in 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.

The Arbitrator awarded permanent partial disability of 10% loss of use of the left hand (20.5 weeks), 12.5% loss of use of the right hand (25.63 weeks) and 12.5% loss of use of the right arm (31.63 weeks) at $695.78 per week. The Arbitrator noted that the total weeks awarded for permanent disability was 74.375. However, the Commission notes that the total weeks is 77.76 (20.5 + 25.63 + 31.63) and corrects this computational error to reflect the correct total of 77.76 weeks awarded. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

15IWCC0915

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 14, 2015 is hereby affirmed and adopted with the above noted computational correction.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,200.00 per week for a period of 7-4/7 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 pay to Petitioner the sum of $695.78 per week for a period of 20.5 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent disability of the left hand to the extent of 10%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 per week for a period of 25.63 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent disability of the right hand to the extent of 12.5%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 per week for a period of 31.63 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent disability of the right arm to the extent of 12.5%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay all reasonable and necessary medical expenses related to the treatment of the left hand, right hand and right arm under §8(a) of the Act, subject to the Medical Fee Schedule under §8.2 of the Act. Respondent shall have §8(j) credit for medical expenses paid.

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 Commission notes that Respondent paid $9,463.33 for temporary total disability benefits.

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

DATED: DEC 14 2015
MB/maw
o10/15/15
43

Mario Basurto

Stephen J. Mathis

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KAUFMANN, THOMAS
Employee/Petitioner

Case# **12WC043433**

12WC043435
12WC043458

SOI-DEPT OF FINANCIAL & PROFESSIONAL REGULATION
Employer/Respondent

15IWCC0915

On 4/14/2015, 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:

2934 BOSHARDY LAW OFFICE PC
JOHN V BOSHARDY
1610 S 6TH ST
SPRINGFIELD, IL 62703

0499 CMS RISK MANAGEMENT
WORKERS' COMP MANGER
PO BOX 19208
SPRINGFIELD, IL 62794-9208

4993 ASSISTANT ATTORNEY GENERAL
AMY S OXLEY
500 S SECOND ST
SPRINGFIELD, IL 62706

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy pursuant to 820 ILCS 305/14

APR 14 2015

RONALD A.RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC0915

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

- ☐ 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

Thomas Kaufmann
Employee/Petitioner

v.

State of Illinois - Dept. of Financial & Professional Regulation
Employer/Respondent

Case # 12 WC 43433

Consolidated cases: 12 WC 43435
12 WC 43458

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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on February 24, 2015. 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 January 26, 2012, 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 $93,600.00; the average weekly wage was $1,800.00.

On the date of accident, Petitioner was 51 years of age, married with 1 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $9,463.33 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $9,463.33.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 5, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of Act.

Respondent shall pay Petitioner temporary total disability benefits of $1,200.00 per week for seven and four sevenths (7 4/7) weeks commencing April 26, 2012, through June 17, 2012, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $695.78 per week for 74.375 weeks because the injuries sustained caused the 12 ½% loss of use of the right arm, 12 ½% loss of use of the right hand and 10% loss of use of the left hand, as provided in Section 8(e) of the Act.

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.

William R. Gallagher, Arbitrator

April 7, 2015
Date

APR 14 2015

Findings of Fact

Petitioner filed three Applications for Adjustment of Claim all of which alleged that he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Applications all alleged Petitioner sustained repetitive trauma to the bilateral upper extremities, right thumb and right arm. The only difference between the three Applications was the date of accident (manifestation) that was alleged. Case 12 WC 43435 alleged a date of accident (manifestation) of January 11, 2012. Case 12 WC 43433 alleged a date of accident (manifestation) of January 26, 2012. Case 12 WC 43458 alleged a date of accident (manifestation) of February 10, 2012 (Petitioner's Exhibit 1). The three cases were previously consolidated for trial. In all three cases, Respondent disputed liability on the basis of accident and causal relationship (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a Bank Examiner for over 28 years. Petitioner's job duties consisted primarily of making on-site inspections of financial institutions' computer and security systems. Petitioner would generally drive 100 to 1,000 miles per week.

Petitioner testified that during the bank examinations, he would work in whatever area the bank provided for him and would review the banks' documents, policies and procedures. A bank examination would take approximately three to five days. Petitioner stated that he would use his hands for virtually the entire time he was conducting the examination. Petitioner would review documents that described the bank's policies and procedures. Petitioner would also interview bank employees to determine if they were following the appropriate policies and procedures. Such an interview could take between 20 minutes and two hours and Petitioner would take handwritten notes. After completing the preceding, Petitioner would write a work program report.

Petitioner testified that he hand wrote the work program report and subsequently typed them on a manual typewriter. Petitioner took a manual typewriter with him to the banks and it took four to five hours to write a report, depending on the bank. While Petitioner did not write reports every day, he was still writing four to five hours per day every day. Sometime in the late 1980's, the manual typewriters were replaced by laptops which are periodically updated in the 1990's and 2000's.

In the early 1990's, Petitioner became a Field Supervisor and split his time between working in an office and the field. From the mid 1990's onward, Petitioner spent most of his time in the office and did keyboarding for five to six hours per day. Petitioner used an old style metal desk and his hands were kept in a flexed position pointing upwards when he was keyboarding.

Petitioner testified that in 2002, two secretaries assigned to his office retired and were replaced by temporary workers who were only there on a sporadic basis. This resulted in an increase of Petitioner's keyboarding. Petitioner also used a computer mouse which he described as being difficult to use.

Over time, Petitioner began to experience tightness, soreness and numbness in both hands which would wake him at night. Petitioner noticed that the soreness was present with both typing and mouse use; however, his symptoms were not as severe over the weekends when he was not using his hands as much.

Petitioner initially sought medical treatment from Dr. James Bohan, his family physician, who evaluated him on January 11, 2012 (the manifestation date alleged in 12 WC 43435). At that time, Petitioner complained of numbness in both hands for the preceding seven to eight years, worse on the left than right. There was no history of trauma or any reference to Petitioner's work activities in Dr. Bohan's record of that date. Dr. Bohan's assessment was tingling and numbness and he subsequently referred Petitioner to Dr. Edward Trudeau for nerve conduction studies (Petitioner's Exhibit 2).

Dr. Trudeau saw Petitioner on January 26, 2012 (the manifestation date alleged in 12 WC 43433) and noted that Petitioner worked using both upper extremities. The nerve conduction studies were positive for bilateral carpal tunnel syndrome, moderately severe in the right and mild in the left, as well as cubital tunnel syndrome of the right elbow (Petitioner's Exhibit 3).

Petitioner advised his Supervisor via e-mail that he had bilateral carpal tunnel syndrome that had a gradual onset of the preceding seven years. The date of Petitioner's e-mail was February 10, 2012 (the date of manifestation alleged in 12 WC 43458). On March 1, 2012, a Supervisor's Report of Injury was prepared (Petitioner's Exhibit 7).

On February 14, 2012, Petitioner completed an Employee's Notice of Injury Form wherein he stated that he had bilateral carpal tunnel which was a gradual condition that had been getting worse over time. He attributed the condition to typing, e-mail and using the mouse on a computer (Respondent's Exhibit 1).

Petitioner was seen by Dr. Brett Wolters, an orthopedic surgeon, on February 15, 2012. At that time, Petitioner informed Dr. Wolters that he worked as a Manager in the IT Department and that he worked on computers for eight hours per day. Petitioner had symptoms of pain, numbness and cramping of both hands, in particular, when he was typing or doing work with a mouse. Dr. Wolters diagnosed Petitioner with bilateral carpal tunnel syndrome, right wrist de Quervain's tenosynovitis and right cubital tunnel syndrome. Dr. Wolters prescribed a splint for Petitioner to use at night and gave an injection in the right wrist (Petitioner's Exhibit 4).

Petitioner was again seen by Dr. Wolters on March 23, 2012, and Dr. Wolters recommended Petitioner have surgery on both upper extremities. Dr. Wolters performed a right carpal tunnel and right cubital tunnel surgical release on April 23, 2012. Dr. Wolters performed a left carpal tunnel release on May 21, 2012. Petitioner recovered from the surgeries and Dr. Wolters authorized him to return to work on June 18, 2012 (Petitioner's Exhibit 4).

Petitioner was last seen by Dr. Wolters on August 15, 2012. At that time, Petitioner advised that the numbness was completely gone but that he still had a little bit of weakness in his left hand. Dr. Wolters opined that Petitioner was at MMI (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was examined by Dr. Patrick Stewart, a hand surgeon, on March 19, 2013. In connection with his examination of Petitioner, Dr. Stewart reviewed medical records as well as information regarding Petitioner's job duties that was provided to him by Respondent. Dr. Stewart confirmed the diagnoses of bilateral carpal tunnel syndrome and right cubital tunnel syndrome. In regard to causality, Dr. Stewart opined that Petitioner's upper extremity conditions were not related to his data entry and computer work (Respondent's Exhibit 3).

Dr. Stewart was deposed on October 18, 2014, and his deposition testimony was received into evidence at trial. Dr. Stewart's testimony was consistent with his medical report and he reaffirmed his opinion that Petitioner's upper extremity conditions were not related to his work activities. Dr. Stewart's opinion was based, in part, on what he described as medical research and literature (Respondent's Exhibit 4; pp 15-18).

On cross-examination, Dr. Stewart agreed that he had no knowledge of how repetitious Petitioner's job duties were nor did he have any knowledge as to the ergonomics of Petitioner's workstation. He also agreed that Petitioner did not have any other systemic conditions associated with carpal tunnel syndrome (Respondent's Exhibit 4; pp 23-25).

Dr. Wolters was deposed on January 23, 2015, and his deposition testimony was received into evidence at trial. Dr. Wolters' testimony was consistent with his medical records regarding his diagnoses and treatment of Petitioner. In regard to causality, Dr. Wolters opined that Petitioner's history of typing and using a computer mouse for multiple hours per day could cause or aggravate both carpal tunnel and cubital tunnel syndrome. In response to a hypothetical question which summarized Petitioner's work duties, Dr. Wolters reaffirmed his opinion regarding causality. He also noted that Petitioner did not have any systemic conditions that could contribute to both carpal tunnel and cubital tunnel syndrome (Petitioner's Exhibit 6; pp 8, 15-18).

At trial, Petitioner testified that he ceased working for Respondent in October, 2012; however, he obtained a job as a Bank Examiner for the Federal Reserve Bank. Petitioner's job duties are essentially identical to those when he was employed by Respondent. Petitioner stated that his upper extremity symptoms improved following the surgery; however, he still has some residual symptoms. In regard to the right hand/arm, Petitioner stated that he still has some symptoms of tightness, soreness and numbness especially upon active use. He still experiences some tingling in the right elbow. In regard to the left hand, Petitioner still experiences some tightness and diminished strength.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury to both upper extremities that arose out of and in the course of his employment for Respondent that manifested itself on January 26, 2012, and that his current condition of ill-being is causally related to same.

In support of this conclusion the Arbitrator notes the following:

Petitioner first sought medical treatment on January 11, 2012; however, Dr. Bohan did not opine as to a specific diagnoses nor did he opine as to whether Petitioner's upper extremity conditions were work-related.

Petitioner was diagnosed with bilateral carpal tunnel syndrome and right cubital tunnel syndrome on January 26, 2012, when nerve conduction studies were performed by Dr. Trudeau. Dr. Trudeau noted that Petitioner worked using both upper extremities. Subsequent to this medical evaluation, on February 10, 2012, Petitioner advised Respondent via e-mail that he had bilateral carpal tunnel syndrome which he believed to be work-related.

Based on the preceding, the Arbitrator finds the date of manifestation to be January 26, 2012, the date the condition was diagnosed by Dr. Trudeau.

Petitioner's testimony regarding the repetitive nature of his job duties was unrebutted.

When Dr. Stewart was deposed, he opined that Petitioner's upper extremity conditions were not related to his work activities and this opinion was based, in part, on what he described as medical research and literature. Timely objections were made to this portion of his testimony. The Arbitrator sustained said objections and, to the extent that Dr. Stewart's testimony summarizes this medical research and data is hereby stricken. Weekley v. Industrial Commission, 615 N.E.2d 59 (Ill. App. 2nd Dist. 1993).

Dr. Wolters testified that Petitioner's work activities could have caused or aggravated both the carpal tunnel and cubital tunnel syndromes.

Both Dr. Wolters and Dr. Stewart agreed that Petitioner had no other systemic conditions that could contribute to both carpal tunnel and cubital tunnel syndromes.

Based on the preceding, the Arbitrator finds the opinion of Dr. Wolters to be more persuasive than that of Dr. Stewart.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 5, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of seven and four sevenths (7 4/7) weeks commencing April 26, 2012, through June 17, 2012.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 12 ½% loss of use of the right arm, 12 ½% loss of use of the right hand and 10% loss of use of the left hand.

In support of this conclusion the Arbitrator notes the following:

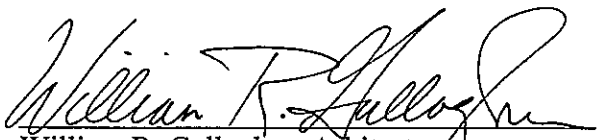
Neither Petitioner nor Respondent tendered into evidence an AMA impairment rating report. The Arbitrator gives this factor no weight.

Petitioner's occupation is a Bank Examiner which requires a significant amount of keyboarding and use of a mouse. Petitioner still has symptoms associated with his work. The Arbitrator gives this factor significant weight.

Petitioner was 51 years of age at the time of the injury. Petitioner will have to live with the effects of this injury for the remainder of his working and natural life. The Arbitrator gives this factor moderate weight.

Petitioner left Respondent's employment and secured a similar position with the Federal Reserve Bank. There was no evidence that the injury will have any effect on Petitioner's future earning capacity. The Arbitrator gives this factor moderate weight.

Petitioner's upper extremity injuries required bilateral carpal tunnel surgical releases and a right cubital tunnel surgical release. While Petitioner's symptoms improved following the surgeries, he continues to experience symptoms in both upper extremities especially upon active use. The Arbitrator finds Petitioner's complaints are consistent with the injuries he sustained. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Thomas Kaufmann,

Petitioner,

vs.

NO: 12 WC 43435
12 WC 43433
12 WC 43458

State of Illinois – Dept. of Financial & Professional Regulation,

Respondent,

15IWCC0916

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, extent of temporary total disability, nature and extent of permanent disability and medical expenses and being advised of the facts and law, corrects the computational error in 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.

The Arbitrator awarded permanent partial disability of 10% loss of use of the left hand (20.5 weeks), 12.5% loss of use of the right hand (25.63 weeks) and 12.5% loss of use of the right arm (31.63 weeks) at $695.78 per week. The Arbitrator noted that the total weeks awarded for permanent disability was 74.375. However, the Commission notes that the total weeks is 77.76 (20.5 + 25.63 + 31.63) and corrects this computational error to reflect the correct total of 77.76 weeks awarded. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 14, 2015 is hereby affirmed and adopted with the above noted computational correction.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,200.00 per week for a period of 7-4/7 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 pay to Petitioner the sum of $695.78 per week for a period of 20.5 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent disability of the left hand to the extent of 10%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 per week for a period of 25.63 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent disability of the right hand to the extent of 12.5%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 per week for a period of 31.63 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent disability of the right arm to the extent of 12.5%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay all reasonable and necessary medical expenses related to the treatment of the left hand, right hand and right arm under §8(a) of the Act, subject to the Medical Fee Schedule under §8.2 of the Act. Respondent shall have §8(j) credit for medical expenses paid.

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 Commission notes that Respondent paid $9,463.33 for temporary total disability benefits.

15IWCC0916

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

DATED: DEC 14 2015
MB/maw
o10/15/15
43

Mario Basurto

Stephen J. Mathis

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KAUFMANN, THOMAS
Employee/Petitioner

Case# **12WC043435**

12WC043433
12WC043458

SOI-DEPT OF FINANCIAL & PROFESSIONAL REGULATION
Employer/Respondent

15IWCC0916

On 4/14/2015, 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:

2934 BOSHARDY LAW OFFICE PC
JOHN V BOSHARDY
1610 S 6TH ST
SPRINGFIELD, IL 62703

0499 CMS RISK MANAGEMENT
WORKERS' COMP MANGER
P O BOX 19208
SPRINGFIELD, IL 62794-9208

4993 ASSISTANT ATTORNEY GENERAL
AMY S OXLEY
500 S SECOND ST
SPRINGFIELD, IL 62706

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy pursuant to 820 ILCS 305/14

APR 14 2015

RONALD A.RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC0916

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ 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

Thomas Kaufmann
Employee/Petitioner

v.

State of Illinois - Dept. of Financial & Professional Regulation
Employer/Respondent

Case # 12 WC 43435

Consolidated cases: 12 WC 43433
12 WC 43458

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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on February 24, 2015. 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 January 11, 2012, 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 not sustain an accident that arose out of and in the course of employment.

Petitioner's current condition of ill-being is not causally related to the accident.

In the year preceding the injury, Petitioner earned $93,600.00; the average weekly wage was $1,800.00.

On the date of accident, Petitioner was 51 years of age, married with 1 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00.

Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's Conclusions of Law attached hereto, claim for compensation is denied.

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.

William R. Gallagher, Arbitrator

April 7, 2015
Date

APR 14 2015

Findings of Fact

Petitioner filed three Applications for Adjustment of Claim all of which alleged that he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Applications all alleged Petitioner sustained repetitive trauma to the bilateral upper extremities, right thumb and right arm. The only difference between the three Applications was the date of accident (manifestation) that was alleged. Case 12 WC 43435 alleged a date of accident (manifestation) of January 11, 2012. Case 12 WC 43433 alleged a date of accident (manifestation) of January 26, 2012. Case 12 WC 43458 alleged a date of accident (manifestation) of February 10, 2012 (Petitioner's Exhibit 1). The three cases were previously consolidated for trial. In all three cases, Respondent disputed liability on the basis of accident and causal relationship (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a Bank Examiner for over 28 years. Petitioner's job duties consisted primarily of making on-site inspections of financial institutions' computer and security systems. Petitioner would generally drive 100 to 1,000 miles per week.

Petitioner testified that during the bank examinations, he would work in whatever area the bank provided for him and would review the banks' documents, policies and procedures. A bank examination would take approximately three to five days. Petitioner stated that he would use his hands for virtually the entire time he was conducting the examination. Petitioner would review documents that described the bank's policies and procedures. Petitioner would also interview bank employees to determine if they were following the appropriate policies and procedures. Such an interview could take between 20 minutes and two hours and Petitioner would take handwritten notes. After completing the preceding, Petitioner would write a work program report.

Petitioner testified that he hand wrote the work program report and subsequently typed them on a manual typewriter. Petitioner took a manual typewriter with him to the banks and it took four to five hours to write a report, depending on the bank. While Petitioner did not write reports every day, he was still writing four to five hours per day every day. Sometime in the late 1980's, the manual typewriters were replaced by laptops which are periodically updated in the 1990's and 2000's.

In the early 1990's, Petitioner became a Field Supervisor and split his time between working in an office and the field. From the mid 1990's onward, Petitioner spent most of his time in the office and did keyboarding for five to six hours per day. Petitioner used an old style metal desk and his hands were kept in a flexed position pointing upwards when he was keyboarding.

Petitioner testified that in 2002, two secretaries assigned to his office retired and were replaced by temporary workers who were only there on a sporadic basis. This resulted in an increase of Petitioner's keyboarding. Petitioner also used a computer mouse which he described as being difficult to use.

Over time, Petitioner began to experience tightness, soreness and numbness in both hands which would wake him at night. Petitioner noticed that the soreness was present with both typing and mouse use; however, his symptoms were not as severe over the weekends when he was not using his hands as much.

Petitioner initially sought medical treatment from Dr. James Bohan, his family physician, who evaluated him on January 11, 2012 (the manifestation date alleged in 12 WC 43435). At that time, Petitioner complained of numbness in both hands for the preceding seven to eight years, worse on the left than right. There was no history of trauma or any reference to Petitioner's work activities in Dr. Bohan's record of that date. Dr. Bohan's assessment was tingling and numbness and he subsequently referred Petitioner to Dr. Edward Trudeau for nerve conduction studies (Petitioner's Exhibit 2).

Dr. Trudeau saw Petitioner on January 26, 2012 (the manifestation date alleged in 12 WC 43433) and noted that Petitioner worked using both upper extremities. The nerve conduction studies were positive for bilateral carpal tunnel syndrome, moderately severe in the right and mild in the left, as well as cubital tunnel syndrome of the right elbow (Petitioner's Exhibit 3).

Petitioner advised his Supervisor via e-mail that he had bilateral carpal tunnel syndrome that had a gradual onset of the preceding seven years. The date of Petitioner's e-mail was February 10, 2012 (the date of manifestation alleged in 12 WC 43458). On March 1, 2012, a Supervisor's Report of Injury was prepared (Petitioner's Exhibit 7).

On February 14, 2012, Petitioner completed an Employee's Notice of Injury Form wherein he stated that he had bilateral carpal tunnel which was a gradual condition that had been getting worse over time. He attributed the condition to typing, e-mail and using the mouse on a computer (Respondent's Exhibit 1).

Petitioner was seen by Dr. Brett Wolters, an orthopedic surgeon, on February 15, 2012. At that time, Petitioner informed Dr. Wolters that he worked as a Manager in the IT Department and that he worked on computers for eight hours per day. Petitioner had symptoms of pain, numbness and cramping of both hands, in particular, when he was typing or doing work with a mouse. Dr. Wolters diagnosed Petitioner with bilateral carpal tunnel syndrome, right wrist de Quervain's tenosynovitis and right cubital tunnel syndrome. Dr. Wolters prescribed a splint for Petitioner to use at night and gave an injection in the right wrist (Petitioner's Exhibit 4).

Petitioner was again seen by Dr. Wolters on March 23, 2012, and Dr. Wolters recommended Petitioner have surgery on both upper extremities. Dr. Wolters performed a right carpal tunnel and right cubital tunnel surgical release on April 23, 2012. Dr. Wolters performed a left carpal tunnel release on May 21, 2012. Petitioner recovered from the surgeries and Dr. Wolters authorized him to return to work on June 18, 2012 (Petitioner's Exhibit 4).

Petitioner was last seen by Dr. Wolters on August 15, 2012. At that time, Petitioner advised that the numbness was completely gone but that he still had a little bit of weakness in his left hand. Dr. Wolters opined that Petitioner was at MMI (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was examined by Dr. Patrick Stewart, a hand surgeon, on March 19, 2013. In connection with his examination of Petitioner, Dr. Stewart reviewed medical records as well as information regarding Petitioner's job duties that was provided to him by Respondent. Dr. Stewart confirmed the diagnoses of bilateral carpal tunnel syndrome and right cubital tunnel syndrome. In regard to causality, Dr. Stewart opined that Petitioner's upper extremity conditions were not related to his data entry and computer work (Respondent's Exhibit 3).

Dr. Stewart was deposed on October 18, 2014, and his deposition testimony was received into evidence at trial. Dr. Stewart's testimony was consistent with his medical report and he reaffirmed his opinion that Petitioner's upper extremity conditions were not related to his work activities. Dr. Stewart's opinion was based, in part, on what he described as medical research and literature (Respondent's Exhibit 4; pp 15-18).

On cross-examination, Dr. Stewart agreed that he had no knowledge of how repetitious Petitioner's job duties were nor did he have any knowledge as to the ergonomics of Petitioner's workstation. He also agreed that Petitioner did not have any other systemic conditions associated with carpal tunnel syndrome (Respondent's Exhibit 4; pp 23-25).

Dr. Wolters was deposed on January 23, 2015, and his deposition testimony was received into evidence at trial. Dr. Wolters' testimony was consistent with his medical records regarding his diagnoses and treatment of Petitioner. In regard to causality, Dr. Wolters opined that Petitioner's history of typing and using a computer mouse for multiple hours per day could cause or aggravate both carpal tunnel and cubital tunnel syndrome. In response to a hypothetical question which summarized Petitioner's work duties, Dr. Wolters reaffirmed his opinion regarding causality. He also noted that Petitioner did not have any systemic conditions that could contribute to both carpal tunnel and cubital tunnel syndrome (Petitioner's Exhibit 6; pp 8, 15-18).

At trial, Petitioner testified that he ceased working for Respondent in October, 2012; however, he obtained a job as a Bank Examiner for the Federal Reserve Bank. Petitioner's job duties are essentially identical to those when he was employed by Respondent. Petitioner stated that his upper extremity symptoms improved following the surgery; however, he still has some residual symptoms. In regard to the right hand/arm, Petitioner stated that he still has some symptoms of tightness, soreness and numbness especially upon active use. He still experiences some tingling in the right elbow. In regard to the left hand, Petitioner still experiences some tightness and diminished strength.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury to both upper extremities that arose out of and in the course of his employment for Respondent that manifested itself on January 26, 2012, and that his current condition of ill-being is causally related to same.

In support of this conclusion the Arbitrator notes the following:

Petitioner first sought medical treatment on January 11, 2012; however, Dr. Bohan did not opine as to a specific diagnoses nor did he opine as to whether Petitioner's upper extremity conditions were work-related.

Petitioner was diagnosed with bilateral carpal tunnel syndrome and right cubital tunnel syndrome on January 26, 2012, when nerve conduction studies were performed by Dr. Trudeau. Dr. Trudeau noted that Petitioner worked using both upper extremities. Subsequent to this medical evaluation, on February 10, 2012, Petitioner advised Respondent via e-mail that he had bilateral carpal tunnel syndrome which he believed to be work-related.

Based on the preceding, the Arbitrator finds the date of manifestation to be January 26, 2012, the date the condition was diagnosed by Dr. Trudeau and not January 11, 2012, the date he saw Dr. Bohan.

In regard to disputed issues (J), (K) and (L) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrations conclusions in disputed issues (C) and (F).

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Thomas Kaufmann,

Petitioner,

vs.

NO: 12 WC 43458
12 WC 43433
12 WC 43435

State of Illinois – Dept. of Financial & Professional Regulation,

Respondent,

15IWCC0917

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, extent of temporary total disability, nature and extent of permanent disability and medical expenses and being advised of the facts and law, corrects the computational error in 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.

The Arbitrator awarded permanent partial disability of 10% loss of use of the left hand (20.5 weeks), 12.5% loss of use of the right hand (25.63 weeks) and 12.5% loss of use of the right arm (31.63 weeks) at $695.78 per week. The Arbitrator noted that the total weeks awarded for permanent disability was 74.375. However, the Commission notes that the total weeks is 77.76 (20.5 + 25.63 + 31.63) and corrects this computational error to reflect the correct total of 77.76 weeks awarded. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

15IWCC0917

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 14, 2015 is hereby affirmed and adopted with the above noted computational correction.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,200.00 per week for a period of 7-4/7 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 pay to Petitioner the sum of $695.78 per week for a period of 20.5 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent disability of the left hand to the extent of 10%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 per week for a period of 25.63 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent disability of the right hand to the extent of 12.5%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 per week for a period of 31.63 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent disability of the right arm to the extent of 12.5%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay all reasonable and necessary medical expenses related to the treatment of the left hand, right hand and right arm under §8(a) of the Act, subject to the Medical Fee Schedule under §8.2 of the Act. Respondent shall have §8(j) credit for medical expenses paid.

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 Commission notes that Respondent paid $9,463.33 for temporary total disability benefits.

15IWCC0917

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

DATED: DEC 14 2015
MB/maw
o10/15/15
43

Mario Basurto

Stephen J. Mathis

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KAUFMANN, THOMAS
Employee/Petitioner

Case# **12WC043458**

12WC043433
12WC043435

SOI-DEPT OF FINANCIAL & PROFESSIONAL REGULATION
Employer/Respondent

15IWCC0917

On 4/14/2015, 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:

2934 BOSHARDY LAW OFFICE PC
JOHN V BOSHARDY
1610 S 6TH ST
SPRINGFIELD, IL 62703

0499 CMS RISK MANAGEMENT
WORKERS' COMP MANGER
PO BOX 19208
SPRINGFIELD, IL 62794-9208

4138 ASSISTANT ATTORNEY GENERAL
AMY S OXLEY
500 S SECOND ST
SPRINGFIELD, IL 62706

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy pursuant to 820 ILCS 305/14

APR 14 2015

RONALD A.RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC0917

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ 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

Thomas Kaufmann
Employee/Petitioner

v.

State of Illinois - Dept. of Financial & Professional Regulation
Employer/Respondent

Case # 12 WC 43458

Consolidated cases: 12 WC 43433
12 WC 43435

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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on February 24, 2015. 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 February 10, 2012, 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 not sustain an accident that arose out of and in the course of employment.

Petitioner's current condition of ill-being is not causally related to the accident.

In the year preceding the injury, Petitioner earned $93,600.00; the average weekly wage was $1,800.00.

On the date of accident, Petitioner was 51 years of age, married with 1 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00.

Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's Conclusions of Law attached hereto, claim for compensation is denied.

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.

William R. Gallagher, Arbitrator

April 7, 2015
Date

APR 14 2015

Findings of Fact

Petitioner filed three Applications for Adjustment of Claim all of which alleged that he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Applications all alleged Petitioner sustained repetitive trauma to the bilateral upper extremities, right thumb and right arm. The only difference between the three Applications was the date of accident (manifestation) that was alleged. Case 12 WC 43435 alleged a date of accident (manifestation) of January 11, 2012. Case 12 WC 43433 alleged a date of accident (manifestation) of January 26, 2012. Case 12 WC 43458 alleged a date of accident (manifestation) of February 10, 2012 (Petitioner's Exhibit 1). The three cases were previously consolidated for trial. In all three cases, Respondent disputed liability on the basis of accident and causal relationship (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a Bank Examiner for over 28 years. Petitioner's job duties consisted primarily of making on-site inspections of financial institutions' computer and security systems. Petitioner would generally drive 100 to 1,000 miles per week.

Petitioner testified that during the bank examinations, he would work in whatever area the bank provided for him and would review the banks' documents, policies and procedures. A bank examination would take approximately three to five days. Petitioner stated that he would use his hands for virtually the entire time he was conducting the examination. Petitioner would review documents that described the bank's policies and procedures. Petitioner would also interview bank employees to determine if they were following the appropriate policies and procedures. Such an interview could take between 20 minutes and two hours and Petitioner would take handwritten notes. After completing the preceding, Petitioner would write a work program report.

Petitioner testified that he hand wrote the work program report and subsequently typed them on a manual typewriter. Petitioner took a manual typewriter with him to the banks and it took four to five hours to write a report, depending on the bank. While Petitioner did not write reports every day, he was still writing four to five hours per day every day. Sometime in the late 1980's, the manual typewriters were replaced by laptops which are periodically updated in the 1990's and 2000's.

In the early 1990's, Petitioner became a Field Supervisor and split his time between working in an office and the field. From the mid 1990's onward, Petitioner spent most of his time in the office and did keyboarding for five to six hours per day. Petitioner used an old style metal desk and his hands were kept in a flexed position pointing upwards when he was keyboarding.

Petitioner testified that in 2002, two secretaries assigned to his office retired and were replaced by temporary workers who were only there on a sporadic basis. This resulted in an increase of Petitioner's keyboarding. Petitioner also used a computer mouse which he described as being difficult to use.

Over time, Petitioner began to experience tightness, soreness and numbness in both hands which would wake him at night. Petitioner noticed that the soreness was present with both typing and mouse use; however, his symptoms were not as severe over the weekends when he was not using his hands as much.

Petitioner initially sought medical treatment from Dr. James Bohan, his family physician, who evaluated him on January 11, 2012 (the manifestation date alleged in 12 WC 43435). At that time, Petitioner complained of numbness in both hands for the preceding seven to eight years, worse on the left than right. There was no history of trauma or any reference to Petitioner's work activities in Dr. Bohan's record of that date. Dr. Bohan's assessment was tingling and numbness and he subsequently referred Petitioner to Dr. Edward Trudeau for nerve conduction studies (Petitioner's Exhibit 2).

Dr. Trudeau saw Petitioner on January 26, 2012 (the manifestation date alleged in 12 WC 43433) and noted that Petitioner worked using both upper extremities. The nerve conduction studies were positive for bilateral carpal tunnel syndrome, moderately severe in the right and mild in the left, as well as cubital tunnel syndrome of the right elbow (Petitioner's Exhibit 3).

Petitioner advised his Supervisor via e-mail that he had bilateral carpal tunnel syndrome that had a gradual onset of the preceding seven years. The date of Petitioner's e-mail was February 10, 2012 (the date of manifestation alleged in 12 WC 43458). On March 1, 2012, a Supervisor's Report of Injury was prepared (Petitioner's Exhibit 7).

On February 14, 2012, Petitioner completed an Employee's Notice of Injury Form wherein he stated that he had bilateral carpal tunnel which was a gradual condition that had been getting worse over time. He attributed the condition to typing, e-mail and using the mouse on a computer (Respondent's Exhibit 1).

Petitioner was seen by Dr. Brett Wolters, an orthopedic surgeon, on February 15, 2012. At that time, Petitioner informed Dr. Wolters that he worked as a Manager in the IT Department and that he worked on computers for eight hours per day. Petitioner had symptoms of pain, numbness and cramping of both hands, in particular, when he was typing or doing work with a mouse. Dr. Wolters diagnosed Petitioner with bilateral carpal tunnel syndrome, right wrist de Quervain's tenosynovitis and right cubital tunnel syndrome. Dr. Wolters prescribed a splint for Petitioner to use at night and gave an injection in the right wrist (Petitioner's Exhibit 4).

Petitioner was again seen by Dr. Wolters on March 23, 2012, and Dr. Wolters recommended Petitioner have surgery on both upper extremities. Dr. Wolters performed a right carpal tunnel and right cubital tunnel surgical release on April 23, 2012. Dr. Wolters performed a left carpal tunnel release on May 21, 2012. Petitioner recovered from the surgeries and Dr. Wolters authorized him to return to work on June 18, 2012 (Petitioner's Exhibit 4).

Petitioner was last seen by Dr. Wolters on August 15, 2012. At that time, Petitioner advised that the numbness was completely gone but that he still had a little bit of weakness in his left hand. Dr. Wolters opined that Petitioner was at MMI (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was examined by Dr. Patrick Stewart, a hand surgeon, on March 19, 2013. In connection with his examination of Petitioner, Dr. Stewart reviewed medical records as well as information regarding Petitioner's job duties that was provided to him by Respondent. Dr. Stewart confirmed the diagnoses of bilateral carpal tunnel syndrome and right cubital tunnel syndrome. In regard to causality, Dr. Stewart opined that Petitioner's upper extremity conditions were not related to his data entry and computer work (Respondent's Exhibit 3).

Dr. Stewart was deposed on October 18, 2014, and his deposition testimony was received into evidence at trial. Dr. Stewart's testimony was consistent with his medical report and he reaffirmed his opinion that Petitioner's upper extremity conditions were not related to his work activities. Dr. Stewart's opinion was based, in part, on what he described as medical research and literature (Respondent's Exhibit 4; pp 15-18).

On cross-examination, Dr. Stewart agreed that he had no knowledge of how repetitious Petitioner's job duties were nor did he have any knowledge as to the ergonomics of Petitioner's workstation. He also agreed that Petitioner did not have any other systemic conditions associated with carpal tunnel syndrome (Respondent's Exhibit 4; pp 23-25).

Dr. Wolters was deposed on January 23, 2015, and his deposition testimony was received into evidence at trial. Dr. Wolters' testimony was consistent with his medical records regarding his diagnoses and treatment of Petitioner. In regard to causality, Dr. Wolters opined that Petitioner's history of typing and using a computer mouse for multiple hours per day could cause or aggravate both carpal tunnel and cubital tunnel syndrome. In response to a hypothetical question which summarized Petitioner's work duties, Dr. Wolters reaffirmed his opinion regarding causality. He also noted that Petitioner did not have any systemic conditions that could contribute to both carpal tunnel and cubital tunnel syndrome (Petitioner's Exhibit 6; pp 8, 15-18).

At trial, Petitioner testified that he ceased working for Respondent in October, 2012; however, he obtained a job as a Bank Examiner for the Federal Reserve Bank. Petitioner's job duties are essentially identical to those when he was employed by Respondent. Petitioner stated that his upper extremity symptoms improved following the surgery; however, he still has some residual symptoms. In regard to the right hand/arm, Petitioner stated that he still has some symptoms of tightness, soreness and numbness especially upon active use. He still experiences some tingling in the right elbow. In regard to the left hand, Petitioner still experiences some tightness and diminished strength.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury to both upper extremities that arose out of and in the course of his employment for Respondent that manifested itself on January 26, 2012, and that his current condition of ill-being is causally related to same.

In support of this conclusion the Arbitrator notes the following:

Petitioner first sought medical treatment on January 11, 2012; however, Dr. Bohan did not opine as to a specific diagnoses nor did he opine as to whether Petitioner's upper extremity conditions were work-related.

Petitioner was diagnosed with bilateral carpal tunnel syndrome and right cubital tunnel syndrome on January 26, 2012, when nerve conduction studies were performed by Dr. Trudeau. Dr. Trudeau noted that Petitioner worked using both upper extremities. Subsequent to this medical evaluation, on February 10, 2012, Petitioner advised Respondent via e-mail that he had bilateral carpal tunnel syndrome which he believed to be work-related.

Based on the preceding, the Arbitrator finds the date of manifestation to be January 26, 2012, the date the condition was diagnosed by Dr. Trudeau and not February 10, 2012, when he e-mailed his Supervisor regarding the diagnosis.

In regard to disputed issues (J), (K) and (L) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrations conclusions in disputed issues (C) and (F).

William R. Gallagher, Arbitrator

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lorenzo Landeros,

Petitioner,

vs.

NO: 13 WC 41219

Metal Management Midwest, Inc.,

15IWCC0918

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary total disability, prospective medical expenses, 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 6, 2014, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

15IWCC0918

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $40,000.00. 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: DEC 16 2015
TJT:yl
o 11/23/15
51

Thomas J. Tyrrell

Kevin W. Lamborn

Michael J. Brennan

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

LANDEROS, LORENZO
Employee/Petitioner

Case# **13WC041219**
14WC028271

METAL MANAGEMENT MIDWEST INC
Employer/Respondent

15IWCC0918

On 11/6/2014, 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 0.06% 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:

0311 KOSIN LAW OFFICE LTD
DAVID X KOSIN
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0445 RODDY LAW LTD
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303 W MADISON ST SUITE 1900
CHICAGO, IL 60606

15IWCC0918

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Lorenzo Landeros
Employee/Petitioner

v.

Metal Management Midwest, Inc.
Employer/Respondent

Case # **13** WC **41219**

Consolidated cases: **14 WC 28271**

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 **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **August 27, 2014**. 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. [ ] What was the date of the accident?
E. [ ] 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. [ ] 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 _____

FINDINGS

On the date of accident, **September 20, 2013**, 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 $**42,307.20**; the average weekly wage was $**813.60**.

On the date of accident, Petitioner was **47** years of age, ***married*** with **1** dependent child.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

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

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

ORDER

The Respondent shall authorize and pay for all reasonable and necessary medical treatment recommended by Dr. Michael Zindrick of Hinsdale Orthopaedic Associates, S.C. as well as any reasonable and necessary rehabilitative treatment, pursuant to Sections 8(a) and 8.2 of 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.

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lorenzo Landros,

Petitioner,

vs. NO: 14 WC 28271

15IWCC0919

Metal Management Midwest, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary total disability, prospective medical expenses, 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 6, 2014, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

15IWCC0919

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $40,000.00. 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: DEC 16 2015
TJT:yl
o 11/23/15
51

Thomas J. Tyrrell

Kevin W. Lamborn

Michael J. Brennan

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

LANDEROS, LORENZO
Employee/Petitioner

Case# **14WC028271**
13WC041219

METAL MANAGEMENT MIDWEST INC
Employer/Respondent

15IWCC0919

On 11/6/2014, 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 0.06% 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:

0311 KOSIN LAW OFFICE LTD
DAVID X KOSIN
134 N LASALLE ST SUITE 1340
CHICAGO, IL 60602

0445 RODDY LAW LTD
RICHARD S ZENZ
303 W MADISON ST SUITE 1900
CHICAGO, IL 60606

Lorenzo Landeros
13 WC 41219
14 WC 28271

15IWCC0919

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Lorenzo Landeros
Employee/Petitioner

v.

Metal Management Midwest, Inc.
Employer/Respondent

Case # **14** WC **28271**

Consolidated cases: **13 WC 41219**

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 **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **August 27, 2014**. 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

B. [ ] 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. [ ] 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. [ ] 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 _____

15IWCC0919

FINDINGS

On the date of accident, February 28, 2014, 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 $**42,307.20**; the average weekly wage was $**813.60**.

On the date of accident, Petitioner was **48** years of age, ***married*** with **1** dependent child.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

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

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

ORDER

The respondent shall authorize and pay for all reasonable and necessary medical treatment as recommended by Dr. Michael Zindrick of Hinsdale Orthopaedic Associates, S.C. as per Decision 13 WC 41219 incorporated herein by reference.

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.

Findings of Fact

On September 20, 2013, Lorenzo Landeros, (the "petitioner") was employed as a crane operator by Metal Management Midwest, Inc., (the "respondent"). The respondent operates a metal recycling facility in Chicago, Illinois. Petitioner operates a crane equipped with a grapple, which is used to pick-up scrap metal and place it on a conveyor. Petitioner identified its Exhibit 1(a) as an overhead view of the respondent's scrap facility and its Exhibit 1(b) as the Sennebogan crane that he operates on a daily basis.

Petitioner testified that he had experienced back pain in 2010, due to an automobile accident; and that the pain lasted a few weeks. It is unrebutted that for the past two to three years leading up to this work incident, Petitioner had no continuing problems with his back and/or legs.

Petitioner described his job duties as driving the crane to and from his work-site on a daily basis; and that the driving surface as made of compacted gravel. He testified that there were deep holes and ruts caused by the heavy machinery continuously driving over the surface. Petitioner estimated that the ruts in the driving surface could be three to four inches deep. Petitioner further testified that driving over the ruts caused the crane and cab to rock back and forth violently, almost as if the crane was tipping over. This motion caused the petitioner to be thrown back and forth in the cab numerous times, on a daily basis. PX19; (c-f).

Petitioner testified that once he sets the crane at his work area, his job is to use the grapple to lift tons of scrap metal and place it on a conveyor. He estimates that he moves hundreds of tons on a daily basis. Petitioner offered unrebutted testimony that when he pushes the grapple into the scrap metal, it can go in easily, but the grapple often strikes hard metal under the surface. When the grapple strikes hard metal, the cab shakes back and forth, jolting the petitioner forward and back and bouncing his body up and down. Petitioner estimated that he experiences these hard jolts approximately 100 times per day and that he operates the crane seven to eleven hours per day.

It is uncontested that on or about August 2013 the petitioner began to experience significant pain in his low back as he performed his job duties. Petitioner testified that by September 20, 2013, he notified his supervisor, Theodore (Teddy) Moore, that his back was hurting him and that he needed to see the company medical facility. It took approximately one week for the petitioner to receive authorization to begin treatment at the Concentra facility on Ashland Street in Chicago. Those records show that the petitioner complained of low back pain, which had started twenty-two (22) days prior, which is consistent with the petitioner's testimony. Although the records note that the petitioner was not sure of the reason for his low back pain, it is clear that he advised the Concentra doctor that he was a crane operator. The handwritten notes of September 27 state, "While operates a crane notes pain". PX2.

The doctor at Concentra concluded that the petitioner suffered from pain at the L3-L5 level and that there were no Waddell's findings. X-rays confirmed narrowing at L5-S1 and the petitioner was started on physical therapy; and returned to work in a full duty capacity. The initial physical therapy note of October 1, 2013 confirms that the petitioner advised the therapist that his back began hurting while at work.
Petitioner presented to Concentra on October 7, 2013, October 14, 2013 and October 24, 2013 and he continued in physical therapy. The records confirm that rather than improve, the petitioner's pain began to radiate more down his right leg. On October 24, 2013, the petitioner was advised to obtain an MRI.

The MRI noted chronic grade 1 spondylolytic anterorlisthesis of L5, in relation to S1, with moderate, associated, bilateral neural foraminal stenosis and additional bilateral L4-5 neural foraminal stenosis. There was no significant lumbar spinal canal stenosis. PX4.

On October 31, 2013, the physician at Concentra on Ashland confirmed that the MRI disclosed a nerve impingement at L5-S1 and referred the petitioner for further treatment with Dr. Heller at the Concentra facility on Lake Street. On November 15, 2013, Dr. Heller saw the petitioner. Those notes also confirm that petitioner's lower back and leg pain occurred while doing his usual work. It was determined that prolonged sitting and standing caused the pain to become worse. An epidural injection was suggested which Petitioner declined, at that time. On December 6, 2013, the petitioner returned to Dr. Heller and she diagnosed L5 radiculopathy and again suggested an injection. It was agreed that the petitioner would follow-up with his own physician. PX3.

On December 27, 2013, the petitioner was seen by Dr. Michael Zindrick of Hinsdale Orthopaedic Associates, S.C. That office note indicates that petitioner's condition started at work, sitting and driving over extremely uneven terrain, with constant jarring and bouncing. Dr. Zindrick reviewed the MRI and noted ischemic spondylolisthesis at L5-S1 with disc space narrowing. There is retrolisthesis identified at L4-L5. Dr. Zindrick's opinion is that the petitioner suffers from pre-existing L5-S1 spondylolisthesis with disc degeneration at L5-S1 and L4-L5. Further, the repetitive driving of the crane over and uneven ground resulted in a work-related back injury and aggravation of his pre-existing condition. Again, physical therapy was prescribed with a possible epidural steroid injection. Demand was made for the respondent to provide treatment as indicated by Dr. Zindrick. Petitioner did continue in physical therapy at ATI until February 28, 2014, without significant long-term benefit. Respondent has refused to pay for the past treatment or to authorize any further treatment with Dr. Zindrick. PX4 & 5.

On February 28, 2014, the petitioner testified that he was continuing to perform his full duties as a crane operator. Petitioner testified that the air seat in his crane was not functioning and that the continuing jolts while operating the crane made his pain worse. It is further unrebutted that the seat

was repaired the following Monday and that the petitioner testified that his pain returned to baseline. That incident is the subject of 14 WC 28271, and the Arbitrator's Decision herein is hereby incorporated into 14 WC 28271 by reference.

On April 24, 2014, the petitioner was sent to Dr. Steven Mather for examination pursuant to Section 12 of the Act. The report notes that Dr. Mather understands that the petitioner operates a crane and does a lot of bouncing around in the cab. Dr. Mather understood that petitioner's pain had started approximately 3 to 4 weeks before seeing the doctors at Concentra, in September 2013. He also understood that the petitioner was using a relatively new machine at the time his back and leg pain started. Dr. Mather further noted that the malfunctioning seat aggravated the petitioner's symptoms. During his examination, Dr. Mather noted consistent loss of range of motion as well as 1 cm of atrophy in petitioner's right calf compared to the left. Dr. Mather reviewed the medical records to date, including the MRI and concluded, as did Dr. Zindrick, that the petitioner suffers from L5-S1 spondylolisthesis. More importantly, Dr. Mather agreed that:

> It appears that Mr. Lorenzo Landeros did indeed sustain aggravation of a pre-existing spondylolisthesis at L5-S1. The mechanism of the injury appears to be the use of the crane over uneven ground and jarring in the cab of the crane. He does have organic findings on physical examination, including a significant 1cm atrophy of his right leg, consistent with his significant nerve root compression. RX3.

Dr. Mather believes that the petitioner has failed conservative measures and recommends a decompression and fusion.

Respondent's witness Mr. Theodore Moore

Respondent offered the testimony of Mr. Theodore (Teddy) Moore, petitioner's supervisor. Mr. Moore testified that he became aware that the petitioner had back pain on September 20, 2013, when the petitioner advised him. Mr. Moore stated that the petitioner did not know what caused his problem. Mr. Moore documented this conversation in his e-mail of September 24, 2013. That e-mail stated that the petitioner did not say, "it was because of work." Mr. Moore further testified that the petitioner drives his crane only approximately two hundred (200) yards each way on a daily basis and that the roadways used by the petitioner are regraded on a constant basis. RX1

On cross-examination, Mr. Moore admitted that at the time he wrote the e-mail, he did not investigate whether the petitioner's job duties were a factor in his complaints of pain. Mr. Moore testified that the potholes depicted in the photographs were generally as deep as six inches and that the surface required constant regrading due to the constant traffic of heavy machines. Although Mr. Moore

testified that he has ridden as a passenger in a crane for a few hours over his three-year career with the respondent, he has never operated or been inside the cab of a crane, while it is picking up materials. RX1.

Petitioner testified that he continues to work full duty, but that his low back pain continues to radiate into his right leg down to the foot. He can stand or sit for approximately 20 minutes before his back pain increases and his right foot and leg becomes numb. He wishes to continue with the treatment prescribed by Dr. Zindrick. Petitioner brings this matter before the Commission pursuant to Section 19(b) of the Act.

Conclusions of Law; 13 WC 41219

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v Industrial Commission*, 47 Ill.2d 144, 265 N.E. 2d 129 (1970). A petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission*, 68 Ill.2d 236, 369 N.E.2d 853 (1977). Where a petitioner fails to prove by a preponderance of the evidence that there exists a casual connection between work and the alleged condition of ill-being, compensation is to be denied. Id. The facts of each case must be closely analyzed to be fair to the employee, the employer, and to the employer's workers' compensation carrier. *Three "D" Discount Store v Industrial Commission*, 198 Ill.App. 3d 43, 556 N.E.2d 261, 144 Ill.Dec. 794 (4th Dist. 1989).

The burden is on the Petitioner seeking an award to prove by a preponderance of credible evidence all the elements of his claim, including the requirement that the injury complained of arose out of and in the course of his or her employment. *Martin vs. Industrial Commission*, 91 Ill.2d 288, 63 Ill.Dec. 1, 437 N.E.2d 650 (1982). The mere existence of testimony does not require its acceptance. *Smith v Industrial Commission*, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much his testimony might be contradicted by the evidence, or how evident it might be that his story is a fabricated afterthought. *U.S. Steel v Industrial Commission*, 8 Ill.2d 407, 134 N.E. 2d 307 (1956).
It is not enough that the petitioner is working when an injury is realized. The petitioner must show that the injury was due to some cause connected with the employment. *Board of Trustees of the University of Illinois v. Industrial Commission*, 44 Ill.2d 207, 214, 254 N.E.2d 522 (1969); see also *Hansel & Gretel Day Care Center v Industrial Commission*, 215 Ill.App.3d 284, 574 N.E.2d 1244 (1991).

15IWCC0919

The Illinois Supreme Court has held that a claimant's testimony standing alone may be accepted for the purposes of determining whether an accident occurred. However, that testimony must be proved credible. *Caterpillar Tractor vs. Industrial Commission*, 83 Ill.2d 213, 413 N.E.2d 740 (1980). In addition, a claimant's testimony must be considered with all the facts and circumstances that might not justify an award. *Neal vs. Industrial Commission*, 141 Ill.App.3d 289, 490 N.E.2d 124 (1986). Uncorroborated testimony will support an award for benefits only if consideration of all facts and circumstances support the decision. *See generally, Gallentine v. Industrial Commission*, 147 Ill.Dec 353, 559 N.E.2d 526, 201 Ill.App.3d 880 (2nd Dist. 1990), *see* also *Seiber v Industrial Commission*, 82 Ill.2d 87, 411 N.E.2d 249 (1980), *Caterpillar v Industrial Commission*, 73 Ill.2d 311, 383 N.E.2d 220 (1978). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence, and assign weight to the witness' testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v Workers' Compensation Commission*, 397 Ill.App. 3d 665, 674 (2009).

The Arbitrator finds that the petitioner has proved, by a preponderance of the evidence, that he sustained a repetitive trauma injury with a manifestation date of September 20, 2013, which arose out of and in the course of his employment by the respondent.

There is no question that the petitioner had a pre-existing condition of spondylolisthesis at L5-S1. Both Drs. Zindrick, and Mather, respondent's Section 12 examining physician, agree. Further, both Drs. Zindrick and Mather opined that the jolting and jarring of Petitioner, when operating the crane, caused an aggravation of that underlying condition, which now requires medical treatment.

The Arbitrator finds the petitioner to be credible in describing how the uneven surface of the respondent's facility caused the crane to jolt and rock. Respondent's witness, Theodore Moore, admitted that the roadway requires constant regrading and he testified to potholes being as deep as six inches, on the driving surface. In addition, the respondent did not refute the fact that the grapple striking a hard surface would cause the cab of the crane to jolt.

Respondent's contention that the petitioner's statement to Mr. Moore and the Concentra doctors that he did not know what was causing his pain is not dispositive in this matter. It is clear from the petitioner's testimony and from the medical records that the petitioner always referred to his work activities as being an instigating factor of his pain. In fact, the September 27, 2013 note specifically states that the pain started while performing his job duties.

Dr. Mather had the opportunity to review all the relevant medical records, including those referred to by the respondent, and he did not find the petitioner's initial statements to be significant. It is clear that both Drs. Zindrick and Mather note that the jarring of the crane, while being operated by the

petitioner, is a cause of his current complaint of ill-being. Dr. Mather offers a causal connection opinion that the jarring in the cab of the crane was the causative factor aggravating the petitioner's pre-existing back condition. Respondent's Section 12 physician opines further and states that after additional recommended treatment:

> This appears to be a straightforward situation and the patient appears to be highly motivated and would, in all likelihood, have an uneventful recovery and fully return to his previous occupation without restrictions.

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

Based upon the medical records and the agreeing opinions of Drs. Zindrick and Mather, the Arbitrator finds that the petitioner's current condition of ill-being is causally related to the work injury of September 20, 2013.

The Arbitrator notes the consolidated case 14 WC 41219 and finds that the incident of February 28, 2014 was a temporary exacerbation of petitioner's back condition. Petitioner offered unrebutted testimony that operating the crane, without a functioning air seat, increased his pain during the period that the seat was not was repaired. After March 3, 2014, when the seat was repaired the pain in his low back and right leg returned to baseline. The Arbitrator hereby incorporates the decision in 13 WC 41219 herein by reference.

K. Is the petitioner entitled to prospective medical treatment?

It is uncontroverted that the petitioner continues to suffer from an aggravation of his pre-existing spondylolisthesis at L5-S1 and degenerative disc disease at L4-L5. Dr. Mather opined that the treatment provided by Dr. Zindrick was reasonable and necessary. Dr. Mather went even further to suggest that since the petitioner did not respond to the additional therapy ordered by Dr. Zindrick, he is an optimum candidate for a decompression and fusion. Therefore, the Arbitrator finds that the petitioner is entitled to prospective medical treatment as prescribed by Dr. Zindrick.

Conclusions of Law; 14 WC 28271

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

It is Petitioner's unrebutted testimony that after his work injury of September 20, 2013, he continued to experience pain and soreness radiating from his low back into his right leg. It is further undisputed that the petitioner has continued to perform the full duties required of him as a crane operator to the present time.

The petitioner testified that from on or about February 26, 2014 through February 28, 2014, he continued to use his assigned crane when the air ride seat failed to work. This caused the jolts he normally experienced to be more severe. It is agreed that the air-ride seat was repaired on Monday, March 3, 2014.

Petitioner testified that during the period that he used the crane without the benefit of the air-ride seat, the pain in his low back and legs increased. The petitioner testified that when the seat was repaired, his low back and leg pain returned to baseline as described in the consolidated matter of 13 WC 41219, which decision is hereby incorporated herein by reference.

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

The respondent's witness, Mr. Moore, testified that he was aware of that the petitioner alleged to have been injured, due to the bouncing and jarring of the crane, at the time that the petitioner operated the crane without the air seat. Mr. Moore noted documents signed by the petitioner, as well as word from other operators of the crane, that the seat was malfunctioning as early as February 28, 2014. The Arbitrator notes that Mr. Moore testified that he did not feel there was any prejudice in investigating this claim. The Arbitrator's finds and concludes that the petitioner did provide appropriate notice and that the respondent did not prove, or even allege, undue prejudice due to any insufficiency of notice. *Tolbert v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC (2014).

It is apparent that Dr. Mather also considered this issue, during his examination of the petitioner, on April 24, 2014. It is clear that the incident of February 28, 2014 was a temporary exacerbation of the work-related condition of ill-being as described by both Dr. Zindrick and Dr. Mather due to the work injury of September 20, 2013, which is the subject of the consolidated matter of 13 WC 41219.

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

The Arbitrator finds that the petitioner's current condition of ill-being is causally related to his injury of September 20, 2013 (13 WC 41219), and that the injury of February 28, 2014 was a temporary exacerbation of that condition.

15IWCC0919

K. Is the petitioner entitled to prospective medical treatment?

The petitioner is entitled to reasonable and necessary prospective medical treatment as recommended by Dr. Zindrick. However, that treatment is related to his work injury of September 20, 2013, per the Arbitrator's decision in the consolidated matter now pending as 13 WC 41219, which decision is hereby incorporated by reference.

15IWCC0919

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
13 WC 41219 & 14 WC 28271
SIGNATURE PAGE

L Thompson Smith
Signature of Arbitrator

November 6, 2014
Date of Decision

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☒ 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

Rodney Burnett,
Petitioner,

15IWCC0920

vs.

NO: 14WC 9313

State of IL, Dept of Corrections/Shawnee Correctional Center ,
Respondent.

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 permanent disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 27, 2015, is hereby affirmed and adopted.

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: DEC 16 2015
o12032015
DLG/mw

David L. Gore

Mario Basurto

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BURNETT, RODNEY
Employee/Petitioner

Case# **14WC009313**

SOI DEPT OF CORRECTIONS/SHAWNEE CORRECTIONAL CENTER
Employer/Respondent

15IWCC0920

On 5/27/2015, 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:

5236 CULLEY FEIST KUPPART & TAYLOR
KREIG B TAYLOR
3 S MAIN ST SUITE 2
HARRISBURG, IL 62946

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
FARRAH L HAGAN
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

1350 CENTRAL MANAGEMENT SYSTEMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy pursuant to 820 ILCS 305/14

MAY 27 2015

RONALD A. RARDIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC0920

STATE OF ILLINOIS)
)SS.
COUNTY OF **WILLIAMSON**)

☐ 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

Rodney Burnett
Employee/Petitioner

v.

Case # **14** WC **9313**

Consolidated cases: _____

State of IL Dept. of Corrections/Shawnee Correctional Center
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 **Michael Nowak**, Arbitrator of the Commission, in the city of **Herrin**, on **1/14/15**. 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 **2/08/2014**, 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 $**62,677.00**; the average weekly wage was $**1,205.33**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **1** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit for any medical expenses paid under Section 8(j) of the Act.

ORDER

Based on the factors enumerated in §8.1b of the Act, which the Arbitrator addressed in the attached findings of fact and conclusions of law, and the record taken as a whole, Respondent shall pay Petitioner the sum of$**721.66**/week for **15** weeks, because the injuries sustained caused **3% loss of use of body as a whole**, as provided in Section 8(d)2 of the Act.

Respondent shall pay reasonable and necessary medical services of **$344.00** as set forth in PX 2, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner compensation that has accrued from **February 8, 2014** through **January 14, 2015**, and shall pay the remainder of the award, if any, in weekly payments.

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

5/8/15
Date

MAY 27 2015

FINDINGS OF FACT

On February 8, 2014 Petitioner was employed as a corrections officer for the State of Illinois at the Shawnee Correctional Center. On that date at around approximately 6:30 a.m., Petitioner arrived at Shawnee Correctional Center and parked in the employee parking lot. As Petitioner was exiting his vehicle he slipped on the snow and ice which covered the parking lot landing on his left side. Petitioner immediately felt pain in his back and rib area and lost his breath. Petitioner then proceeded to walk to the entrance of facility. Upon arrival Petitioner completed an incident/accident report and worked his shift which was to be from 7:00 a.m. to 3:00 p.m. Petitioner testified that he continued to experience pain as he worked that day.

Following the accident, Petitioner sought treatment from his primary care physicians at the Alexander Family Practice on February 10, 2014. On that date, Petitioner presented with a history of "fell at work Saturday at 0620 on the ice, he landed on his left side on the parking lot, he stayed at work that day and did go to nurse there." Petitioner indicated that his pain continued to the left ribs and that he now had pain in his right shoulder and back region. X-rays were taken of the right shoulder which revealed no radiographic evidence of any abnormality. X-rays of the left ribs were negative. Petitioner was diagnosed with a shoulder sprain, sprained ribs and lumbar strain. Petitioner was told to take ibuprofen for pain, use a heating pad and to return to work.

Petitioner followed up with Dr. Alexander's office on February 17, 2014 complaining of continued pain from a fall at work. Petitioner provided a history that he was having spasms in his right trapezius and shoulder region and also in his left lateral ribs. He also indicated that he had been using a heating pad and taking ibuprofen without much relief. On that date, Petitioner was prescribed Flexeril, 5 MG tabs, which Petitioner testified that he took as a muscle relaxer. Petitioner was taken off of work for the days of February 18, 2014 and February 19, 2014.

Petitioner testified that he still experiences pain throughout his left rib area and his back and notices the pain more so when performing certain activities.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

The Arbitrator finds the testimony of Petitioner to be credible. Petitioner testified that on February 8, 2014 at approximately 6:30 a.m., he slipped on the ice in the employee parking lot while exiting his vehicle. Petitioner testified that the location of the parking lot was on the premises controlled by Respondent and that it was a lot designated for employee parking. Petitioner's testimony as to the condition of the parking lot and the control of the same was unrebutted. Respondent's witness, Major Dennison, testified that he could not remember nor accurately testify as to the condition of the parking lot on that date of the accident. He indicated that the parking lot in which Petitioner slipped was a parking lot designated for use by employees at the facility. He also testified that Petitioner was an honest employee and he had no reason to dispute the accuracy of Petitioner's testimony. He further indicated that the maintenance staff, who handle ice and snow removal in the lots do not begin their shift until 7:00 a.m.

Petitioner testified that he immediately felt pain in his rib and back area following the accident and later felt pain his right shoulder, the conditions for which Petitioner was seen by his primary physicians at Alexander Family Practice.

Based upon the foregoing and the record taken as a whole, the Arbitrator finds that the accident as described by Petitioner as occurring on February 8, 2014 was an accident which arose out of and in the course of Petitioner's employment with Respondent. Petitioner was exposed to risks greater than those encountered by the public at large. The location of his fall was an area designated for employee parking. In addition, the general public is not generally present on the premises of a correctional facility before maintenance workers arrive to deal with snow covered parking lots at 7:00 a.m.

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds Petitioner's current condition of ill-being is causally related to his injury sustained on February 8, 2014. Petitioner testified that he sought medical treatment for his injuries on February 10, 2014, two days after the accident. Petitioner testified that he no issues to these areas of his body prior to his work accident. This evidence was un rebutted.

Issue (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?

The Arbitrator concludes that all of the medical treatment provided to Petitioner's left rib area, right shoulder and back were reasonable and necessary and that Respondent is responsible for payment of the medical bills associated therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 2, as provided in Section 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Issue (L): What is the nature and extent of the injury?

On February 8, 2014, Petitioner sustained injuries to his left ribs, right shoulder and back as evidenced by the medical records. Petitioner was diagnosed with shoulder sprain, sprained ribs and lumbar strain.

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither party submitted an impairment rating. The Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee the Arbitrator notes that the Petitioner worked as a corrections officer for Respondent. Petitioner testified that he still experiences pain from the injury but is still able to perform his job duties. Petitioner was taken off of work for two days after the accident. The Arbitrator therefore gives *some* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 52 years old at the time of the injury. Petitioner has diminished healing capacity as compared with a younger worker. The Arbitrator therefore gives *some* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes there is no direct evidence of reduced earning capacity contained in the record. The Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the Petitioner was a credible witness. Petitioner has sustained injuries to his ribs, right shoulder and back. Petitioner testified that he still experiences pain in these areas and that he did not have any similar symptoms before the accident. Because the medical records and evidence taken as a whole corroborate the Petitioner's injuries and complaints of pain, the Arbitrator therefore gives *greater* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 3% loss of use of the body as a whole. pursuant to §8(d)2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

☒ 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

Roy Alvey,
Petitioner,

vs. NO: 12 WC 01113

151WCC0921

Kroger's,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident and temporary total disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 10, 2015, is hereby affirmed and adopted.

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.

15IWCC0921

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: DEC 16 2015

Joshua D. Luskin

o-12/02/15
jdl/wj
68

Charles J. DeVriendt

Ruth W. White

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

ALVEY, ROY
Employee/Petitioner

Case# **12WC001113**

15IWCC0921

KROGER'S
Employer/Respondent

On 2/10/2015, 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:

1727 LEE & WENDT
MARK N LEE
1101 S 2ND ST
SPRINGFIELD, IL 62704

2593 GANAN & SHAPIRO PC
MELINDA ROWE-SULLIVAN
411 HAMILTON BLVD SUITE 1006
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

☐ 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)

Roy Alvey
Employee/Petitioner

v.

Kroger's
Employer/Respondent

Case # 12 WC 01113

Consolidated cases: n/a

15IWCC0921

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 William R. Gallagher, Arbitrator of the Commission, in the city of Urbana, on December 19, 2014. 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. ☒ 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 _____

FINDINGS

On the date of accident, November 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 not sustain an accident that arose out of and in the course of employment.

Petitioner's current condition of ill-being is not causally related to the accident.

In the year preceding the injury, Petitioner earned $21,899.80; the average weekly wage was $421.15.

On the date of accident, Petitioner was 48 years of age, single with 0 dependent child(ren).

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's Conclusions of Law attached hereto, claim for compensation is denied:

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.

William R. Gallagher, Arbitrator
ICArbDec19(b)

January 30, 2015
Date

FEB 10 2015

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Application alleged a date of accident (manifestation) of November 30, 2011, and that Petitioner sustained repetitive trauma to his right shoulder (Arbitrator's Exhibit 2). This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of temporary total disability benefits and medical bills as well as prospective medical treatment. Respondent disputed liability on the basis of accident, notice and causal relationship.

At trial, counsel for Petitioner and Respondent tendered into evidence their exhibits. In regard to Petitioner's Exhibit 3 (medical records of Dr. Manjeshwar Prabhu), Respondent's counsel made a hearsay objection in regard to a letter prepared by Dr. Prabhu dated December 22, 2011, which was directed "To Whom it may Concern", and purported to address the issue of causality. When considering Respondent's objection, the Arbitrator noted that two copies of this letter were included in Respondent's Exhibit 2 (Petitioner's personnel file) which had been received into evidence. The Arbitrator overruled Respondent's hearsay objection on the basis that Respondent waived this objection by tendering that same letter into evidence.

Petitioner testified that he worked for Respondent as a grocery/courtesy clerk for over 22 years. Petitioner's job duties included pushing grocery carts, assisting customers with groceries as needed, moving heavier items for customers such as rock salt, cleaning the restrooms and break rooms, throwing trash away, etc. Petitioner tendered into evidence both a written job description that he completed and a job description prepared by Respondent (Petitioner's Exhibit 1). Petitioner agreed that these job descriptions were consistent with one another.

At trial, Petitioner did not testify as to how performing his various job duties had any effect on his right shoulder on a day to day basis. It was also unclear as to exactly when Petitioner first started having right shoulder symptoms. Respondent tendered into evidence Petitioner's personnel file which contained a report prepared by both Petitioner and Charolette Denson, the Co-Manager, dated December 22, 2011. The first page of the report was completed and signed by Petitioner and it stated that Petitioner was pushing a cart and heard a pop in his shoulder (it did not specify right or left) and that the date of the injury was August 2, 2007. In a portion of the report completed by Denson, it stated that Petitioner informed her that Petitioner was having shoulder pain and when she asked Petitioner if he had hurt himself at work, he responded "no" and that he injured it at home (Respondent's Exhibit 2).

At trial, Petitioner testified that he gave Denson the date of August 2, 2007, because she pressured him to provide her with a specific date of accident. Petitioner stated that he had right shoulder problems prior to 2011; however, he did not seek medical treatment because he thought the problem would resolve itself.

Petitioner initially sought medical treatment on August 23, 2011, at the ER of Taylorville Memorial Hospital. At that time, Petitioner complained of pain in the right shoulder, but he was unaware of any particular event causing him trouble. Petitioner was diagnosed with a shoulder strain (Petitioner's Exhibit 2).

Petitioner subsequently sought medical treatment from Dr. Prabhu, his family physician, on November 30, 2011 (the date of manifestation alleged in the Application). At that time, Petitioner complained of right shoulder pain that had been present for about four years but had recently gotten worse. There was no reference to Petitioner's work activities or any other cause of Petitioner's right shoulder symptoms. Dr. Prabhu ordered an MRI scan (Petitioner's Exhibit 3).

An MRI scan was performed on December 7, 2011, which revealed a full thickness tear of the anterior supraspinatus, partial tears elsewhere throughout the supraspinatus, tendinosis and partial tears of the subscapularis and a probable anterior labral tear. In regard to history, the radiologist's report stated that Petitioner had chronic right shoulder pain for four months and no known injury (Petitioner's Exhibit 3).

Dr. Prabhu subsequently ordered physical therapy. When Petitioner was initially evaluated for physical therapy, he advised that he had right shoulder pain for approximately three to four years and that it was probably from pushing six to twelve carts at a time at his job (Petitioner's Exhibit 3).

Petitioner was subsequently seen by Dr. Jeffrey Schopp on December 16, 2011. At that time, Petitioner complained of a gradual onset of right shoulder pain but denied any injury or trauma. Dr. Schopp made reference to the MRI and noted that if Petitioner continued to have symptoms, a surgical repair of the rotator cuff might be indicated (Petitioner's Exhibit 4).

Petitioner was again seen by Dr. Prabhu on December 22, 2011 (the same day the accident report was prepared) and Petitioner testified that he has to Dr. Prabhu to prepare a letter regarding the cause of his right shoulder symptoms because Respondent did not believe his right shoulder condition was work-related. Dr. Prabhu's letter of December 22, 2011, stated that Petitioner's right shoulder condition was caused by repetitive trauma and not as a result of a single event. There was no specific reference to Petitioner's work activities (Petitioner's Exhibit 3). Dr. Prabhu subsequently referred Petitioner to Dr. Mark Greatting, an orthopedic surgeon.

Dr. Greatting evaluated Petitioner on January 30, 2012. At that time, Petitioner informed him that he had worked for Respondent for 22 years and his job duties required a significant amount of lifting and use of his right arm. Dr. Greatting reviewed the MRI and agreed that Petitioner had a torn rotator cuff. He opined that Petitioner's work activities over a period of years could have contributed to or caused the problem. He recommended Petitioner have rotator cuff surgery (Petitioner's Exhibit 5).

On March 7, 2012, Dr. Greatting performed arthroscopic surgery which consisted of a rotator cuff repair and subacromial decompression. Following surgery, Dr. Greatting ordered physical therapy which Petitioner received from April 3, 2012, through September 10, 2012. When Dr. Greatting saw Petitioner on October 18, 2012, Petitioner still had significant right shoulder pain and Dr. Greatting recommended that an MRI arthrogram be performed to evaluate the integrity of the surgical repair (Petitioner's Exhibits 2 and 5).

At the direction of Respondent, Petitioner was examined by Dr. Lawrence Li, an orthopedic surgeon, on February 28, 2013. In connection with his examination of Petitioner, Dr. Li reviewed

medical records provided to him by Respondent as well as the injury report of December 22, 2011 (the month was incorrectly stated as September). When Petitioner was seen by Dr. Li, he advised that he initially experienced popping in the right shoulder in November, 2007, and that while he did not seek any medical treatment for four years, he continued to actively use his right arm at work. Dr. Li opined that Petitioner had a torn rotator cuff that required surgery; however, he opined that Petitioner's right shoulder condition was not related to any incident that occurred in 2007 (Respondent's Exhibit 3).

Dr. Li subsequently received Petitioner's job description and, in a supplemental report dated April 23, 2014, he opined that Petitioner's right shoulder condition was not related to repetitive use of the right shoulder at work. This opinion was primarily based on the fact that the job description did not indicate any repetitive use of the shoulder in an over the chest fashion (Respondent's Exhibits 4 and 5).

Dr. Greatting was deposed on February 25, 2014, and his deposition testimony was received into evidence at trial. Dr. Greatting's testimony was consistent with his medical records and he reaffirmed his opinion that Petitioner's right shoulder condition was related to his repetitive work activities while employed by Respondent (Petitioner's Exhibit 6; p 15).

Dr. Li was deposed on May 5, 2014, and his deposition testimony was received into evidence at trial. Dr. Li's testimony was consistent with his medical reports and he reaffirmed his opinion that Petitioner's right shoulder condition was not related to his work activities, whether a specific accident that occurred in August, 2007, or repetitive trauma that manifested itself on November 30, 2011. Dr. Li explained that the lack of over the chest use of the right shoulder was the primary basis of his opinion regarding causality (Respondent's Exhibit 6; pp 11, 15-16).

Darren Carpenter testified on behalf of the Respondent at trial. Carpenter is Respondent's Store Manager and has been in that position for approximately four years. Carpenter testified that he was familiar with Petitioner's job duties and that the heaviest item Petitioner would have had to lift would have been a 50 pound bag of dog food. Further, he stated that Petitioner was not required to do any overhead lifting at all and only a minimal amount of lifting at chest level. Carpenter testified that Petitioner would typically bag groceries, sweep/mop floors, return products to the shelf, take customers' groceries to cars, etc.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner did not sustain a repetitive trauma injury arising out of and in the course of his employment for Respondent to his right shoulder that manifested itself on November 30, 2011, and that his current condition of ill-being is not related to his work activities.

In support of this conclusion the Arbitrator notes the following:

The evidence was not clear as to whether Petitioner was claiming to have sustained a specific accident of August 2, 2007, or repetitive trauma that manifested itself on November 30, 2011.

Petitioner testified that he indicated August 2, 2007, as the date he injured his right shoulder because he was "pressured" to provide a date of accident by Charolette Denson. However, Petitioner did not provide any explanation as to how he determined the date of accident to be August 2, 2007.

The evidence is not clear as to when Petitioner first started experiencing right shoulder symptoms. Dr. Prabhu's records indicated that it was four years prior to November 30, 2011; however, the radiologist who read the MRI on December 7, 2011, indicated that Petitioner had symptoms for four months.

Assuming that Petitioner did, in fact, have right shoulder symptoms that began sometime in 2007, it is not disputed that Petitioner sought no medical treatment for any right shoulder problems until August, 2011.

Dr. Prabhu's letter of December 22, 2011, wherein he opined that Petitioner's right shoulder condition was related to repetitive trauma is of minimal probative value because it contains no description of Petitioner's alleged repetitive work activities that caused the condition.

The Arbitrator finds the testimony of Darren Carpenter in regard to Petitioner's work activities to be credible and that Petitioner's job required no overhead use of his right arm and minimal amount of lifting at chest level.

The Arbitrator finds the opinion of Dr. Li to be more persuasive than that of Dr. Greatting in regard to whether Petitioner's right shoulder condition was related to his work activities.

In regard to disputed issues (E), (J), (K) and (L) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issues (C) and (F).

William R. Gallagher, Arbitrator

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

B. Nadine Rund,
Petitioner,

vs. NO: 14 WC 13266

University of Illinois,
Respondent.

15IWCC0922

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 and permanent disability, and being advised of the facts and law, hereby reverses the April 14, 2015 decision of Arbitrator Gallagher, whose decision is attached hereto and made a part hereof. The Arbitrator found that Petitioner proved a compensable accident and sustained permanent partial disability (to the extent of 25% loss of use of her right hand). The Commission, after reviewing the entire record, finds that Petitioner failed to prove she sustained accidental injuries arising out of and in the course of her employment with Respondent. Accordingly, compensation is denied. Furthermore, based upon Petitioner's failure to prove a compensable accident, the Commission finds all other issues are moot.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner, Bessie "Nadine" Rund, a 52-year-old staff nurse, was employed by Respondent at its McKinley Health Center in Urbana. (Tr. 16). On February 21, 2014, she fell down a stairway and fractured her right wrist while on her way to delivering a prescription to the pharmacy on the floor below. (Tr. 19). She testified that she was in a hurry at the time because it was near the end of her workday. (Tr. 20). The fall occurred at approximately 4:20 p.m. on a Friday; her shift ended at 4:30 p.m. (Tr. 18, 22). She could not recall whether she was running, but she was descending the stairs more quickly than usual. (Tr. 42). She was delivering a

prescription for antibiotics for a student. (Tr. 19). The student needed to have the prescription filled and picked up that afternoon, as the student needed to start the course of antibiotics for a sexually transmitted disease before going home for the weekend. (Tr. 19). Petitioner testified that, right before the accident, Petitioner had spoken with the student by phone and told her to give Petitioner some time to get the prescription down to the pharmacy. (Tr.19). The pharmacy closed at 5:30 p.m. (Tr. 22). Petitioner could have left this and other unfinished tasks for a co-worker, whose shift ended at 5:30 p.m., but attested she did not want to impose on her co-worker. (Tr. 24, 52).

The stairs in question are open for use to the general public. (Tr. 46). An elevator is available, but Petitioner chose to forego the wait. (Tr. 24). Petitioner was holding onto the railing with her right hand and had the prescription (a piece of paper about six by three inches) in her left when she fell. (Tr. 20, 47). At trial, evidence was offered suggesting that the stairs were atypically steep, comprised of varying heights, or otherwise defective or dangerous; one photograph showed that the carpet at the lip of the landing between the floors was unfastened. (Tr. 27, PX 1). However, ultimately Petitioner admitted that she just did not know exactly where she tripped or what event triggered her fall. (Tr. 19, 28, 41). She testified, "I just knew I was in a hurry and I knew I was going to fall, and I don't remember a lot from that time." (Tr. 20).

The Commission finds that Petitioner failed to prove she sustained accidental injuries arising out of and in the course of employment with Respondent. In so doing, the Commission reverses the decision of the Arbitrator, who opined that the circumstances of Petitioner's fall were analogous to those of the prevailing claimants in William G. Ceas & Co. v. Industrial Commission, 261 Ill. App. 3d 630 (1st Dist. 1994) and Knox County YMCA v. Industrial Commission, 311 Ill. App. 3d. 880 (3d Dist. 2000). The purpose of the Act is to protect employees from risks and hazards that are peculiar to the nature of the work they are employed to do. Illinois Bell Telephone Co. v. Industrial Commission, 131 Ill. 2d 478, 483 (1989). An injury is compensable under the Act only if it "arises out of" and occurs "in the course of" a claimant's employment. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 57-58 (1989). In the case at hand, there is no dispute that Petitioner sustained injuries in the course of her employment. The issue presented is whether the injuries also "arose out of" that employment.

"Arising out of" employment pertains to the origin or cause of an employee's injury. First Cash Financial Services v. Industrial Commission, 367 Ill. App. 3d 102 (1st Dist. 2006). For an injury to "arise out of" one's employment, its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. Caterpillar Tractor Co., 129 Ill. 2d at 58. Illinois courts categorize the risks to which an employee may be exposed into three general groups: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks that have no particular employment or personal characteristics. Baldwin v. Illinois Workers' Compensation Commission, 409 Ill. App. 3d 474, 478 (4th Dist. 2011); First Cash Financial Services, 367 Ill. App. 3d at 105; Illinois Institute of Technology Research Institute v. Industrial Commission, 314 Ill. App. 3d 149, 162 (1st Dist. 2000).

As to the first category, risks distinctly associated with employment, these include the obvious kinds of industrial injuries and occupational diseases, and are universally compensated. Illinois Institute of Technology Research Institute, 314 Ill. App. 3d at 162. These are the kind of risks inherent in one's employment. Illinois Consolidated Telephone Co. v. Industrial Commission, 314 Ill. App. 3d 347, 352 (5th Dist. 2000) (Rakowski, J., specially concurring). In the context of falls, these employment risks include tripping on a defect at the employer's premises or falling on uneven or slippery ground at a worksite. Id. In the case at hand, Petitioner tripped and fell while traversing stairs. There is no evidence that the risk of injury while traversing stairs is distinctly associated with working as a staff nurse at a university hospital. Additionally, there was no evidence that Petitioner's fall resulted from a defect on Respondent's premises. As noted earlier, Petitioner testified that she just did not know what caused her to stumble. Thus, this case does not present the issue of risk distinctly associated with employment.

As to the second category of risk, personal risks include exposure to elements that cause non-occupational disease and personal defects or weaknesses. Illinois Consolidated Telephone Co., 314 Ill. App. 3d at 352 (Rakowski, J., specially concurring); *see also* Illinois Institute of Technology Research Institute, 314 Ill. App. 3d at 162-63. For example, "idiopathic" falls due to a bad knee or an episode of dizziness are grouped into the personal risk category. Id. Although generally not compensable, injury from personal risks may be compensable where conditions of the employment increase the risk of injury. Illinois Institute of Technology Research Institute, 314 Ill. App. 3d at 163, n.1. In the case at hand, there was no evidence to suggest that any non-occupational disease or personal infirmity contributed to Petitioner's fall. Accordingly, this case does not involve a personal risk.

The Commission finds that Petitioner's injury arose from the third category of risk -- neutral risk -- that risk here being of traversing stairs that are used as well by the general public, of no particular employment or personal characteristics. *See* First Cash Financial Services, 367 Ill. App. 3d 102 (2006); Illinois Consolidated Telephone Co., 314 Ill. App. 3d at 353 (Rakowski, J., specially concurring) ("In the context of falls, neutral risks include falls on level ground or while traversing stairs"). As such, her injuries cannot be deemed to have arisen out of her employment, and thus are not to be compensated under the Act, unless she was exposed to this risk to a greater degree than the general public. *See* Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Commission, 407 Ill. App. 3d 1010, 1014 (1st Dist. 2011); Illinois Institute of Technology Research Institute, 314 Ill. App. 3d 149 (1st Dist. 2007).

The Commission finds that Petitioner was not exposed to an increased risk of harm. Petitioner offered a number of arguments as to how her particular employment – on a global everyday basis, and as well on that particular day, and even at that specific moment – exposed her to a greater risk than that faced by the general public. For instance: On a daily basis, according to Petitioner, she had to traverse the stairs up to fifteen times; that particular workday was atypically busy and thus she had to work at a faster pace than usual; at that specific moment, she was holding a prescription in her left hand, which presumably prevented her from breaking her fall with her left hand. Mostly, Petitioner emphasizes that she was in a hurry at the time of

the accident – she essentially argues that, but for her pressing employment errand, she would not have been rushing down the stairs and fallen when she did.

The Commission finds Petitioner's arguments both self-serving and unpersuasive. The injury here occurred while she was descending a flight of stairs. Descending stairs is not a hazard peculiarly related to her employment as a staff nurse at a university hospital, but rather is an ordinary activity engaged in by the general public. Indeed, the stairs in question were used as well by the general public. As to her hurriedness that day, Petitioner presented a number of elaborations upon her haste, or justifications therefor, including: the Health Center was short-staffed; "all" the doctors were present on the floor; "more" patients were being seen, Friday is a busy day; February is a busy month, etc. (Tr. 16-18, 59-60). However, statements to the effect that Petitioner had more work to do than usual because Fridays in February are an especially busy time are tautological and not elucidating. More to the point: while Petitioner might well have been working at a pace that was faster than was her habit, felt rushed, and presumably was less careful than was her habit in descending the stairs, explanations of this kind go to Petitioner's subjective experience and are immaterial in the final analysis.

Lastly, the Commission notes that to find a compensable accident in these circumstances would be to adopt the positional risk doctrine, a doctrine rejected by the Supreme Court in Brady v. Louis Ruffolo & Sons Construction Co., 143 Ill. 2d 542 (1991). There was no showing that any alleged defect on Respondent's premises interfered with Petitioner's ability to traverse the stairs; as noted earlier, Petitioner testified she did not know what caused her to trip and fall. This fall was unexplained. Professor Arthur Larson has pointed out that recovery in a pure unexplained fall case can only be justified by an acceptance of the positional risk doctrine. With regard to such falls, Larson states:

> If an employee falls while walking down the sidewalk or across a level factory floor for no discoverable reason, the injury resembles that from stray bullets and other positional risks in this respect: The particular injury would not have happened if the employee had not been engaged upon an employment errand at the time. In a pure unexplained fall case, there is no way in which an award can be justified as a matter of causation theory except by a recognition that this but-for reasoning satisfies the "arising" requirement.

1 A. Larson & L. Larson, Larson's Workers' Compensation Law § 7.04 (1) at 7-15 (1999).

As alluded to earlier, Petitioner's arguments are in essence "but for" arguments. The Supreme Court has never accepted the "but for" reasoning of the positional risk doctrine. *See* Brady, 143 Ill. 2d 542; Campbell "66" Express, Inc. v. Industrial Commission, 83 Ill. 2d 353 (1980); Decatur-Macon County Fair Association v. Industrial Commission, 69 Ill. 2d 262 (1977). The Commission cannot do so here.

Accordingly, the Commission finds that compensation in this matter is unwarranted. Benefits are denied. All other issues are moot.

15IWCC0922

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 14, 2015, is hereby reversed. Benefits denied.

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: DEC 16 2015

Joshua D. Luskin

Charles J. DeVriendt

Ruth W. White

o-10/20/15
JDL/ac
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RUND, B NADINE
Employee/Petitioner

Case# **14WC013266**

UNIVERSITY OF ILLINOIS
Employer/Respondent

15IWCC0922

On 4/14/2015, 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:

1727 LAW OFFICE OF MARK N LEE
KEVIN MORRISON
1101 S SECOND ST
SPRINGFIELD, IL 62704

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
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0904 STATE UNIVERSITY RETIREMT SYS
PO BOX 2710 STATION A
CHAMPAIGN, IL 61825

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

APR 14 2015

RANDY A. PASCIA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ 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

B. Nadine Rund
Employee/Petitioner

v.

University of Illinois
Employer/Respondent

Case # 14 WC 13266

Consolidated cases: n/a

15IWCC0922

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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on February 23, 2015. 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 February 21, 2014, 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 $48,474.40; the average weekly wage was $932.20.

On the date of accident, Petitioner was 52 years of age, married with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical bills as identified in Petitioner's Exhibit 6 as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $621.47 per week for 24 2/7 weeks commencing February 22, 2014, through August 10, 2014, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $559.32 per week for 51.25 weeks because the injury sustained caused the 25% loss of use of the right hand as provided in Section 8(e) of the Act.

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.

William R. Gallagher, Arbitrator

March 31, 2015
Date

APR 1 4 2015

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment for Respondent on February 21, 2014. The Application alleged that Petitioner "Fell down stairs during course of employment" and sustained injuries to the right hip, right thigh and right wrist (Arbitrator's Exhibit 2). Respondent disputed liability on the basis of accident. Petitioner claimed to be entitled to temporary total disability benefits for 24 2/7 weeks. While Respondent disputed liability for same, Respondent agreed that Petitioner was disabled for the claimed period of time.

Petitioner is an RN and has worked for Respondent as a staff nurse at Respondent's Health Center for approximately seven years. Petitioner testified that her regular working hours were 8:00 AM to 4:30 PM.

Petitioner testified that February 21, 2014, was an extremely busy day at the Health Center because it was a Friday, and those days were typically busier than other weekdays. Further, the Health Center was understaffed on that particular day because one of the LPNs was not present and another had left work early. There was only one other RN at the facility at that time.

The Health Center has a pharmacy on-site which closes at 5:30 PM. Petitioner testified that at approximately 4:20 PM she was in a hurry to get to the pharmacy with a prescription and, when she descended the stairs to the pharmacy, she fell down the stairs and sustained injuries primarily to her right wrist/hand. Petitioner described the stairs as being "steep," but she was not certain exactly what caused her to fall. Petitioner stated that her right hand was on the railing and the prescription was in her left hand. When Petitioner fell, she extended her dominant right hand to break her fall. When Petitioner landed at the base of the steps, the prescription was still in her left hand.

Petitioner explained that the reason she was in a hurry was that the pharmacy usually takes one hour to fill a prescription. Given the fact that Petitioner left for the pharmacy at 4:20 PM and the pharmacy closes at 5:30 PM meant that she was cutting it very close time wise. Further, the prescription was for a student who had a sexually transmitted disease so it was extremely important to get the prescription filled as soon as possible. The patient was not at the Health Center at that time; however, she was expected to arrive sometime very soon.

Petitioner introduced into evidence photographs of the stairs (Petitioner's Exhibit 1). Two of the photographs were of the landing which revealed a gap of approximately one inch between the landing and the lip of the top step (Petitioner's Exhibit 1-D). Petitioner identified the photographs, but could not state with any certainty that the defect noted in that exhibit was what caused her to fall. Petitioner's testimony was that she fell because she was in a hurry and that the stairs are "steep."

The stairs were open for use by the general public. Petitioner admitted that there was an elevator that she could have used to get down to the pharmacy; however, Petitioner testified that simply going down the stairs would actually take less time than waiting for the elevator.

Petitioner completed two First Report(s) of Injury/Illness, the first of which was prepared on the same day of the accident. The report stated that Petitioner was walking down the stairs, her foot got caught and she fell down several stairs. The second report completed by Petitioner stated "These stairs are steeper than normal stairs and have a different rise/run than other stairs." (Respondent's Exhibit 1).

Janna Franks testified on behalf of the Petitioner at trial. Franks is also an RN and at the Health Center. She has known Petitioner for over 20 years and previously worked with her at another facility. She has worked for Respondent for approximately five years. Franks testified she was working on February 21, 2014, but her shift was slightly different than that of the Petitioner, 9:00 AM to 5:30 PM. She confirmed that it was a very busy day due, in part, to the fact that some of the staff was not present.

In regard to the staircase, Franks testified that she was familiar with it because she does go up/down the staircase on a regular basis. She specifically noted that this particular staircase is very steep when compared to others and that she always uses the railing.

Following the accident, Petitioner was seen at the ER of Carle Foundation Hospital. X-rays were taken which revealed moderately displaced and commuted fractures of the right distal radius and ulna (Petitioner's Exhibit 3).

Petitioner was subsequently treated by Dr. Clifford Johnson, an orthopedic/hand surgeon. Dr. Johnson performed surgery on March 5, 2014, and the procedure consisted of an open reduction and internal fixation of the right distal radius fracture and application of a right wrist spanning plate. On June 25, 2014, Dr. Johnson performed a second surgical procedure which consisted of removal of the spanning plate and screws (Petitioner's Exhibit 4).

Petitioner received physical therapy from March 17, 2014, through September 26, 2014 (Petitioner's Exhibit 5). When Dr. Johnson saw Petitioner on September 29, 2014, Petitioner rated her pain at 2/10 and Dr. Johnson noted that Petitioner had reduced range of motion of the right hand as compared to the left as well as a lesser amount of grip strength. He discharged Petitioner from treatment; however, he opined that she would not be at MMI until about one year post-accident (Petitioner's Exhibit 3).

At the direction of Respondent, Petitioner was examined by Dr. Richard Lehman, an orthopedic surgeon, on October 21, 2014. In connection with his examination of Petitioner, Dr. Lehman reviewed medical records provided to him by Respondent. Dr. Lehman opined that Petitioner could work without restrictions, no further medical treatment was indicated and that Petitioner was at MMI. He did note that Petitioner had some diminished grip strength; however, he opined that this was self-limiting (Respondent's Exhibit 2).

At trial, Petitioner testified that she was able to return to work to her regular job but that she still lacks a certain amount of flexibility in her right hand. She stated that the lack of flexibility in her right hand has impacted certain job tasks that she is required to perform such as taking blood pressure, typing and writing. She also expressed some concern about her ability to properly performed CPR although she has not had occasion not to do so since the time of the accident.

Petitioner also stated that she now uses her left hand to a greater extent than what she did prior to the accident.

Conclusions of Law

In regard to disputed issue (C) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained an accidental injury arising out of and in the course of her employment for Respondent on February 21, 2014.

In support of this conclusion the Arbitrator notes the following:

The basis for Respondent's denial in this case was that Petitioner sustained an unexplained fall that resulted from a risk which was no greater than that to which the general public was exposed. Caterpillar Tractor Co. v. Industrial Commission, 541 N.E.2d 665 (Ill. 1989).

In the Caterpillar case, compensation was denied when an employee sustained an ankle injury when he stepped off of a curb when leaving the employer's premises. There was no evidence of any defect which caused Petitioner to twist his ankle and the area was used by both employees and the general public. The Court held that accident was not compensable because Petitioner was not subjected to a greater risk than the general public because of his employment. Caterpillar at 669.

The case of William G. Ceas & Co. v. Industrial Commission, 633 N.E.2d 994 (Ill. App. 1st Dist. 1994) involved a case in which the family of a deceased employee sought compensation benefits for an injury and subsequent death that occurred as result of a fall down a flight of stairs. In Ceas, the employee worked as a secretary for Respondent whose office was on the second floor of an office building. A single staircase connected the first and second floors and there was no elevator. On the day of the accident, the deceased employee was observed running back and forth to get something finished prior to leaving the office for the day. It was determined that the deceased employee's boss would regularly make demands of her to perform job tasks close to the end of the workday. On this particular occasion, the Commission inferred that the deceased employee's boss made a last minute demand to her to prepare and mail a number of Federal Express envelopes. While in the process of quickly descending the stairs, Petitioner lost her footing and fell thereby sustaining the injury that would ultimately cause her death. The Court held that Petitioner was subjected to an increased risk of injury because of her work. Ceas at 998-999.

The case of Knox County YMCA v. Industrial Commission, 725 N.E.2d 759 (Ill. App. 3rd Dist. 2000) was a case in which the Appellate Court upheld an award of compensation benefits to an employee that sustained injuries as a result of a fall down a staircase.

In the Knox case, the employee was required to attend a CPR class which was held on the second floor of Respondent's building. On the day of the accident, Petitioner was scheduled to work from 3:00 PM to 6:00 PM off-site supervising children of working parents. The CPR class was scheduled to start at 6:00 PM and no time was allotted between the end of Petitioner's shift and

the beginning of the CPR class. While on route to the YMCA, Petitioner stopped and got a sandwich and a soft drink. Petitioner then attended the CPR class for approximately 10 to 15 minutes and was then informed that she could leave. When Petitioner left the CPR class, she had her purse in one hand and the soft drink in the other hand and, as she was descending the staircase, she missed the last step and sustained an injury to the left leg. Knox at 760-761.

The Court held that Petitioner was subjected to a greater risk than the general public because she fell while attending a mandatory CPR class and the presence of the soft drink in one hand and purse in the other were because of Petitioner's attendance at the mandatory CPR class. Knox at 763.

In the instant case, Petitioner testified that, on the day of the accident, the Health Center was extremely busy and understaffed. This was corroborated by the testimony of Petitioner's co-worker, Janna Franks. Petitioner stated that she was in a hurry to get the prescription delivered to the pharmacy because the pharmacy would usually require one hour to fill a prescription and it was 4:20 PM and the pharmacy would close at 5:30 PM. Further, the prescription was for student who had contracted a sexually transmitted disease.

While Petitioner could not testify as to exactly what caused her to fall, she did state that the stairs used were "steep" and this testimony was likewise corroborated by the testimony of her co-worker, Janna Franks.

Based on the preceding, the Arbitrator finds that the circumstances of Petitioner's fall are analogous to the circumstances of both the Ceas and Knox cases. The Arbitrator finds that Petitioner was subject to a greater risk of injury than the general public and that the accident sustained arose out of and in the course of her employment for Respondent.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 6, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of 24 2/7 weeks commencing February 22, 2014, through August 10, 2014.

In support of this conclusion the Arbitrator notes the following:

At trial, Petitioner and Respondent stipulated as to the period of temporary total disability.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 25% loss of use of the right hand.

In support of this conclusion the Arbitrator notes following:

Neither Petitioner nor Respondent tendered into evidence an AMA impairment rating. The Arbitrator gives no weight to this factor.

Petitioner works as an RN and her job requires the active use of both hands, in particular, her dominant right hand. Petitioner's job requires her to take blood pressure, write, type, and possibly perform CPR. The Arbitrator gives significant weight to this factor.

Petitioner was 52 years of age at the time of this accident and will have to live with the effects of this injury for the remainder of her working and natural life. The Arbitrator gives a moderate amount of weight to this factor.

Petitioner was able to return to work to her regular job as an RN and there was no evidence that the injury will have any effect on her future earning capacity. The Arbitrator gives no weight to this factor.

Petitioner sustained a significant injury to her right hand which resulted in fractures that required open reduction and internal fixation as well as subsequent surgical removal of the metal hardware. Both Petitioner's treating physician, Dr. Johnson, and Respondent's Section 12 examiner, Dr. Lehman, noted that Petitioner had diminished grip strength in her dominant right hand. The Arbitrator gives significant weight to this factor.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF ROCK ISLAND)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kelly R. Quinn,
Petitioner,

vs. NO: 13 WC 34844

Aledo Rehab & Health Care,
Respondent.

15IWCC0923

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, medical expenses, prospective medical expenses 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 13, 2015 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

15IWCC0923

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: DEC 16 2015

Joshua D. Luskin

o-12/01/15
jdl/wj
68

Charles J. DeVriendt

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

QUINN, KELLY
Employee/Petitioner

Case# 13WC034844

15IWCC0923

ALEDO REHAB & HEALTH CARE CENTER
Employer/Respondent

On 2/13/2015, 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:

4707 LAW OFFICE OF CHRIS DOSCOTCH
2708 N KNOXVILLE AVE
PEORIA, IL 61604

1337 KNELL LAW LLC
ILIR IMERI
504 FAYETTE ST
PEORIA, IL 61603

STATE OF ILLINOIS)
)SS.
COUNTY OF ROCK ISLAND)

☐ 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

KELLY QUINN
Employee/Petitioner

v.

ALEDO REHAB & HEALTH CARE CENTER
Employer/Respondent

Case # 13 WC 34844

Consolidated cases: _____

15IWCC0923

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 **GREGORY DOLLISON**, Arbitrator of the Commission, in the city of **Rock Island, Illinois**, on **January 8, 2015**. 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 **PROSPECTIVE MEDICAL**

FINDINGS 15IWCC0923

On **05/16/13**, 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 **$28,440.42**; the average weekly wage was **$618.22**.

On the date of accident, Petitioner was **53** years of age, ***single*** 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 **$7,831.42** for TTD, **$n/a** for TPD, **$n/a** for maintenance, and **$n/a** for other benefits, for a total credit of **$$7,831.42**.

Respondent is entitled to a credit of **$n/a** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $412.15 per week for 18-2/7 weeks commencing September 2, 2014 through January 8, 2015, as provided in Section 8(b) of this Act, with Respondent receiving credit for $7,831.00.

Respondent shall authorize and pay for the right total arthoplasty of the right knee as recommended by Dr. Stachniw. Respondent shall further authorize further evaluation with Dr. Stachniw for the right shoulder. Respondent shall pay all reasonable and necessary medical expenses associated with same pursuant to Section 8(a) and 8.2 of 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

2/12/15
Date

ICArbDec p. 2

FEB 13 2015

Statement of Facts:

Petitioner is employed at Aledo Rehab and Health Care as a dietary supervisor. She has worked for Respondent for 5 years. Petitioner testified that her duties include overseeing the kitchen, ordering food, scheduling staff, making sure diets and meals are prepared properly. Petitioner also stated that she helps take care of long term care patients including persons who suffer from dementia and Alzheimer's.

On May 16, 2013 Petitioner fell at work. Petitioner testified that she was serving breakfast to residents. Petitioner took a tray from the kitchen window and brought it to the dining room to serve to a resident. Petitioner provided that she set up the breakfast for the resident, turned around to return the tray to the kitchen and get another tray of food when her foot stuck to the floor and she went down with the tray in her hand and landed on her right side.

Petitioner testified that the tray was a normal food tray with a dome on top of it. She was carrying the tray with both hands. Petitioner testified that she did not drop the tray but carried it to the ground. Petitioner stated that as she was losing her balance, she did not want to drop the tray so as to not startle the residents. Therefore, she held on to the tray to the ground rather than using her hands to brace or break the fall.

Petitioner testified that she fell on her neck, right shoulder and right knee. She fell on the entire right side of her body. Petitioner indicated that after the fall, she got up and went to the administrator's office to report the accident. The accident was witnessed by other nurses that were on duty. Petitioner described the impact as hard. She did not examine or stay on the ground long because the residents were getting worried and upset.

Petitioner testified that she did not seek treatment until her appointment with her family physician, Dr. Valerie Flacco on June 1, 2013. Petitioner testified that she experienced right sided neck, shoulder and right knee pain following the incident which progressively worsened after her fall. Petitioner provided that she already had a previously scheduled appointment with Dr. Flacco, on June 1, 2013, and decided to wait until that appointment to address her injuries.

On June 1, 2013, Petitioner was evaluated by Dr. Flacco. The doctor obtained a history from Petitioner that she fell down on her right knee at work and hurt her arm as well. Dr. Flacco noted swelling Petitioner's right knee and arm pain with palpation. Dr. Flacco informed Petitioner that he did not treat workers' compensation cases and as a result referred her to Dr. Stachniw. (PX 1)

Dr. Stachniw is an orthopedic surgeon at Midwest Orthopedic Services. On June 12, 2013, Dr. Stachniw evaluated Petitioner. Dr. Stachniw obtained a history that Petitioner fell 3 weeks ago hitting her right side and right arm. Petitioner reported pain up to her shoulder and neck with popping, numbness and tingling to her fingers, and right knee pain. On examination, Dr. Stachniw found crepitus of the neck, a bruise over her right elbow and a bursa on the anterolateral aspect of the patella which Petitioner described as a lump. Dr. Stachniw ordered x-rays of the cervical spine and a MRI of the knee. (PX 2)

On July 20, 2013, the MRI of the knee was performed. The MRI revealed edema in the soft tissues, degenerative joint disease in all 3 compartments, most severe in the patellofemoral joint and increased signal in the medial and lateral ligaments representing strain. (PX 4)

Petitioner returned to Dr. Stachniw on August 1, 2013. Dr. Stachniw noted the MRI of the knee basically showed degenerative changes and arthritis. He indicated x-rays of the neck showed osteoarthritis/degenerative changes as well. An examination showed limitation of the neck; examination of the shoulder revealed some impingement signs; and the right knee revealed moderate effusion. Also noted was a palpable soft lump on the anterolateral joint line. Dr. Stachniw recorded that Petitioner basically had osteoarthritis and recommended physical therapy. (PX 2, RX 6)

Petitioner returned to Dr. Stachniw on September 12, 2013. The doctor noted that physical therapy had not been helping. During this visit, an examination revealed crepitus and very strong impingement signs. The doctor also noted she had osteoarthritic knee with osteophytes and crepitus. Dr. Stachniw assessed joint pain in the shoulder and knee. Viscosupplementation injections and an additional MRI was recommended. (PX 2)

At Respondent's request a Utilization Review was performed. The question for review was whether the request for right shoulder MRI and right knee viscosupplementation injection medically necessary. On October 10, 2013; the Medical Review Institute of America issued a report finding that the viscosupplementation injections were medically necessary. The additional MRI was found not to be medically necessary. (PX 2, RX 7) Petitioner testified that the workers' compensation carrier denied the injections. As such, they were never performed.

Petitioner followed up with Dr. Stachniw on November 21, 2013. Petitioner continued with neck, right knee and shoulder complaints. Dr. Stachniw felt that a total right knee replacement was the only thing that would help Petitioner. The doctor commented that Petitioner's arthritis in her right knee was pre-existing but was aggravated and accelerated by her injury. Dr. Stachniw recommended a total right knee replacement and ordered a MRI of her neck noting that physical therapy was not helping. (PX 2)

Petitioner next treatment with Dr. Stachniw was on February 19, 2014. Petitioner complained of severe pain in her right shoulder and neck extending down her arm. Petitioner also reported considerable discomfort and right knee pain. Dr. Stachniw recorded that he was concerned that Petitioner had a torn rotator cuff and cervical disc herniation. Dr. Stachniw also noted that Petitioner's pain was coming from the severe osteoarthritis. He indicated, "she did have pre-existing arthritis but the injury significantly was aggravated and accelerated the pain." Dr. Stachniw reiterated his recommendation for a right knee arthroplasty. The doctor also felt it important that a MRI of the cervical and right shoulder be obtained. (PX 2)

MRI's of the cervical and right shoulder were obtained on April 18, 2014. The MRI of the cervical spine showed degenerative disc disease with stenosis at C5-6 and C6-7. Petitioner had disc protrusion at C6-7, moderate to severe on the right with impingement on the exiting C7 nerve root. The stenosis at C5-6 was impinging on the C6 nerve root. The right shoulder MRI revealed a mild diffuse supraspinatus and infraspinatus tendinosis and a 7 by 5 mm tear of the anterior aspect of the supraspinatus tendon. Petitioner also had findings of potential impingement syndrome and mild degenerative changes of the AC joint. (PX 4)

On April 24, 2014 Dr. Stachniw evaluated Petitioner following the neck and shoulder MRI. Dr. Stachniw continued to note that Petitioner had significant pain in her right knee, right shoulder, and cervical spine with radicular symptoms in her right arm. Dr. Stachniw's impression of the MRI showed stenosis, pressure on the spinal cord, and a very large disc herniation. Dr. Stachniw also diagnosed impingement syndrome and rotator cuff tear of the right shoulder. Dr. Stachniw recommended neurosurgical evaluation of the neck prior to any surgical intervention of the right shoulder. Dr. Stachniw referred Petitioner Dr. Patrick

O'Leary. Dr. Stachniw wrote that he felt Petitioner's cervical disc herniation and shoulder problem was related to the injury at work. (PX 2)

On May 13, 2014 Dr. O'Leary evaluated Petitioner for her neck, right shoulder pain, right arm tingling and paresthesias. Dr. O'Leary took a history of Petitioner falling while carrying a tray. Dr. O'Leary performed examination and reviewed diagnostic imaging to include the cervical MRI. Dr. O'Leary's impression was stenosis at C5-6 andC6-7, C7 disc herniation, and rotator cuff injury to the right shoulder. Dr. O'Leary's opined that the fall permanently aggravated an underlying pre-existing asymptomatic condition. Dr. O'Leary explained the mechanism of injury of falling unguarded on her right side is consistent with aggravating this type of injury and her symptoms. Dr. O'Leary recommended a 2 level anterior cervical discectomy with antibody fusion. (PX 10)

At Respondent's request, a Utilization Review was undertaken regarding the 2 level fusion prescribed by Dr. O'Leary. The utilization report dated May 21, 2014 stated that the 2 level anterior cervical discectomy and interbody fusion was medically necessary. (PX 10, RX 4)

At Respondent's request, Petitioner underwent a Section 12 examination by Dr. Andrew Zelby. Dr. Zelby issued a report on June 16, 2014 and a second report on July 21, 2014. Dr. Zelby reviewed previous medical records, diagnostic testing and examined Petitioner. Dr. Zelby obtained a history from Petitioner of her falling on her right side at work while carrying a tray to the kitchen. Dr. Zelby noted that Petitioner's neck bounced on the floor and she heard a pop. Dr. Zelby diagnosed cervical spondylosis at C5-6 with a possible disc herniation at C6-7. Dr. Zelby recommended a higher quality MRI prior to surgery. Dr. Zelby opined that Petitioner's accident caused her asymptomatic degenerative condition to become symptomatic and that it was likely that her fall either caused a herniated disc at C6-7 or the herniated disc to become symptomatic as well. (PX 7, PX 8)

Petitioner was also seen, at Respondent's request, by Dr. Lehman for a Section 12 examination on July 10, 2014. Dr. Lehman, after reviewing Petitioner's medical records, performing a physical examination, and obtaining a history diagnosed impingement syndrome, AC arthritis right shoulder, degenerative partial tear of the rotator cuff and end stage degenerative arthritis of the right knee. Dr. Lehman did not believe the work accident was the proximal cause of the injuries diagnosed. H e also did not believe the work accident precipitated, aggravated, or accelerated her pre-existing arthritis. (RX 3)

With respect to Petitioner's right knee, Dr. Lehman noted that Petitioner had end stage degenerative arthritis. The doctor noted "she had it her contralateral knee and has had this for "many, many years." He indicated this was bilateral, long term in nature and severe. He also felt same was bilateral, long term, chronic, and severe arthritis. Dr. Lehman believed that the condition in Petitioner's right knee appeared to be the same as that of the left knee for which ended with a left total knee replacement. Although the doctor did believe the work injury exacerbated or altered her arthritis, Dr. Lehman agreed that Petitioner needed a total right knee replacement. (RX 3)

With respect to Petitioner's shoulder condition, Dr. Lehman opined the right shoulder was not exacerbated or changed in any way by her accident on May 16, 2013. Dr. Lehman opined that the breakdown in her shoulder appeared to be spurring, degenerative long term changes in the rotator cuff. Dr. Lehman felt there was no acute pathology as it related to her shoulder in any MRI, exam, and x-rays. Dr. Lehman specifically opined that the MRI did not appear to show any acute pathology. Dr. Lehman opined that Petitioner had reached MMI regarding both her degenerative right shoulder and right knee issues. (RX 3)

On September 8, 2014 Dr. O'Leary performed C5-6, C6-7 anterior cervical discectomy and fusion. The post operative diagnosis was C5-6 spinal stenosis, C5-6 spondylosis without myelopathy, C6-7 disc herniation. (PX 10)

At the time of this hearing Petitioner remains under the care of Dr. O'Leary in post operative recovery. Petitioner reported that her neck pain improved but she was still having residual radicular symptoms in her arm. Petitioner remains off work at the direction of Dr. O'Leary. Dr. O'Leary ordered a post operative EMG to test the residual numbness in her right upper extremity. (PX 10) Petitioner has not worked since September 1, 2014.

Petitioner testified that she had no previous problems with her right knee other than a Bakers Cyst in 2004. Petitioner testified that she did not have any problems with her right shoulder prior to the May 2013 fall.

A review of the records of Dr. Flacco and Dr. Stachniw show Petitioner had undergone a previous left knee total arthroplasty. In regards to the shoulder, there are medical records from 2006 and 2007 regarding Petitioner's radial head elbow fracture. There is one notation that she was having pain in her elbow up to her shoulder. An October 4, 2007 FCE diagnosed left knee pain and right elbow pain. During that test Petitioner exhibited full range of motion of her shoulder. There was no mention of any shoulder pain. Petitioner was noted to have some diminished strength in the shoulder. Petitioner was released consistent with the FCE to sedentary work. This restriction related mainly to her left knee rather than her right elbow. (PX 1, PX 2, RX 8, RX 9) Petitioner testified that her condition ultimately improved and she eventually returned to unrestricted work as a dietary aide supervisor.

Dr. Stachniw provided testimony on September 10, 2014. Dr. Stachniw reviewed his previous medical records. Based upon his review of the medical records and personal recollection, Dr. Stachniw testified that he had never treated Petitioner for any right shoulder or right knee problems prior to June 2013. Dr. Stachniw confirmed that he never recommended treatment or restricted her activities relating to her right knee or shoulder prior to June 2013. Following his examination and review of the diagnostics, Dr. Stachniw's diagnoses were rotator cuff tear and impingement syndrome of the right shoulder. As to the knee, Dr. Stachniw diagnosed degenerative osteoarthritis of the knee, most severe in the patellofemoral joint. Dr. Stachniw is recommending a right total knee replacement because the Petitioner is having disabling pain that is affecting her lifestyle and that she has been nonresponsive to conservative treatment. (PX 6)

Dr. Stachniw testified that a direct blow to the knee is consistent with trauma to the patellofemoral joint and consistent with the bursa he saw one (1) month after the fall. Dr. Stachniw recommended total knee replacement for end stage osteoarthritis. (PX 6)

In regards to Petitioner's shoulder treatment Dr. Stachniw deferred surgery and further evaluation until completion of the neck treatment. Dr. Stachniw's opined that it was more likely than not that Petitioner would need shoulder surgery for her impingement and rotator cuff tear but would defer that final recommendation until after her recovery from her cervical condition. The reason to defer surgery was twofold: First, if she has a pinched nerve in the neck aggressive therapy to the shoulder could further damage the nerve; and second, there is the potential for cross over symptoms from the neck to the shoulder. (PX 6)

Dr. Stachniw rendered the opinion that both the right shoulder condition and right knee condition were more likely than not caused by the fall on May 16, 2013. Dr. Stachniw testified that the fall aggravated a previously asymptomatic right knee arthritic condition causing the need for treatment. Dr. Stachniw testified that even if Petitioner would have needed a right knee replacement later in life that the fall accelerated the need

for this surgery. Dr. Stachniw testified that the mechanism of injury of direct trauma to the knee is consistent with an aggravation to an asymptomatic pre-existing degenerative arthritis in the knee. (PX 6)

As to the shoulder, Dr. Stachniw testified that the fall was an aggravating or causative factor in her right shoulder pain and need for the treatment that had been rendered and prescribed. Dr. Stachniw's opinion was based upon the evidence and his experience. Dr. Stachniw testified that the timeline, her symptoms and MRI were consistent with a trauma and that a direct blow to the right shoulder is a mechanism of injury that can cause a previously asymptomatic impingement syndrome to become symptomatic. Dr. Stachniw testified that the fall was consistent with the trauma seen on MRI scan. (PX 6)

With respect to (C.) Did an Accident occur that arose out of and in the course of Petitioner's employment with the Respondent, the Arbitrator finds as follows:

The Arbitrator finds Petitioner sustained accidental injuries arising out of and in the course of her employment. At the time of her accident Petitioner was carrying a tray in both hands back to the kitchen. The act of carrying the tray back to the kitchen is distinctly associated with her employment. It is not a neutral risk. The employer would reasonably expect Petitioner to be performing this activity and duty while in the course of her employment as a dietary supervisor. The Illinois Appellate Court in *Young v. Illinois Workers' Compensation Commission*, 2014 IL App.(4th) 130392WC supports the Arbitrator's finding that Petitioner's accident arose out of and in the course of her employment. In the *Young* case, Petitioner was reaching into a box as a part of his job as an inspector when he felt a pop in his shoulder. Respondent argued that the act of reaching was a normal daily activity and there was no increased risk of injury associated with the activity. The Appellate Court found that Petitioner was injured while performing his job duties, that being inspecting parts. The Appellate Court denied the Respondent's argument in *Young* that Petitioner's act was personal in nature and not in any way peculiar to the employment. The *Young* court cited *Springfield Urban League*, 2013 IL App. (4th) 120219WC and *Orsini*, 117 Ill. 2d at 45, 509 N.E.2d, 1005, 1008 (1987) and *Autumn Accolade vs. Illinois Workers' Compensation Commission*, 2013 IL App. (3rd) 120588WC. In those cases the Court rejected the contention that the reported accidents were personal in nature and no way peculiar to the employment. The Court held that the activities as described in those cases were activities that would be reasonably expected to be performed in their assigned duties and therefore arose of employment.

In this case it is reasonable to expect that Petitioner would be carrying the tray back to the kitchen in performance of her duties. Therefore, the act of falling while performing this job related action arises out of and in the course of her employment.

Additionally, Petitioner was holding a tray at the time of her fall. As noted by Dr. O'Leary, Petitioner's fall was unguarded. Petitioner was unable to brace or guard against the fall to the ground because of the tray. Petitioner held the tray all the way to the ground and was unable to break her fall with her arms. Since she could not break her fall, Petitioner's head, right shoulder and knee directly impacted the hard tile floor. Petitioner's testimony regarding holding the tray and her fall is consistent with the medical records and not rebutted by Respondent or any witness. Consistent with the decision in *Knox County YMCA vs. Industrial Commission*, 2000 IL App. (3rd) 3990441WC the Appellate Court found that a claimants fall while descending the stairs arose out of course of employment. There was no evidence of any defect on the stairs causing Petitioner to fall in Knox County YMCA. The act of descending the stairs was not a risk peculiar to Petitioner's employment or job duties. The fall was from a neutral risk. At the time of the claimants fall in *YMCA* Petitioner had her purse in one hand and a soft drink in the other hand. The court noted that absent the purse and soft drink in her hands claimant would have been able to grab onto the stairwell railing. Accordingly, the

Appellate Court affirmed the Commission's decision that the presence of the soft drink and purse in her hands increased the risk of the fall to Petitioner.

In this case, the presence of the tray in both hands increased the risk and hazards associated with her fall as she was unable to brace herself when striking the ground. Consistent with the decisions in *Young* and *YMCA* the Arbitrator finds that Petitioner's injuries to her right shoulder, right knee and cervical spine arose out of in the course of her employment.

With respect to (F.) Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

With respect to Petitioner's cervical condition, there is no dispute as to Petitioner's condition, causation and the necessity of treatment. Dr. O'Leary and Dr. Zelby both agreed that her accident aggravated her pre-existing condition necessitating the surgery. Furthermore, Respondent's utilization review certified the procedure as reasonable and medically necessary.

The main dispute in this case focuses on the shoulder and right knee. Petitioner offers the testimony of Dr. Stachniw in support of causation and Respondent offers the opinions of Dr. Lehman against causation.

The Arbitrator notes that Petitioner worked for Respondent for the last 5 years without restrictions. There is no medical notation of any treatment to the right shoulder or right knee since the date Petitioner began working full duty for Respondent. A review of the pre-accident medical records does not contain any notations of specific pain in her right shoulder or diagnosis of a right shoulder condition. There is no evidence that Petitioner had undergone any previous x-rays, injections, MRI's, or orthopedic evaluation to the shoulder joint. There are medical records from 2006 and 2007 regarding Petitioner's radial head elbow fracture. There is one notation that she was having pain in her elbow up to her shoulder. In reviewing Dr. Stachniw's records, therapy records and work conditioning records, the Arbitrator notes that no shoulder diagnosis made. For example an October 4, 2007 FCE diagnosed left knee pain and right elbow pain. During that test Petitioner exhibited full range of motion of her shoulder. There was no mention of any shoulder pain. Petitioner's testimony and the medical records are consistent in this regard. The Respondent offers no evidence to rebut the same.

Respondent's Section 12 examiner, Dr. Lehman, examined Petitioner on July 10, 2014. Dr. Lehman reviewed medical records pre and post accident. In reviewing the medical records, the Arbitrator notes that Dr. Lehman did not comment on any previous therapy notes or treatment to the right shoulder prior to the May 2013 fall. If Dr. Lehman thought the elbow fracture records were significant in regards to any pre-existing condition to the right shoulder, it is anticipated that Dr. Lehman would have noted the same in his report. Dr. Lehman's lack of comment indicates the insignificance of those records in terms of assessing causation in this matter.

Dr. Lehman reviewed the MRI's and concluded that there was no evidence of acute injury. Dr. Lehman's impression of the MRI's was that Petitioner had long standing pre-existing degenerative disease in the right shoulder and knee with no evidence of acute trauma.

In regard to the knee MRI, the Arbitrator notes that edema was shown as well as a bursa with strain of the medial and collateral ligaments. These findings are consistent with a traumatic fall that occurred in May 2013. In regards to the shoulder, Petitioner had evidence of tendinosis and rotator cuff tear. The MRI was not done until approximately 11 months after the date of injury. It is difficult to assess whether or not there would have been acute findings on the MRI had a shoulder MRI been performed in closer proximity to the trauma.

Dr. Lehman's final diagnosis was impingement syndrome, AC arthritis to the right shoulder, degenerative partial tear of the rotator cuff and end stage degenerative arthritis to the right knee. Dr. Lehman attributed her problems solely to arthritis and discounted that the accident aggravated these pre-existing conditions.

Contrary to Dr. Lehman's opinion, Dr. Stachniw rendered the opinion that both the right shoulder condition and right knee condition were more likely than not caused by the fall on May 16, 2013. Dr. Stachniw testified that the fall aggravated a previously asymptomatic right knee arthritic condition causing the need for treatment. Dr. Stachniw testified that even if Petitioner would have needed a right knee replacement later in life, the fall accelerated the need for this surgery. Dr. Stachniw testified that the mechanism of injury of direct trauma to the knee is consistent with an aggravation to an asymptomatic pre-existing degenerative arthritis in the knee.

As to the shoulder, Dr. Stachniw testified that the fall was an aggravating or causative factor in her right shoulder pain and need for the treatment that had been rendered and prescribed. Dr. Stachniw testified that the timeline, her symptoms and MRI were consistent with a trauma and that a direct blow to the right shoulder is a mechanism of injury that can cause a previously asymptomatic impingement syndrome to become symptomatic. Dr. Stachniw testified that the fall was consistent with the trauma seen on MRI scan.

The Arbitrator finds the opinions of Dr. Stachniw more persuasive than Dr. Lehman. First, Dr. Stachniw has a more extensive knowledge of Petitioner as he has been treating her since 2004. Petitioner's testimony, Dr. Stachniw's testimony, and the medical records confirm that Petitioner was not symptomatic in her right shoulder and right knee until the fall of May 16, 2013. Dr. Stachniw's opinion that the fall aggravated the asymptomatic pre-existing condition is more reasonable and supported by the credible evidence.

Based on all the above, the Arbitrator finds that a causal relationship exists between Petitioner's cervical, right shoulder and right knee conditions of ill-being and the accident sustained on May 16, 2013 .

With respect to (K.) What temporary benefits (TTD) are in dispute, the Arbitrator finds as follows:

Petitioner is not at maximum medical improvement based upon the medical records, Petitioner's testimony, and Dr. Stachniw's testimony. The Arbitrator finds that Petitioner is entitled to temporary total disability from September 2, 2014 through the date of hearing. Respondent is entitled to a credit for amounts paid.

With respect to (O.) Prospective Medical, the Arbitrator finds as follows:

Having found the requisite causal relationship, the Arbitrator orders Respondent to authorize treatment as proposed by Dr. Stachniw for her right knee and right shoulder. Specifically to the right knee, the Arbitrator orders Respondent to authorize and pay for a right knee total arthroplasty. As to the shoulder, the Arbitrator orders Respondent to authorize an office visit with Dr. Stachniw for further evaluation and treatment of the right shoulder.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
CHAMPAIGN

☒ 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

Allan D. Corbett,
Petitioner,
vs.
Guardian West,
Respondent,

NO: 12WC 29151

15IWCC0924

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 medical expenses, temporary total disability, permanent partial disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 5, 2015, is hereby affirmed and adopted.

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.

Bond for 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: DEC 17 2015
MJB/bm
o-12/14/15
052

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CORBETT, ALLAN D
Employee/Petitioner

Case# **12WC029151**

GUARDIAN WEST
Employer/Respondent

15IWCC0921

On 5/5/2015, 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:

1937 TUGGLE SCHIRO & LICHTENBERGER
TODD D LICHTENBERGER
510 N VERMILION
DANVILLE, IL 61832

0522 THOMAS MAMER & HAUGHEY LLP
JOHN STURMANIS
30 E MAIN ST SUITE 500
CHAMPAIGN, IL 61820

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

☐ 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

Allan D. Corbett
Employee/Petitioner

v.

Guardian West
Employer/Respondent

Case # 12 WC 29151

Consolidated cases: n/a

15IWCC0924

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 William R. Gallagher, Arbitrator of the Commission, in the city of Urbana, on March 12, 2015. 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 15IWCC0024

On July 18, 2012, 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 $68,905.72; the average weekly wage was $1,325.11.

On the date of accident, Petitioner was 52 years of age, married with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $7,653.58 for other benefits, for a total credit of $7,653.58.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act as it pertains to medical benefits.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibits 7, 8, 9, 10 and 11, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $883.41 per week for 62 5/7 weeks, commencing July 19, 2012, through September 30, 2013.

Respondent shall pay Petitioner temporary partial disability benefits of 656.74 per week for 27 5/7 weeks commencing October 1, 2013, through April 13, 2014.

Respondent shall pay Petitioner wage differential benefits commencing April 14, 2014, of $445.01 per week until Petitioner reaches the age of 67 or five years from the date of the final award, whichever is later, because the injuries sustained caused a loss of earning, as provided in Section 8(d)1 of the Act.

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.

William R. Gallagher, Arbitrator

April 29, 2015
Date

MAY 5 - 2015

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on July 18, 2012. According to the Application, Petitioner sustained "chemical exposure" that caused an injury to his lungs (Arbitrator's Exhibit 2). Respondent stipulated that Petitioner sustained a work-related accident; however, Respondent disputed liability on the basis of causal relationship.

Petitioner sought an order for a wage differential award under Section 8(d)1 of the Act. In that regard, the parties stipulated that Petitioner's current average weekly wage was $657.60 based on $16.44 per hour. Petitioner also sought an order for payment of both temporary total and temporary partial disability benefits and, while Respondent disputed liability for same, Respondent agreed that the time periods demanded by Petitioner were accurate. Further, in regard to Petitioner's claim for temporary partial disability benefits, the parties stipulated that during that period time, Petitioner was earning $340.00 per week.

Petitioner began working for Respondent in 1997 and worked as a Shift Supervisor for approximately one year. In 1998, Petitioner was promoted to Safety Manager, which was the job he had at the time of the accident. Respondent is in the business of manufacturing truck bumpers and the manufacturing process required the use of various caustic materials.

Petitioner testified that on July 18, 2012, he was outside the plant facility doing what he described as audio testing. Another employee reported to him that there was an intense smell of sulfuric acid in the plant. When Petitioner went into the plant to investigate, he observed what he described as a "white cloud" coming out of a storage area going into a hallway. Petitioner immediately told everyone to evacuate the building. Petitioner remained in the building for approximately five to 15 minutes before he exited the building. Shortly after Petitioner had exited the building, it was determined that two employees were unaccounted for. At that time, Petitioner reentered the building to look for them and was wearing a respirator.

It was subsequently determined that the accident occurred because someone hooked up a line leading to a tank of hydrochloric acid and connected it to a tank of sulfuric acid. This combination created the toxic gas.

Petitioner was seen at the ER of Carle Foundation Hospital that same day. At that time, Petitioner informed the ER personnel of his exposure and that he had a headache, burning chest pain and difficulty breathing. Petitioner also advised that he had smoked one pack of cigarettes per day and that he had a remote history of bronchitis, but no other pulmonary pathology. Petitioner was treated with albuterol nebulizers. The final diagnosis was dypsnea secondary to bronchial spasm and toxic effect to sulfuric acid exposure (Petitioner's Exhibit 1).

Petitioner subsequently sought medical treatment from Dr. David Fletcher, an occupational medicine specialist, at SafeWorks on July 19, 2012. At that time, Petitioner complained of difficulty breathing. Dr. Fletcher noted that Petitioner's medical history was significant for COPD. He ordered a pulmonary function test which revealed severe obstructions and his assessment was chemical exposure exacerbating pre-existing COPD. Dr. Fletcher prescribed

steroids, authorized Petitioner to be off work and referred him to Dr. Salman Sheikh, a pulmonologist (Petitioner's Exhibit 2).

Dr. Sheikh examined Petitioner on July 19, 2012, and reviewed the pulmonary function test. Dr. Sheikh opined Petitioner had an acute COPD exacerbation due to chemical fume exposure leading to reactive airway dysfunction syndrome. He also noted that Petitioner had a history of tobacco abuse and that Petitioner's lungs were aging three times faster than a non-smoker. When Dr. Sheikh saw Petitioner on July 31, 2012, he opined Petitioner had reactive airway dysfunction syndrome due to acid related fumes with a history of active tobacco abuse (Petitioner's Exhibit 3).

Petitioner continued to be treated by both Dr. Fletcher and Dr. Sheikh from August through November, 2012. Petitioner continued to complain of wheezing, congestion and shortness of breath. Pulmonary function test were regularly performed and they continued to show obstructive airway disease. Treatment consisted primarily of various prescribed medications. When Dr. Fletcher saw Petitioner on August 20, 2012, he opined that Petitioner was slowly improving and released Petitioner to return to work with restrictions of desk work/sedentary work only (Petitioner's Exhibits 2 and 3).

When Dr. Fletcher evaluated Petitioner on October 22, 2012, he noted that Petitioner had chronic industrial bronchitis secondary to acid exposure superimposed on pre-existing COPD as a smoker; however, Dr. Fletcher also noted that he had worked with Petitioner for over 10 years and that Petitioner was fully functional until the toxic exposure. Dr. Fletcher continued Petitioner's sedentary work restrictions (Petitioner's Exhibit 2).

On November 14, 2012, Petitioner was examined by Dr. Peter Sporn, a pulmonologist, for another opinion regarding his condition. At that time, Petitioner informed Dr. Sporn that he had some improvement of his symptoms but he continued to have issues with breathing, wheezing, coughing and shortness of breath. Petitioner informed Dr. Sporn of the toxic exposure and that while he had been previously diagnosed with COPD, he had no significant respiratory issues prior to the time of the exposure. Dr. Sporn opined Petitioner had poorly controlled obstructive lung disease following acute exposure and that he met the criteria for reactive airway dysfunction syndrome (Petitioner's Exhibit 4).

Petitioner was again seen by Dr. Sporn on December 27, 2012, and Petitioner advised that he had some improvement of his condition. Dr. Sporn's assessment was essentially the same as it was prior; however, he also opined that Petitioner's severe respiratory impairment was likely to be permanent (Petitioner's Exhibit 4).

Petitioner continued to be treated by Dr. Fletcher from November, 2012, through February, 2013. On February 4, 2013, Dr. Fletcher opined that Petitioner was at MMI and that the condition was permanent. He also stated that Petitioner would require lifetime maintenance with bronchodilators and he continued to impose sedentary work restrictions (Petitioner's Exhibit 2).

At the direction of Respondent, Petitioner was examined by Dr. Glennon Paul, an internal medicine/allergy specialist, on February 25, 2013. In connection with his examination of

Petitioner, Dr. Paul reviewed medical records provided to him by Respondent. Dr. Paul opined that Petitioner had obstructive airway disease, which may have been related to the inhalation of hydrochloric and sulfuric acid fumes. He further noted that Petitioner had a sinus infection as well as a prior lung injury because of his smoking. Dr. Paul opined that Petitioner was disabled, but also stated Petitioner could work in a sedentary or light duty position. Dr. Paul further opined that Petitioner was not at MMI but that his condition would ultimately resolve without any permanency in two years or less (Respondent's Exhibit 1; Deposition Exhibit 2).

From March, 2013, through December, 2014, Petitioner continued to be treated by Dr. Fletcher and Dr. Sporn as well as Dr. Maury Topolosky, another pulmonologist. Dr. Fletcher last saw Petitioner on December 30, 2014, and he continued Petitioner's sedentary work restrictions (Petitioner's Exhibits 2 and 3).

Dr. Fletcher was deposed on April 16, 2013, and his deposition testimony was received into evidence at trial. Dr. Fletcher's diagnosis was consistent with his medical records and he reaffirmed his opinion that Petitioner had reactive airway disease caused by the exposure to chemical fumes that occurred on July 18, 2012. He opined that Petitioner was at MMI as of either late December, 2012, or early January, 2013 (Petitioner's Exhibit 13; pp 39-42).

Dr. Paul was deposed on April 23, 2013, and his deposition testimony was received into evidence at trial. Dr. Paul's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Dr. Paul testified that the exposure worsened/aggravated Petitioner's lung condition but that it was unlikely to be permanent. He agreed that Petitioner was limited to sedentary or light duty at the time he examined Petitioner; however, he opined that this was a temporary situation (Respondent's Exhibit 1; pp 19-24, 33).

Dr. Sporn was deposed on June 27, 2013, and his deposition testimony was received into evidence at trial. Dr. Sporn's testimony was consistent with his medical records and he reaffirmed his diagnosis of reactive airway dysfunction syndrome related to Petitioner's exposure to chemical fumes. He further opined that Petitioner's symptoms would likely be permanent (Petitioner's Exhibit 14; pp 23-24, 42-44).

Approximately two weeks after the accident, Petitioner had a meeting with Gary Hinton, Respondent's Human Resource Director, and was informed that his job position was being eliminated. Petitioner also testified that Hinton informed him that there were issues with his job performance. Petitioner stated that Hinton offered him a severance package which would have paid him approximately 12 weeks salary and that he was offered what was described as a "temporary" position at Respondent's plant in Danville. Petitioner had a subsequent meeting with him about two weeks later and declined the temporary position. A severance package was subsequently agreed upon and signed by Petitioner on August 24, 2012. A copy of this agreement was received into evidence at trial (Petitioner's Exhibit 12).

Gary Hinton testified at the trial of this case. Hinton testified that the position that was offered to Petitioner at the Danville plant was permanent and the virtual the equivalent of the position that he had at the Urbana plan. Hinton further stated that there would have been no reduction in Petitioner's salary and that the position would have been primarily a desk job.

On cross-examination, Hinton admitted that the offer of this permanent job was not put in writing nor was there any written documentation of the reasons for Respondent's decision to terminate Petitioner's employment. Hinton testified that it was necessary to terminate Petitioner's employment because the job was beyond Petitioner's abilities and technical competence. Hinton was shown a copy of Petitioner's most recent Annual Performance Review of December, 2011 (Petitioner's Exhibit 17) and Hinton agreed that in every single category Petitioner was rated as "outstanding" and that his overall performance rating was also "outstanding."

At the direction of his attorney, Petitioner was evaluated by Bob Hammond, a vocational rehabilitation/employment expert on September 4, 2013. In connection with his evaluation of Petitioner, Hammond reviewed medical records provided to him by Petitioner's counsel. Hammond opined that Petitioner's job as a Safety Manager was a skilled position at the medium physical demand level and that Petitioner's work restrictions prevented him from returning to that job. He further stated that Petitioner could work at a number of limited clerical positions (Petitioner's Exhibit 15).

Hammond prepared a supplemental report dated August 12, 2014, in which he acknowledged that Petitioner had returned to work as a bus driver at the rate of $16.44 per hour. He opined that this position was consistent with Petitioner's work restrictions and that it was at the top of his earning potential (Petitioner's Exhibit 16).

On direct examination, Petitioner testified that he did not have any prior breathing or lung problems other than typical cold/flu issues. Respondent tendered into evidence medical records which revealed that Petitioner had, in fact, been treated for breathing/lung issues on various occasions from April, 2001, through November, 2011. Petitioner was previously diagnosed with reactive airway disease, bronchitis and COPD. Petitioner was treated with various medications and no pulmonary function tests were ever ordered or obtained (Respondent's Exhibit 2).

Petitioner returned to work on October 1, 2013, driving a van for Halcon Transportation. Pursuant to the stipulation of the parties, Petitioner was paid $340.00 per week and worked at this job from October 1, 2013, through April 13, 2014. On April 14, 2014, Petitioner began working for Champaign School District as a bus driver and, pursuant to the stipulation of the parties, was paid $657.60 per week based on $16.44 per hour.

At trial, Petitioner testified that he still has significant breathing and lung problems and that his condition varies on a day to day basis. Petitioner testified that he never has a day without wheezing and that, prior to the accident, he did not have the symptoms. During the trial, Petitioner was constantly wheezing and breathing heavily.

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the accident of July 18, 2012.

In support of this conclusion the Arbitrator notes the following:

Petitioner's two primary treating physicians who were deposed, Dr. Fletcher and Dr. Sporn, both opined that Petitioner's lungs were injured as result of the chemical exposure of July 18, 2012, and that the condition was permanent.

Respondent's Section 12 examiner, Dr. Paul, opined that Petitioner's lung condition was aggravated as a result of the chemical exposure, but opined that the condition was not likely to be permanent and would resolve within two years.

Petitioner had a long history of smoking and had been previously diagnosed with lung ailments, in particular, COPD. Petitioner's testimony that he had no breathing/lung issues prior to the chemical exposure was suspect; however, Petitioner did not have any pulmonary function tests performed prior to the accident of July 18, 2012, and there was no evidence that any pre-existing breathing/lung symptoms had any significant effect on Petitioner's day to day activities. This clearly indicated that while Petitioner did have some prior breathing/lung symptoms, they were not as severe before the chemical exposure as they were afterward.

The Arbitrator finds the opinions of Dr. Fletcher and Dr. Sporn to be more persuasive than that of Dr. Paul.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibits 7, 8, 9, 10 and 11, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusions of law:

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of 62 5/7 weeks, commencing July 19, 2012, through September 30, 2013.

The Arbitrator concludes Petitioner is entitled to temporary partial disability benefits of 27 5/7 weeks commencing October 1, 2013, through April 13, 2014.

As noted herein, the parties agreed to the time periods of both temporary total and temporary partial disability and that Petitioner's average weekly wage during the period of temporary partial disability was $340.00.

Dr. Fletcher authorized Petitioner to be off work from July 19, 2012, through August 20, 2012, when he released Petitioner to return to light duty. Respondent did not accommodate this restriction because Respondent terminated Petitioner's employment.

Petitioner testified that he was informed by Gary Hinton of Respondent's decision to terminate his employment approximately two weeks after to the accident. In regard to the offer of employment, Petitioner stated that this was only for a temporary position at Respondent's plant in Danville which he declined.

While Gary Hinton testified that the job offer was for a permanent position at the same salary Petitioner had previously earned, there was no written documentation of either this offer or of Respondent's decision to terminate Petitioner's employment.

Hinton's testimony that Petitioner was terminated because of Petitioner's limited abilities and competence was totally contrary to Petitioner's most recent Annual Performance Review which clearly and unequivocally stated that Petitioner's work performance was "outstanding" in each and every respect.

The Arbitrator concludes Hinton's testimony is not credible. It lacks written documentation, is contrary to Petitioner's Annual Performance Review and it defies common sense that Respondent would offer a permanent job to Petitioner and terminate his employment at the same time.

At the time of the accident, Petitioner's average weekly wage was $1,325.11. $1,325.11 minus $340.00 equals $985.11, two-thirds of which is $656.74 which is the appropriate rate for temporary partial disability.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to a wage differential award of $445.01 per week, commencing April 14, 2014, until Petitioner reaches the age of 67 or five years from the date that the award becomes final, whichever is later.

As noted herein, the parties stipulated that Petitioner's current average weekly wage was $657.60. There was no evidence tendered as to what Petitioner's earnings as a Safety Manager would have been as of the date of trial. Accordingly, the Arbitrator will use Petitioner's average weekly wage as of the date of accident of $1,325.11. $1325.11 minus $657.60 equals $667.57, two-thirds of which is $445.01.

The evidence clearly indicates that Petitioner is unable to return to work to his prior job as a Safety Manager. Further, the opinion of Bob Hammond that Petitioner was employed at the top of his earning potential was unrebutted.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☐ 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

David Crawford,

Petitioner,

vs. NO: 08 WC 10919

Freeman United Coal Mining Co.,

15IWCC0925

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, occupational disease, causal connection, temporary total disability, medical expenses, permanent disability benefits, evidentiary rulings and Sections 1(d)-(f) of the Illinois Workers' Occupational Diseases Act, hereby reverses the Arbitrator's Decision and finds that Petitioner sustained accidental injuries as a result of exposure to an occupational disease arising out of and in the course of his employment on August 30, 2007.

The Commission notes that in *Freeman United Coal Mining Co. v. Industrial Commission*, 188 Ill.2d 243 (1999), the Illinois Supreme Court found that the claimant, Lefler, fell under Section 1(d) of the Illinois Workers' Occupational Diseases Act which provides that an employee "shall be conclusively deemed to have been exposed to the hazards of an occupational disease when, for any length of time however short, he or she is employed in an occupation or process in which the hazard of the disease exists." 820 ILCS 310/1(d) (2006). The Court found that such conditions were satisfied in that case and explained that:

> "[t]here is no dispute that coal mining is an occupation in which the hazard of coal worker's pneumoconiosis is present. There is also no dispute that Lefler was employed as a coal miner. According to the record, Lefler worked as a coal miner for 33 years and was employed

at a mine operated by Freeman United Coal Mining Company at the time he stopped working. Under these circumstances, the arbitrator should have taken Lefler's exposure to the hazard of coal worker's pneumoconiosis as having been conclusively established. Lefler was not obligated to present further evidence on the point, and it was not subject to challenge by the employer.

In an effort to validate the arbitrator's decision, the employer argues that evidence as to the timing and extent of Lefler's exposure was properly considered because he was required to establish that he suffered medically significant exposure to coal dust on the final day of his employment. We disagree. The Act does specify that compensation is only payable where disablement 'occurs within two years after the last day of the last exposure to the hazards of the disease,' except in circumstances not relevant here. Ill. Rev. Stat. 1981, ch. 48, par. 172.36(f). In addition, where the disability was caused by coal worker's pneumoconiosis, the law provides that the application for compensation must be filed with the Commission within five years after the employee was last exposed where no compensation has been paid, or within five years after the last payment of compensation where such payments have been made. Ill. Rev. Stat. 1981, ch. 48, par. 172.41(c). Nothing in the Act, however, makes an employer's liability contingent on a claimant's ability to link his condition to exposure on the final day of his employment with that employer." *Freeman United,* 188 Ill.2d at 246-47.

In the case at bar, Petitioner worked underground in a mine for 31 years and was exposed to coal dust, along with diesel fumes, silica, and other fumes and particles. Petitioner testified that there were times when he became overcome with the dust and he was sure that the dust particles got in his lungs because he was "blowing tadpoles" (i.e., expelling/coughing up phlegm) when he showered. Petitioner also testified to substantial diesel fume exposure. Petitioner has never smoked.

Petitioner filed his claim within the required time frame designated under the Occupational Diseases Act. The evidence provided at hearing includes a chest x-ray taken about a year after Petitioner left Respondent's employ, January 2, 2008, which has been interpreted to show evidence of coal worker's pneumoconiosis (hereinafter "CWP") by Dr. Smith and Dr. Alexander. Dr. Cohen noted that Petitioner had a "history of dyspnea on moderate to heavy exertion for the last 2-3 years. This was a gradually progressive process. It has been worse in the last 5-6 months. No history of cough. He does have a slight wheeze with heavy exertion." Dr. Cohen reviewed the January 2, 2008 x-ray and found it positive for the opacities of pneumoconiosis at profusion of 1/0, q/s shaped opacities. Dr. Cohen also reviewed the June 23, 2009 pulmonary function and cardiopulmonary exercise test, the results of which indicated mild diffusion impairment for the pulmonary function and maximal exercise study with normal work capacity for the cardiopulmonary exercise test. Dr. Cohen diagnosed Petitioner as having symptoms of dyspnea on exertion and CWP as a result of is work as a coal miner.

As explained by Dr. Castle at his evidence deposition, the National Institute for Occupational Safety and Health (hereinafter "NIOSH") recommends that a chest x-ray screening be done every 3-5 years "[b]ecause it takes at least that long to determine if there's been any development or any change in anything that may be there." (RX2-pg.33) The Commission notes that Petitioner's last exposure was on August 30, 2007, his last day at work, and then a year later evidence of CWP appears on his chest x-rays. Therefore, based on the requirements of the Illinois Workers' Occupational Diseases Act, the case law, the medical evidence, findings of CWP on chest x-rays by multiple doctors, and Petitioner's symptoms, the Commission finds that Petitioner is suffering from an occupational disease as result of his employment with Respondent, and hereby reverses the Arbitrators' Decision.

Regarding compensation, the Commission notes that Petitioner's only request on review is for an award of permanent disability benefits. The record shows that Petitioner currently works for a new employer, Prose Farm, and that his job consists of servicing equipment, mowing, collecting crops and hauling grain to the elevator, and, sometimes, as an excavator for the owner's side business and laying tiles. During his examination of Petitioner, Dr. Cohen noted that the pulmonary function and cardiopulmonary exercise indicated mild diffusion impairment for the pulmonary function and maximal exercise study with normal work capacity for the cardiopulmonary exercise test. Dr. Cohen diagnosed Petitioner as having symptoms of dyspnea on exertion and CWP as a result of his work as a coal miner. The Commission further notes that Petitioner continues to enjoy his outdoor hobbies and even went hiking in Utah. Petitioner complained of breathing issues with exertion and Dr. Cohen noted that Petitioner had "a slight wheeze with heavy exertion." Based on Petitioner's continued work with a new employer, ability to enjoy outdoor hobbies, and overall mild pulmonary impairment, the Commission finds that Petitioner has suffered a 5% loss of use of the person as a whole as a result of his work as a coal miner for Respondent.

So that the record is clear, and there is no mistake as to the intentions or actions of this Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical / legal perspective. Furthermore, we have considered all of the testimony, exhibits, pleadings and arguments submitted by the Petitioner and the Respondent. Finally, one should not and cannot presume that we have failed to review any of the record made below. Though our view of the record may or may not be different than the arbitrator's, it should not be presumed that we have failed to consider any evidence taken below. Our review of this material is statutorily mandated and we assert that this has been completed.

IT IS THEREFORE ORDERED BY THE COMMISSION that that the Decision of the Arbitrator, filed on January 21, 2015, is reversed as stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $636.20 per week for a period of 25 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 5% loss of use of the person as a whole.

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

15IWCC0925

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 $16,000.00. 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: DEC 17 2015
MJB/ell
o-10/26/15
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CRAWFORD, DAVID
Employee/Petitioner

Case# **08WC010919**

FREEMAN UNITED COAL MINING CO
Employer/Respondent

15IWCC0925

On 1/21/2015, 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:

0755 CULLEY & WISSORE
KIRK CAPONI
300 SMALL ST SUITE 3
HARRISBURG, IL 62946

1662 CRAIG & CRAIG LLC
KENNETH F WERTS
PO BOX 1545
MT VERNON, IL 62864

15IWCC0925

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ 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

David Crawford
Employee/Petitioner

v.

Freeman United Coal Mining Co.
Employer/Respondent

Case # 08 WC 10919

Consolidated cases: n/a

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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on November 19, 2014. 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 Sections 1(d)-(f) and 19(d) of the Occupational Diseases Act

FINDINGS 15IWCC0925

On August 30, 2007, 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 not sustain an occupational disease 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 not causally related to the alleged occupational disease.

In the year preceding the injury, Petitioner earned $n/a; the average weekly wage was $1,060.34.

On the date of accident, Petitioner was 53 years of age, married with 0 dependent child(ren).

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 $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00.

Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's Conclusions of Law attached hereto, claim for compensation is denied.

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.

William R. Gallagher, Arbitrator

January 16, 2015
Date

JAN 21 2015

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an occupational disease to his lungs and/or heart arising out of and in the course of his employment for Respondent. The Application alleged a date of last exposure of August 30, 2007, and that Petitioner sustained the occupational disease as a result of inhalation of coal mine dust including but not limited to coal dust, rock dust, fumes and vapors for a period in excess of 31 years.

At the time of arbitration, Petitioner was 59 years. Petitioner has a high school education. He worked for 31 years in the coal mine with all that being underground. In addition to coal dust, Petitioner was exposed to silica dust, rock dust, roof bolting glue fumes and diesel fumes.

Petitioner's last day of work was August 30, 2007, with Respondent at its Crown II mine in Virden. He was 51 years old on that date and was working as a belt repairman. He started his coal mine employment on May 9, 1977, with Respondent. He testified that on that date he breathed coal dust. That was his last day worked because the mine closed. Petitioner testified that but for being laid off on August 30, 2007, he would have reported to his next shift. After he was laid off he collected unemployment for two months and then started his retirement. He received a 30 and out pension effective November 1, 2007. This meant that after 30 years he could leave with full pension and full benefits.

Petitioner testified that there were times when working in the mine that he would be overcome with dust, especially when he rock dusted. He testified that the diesel generator would put up a haze and stir up the dust. He testified that he always tried to keep a dust mask on when on the machine called a gator. He would use his coat or jacket to put over his mouth waiting for the dust to dissipate. Petitioner testified that since leaving the mine his breathing has gotten worse. He noticed walking up and down hills and even going up steps he has to stop and take a breath. Petitioner testified that if the coal mine offered him a job today he would not take it because of the breathing issues and the hard job that it was. From time to time while employed by Respondent Petitioner underwent screening by NIOSH for black lung. He had chest x-rays performed with the last one being May, 2007.

Petitioner testified that he has never smoked. He does not have any cardiac or heart problems or high blood pressure. Petitioner lost his leg in an accident on June 12, 1980. He takes Paxil for the breakdown he had related to that accident. He was off work for one and a half years at the time of that injury but was able to continue working in the mine.

After leaving Respondent, Petitioner worked at Prose Farms. He serviced equipment, mowed and helped get the crops in and out. He also hauled grain to the elevator. At times they worked on tile projects because the owner had a side business as an excavator. Petitioner testified that when laying tile in the fields he was exposed to the dust that was kicked up.

Petitioner testified that he saw Dr. Robert Cohen in Cook County at the recommendation of his attorneys. He testified that when he met with Dr. Cohen he was honest with him in regard to the questions that Dr. Cohen posed to him. Petitioner testified that for recreation he hunts, fishes and

gardens. He hunts from a stand. Petitioner testified that he does some traveling. He has gone on some cruises and was in Utah this past summer. While in Utah he did some hiking.

Petitioner was examined by Dr. Robert Cohen on June 23, 2009, for a Department of Labor black lung evaluation. (Petitioner's Exhibit 1, Deposition Exhibit 2). Dr. Cohen is a senior attending physician at Stroger Hospital Cook County and is the medical director of the pulmonary physiology rehabilitation section. He runs three occupational lung disease clinics per week and also works in the hospital doing general pulmonary medicine consults. He is the medical director of the Black Lung Clinic at Stroger Hospital and the National Coalition of Black Lung and Respiratory Disease Clinics, which are the federally funded clinics to take care of black lung throughout the country. (Petitioner's Exhibit 1, p 6). Dr. Cohen has been a B-reader since 1998. (Petitioner's Exhibit 1, p 6). Dr. Cohen is board certified in internal medicine, pulmonology and critical care. (Petitioner's Exhibit 1, Deposition Exhibit 1, p 2).

Dr. Cohen was deposed on December 5, 2012, and his deposition testimony was received into evidence at trial. Dr. Cohen testified that Petitioner's chest exam was normal. (Petitioner's Exhibit 1, pp 7-8). Pulmonary function testing was performed as part of Dr. Cohen's examination. The testing included spirometry, lung volume measurements, diffusion capacity measurements and arterial blood gases on the resting pulmonary function tests. The spirometry and lung volume measurements were normal. He had mild diffusion impairment and normal resting blood gases. Dr. Cohen testified that mild diffusion impairment means that there is damage to the gas exchanging surface of the lung. (Petitioner's Exhibit 1, pp 8-9). Based upon NHANES III, there was no evidence of an obstruction or restriction. (Petitioner's Exhibit 1, p 55). A reduced diffusion capacity is a direct measure of obliterated capillary beds. Coal workers' pneumoconiosis causes destruction of the lung and obliteration of those capillary beds so it is a very useful measure of destruction of normal lung tissue. (Petitioner's Exhibit 1, pp 32-33). Dr. Cohen testified that the fact that Petitioner had some abnormalities in diffusion capacity along with radiographic findings indicated that there was damage to the gas exchanging surface of the lung. He testified that in Petitioner's case, it was more likely than not that the amount of scar tissue in the various nodules or macules that are seen as the white spots in the x-ray are the cause of the diffusion impairment. (Petitioner's Exhibit 1, pp 9-10). Dr. Cohen testified that Petitioner's level of impairment was mild. (Petitioner's Exhibit 1, p 10).

Dr. Cohen reviewed chest x-ray of Petitioner taken January 2, 2008. He testified that the chest x-ray was quality 1, and he felt there were opacities consistent with pneumoconiosis. There were small opacities primarily Q in shape, secondarily S in shape present in all lung zones and a profusion of 1/0. (Petitioner's Exhibit 1, p 14). Dr. Cohen testified that the profusion rate of 1/0 on the January 2, 2008, chest x-ray was the lowest profusion rating he could have given the film and it remain positive for pneumoconiosis. (Petitioner's Exhibit 1, p 47). Dr. Cohen testified that Dr. Smith found abnormalities only in the mid and lower lung zones. He did not think that was a significant difference between the two readings. They both saw primary round opacities and secondary S opacities. (Petitioner's Exhibit 1, pp 14-15).

Dr. Cohen testified that there is very good evidence that coal workers' pneumoconiosis can present on x-rays in mid and lower zones, not just in the upper lobes and that it can present as irregular opacities and not just regular opacities. He testified that this was something that was clarified

recently in a NIOSH study of a large number of chest x-rays taken on coal miners who had participated in the NIOSH surveillance program. Dr. Cohen testified that in an article published by Dr. Petsonk and Scott Laney they described the prevalence of lower zone opacities and irregular opacities. (Petitioner's Exhibit 1, pp 16-17).

Dr. Cohen testified that Petitioner's main complaint was dyspnea on moderate to heavy exertion which had been gradually progressive over the last two to three years. Dr. Cohen testified that in his opinion the dyspnea on moderate to heavy exertion was more likely than not significantly related to his coal mining employment. (Petitioner's Exhibit 1, p 20). Dr. Cohen testified that Petitioner's chest x-ray was positive for the opacities of coal workers' pneumoconiosis and because the lung is scarred, that is a significant radiologic impairment. He testified that coal workers' pneumoconiosis can be a progressive disease even after one leaves the coal mine environment. (Petitioner's Exhibit 1, p 21). Dr. Cohen could not say within a reasonable degree of medical certainty that Petitioner's pneumoconiosis was progressing. Dr. Cohen testified that in less than 50% of cases will simple pneumoconiosis progress once exposure ceases. (Petitioner's Exhibit 1, p 54).

Dr. Cohen testified that Petitioner should not return to the atmosphere of a coal mine given the fact that he already had scar tissue in his lungs, mild diffusion impairment and an early obstructive defect according to the AMA Guides to Permanent Impairment. That medical preclusion would be permanent. (Petitioner's Exhibit 1, p 22). Dr. Cohen testified that Petitioner may complain of shortness of breath with coal workers' pneumoconiosis despite normal pulmonary function testing. (Petitioner's Exhibit 1, p 28).

Dr. Cohen examined Petitioner one time. He did not review any treatment records regarding Petitioner. He testified that treatment records can be valuable in evaluating a patient for the presence and significance of an occupational disease. (Petitioner's Exhibit 1, pp 40-41). Dyspnea on exertion can be due to many different things. Petitioner related that his dyspnea was triggered by exertion. He did not relate that it was triggered by smoke, dust or fumes. (Petitioner's Exhibit 1, pp 43-44). Dr. Cohen testified that Petitioner's exercise testing showed a normal work capacity. (Petitioner's Exhibit 1, p 45).

Petitioner did not relate to Dr. Cohen ever having taken breathing medication. (Petitioner's Exhibit 1, p 46). Dr. Cohen testified that the chest x-ray abnormality that he observed in Petitioner was likely present for a number of years prior to the last day worked. He testified that it was not something that would have developed over a short period of time and more likely than not was present when he left the mine if it was present at all. Petitioner did not tell Dr. Cohen that he left mining when he did because of a pulmonary problem or concern on the advice of a physician. He did not relate to Dr. Cohen an inability to do the duties of the last job in the mine. (Petitioner's Exhibit 1, pp 53-54). Dr. Cohen testified that the prevalence of coal workers' pneumoconiosis based upon the results from the NIOSH Coal Worker's X-ray Surveillance Program for Illinois is three percent. (Petitioner's Exhibit 1, pp 47-48).

Dr. Cohen testified that blood gases are measured both at rest and with exercise to see whether or not there are gas exchange abnormalities that develop with exercise. Petitioner's was both normal at rest and with exercise. (Petitioner's Exhibit 1, p 57). Dr. Cohen testified that exercise testing

is a gold standard for determining an individual's cardiopulmonary ability. Petitioner's results were normal. (Petitioner's Exhibit 1, p 60). Dr. Cohen testified that there was no functional impairment revealed by the exercise testing. (Petitioner's Exhibit 1, p 62). According to his exercise test, Petitioner was capable of heavy manual labor. (Petitioner's Exhibit 1, p 64).

Dr. Henry K. Smith, a board certified radiologist and NIOSH B-reader, interpreted a chest x-ray of Petitioner dated September 9, 2004, as positive for pneumoconiosis, profusion 1/1 with P/P opacities in all lung zones. He made an identical interpretation of the chest x-ray dated May 7, 2007. Dr. Smith, interpreted Petitioner's chest x-ray of January 2, 2008, as positive for pneumoconiosis, profusion 1/1 with P/S opacities in the mid and lower lung zones bilaterally. (Petitioner's Exhibit 2).

Dr. Michael Alexander, a board certified radiologist and B-reader, interpreted chest x-ray dated September 9, 2004, as positive for pneumoconiosis, profusion 1/1 with P/P opacities in all lung zones. He made an identical interpretation of the chest x-ray dated May 7, 2007. (Petitioner's Exhibit 4).

Chest x-rays interpretations from NIOSH were admitted into evidence. Two B-readers interpreted a chest x-ray of May 7, 2007, as negative for pneumoconiosis. (Respondent's Exhibit 3).

The deposition of Dr. Cristopher A. Meyer was taken on July 26, 2013, and his deposition testimony was received into evidence at trial. Dr. Meyer reviewed chest x-rays for Petitioner dated September 9, 2004, May 7, 2007, and January 2, 2008, at the direction of counsel for the Respondent. Dr. Meyer found the film of 2004 to be quality 1 and the two subsequent films to be quality 2 due to poor contrast. Dr. Meyer testified that they were normal chest x-rays and revealed that the lungs were clear. Dr. Meyer testified it is a benefit to have serial films to read because chest x-rays over time allow one to distinguish acute findings that may develop from chronic interstitial lung disease. He testified that coal workers' pneumoconiosis would be a chronic interstitial lung disease. (Respondent's Exhibit 1, pp 40-41).

Dr. Meyer has been board certified in radiology since 1992. (Respondent's Exhibit 1, p 7). Dr. Meyer has been a B-reader since 1999 (Respondent's Exhibit 1, p 19). Dr. Meyer was asked to take the B-reading exam by Dr. Jerome Wiot (Respondent's Exhibit 1, pp 19-20). Dr. Wiot was on the original committee that designed the training course which is called the B-reader program. (Respondent's Exhibit 1, pp 21-22). Dr. Meyer has recently been asked to have a more active academic role with the B-reader course. (Respondent's Exhibit 1, p 32). Dr. Meyer testified that radiologists have a 10% higher pass rate on the B-reading exam than other specialties. In Dr. Meyer's opinion radiologists have a better sense of what the variation in normal is. (Respondent's Exhibit 1, pp 34-35).

Dr. Meyer testified that the B-reader looks at the films of the lung to decide whether there are any small nodular opacities or any linear opacities and based on the size and appearance of those small opacities, they are given a letter score. (Respondent's Exhibit 1, p 22). Dr. Meyer testified that specific occupational lung diseases are described by specific opacity types. Coal workers' pneumoconiosis is characteristically described by small round opacities. (Respondent's Exhibit

1, pp 28-29). The distribution of opacities is also described because different pneumoconioses are seen in different regions of the lung. Coal workers' pneumoconiosis is typically an upper zone predominant process. (Respondent's Exhibit 1, pp 22-23). The last component of the lung involvement piece for the small opacities is the extent of the lung involvement, or the so-called profusion. (Respondent's Exhibit 1, p 23). Dr. Meyer testified that the profusion defines the density of the small opacities in the lung. (Respondent's Exhibit 1, p 30).

The deposition of Dr. James R. Castle was taken on March 28, 2014, and his deposition testimony was received into evidence at trial. Dr. Castle reviewed medical records and chest x-rays regarding Petitioner, at the request of Respondent's counsel. (Respondent's Exhibit 2, pp 21, 29). Dr. Castle is a pulmonologist and is board certified in internal medicine and in the subspecialty of pulmonary disease. (Respondent's Exhibit 2, p 4). Dr. Castle practiced in Roanoke, Virginia, for 30 years. His practice was limited to pulmonary disease and chest disease which encompassed critical care medicine. (Respondent's Exhibit 2, pp 7-8). Dr. Castle's practice included treating patients with occupational lung disease. He had some patients in his practice that had coal workers' pneumoconiosis. (Respondent's Exhibit 2, p 8). Dr. Castle has been certified as a B-reader since 1985. (Respondent's Exhibit 2, p 14). Two of Dr. Castle's instructors at West Virginia University School of Medicine were Dr. Keith Morgan and Dr. Lee Lapp Dr. Morgan was one of the early individuals in the country who started looking at coal workers' pneumoconiosis to determine the extent of the disease and its effects on the individual. (Respondent's Exhibit 2, pp 13-14).

Dr. Castle testified that the physiologic studies obtained by Dr. Cohen at his evaluation on June 23, 2009, demonstrated entirely normal spirometry and lung volumes. Petitioner had a very minimal reduction in the diffusing capacity and the DL/VA. Dr. Castle testified that the spirometry did not show any significant abnormalities and there was not any evidence of restriction. Petitioner did not demonstrate a disabling abnormality of ventilatory function of any cause including pneumoconiosis. Dr. Castle testified that the resting and exercise blood gas study by Dr. Cohen was entirely normal and that Petitioner had no cardiopulmonary limitation to exercise. (Respondent's Exhibit 2, pp 31-32). Dr. Castle testified that Petitioner did not demonstrate any evidence of significant impairment or disability from any cause including his occupational exposure. (Respondent's Exhibit 2, p 32). Dr. Castle testified that Petitioner's diffusing capacity and exercise testing were normal. (Respondent's Exhibit 2, p 33).

Dr. Castle reviewed chest x-rays of September 9, 2004, May 7, 2007, and January 2, 2008. He found no parenchymal abnormalities consistent with pneumoconiosis on these films. (Respondent's Exhibit 2, p 29). Dr. Castle testified that the opacities of pneumoconiosis will not disappear over time. It is virtually impossible for someone to go from a film that has normal opacities to one that is a 1/0 involving all lung zones in less than four months. He testified that NIOSH only recommends a chest x-ray screening be done every three to five years because it takes at least that long to determine if there has been any development or any change in anything that may be seen on the chest x-ray. (Respondent's Exhibit 2, pp 32-33).

Dr. Castle testified that based upon a review of all the data including the medical histories, physical examinations, radiographic evaluations, physiologic testing, arterial blood gas studies and other data Petitioner does not suffer from any pulmonary disease or impairment as a result of

his occupational exposure to coal mine dust. (Respondent's Exhibit 2, pp 29-30). Dr. Castle agreed with Dr. Cohen that the testing revealed that Petitioner was capable of heavy manual labor. He also agreed with the position taken by the American Thoracic Society that an older worker with a mild pneumoconiosis may be at low risk for working in currently permissible exposure levels until he reaches retirement age. (Respondent's Exhibit 2, pp 35-36). Dr. Castle testified that exposure to grain dust by Petitioner could be an aggravant to his shortness of breath. (Respondent's Exhibit 2, p 34).

Dr. Castle testified that no matter what he saw on the films that would not rule out the possibility that Petitioner could have pneumoconiosis that can be found pathologically or at autopsy. (Respondent's Exhibit 2, p 48). Dr. Castle testified that if he has historical information, physical examination and objective data over a period of time, then he is in at least an equal, if not better, position to evaluate a circumstance than a person that has done an evaluation on one single occasion without that same ability to review all the information. (Respondent's Exhibit 2, pp 56-57).

Dr. Castle testified that the scar tissue of pneumoconiosis itself cannot perform the function of normal healthy lung tissue. By definition, if a person has coal workers' pneumoconiosis, he would have an impairment in the function of the lung at the site of the scarring. If scar tissue is causing a measurable pulmonary impairment, that could be restriction, obstruction or both. (Respondent's Exhibit 2, p 63). Dr. Castle testified that a person could have radiographically significant coal workers' pneumoconiosis, yet have normal spirometry, normal pulmonary function in all areas, normal blood gases, normal physical exam of the chest and maybe even no complaints. If the individual has complaints, shortness of breath is the most likely one. (Respondent's Exhibit 2, pp 65-66). Dr. Castle testified that coal workers' pneumoconiosis can progress after cessation of coal mining, but it is very uncommon. (Respondent's Exhibit 2, pp 66-67).

Medical records of Koke Mill Medical Associates were admitted into evidence. Petitioner underwent a chest x-ray at Radiological Associates of Decatur on September 9, 2004. The impression was no acute pulmonary abnormality. Physical examination on that date was normal. (Respondent's Exhibit 4, pp 76-77). Petitioner was seen on October 14, 2005, to review his EKG. On examination his respiratory system was clear. The assessment was abnormal EKG-asymptomatic. (Respondent's Exhibit 4, pp 56-57).

On January 4, 2007, Petitioner was seen for his annual physical. His respiratory system was noted to be clear. His respirations were even and unlabored. He had no chest pain and no shortness of breath. (Respondent's Exhibit 4, pp 54-55). Petitioner was seen on December 18, 2007, for his annual labs and medication review. His respiratory system was clear. Respirations were even and non-labored. (Respondent's Exhibit 4, pp 52-53).

Petitioner was seen in the office again on March 10, 2010, for an annual physical. Petitioner related being healthy other than some joint pain in his two middle fingers and intermittent right knee pain. Review of pulmonary systems on that date was normal. Physical examination of the chest revealed normal respiratory effort and the lungs clear to auscultation. (Respondent's Exhibit 4, pp 41-43). Petitioner was seen on March 9, 2011, at which time he related he was

doing well. On physical examination of the chest the lungs were clear to auscultation. (Respondent's Exhibit 4, pp 30-32).

On May 9, 2012, Petitioner complained of cough and congestion. It was charted that he might have some slight shortness of breath. Review of systems revealed nasal discharge, wheezing and cough. Examination of the chest revealed a few scattered rhonchi. The assessment on that date was bronchitis. (Respondent's Exhibit 4, pp 27-29). Petitioner returned on June 13, 2012, with complaint of pain regarding the left middle finger. Physical examination of the chest revealed the lungs clear to auscultation. (Respondent's Exhibit 4, pp 19-20). Petitioner was seen on February 26, 2013, with complaint of cough that started one week prior. It was associated with runny nose and post nasal drainage but no shortness of breath and no wheezing. Physical examination of the chest revealed scattered rhonchi with expiratory wheeze. The assessment was acute bronchitis with bronchospasm. (Respondent's Exhibit 4, pp 17-18). Petitioner was next seen on July 9, 2013, for annual physical. Review of systems pulmonary revealed no abnormality. Physical examination of the chest revealed the lungs clear to auscultation. (Respondent's Exhibit 4, pp 2-5).

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner did not sustain an occupational disease arising out of and in the course of his employment for Respondent that manifested itself on August 30, 2007.

In support of this conclusion the Arbitrator notes the following:

Dr. Castle testified that the physiologic studies obtained by Dr. Cohen demonstrated entirely normal spirometry and lung volumes. Further, Dr. Castle testified, the opacities of pneumoconiosis will not disappear over time. Dr. Castle testified that it would be unlikely for someone to go from a film that was normal to one involving all lung zones with a profusion of 1/0 in less than four months.

Dr. Smith's interpretations of the chest x-rays were not consistent with the characteristics of coal workers' pneumoconiosis. Dr. Smith noted opacities in all lung zones on the 2004 and 2007 chest x-rays but found opacities only in the mid and lower lung zones on the January 2008 chest x-ray.

The chest x-ray interpretations by NIOSH confirm that Petitioner did not have pneumoconiosis as of chest x-ray taken on May 7, 2007. The NIOSH B-readings were the only independent interpretations. The Arbitrator finds the NIOSH B-readings to be credible as NIOSH is concerned with making sure the B-reading is accurate as the employee's rights to move to a less dusty job are dependent on the interpretation.

The Arbitrator finds the opinions of Dr. Meyer, Dr. Castle and the NIOSH B-readers to be more persuasive than that of Dr. Cohen.

In regard to disputed issues (L) and (O) the Arbitrator makes no conclusion of law as the issues are rendered moot because of the Arbitrator's conclusion of law in disputed issues (C) and (F).

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☐ 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

JOHN SANKS,

Petitioner,

vs. NO: 13 WC 31423

HENSON ROBINSON COMPANY,

Respondent.

15IWCC0926

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 employment relationship, accident, causal connection, medical, prospective medical, and 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.

So that the record is clear, and there is no mistake as to the intentions or actions of the Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical/legal perspective. The Commission has considered all of the testimony, exhibits, pleadings and arguments submitted by the parties. Based on the evidence, the Commission modifies the Decision of the Arbitrator and finds that an employment relationship existed between John Sanks and Respondent at the time of the alleged work incident of September 13, 2013. The Commission, however, affirms the remainder of the Decision finding Sanks failed to prove an accident arising out of and in the course of his employment. Petitioner's claim for compensation is, therefore, denied.

Where appropriate, the Commission adopts the Arbitrator's findings of fact and incorporates them by reference herein. The Commission finds the testimony as to the timing of the alleged layoff relative to the alleged work incident conflicting. Sanks testified that the layoff occurred between 1:15 p.m. and 1:30 p.m. Sanks testified that he objected to the layoff and subsequently returned to work at the recommendation of his business agent. He testified that the

alleged work injury occurred between 1:30 p.m. and 1:45 p.m. Petitioner's witness, Mike McClean, is equivocal in that he could not recall whether Sanks was injured before or after lunch or whether Sanks received notice of the layoff before or after the alleged incident.

Patrick Waghorn, the project manager and respondent's witness, testified that he laid Sanks off at 2:00 p.m., and that Sanks objected to the layoff at that time. John Terneus, project manager for respondent, testified that he spoke to the business agent at 2:15 p.m. and there was no mention of a work injury. Terneus then spoke to Waghorn at 2:20 p.m. and informed Waghorn that Sanks was now going to be terminated for insubordination for refusing his layoff. Terneus was not present at the job site. Waghorn testified that he next encountered Sanks at 2:45 p.m. at which time Waghorn notified the employees that the shift was over. It was at this time that Sanks informed Waghorn of the alleged injury.

The credible evidence demonstrates that Sanks was terminated by Waghorn subsequent to the alleged layoff. Because of the conflicting evidence surrounding the layoff, the Commission finds that the termination severed the employment relationship; the termination occurred after the alleged accident. As such, Sanks established that an employment relationship existed at the time of the alleged incident. However, the Commission adopts the well-reasoned analysis of the Arbitrator finding Sanks failed to prove an accident arising out of and in the course of his employment.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 18, 2015, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that since petitioner failed to prove that he sustained accidental injuries arising out of and in the course of his employment on September 13, 2013, his claim for compensation is hereby denied.

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: DEC 17 2015

MJB/tdm
O: 11-9-15
052

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

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

SANKS, JOHN
Employee/Petitioner

Case# **13WC031423**

HENSON ROBINSON COMPANY
Employer/Respondent

15IWCC0926

On 2/18/2015, 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 0.06% 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:

0487 SMITH ALLEN MENDENHALL ET AL
SREVE SELBY
510 E 6TH ST
ALTON, IL 62002

0299 KEEFE & DePAULI PC
GREGORY KELTNER
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
COUNTY OF ST CLAIR)

☐ 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)

John Sanks
Employee/Petitioner

v.

Henson Robinson Company
Employer/Respondent

Case # 13 WC 31423

Consolidated cases: _____

15IWCC0926

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 Belleville, on 12/22/14 and 12/23/14. 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. ☒ 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 _____

FINDINGS

On the date of accident, 9/13/13, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did not* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of the alleged accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned $82,029.13; the average weekly wage was $1,477.48.

On the date of accident, Petitioner was 55 years of age, *married* with -0- children under 18.

Respondent shall be given a credit of $8,329.12 for TTD.

ORDER

Because Petitioner did not sustain an injury that arose out of and in the course of his employment with Respondent and there was not an employer-employee relationship at the time of the alleged injury, the claim for compensation is denied.

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.

Edward Lee

Signature of Arbitrator

2/12/15

Date

FEB 18 2015

ICArbDec19(b)

STATE OF ILLINOIS)
) ss.
COUNTY OF ST CLAIR)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

John Sanks,
Employee/Petitioner,

v.

Case No: 13 WC 31423

Henson Robinson Company,
Employer/Respondent.

15IWCC0926

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On September 13, 2013, Petitioner was employed by Respondent as a Pipefitter out of Pipefitter's Local 553. Petitioner has worked as a pipefitter for 34 years. Petitioner testified that between 1:15 p.m. and 1:30 p.m. his foreman, Pat Waghorn, advised him that he was being laid off and handed him a check. Petitioner testified that due to his seniority and past practice he took issue with the layoff and contacted his union business agent. After speaking with his agent, Petitioner elected to remain on the job site. Petitioner testified that he received his work assignments from Waghorn but disputed Waghorn's authority to lay him off.

Petitioner testified that between 1:30 p.m. and 1:45 p.m. he and Michael McClean, another pipefitter from Local 553, were installing a section of six inch diameter PVC pipe which was between 24 and 26 feet in length and weighed approximately 90 pounds. McClean was working off of a man lift and Petitioner was on the roof of a building. Petitioner testified that he was holding the pipe overhead and that when he shoved the pipe forward to place it in a pipe hanger he experienced a sharp burning pain in his back which radiated into his hip and buttocks. Petitioner thereafter joined McClean on the lift and reported that he had injured his back.

Petitioner testified that after reaching the ground at approximately 2:00 p.m. he told his foreman Waghorn of the injury and requested an accident report.

Petitioner testified that when he arrived home later that day his business agent called and advised him that he had been terminated by Respondent. Petitioner testified that he did not know the reason for his termination. He later received written notice from Respondent indicating that he was terminated for insubordination.

Patrick Waghorn testified that he was the foreman on the project and that Petitioner was his subordinate. Waghorn testified that he was responsible for any issues regarding job duties or work to be performed. Waghorn testified that he takes notes regarding activities on the job site throughout each day and that he referred to those notes prior to testifying.

Waghorn testified that at 2:00 p.m. on September 13, 2013 he gave Petitioner his layoff check and told him that he was done. Waghorn testified that the check included payment for work performed on September 11, 2013, September 12, 2013 and eight hours of work on September 13, 2013. Waghorn testified that Petitioner was laid off because the project was winding down, fewer workers were needed and Petitioner's productivity was below that of the other workers. Waghorn testified that the decision to layoff Petitioner followed a discussion between himself and Project Manager John Terneus. Waghorn testified that Petitioner objected to the layoff and stated that Respondent did not determine which employees would be laid off. Petitioner thereafter made a phone call. Waghorn testified that Petitioner was laid off prior to the end of the shift to allow him time to report back to the union hall to sign the out of work list.

Waghorn testified that he did not advise Petitioner of the layoff prior to 2:00 p.m. He testified that when he advised Petitioner of the layoff, Petitioner said nothing about a work injury. Waghorn testified that had Petitioner done so, he would have immediately contacted the project manager or safety officer.

Waghorn next encountered Petitioner at 2:45 p.m. Waghorn testified that he made a note of the encounter in his log book. At that time he told all of the workers that the shift was over. Waghorn testified that Petitioner then reported for the first time that he had injured his back and needed an incident report. Waghorn testified that Petitioner did not provide any specifics as to the mechanism of injury.

Waghorn testified that although he did not generate the paperwork which reflected the basis for Petitioner's termination, he did terminate Petitioner.

John Terneus testified that he was the project manager. He testified that he and Waghorn agreed to lay Petitioner off as part of a reduction in force and that Petitioner would be given his layoff check on September 13, 2013. Terneus testified that Petitioner was laid off at 2:00 p.m. in accord with a common courtesy practice so he could report back to his union hall for assignment to a different employer. Terneus testified that he spoke with Petitioner's union business agent at 2:15 p.m. Terneus testified that the agent said nothing about an alleged injury. Terneus explained that had Petitioner reported an injury he would have been asked to undergo a drug/alcohol test.

Terneus testified that at 2:20 p.m. Waghorn reported that Petitioner was refusing his layoff. Waghorn contacted Terneus at 2:45 p.m. and reported that Petitioner claimed to have sustained an injury. Terneus testified that at 3:00 p.m. he advised Petitioner that he would need to undergo a drug/alcohol test.

Mike McClean testified that he was working with Petitioner on September 13, 2013. McClean testified that after lunch and "...long before quitting time" he and Petitioner were hanging PVC pipe. McClean estimated that the pipe was 20-23 feet in length and weighed 30-40 pounds. McClean testified that at the time of the incident Petitioner was holding the pipe over his head, staggered a little and said that he had injured his back. After completion of the task, Petitioner climbed into the lift with McClean and reported that he had injured his back. McClean testified that after the incident Petitioner sought out the project coordinator to obtain an injury report.

McClean testified that he was present when Petitioner was laid off. McClean could not recall whether the alleged injury occurred before or after the afternoon break. He could not recall whether Petitioner received the layoff check before or after the alleged accident.

At the time of the alleged accident on September 13, 2013 Petitioner had a pending workers' compensation case involving injuries to his left knee and left arm which resulted from a fall from scaffolding on April 30, 2012. In conjunction with that claim, Petitioner underwent an independent medical examination with orthopedic surgeon Michael Nogalski on September 18, 2013. The Patient History form completed in conjunction with Dr. Nogalski's examination reflects that Petitioner's primary complaint involved the left knee. It does not reflect any complaints of low back, hip, buttock or right lower extremity symptoms. Dr. Nogalski testified that this form is completed by the patient. Petitioner denied that he completed any forms in conjunction with Dr. Nogalski's examination.

Dr. Nogalski testified that Petitioner reported left knee and left arm symptoms following a fall from scaffolding. He testified that Petitioner did not advise him of any symptoms other than those involving the left knee. Dr. Nogalski testified that had Petitioner reported back symptoms he would have documented those in his report, as back and knee issues can overlap. Dr. Nogalski testified that Petitioner did not provide any history of a back injury on September 13, 2013 and that had he done so, it would have been documented in the report. Dr. Nogalski testified that Petitioner did not mention low back, right buttock, right hip or right posterior thigh symptoms nor did he report burning down his lateral thigh to the anteriolateral calf on either the left or right sides. Dr. Nogalski testified that Petitioner did not complain of constant pain which was exacerbated with sitting, standing, bending or lifting nor did he complain of any numbness or weakness in the right leg. Dr. Nogalski testified that had Petitioner reported any of these symptoms, they would have been documented in his report.

Dr. Nogalski testified that during the examination, Petitioner did not show any signs of pain, appeared comfortable moving about the examination room and sat, stood and moved easily to positions when asked to do so. Petitioner did not voice any complaints with any activities which he was asked to perform insofar as the low back or lower extremities were concerned. As part of the examination, Dr. Nogalski asked Petitioner to walk around the room. He testified that Petitioner's gait was normal and no limping was observed. Dr. Nogalski did not note any symptoms during the examination which

Petitioner testified that in 1995 or 1996 he sustained a back injury. He did not undergo surgery. His symptoms resolved after chiropractic treatment. Petitioner denied any significant back problems thereafter until the alleged incident of September 13, 2013.

Petitioner testified that in conjunction with the April 30, 2012 accident he was treated by orthopedic surgeons James Emanuel and Glenn Johnson at Parkcrest Orthopedics. He received treatment at Parkcrest from June 19, 2012 through July 23, 2013. He testified that at the visits he was asked about his complaints and physical condition and responded truthfully to those inquiries. The records from Parkcrest Orthopedics reflect that at Petitioner's initial visit with Dr. Emanuel on June 19, 2012 he reported low back pain and sciatica. Similar complaints were noted on multiple occasions thereafter through the final visit with Dr. Emanuel on July 23, 2013.

Petitioner first received medical treatment following the alleged accident of September 13, 2013 on October 7, 2013 when he saw orthopedic spine surgeon Matthew Gornet. Petitioner complained to Dr. Gornet of low back, right buttock and right posterior thigh and pain with burning down the lateral thigh and to the anteriolateral calf. Petitioner also complained of constant pain which was exacerbated by sitting, standing, bending and lifting. Petitioner also reported numbness and weakness of the right leg. Petitioner advised that his symptoms began on September 13, 2013 as he was lifting a pipe. Dr. Gornet testified that Petitioner reported that after his recovery from low back problems in the 1990's there had been no significant treatment beyond occasional chiropractic care. Dr. Gornet noted that Petitioner was ambulating with a cane.

Dr. Gornet testified that as a result of the accident, Petitioner sustained an annular tear and lateral disc herniation at L4-5 and an annular tear at L5-S1. He opined that the accident aggravated pre-existing facet arthropathy and forminal stenosis. Dr. Gornet excused Petitioner from work and opined that Petitioner would not have been able to work from the accident date through October 7, 2013.

Petitioner underwent injections on October 21, 2013 and November 4, 2013 which provided only temporary relief. On December 11, 2013, Petitioner underwent a discogram and post discogram CT. On December 19, 2013, Dr. Gornet recommended a decompression at L4-5 and L5-S1. He opined that the need for surgery was related to the work injury.

On January 22, 2014 Petitioner was examined by orthopedic spine surgeon David Robson pursuant to Section 12 of the Act. Petitioner advised Dr. Robson that on September 13, 2013 as he was lifting a section of pipe overhead he slipped awkwardly and injured his back. Petitioner complained to Dr. Robson of low back, right buttock, and hip pain. Dr. Robson testified that Petitioner was not using a cane at the time of the examination.

Dr. Robson reviewed the lumbar MRI and lumbar discogram films and medical records of Dr. Gornet, Dr. Nogalski and Drs. Emanuel and Johnson. Dr. Robson testified that the degree of pathology shown on the October 7, 2013 lumbar MRI could not have

possibly developed in the three week span between alleged accident and the study and that the pathology clearly pre-existed the accident. Dr. Robson could not identify any specific pathology related to the accident. Diagnosis was foraminal stenosis at L4-5 and L5-S1 with degenerative dehydration of the lower two discs. Dr. Robson opined that neither of these conditions were related to the work injury. Dr. Robson opined that the mechanism of injury described by Petitioner could cause a temporary exacerbation. Dr. Robson opined that Petitioner's condition of ill-being was unrelated to the accident. He noted that the records of Drs. Emanuel and Johnson reflected a longstanding history of low back pain and sciatica. Dr. Robson testified that the mechanism of the injury could result in a spinal injury consisting of an annular tear and exacerbation of spinal stenosis and degenerative changes. Dr. Robson testified that his opinion of no causal connection between the alleged accident and Petitioner's current condition was based upon the records of Drs. Emanuel and Johnson which reflected that throughout their course of treatment Petitioner reported lower back pain and sciatica. Dr. Robson testified that there was no way to date the age of an annular tear and that individuals can have such tears and be asymptomatic.

On October 16, 2014, Dr. Gornet noted that as Petitioner still reported severe pain in his right buttock, right hip and right thigh with burning and tingling, he continued to recommend decompression at L4-5 and L5-S1. Petitioner testified that he wishes to undergo the surgery recommended by Dr. Gornet.

CONCLUSIONS OF LAW

Was there an employee-employer relationship?

Although Petitioner and Waghorn, disagree as to the time that Waghorn presented the paycheck and advised Petitioner of his layoff and the time that Petitioner advised Waghorn of the alleged injury, they agree that Waghorn tendered the check and advised Petitioner that he was laid off before Petitioner reported the alleged injury. Waghorn testified unequivocally on cross-examination that he terminated Petitioner. Petitioner testified that he was advised of the layoff between 1:15 p.m. and 1:30 p.m. Waghorn testified that he presented the paycheck to Petitioner and advised him of the layoff at 2:00 p.m. Petitioner testified that his injury occurred between 1:30 p.m. and 1:45 p.m. Waghorn testified that Petitioner said nothing about the alleged injury at 2:00 p.m. and first reported the injury at 2:45 p.m. when Waghorn instructed the workers to leave the job site.

Petitioner disputed Waghorn's authority to terminate his employment. He agreed, however, that Terneus, as the project manager, did have the authority to terminate him. It is apparent from the uncontroverted testimony of Terneus and Waghorn that Terneus made the decision to terminate Petitioner's employment. Since Terneus was in Springfield and not at the job site in Greenville, Waghorn was clearly acting at Terneus' direction when he advised Petitioner of his termination.

The Arbitrator finds that Petitioner's employment with Respondent was severed when Waghorn tendered the paycheck and notified Petitioner that he was laid off/terminated.

Accident/Causation

Having carefully considered the testimony of all of the witnesses and evidence submitted by the parties, the Arbitrator finds, for the reasons set forth below, that Petitioner failed to meet his burden of proof that he sustained an accident arising out of and in the course of his employment with Respondent and that his current condition of ill-being is causally related to his employment with Respondent.

The Arbitrator notes that the records from Parkcrest Orthopedics reflect continuous treatment of Petitioner with regard to his left arm and left knee conditions resulting from the April 30, 2012 accident for the period of June 19, 2012 through July 23, 2013. Virtually every office note during that period reflects complaints of low back pain and sciatica. On some visits, lower back pain was noted but no sciatica (April 15, 2013 and June 24, 2013). On other visits both sciatica and back pain were noted (May 13, 2013, June 25, 2013 and July 23, 2013). Petitioner testified that he was forthright with Drs. Johnson and Emanuel when they inquired as to his complaints and condition. Consequently, the Arbitrator does not find Petitioner's denial of low back problems between the 1990s and the alleged accident of September 13, 2013 credible.

There was no evidence that Dr. Gornet reviewed or considered the records from Parkcrest Orthopedics. Dr. Robson testified that he reviewed the Parkcrest Orthopedics records and that they were a significant factor in his causation analysis. Because Dr. Gornet did not consider the records from Parkcrest Orthopedics, the Arbitrator finds his causation opinion foundationally unsound. Accordingly, the Arbitrator finds that the opinion of Dr. Robson that there was no causal connection between the alleged accident and Petitioner's current condition of ill-being more credible and persuasive than that of Dr. Gornet.

The Arbitrator finds the testimony of Waghorn, more credible than Petitioner with regard to the time that the layoff notice was tendered and the time that Petitioner reported the alleged injury. Waghorn's uncontroverted testimony was that he kept daily notes of activities on the job site, that his note from September 13, 2013 reflected that Petitioner was given his final check and layoff notice at 2:00 p.m. and that Petitioner said nothing at that time regarding a work injury.

The *Medical Information* form completed by Petitioner in conjunction with Dr. Gornet's appointment on October 7, 2013 reflects that the injury occurred at 2:00 p.m. (PX 1, Respondent's deposition Exhibit A). This is inconsistent with Petitioner's testimony that the injury occurred between 1:30 p.m. and 1:45 p.m. and that he notified Waghorn of the accident at 2:00 p.m. The time of injury reflected in the medical form is, however, consistent with Waghorn's testimony as to the time that he notified Petitioner of the layoff.

The testimony of Project Manager John Terneus supports Waghorn's version of events. Terneus testified that he spoke with Petitioner's business agent at 2:15 p.m. regarding Petitioner's reaction to the layoff notice. Terneus testified that the business agent (who was not called to testify) said nothing about an alleged injury.

The Arbitrator finds it significant that Petitioner did not receive any medical treatment until approximately three weeks after the alleged accident. If Petitioner's symptoms were as significant after the accident as those described to Dr. Gornet on October 7, 2013, the Arbitrator finds it mystifying that Petitioner did not seek medical treatment immediately after the alleged accident. In the Arbitrator's view, Petitioner's failure to provide a plausible explanation regarding the delay in treatment suggests that the injury did not occur as alleged, on September 13, 2013 but rather some time thereafter.

The Arbitrator also finds it significant that Petitioner saw Dr. Nogalski five days after the alleged accident, yet reported nothing regarding his low back or radicular symptoms or the alleged accident on September 13. The Arbitrator notes that Dr. Nogalski's examination revealed no indication of a spinal injury. The Arbitrator finds it particularly significant that Petitioner did not complain to Dr. Nogalski of low back, right buttock, right hip or right posterior thigh symptoms, burning down his lateral thigh to the anteriolateral calf or constant pain exacerbated with sitting, standing, bending or lifting or of any numbness or weakness in the right leg, yet reported all those symptoms to Dr. Gornet two and a half weeks later on October 7, 2013. In the Arbitrator's view, the foregoing further supports the notion that Petitioner's injury occurred after September 13, 2013.

The Arbitrator has also considered the testimony of Petitioner's co-worker, Mike McClean. McClean had no recollection as to the time Petitioner was tendered the layoff check or was allegedly injured. While his testimony did corroborate Petitioner's version of the mechanism of the alleged injury and the discussion between them regarding it, the Arbitrator does not find McClean's testimony dispositive, since the issue of whether an accident occurred is, in the Arbitrator's view, linked to the timing of the layoff notice, the time of the alleged injury and Petitioner's report of the injury to Respondent. The Arbitrator finds that McClean's testimony does not clarify these issues and therefore gives it little weight.

Medical Services/TTD/Prospective medical care

Consistent with the findings above regarding lack of employer-employee relationship at the time of the alleged accident and lack of accident/causation, Petitioner's claim for expenses associated with medical services, temporary total disability and prospective medical care is denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TERRY L. PETRICK,

Petitioner,

vs. NO: 08 WC 41332

SQUARE ONE, SQUARE 1, SQUARE ONE ROOFING, and DOUG MARICK individually and d/b/a SQUARE ONE, SQUARE 1, SQUARE ONE ROOFING, and DAN RUTHERFORD ex officio custodian of the INJURED WORKERS' BENEFIT FUND ,

15IWCC0927

Respondent.

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 employment relationship, accident, medical, causal connection, temporary total disability (TTD), and permanent partial disability (PPD) and being advised of the facts and applicable law, reverses the Decision of the Arbitrator and finds that Terry Petrick established that an employment relationship existed at the time of his June 18, 2008 accident that arose out of and in the course of his employment.

So that the record is clear, and there is no mistake as to the intentions or actions of the Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical/legal perspective. The Commission has considered all of the testimony, exhibits, pleadings and arguments submitted by the parties. Based on the evidence, the Commission finds that an employment relationship existed between the Petitioner and Respondent at the time of his work-related injury on June 18, 2009. As the result of the accident, the Petitioner is entitled to TTD benefits from September 18, 2008 through March 6,

2009 (less one day), representing 24-1/7 weeks. The Petitioner is also entitled to reasonable and necessary medical expenses totaling $74,549.53. The Commission finds Mr. Petrick sustained thirty-five percent loss of use of the right foot pursuant to Section 8(e) of the Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission makes the following findings:

1. Terry Petrick along with Respondent's witnesses, Doug Marick, Rick Williams, Wendell Barrett, and Fred West testified at hearing. Mr. Williams worked with Marick and was present at the time of the injury. Barrett and West previously worked for Marick, and both offered testimony relative to their work experience with Marick.

2. Petitioner testified that he previously worked for Doug Marick dating back to 1995. T.19, T.26. Petitioner was installing siding with Marick on June 18, 2008 and had been at that job site for 2 to 3 days. Petitioner testified that he was paid $15.00 per hour and paid cash at the end of the week. He was required to keep track of his hours. T.21. Marick testified that he would pay the workers after they submitted their records to him. Petitioner did not receive a W2 or 1099. *Id.* There were other workers at the job site. T.25.

3. Marick testified that he told petitioner that he had general liability insurance only and petitioner needed his own insurance. T.80. Wendell Barrett stated that petitioner advised him that Marick could hire him but he needed his own workers' compensation insurance. T.141. Marick testified that he explained to Mr. Barrett that he had no workers' compensation insurance and had to pay his own taxes, but he could come and go as he pleased. T.88.

4. Petitioner testified he provided his own pouch, hammer and tape measure, but did not have his own nail gun. T.24. Marick provided the materials, saws, ladders, pry bars, nail guns and scaffolding. T.24, T.29. Marick testified that he supplied big things like compressors and that Petitioner had his own guns and tools. Rick Williams testified that Marick provided the compressor, shingles, and nail guns. T.135. However, Mr. Williams, Mr. Barrett, and Fred West all testified that they provided their own tools.

5. Petitioner testified that Marick controlled the work. Petitioner testified that he would speak with Marick at night and Marick would advise him of what needed to be done the following day. T.22. He would ask Marick if there was a question about what needed to be done. T.26. Petitioner stated that he had the option to use a box cut or a 45 degree cut when installing trim around the window, and it largely depended on how the trim was previously installed. T.49. Marick testified that he did not control how petitioner applied the siding and it was up to petitioner to decide how he wanted to install the trim around the window. T.81.

6. Mr. Barrett testified that Marick instructed him how to install the siding around the windows. T.145. He further testified that Marick would review his work and have him redo it if it was not correct. T.146. Mr. Barrett last worked for Marick in 1998 and 1999. T.147.

7. Mr. West testified that Marick advised him about what the job entailed, but did not tell him how to cut siding. T.151. Mr. West stated that Marick generally hired qualified workers. T.160.

8. Petitioner testified that Marick would drive him to the site as he did not have a drivers' license. T.26. Marick would take him home if he finished early. T.27. He was not permitted to set his own hours, but he could, at times, come and go as he pleased. T.48. Marick testified that he did not guarantee petitioner a certain number of hours and petitioner was free to come and go as he pleased. T.80-T.81. Mr. Barrett testified that Marick usually drove him to the job site and he could come and go as he pleased. T.143. Barrett stated that petitioner could come and go as he pleased. T.144. Mr. West testified that he set his own schedule.

9. Marick testified that he stopped using the petitioner when the job ended, which was the day he learned that petitioner was suing him for the injury. T.121. Petitioner testified that Marick became irate when he heard that he was being sued. Marick threw $100.00 at him. Petitioner has not worked for Marick since.

10. Petitioner testified that he rented a house from Susie Krutsinger and performed some work for her in exchange for a discount on rent. Marick stated that Ms. Krutsinger is his main client. Marick stated that the work petitioner performed for Krutsinger took away some of his business as he did not get that job. T.86.

11. On direct-examination, Petitioner denied using any drugs or alcohol on the day of the accident. T.34. However, on rebuttal, Petitioner stated that he smoked marijuana on the morning of the accident. T.162.

12. Marick testified that 15 minutes prior to the accident, he went to the gas station with petitioner and Rick Williams to get something to drink. Marick went in to purchase the drinks and when he came out petitioner and Mr. Williams had smoked a joint in his car. T.92. Petitioner denied this allegation.

13. Mr. Williams testified that he smoked a joint with petitioner prior to the accident, but Marick did not smoke the joint. T.125. Williams stated that petitioner was acting "high" when they went back to the job. T.127.

14. On June 18, 2008, petitioner was installing siding with Marick and Rick Williams. Petitioner was on the scaffolding when the board slipped off the ladder causing him to

fall five feet to the ground. T.30. Petitioner broke his ankle as a result of the injury. He helped Marick build the scaffold. Marick and Rick Williams drove petitioner to the hospital.

15. Marick testified that, while at the hospital, the nurse asked him if he wanted petitioner drug tested. Marick stated that he did not have that right as petitioner was a contractor. T.94. He noted that petitioner's marijuana pipe and marijuana fell out of his pocket when the hospital staff took off petitioner's pants. *Id.*

16. Mr. Williams testified that he saw the pipe fall out of petitioner's coat pocket. T.129.

17. Per the St. Mary's Hospital record dated June 18, 2008, petitioner denied drug use. The examination revealed that petitioner's eyes were normal. Petitioner's employer was listed as Square One. PX.8. Petitioner was transported to St. John's Hospital via ambulance.

18. Petitioner was admitted to St. John's Hospital on June 18, 2008 and diagnosed with a right distal tibial fibular fracture. PX.2.

19. Petitioner underwent open reduction internal fixation of the right lateral malleolus with closed reduction of the distal tibia on June 19, 2008. The fracture was minimally comminuted, but was 100 percent displaced. With reduction forceps, the fracture was reduced with longitudinal traction and slight internal rotation. A 6-hole plate was then inserted and 3 screws were placed proximally and 3 cortical screws were placed distal to the fracture site. The post-operative diagnosis was closed pilon fracture, right distal tibia (both bone). PX.2.

20. According to the New Outpatient Visit Intake Form dated June 25, 2008, petitioner indicated that he did not have insurance and was unemployed. PX.3.

21. Petitioner underwent a second surgery, which was an open reduction and internal fixation of the distal intra-articular tibial fracture on June 26, 2008 at St. John's Hospital. The fracture was highly comminuted and extended to the level of the joint. There were multiple fractures sites into the ankle joint proper. The fracture was temporarily fixed with Kirschner wires. A DePue locking distal tibial 4-hole plate was placed along the anterior aspect of the distal tibia. 4 distal tibia screws and 4 proximal tibial screws were placed. It was noted that Petitioner sustained a severe injury to the distal tibia and fibula. He had the previous surgery, but because of the significant swelling, the distal tibia repair was delayed until today (June 26, 2008). PX.2.

22. Petitioner underwent a third surgery for a repair of a non-union of the distal tibia and fibula fracture on October 21, 2008 at Memorial Medical Center. Harvested bone graft was packed into the nonunion site on the tibia. An additional 4.0 screw was placed across the nonunion site. A screw was also placed to catch the posterior fragment placed from

the posterior to anterior aspect of the tibia. Harvested bone graft was also packed into the fibula. PX.3.

23. Petitioner was seen by Dr. Osaretin Idusuyi of SIU Physicians & Surgeons on March 6, 2009. Petitioner walked with a non-antalgic gait. He had no swelling and the surgical scars were well healed. His range of motion was satisfactory. The radiographs showed a completely healed fracture to the distal tibia and fibula. He could resume activities as tolerated. He was to follow-up as needed. PX.3.

24. Petitioner worked with Marick for one day only after the accident. Petitioner helped clean up a project. He has since started working for another roofing company. Petitioner testified that he cannot move his foot up or down. T.38. He still has some swelling and pain in his toes. He does not run well anymore. He can walk long distances. He takes over-the-counter Tylenol.

An employment relationship is a prerequisite for an award of benefits under the Act, *Roberson v. Industrial Comm'n,* 225 Ill. 2d 159, 174, 866 N.E.2d 191, 310 Ill. Dec. 380 (2007) quoting *O'Brien v. Industrial Comm'n,* 48 Ill. 2d 304, 307, 269 N.E.2d 471 (1971). In assessing whether an individual is an employee, Illinois courts have articulated a number of factors, including the right to control the manner in which the work is done, the nature of the work performed by the alleged employee in relation to the general business of the employer, the method of compensation, the right to discharge, and the label the parties place upon their relationship. *Roberson,* 225 Ill. 2d at 175; *Ware v. Industrial Comm'n,* 318 Ill. App. 3d 1117, 1122, 743 N.E.2d 579, 252 Ill. Dec. 711 (2000); *Area Transportation Co. v. Industrial Comm'n,* 123 Ill. App. 3d 1096, 1100, 465 N.E.2d 533, 80 Ill. Dec. 421 (1984). Also relevant is whether the purported employer dictates the worker's schedule, whether income and social security taxes are withheld from the worker's paycheck, and whether the purported employer supplies the worker with materials and equipment. *Roberson,* 225 Ill. 2d at 175; *Ware,* 318 Ill. App. 3d at 1122; *Area Transportation Co.,* 123 Ill. App. 3d at 1100. While no single factor is determinative and the significance of the factors will change depending on the work involved, the right to control and the nature of the work performed by the alleged employee in relation to the general business of the employer are often regarded as the two most important factors. *Roberson,* 225 Ill. 2d at 175; *Ware,* 318 Ill. App. 3d at 1122.

Regarding the nature of the work performed, the Supreme Court has noted that "because the theory of workmen's compensation legislation is that the cost of industrial accidents should be borne by the consumer as a part of the cost of the product, this court has held that a worker whose services form a regular part of the cost of the product, and whose work does not constitute a separate business which allows a distinct channel through which the cost of an accident may flow, is presumptively within the area of intended protection of the compensation act." *Ware,* 318 Ill. App. 3d at 1124, quoting *Ragler Motor Sales v. Industrial Comm'n,* 93 Ill. 2d 66, 71, 442 N.E.2d 903, 66 Ill. Dec. 342 (1982).

The question whether an employer-employee relationship existed at the time of an accident is one of fact. *Ware,* 318 Ill. App. 3d at 1122. Where elements of both an employer-employee relationship and independent contractor status are present, the Commission is empowered to draw the inferences either way. *Area Transportation Co.,* 123 Ill. App. 3d at 1099.

The Commission has examined the testimony and exhibits and finds that an employment relationship existed between Marick and Petrick at the time of the accident. The Commission finds little evidence in support of Marick's testimony.

Marick testified that he did not control how Petrick performed his work. Marick's testimony was contradicted, however, by his own witness, Mr. Barrett. Mr. Barrett testified that Marick instructed him how to install the siding around the window and that Marick would inspect the work to make sure it was done right. If not, Marick would have Barrett redo the work. While Barrett had not worked for Marick for some time, Barrett's testimony is insightful as it corroborates petitioner's testimony that Marick controlled the work.

The evidence established that Marick instructed petitioner on what work needed to be done at the project. The petitioner was working side-by-side with Marick at the time of the accident. The evidence further demonstrated that Marick stopped using Petitioner when he learned of the lawsuit. The above facts establish that Marick controlled the manner in which the work was done and had the right to discharge the petitioner.

Marick testified that petitioner had his own nail gun and tools. However, Marick's testimony was again contradicted by his own witness, Mr. Williams. Mr. Williams testified that Marick provided the materials, compressors and nail guns. Mr. Williams' testimony corroborates petitioner's testimony that Marick provided the nail guns. Also, the evidence establishes that Marick provided the scaffolding and materials needed to complete the job. Marick and petitioner assembled the scaffold from which the petitioner fell.

Marick paid petitioner $15.00 per hour and paid him cash at the end of each week. In order to be paid however, Marick testified that he required the workers to keep track of the hours they worked. Admittedly, Marick did not withhold taxes.

The Commission finds sufficient evidence in support of an employment relationship. Marick provided the necessary tools, instructed the workers how the job was to be done, inspected the work, and had authority to control the manner in which the work was to be performed.

The respondent asks the Commission to find, in the alternative, that petitioner did not sustain an accident arising out of and in the course of his employment as petitioner was intoxicated at the time of the accident. The Commission notes that the testimony regarding whether petitioner had recently smoked marijuana is conflicting. Williams and Marick testified that petitioner smoked marijuana 15 minutes prior to the accident; petitioner denied this

allegation. However, petitioner admitted to smoking marijuana prior to arriving at the job site in the morning, several hours prior to the accident. Marick testified that a pipe and marijuana fell out of petitioner's pants pocket while Williams testified that the pipe fell out of petitioner's coat pocket.

The Commission finds no credible evidence in support of respondent's claim that petitioner was intoxicated at the time of the accident. The medical records contain no reference that petitioner had a pipe or marijuana on his person. The medical records further make no reference to petitioner being under the influence. Rather, the initial medical records indicate that petitioner's eyes were normal. Based on the lack of credible evidence of intoxication, the petitioner established an accident arising out of and in the course of employment by a preponderance of the evidence.

The Commission finds petitioner is entitled to TTD from September 18, 2008 through March 6, 2009, less one day, which represents the one day that petitioner testified he worked. This represents 24-1/7 weeks of disability.

Regarding medical expenses, petitioner is entitled to all reasonable and related medical expenses to the right ankle only through March 6, 2009. This represents $74,549.53. The Commission denies the medical bills from Decatur Memorial totaling $2,850.85 as petitioner was seen for chest pain and no evidence was offered linking this condition to his right ankle. The Commission further notes that the medical bills from Springfield Pathology and Central Illinois reference that no balance is due; therefore, those bills are denied.

The Commission finds petitioner is entitled to 35% loss of use of the right foot. Petitioner underwent three surgeries and retained the hardware. He has limited motion with certain movements of his ankle.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on December 22, 2014 is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $400.00 per week for a period of 24-1/7 weeks, September 18, 2008 through March 6, 2009 (less one day), 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 pay to Petitioner the sum of $360.00 per week for a period of 58.45 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused 35% loss of use of the foot.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $74,549.53 for medical expenses under §8(a) of the Act, and subject to the medical fee schedule.

15IWCC0927

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.

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: DEC 17 2015

Michael J. Brennan

MJB/tdm
D: 10-26-15
052

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PETRICK, TERRY L
Employee/Petitioner

Case# 08WC041332

SQUARE ONE SQUARE 1 SQUARE ONE ROOFING AND DOUG MARICK INDV AND D/B/A SQUARE ONE SQUARE 1 SQUARE ONE ROOFING DAN RUTHERFORD EX 0FFICIO-CUSTODIAN OF THE INJURED WORKERS' FUND
Employer/Respondent

15IWCC0927

On 12/22/2014, 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 0.11% 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.

2427 KANOSKI & ASSOCIATES
KATHY A OLIVERO
2730 S MacARTHUR BLVD
SPRINGFIELD, IL 62704

3063 LAKE LAW FIRM
DOUGLAS LAKE
505 E WILLIAM ST
DECATUR, IL 62523

0988 ASSISTANT ATTORNEY GENERAL
GLISSON, RICHARD C
500 S SECOND ST
SPRINGFIELD, IL 62706

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☒ 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

Terry L. Petrick
Employee/Petitioner

v.

Square One, Square 1, Square One Roofing, and Doug Marick individually and d/b/a, Square One, Square 1, Square One Roofing, Dan Rutherford ex officio-custodian of the Injured Workers' Fund
Employer/Respondent

Case # 08 WC 41332

Consolidated cases: n/a

15IWCC0927

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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on November 14, 2014. 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 June 18, 2008, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did not exist between Petitioner and Respondent.

ORDER

Based upon the Arbitrator's Conclusion of Law attached hereto, claim for compensation is denied.

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.

William R. Gallagher, Arbitrator

December 16, 2014
Date

DEC 22 2014

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on June 18, 2008. According to the Application, Petitioner sustained a fall and injured his right foot/leg (Arbitrator's Exhibit 2). Respondent disputed liability primarily on the basis that there was not an Employee-Employer relationship between the Petitioner and Respondent and that Petitioner was, in fact, an independent contractor.

Petitioner testified that he worked for the Respondent, Doug Marick, and that he did roofing, siding and a little bit of remodeling. Petitioner did not recall exactly when he started working for Marick, but that he had worked doing construction-type work for number of years before he started to work for Marick. During part of the time Petitioner worked for Marick, he also worked for others doing sand blasting and painting.

Petitioner stated that he and Marick agreed that Petitioner would be paid $15.00 per hour and that he would be paid weekly. Petitioner kept track of his hours and was always paid in cash. There was no withholding of either income taxes or Social Security. Marick did not provide Petitioner with any tax documents such as W-2 or 1099 forms.

Petitioner testified that Marick supplied the tools such as saws, ladders and nail guns as well as all of the building materials that the Petitioner and others would use at the job sites. Petitioner provided his own tool belt and smaller hand tools such as hammers, utility knife, and a tape measure.

Petitioner did not have a drivers' license for a period of time. Marick would, on a regular basis, provide Petitioner with transportation to and from the job sites.

Petitioner testified that Marick was always present at the job sites and that he would oversee the work. Petitioner did not describe any specific direction or control by Marick in regard to how he performed his work. Petitioner agreed that he had the prerogative of using his own method of placing trim on a window, whether it was the "box" method or "45 degree" method. Petitioner denied that he was an independent contractor or that he could set his own work hours and come and go from the job sites as he pleased.

Petitioner acknowledged that he entered into a contract to perform siding work for Susie Krutsinger and that he also performed some other work for Krutsinger which included some painting. Petitioner had previously rented a house from Krutsinger and he had fallen behind in his rent payments. Petitioner's work for Krutsinger was to be in lieu of a portion of the rent that he owed. Petitioner agreed that Krutsinger was also a customer of Marick.

Petitioner testified that on June 18, 2008, he was working on a roof at a job site in Mount Zion, Illinois. He was on a scaffolding that he and Marick had erected. When he walked on a board in the middle of the scaffolding, the board gave way causing him to fall approximately five feet. Marick was standing on one of the ends of the board and he also fell. On direct examination, Petitioner denied being under the influence of either drugs or alcohol at the time of the accident.

Subsequent to the accident, Marick and another worker, Rick Williams, helped Petitioner get up and took him to the ER of St. Mary's Hospital in Decatur, Illinois. Petitioner was diagnosed with fractures of his right ankle and he was transferred to St. John's Hospital in Springfield, Illinois. Petitioner's primary treating physician was Dr. Osaretin Idusuyi, an orthopedic surgeon, who performed open reduction surgery on June 19, 2008.

The Respondent, Doug Marick, testified at trial and stated that he first became acquainted with Petitioner in 1995 when they lived next door to one another for period of time. Marick testified that when Petitioner started to work for him, he did so as an independent contractor and that he informed Petitioner that he would have to purchase his own workers' compensation insurance. Respondent testified that he did not guarantee Petitioner a specific number of hours nor did he supply Petitioner with any of the tools required for the work other than a compressor. Respondent testified that Petitioner had his own nail gun. He also stated that Petitioner would use his own methods to perform the work, specifically, when trimming a window, Petitioner decided whether to use the "box" method or "45 degree" method.

Marick also testified that Petitioner was free to come and go from the job sites as he pleased and that this was an option that Petitioner exercised on a regular basis. When Marick provided transportation to Petitioner, he stated that there were a number of occasions in which Petitioner would choose not to go to work. When Petitioner would leave the worksites early, his significant other would pick him up.

Marick testified that he had several other individuals that worked for him as independent contractors. One of these individuals was Wendell Barrett, who Petitioner introduced to him.

Barrett testified at trial on behalf of the Respondent. He confirmed that Petitioner introduced him to Marick. Barrett stated that Petitioner advised him that if he was going to work for Marick he would have to supply his own tools and obtain his own workers' compensation coverage. Barrett worked with Petitioner and observed him working using his own tools, setting his own hours and coming and going from the job sites as he pleased. He also stated that Marick did not control the manner in which Petitioner performed his job duties.

Rick Williams testified on behalf of the Respondent and, prior to the accident, he and Petitioner were with Marick when Marick drove to a gas station to get a drink. While Marick was inside the gas station, Williams testified he and Petitioner shared a joint. Previously, when Marick testified, he stated that when he returned from the inside of the gas station, the vehicle was full of smoke. Petitioner sustained the accident shortly after they returned from the gas station and Williams stated that Petitioner was acting "high" shortly before the accident.

Williams also stated that he did provide assistance to the Petitioner and was with him when Marick drove to the ER. He also stated that he and Petitioner shared a joint on the way to the hospital. While at the ER, Williams observed a bag of pot falling out of Petitioner's pocket and onto the floor.

Fred West testified on behalf of the Respondent at trial. West worked for Respondent on a part-time basis as an independent contractor and provided his own tools, set his own work schedule and did not receive supervision from Respondent as to how to perform his work. West was not present on the date of the accident and he had no specific knowledge regarding it.

Petitioner testified in rebuttal and denied having smoked marijuana while Marick's vehicle was parked at the gas station; however, he did admit to having smoked marijuana earlier that same day. This was contrary to his earlier testimony that he was not under the influence of any drugs or alcohol on the date of the accident.

Conclusions of Law

In regard to disputed issue (B), the Arbitrator makes the following conclusions of law:

The Arbitrator finds that an Employee/Employer relationship did not exist between the Petitioner and Respondent because Petitioner was an independent contractor.

In support of this conclusion the Arbitrator notes the following:

In determining whether an individual is an Employee or an independent contract there is no standard rule. West Cab Co. Inc. v. Industrial Commission, 876 N.E.2d 53 (Ill. App. 2004). However, the Workers' Compensation Commission has articulated numerous factors to be considered when determining the relationship between the parties. Ware v. Industrial Commission, 743 N.E.2d 579 (Ill. App. 2001). Among the relevant factors are: (1) whether the Employer may control the manner in which the person performs the work; (2) whether the Employer dictates the person's schedule; (3) whether the Employer pays the person hourly; (4) whether the Employer withholds income and social security taxes from the person's compensation; (5) whether the Employer may discharge the person at will; (6) whether the Employer supplies the person with the needed instrumentalities; and (7) whether the Employer's general business encompasses the person's work. Roberson v. Industrial Commission, 866 N.E.2d 191 (Ill. 2007). Other relevant factors include (8) the title the parties place on their relationship; and (9) whether the parties' relationship was "long, continuous, and exclusive." Ware at 583. While all of the preceding factors are considered in making this determination, the single most important factor in deciding whether one is an Employee or an independent contractor is the right to control the manner in which the work is performed. Bryant v. Fox, 515 N.E.2d 775 (Ill. App. 1987).

As stated herein, the single most important factor in determining whether one is an independent contractor or employee is the right to control the manner in which the work is performed. While Petitioner testified that Respondent was present when the work was performed and would "oversee" it, he did not describe any control by Respondent over the manner in which the work was performed. In particular, Petitioner agreed that he could determine the manner in which he would place trim on a window.

Further, Respondent testified that he did not control the manner in which the work was completed by those individuals who performed work for him. This was corroborated by the testimony of Respondent's witnesses, Wendell Barrett and Fred West. The Arbitrator finds this factor supports the finding of independent contractor.

In regard to Petitioner's work schedule, while Petitioner testified that he was not free to set his own schedule, Marick credibly testified that Petitioner would typically come and go as he pleased from the worksites and, that on numerous occasions, he would go to Petitioner's residence provide

transportation to the work sites and Petitioner would choose not to go to work. The Arbitrator finds that this factor supports the finding of independent contractor.

While Respondent paid Petitioner $15.00 per hour, Respondent paid Petitioner in cash and did not withhold either income taxes or Social Security. The Arbitrator finds that paying Petitioner an hourly rate supports the finding of employee, but that the lack of income tax and Social Security withholding supports the finding of independent contractor.

There was no testimony or evidence as to whether Respondent could discharge the Petitioner at will. Accordingly, the Arbitrator assigns no weight to this factor.

Petitioner supplied most of the tools that were required to perform his work, in particular, Petitioner provided his own tool belt and smaller hand tools. The tools provided by Respondent were limited to the larger tools used at the job site. The Arbitrator finds this factor supports the finding of independent contractor.

Respondent's business was primarily roofing and siding as well as some remodeling. Petitioner had significant experience performing this type of work. Further, Petitioner entered into a contract to provide similar work for one of Respondent's customers, Susie Krutsinger. The Arbitrator finds this factor supports the finding of independent contractor.

In regard to the title placed on the relationship, Respondent considered Petitioner to be an independent contractor. Petitioner considered himself to be an employee. Respondent had other individuals who performed work for him in a similar arrangement and they considered themselves to be independent contractors. One such person was Wendell Barrett who Petitioner introduced to Respondent and Barrett testified that Petitioner advised him that he would have to supply his own tools and obtain his own workers' compensation coverage. The Arbitrator finds this factor supports the finding of independent contractor.

It is not clear how long the parties had been in this relationship. Accordingly, the Arbitrator assigns no weight to this factor.

The Arbitrator further finds that Petitioner's credibility was suspect. Petitioner's testimony wherein he denied smoking marijuana shortly before the accident was rebutted by the testimony of Rick Williams. Further, Petitioner's testimony on direct examination was that he was not under the influence of either drugs or alcohol on the day of the accident, but he later testified in rebuttal that he had, in fact, smoked marijuana earlier that day.

In regard to disputed issues (C), (J), (K) and (L) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issue (B).

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt	☐ 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

RICHARD VAN WAZER,

Petitioner,

15IWCC0928

vs.

NO: 13 WC 35518

ARATA EXPOSITIONS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, average weekly wage, benefit rate, and penalties and fees, 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. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

Petitioner appealed the March 10, 2015 19(b) Decision of Arbitrator Williams finding that Petitioner, a 40 year-old journeyman carpenter, sustained accidental injuries arising out of and in the course of his employment on September 19, 2013, that Petitioner provided timely notice of the accident, that Petitioner's current condition of ill-being with regard to his low back is not causally related to the accident, that Petitioner was temporarily totally disabled for a period of 1/7 weeks, through September 23, 2013 after the statutory waiting period, at the rate of $887.47 per week, that Respondent is entitled to a credit of $92,941.28 for TTD benefits paid, that Petitioner's request for prospective medical, a L4 through S1 hemilaminectomy and

discectomy at L4-5, is denied, and that Petitioner's request for penalties and attorney fees is denied.

The Arbitrator found that as a result of Petitioner's September 19, 2013 work injury he sustained strains to his left Achilles, left hip/thigh, and left lower leg, as those were his initial complaints and the physical examination was negative for lumbar symptoms of findings. The Arbitrator further found that Petitioner's condition of ill-being with respect to his lumbar spine was not causally related to his work injury based upon Petitioner's prior history of back problems since childhood, his recent chiropractic treatment to his low back prior to his work injury, and that Petitioner's examination and physical complaints from the date of accident until September 26, 2014, were solely indicative of an injuries to Petitioner's left Achilles, left hip/thigh, and left lower leg.

Based upon a review of the record as a whole, the Commission finds that Petitioner's lumbar strain is causally connected to his work injury, but that there is no casual connection between his work injury and his preexisting lumbar spondylosis or herniated disc, or the lumbar surgery proposed by Dr. Salehi.

As the Arbitrator noted, Petitioner's initial treating records on the date of accident, and on the following day, were negative for any findings, symptoms or diagnoses related to his low back. On the date of accident, September 19, 2013, Petitioner sought treatment with Dr. Paloyan at Concentra, and his complaints were of about his left leg, when he was pushing a heavy roll of carpeting, slipped, stepped forward awkwardly on his left foot, and felt a sharp pain in the left Achilles area which extended to the left thigh area, posterior. At that time, Petitioner reported that he had "a history of back problems, and has had chiropractic treatment in the recent past." On examination, Dr. Paloyan found a negative bilateral leg raise to 80 degrees, normal big toe strength to resisted dorsiflexion and plantar flexion, walk on heels and toes, no bruising, ecchymosis or tenderness, normal gait, symmetric reflexes for patellar and Achilles, normal full range of motion with flexion, extension, lateral flexion, and axial rotation, normal sensation to light touch in both lower extremities, stable and no discomfort when both legs extended while sitting, able to extend both legs to horizontal position while seated, and a negative Patrick's test on the left and right side. Dr. Palyon noted positive findings with regard to Petitioner's left leg - moderate tenderness to palpation distal lower leg, posterior aspect, in Achilles insertion, and his L ankle- Achilles tendon intact but tender; Dr. Paloyn diagnosed a left Achilles strain, a left lower leg strain, and a sprain/strain of the hip/thigh. He recommended Petitioner return to work regular duty and follow up if symptoms worsened. Petitioner then followed up at Concentra on September 20, 2013, and was seen by Dr. Lambos, at which time Petitioner complained of some pain in the left buttock that at times traveled into the back of the left thigh. Dr. Lambos' diagnosed a sprain/strain of the hip/thigh, recommended light duty and a course of physical therapy. On September 26, 2013, Petitioner followed up at Concentra and was seen by Dr. Lee, at which time he diagnosed a lumbar strain. Petitioner continued to follow up at Concentra then on October 3, 2013, October 11, 2013, October 18, 2013 and October 25, 2013, during which time he continued to complain of low back pain and his diagnosis remained a lumbar strain and

radiculopathy. On November 25, 2013, Petitioner was referred to an orthopedic surgeon, Dr. Mercier, for follow up. (PX1).

At the time of Petitioner's December 2, 2013 office visit with Dr. Mercier, Petitioner reported a prior low back problem since childhood, one that he had been receiving chiropractic treatment for on an irregular basis. Dr. Mercier's office note further reflects that Petitioner provided a history of receiving chiropractic treatment just prior to his work-related accident with Respondent. (PX1).

Petitioner argues that he sustained a lumbar spine injury on the date of accident, that Dr. Salehi opined Petitioner's lumbar condition is causally related, and that Respondent's Section 12 examiner, Dr. Hsu, also diagnosed a lumbar strain and spondylosis at L4-5 and L5-S1 and opined his current condition was causally related to the accident;

Although Dr. Salehi offered an opinion that Petitioner "has mechanical low back and left radicular complaints as a result of described work injury," and he wishes to proceed with a left L4 through S1 hemilaminectomy and discectomy at L4-5 (PX1), he also admitted that Petitioner denied any prior history of low back or leg pain, that he had no knowledge of Petitioner's prior chiropractic treatment, that he had no knowledge of Petitioner treating with a chiropractor just prior to his date of accident as relayed to Dr. Mercier, that he had no knowledge of Petitioner's low back problems since childhood as relayed to Dr. Mercier, and that he had no knowledge of Petitioner's prior history of low back pain. (PX5, T15-22).

Dr. Hsu examined Petitioner on April 2, 2014, and opined that Petitioner's diagnoses were a lumbar strain, and lumbar spondylosis at L4-5 and L5-S1. On that date, Dr. Hsu opined that Petitioner's current condition was casually related to the alleged work injury, and that Petitioner had continuing left lower extremity radiating pain, as well as low back pain. Dr. Hsu noted that Petitioner had preexisting lumbar spondylosis, but that was not the cause of his pain. Dr. Hsu recommended four weeks of work hardening, and opined Petitioner should be able to return to work full duty after he completed a course of work hardening. On July 10, 2014, following Dr. Hsu's review of supplemental records including those of Dr. Salehi and Petitioner's December 31, 2013 MRI study, he reiterated his prior opinion as to Petitioner's diagnoses - lumbar strain, and lumbar spondylosis at L4-5 and L5-S1- and he further opined that Petitioner was not a surgical candidate, that his MRI findings of stenosis were not such that could be improved with surgery, and that the surgery proposed by Dr. Salehi was not causally related to his work injury, as the mechanism of injury was consistent with lumbar strain, and not with structural injury to the lumbar spine. (RX3).

Based upon the causal connection opinion rendered by Dr. Hsu, and a review of the treating records, the Commission finds that Petitioner's lumbar strain condition of ill-being is causally connected to his work-related injury, and that Petitioner failed to prove his preexisting lumbar spondylosis is causally related or was aggravated/accelerated as a result of his work-related injury.

15IWCC0928

With regard to the issue of prospective medical treatment, the Commission affirms the Arbitrator's denial of an award for the low back surgery contemplated by Dr. Salehi, based upon the Commission's finding that Petitioner sustained a low back strain that did not aggravate or accelerate his underlying lumbar spondylosis condition of ill-being, the more persuasive opinion of Dr. Hsu. However, based upon the Respondent's stipulation and Dr. Hsu's recommendation course of treatment, the Commission finds Petitioner is entitled to prospective medical care in the form of four weeks of work conditioning, as recommended by Dr. Hsu on April 2, 2014, to address Petitioner's lumbar strain. (RX3).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on March 10, 2015, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $887.47 per week for a period of 1/7 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 authorize and pay for four weeks of work hardening for Petitioner's lumbar strain, as recommended by Dr. Hsu, under §8(a) and pursuant to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's request for an award of penalties and fees under Sections 19(k), 19(l) and 16 is denied.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $200.00. 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: DEC 17 2015
KWL/kmt
O-11/23/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

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

15IWCC0928

VAN WAZER, RICHARD
Employee/Petitioner

Case# 13WC035518

ARATA EXPOSITIONS INC
Employer/Respondent

On 3/10/2015, 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:

5077 WARMOUTH LAW PC
BILL WARMOUTH
17 N WABASH AVE SUITE 650
CHICAGO, IL 60602

2837 LAW OFFICES JOSEPH MARCINIAK
MATTHEW A WRIGLEY
2 N LASALLE ST SUITE 2510
CHICAGO, IL 60602

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

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

19(b) ARBITRATION DECISION

15IWCC0928

Case #13 WC 35518

RICHARD VAN WAZER
Employee/Petitioner

v.

ARATA EXPOSITIONS, INC.
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 February 17, 2015. 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. ☒ Should penalties or fees be imposed upon the respondent?

M. ☐ Is the respondent due any credit?

N. ☒ Prospective medical care?

FINDINGS

- On September 19, 2013, the respondent was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship existed between the petitioner and respondent.
- On this date, the petitioner sustained injuries that arose out of and in the course of employment.
- Timely notice of this accident was given to the respondent.
- In the year preceding the injury, the petitioner earned $541.20; the average weekly wage was $1,894.20.
- At the time of injury, the petitioner was 40 years of age, single with no children under 18.
- The parties agreed that the respondent paid $92,941.28 in temporary total disability benefits.
- The parties agreed that the respondent paid for all the related medical services provided to the petitioner.

ORDER:

- The respondent shall pay the petitioner temporary total disability benefits of $887.47/week for 1/7 weeks, which is the period of temporary total disability for which compensation is payable. The respondent has a set-off of $92,941.28 for the temporary total disability benefits paid to the petitioner.
- The petitioner's request for penalties and fees is denied.
- In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of temporary total disability, medical benefits, or compensation for a 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.

Robert E. Williams

Signature of Arbitrator

March 9, 2015

Date

MAR 10 2015

FINDINGS OF FACTS:

On September 19, 2013, the petitioner, a journeyman carpenter, felt pain in his foot to his butt. He received urgent care at Occupational Health Centers with Dr. Paloyan for leg complaints. The petitioner reported slipping, stepping awkwardly and catching himself with his left foot and feeling a sharp shooting pain from his waist/left posterior thigh area to his foot/left Achilles area. The clinical examination was negative for his cervical, lumbar, left thigh and left knee. No tenderness was indicated in his lumbar area. Moderate tenderness to palpation was noted in the petitioner's distal lower posterior left leg at the Achilles insertion. The assessment was left Achilles, hip/thigh and lower leg strain. X-rays of his left hip and back on September 20th were essentially negative. The petitioner was given twenty pounds lifting and other restrictions on the 20th. He started therapy on September 23rd.

The petitioner was treated for a back strain by Dr. Lee on September 26th. The doctor noted midline tenderness at L4, L5, S1 and S2, assessed a lumbar strain and scheduled physical therapy. The petitioner reported no improvement on October 3rd and 11th and the assessment was lumbar radiculopathy, lumbar strain and hip/thigh strain. The petitioner's chief complaint to Dr. Kathuria on October 18th was unimproved back pain. Dr. Lee noted a 50% improvement on November 25th. Dr. Charles Mercier at US MedGroup of Illinois saw the petitioner for left radicular low back pain on December 2nd and noted prior back problems since childhood and chiropractic treatment just prior to September 19, 2013. The examination indicated pain over the left sciatic notch and pain with extension. Dr. Mercier opined on January 6, 2014, that a lumbar MRI revealed a central disc protrusion at L5-S1 with minimal annular edema, degenerative findings and

mild to moderate central stenosis. The petitioner reported on February 3rd that a lumbar epidural provided minimal improvement. On February 7th, Dr. Salehi at US MedGroup of Illinois noted tenderness at the petitioner's right posterior iliac crest and no sciatic notch tenderness. His diagnosis was lumbar degenerative disc disease at L2-3 through L5-S1, mainly L5-S1, disc herniation at L4-5 and lumbosacral spondylosis at L5-S1, for which the petitioner agreed to a L4 through S1 hemilaminectomy and discectomy at L4-5. The petitioner reported low back pain with left leg radiation and Dr. Salehi reiterated his surgical recommendation on May 30th and October 3rd.

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 failed to prove that his current condition of ill-being with his lumbar spine is causally related to the work injury on September 19, 2013. The petitioner's initial complaints and symptoms were regarding his left Achilles, hip/thigh and lower leg only. And, the clinical examination specifically indicated that there were no lumbar symptoms or findings. Moreover at his initial medical care on September 19, 2013, the petitioner reported a history of back problems since his childhood and recent chiropractic care for his back. As Dr. Salehi suggested, the petitioner's chiropractic records may have been enlightening on the exact nature of the complaints, diagnosis, tests and treatment for his lumbar spine. Considering the contemporaneous chiropractic care for the petitioner's lumbar spine, the absence of any initial complaints, symptoms or clinical findings regarding his lumbar spine and the absence of reliable evidence detailing the nature and extent of his pre-existing lumbar spine condition, the evidence is insufficient to establish that his condition of ill-being with his lumbar spine is casually related to his left Achilles, hip/thigh and

lower leg strain on September 19, 2013. Dr. Salehi's opinion is not consistent with the evidence and is not given any weight. All claims for benefits for the petitioner's condition of ill-being with his lumbar spine are denied.

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

The petitioner treated for left Achilles, hip/thigh and lower leg strains through September 23, 2013. He started care for an unrelated back strain on September 26, 2013. The respondent shall pay the petitioner temporary total disability benefits of $887.47/week for 1/7 weeks as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner.

FINDING REGARDING PROSPECTIVE MEDICAL:

The petitioner failed to prove that the L4 through S1 hemilaminectomy and discectomy at L4-5 recommended by Dr. Salehi is reasonable medical care necessary to relieve the effects of the work injury. The petitioner's request for the reasonable and necessary cost from the respondent for a L4 through S1 hemilaminectomy and discectomy at L4-5 is denied.

FINDING REGARDING PENALTIES AND FEES:

The petitioner failed to prove that he is entitled to penalties and fees and his request is denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☐ 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

CARY PRATHER,

Petitioner,

15IWCC0929

vs.

NO: 14 WC 10863

OLIN WINCHESTER,

Respondent.

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, medical expenses, TTD and PPD 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.

The basis for Arbitrator Nowak's Decision of the Arbitrator is the claim by Petitioner that he sustained injuries to his elbows and wrists as result of his working for Respondent, first, as a Chief Stores Checker and Chief Stock Clerk, and, currently, as a Bullet Adjuster II-T-500. Arbitrator Nowak presided over the proceedings, including the November 20, 2014, arbitration hearing, and subsequently authored the Decision of the Arbitrator in which he found Petitioner carried his burden of proving that he sustained repetitive trauma injuries to his elbows and wrists and was entitled to benefits under Sections 8(a), 8(b), 8.2 and 8(e) of the Act. Respondent appealed the Decision of the Arbitrator in a timely manner, giving jurisdiction to the Commission to review Arbitrator Nowak's decision. As noted above, the Commission modifies said decision only to the extent it reduces the benefits tendered under Section 8(e) of the Act.

Arbitrator Nowak found Petitioner sustained a 12.5% loss of use of his right hand, a 10% loss of use of his left hand and a 15% loss of use of both arms and noted Petitioner underwent surgeries to both wrists and both elbows but, nevertheless, continues to experience residual effects of the complained repetitive injuries. The Commission, in reviewing the medical records and Petitioner's testimony, concludes Petitioner is not as permanently disabled as was found by Arbitrator Nowak.

Petitioner underwent left carpal tunnel release and left cubital tunnel release, along with an unrelated left shoulder surgery, on April 8, 2014, and right carpal tunnel release and cubital tunnel release on May 20, 2014. Following the April 8, 2014, surgeries, Petitioner presented to SSM Physical Therapy on April 14, 2014, for an initial evaluation. The therapy record noted Petitioner had shoulder surgery and carpal tunnel release but did not reference the cubital tunnel release that was performed. The same record, however, implies only Petitioner's shoulder was to be addressed through therapy. Petitioner opted to under physical therapy with a friend who is a physical therapist. Dr. Randall Rogalsky, Petitioner's treating physician, did not object to this course of treatment. Dr. Rogalsky, following the May 20, 2014, surgeries to Petitioner's right elbow and wrist, indicated physical therapy was not necessary for either.

The postoperative records consist of the SSM Physical Therapy evaluation note referenced above and Dr. Rogalsky's progress notes from April 18, 2014, and May 2, 2014, concerning Petitioner's left shoulder, elbow and wrist and from May 30, 2014, June 13, 2014, and June 23, 2014, concerning Petitioner's right elbow and wrist. None of Dr. Rogalsky's notes indicate Petitioner was experiencing any residual issues with either elbow or either wrist. Dr. Rogalsky returned Petitioner to work effective June 30, 2014. There is no record of Petitioner subsequently seeing or contacting Dr. Rogalsky. The Commission also notes there being no record of Petitioner's postoperative physical therapy with his friend following the April 8, 2014, surgeries. A presumption is made that the physical therapy was unremarkable.

On June 30, 2014, or sometime thereafter, Petitioner returned to work his normal job duties with Respondent. Almost four-and-a-months after returning to work, at his November 20, 2014, arbitration hearing, Petitioner described the then-current condition of his elbows and wrists. He acknowledged the surgeries improved his elbows and wrists but left him with continuing complaints. His left elbow hurts when he turns it certain ways or it is hit and is not as strong as it used to be. His left wrist still has a little pain in it. The condition of his right elbow was described as being essentially the same as his left elbow. He described his right wrist as being worse than his left wrist and sometimes experiences pain in it when he turns it a certain way. More globally, Petitioner testified that he is more careful when he works and now uses two hands whereas previously he only used one hand.

Petitioner returned to his regular work activities and has not sought out additional medical attention for either his wrists or elbows. His testimony indicates circumstantial discomfort and subjective weakness in both elbows as well as circumstantial pain in his right wrist. It appears only his left wrist is continually painful but with pain described as a "little" pain. On the basis of Petitioner's testimony, the Commission cannot sustain the benefits awarded by Arbitrator Nowak. Accordingly, the Commission finds Petitioner lost 10% use of both his left and right hand and 5% use of both his left and right arm.

The Commission finds no reason to disturb Arbitrator Nowak's findings with respect to accident, medical expenses and TTD and, therefore, affirms and adopts those findings.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $707.15 per week for a period of 11-6/7 weeks, that being the period of

15IWCC0929

temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $636.44 per week for a period of 20.5 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 10% loss of use of the left hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $636.44 per week for a period of 12.65 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 5% loss of use of the left arm

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $636.44 per week for a period of 20.5 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 10% loss of use of the right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $636.44 per week for a period of 12.65 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 5% loss of use of the left hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $20,639.37 for medical expenses under §8(a) of the Act. $20,464.37 is to be paid for the reasonable and necessary services provided to Petitioner. $175.00 is to be paid for out-of-pocket expenses incurred by Petitioner.

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 credits of $3,044.47 for temporary total disability benefits pain and of $10,202.01 for medical benefits paid by group health insurance carrier. Respondent shall hold Petitioner harmless for any claims by any providers for services for which Respondent is receiving credit as provided in Section 8(j) of the Act.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $58,100.00. 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: DEC 17 2015
KWL/mav
O: 10/26/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0929

PRATHER, CARY
Employee/Petitioner

Case# **14WC010863**

OLIN WINCHESTER
Employer/Respondent

On 2/25/2015, 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 0.06% 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:

4620 ADWB LLC
JOHN WINTERSCHEIDT
219 PIASA ST
ALTON, IL 62002

0299 KEEFE & DePAULI PC
JAMES K KEEFE JR
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
COUNTY OF **MADISON**)

☐ 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

15IWCC0929

Cary Prather
Employee/Petitioner

v.

Olin Winchester
Employer/Respondent

Case # **14** WC **010863**

Consolidated cases: **n/a**

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 **Michael Nowak**, Arbitrator of the Commission, in the city of **Collinsville**, on **November 20, 2014**. 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 _____

15IWCC0929

FINDINGS

On **03/05/14**, 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 $**55,157.96**; the average weekly wage was $**1,060.73**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **1** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**3,044.47** for other benefits, for a total credit of $**3,044.47**.

Respondent is entitled to a credit of $**10,202.01** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of $20,464.37, as provided in Sections 8(a) and 8.2 of the Act, and shall pay $175.00 to Petitioner for expenses he paid out of pocket. Respondent shall be given a credit of $10,202.01 for medical benefits that have been paid by the group health insurance carrier, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $707.15/week for 11 6/7 weeks, commencing 04/08/14 through 06/29/14, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $3,044.47 for temporary total disability benefits that have been paid.

Pursuant to factors set forth in §8.1b(b) of the Act, which the Arbitrator specifically addresses herein below, Respondent shall pay Petitioner permanent partial disability benefits of $636.44/week for 118.65 weeks, because the injuries sustained caused the 12.5% loss of the right hand, 10% loss of the left hand, 15% loss of the right arm, and 15% loss of the left arm, as provided in Section 8(e) of the Act.

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

2/12/15
Date

FEB 25 2015

FINDINGS OF FACT

Petitioner is forty-three-years-old, right hand dominant, and has worked for Respondent since May 4, 1999. From that date until 2008, he held a position titled Bullet Adjuster II-T-500. Thereafter he became a Chief Stores Checker and Chief Stock Clerk.

The Bullet Adjuster II-T-500 job required Petitioner to operate three machines. This in turn required him to lift and carry up to ninety pounds, push up to twenty-six pounds and pull up to ninety pounds, all on a daily basis. He was required to scoop eight pounds of material seventy-two to ninety-six times with one hand, use one hand to lift a thirty to thirty-five pound bucket twenty-four times per shift, use both hands to lift seventy-six to ninety-four pound pans of material six inches to twenty-six inches from the floor six to fourteen times per shift, push and pull portable stairs, push and pull hand trucks loaded with twenty-five to one hundred pound barrels of black powder one to two times per shift and to forcefully grip gauging material twenty to eighty times per shift. Petitioner also used hammers, pliers, screwdrivers, Allen wrenches and other wrenches, as well as operated air driven hammers and drills throughout his workday. Petitioner's testimony of his Bullet Adjuster II-T-500 job duties is consistent with Respondent's Physical Demands Analysis. (PX 1, pp. 1-3) Petitioner testified that these job duties required repetitive, forceful twisting, bending and extending of his wrists and elbows.

In 2008, Petitioner began the job of Chief Stores Checker and Chief Stock Clerk, the positions he continues to hold for Respondent today. These jobs require Petitioner to unload fifty to seventy-five pound powder kegs six hundred to eight hundred times, and to move the kegs with a two-wheel dolly on a concrete floor. He is required to unload boxes of material from trucks and stack the boxes on pallets, scan the labels up to one hundred thirty-eight times per shift, use an industrial stapler up to two hundred seventy-six times per shift, hand write delivery documents and stack twenty-five to one hundred pound boxes by hand, all on a daily basis. Petitioner's description of his present job duties since 2008 is again consistent with Respondent's Physical Demands Analysis' for its jobs titled Chief Stores Checker and Chief Stock Clerk. (PX 2, pp. 4-6; PX 3, pp. 1-7) Petitioner testified that these job duties likewise require repetitive, forceful twisting, bending and extending of his wrists and elbows.

On February 17, 2014, Petitioner sustained a left shoulder injury which is unrelated to this claim. As a result of the shoulder injury, Petitioner was required by Respondent to undergo a Safety Interview at Respondent's Medical Department on February 20, 2014. During the course of that Safety Interview, Petitioner informed Respondent's medical personnel that he was experiencing numbness and tingling in his hands, he was dropping objects and that the pain in his hands was keeping him awake at night. Respondent's Medical Department's record of February 20, 2014 reflects Petitioner's complaints of left hand numbness with radiation to the elbow and a notation that the numbness had been present before in both hands, but had become worse. (PX 4, p. 3)

Petitioner saw Dr. Bernard Randolph on February 26, 2014 pursuant to §12 of the Act. (PX 5, p. 1) In addition to addressing Petitioner's shoulder injury, Dr. Randolph recorded Petitioner's complaints of numbness and tingling in his hands which predated his shoulder injury. The symptoms involved the palm into all five digits with nighttime discomfort. (PX 5, p. 1) With respect to Petitioner's hands and elbows, Dr. Randolph stated, "[Petitioner] may have a degree of carpal tunnel syndrome and possibly ulnar nerve dysfunction." (PX 5, p. 3)

Petitioner sought treatment for his hands, elbows, and shoulder with board certified, orthopedic surgeon, Dr. Randall Rogalsky on March 3, 2014. (PX 6, p. 1; PX 9, p. 6) Dr. Rogalsky recorded Petitioner's complaints of numbness and tingling in his index and middle fingers, with the left hand greater than the right, as well as complaints of awakening during the night. (PX 6, p. 1) Petitioner testified that he informed Dr. Rogalsky of his bilateral elbow complaints and that Dr. Rogalsky examined his elbows on that day. Dr. Rogalsky, however testified that Petitioner subsequently informed him of the elbow pain and that he did not examine the elbows on the initial visit. (PX 9, p. 31) Dr. Rogalsky diagnosed bilateral carpal tunnel syndrome, right greater than left, and advised Petitioner to wear wrist splints, avoid activities that aggravate his conditions, and to take anti-inflammatory medication. (PX 6, p. 2; PX 9, p. 30) A nerve conduction study was ordered at that time. *Id.*

A nerve conduction study of Petitioner's left upper extremity was performed on March 5, 2014 at Alton Memorial Hospital. The test indicated left median nerve sensory entrapment of the flexor retinaculum. (PX 7, p. 21)

Dr. Rogalsky saw Petitioner again on March 21, 2014. Dr. Rogalsky's conservative treatment did not alleviate Petitioner's complaints. According to Petitioner his elbows were again examined. Dr. Rogalsky's record of that date is silent in that regard. (PX 6, pp. 9-10) At that visit Dr. Rogalsky did, however recommend surgery for Petitioner's bilateral carpal tunnel, bilateral cubital tunnel, and his shoulder injury. (PX 9, p. 17)

On March 31, 2014 Petitioner underwent pre-operative testing at Alton Memorial Hospital. Thereafter, Dr. Rogalsky performed an open left carpal tunnel release and an open left cubital tunnel release at the elbow, in addition to the left shoulder surgery which was unrelated to this claim, on April 8, 2014. (PX 7, pp. 25-28, 72, 73; PX 9, p. 18) Petitioner was excused from work following the surgeries. (PX 9, p. 19)

Dr. Rogalsky released Petitioner from care with respect to his shoulder on May 4, 2014. (PX 9, pp. 20, 21) On May 20, 2014, Dr. Rogalsky preformed an open carpal tunnel release on Petitioner's dominant, right hand and an open cubital tunnel release of Petitioner's right elbow. (PX 7, pp. 137, 138; PX 9, p. 22) Petitioner was to remain off work following these surgeries. (PX 9, p. 19) Postoperatively, Dr. Rogalsky referred Petitioner to SSM Physical Therapy. (PX 9, p. 19) Petitioner has a friend that is a physical therapist who provided the treatment with Dr. Rogalsky's approval. (PX 9, p. 19)

Petitioner last saw Dr. Dr. Rogalsky on June 23, 2014 and was released to return to work without restrictions as of June 30, 2014. (PX 6, p. 42; PX 9, p. 24) After Dr. Rogalsky's release, Petitioner returned to work for Respondent where he continues to perform his regular jobs as Chief Stores Checker and Chief Stock Clerk as of the date of hearing.

Petitioner testified that Dr. Rogalsky's treatment "absolutely" helped his bilateral hand and elbow conditions, and Dr. Rogalsky recorded that Petitioner had recovered "very well." (PX 6, p. 43) Dr. Rogalsky testified that his physical examination of June 23, 2014 was essentially normal. (PX 9, p. 39)

As a result of his bilateral hand and elbow conditions, Petitioner incurred medical expenses totaling $20,464.37. Of that amount, Respondent's group medical insurance carrier paid $10,202.01, for which it seeks a credit pursuant to Section 8 (j) of the Act. Petitioner personally paid $175.00 directly to the providers. (PX 10, pp. 1-14)

On August 5, 2014, Respondent had Petitioner evaluated again pursuant to §12 of the Act. This examination was performed by board certified plastic surgeon, Dr. Evan Crandall. He reviewed Respondent's Physical Demands Analysis' in conjunction with his examination. (RX 1, pp. 4, 7, 11) Dr. Crandall testified that Petitioner's job duties could cause an aggravation of carpal tunnel and cubital tunnel syndrome. (RX 1, pp. 11, 13) While Dr. Crandall testified that Dr. Rogalsky's left carpal tunnel surgery was reasonable and necessary, he opined that the left cubital tunnel surgery was not reasonable or necessary because the ulnar nerve was normal according to the nerve conduction study. (RX 1, p. 9) He also testified that Dr. Rogalsky's right carpal tunnel surgery and right cubital tunnel surgery were not reasonable and necessary because no nerve conduction studies were performed on Petitioner's right upper extremity. (RX 1, pp. 9-10) According to Dr. Crandall, there is never a situation where carpal tunnel or cubital tunnel surgery is indicated without nerve conduction studies. (RX 1, p. 10)

Dr. Rogalsky testified on behalf of Petitioner. Following his review of Respondent's Physical Demands Analysis' of Petitioner's jobs, Dr. Rogalsky testified that Petitioner's performance of the duties associated with any of those jobs was significantly contributory to the onset of Petitioner's bilateral carpal and cubital tunnel syndromes. (PX 9, pp. 26, 28) Dr. Rogalsky disagreed with Dr. Crandall regarding the reasonableness and necessity of the left cubital tunnel surgery, the right carpal tunnel surgery and the right cubital tunnel surgery. Dr. Rogalsky testified that nerve conduction studies produce false negatives in 10%-15% of patients with carpal tunnel syndrome and 15%-20% of patients with cubital tunnel syndrome. (PX 9, p. 14) In Dr. Rogalsky's opinion, surgery to correct carpal tunnel syndrome and cubital tunnel syndrome is appropriate without nerve conduction testing when the patient has classic complaints and physical findings of carpal and cubital tunnel syndrome, and shows no improvement with non-operative measures. (PX 9, p. 15)

While Petitioner has returned to his regular job for Respondent, he must now be more careful when handling and lifting heavy objects due to his operated upper extremities. He now uses two hands to perform tasks which previously required use of only one. On occasion, he will experience sharp pains in his elbows and hands when moving heavy objects. Petitioner has lost grip strength in his hands and has a decreased range of motion in his wrists. Lifting and carrying heavy objects causes pain in his hands. Petitioner testified that while Dr. Rogalsky's treatment has made his hands better, they are not "what they used to be." With respect to his elbows, Petitioner feels pain in the joints if he turns his arms "the wrong way." He experiences pain with extreme ranges of motion and stated that his elbows have lost strength. He further testified that both elbows are tender if bumped.

CONCLUSIONS OF LAW

Issue C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
Issue F. Is Petitioner's current state of ill-being causally related to the injury?

Petitioner testified regarding his job duties for Respondent. His testimony was consistent with Respondent's Physical Demands Analysis' for the jobs of Bullet Adjuster II-T-500, Chief Stores Checker, and Chief Stock Clerk which were entered into evidence. Petitioner testified that these duties required repetitive, forceful twisting, bending and extending of his wrists and elbows. The Arbitrator found Petitioner to be a forthright and credible witness.

Both Dr. Rogalsky and §12 examiner, Dr. Crandall, reviewed Respondent's Physical Demands Analysis' of Petitioner's jobs. Dr. Rogalsky testified that those job duties "significantly contributed" to the development of Petitioner's bilateral carpal and cubital tunnel syndromes. Dr. Crandall testified that his job duties could aggravate carpal and cubital tunnel syndrome.

The real dispute in this case is whether Petitioner actually had bilateral cubital tunnel syndrome and right carpal tunnel syndrome. This dispute is based upon the lack of ulnar nerve abnormalities found in the nerve conduction study of Petitioner's left upper extremity and the absence of a nerve conduction study on Petitioner's right upper extremity. Dr. Crandall testified that diagnoses' of left cubital tunnel syndrome, right carpal tunnel syndrome and right cubital tunnel syndrome have never been conclusively established due to the fact that there had been on positive findings from electro-diagnostic studies. Conversely, Dr. Rogalsky testified that carpal tunnel syndrome and cubital tunnel syndrome could be diagnosed without nerve conduction studies, and/or despite negative results on nerve conduction studies. Dr. Rogalsky stated that 10%-15% of patients who have classic symptoms and fail conservative measures have beneficial surgical results despite normal nerve conduction studies. The Arbitrator notes this appears to have been the case with Petitioner. Dr. Rogalsky testified that his clinical examination of Petitioner revealed carpal and cubital tunnel syndrome and Petitioner failed conservative measures of splinting, avoiding aggravating activities and taking anti-inflammatory medication. He indicated that surgical intervention in such a situation was standard practice. Despite the difference in the opinions of Drs. Rogalsky and Crandall regarding the need for surgical intervention, there is no dispute that Petitioner benefited from Dr. Rogalsky's surgeries. This is reflected in medical records and testimony, including Petitioner's own testimony.

The Arbitrator finds the opinions of Dr. Rogalsky more persuasive. Based upon the foregoing and the record taken as a whole, the Arbitrator finds that Petitioner has proven that he sustained accidental injuries which arose out of and in the course of his employment with Respondent and that Petitioner's bilateral carpal and cubital tunnel syndromes are causally connected to Petitioner's job duties for Respondent.

Issue 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?

For the reasons set forth above, the Arbitrator finds that Dr. Rogalsky's bilateral carpal and cubital tunnel surgeries were reasonable and necessary to cure and relieve the effects of Petitioner's job-related carpal and cubital tunnel syndromes. Therefore, Respondent shall pay Petitioner $175.00 for out-of-pocket medical expenses he has incurred for treatment of his work

related conditions. Respondent is further ordered to pay medical expenses of $20,464.37 as listed in Petitioner's Exhibit 10, pursuant to the Act's Medical Fee Schedule. Respondent is granted a Section 8(j) credit for the $10,202.01 paid by its group health medical insurer, and is hereby ordered to hold Petitioner harmless for the amounts paid to the various medical providers listed in Petitioner's Exhibit 10.

Issue K. What temporary benefits are in dispute?

Dr. Rogalsky excused Petitioner from work from April 8, 2014 through June 29, 2014, a period of 11 6/7 weeks, as a result of Petitioner's bilateral carpal and cubital tunnel syndromes. The parties agreed Petitioner was disabled during this period. Respondent disputed it's liability to pay benefits because it disputed the causal relationship between Petitioner's disability and his employment. No evidence was offered to contradict this period of temporary incapacity. Having previously found Petitioner met his burden of establishing a work related accident and causation, Respondent shall pay Petitioner the sum of $707.15 for 11 6/7 weeks. Respondent shall be entitled to a credit in the amount of $3,044.47 for non-occupational indemnity benefits paid.

Issue L. What is the nature and extent of the injury?

In assessing the nature and extent of Petitioner's injures, the Arbitrator relies upon the factors enumerated by Section 8.1 (b) of the Act, without considering any single factor as the sole determinant.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a Chief Stores Checker and Chief Stock Clerk at the time of the accident and that he has been able to return to work in his prior capacity. The Arbitrator notes Petitioner's occupation requires repetitive, forceful twisting, bending and extending of his wrists and elbows. Petitioner testified credibly throughout the Hearing regarding the residual problems associated with his work related activities. As reflected by Petitioner's testimony and Respondent's Physical Demands Analysis', he has a very repetitive, labor-intensive job that requires strenuous use of his upper extremities on a daily basis. Because of the nature of these duties, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 43 years old at the time of the accident. Because of his fairly young age and the length of his remaining work life, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes There is no evidence in the record which tends to indicate a reduction in future earning capacity. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner has a surgically repaired, dominant right hand, a surgically repaired dominant right elbow, a surgically repaired left hand, and a surgically repaired

left elbow. Petitioner testified credibly regarding the significant residual complaints associated with each of his upper extremities. While Petitioner has returned to his regular job for Respondent, he must now be more careful when handling and lifting heavy objects. He now must use two hands when he was previously able to perform his tasks with just one. He experiences occasional sharp pains in his elbows and hands when moving heavy objects. He has lost grip strength in his hands and has a decreased range of motion in his wrists. Lifting and carrying heavy objects causes pain in his hands. Petitioner testified that while better than before surgery, his hands are not "what they used to be." With respect to his elbows, Petitioner feels pain in the joints if he turns his arms "the wrong way." He experiences pain with extreme ranges of motion and stated that his elbows have lost strength. Further, both elbows are tender if he strikes them on something. Because of these ongoing difficulties, the Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 12.5% loss of use of the right hand, 10% loss of use of the left hand, 15% loss of use of the right arm, and 15% loss of use of the left arm pursuant to §8(e) of the Act. Respondent shall therefore pay Petitioner the sum of $636.44 per week, for a period of 118.65 weeks.

Issue N. Is Respondent due any credit?

As indicated above, Respondent shall receive credit in the amount of $3,044.47 for non-occupational indemnity benefits paid to Petitioner while he was excused from work. Respondent is shall also receive credit in the amount of $10,202.01 for medical bills paid through its group medical plan pursuant to Section 8(j) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☒ Affirm and adopt	☐ 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

Pamela Hanna,
Petitioner,
vs.

15IWCC0930
NO: 15 WC 1077

Menard Correctional Center,
Respondent.

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 accident, medical expenses, temporary total disability, permanent partial disabilityand being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 5, 2015 is hereby affirmed and adopted.

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.

DATED: DEC 17 2015
KWL/vf
O-12/14/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0930

HANNA, PAMELA
Employee/Petitioner

Case# **15WC001077**

MENARD CORRECTIONAL CENTER
Employer/Respondent

On 5/5/2015, 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:

4075 FISHER KERKHOVER COFFEY
JASON E COFFEY
PO BOX 191
CHESTER, IL 62233

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
KENTON J OWENS
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

1350 CENTRAL MANAGEMENT SYSTEMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

MAY 5 - 2015

STEPHEN A. HARRIS, ACTING Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **Williamson**)

☐ 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

15IWCC0930

Pamela Hanna
Employee/Petitioner

v.

Menard Correctional Center
Employer/Respondent

Case # **15** WC **001077**

Consolidated cases: **None**

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Herrin**, on **March 12, 2015**. 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 _____

15IWCC0930

FINDINGS

On **September 4, 2014**, 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 $**81,705.87**; the average weekly wage was $**1,571.27**.

On the date of accident, Petitioner was **53** years of age, ***married*** with **0** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

Respondent is entitled to a credit for any medical bills paid by its group medical plan for which credit is allowed under Section 8(j) of the Act.

ORDER

Petitioner failed to prove she sustained an accident on September 4, 2014 that arose out of her employment with Respondent. Petitioner's claim for compensation is denied and no benefits are awarded.

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

May 3, 2015
Date

MAY 5 - 2015

FINDINGS OF FACT and CONCLUSIONS OF LAW

The parties presented for hearing on March 12, 2015 with Respondent disputing the following issues: accident, liability for medical bills based upon accident, liability for TTD based upon accident, and the nature & extent of Petitioner's injury (see AX #1). Two witnesses testified at the hearing: Petitioner and Sergeant Charles Antry (Respondent's representative throughout the proceeding).

The Arbitrator finds:

Petitioner testified she is currently a 54 year old Corrections Nurse II at Respondent's facility, a position she has held for the last three years. Petitioner further testified she was assigned to the health care unit within Menard Correctional Center on September 4, 2014. Petitioner described the health care unit as being located in the middle of the prison complex behind the gates. Petitioner noted the unit is not accessible to the general public.

Petitioner testified her job duties include providing medical care for offenders and staff, if anything would happen to them. The offenders are assigned to the health care unit which contains cells within the health care unit facility. Petitioner would go to the offender's cell to administer treatment. The offender would not come to her office. Petitioner testified she would sit at the Sergeant's desk when not treating an offender. The location would allow her to hear if an inmate needed her assistance. There was an office for nurses, but it was glassed in and she can't hear if the inmate is calling for her assistance. Petitioner testified her supervisors know that she sits at the Sergeant's desk and have never told her not to sit there. Petitioner further testified she usually sits across from the Sergeant on duty at his/her desk.

On September 4, 2014, Petitioner went to sit in her chair at the office desk and when she leaned back the chair flipped and she hit her head on the wall behind her and fell backward to the tile floor. Petitioner testified she was returning from a cell having administered treatment to an offender when her injury occurred. Petitioner testified she was being escorted by the Correctional Sergeant on duty at the time of the fall, Sergeant Antry. As Petitioner was sitting down in the chair she was discussing the offender's manipulative behavior. Petitioner testified her discussing the behavior of the offender with the Sergeant at the time of her fall was a routine activity she engaged in as a part of her job duties.

Petitioner described the chair as an office chair with wheels which sits on a tile floor. Petitioner further testified her employer reasonably expects her to be discussing the offender's behavior with the Correctional Sergeant on duty.

Petitioner stated she reported her injury later on the night of the alleged injury. She reported to first aid downstairs in the health care unit. She was seen by her primary-care physician at Chester Clinic the next day following the alleged work injury.

Petitioner saw her primary-care physician on September 5, 2014 complaining of neck and shoulder pain reporting that she flipped out of an office chair (PX. 1, p. 3). The records indicate Petitioner gave a history of

neck pain and right shoulder pain after a fall she sustained at work on September 4, 2014 where she was sitting in an office chair that flipped backwards (PX. 1, p. 4). She was initially diagnosed with cervicalgia of the neck and a right shoulder sprain (PX. 1, p. 5). She was referred for X-ray of the C-spine and right shoulder which she did undergo at Chester Memorial Hospital on September 5, 2014 (PX. 2, pp. 4-5). The X-rays were negative for fractures, but did reveal moderate degenerative disc disease at the C4-5 and C5-6 levels (PX. 2, pp. 4-5).

On September 9, 2014, Petitioner followed-up with her primary-care physician at Chester Clinic noting continuing neck pain with movement (PX. 1, p. 7). She was taking Naprosyn for pain every day and Flexeril although this made her sleepy (PX. 1, p. 7). Based upon Petitioner's continued pain complaints, she was referred for physical therapy at Chester Memorial Hospital (PX. 1, p. 8). Petitioner testified she underwent two weeks of physical therapy. Petitioner presented for evaluation at physical therapy on October 14, 2014 noting pain in her neck and right shoulder (PX. 2, p. 7). By October 22, 2014, Petitioner was reporting her neck was better but with increased pain after working all night (PX. 2, p. 12). Petitioner continued through two weeks of physical therapy being discharged on October 29, 2014 (PX. 2, p. 14).

Petitioner testified she last sought medical treatment on October 31, 2014. Petitioner noted the physical therapy regimen had greatly improved her pain and function in her neck and shoulder. (PX. 1, p. 16) However, she continued to have pain in the right side of her neck. (PX. 1, p. 16) Petitioner was instructed to continue exercises at home and the use of heat to treat her neck pain. (PX. 1, p. 17) She was released with instructions to follow-up as needed. (PX. 1, p. 17)

Petitioner testified that since being released approximately four months have passed and her neck still bothers her. She will get headaches and her neck gets sore. Petitioner further testified she returned to her position full duty without restrictions. Petitioner stated that work activities such as charting and going through charts with her head down while reading will cause neck pain. Petitioner testified she takes Tramadol to alleviate her headaches. Petitioner is still a Corrections Nurse II and stated she planned to remain in that position for eight or nine more years.

On cross-examination, Petitioner testified she has not sought any medical treatment for her neck since October 31, 2014. Petitioner stated her neck pain has not been bad enough to go through more physical therapy. Petitioner also acknowledged she took Tramadol for rheumatoid arthritis prior to this injury and her dosage has not changed since the injury. Petitioner testified she takes the Tramadol for her rheumatoid arthritis and her headaches caused by the neck pain. Petitioner also testified she has had no negative performance evaluations since being returned to full duty following her work injury.

Petitioner was also asked about the chair and desk where she sits. Petitioner testified the desk is a wooden desk with two chairs around it. The chair had rollers on it, no arms, a cloth seat, and hydraulics to move up and down. Petitioner testified she had always sat in this chair when assigned to the health care unit. Petitioner acknowledged there was nothing wrong with the tile floor on September 4, 2014. She further acknowledged she did not notice anything wrong with the chair after she fell to the floor. Petitioner could not state why the chair flipped backward on her. Petitioner also stated she missed three days of work following the injury. When she returned to work, the chair was still at that location. However, Petitioner testified she doesn't sit in that chair anymore instead utilizing a plastic chair. No one sits in that chair to her knowledge.

Petitioner was then shown her reports of injury which she completed and signed on September 4, 2014. One report indicated "I went to sit in chair, put my back against the back of the chair – chair fell backwards, hit head on wall and bent my head to my chest" (RX. 1, p. 3). The other report indicated "at the above date and time I

went to sit in chair on 3rd floor HCU at Sgt. Desk. I leaned my back on back of chair and chair fell back. I hit my head on wall – bent my head to chest when I landed on floor" (RX. 1, p. 9).

Respondent called Sergeant Charles Antry to testify. Sergeant Antry testified he was assigned to the Health Care Unit in September 2014. He further testified his job duties involved providing security for the nurse and escorting her wherever she goes on a floor and also providing basic needs for inmates that are housed there. Sergeant Antry acknowledged having sat and listening to the testimony of Petitioner and agreeing with what she said during her testimony. He stated they were coming back from an inmate's cell and were going to sit down. Petitioner leaned back and the chair flipped. Sergeant Antry did not know of any problem with the chair and described it in identical fashion as Petitioner did during her testimony. Sergeant Antry also stated he had never sat in that chair.

On cross-examination, Sergeant Antry acknowledged that he and Petitioner were discussing an inmate when returning to the desk, that it was not out of the ordinary for nurses to sit at his desk, and that other nurses have sat there as well. Sergeant Antry was then asked if he, as a representative of Respondent, felt Petitioner was expected to sit in the chair across from him and he replied "Not always, but yes."

The Arbitrator concludes:

Issue (C) Accident.

Petitioner failed to prove that the accident she was involved in on September 4, 2014 arose out of her employment. There is no dispute that Petitioner had an accident that day. Furthermore, she was in the course of her employment as she was on Respondent's premises and it occurred during regular work hours. The issue is whether Petitioner's act of leaning back in her chair is a risk of her employment. The Arbitrator concludes that it was not.

An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and the accidental injury. Orsini v. Industrial Commission, 509 N.E.2d 1005 (1987). In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work *or* that he or she is exposed to the risk of injury to a greater degree than the general public. (Id.) The Courts have acknowledged the existence of three categories of risk: (1) risks distinctly associated with her employment; (2) personal risks; and (3) neutral risks which have no particular employment or personal characteristics. Springfield Urban League v. Illinois Workers' Compensation Commission, 2013 IL App (4th) 120219WC, 990 N.E.2d 284, 290 (4th Dist. 2013).

Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. *Id.* This increased risk may be qualitative, such as some aspect of employment that contributes to risk, or quantitative, such as the number of times they are required to encounter the risk. *Id.* Liability is also generally imposed where an injury occurs as a direct result of a hazardous condition on the employer's premises. USF Holland, Inc. v. Industrial Commission, 357 Ill.App.3d 798, 829 N.E.2d 810 (1st Dist. 2005).

The testimony of Petitioner and Sergeant Antry clearly established that nothing about the chair or floor was defective. There was no defect or debris on the floor. In explaining what occurred Petitioner stated that when she leaned back in the chair, the chair flipped backwards. The medical records and injury report suggest

the chair slid out from under her. Based upon Petitioner's description of the accident the Arbitrator could reasonably infer that as Petitioner leaned back in chair, Petitioner's momentum pushed the chair forward. The risk inherent in sitting down and leaning back in a chair are risks to which the general public is equally exposed. Petitioner's job did not increase her risk of injury. The Arbitrator is aware of the Appellate Court's decision in *Young v. Illinois Workers' Compensation Commission*, 13 N.E. 3d 1252, 383 Ill. Dec. 131 (4th Dist., 2014) and the Commission's decision in *Gloria Burcham v. Governor's State University*, 14 IWCC 795 (12-WC-39052). However, the facts of those cases are distinguishable. In *Young*, the claimant was reaching/over extending his arm for a spring clip at the bottom of a narrow box which was an assigned job duty. In *Gloria Buchanan* the claimant was at her desk and stood up to get a folder she needed in order to perform her work. She then went to sit down and her chair swiveled out from under her. In the instant case there was no evidence presented that Petitioner was involved in an activity that enhanced her risk of injury beyond that of any person sitting/leaning back in a chair.

Petitioner's claim for compensation is denied. No benefits are awarded. All other issues are moot.

****

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

☒ 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

Thomas Throop,

Petitioner,

vs.

SOI/Pinckneyville Corr. Ctr.,

Respondent,

NO: 10WC 46889

15IWCC0931

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under §19(b) by the Respondent, herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, notice, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 28, 2015, is hereby affirmed and adopted.

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.

DATED: DEC 17 2015
MJB/bm
o-12/14/15
052

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

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

THROOP, THOMAS Case# **10WC046889**

Employee/Petitioner

ST OF IL PINCKEYVILLE CORR CTR

Employer/Respondent

15IWCC0931

On 4/28/2015, 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:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0588 ASSISTANT ATTORNEY GENERAL
FARRAH L HAGAN
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

1350 CENTRAL MANAGEMENT SYSTEMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy pursuant to 820 ILCS 305/14

APR 28 2015

RONALD A.RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **Jefferson**)

- ☐ 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)

Thomas Throop
Employee/Petitioner

v.

State of Illinois, Pinckneyville Corr. Ctr.
Employer/Respondent

Case # **10** WC **46889**

Consolidated cases: **N/A**

15IWCC0931

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 **Michael K. Nowak**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **December 12, 2014**. 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. ☒ 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 _____

FINDINGS

On the date of accident, **December 1, 2010**, 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 **$56,381.00**; the average weekly wage was **$1,084.25**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

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

Respondent is entitled to a credit for any benefits paid through the group health carrier under Section 8(j) of the Act.

ORDER

Respondent shall pay the reasonable and necessary medical expenses as outlined in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act.. Respondent shall have credit for all amounts paid through its group carrier, but shall indemnify and hold Petitioner harmless from any claims regarding payment of any amount for which it is receiving this credit, pursuant to §8(j) of the Act

Respondent shall authorize and pay for any medical treatment recommended by Dr. Brown, including but not limited to surgery, as provided in §8(a) and 8.2 of 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

4/21/15
Date

APR 28 2015

ICArbDec19(b)

15IWCC0931

FINDINGS OF FACT

The Petitioner has worked for the State of Illinois, Department of Corrections since July, 1998. He was hired on July 1, 1998 and began his career at Joliet Correctional Center, where he performed the duties of a correctional officer until October of 1998 when Pinckneyville Correctional Center opened. During his time at Joliet, Petitioner testified that he rapped bars, opened sliding steel bar doors, fed and cleaned up after feed lines, at times using Folger Adams keys. In October of 1998, Petitioner transferred to Pinckneyville Correctional Center where he began working as a correctional officer. He has worked the 7:00-3:00 shift for the entire sixteen (16) years that he has been employed at Pinckneyville. Petitioner testified that he has spent at least eighty (80) percent of his time as a wing officer. He indicated that as a wing officer, he is assigned to different wings, and that he is currently assigned as a housing unit relief officer, which means that on three (3) days per week, he is assigned one wing per day, and the remaining two (2) days of the week he is assigned to two (2) wings. Petitioner prepared a work history timeline and job description, which was admitted into evidence as Petitioner's Exhibit 6. (PX6). Petitioner testified consistently with his job description to the duties he has been performing since 1998. Petitioner has no comorbid factors for the development of carpal tunnel syndrome. He does not have diabetes, gout, hypothyroidism or rheumatoid arthritis. Petitioner testified that he had the opportunity to review all material prepared by Respondent, including the DVD's, the job site analysis, and the demands of the job form which were admitted into evidence. Petitioner testified that they do not show the frequency and pace at which he works. He testified that he has had to key and manipulate 400 doors per day on some shifts. He estimated he has turned approximately 600,000 keys in his career. Maj. Jason Thompson testified as well. He indicated that from July 1998 through December 2011 he worked at Pinckneyville correctional center. He acknowledged that turning 400 keys in a shift was possible. Maj. Thompson did not find any major discrepancy with Petitioner's testimony at the hearing.

Petitioner claims bilateral carpal tunnel and bilateral cubital tunnel syndrome as result of repetitive trauma with an effective date of loss of December 1, 2010. Petitioner testified that over the course of time he developed progressive symptoms of numbness and pain in his upper extremities. Petitioner sought care and treatment from Dr. David Brown at the referral of his attorney on 12/1/10 relative to the bilateral upper extremity symptoms he was experiencing. (PX3) Dr. Brown conducted a physical examination which he felt was positive for bilateral carpal tunnel syndrome and cubital tunnel syndrome. He referred Petitioner that same day to Dr. Daniel Phillips for nerve studies. The studies indicated evidence of bilateral carpal and cubital tunnel syndromes. (PX3; PX4) Petitioner indicated that it was at this point he realized he had a condition related to his employment. He filled out an employee's notice of accident on December 6, 2010. (RX 2) When Petitioner returned to Dr. Brown January 5, 2011 surgery was recommended to correct Petitioner's bilateral carpal tunnel and cubital tunnel syndromes.

Dr. Brown testified by way of deposition that he evaluated Petitioner in late 2010 and early 2011 for possible carpal and cubital tunnel bilaterally, which was confirmed by electrodiagnostic studies performed by Dr. Phillips, a board certified neurologist. (PX5. at 20-21) Dr. Brown testified consistently with his treatment notes that he believed Petitioner's job duties at Pinckneyville were at least an aggravating factor in the development of his bilateral carpal and cubital tunnel syndromes, as well as the need for treatment of those conditions. (*Id.* at 22) Dr. Brown confirmed that Petitioner had no medical problems that would put Petitioner at increased risk for developing carpal or cubital tunnel syndrome other than his age of forty-nine (49) years old.

(*Id.* at 22-23) Dr. Brown indicated forceful gripping, forceful pushing and pulling, forceful pinching required in keying a door, the forceful turning opening a door, the cuffing and uncuffing of inmates, if done on a frequent basis over the course of a prolonged period of time, are the type of activities that can at the very least aggravate carpal tunnel syndrome and cubital tunnel syndrome. (*Id.* at 30)

Prior to his testimony, Dr. Brown reviewed multiple exhibits submitted by Respondent at arbitration relative to Petitioner's job duties, including a key usage study performed by Lieutenant Jason Thompson which was RX 9. Dr. Brown also had the benefit of a detailed job description which had been provided to him by Petitioner. Dr. Brown testified that he reviewed the key usage estimation study performed by Lieutenant Thompson and found this document to be helpful because it confirms that "this is not the amount of keying that is encountered in everyday life by normal individuals.... This is just an abnormal amount of keying of doors relative to activities that we perform in everyday living. And we know that the forces involved in keying, which is forceful pinching and turning—those are the type of activities that have been shown to increase carpal tunnel pressure and can contribute to these conditions." (*Id.* at 41-42) He indicated this information provides additional evidence that Petitioner was exposed to activities that are not normally encountered in everyday living which, when performed over the course of a decade, can contribute to carpal and cubital tunnel syndromes. (*Id.* at 37) Dr. Brown indicated that the job duties performed by Petitioner would be at least an aggravating factor in the development and need for treatment of his bilateral carpal and cubital tunnel syndromes. (*Id.* at 46)

Respondent obtained a medical records review by Dr. James Williams. (RX 14) Dr. Williams agreed with the diagnosis of bilateral carpal and cubital tunnel syndromes and further agreed that the treatment recommended by Dr. Brown is reasonable. (RX 14 at 26) He also agreed with Dr. Brown that turning of the wrist can cause increased pressure within someone's carpal tunnel, and forceful slamming of chuckholes and doors could contribute to the development of compression neuropathies, depending on how frequent this activity was performed. (*Id.* at 26-27) Dr. Williams also acknowledged that forceful and repeated gripping, forceful pinching, and repetitive motion of the fingers, as well as repeated flexion of the flexor tendons can cause increased pressure in the carpal tunnel. (*Id.* at 28) Dr. Williams testified that he believed Petitioner's carpal and cubital tunnel syndromes are idiopathic in nature and do not have a cause. (*Id.* at 34) He did not, however believe that Petitioner's job duties caused or aggravated Petitioner's carpal and/or cubital tunnel syndrome. (*Id.*)

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
Issue (D): What was the date of the accident?
Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

These issues are somewhat overlapping, therefore the Arbitrator will address them jointly. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture,* 99 I.I.C. 0961 (1999)

The Petitioner is relying upon a repetitive trauma theory rather than one of traumatic injury. In such cases the claimant generally relies on medical testimony to establish causal connection between the claimant's work duties in the claimant's condition of ill being. *Peoria County Bellwood Nursing Home v. Industrial Commission,* 505 N.E.2d 1026 (1987). In Illinois. "[t]here is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Edward Hines Precision*

Components v. Indus. Comm'n, 825 N.E.2d 773,at 780 (2nd Dist. 2005). Similarly, the Commission recently noted that while in a repetitive trauma claim a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or even the primary cause. Further, there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (2nd Dist. 1991).

In this case, the evidence shows that Petitioner used his hands extensively. The Arbitrator found the Petitioner to be credible in his testimony. In addition, Major Thompson corroborated Petitioner's testimony for the most part. Further, the Exhibits offered by both parties indicate the work of Corrections Officers is hand and upper extremity intensive.

Both Dr. Brown and Dr. Williams agreed that Petitioner suffers from bilateral carpal tunnel and cubital tunnel syndromes. It was Dr. Williams' opinion, however that the work activities performed by correctional officers were not significant enough to cause or aggravate carpal tunnel and/or cubital tunnel syndromes and that Petitioner's carpal and cubital tunnel syndromes are idiopathic in nature.

. On the other hand, Dr. Brown explained thoroughly in his testimony how the job duties of Petitioner resulted in the development and/or aggravation of his bilateral carpal tunnel and cubital tunnel syndromes. (PX5)

The Arbitrator finds the testimony of Dr. Brown more persuasive. The Arbitrator further notes that based upon Petitioner's unrefuted testimony, which is consistent with the medical records, Petitioner was unaware of his true diagnosis and its relationship to his employment until the electro-diagnostic studies were performed by Dr. Phillips on December 1, 2010.

Based upon the foregoing, and the record taken as a whole, the Arbitrator finds Petitioner did sustain an accident which arose out of and in the course of his employment on December 1, 2010, the date of manifestation. Further, the Arbitrator finds Petitioner's current condition of ill being is causally related to the accident.

Issue (E): Was timely notice of the accident given to Respondent?

It is unrefuted that Petitioner provided written notice to Respondent on December 6, 2010. (RX 2) Having ruled that Petitioner proved an accident date of December 1, 2010, notice was provided to Respondent within 45 days as required by the Act. The Arbitrator therefore finds that appropriate notice was given to Respondent.

Issue (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?
Issue (K): Is Petitioner entitled to any prospective medical care?

Medical services were disputed based on accident and causal relationship. Both Dr. Brown and Respondent's records reviewer agreed that Petitioner required surgery to alleviate the symptoms from which he suffers. Given the above findings, Respondent is directed to pay the medical bills identified in PX 1 pursuant to section 8 (a) and the fee schedule. Respondent shall be entitled credit for any and all amounts previously paid but shall hold Petitioner harmless, pursuant to section 8 (j) of the act, for any group health care reimbursement requests for such payments. Further, Respondent shall pay for the medical treatment recommended by Dr. Brown including, but not limited to surgery, subject to the fee schedule.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☒ 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

Nancy Guethle,
Petitioner,
vs. NO: 12WC 35522
SOI/Chester Mental Hlth. Center,
Respondent,

15IWCC0932

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 nature and extent, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 5, 2015, is hereby affirmed and adopted.

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.

DATED: DEC 17 2015
MJB/bm
o-12/14/15
052

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GUETHLE, NANCY
Employee/Petitioner

Case# **12WC035522**

SOI/CHESTER MENTAL HEALTH CENTER
Employer/Respondent

15IWCC0932

On 5/12/2015, 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:

0969 THOMAS C RICH PC
6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
KYLEE J JORDAN
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

1745 CMS - RISK MANAGEMENT
801 S SEVENTH ST 8M
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

MAY 12 2015

RONALD A.RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **Williamson**)

☐ 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

NANCY GUETHLE

Case # **12** WC **035522**

Employee/Petitioner

v.

STATE OF ILLINOIS/CHESTER MENTAL HEALTH CENTER

15IWCC0932

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 **Michael Nowak**, Arbitrator of the Commission, in the city of **Herrin**, on **January 13, 2015**. 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 _____

15IWCC0932

FINDINGS

On **August 13, 2012** 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 $**76,210.86**; the average weekly wage was $**1,465.59**.

On the date of accident, Petitioner was **48** years of age, ***married*** with **0** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**

Respondent is entitled to a credit for any medical benefits previously paid under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of as set forth in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Based on the factors enumerated in §8.1b of the Act, which the Arbitrator addressed in the attached findings of fact and conclusions of law, and the record taken as a whole, Respondent shall pay Petitioner the sum of $**712.55**/week for a further period of **75.25** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **35% loss of the left leg**.

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

5/4/15
Date

MAY 12 2015

ICArbDec p. 2

FINDINGS OF FACT

The Parties stipulated that Petitioner sustained accidental injuries on August 13, 2012 that arose out of and in the course of her employment with Respondent as a RN/Public Service Administrator when she walked across wet carpet, slipped on tile floor and injured her left knee. (T.8, 9) The parties further agreed Respondent is responsible for payment of all reasonable and necessary medical expenses. Petitioner testified that she did not have any claims, testing or treatment for her left knee prior to the accident. (T.9) Petitioner developed severe pain that prevented her from standing for prolonged periods of time. (T.11) Petitioner sought treatment with her family physician and obtained an MRI, which demonstrated marked patellar abnormalities and bony edema. (PX3; PX4) Petitioner was referred for orthopedic evaluation and came under the care of an orthopedic specialist, Dr. George Paletta. (PX5) Dr. Paletta noted that Petitioner was wearing a sleeve brace and taking anti-inflammatory medication with no improvement in her condition. *Id.* After performing a physical examination and reviewing Petitioner's left knee MRI, Dr. Paletta diagnosed patellofemoral arthrosis and instability with patella maltracking. *Id.* Dr. Paletta recommended referral to Dr. Tanaka, a specialist in patellofemoral disorders. *Id.* He noted that Petitioner's options included arthroscopy with lateral release and debridement, patella realignment or patella resurfacing. *Id.* He believed Petitioner's condition was causally related to her slip and fall at work. *Id.*

Petitioner saw Dr. Tanaka on October 3, 2012, who also noted that Petitioner gained no improvement in instability through bracing. (PX6, 10/3/12) Dr. Tanaka examined Petitioner's knee, reviewed the left knee MRI and agreed with Dr. Paletta's assessment of patellofemoral arthrosis and instability with patella maltracking and recommended physical therapy, a hinged lateral patellar stabilizing brace and Mobic. *Id.* However, these failed to give Petitioner relief. (PX6, 11/28/12) Dr. Tanaka recommended patellar stabilization surgery. *Id.* Surgery was done on January 28, 2013, and examination under anesthesia demonstrated that Petitioner had 3 quadrants of patellar mobility laterally without an endpoint, significant lateral retinacular tightness, inability of the patella to be brought to a neutral tilt and a chondral lesion of the medial femoral condyle. (PX6, 1/28/13) Dr. Tanaka performed tibial tubercle osteotomy, medial patellofemoral ligament reconstruction, left knee diagnostic arthroscopy, chondroplasty of the medial femoral condyle, chondroplasty of the patella and lateral release. *Id.*

Petitioner reported improvement following surgery, but had difficulty in physical therapy secondary to pain. (PX6, 2/8/13, 3/11/13) There was also some delay in weight bearing due to minimal signs of healing of her tibial tubercle osteotomy at her six week visit. (PX6, 4/15/13) Consolidation was progressing but not achieved nearly 3 months after surgery. *Id.* Four months out from surgery, Petitioner still required the use of her brace due to lack of quad strength and experienced activity-related pain in her anterior knee. *Id.* At her six month visit, Petitioner continued to suffer from left leg weakness and still required restrictions. (PX6, 7/26/13) Physical examination demonstrated palpable crepitus with range of motion and very visible persistent quadriceps atrophy. *Id.* Dr. Tanaka recommended more physical therapy and work hardening, but Petitioner was unable to complete work hardening. (PX6, 9/13/13, 10/11/13). Petitioner was released to full duty work on October 11, 2013. (PX6, 10/11/13) During her final two visits, Petitioner reported discomfort at the hardware site and right knee patellar tendinitis. (PX6, 1/31/14, 3/28/14).

Petitioner testified at Arbitration that despite the improvement from surgery, she experiences swelling and favors her right leg over her left. (T.12) She is unable to kneel on her left leg or squat. (T.13) She continues

to experience pain for which she takes Celebrex, Meloxicam and Ibuprofen. (T.13) Petitioner's exercise routine and fitness hobbies have been adversely affected. (T.12, 14).

CONSLUSIONS OF LAW

Issue (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?

The parties agreed Respondent was responsible for paying all related reasonable and necessary medical expenses. (T. 4-5) Therefore the Arbitrator finds Respondent shall pay reasonable and necessary medical services of as set forth in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Issue (L): What is the nature and extent of the injury?

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither Party submitted an AMA rating. The Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes Petitioner is employed by Respondent as an RN/Public Service Administrator. Respondent's "Demands of the Job" form indicates that Petitioner's job requires her to stand and/or walk for 4 to 6 hours per day. (RX5) Accordingly, Petitioner's injury has a significant impact on her occupation. The Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 48 years old at the time of her injury. She is approaching advanced age, but has a considerable number of working years over which to bear her disability. The Arbitrator therefore gives *some* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes while there is no direct evidence of reduced earning capacity contained in the record; based on the severity of Petitioner's injury, the extensive surgery performed, the presence of hardware and the significant standing and/or walking required by Petitioner's job, it is reasonable to conclude that such repercussions will manifest in the near future. The Arbitrator therefore gives *little* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the Petitioner was a credible witness. As a result of her accident, Petitioner

15IWCC0932

developed symptomatic patellofemoral arthrosis and instability with patella maltracking. (PX5; PX6) This required significant surgery by way of tibial tubercle osteotomy, medial patellofemoral ligament reconstruction, left knee diagnostic arthroscopy, chondroplasty medial femoral condyle, chondroplasty patella and lateral release. (PX6, 1/28/13) Petitioner testified at Arbitration that despite the improvement from surgery, she experiences swelling and favors her right leg over her left. (T.12) She is unable to kneel on her left leg or squat. (T.13) She continues to experience pain for which she takes Celebrex, Meloxicam and Ibuprofen. (T.13) Petitioner's exercise routine and fitness hobbies have been adversely affected. (T.12, 14). Because the medical records and evidence taken as a whole corroborate the Petitioner's description of her ongoing symptoms, the Arbitrator therefore gives *greater* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 35% loss of use of her left leg pursuant to §8(e) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

☐ 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 up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CARY PRATHER,

Petitioner,

vs. NO: 14 WC 10864

OLIN CORPORATION,

Respondent.

15IWCC0933

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of medical, casual connection, temporary total disability (TTD), and permanent partial disability (PPD) 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.

So that the record is clear, and there is no mistake as to the intentions or actions of the Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical/legal perspective. The Commission has considered all of the testimony, exhibits, pleadings and arguments submitted by the parties. The Commission finds that Cary Prather sustained twelve percent loss of use of the man-as-a-whole as a result of his work-related injuries. All else is affirmed and adopted.

According to Section 8.1(b) of the Act, for accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and

professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

The Commission adopts the Arbitrator's well-reasoned analysis of Section 8.1(b) of the Act. The Commission, however, gives greater weight to the physical demands of petitioner's job duties and the nature of his injury. The evidence establishes that petitioner sustained a decrease in his shoulder range of motion, a loss of shoulder strength, and has shoulder stiffness and pain as a result of his accident. Because of the impact of petitioner's injury on his job duties, the Commission finds that petitioner sustained 12% loss of use of the man-as-a-whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 5, 2015, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $707.15 per week for a period of 4-2/7 weeks, April 8, 2014 through May 7, 2014 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 be given a credit of $1,032.02 for disability benefits that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,122.20 for medical expenses under §8(a) of the Act, and subject to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit of $8,204.58 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided by Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $636.44 per week for a period of 60 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the loss of use of 12% man-as-a-whole.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $40,300.00. 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: DEC 17 2015

MJB/tdm
O: 10-26-15
052

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PRATHER, CARY
Employee/Petitioner

Case# **14WC010864**

OLIN WINCHESTER
Employer/Respondent

15IWCC0933

On 1/5/2015, 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 0.13% 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:

4620 ARMBRUSTER DRIPPS WINTERSCHEID
JOHN WINTERSCHEIDT
219 PIASA ST
ALTON, IL 62002

0299 KEEFE & DePAULI PC
JAMES K KEEFE JR
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
COUNTY OF **MADISON**)

☐ 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

Cary Prather
Employee/Petitioner

v.

Olin Winchester
Employer/Respondent

Case # **14** WC **010864**

Consolidated cases: **n/a**

15IWCC0933

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 **Belleville**, on **September 26, 2014**. 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 _____

15IWCC0933

FINDINGS

On **February 17, 2014**, 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 $**55,157.96**; the average weekly wage was $**1,060.73**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **1** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**1,032.02** for other benefits, for a total credit of $**1,032.02**.

Respondent is entitled to a credit of $**8,204.58** under Section 8(j) of the Act.

ORDER

Medical benefits

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $88.31 to Petitioner, and $1,033.89 to the medical providers listed in Petitioner's Exhibit 10, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of $8,204.58 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $707.15/week for 4 2/7 weeks, commencing 04/08/14 through 05/07/14, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $1,032.02 for disability benefits that have been paid.

Permanent Partial Disability: Person as a whole

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

Respondent shall pay Petitioner permanent partial disability benefits of $636.44/week for 40 weeks, because the injuries sustained caused the 8% loss of the person as a whole referable to the left shoulder, as provided in Section 8(d)2 of the Act.

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

12/02/14
Date

JAN 5 - 2015

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

CARY PRATHER,
Employee/Petitioner,

v. Case # 14 WC 010864

OLIN WINCHESTER,
Employer/Respondent

15IWCC0933

MEMORANDUM OF DECISION OF ARBITRATOR

PROCEDURAL HISTORY

On the day of Hearing, Respondent presented a Motion to Consolidate this matter with Application for Adjustment of Claim bearing Commission number 14 WC 10863. Application for Adjustment of Claim bearing Commission number 14 WC 10863 was pending before arbitrator Zanotti (now "TBA") and alleges repetitively traumatic injuries to Petitioner's bilateral hands with an alleged March 5, 2014 accident date. The Application for Adjustment of Claim set for Hearing here bears Commission number 14 WC 010864 and alleges a February 17, 2014 injury to the left shoulder, left elbow and body as a whole as a result of a slip and fall on ice at Respondent's plant. Petitioner opposed Respondent's Motion to Consolidate.

Rule 7030.10 governing practice before the Commission states in pertinent part, "In the event a Petitioner has an Application for Adjustment of Claim pending and files one or more Applications for Adjustment of Claim against the same Respondent, or against different Respondents **alleging accidental injuries to the same part of the body** subsequent cases shall on motion of any party be assigned to the case filed first." (emphasis added). The two Applications for Adjustment of Claim allege different dates of

injury, allege injuries to different parts of the body and allege different theories of recovery (14 WC 010864 alleges a traumatic injury to the left shoulder and left elbow, 14 WC 10863 alleges repetitively traumatic injuries to Petitioner's hands). Therefore, Respondent's Motion to Consolidate was denied and Application for Adjustment of Claim bearing Commission number 14 WC 010864 proceeded to Hearing.

FINDING OF FACTS

Petitioner is a right hand dominant, forty-three-year-old machinist who has been employed by Respondent's ammunition manufacturing facility since May 14, 1999. Since about 2008, he has worked as a "Chief Stores Checker" which requires him to work outside of Respondent's plant at times. Petitioner entered Respondent's Physical Demands Analysis for the Chief Stores Checker job in evidence. (PX 2).

On February 17, 2014, Petitioner was walking on stairs in an outside area of Respondent's plant when he slipped and fell on ice. He attempted to break his fall with his left arm, and fell on his left side. Petitioner felt his left shoulder "pop" and felt immediate, severe pain in the shoulder. He reported the accident to his supervisor and was sent to Respondent's medical department. Petitioner had never injured nor received any medical treatment to his left shoulder before February 17, 2014.

The records of Respondent's medical department dated February 17, 2014 record a history of Petitioner's accident and his complaints of left shoulder and left elbow pain. (PX 3; 02/17/14). Petitioner was sent to Alton Memorial Hospital for X-rays of his left shoulder and left elbow, which were read as negative for fractures. (PX 7; 02/17/14). Following the X-rays, Respondent's medical department diagnosed Petitioner with "left shoulder and left elbow injury". Petitioner was advised to apply ice to his injuries and to take over-the-counter Aleve for pain.

Petitioner followed up with Respondent's medical department and was directed to Dr. Bernard Randolph pursuant to Section 12 of the Act. Petitioner saw Dr. Randolph on February 26, 2014 when a history of his accident and complaints were recorded. Dr.

Randolph diagnosed a left shoulder and left elbow sprain from the fall with findings suggestive of a rotator cuff injury or dysfunction. Dr. Randolph recommended an MRI of the shoulder, physical therapy and medication. Dr. Randolph also imposed restrictions of avoiding overhead reaching or lifting, pushing and pulling. (PX 4).

Petitioner's condition did not improve with time, so he sought treatment with board certified orthopedic surgeon, Dr. Randall Rogalsky on March 3, 2014. On that day, Dr. Rogalsky recorded a history of Petitioner's February 17, 2014 accident and his complaints. Dr. Rogalsky diagnosed subacromial impingement of the left shoulder with a possible rotator cuff tear. He prescribed a splint and ordered an MRI of the shoulder. (PX 5; 03/03/14; PX 9). [It should be noted that Dr. Rogalsky concurrently treated Petitioner's left shoulder while also treating his bilateral hands and elbows, which are not being claimed here, but are the subject of Application for Adjustment of Claim 14 WC 10863].

The MRI of Petitioner's left shoulder was taken on March 5, 2014 and revealed findings consistent with tendinosis or partial tearing in the supraspinatus tendon. (PX 6). Dr. Rogalsky's review of the MRI resulted in his diagnoses of acromioclavicular degenerative joint disease with impingement and tendinopathy, but no rotator cuff tear. As a result, Dr. Rogalsky recommended surgery. (PX 6; 03/21/14). Respondent's Section 12 examiner, Dr. Randolph, reviewed the MRI and opined that Petitioner suffered a left shoulder sprain and possible rotator cuff injury in his February 17, 2014 accident. He recommended injections and physical therapy and if no improvement in three months, then surgical intervention.

On April 8, 2014, Dr. Rogalsky performed open surgery consisting of an acromioclavicular resection with an anterior acromioplasty. (PX 7; 04/08/14 Op. Rpt.; PX 5; 04/08/14 Op. Rpt.; PX 9). Petitioner was excused from work following the surgery and physical therapy was prescribed. Petitioner's friend is a physical therapist, and the doctor agreed that the friend could provide Petitioner's therapy in lieu of formal physical therapy. (PX 9). Petitioner experienced considerable improvement in the shoulder following the surgery and Dr. Rogalsky released him from his care, with respect to the shoulder, and

allowed Petitioner to return to work without restrictions relative to his shoulder on May 7, 2014. (PX 5; 05/02/14; PX 9).

Treating, board certified orthopedic surgeon, Dr. Rogalsky testified on behalf of Petitioner. Of significance, Dr. Rogalsky testified that based upon the history of accident provided to him and the patient's physical findings, Petitioner's left shoulder injury was a result of the accident which put his underlying condition "over the top", thereby leading to the direct need for surgical intervention. (PX 9, p. 24). Dr. Rogalsky also testified that the treatment he ordered and provided, including the MRI, the physical therapy and the surgery were necessitated by the accident. (PX 9, p. 24).

Petitioner has returned to work for Respondent and continues to perform his regular job as a Chief Stores Checker. According to Respondent's Physical Demands Analysis, that job requires him to unload powder kegs with a dolly, requiring force between twenty-five pounds and one hundred pounds between 600 and 800 times per shift; lift a metal ramp requiring force between seventy-five pounds and eighty pounds up to 12 times per shift; pull an overhead trailer door requiring force between twenty pounds and thirty pounds between 6 and 10 times per shift; lift thirty pound cases 4 to 6 times per shift; push thirty pound cases on a dolly requiring force between thirty and ninety pounds, 2 to 3 times per shift; stack the thirty pound cases by hand 4 to 6 times per shift; move skids of packaged primers with a hand-fork-lift requiring thirty to forty pounds of force 5 to 15 times per shift; hand roll barrels of high explosive, requiring force between one hundred and one hundred twenty pounds, 18 to 20 times per shift; pull the barrels of high explosive with a dolly, requiring one-hundred to one-hundred-twenty pounds of force, 18 to 20 times per shift; push the same barrels on a dolly, requiring the same force, 18 to 20 times per shift; load the same barrels by dolly, requiring the same force, 18 to 20 times per shift; and move wooden pallets requiring thirty to thirty-five pounds of force between 1 to 5 times per shift. In short, Petitioner's job with Respondent requires significant, strenuous use of his shoulders repeatedly on a daily basis.

Petitioner had never had any difficulty performing his job duties for Respondent before his February 17, 2014 accident. However, he now experiences pain in his left

shoulder while doing the tasks required of his job. He has a decreased range of motion in the shoulder as well as a loss of strength in the extremity. He also experiences stiffness in the shoulder and has difficulty with the lifting aspects of his job.

As a result of the medical treatment Petitioner received for his left shoulder, he has incurred medical bills in the amount of $16,948.03. Of that amount, Petitioner personally paid $88.31, $8,204.58 was paid by Petitioner's medical insurance (for which Respondent claims a Section 8(j) credit), and a balance of $1,033.89 remains outstanding. (PX 15).

CONCLUSIONS OF LAW

Issue F. Is Petitioner's current state of ill-being causally related to the injury?

After reviewing the MRI of Petitioner's shoulder, Respondent's Section 12 examining physician, Dr. Randolph opined that Petitioner suffered a left shoulder sprain and possible rotator cuff injury in his February 17, 2014 accident. Treating, board certified orthopedic surgeon, Dr. Rogalsky testified that Petitioner's left shoulder injury was a result of the February 17, 2014 accident and that the injury lead to the direct need for surgical intervention. In light of the above, I find that Petitioner's current state of ill-being with respect to his left shoulder is medically causally related to his accident of February 17, 2014.

Issue 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?

Treating, board certified orthopedic surgeon, Dr. Rogalsky testified that the treatment he ordered and provided, including the MRI, the physical therapy and the surgery was necessitated by Petitioner's February 17, 2014 accident. Additionally, there is no evidence of unreasonable or excessive treatment found in the record. Therefore, Respondent is hereby ordered to pay Petitioner $88.31 for out-of-pocket medical expenses he has incurred for treatment of his work related injury, and Respondent is further ordered

to pay the sum of $1,033.89 for medical bills as listed in Petitioner's Exhibit 10, directly to the providers listed therein, pursuant to the Act's Medical Fee Schedule. Finally, Respondent is granted a Section 8(j) credit for the $8,204.58 paid by its group health medical insurer, and is hereby ordered to hold Petitioner harmless for that amount paid to the various medical providers listed in Petitioner's Exhibit 10.

Issue K. What temporary benefits are in dispute? TTD:

Dr. Rogalsky excused Petitioner from work on April 8, 2014, following his surgery of that date. Dr. Rogalsky testified that Petitioner was able to return to work without restrictions relative to his left shoulder on May 7, 2014. This is a period of 4 2/7 weeks. Petitioner's testimony and the treatment medical records support this period of total incapacity. Conversely, there is no evidence in the record to contradict this period of temporary total disability. Therefore, I find that Petitioner was temporarily and totally disabled for a period of 4 2/7 weeks, from April 8, 2014 through May 7, 2014. Respondent is therefore ordered to pay Petitioner the sum of $707.15 per week, for a period of 4 2/7 weeks. Respondent is granted a credit in the amount of $1,032.02 for disability payments previously made to Petitioner.

Issue L. What is the nature and extent of the injury?

Petitioner testified credibly throughout the Hearing. As reflected in Respondent's Physical Demands Analysis for Petitioner's Chief Stores Checker job, he has a very labor intensive job that requires strenuous use of his upper extremities on a daily basis. As a result of his February 17, 2014 accident, Petitioner now must perform his job duties with a surgically repaired, left shoulder. While he was able to perform his job without difficulty prior to his accident, Petitioner now experiences pain in his shoulder while doing the tasks required of his job. He has a decreased range of motion in the shoulder as well as a loss of strength in the extremity. He also experiences stiffness in the shoulder and has difficulty with the lifting aspects of his job.

No permanent partial disability impairment report or opinion was submitted in evidence. Therefore, no weight is given to this factor in the determination of Petitioner's

permanent partial disability. Based upon the Petitioner's job description and his testimony the Arbitrator finds the physical demand level of his occupation to be heavy and therefore concludes it has a significant bearing upon the determination of the PPD in this case. The Petitioner's age has little bearing on this case as does his future earning capacity. The Petitioner's shoulder complaints coupled with the treating medical records have a significant bearing upon PPD and the Arbitrator accordingly awards Petitioner 8% loss of use on a person as whole basis for injury sustained to his left shoulder.

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Coglianese,

Petitioner,

vs. NO: 10 WC 35282

Asphalt Maintenance Systems,

15IWCC0934

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of temporary total disability, 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission notes that the TTD awarded to Petitioner in this case totals $54,768.57. The Arbitrator's decision noted that Respondent is entitled to a TTD credit totaling $111,245.08. Thus, after deducting the amount of the TTD owed in this case from the TTD credit, the Respondent has a remaining TTD credit of $56,476.51 that is applicable to the 11 WC 48918 case. Additionally, the parties agreed at hearing that the Respondent is entitled to credit for all medical bills that were paid prior to hearing. The evidence presented at hearing included two bills from Munster Community Hospital (service dates March 2, 2010 and December 17, 2010) which totaled $29,437.23 and which, on their face, remained outstanding. Respondent remains entitled to credit for all amounts paid pursuant to Sections 8(a) and 8.2 of the Act. However,

15IWCC0934

because there is no proof of payment within the documentation submitted into evidence, the Commission must include these amounts as part of the required surety bond.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 18, 2015, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $29,500.00. 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: DEC 18 2015
TJT:yl
o 12/7/15
51

Thomas J. Tyrrell

Kevin W. Lamborn

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b)/8(a) ARBITRATOR DECISION

COGLIANESE, WILLIAM
Employee/Petitioner

Case# **10WC035282**

11WC048918

ASPHALT MAINTENANCE SYSTEMS
Employer/Respondent

15IWCC0934

On 2/18/2015, 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 0.06% 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:

1747 SEIDMAN MARGULIS & FAIRMAN LLP
STEVEN J SEIDMAN
20 S CLARK ST SUITE 700
CHICAGO, IL 60603

2837 LAW OFFICES JOSEPH MARCINIAK
MICHELLE POWELL
2 N LASALLE ST SUITE 2510
CHICAGO, IL 60602

15IWCC0934

STATE OF ILLINOIS)
)SS.
COUNTY OF **WILL**)

- ☐ 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)/8(a)

William Coglianese,
Employee/Petitioner

v.

Asphalt Maintenance Systems,
Employer/Respondent

Case # **10** WC **35282**

Consolidated cases: **11 WC 48918**

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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **New Lenox**, on **11/6/14**. 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. ☐ 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 _____

15IWCC0934

FINDINGS

On the date of accident, **7/20/09**, 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 condition of ill-being ***is*** causally related to the accident up through MMI on 1/5/12.

In the year preceding the injury, Petitioner earned $**62,634.00**; the average weekly wage was $**1,205.59**.

On the date of accident, Petitioner was **46** years of age, ***single*** with **1** dependent child.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**111,245.08** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**111,245.08**. (See Arb.Ex.#1).

Respondent is entitled to a credit of $**0.00** under § 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $803.73 per week for 68-1/7 weeks, commencing 12/1/09 through 3/22/11, as provided in § 8(b) of the Act. (See Arb.Ex.#1).

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 12/2/09 through 3/22/11, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of $111,245.08 for temporary total disability benefits that have been paid.

Respondent shall pay the reasonable and necessary medical expenses relating to his left shoulder in claim 10 WC 35282 through the date of MMI on January 5, 2012 pursuant to § 8(a) and the fee schedule provisions of § 8.2 of the Act. Furthermore, Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in § 8(j) of 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

2/4/15
Date

ICArbDec19(b)

FEB 18 2015

STATEMENT OF FACTS:

At arbitration, Petitioner moved to amend the Application for Adjustment of Claim in 11 WC 48918 to show a date of accident of March 23, 2011. Respondent had no objection.

Petitioner was working for Asphalt Maintenance Systems as a truck driver. On July 20, 2009 (10 WC 35282) he injured his left shoulder when he fell off his truck landing on his left side. Petitioner had immediate pain in his left shoulder that continued for several months. He worked despite the pain.

On November 30, 2009 petitioner presented to Methodist Hospital stating he fell about 6 feet off his semi several months ago and still had continued pain, weakness and decreased mobility in his left arm/shoulder. (Px5; Px12) The symptoms were not improving. (Px5; Px12) X-rays showed no fracture. (Px5; Px12) Methodist Hospital referred petitioner to Dr. Schwartz for MRI and likely surgery for "deformative repair." (Px5; Px12) The diagnosis was rotator cuff damage. (Px5; Px12) Petitioner was kept off work and TTD was started December 1, 2009. (Arb. Ex 1)

Petitioner presented to FirstMed Occupational Health on December 22, 2009 providing a consistent history. (Px4) Petitioner was diagnosed with a left shoulder sprain/strain and they wanted to rule out a rotator cuff tear. (Px4) Petitioner was returned to work with no use of the left arm, wear a sling and was again referred to Dr. Schwartz. (Px4)

Petitioner saw Dr. Schwartz on January 4, 2010 stating he did not seek treatment immediately because he thought his left shoulder would get better on its own. (Px5) The doctor prescribed an MRI of the left shoulder. (Px5) The left shoulder MRI was completed on January 26, 2010. (Px5) It showed a focal full thickness tear of the anterior insertion of the supraspinatus tendon with undersurface tearing of the tendon at the posterior insertion, mild partial undersurface tearing of the infraspinatus tendon at the anterior most insertion, findings compatible with interstitial tearing of the extra-articular biceps tendon within the intertubercular groove. (Px5) On February 3, 2010 petitioner returned to see Dr. Schwartz. (Px5) Dr. Schwartz recommended surgery. (Px5)

Petitioner underwent arthroscopic left rotator cuff repair, arthroscopic assisted left shoulder bicipital tendonesis, arthroscopic distal clavicle resection and acromioplasty on March 2, 2010. (Px5; Px7) His pre operative and post operative diagnoses were left rotator cuff tear, biceps tendinosis and acromioclaviclar joint pain. (Px5; Px7) Petitioner was placed on restrictions and was not able to return to work. (Px5) TTD was continued. (Arb. Ex 1) Petitioner underwent post surgical physical therapy. (Px5)

By April 8, 2010 Petitioner presented with limited motion and pinching, locking and snapping on motion. (Px5) He also complained of a dull ache in the biceps and shoulder blade region with cramping and atrophy in the biceps as well as difficulty sleeping at night due to left sided neck and lateral shoulder pain. (Px5) Pain was exacerbated with reaching across the opposite armpit and reaching up with actions such as to wash his hair. (Px5) Petitioner continued post surgical physical therapy. (Px5) On August 26, 2010 he presented for follow up with Dr. Schwartz stating he was worried about climbing into and out of his truck when he has to support his entire body weight. (Px5) He also noted some popping with lifting weights. (Px5) Dr. Schwartz recommended a work conditioning program and an FCE at the end. (Px5) Dr. Schwartz anticipated a full duty return to work after this and in the meantime petitioner was restricted from climbing into and out of his dump truck. (Px5)

On September 17, 2010 the physical therapist noted that petitioner lifts 25 lbs. from floor to waist and chest. (Px5) Petitioner said he is unable to carry of lift more than that due to his back problem and that he does not carry or lift heavy objects at work. (Px5) Subsequently, on September 27, 2010 petitioner advised that when

steering a wheel of a car his shoulder pops which was reproduced for the doctor and noted to be extremely painful, audible and palpable. (Px5) Dr. Schwartz reviewed the FCE and noted that petitioner had some back pain with lifting and carrying as well as shoulder discomfort with lifting and pushing. (Px5) The examiner for the FCE felt petitioner should be limited with use of a pick axe and climbing into his dump truck. (Px5) Due to the increase in symptoms, Dr. Schwartz ordered a left shoulder MR arthrogram. (Px5) Petitioner was released to return to work except he was "unable to climb truck bed." (Px5)

The left shoulder MRI from October 28, 2010 showed large undersurface and intrasubstance partial thickness tearing of the distal supraspinatus. (Px5; Px13) Petitioner continued to have popping with rotation of the shoulder and Dr. Schwartz felt there was possible subcoracoid impingement as well as a partial thickness supraspinatus tear. (Px5) Dr. Schwartz discussed revision surgery. (Px5) Petitioner was released to return to work with no climbing into the truck bed. (Px5)

Petitioner underwent another surgery on December 17, 2010 for left shoulder arthroscopic capsular release and revision arthroscopic subacromial decompression. (Px5; Px7) His post operative diagnosis was left shoulder impingement pain and capsular tightness. (Px5; Px7) There was thinning but no actual re-tear. (Px5; Px7) Petitioner was kept off work. (Px5; Px7) Petitioner once again completed post surgical physical therapy and TTD was continued. (Px5; Arb. Ex. 1)

Dr. Schwartz injected petitioner's left shoulder with Kenalog and lidocaine on January 31, 2011. (Px5) Petitioner was released to return to work at light duty with light clerical use of the left arm only. (Px5) Dr. Schwartz also recommended continued physical therapy for the left shoulder. (Px5) Dr. Schwartz wrote a prescription for work conditioning on February 28, 2011 "for job simulation." (Px5) On March 2, 2011 a note in Dr. Schwartz's records states the Bone and Joint Specialists "confirmed with Comp Care job simulation/Blake w/Hartford to send job description." (Px6)

On March 10, 2011 the Comprehensive Physical Therapy notes state a work conditioning evaluation was completed. (Px5; Px8) The evaluation stated that petitioner could currently do 71.2% of the physical demands of his job as a truck driver. (Px8) He was able to work at light physical demand and his job as a truck driver was listed as a heavy physical demand job. (Px8) The Comprehensive Physical Therapy notes make no mention of back pain on March 14 or 16, 2011. (Px5; Px8) The notes from March 16, 2011 do state that petitioner was not able to complete the box lift sets that day. (Px5; Px8)

Petitioner testified that he had to constantly lift boxes from floor to waist and above during this work hardening and that these activities hurt his back.

On March 23, 2011 (11 WC 48918) petitioner lifted boxes which hurt his back to the point where he could not continue work hardening. See decision for this said claim concerning Petitioner's alleged lower back injury.

On June 23, 2011 Dr. Schwartz diagnosed petitioner with persistent left shoulder AC joint pain, periscapular trigger point pain and back pain. (Px5) Petitioner stated the trigger point injections helped his posterior pain somewhat. (Px5) He still had pain over the superior and anterior shoulder particularly with pushing. (Px5) He also complained of persistent severe back pain. (Px5) The doctor noted that petitioner might benefit from a revision distal clavicle resection. (Px5)

Petitioner underwent a §12 evaluation with Dr. Nicholson at Midwest Orthopedics at Rush on July 6, 2011. (Px5; Rx3) Petitioner stated when he fell initially his ribs were extremely painful and once those resolved he noticed he had shoulder problems. (Px5; Rx3) The IME also noted that petitioner injured his "chronic back

area" while doing work conditioning and now was also dealing with significant back pain. (Px5; Rx3) Dr. Nicholson opined that petitioner's continued shoulder pain almost fits the pattern of complex regional pain syndrome and the doctor was fearful that petitioner had a recurrent rotator cuff tear. (Px5; Rx3) Dr. Nicholson recommended an updated MRI of the shoulder and stated that petitioner was unable to control his arm or do even light activity and was therefore unable to return to work. (Px5; Rx3) Dr. Nicholson said that regardless of the additional treatment he recommended for petitioner, he did not believe petitioner would be able to return to what the doctor says is a "heavy duty job." (Px5; Rx3) Dr. Nicholson opined that once they deal with his pain, restrictions would be that he would be able to drive but he would not be able to do the cleaning of the trucks; "if we do get him back." (Px5; Rx3) An updated MRI from August 31, 2011 showed the supraspinatus tendon was torn near the humeral attachment. There was no significant retraction of the torn tendon edges. (Px5) Petitioner continued to have pain and popping in the left shoulder and Dr. Schwartz assessed petitioner with persistent left shoulder pain and popping status post arthroscopic rotator cuff repair, biceps tendonesis, and distal clavicle resection with subsequent revision distal clavicle resection and acromioplasty. (Px5; Px9)

On October 19, 2011 Dr. Nicholson provided an addendum report after review of the MR arthrogram from August 31, 2011. (Rx4) Dr. Nicholson did not see a significant full thickness rotator cuff tear. (Rx4) He did note tendinosis at the insertion side. (Rx4) Dr. Nicholson diagnosed petitioner with pain in and around the shoulder related to other issues such as complex regional pain syndrome and a subacromial bursitis. (Rx4) Dr. Nicholson admitted that he had not seen petitioner since July 2011 so he was unaware of petitioner's current status but still felt "he should be at maximum medical improvement from the standpoint of the rotator cuff repair and rehabilitation." (Rx4) Dr. Nicholson opined petitioner would be capable of a return to work but that return to work would need to be determined by an FCE. (Rx4) Dr. Nicholson did not see a surgical lesion and therefore did not believe further surgery would be warranted at this time. (Rx4)

The FCE completed on December 21, 2011 showed petitioner at sedentary-light duty and his job as a dump truck driver was considered medium duty with up to 50 lbs. occasional lifting. (Px5; Px9) Petitioner was not able to return to work in his prior capacity as a dump truck driver. (Px5; Px9)

Petitioner returned to see Dr. Schwartz on January 5, 2012 still complaining of back pain and Dr. Schwartz duplicated the popping in the shoulder with range of motion. (Px5; Px11) Based on the FCE from December 2011, Dr. Schwartz released petitioner with permanent restrictions in the sedentary/light physical demand level while noting that his prior job was medium duty. (Px5; Px11) Dr. Schwartz stated that "[i]t is my impression that the patient has reached maximum medical improvement from the injury that occurred on July 20, 2009 when he fell off a truck." (Px5). Dr. Schwartz went on to note that petitioner's permanent partial impairment was determined using the Sixth Edition Guides of the AMA (specifically table 15-5) placing him at 10% upper extremity impairment based on the distal clavicle resection. (Px5; px11) The impression was AC joint sprain injury with degenerative joint disease. (Px5; Px11) However, Dr. Schwartz then recommended an updated MRI due to the ongoing symptomology, noting that "[f]urther treatment will be determined based on the result of the MRI." (Px5). Petitioner was to follow up after the MRI had been performed and was to remain off of work. (Px5; Px11) This was Petitioner's last visit with Dr. Schwartz. It does not appear that another MRI for the left shoulder was ever performed.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner credibly testified that on July 29, 2009 he was exiting a truck when his feet got stuck and he fell to the concrete, landing on his left shoulder. He indicated that he felt severe pain following the incident.

Accident is not in dispute. (See Arb.Ex.#1). Petitioner continued to work thereafter. He testified that he thought that his shoulder would get better, but that it only got worse.

On November 30, 2009 petitioner presented to Methodist Hospital stating he fell about 6 feet off his semi several months ago and still had continued pain, weakness and decreased mobility in his left arm/shoulder. (Px5; Px12) The symptoms were not improving. (Px5; Px12) X-rays showed no fracture. (Px5; Px12) Methodist Hospital referred petitioner to Dr. Schwartz for MRI and likely surgery for "deformative repair." (Px5; Px12) The diagnosis was rotator cuff damage. (Px5; Px12)

Petitioner presented to FirstMed Occupational Health on December 22, 2009 providing a consistent history. (Px4) Petitioner was diagnosed with a left shoulder sprain/strain and they wanted to rule out a rotator cuff tear. (Px4)

Petitioner saw Dr. Schwartz on January 4, 2010 stating he did not seek treatment immediately because he thought his left shoulder would get better on its own. (Px5) Dr. Schwartz prescribed an MRI of the left shoulder. (Px5) The left shoulder MRI was completed on January 26, 2010. (Px5) It showed a focal full thickness tear of the anterior insertion of the supraspinatus tendon with undersurface tearing of the tendon at the posterior insertion, mild partial undersurface tearing of the infraspinatus tendon at the anterior most insertion, findings compatible with interstitial tearing of the extra-articular biceps tendon within the intertubercular groove. (Px5)

Petitioner eventually underwent arthroscopic left rotator cuff repair, arthroscopic assisted left shoulder bicipital tendonesis, arthroscopic distal clavicle resection and acromioplasty on March 2, 2010. (Px5; Px7) He subsequently had a second surgery on December 17, 2010 consisting of a left shoulder arthroscopic capsular release and revision arthroscopic subacromial decompression. (Px5; Px7) His post operative diagnosis was left shoulder impingement pain and capsular tightness. (Px5; Px7) There was thinning but no actual re-tear. (Px5; Px7)

Petitioner returned to see Dr. Schwartz on January 5, 2012. Dr. Schwartz's impression at that time was AC joint sprain injury with degenerative joint disease. (Px5; Px11). Following his examination, Dr. Schwartz stated that "[i]t is my impression that the patient has reached maximum medical improvement from the injury that occurred on July 20, 2009 when he fell off a truck." (Px5). However, Dr. Schwartz went on to recommend an updated MRI due to the ongoing symptomology, noting that "[f]urther treatment will be determined based on the result of the MRI." (Px5). Petitioner was to follow up after the MRI had been performed and was to remain off of work. (Px5; Px11). It does not appear that Petitioner underwent the recommended MRI, and there is no indication that Petitioner has sought treatment for his left shoulder since that date.

During the course of Dr. Schwartz's evidence deposition on July 31, 2014, counsel for Respondent stipulated there was no dispute regarding causation of the left shoulder in relation to the July 20, 2009 accident. (Px2 pp.6-7)

Currently, Petitioner testified that his left shoulder "shifts" or "pops" with any outward motion. When asked whether he is presently taking any medication for his left shoulder, Petitioner testified that he "mainly" takes medication for his back.

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner's current condition of ill-being with respect to his left shoulder was causally related to the accident on July 20, 2009 up through the date that Dr. Schwartz found that Petitioner had reached MMI, or January 5, 2012.

While Dr. Schwartz also recommended an MRI at the time of this visit, and a follow up visit to determine if any further treatment was indicated, there is no indication that Petitioner ever returned to Schwartz or that Dr. Schwartz ever changed his mind with respect to his MMI pronouncement. Furthermore, there is no evidence to show that Petitioner is currently in need of additional treatment for his left shoulder. Indeed, Petitioner's treatment since the alleged incident at work condition on or about 3/23/11 has focused almost exclusively on his lower back. In addition, Petitioner himself testified at arbitration that other than some shifting and popping in the shoulder with outward movement, he is currently working within his restrictions and that the medication he presently takes is "mainly" for his back. Therefore, the Arbitrator finds that Petitioner's left shoulder condition reached maximum medical improvement on January 5, 2012, or the date his treating surgeon, Dr. Schwartz opined as much.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to causation (issue "F", supra), the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical expenses relating to the left shoulder up through the date Dr. Schwartz found that Petitioner had reached MMI, or January 5, 2012. Furthermore, Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in § 8(j) of the Act.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY PARTIAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes the parties stipulated that Petitioner was temporarily totally disabled from 12/1/09 through 3/22/11, for a period of 68-1/7 weeks, as provided in § 8(b) of the Act. (See Arb.Ex.#1).

The Arbitrator further notes that while the Request for Hearing form (Arb.Ex.#1) also shows a period of temporary partial disability ("TPD") in dispute in this case, the relevant period being claimed (6/7/13 through arbitration) occurred subsequent to the alleged accident on March 23, 2011, the subject of claim 11 WC 48918. Therefore, the issue of TPD is more appropriately considered in the decision issuing separately in that claim.

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Coglianese,

Petitioner,

vs. NO: 11 WC 48918

Asphalt Maintenance Systems,

15IWCC0935

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary total disability, 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

Respondent was found to be entitled to a TTD credit of $111,245.08 in case number 10 WC 35282. The TTD awarded in that case totaled $54,768.57, which leaves Respondent with a remaining TTD credit in this case of $56,476.51. The Commission notes that the TTD and TPD awarded in this case totals $102,854.21. After deducting the noted remaining TTD credit to Respondent, the amount of TTD and TPD left due and owing is $46,377.70. While all reasonable and necessary medical expenses related to the lumbar spine in this claim have been awarded by the Arbitrator, and affirmed by the Commission on review, for purposes of the surety bond, we note that the only medical bill located in the evidentiary record that may be outstanding totals

15IWCC0935

$2,085.00 from Advanced Medical Imaging Center (Px13). As such, the bond is based on this outstanding bill and the outstanding TTD & TPD after deducting credit to Respondent.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 18, 2015, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $48,500.00. 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: DEC 18 2015
TJT:yl
o 12/7/15
51

Thomas J. Tyrrell

Kevin W. Lamborn

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b)/8(a) ARBITRATOR DECISION

COGLIANESE, WILLIAM
Employee/Petitioner

Case# **11WC048918**

10WC035282

ASPHALT MAINTENANCE SYSTEMS
Employer/Respondent

15IWCC0935

On 2/18/2015, 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 0.06% 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:

1747 SEIDMAN MARGULIS & FAIRMAN LLP
STEVEN J SEIDMAN
20 S CLARK ST SUITE 700
CHICAGO, IL 60603

2837 LAW OFFICES JOSEPH MARCINIAK
MICHELLE POWELL
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CHICAGO, IL 60602

15IWCC0935

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

William Coglianese,
Employee/Petitioner

v.

Asphalt Maintenance Systems,
Employer/Respondent

Case # 11 WC 48918

Consolidated cases: 10 WC 35282

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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **New Lenox**, on **11/6/14**. 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. [ ] 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. [ ] 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. [x] 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. [x] What temporary benefits are in dispute?
[x] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

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FINDINGS

On the date of accident, **3/23/11**, 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 **$62,634.00**; the average weekly wage was **$1,205.59**.

On the date of accident, Petitioner was **46** years of age, ***single*** with **1** dependent child. (Arb.Ex.#2).

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$0.00**. (See Arb.Ex.#1).

Respondent is entitled to a credit of **$0.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary partial disability ("TPD") benefits of $139.06 per week for 74-1/7 weeks, commencing 6/6/13 through 11/6/14, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability ("TTD") benefits of $803.73 per week for 115-1/7 weeks, commencing 3/23/11 through 6/5/13, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 3/24/11 through 11/6/14, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay the reasonable and necessary medical expenses relating to his lumbar spine in claim 11 WC 48918, pursuant to §8(a) and the fee schedule provisions of § 8.2 of the Act. Furthermore, Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

Petitioner is entitled to prospective medical treatment in the form of aquatic therapy prescribed by Dr. Levin, and Respondent shall pay the reasonable and necessary medical expenses associated therewith pursuant to §8(a) and the fee schedule provisions of § 8.2 of 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

2/4/15
Date

ICArbDec19(b)

FEB 18 2015

STATEMENT OF FACTS:

Petitioner alleged two separate injuries – one involving his left shoulder (10 WC 35282) and the other involving his lower back (11 WC 48918). At arbitration, Petitioner moved to amend the Application for Adjustment of Claim for 11 WC 48918 to show a date of accident of March 23, 2011. Respondent had no objection.

See decision issued with respect to companion claim 10 WC 35282 for discussion concerning Petitioner's left shoulder injury on July 20. 2009.

Following the aforementioned left shoulder injury and subsequent surgeries, Petitioner underwent work conditioning. He testified that as part of this program he had to constantly lift boxes from floor to waist and above. He indicated that doing these activities hurt his back.

Petitioner testified that on March 23, 2011 (11 WC 48918) he lifted boxes which hurt his back to the point where he could not continue work hardening. Notes from Dr. Schwartz's office state that petitioner came into the office that day requesting something for back pain stating he was doing work conditioning when he was lifting boxes and felt extreme pain in his back. (Px5) Petitioner asked if he needed to complete his last work conditioning session on March 25, 2011 because he was in pain. (Px5) Work conditioning was stayed until he could follow up with Dr. Schwartz. (Px5) Petitioner stated that he felt "something is wrong" with his back. (Px5) On March 23, 2011 Comprehensive Physical therapy notes indicate that back pain was very limiting and that the lumbar pain undermined petitioner's ability to perform lifting exercises. (Px5; Px8) Work conditioning daily productivity notes state that on March 23, 2011 petitioner was unable to complete exercises noting "can't back pain." (Px5; Px8)

On March 28, 2011 petitioner returned to see Dr. Schwartz and the notes state "over the last couple of weeks, however, he has had significant lumbar back pain with the lifting and carrying in work conditioning that has made it difficult for him to progress. He states the back pain now far outweighs any shoulder discomfort." (Px5) Petitioner was referred to therapy for back strengthening and modalities as well as shoulder range of motion exercises. (Px5) Petitioner was taken off work. (Px5) Petitioner testified that he completed all aspects of his job and had no back trouble prior to this work hardening.

When petitioner returned to see Dr. Schwartz on April 11, 2011 he still had significant low back pain while his shoulder pain was a bit better though he continued to note popping with motion and soreness particularly at end ranges of motion. (Px5) On exam Dr. Schwartz noted petitioner had obvious discomfort when standing from a seated position due to his low back pain. (Px5) Repetitive popping in the shoulder was also demonstrated. (Px5) Dr. Schwartz referred petitioner to an anesthesia pain management specialist for the low back pain. (Px5) Petitioner was also prescribed additional physical therapy for the left shoulder which was approved and started on April 11, 2011. (Px5) Petitioner was released to return to work with no lifting over 10 lbs. (Px5)

A sheet listing the physical demands of a truck driver was sent over from the Hartford to Dr. Schwartz on May 10, 2011. (Px5) The physical demands analysis states that lifting and carrying are necessary only occasionally up to 10 lbs., pushing and pulling was only necessary occasionally up to 10 lbs. (Px5) This sheet also stated there were two steps to climb into the truck and repetitive use of the left foot for the clutch. (Px5) It states that part time or transitional duty is not available at A.M.S. (Px5)

Petitioner presented to Dr. Schwartz on May 12, 2011 with severe neck and back pain. (Px5) He also still complained of popping in the shoulder with rotation. (Px5) Dr. Schwartz provided trigger point injections and continued petitioner on 10 lbs. weight restriction. (Px5) Dr. Schwartz noted that unfortunately petitioner was

not seeking treatment for his back because it has been denied by workers compensation. (Px5) Petitioner was released to return to work with no lifting over 10 lbs. (Px5)

On June 23, 2011 Dr. Schwartz diagnosed petitioner with persistent left shoulder AC joint pain, periscapular trigger point pain and back pain. (Px5) Petitioner stated the trigger point injections helped his posterior pain somewhat. (Px5) He still had pain over the superior and anterior shoulder particularly with pushing. (Px5) He also complained of persistent severe back pain. (Px5) Dr. Schwartz noted petitioner may benefit from a revision distal clavicle resection. (Px5)

Petitioner underwent a §12 evaluation with Dr. Nicholson at Midwest Orthopedics at Rush on July 6, 2011. (Px5; Rx3) Petitioner stated when he fell initially his ribs were extremely painful and once those resolved he noticed he had shoulder problems. (Px5; Rx3) The IME also noted that petitioner injured his "chronic back area" while doing work conditioning and now was also dealing with significant back pain. (Px5; Rx3) Dr. Nicholson opined that petitioner's continued shoulder pain almost fits the pattern of complex regional pain syndrome and the doctor was fearful that petitioner had a recurrent rotator cuff tear. (Px5; Rx3) Dr. Nicholson recommended an updated MRI of the shoulder and stated that petitioner was unable to control his arm or do even light activity and was therefore unable to return to work. (Px5; Rx3) Dr. Nicholson said that regardless of the additional treatment he recommended for petitioner, he did not believe petitioner would be able to return to what the doctor says is a "heavy duty job." (Px5; Rx3) Dr. Nicholson opined that once they deal with his pain, restrictions would be that he would be able to drive but he would not be able to do the cleaning of the trucks; "if we do get him back." (Px5; Rx3) An updated MRI from August 31, 2011 showed the supraspinatus tendon was torn near the humeral attachment. There was no significant retraction of the torn tendon edges. (Px5) Petitioner continued to have pain and popping in the left shoulder and Dr. Schwartz assessed petitioner with persistent left shoulder pain and popping status post arthroscopic rotator cuff repair, biceps tendonesis, and distal clavicle resection with subsequent revision distal clavicle resection and acromioplasty. (Px5; Px9)

On October 19, 2011 Dr. Nicholson provide an addendum report after review of the MR arthrogram from August 31, 2011. (Rx4) Dr. Nicholson did not see a significant full thickness rotator cuff tear. (Rx4) He did note tendinosis at the insertion side. (Rx4) Dr. Nicholson diagnosed petitioner with pain in and around the shoulder related to other issues such as complex regional pain syndrome and a subacromial bursitis. (Rx4) Dr. Nicholson admitted he has not seen petitioner since July 2011 so he was unaware of petitioner's current status but still felt "he should be at maximum medical improvement from the standpoint of the rotator cuff repair and rehabilitation." (Rx4) Dr. Nicholson opined petitioner would be capable of a return to work but that return to work would need to be determined by an FCE. (Rx4) Dr. Nicholson did not see a surgical lesion and therefore did not believe further surgery would be warranted at this time. (Rx4) On December 12, 2011 Blake from the Hartford authorized the FCE "to provide permanent restrictions and close case." (Px5)

The FCE completed on December 21, 2011 showed petitioner at sedentary-light duty and his job as a dump truck driver was considered medium duty with up to 50 lbs. occasional lifting. (Px5; Px9) Petitioner was not able to return to work in his prior capacity as a dump truck driver. (Px5; Px9)

Petitioner returned to see Dr. Schwartz on January 5, 2012 still complaining of back pain and Dr. Schwartz duplicated the popping in the shoulder with range of motion. (Px5; Px11) Based on the FCE from December 2011, Dr. Schwartz released petitioner with permanent restrictions in the sedentary/light physical demand level while noting that his prior job was medium duty. (Px5; Px11) Dr. Schwartz stated that "[i]t is my impression that the patient has reached maximum medical improvement from the injury that occurred on July 20, 2009 when he fell off a truck." (Px5). Dr. Schwartz went on to note that petitioner's permanent partial impairment was determined using the Sixth Edition Guides of the AMA (specifically table 15-5) placing him at 10% upper

extremity impairment based on the distal clavicle resection. (Px5; px11) The impression was AC joint sprain injury with degenerative joint disease. (Px5; Px11) However, Dr. Schwartz then recommended an updated MRI due to the ongoing symptomology, noting that "[f]urther treatment will be determined based on the result of the MRI." (Px5). Petitioner was to follow up after the MRI had been performed and was to remain off of work. (Px5; Px11) It does not appear that an MRI for the left shoulder was performed thereafter.

Petitioner underwent an initial vocational rehabilitation assessment on January 23, 2012. (Rx5) The assessment listed potential transferable skills as including team assemblers, first line supervisors of housekeeping and janitorial workers, information clerks, and telemarketers. (Rx5) Petitioner continued to receive TTD benefits during this time.

Petitioner presented to Dr. Marc Levin at the Community Spine & Neurosurgery Institute on February 4, 2012 stating his back and leg pain began when he was lifting boxes in work hardening March 2011. (Px10) On March 3, 2012 Petitioner underwent x-rays at Community Hospital for his left hip, thoracic and lumbar spine. (Px7; Px10) The hip showed mild degenerative changes and the lumbar spine showed narrowing at the L4-5 intervertebral disc and increased density that "may represent an incomplete osseous fusion with degenerative changes most pronounced at the L4-5 level." (Px7; Px10)

When petitioner returned to see Dr. Levin again on February 9, 2012 he complained of low back pain with constant radiation into the bilateral buttocks and at times radiating into the groin area left greater than right. (Px10) He also complained of a weak feeling in the bilateral lower extremities. (Px10) Petitioner told Dr. Levin that after a shoulder injury he was sent to work hardening and was supposed to use a BTE machine, which is a truck simulator, but the place he went to did not have a BTE machine and instead he did a lot of box lifting which increased his back pain until work hardening was stopped due to the back pain. (Px10) The diagnosis was lumbar degenerative disc disease, lumbar strain, and rule out left hip pathology. (Px10) Dr. Levin first wanted to take some x-rays to rule out instability. (Px10)

Meanwhile, Corvel completed a Labor Market Survey on February 14, 2012 that concluded petitioner should be able to earn between $10.25 and $11.00 per hour. (Rx6) It does not appear that vocational rehabilitation was continued past this Labor Market Survey. (Rx)

Dr. Levin listed petitioner's diagnosis as failed L4 fusion and radiculopathy at their follow up on March 5, 2012. (Px7) He ordered an MRI of the lumbar spine and petitioner was kept off. (Px10)

Petitioner underwent a lumbar MRI on May 2, 2012 that showed no acute lumbar fracture, but did show grade 1 retrolisthesis of L4 on L5 by 3 mm. (Px7; Px10; Px11) The osseous material seen within the L4-5 intervertebral disc space could be secondary to partial interbody fusion. (Px7; Px10; Px11) L4-5 and L5-S1 also both showed broad based disc bulges with L4-5 having some central canal stenosis and mild bilateral foraminal stenosis. (Px7; Px10; Px11) On May 2, 2012 petitioner also underwent a lumbar CT scan that showed postoperative changes at L4-5, multilevel degenerative changes with moderate central canal stenosis at L3-4 and scattered areas of lateral recess compromise. (Px7; Px10; Px11)

Petitioner presented with continued constant back pain radiating into the buttocks and groin on May 11, 2012. (Px10) Petitioner was walking with a hunched stopped posture. (Px10) The MRI and CT scan were reviewed and found to note degenerative changes as well as a fusion at L4-5. There was no significant foraminal or central stenosis. (Px10) Dr. Levin felt the CT scan showed a full fusion. (Px10) Dr. Levin diagnosed petitioner with a lumbar strain aggravated by a pre-existing condition and recommended physical therapy; specifically aquatic therapy. (Px10)

On June 20, 2012 petitioner called Dr. Schwartz and stated he had gone through 15 months without treatment for the back and had been told via MRI that his spine fusion from 1998 is cracked. (Px5)

Petitioner forwarded correspondence to Dr. Schwartz discussing the back injury dated June 21, 2012. (Px5) Petitioner states that in February 2011 he wanted to try and drive his work truck to see if his shoulder could handle it and his therapist from Bone and Joint recommended he go to a facility with a BTE machine. (Px5) Petitioner states workers compensation sent him to Comprehensive Care in Gary, Indiana for "full-blown" work hardening instead of the work conditioning that Dr. Schwartz prescribed. (Px5) Petitioner states he lifted weighted boxes over and over up to approximately 350 times a day during a four hour period while Dr. Schwartz still had him listed on a 10 lbs. weight lifting restriction. (Px5) The back pain increased until on March 23, 2011 petitioner felt a pop in his lower back and severe pain. (Px5)

Petitioner was examined by Dr. Bernstein for the back at Respondent's request on December 17, 2012. (Rx1) Petitioner advised Dr. Bernstein that on March 23, 2011 while in work hardening for the left shoulder he suffered injury to his lumbar spine. (Rx1) Petitioner said that after one and a half weeks of repetitive bending and lifting he began to experience increasing pain in the low back. (Rx1) Petitioner says he then lifted overhead and had severe back pain on March 23, 2011. (Rx1) Dr. Bernstein noted that while distracted in a seated position petitioner had negative straight leg raising. (Rx1) Dr. Bernstein noted that there was bone at the L4-5 disc space on the May 2, 2012 MRI scan and that claw spurs at the L4-5 level were potentially consistent with chronic pseudoarthrosis. (Rx1) Dr. Bernstein stated that "if taken at face value, this patient requires further workup with a lumbar CT scan. The patient's lumbar MRI scan fails to identify any other pathology that should be responsible for this degree of symptomatology." (Rx1) Dr. Bernstein did say that "based on today's evaluation, this patient would, at the most be able to perform light duty physical demand activity, assuming that his pain complaints and pain guarding on physical examination are legitimate." (Rx1)

Dr. Bernstein rendered an addendum report dated February 18, 2013 advising that he was able to review additional medical records forwarded. (Rx2) Dr. Bernstein noted back pain listed in the physical therapy records from July 2009. (Rx2) Dr. Bernstein also reviewed the CT scan from May 4, 2012 which he stated showed interbody surgery at L4-5 and pseudoarthrosis with incomplete healing of the superior aspect of the graft. (Rx2) Dr. Bernstein opined he did not see evidence of posterior spinal fusion. (Rx2) Dr. Bernstein stated "I recognize that this patient had made subjective complaints of pain and demonstrated an inability to return to his normal work activities. I fail to identify any further pathology in his lumbar spine that would be responsible for his symptoms. It is possible that he is having pain related to the pseudoarthrosis at L4-5, however, this is a surgery from ten years ago and it is unlikely that it should become symptomatic at this time." (Rx2)

On April 1, 2013 Petitioner presented to Dr. Levin with continued low back pain and bilateral buttock pain radiating into the groin. (Px10; Px11) He did not have numbness or tingling but did still feel his bilateral lower extremities were weak. (Px10; Px11) Dr. Levin felt petitioner had pseudoarthrosis at the prior fusion site. (Px10; Px11) Petitioner told Dr. Levin again that the back pain began while he was completing work hardening for his left shoulder injury. (Px10; Px11) Dr. Levin stated that "looking back at the imaging studies there is no way one can tell from the studies the date any pain would have or not have started." (Px10; Px11) Dr. Levin stated "so, basically what I can say is based on his history, this is when the back pain started and if indeed that is the case, it should be included into his workman's compensation injury." (Px10; Px11) On April 29, 2013 Dr. Levin provided an additional letter stating that "it is my professional medical opinion that the lumbar pseudoarthritis at the site of the fusion is indeed related to Mr. Coglianese workman's compensation injury." (Px10; Px11)

On April 16, 2013 petitioner presented to APAC Groupe Centers for Pain Management with back spasm and was listed to have an unsteady, abnormal and antalgic gain with sacroiliac pain. (Px11) The diagnoses were listed to be back pain, lumbar radiculopathy, lumbar spinal stenosis, post laminectomy syndrome of the lumbar region, muscle spasm, failed back syndrome, and inflammation of the sacroiliac joint. (Px11) It is noted that petitioner had fusion in 1998 with good pain relief until he was doing work hardening 2 years ago when he was lifting heavy objects during therapy which caused his current back pain with radiation to both buttock and legs to the knee. (Px11) Petitioner returned to APAC Groupe Centers for Pain Management once in April and again in May 2013. (Px11) This record also noted that the patient "has surgeons who suggest surgery once approved." (Px11) By June 4, 2013 his range of motion was listed to be 50% of normal. (Px11) Petitioner continued to see APAC Groupe throughout July and then again in September 2013. (Px11) On December 11, 2013 petitioner presented to APAC Groupe Centers for Pain Management again with low back pain located at the axial and radiating into the right and left legs. (Px11) The diagnosis was low back pain, lumbar spondylosis and shoulder pain. (Px11)

The deposition of orthopedic physician Dr. Schwartz was taken on July 31, 2014. (Px2) The parties stipulated there was no dispute regarding causation of the left shoulder in relation to the July 20, 2009 accident. (Px2 pp.6-7) The parties also agreed that there was no dispute as to the findings of the functional capacity evaluation. (Px2 p.7) Dr. Schwartz stated petitioner was prescribed work hardening as part of his treatment for the left shoulder injury. (Px2 p.7) Petitioner was to undergo job simulation type physical therapy to recondition him to his job but in petitioner's case Dr. Schwartz noted the work hardening facility was having petitioner complete therapeutic exercises, range of motion, box lifting, and working on steering wheel turns in a driver's seat type of position. (Px2 p.8) Petitioner returned to Dr. Schwartz with complaints of back pain on March 28, 2011 stating that initially he had progressed well in work conditioning, though his shoulder still remained somewhat weak and limited in motion, but after repeated lifting and carrying he developed significant pain in his lumbar spine. (Px2 p.9) Dr. Schwartz decided to hold work conditioning and instead shift to conservative back treatment. (Px2 p.10) On April 11, 2011 petitioner returned with continued back pain and advised that back treatment was not approved and therefore he had been unable to receive treatment for the back. (Px2 p.10) Dr. Schwartz stated that he believed "the activities he participated in during his work hardening was a contributor to his lumbar back pain, his low back pain." (Px2 p.14)

Dr. Marc Levin a neurosurgeon with Community Spine & Neurosurgery Institute was deposed on July 24, 2014. (Px3) Petitioner advised Dr. Levin that he was to undergo a truck simulator but the place he was sent did not have that type of machinery and instead he underwent a regular work hardening program that included lifting multiple boxes up and down from the waist up to the ceiling. (Px3 p.8) Petitioner advised Dr. Levin that he was lifting about 400 boxes a day at work hardening and began having back pain which then became severe. (Px3 p.8) Dr. Levin noted about the prior fusion at L4-5 in 1998. (Px3 p.8) Dr. Levin's impression was lumbar degenerative disc disease and lumbar sprain and they wanted to rule out pathology on the left. (Px3 p.9)

Dr. Levin stated in his March 5, 2012 notes that the x-rays showed a possible incomplete fusion, meaning no solid bone between L4 and L5 and ordered an MRI and a CT scan. (Px3 p.10) The CT scan showed petitioner did not have a full fusion in the L4-5 area. (Px3 p.11) Dr. Levin's diagnosis was sprain/strain aggravated by a pre-existing condition. (Px3 p.11) On April 1, 2013 Dr. Levin noted pseudoarthritis at the side of the previous fusion. (Px3 p.12)

During his July 24, 2014 deposition, Dr. Levin opined that "the aggravation of his previous problem with his lumbar spine was indeed aggravated by that work hardening program." (Px3 p.13) Dr. Levin stated his opinion is based on "the onset of the pain, the continued pain. There's no absolute certainty by looking at studies whether or not the pseudoarthritis occurred at that time or was present and quiescent prior." (Px3 p.13)

Pseudoarthritis means there is not a complete fusion at the area that was supposed to be fused. (Px3 p.13) Dr. Levin stated that he would recommend conservative treatment first and that Mr. Coglianese was not necessarily an operative candidate but that they might do some aqua therapy. (Px3 p.14) Dr. Levin opined petitioner was to be continued off work. (Px3 p.15)

Dr. Levin noted that the incomplete fusion could have been present after 1998 when petitioner was working and there was no way to determine whether or not it was. (Px3 p.18) Dr. Levin stated he believes petitioner's back condition is related to the work hardening because that is when petitioner began having pain. (Px3 p.18) Dr. Levin agreed that he could not to a reasonable degree of medical and surgical certainty opine whether the pseudoarthritis was caused by the work accident. (Px3 p.19)

On redirect Dr. Levin was asked the following "Counsel just asked you a lot of questions with possibilities. What I am asking you is, based on a reasonable degree of certainty, medical and neurosurgical certainty, do you have an opinion as to whether or not that work hardening incident was a cause or aggravating factor to his current condition of ill-being when you saw him in 2012 and '13?" (Px3 p.20) Dr. Levin replied "Yes. I have an opinion. That is my opinion that you can't tell—it could either have been caused by that or certainly it did aggravate a pre-existing condition." (Px3 p.21)

Mike Wick is a supervisor at Rock Solid Paving & Excavating. Mr. Wick testified to petitioner's work for the company verifying that petitioner did no lifting and worked within his restrictions. Petitioner testified that at his current job at Rock Solid Paving & Excavating he sits in a truck and either drives or pushes a button to operate the equipment. He does no manual labor at all. Mr. Wick advised that petitioner did no strenuous tasks. Due to the relationship with the owner of Rock Solid Paving & Excavating, petitioner has also been allowed and able to take off work or work less on days that his back is acting up and he cannot sit in a truck. His condition has been accommodated at least temporarily. In his prior job at Asphalt Maintenance Systems petitioner testified that he would need to use a pick axe to clean out the truck bed and engage in heavy labor as part of his job duties.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, AND (D), WHAT WAS THE DATE OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner testified that following the accident on July 20, 2009 (10 WC 35282) he eventually underwent a program of work hardening at Comprehensive Physical Therapy beginning in early March 2011. He indicated that this program required a lot of bending and lifting, including repeated lifting of a milk crate or wooden box weighing up to 40 pounds three (3) days a week. He testified that his back started hurting him from all the lifting, and that on March 23, 2011 he reached overhead and felt a pop in his back. He indicated that he informed the therapist that he had hurt his back and that he believed he was given ice packs at that time. He thereupon visited Dr. Schwartz on March 28, 2011.

The records of Comprehensive Physical Therapy dated March 23, 2011 note that "[l]umbar pain undermines pt's ability to perform lifting activities." (PX8).

In an office note dated March 28, 2011, Dr. Schwartz recorded that "[o]ver the last couple of weeks ... [Petitioner] has had significant lumbar back pain with the lifting and carrying in work conditioning that has made it difficult for him to progress. He states that the back pain now far outweighs any shoulder discomfort." (PX5).

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner proved by a preponderance of the credible evidence that he sustained accidental injuries arising out of and in the course of his employment on March 23, 2011, or his last date of work conditioning. More to the point, the Arbitrator finds that Petitioner aggravated his pre-existing back condition during the course of the work conditioning program in question, said program having been prescribed as a result of his work-related left shoulder condition.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

As previously noted, Petitioner credibly testified that his low back started to bother him while participating in work conditioning relative to his left shoulder in March of 2011. He noted that on March 23, 2011 he reached overhead and felt a pop in his back. He indicated that he told his therapist and was given ice packs.

Comprehensive Physical Therapy records on that date state that "[l]umbar pain undermines pt's ability to perform lifting activities." (PX8).

Furthermore, Dr. Schwartz's subsequent office note dated March 28, 2011 record that Petitioner "... has had significant lumbar back pain with the lifting and carrying in work conditioning that has made it difficult for him to progress. He states that the back pain now far outweighs any shoulder discomfort." (PX5).

Petitioner eventually came under the care of Dr. Levin who testified that he was of the opinion that "... the aggravation of [Petitioner's] previous problem with his lumbar spine was indeed aggravated by that work hardening program." (PX3, p.13). Dr. Levin noted that this opinion was "... based on the onset of the pain, the continued pain. There's no absolute certainty by looking at studies whether or not the pseudarthrosis [or incomplete prior fusion] occurred at that time or was present and quiescent prior." (PX3, p.13). On cross examination, Dr. Levin agreed that the incomplete fusion could have been present since the surgery in 1998, and that he could not say one way or the other whether the actual pseudarthrosis was caused by the work hardening accident. (PX3, pp.17,19). However, on re-direct, when asked whether the work hardening incident was a cause or aggravating factor to his current condition, Dr. Levin testified that "... it could either have been caused by that or certainly it did aggravate a pre-existing condition." (PX3, pp.20-21).

Thus, it would appear that while Dr. Levin could not say that the work hardening incident *caused* the pseudarthrosis, he did feel that the incident had indeed *aggravated* said condition.

At the request of the Respondent, Petitioner was examined by Dr. Bernstein. In a report dated December 17, 2012, Dr. Bernstein noted under "Assessment" that "[t]his patient is status post a lumbar interbody fusion from 1998 and now currently reports a new injury to the lumbar spine related to his work conditioning program." (RX1). Otherwise, Dr. Bernstein noted a "... normal neurologic evaluation and substantial pain guarding..."and that the lumbar MRI "... fail[ed] to identify any other pathology that should be responsible for this degree of symptomatology." (RX1). In an addendum report dated February 18, 2013, Dr. Bernstein noted that he had reviewed additional records and that he "... fail[ed] to identify any further pathology in [Petitioner's] lumbar spine that would be responsible for his symptoms. It is possible that he is having pain related to the pseudoarthrosis at L4-5, however, this is a surgery from ten years ago and it is unlikely it should become symptomatic at this time." (RX2).

Thus, it does not appear that Dr. Bernstein directly addressed what if any effect the work conditioning incident may have had on Petitioner's current lumbar spine condition. Instead, he simply noted that while it was possible that Petitioner's lumbar pain was related to the pseudoarthrosis, he believed it "unlikely that it should become symptomatic at this time."

Furthermore, while Petitioner had previously injured his lower back and had in fact undergone lumbar fusion surgery in April of 1998, there is no evidence to suggest that he received any treatment for his lower back subsequent to his release in February 1999 and during the ensuing twelve (12) years leading up to the date of work conditioning incident in March of 2011.

Therefore, based on the above, and the record taken as a whole, the Arbitrator finds that a causal relationship exists between the accident on or about March 23, 2011 and Petitioner's current condition of ill-being relative to his lower back. This finding is based on Petitioner's credible testimony as to the onset of his symptoms during the work conditioning sessions ordered by Dr. Schwartz as part of his treatment following his left shoulder injury, as well as Dr. Levin's opinion to the effect that said work conditioning activities aggravated Petitioner's pre-existing pseudoarthrosis.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to accident and causation (issues "C", D" and "F", supra), the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical expenses relating to his lumbar spine condition pursuant to §8(a) and the fee schedule provisions of § 8.2 of the Act. Furthermore, Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

When asked at the time of his deposition on July 24, 2014 what his treatment plan for the patient was, Dr. Levin noted that "... we had mentioned about – again, conservative therapy, I do not feel he was necessarily an operative candidate, but it might be that – you know, we wanted to do aquatic therapy. That may or may not have been followed by pain clinic treatment." (PX3, p.14).

Petitioner testified that his back currently hurts "all the time", even with sitting. He noted that he currently takes Aleve every day, multiple times a day and that it helps a little bit. He also indicated that he still wants the treatment prescribed for his back.

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner is entitled to prospective medical treatment in the form of the aquatic therapy recommended by Dr. Levin, and that Respondent shall be liable for the reasonable and necessary medical expenses associated therewith pursuant to §8(a) and the fee schedule provisions of § 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY AND TEMPORARY PARTIAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator previously found that based on the parties' stipulation in companion claim 10 WC 35282, Petitioner was temporarily totally disabled with respect to his left shoulder injury from 12/1/09 through 3/22/11, for a period of 68-1/7 weeks. (See Arb.Ex.#1). The Arbitrator also determined that Petitioner has reached maximum medical improvement ("MMI") relative to his left shoulder injury on January 5, 2012 based on the opinion of his treating surgeon, Dr. Schwartz. (See decision in re: 10 WC 35282).

A review of Dr. Levin's records at Community Spine and Neurosurgical Institute show that he first examined Petitioner on February 9, 2012. An "Occupational Health – Clinical Patient Status Form" on that date shows that Petitioner was "off work" at that time. (PX10). A similar notation was made in "Occupational Health – Clinical Patient Status Form[s]" dated March 5, 2012 and May 11, 2012. (PX10).

When asked at the time of his deposition on July 24, 2014 whether he had placed Petitioner on any work restrictions concerning his back at his last office visit on April 1, 2013, Dr. Levin testified that "I think we addressed it on 05/11/12 that he was off work. That also was the case on 03/05/12. Also, on 02/09/12, he was off work" and that "...according to [his] record, [Petitioner] had not worked since 12 of 2009." (PX3, pp.14-15).

In a report dated December 17, 2012, Respondent's §12 examining physician, Dr. Bernstein, noted that "[t]his patient is status post a lumbar interbody fusion from 1998 and now currently reports a new injury to the lumbar spine related to his work conditioning program." (RX1). Dr. Bernstein noted that Petitioner presented at that time "... with a normal neurologic evaluation and substantial pain guarding. If taken at face value, this patient requires further workup with a lumbar CT scan. The patient's lumbar MRI scan fails to identify any other pathology that should be responsible for this degree of symptomatology." (RX1). Dr. Bernstein then concluded that "[b]ased on today's evaluation, this patient would, at the most be able to perform light duty physical demand activity, assuming that his pain complaints and pain guarding on physical examination are legitimate." (RX1).

In an addendum report dated February 18, 2013, Dr. Bernstein noted that he had reviewed additional records, including the results of a work hardening report from March 10, 2011 which found that Petitioner was able to function at the light physical demand level but only demonstrated the ability to perform 71.2% of the demands of his job as a truck driver. (RX2). Dr. Bernstein went on to state that while he "... recognize[d] that this patient has made subjective complaints of pain and demonstrated an inability to return to his normal work activities ...", he "... fail[ed] to identify any further pathology in [Petitioner's] lumbar spine that would be responsible for his symptoms. It is possible that he is having pain related to the pseudoarthrosis at L4-5, however, this is a surgery from ten years ago and it is unlikely it should become symptomatic at this time." (RX2).

Respondent also submitted into evidence a vocational assessment dated January 23, 2012 and a labor market survey dated February 14, 2012. (RX5, RX6). Both reports reference the fact that Dr. Schwartz had found that Petitioner reached MMI with respect to his left shoulder on January 5, 2012 and had released him to sedentary-light demand level work per the FCE at that time. (RX5, RX6). The labor market survey identified possible jobs within Petitioner's restrictions with a median wage of $12.14 per hour. (RX6).

Petitioner testified that on June 6, 2013 he began working for Rock Solid Paving and Excavating, and that he has been working there ever since. He indicated that the job is within his restrictions in that he simply drives a truck. Petitioner's supervisor at Rock Solid, Michael Wick, testified that Petitioner currently earns $25.00 per hour as a truck driver for his firm. Petitioner submitted a typed summary of wages purporting to delineate the dates, hours, and pay Petitioner earned with Rock Solid from June 6, 2013 through September 19, 2014. (PX16).

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner was temporarily totally disabled ("TTD") from March 23, 2011 through June 5, 2013, for a period of 115-1/7 weeks.

Furthermore, the Arbitrator finds that Petitioner is entitled to temporary partial disability "TPD" benefits of $137.06 per week from June 6, 2013 through November 6, 2014, for a period of 74-1/7 weeks. The Arbitrator notes that this amount is based on 2/3rds of the difference between what Petitioner was earning at the time of his injury ($1,205.59) and the amount is currently earning or capable of earning ($25.00/hour x $40 hours/week, or $1,000.00).

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Douglas McMullen,

Petitioner,

vs.

NO: 14 WC 21554

Hollister Whitney Elevator,

15IWCC0936

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of medical expenses, temporary total disability, permanent partial disability, 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 14, 2015, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

15IWCC0936

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: DEC 1 8 2015
TJT:yl
o 11/23/15
51

Thomas J. Tyrrell

Kevin W. Lamborn

Michael J. Brennan

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

McMULLEN, DOUGLAS
Employee/Petitioner

Case# **14WC021554**

HOLLISTER WHITNEY ELEVATOR
Employer/Respondent

15IWCC0936

On 4/14/2015, 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:

0293 KATZ FRIEDMAN EAGLE ET AL
JASON P CARROLL
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

4866 KNELL O'CONNOR DANIELEWICZ
THOMAS R BOYD
901 W JACKSON BLVD SUITE 301
CHICAGO, IL 60607

STATE OF ILLINOIS)
)SS.
COUNTY OF ADAMS)

☐ 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)

15IWCC0936

DOUGLAS MCMULLEN
Employee/Petitioner

v.

Case # **14 WC 21554**

HOLLISTER WHITNEY ELEVATOR
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 Molly Dearing,** Arbitrator of the Commission, in the city of **Quincy,** on **February 4, 2015.** 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. ☒ 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 _____

FINDINGS

15IWCC0936

On **April 22, 2014**, 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 ***in part*** to the accident. See Memorandum, *infra.*

In the year preceding the injury, Petitioner's average weekly wage was **$543.93.**

On the date of accident, Petitioner was **37** years of age, ***single*** with **0** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$2,057.07** for TTD that has been paid more fully set forth *infra.*, and **$0.00** in TPD, **$0.00** in maintenance, **$0.00** in nonoccupational indemnity benefits, and **$0.00** for other benefits.

ORDER

Respondent shall pay all reasonable and necessary medical benefits for dates of service from April 22, 2014 through September 3, 2014, as provided in Sections 8(a) and 8.2 of the Act, and subject to the fee schedule. All medical bills for services rendered after September 3, 2014 are denied. Respondent shall be given credit for all medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Prospective medical treatment is denied.

Respondent shall pay Petitioner temporary total disability benefits of $362.62/week for a total of 11 2/7 weeks, commencing April 23, 2014 through May 14, 2014, as provided in Section 8(b) of the Act.

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

Arbitrator Molly Dearing

April 4, 2015
Date

APR 14 2015

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

15IWCC0936

DOUGLAS MCMULLEN
Employee/Petitioner

v.

Case # 14 WC 21554

HOLLISTER WHITNEY ELEVATOR
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

The parties stipulated that Petitioner sustained an accident that arose out of and in the course of his employment with Respondent on April 22, 2014. Arb. X 1. On that date, Petitioner was thirty seven years of age and employed by Respondent, an elevator manufacturer, as a laborer. He had been so employed for approximately two years. Petitioner's job duties included cleaning, punching and moving I-beams with the boom of a crane and hoist. He testified the I-beams were comprised of solid steel, measured approximately 46 to 52 inches long, and weighed between 80 and 100 pounds. Petitioner's shift was from 8:30 p.m. to 7:00 a.m.

On April 22, 2014, Petitioner testified he was performing his job duties of cleaning, punching and moving I-beams, when an I-beam attached to the hoist began to swing toward him. He testified that he reached with his left hand at or near face level and pushed the I-beam away with the palm of his left hand. Petitioner testified he immediately felt a sharp pain in his left triceps and neck that radiated into his fingertips. He notified his supervisor and Petitioner was sent to Blessing Hospital in Quincy, Illinois for emergency medical treatment.

At the Blessing Hospital Emergency Room, Petitioner complained of left shoulder, neck and left arm pain, particularly in the bicep, shoulder and left trapezius areas. He denied distal numbness, tingling or weakness and denied any injury to himself. A radiograph of the left shoulder was unremarkable, and showed no fracture, dislocation or advanced degenerative change. A radiograph of his cervical spine revealed no acute fracture and minimal degenerative disc disease. Petitioner was diagnosed with a strain of his left shoulder and bicep. He was prescribed Norco, placed in a sling, provided work restrictions of no use of the left arm, and discharged with instructions to follow up with his physician. PX 1.

The following day, April 23, 2014, Petitioner presented to Dr. Merle Muller at Blessing Physician Services in Quincy. Petitioner reported an immediate, significant pain in the left shoulder when a hoist he was operating at work "did not stop as expected and pulled his left UE across the front of his chest and up toward his right shoulder before he could let go." Petitioner denied numbness, tingling, popping/sticking and instability. A physical examination revealed a negative Hoffman's test on the left and right, tenderness of the AC joint, bicipital groove and deltoid, and limited, painful range of motion in all planes. A foraminal compression test with the head rotated to the right produced no pain radiating down the right or left arms. The same test performed with the

head rotated to the left produced no pain radiating down the right or left arms. Dr. Muller assessed Petitioner with an injury of the left shoulder, and advised Petitioner to continue wearing the sling, ice his left shoulder, and to follow up in five days. Dr. Muller also removed Petitioner from work. PX 2.

Petitioner returned to Dr. Muller on April 28, 2014, at which time Petitioner reported no new complaints and Dr. Muller prescribed physical therapy. PX 2.

On May 6, 2014, Petitioner returned to Dr. Muller, at which time Petitioner reiterated his left shoulder and neck pain discomfort and occasional headaches. He denied numbness or tingling into the left hand or forearm. A physical examination revealed a negative Hoffman's test on the left and right, tenderness of the AC joint and trapexial, and limited, painful range of motion in all planes. A foraminal compression test with the head rotated to the right produced no pain radiating down the right or left arms. The same test performed with the head rotated to the left produced no pain radiating down the right or left arms. Dr. Muller prescribed cyclobenzaprine and removed Petitioner from work. PX 2.

Thereafter, Petitioner returned to Dr. Muller on a periodic basis and continued to complain of left shoulder discomfort, and occasional left-sided neck pain into the upper thoracic spine region and headaches. On May 13, 2014, Dr. Muller allowed Petitioner to return to work with restrictions of no repetitive shoveling, no lifting, pushing or pulling more than 15 pounds, and no reaching above shoulder level. Dr. Muller's assessment continued to be neck pain and left shoulder pain. PX 2. Petitioner testified that he worked light duty for Respondent from May 2014 until his termination on December 10, 2014.

Petitioner began a course of physical therapy at Advance Physical Therapy in Quincy on May 14, 2014, at which time Petitioner reported suffering an injury to his shoulder when a hoist jerked his arm. Petitioner was discharged from physical therapy on September 8, 2014. PX 6.

On June 27, 2014, Petitioner presented to Dr. James Daniels at Blessing Physician Services. Petitioner reported that while operating a hoist, "something happened and it caught his arm. His arm was more at his side and it was forcefully jerked up and abducted. He stated that it really hurt and for a minute he could not use his arm very much and was having a lot of tingling in his arm." Petitioner further reported undergoing treatment with Dr. Muller at which time he "was having numbness and tingling in his arm and Doctor Muller was worried about a neurogenic problem." When Dr. Daniels inquired about the origin of his pain, Petitioner pointed down into his arm on the ulnar aspect of the left arm going down into his elbow. Petitioner held his arm while speaking to the doctor as "he does not want it dangling at all. At night the only way he can get comfortable is to put his arm on a pillow and lay there. If he moves around he has trouble. He states that the pain is a sharp pain. He also has still occasionally some tingling in his hand." A physical examination revealed a negative Hoffman's sign and Spurling's test, no abduction nor extension over 90 degrees due to pain, normal subscapularis and infraspinatus, bilaterally positive sulcus sign, nontenderness of the axial area, tenderness about two centimeters proximate to the ulnar notch of the elbow with severely uncomfortable palpation in that area, negative ulnar nerve subluxation, nontenderness over the biceps muscle, and an unremarkable median nerve compression test. Dr. Daniels assessed Petitioner with "a little bit" of shoulder subluxation that is not "any big issue at this point." Dr. Daniels further assessed Petitioner's pain as neurogenic, and stated that he may have injured his brachial plexus since he is symptomatic in his small finger "but we think more likely that he's got a

traction injury of the ulnar nerve at the cubital tunnel." Dr. Daniels prescribed Petitioner amitriptyline to assist with his sleeping difficulties, and he ordered Petitioner undergo treatment with a hand therapist. Dr. Daniels allowed Petitioner to return to work with restrictions of no lifting, pushing, pulling over ten pounds and no use of the left arm. PX 2.

Petitioner returned to Dr. Daniels on July 16, 2014. Petitioner reported some improvement in his neck pain, and that his arm was painful after beginning therapy that morning. "He has been going to px therapy the [sic] is going ok." Dr. Daniels noted that Petitioner still had an odd pain in the area around his left triceps. A physical examination revealed good range of motion of the cervical spine, unremarkable Spurling's maneuver, a headache reproduction with palpation of the C2 area into the occipital nerve, negative sulcus sign, no reproduction of pain in his left shoulder, negative response to palpation around the triceps area, and an unremarkable response to aggravation of the ulnar nerve. Dr. Daniels' assessment was a headache secondary to irritation of C2, shoulder subluxation with a little multidirectional instability that was improving, "odd pain in the area around the triceps", and stated that "[i]t is possible we could be missing a possible cubital tunnel, etc." Dr. Daniels referred Petitioner to an orthopedic physician for a second opinion. PX 2.

On September 3, 2014, Petitioner underwent an examination with Dr. John Cherf pursuant to Section 12 of the Act. Petitioner reported an injury on April 22, 2014 while operating a machine used to move I-beams with a hoist when I-beams attached to the hoist began to swing toward him, and he reached up with his left hand at or near face level and pushed the I-beam away. Petitioner described and recreated his mechanism of injury for Dr. Cherf, who noted that Petitioner was in a standing position and pushed the beam away by extending his arm at approximately 45 degrees off the sagittal and coronal plane with no direct impact of the I-beam to his neck, left shoulder or elbow. Dr. Cherf further noted that the I-beams were approximately 46 to 52 inches long and weighed between 80 and 100 pounds. Petitioner complained of neck pain, left shoulder pain, and pain in his left elbow in the area of the triceps. He described diffuse tenderness upon examination throughout his cervical spine including the spinous processes and paraspinal muscles, and exhibited diffuse tenderness throughout his left elbow to include the triceps, biceps, distal humerus medially and laterally, radius, and ulna. RX 2.

After taking a history of accident, reviewing Petitioner's medical records, and conducting a physical examination, Dr. Cherf opined that Petitioner's neck and left arm symptoms were related to his work accident of April 22, 2014, based upon Petitioner's history of being asymptomatic in his neck or left upper extremity prior to the work accident and the temporal relationship between the accident and his onset of left shoulder symptoms. Dr. Cherf noted the lack of objective findings on physical examination or Petitioner's imaging studies to justify the symptoms described by Petitioner, and that Petitioner's mechanism of injury is inconsistent with an injury that would cause such symptoms described by him. Dr. Cherf concluded that Petitioner did not suffer any irritation of C2 or subluxation of the left shoulder with multidirectional instability as indicated by Dr. Daniels as a result of his work accident, as his physical examination and medical records do not indicate any significant cervical spine injury or instability of the left shoulder. Dr. Cherf further concluded that Petitioner did not have any pathology relative to cubital tunnel syndrome based on Petitioner's history, his physical examination, and his mechanism of injury being inconsistent with that type of injury. Dr. Cherf opined that Petitioner did not require any additional treatment for his cervical spine, left shoulder or left elbow resultant from his work injury of April 22, 2014. He stated that the treatment he had received to that point appeared "reasonable and necessary although somewhat

excessive when considering the mechanism of injury." Dr. Cherf noted that Petitioner exhibited "abnormal illness behavior" evidenced by "limitation of effort, symptom magnification, superficial and nonanatomic tenderness, overreaction to examination, and what appeared to be nonphysiologic findings." Dr. Cherf indicated a functional capacity evaluation might be considered, but he opined that Petitioner could return to work without restrictions. RX 2.

Dr. Cherf also authored an Impairment Rating Report dated September 4, 2014. With respect to his left shoulder, Dr. Cherf noted that Petitioner's diagnosis was best described as a sprain or strain, which renders a class 0 diagnostic criteria based on the shoulder regional grid, given that Dr. Cherf found no residual instability or loss of motion with persistent pain, and abnormality and no significant objective abnormal findings at maximum medical improvement. Because there are no specific grades for class 0 of the shoulder regional grid, the functional history, physical examination and clinic studies grade modifiers are inapplicable. A class 0 criteria resulted in an upper extremity impairment rating of 0% and a whole person impairment rating of 0%. With respect to Petitioner's "work-related left elbow symptoms", Dr. Cherf noted that Petitioner's diagnosis is best described as a painful elbow, which is a class I diagnostic criteria based on the elbow regional grid with nonspecific elbow pain. The default grade C justified grade modifiers of a functional history grade modifiers, which Dr. Cherf found to be 0. Dr. Cherf noted that Petitioner's QuickDASH report appeared to be unreliable and inconsistent with the other grade modifiers as it differed by two or more grades. Dr. Cherf applied a physical examination grade modifier of 0 given the lack of palpatory findings with full range of motion, no instability, normal motor function, and no malalignment, deformity or instability. Dr. Cherf found the clinical studies grade modifiers were inapplicable as he had no diagnostic studies available to review. The formula resulted in a net adjustment of -2 and the default grade of C was changed to A. This resulted in an upper extremity impairment rating of 0% and a whole person impairment rating of 0%. With respect to his cervical spine, because of the lack of an injury to the cervical spine, Dr. Cherf noted that there was no specific loss or grade for a work-related injury to the cervical spine. This resulted in a whole person impairment rating of 0% for the cervical spine. RX 2.

Following his evaluation by Dr. Cherf, Petitioner testified he continued to work in a light duty capacity for Respondent. He testified that he sought treatment at Quincy Medical Group because his condition was not improving with treatment from Blessing Physicians.

On October 3, 2014, Petitioner presented to Jane Peterson, Nurse Practitioner, at the Quincy Medical Group and he reported swinging a I-beam away from his face when he experienced immediate neck pain with radiation down the left arm, an inability to use his left arm. He further reported being on light duty, presenting to Dr. Daniels, undergoing physical therapy, difficulty sleeping secondary to pain, headaches and chronic pain. A physical examination revealed some pain on palpation of the cervical spine, very limited range of motion with complaints of pain, and symmetrical strength. Ms. Peterson assessed Petitioner with cervical spine pain, insomnia secondary to chronic pain, and cervical radicular pain. She ordered an MRI, ordered Petitioner to follow up with Dr. Noble, and excused him from work for two days due to neck pain and insomnia. PX 4. Petitioner's cervical MRI of October 9, 2014 revealed no stenosis or significant abnormality. PX 4.

On October 16, 2014, Petitioner presented to Dr. Noble and reported injuring himself when he redirected a 100-pound I-beam so as not to be hit in the head or shoulder. "Since that time, he had pain over the left posterolateral neck radiating into the left upper thoracic back region. He has

complained of pain radiating into the left triceps area, associated now with general headaches. He has numbness and tingling of the tips of the 2 middle fingers of the left hand if he sits for any length of time." Petitioner reported difficulty sleeping secondary to pain and some weakness of the left upper arm. Dr. Noble reviewed Petitioner's MRI, which he noted revealed a minimal left-sided disc herniation without any significant stenosis or narrowing, as well as nerve impingement. Dr. Noble's assessment was chronic neck pain with secondary headaches and chronic left shoulder and triceps pain, consider neuropathic involvement. Dr. Noble discussed with Petitioner the possibility of a thoracic nerve outlet injury, and he accordingly ordered nerve conduction studies of both upper extremities for comparison. He prescribed Petitioner gabapentin and increased his trazodone for sleep. Dr. Noble allowed Petitioner to resume work on a light duty basis. PX 4.

On November 19, 2014, Petitioner presented to Dr. Douglas Sullivant for electrodiagnostic studies. Petitioner reported that he was injured "about 7 months ago and since then he has had pain in the left arm and neck. Patient states he is also having trouble with numbness in the left arm." Dr. Sullivant's impression was bilateral upper extremity median nerve compression neuropathy at the wrist of mild electrophysiological severity, and no evidence of acute denervation changes. PX 4.

Petitioner returned to Dr. Noble on December 3, 2014, at which time Petitioner reported improvement with the addition of gabapentin. Dr. Noble assessed Petitioner with myofascial strain with myofascial pain of the left posterolateral neck and shoulder. He noted that "with his imaging studies being normal, nerve conductions being normal, we will treat conservatively with pain management to include gabapentin and trazodone at bedtime, continue light duties until reassess in 6 weeks...." PX 4.

Petitioner continued to work in a light duty capacity for Respondent until December 10, 2014, at which time Petitioner testified that Respondent sent him home and indicated that it would no longer accommodate his work restrictions. Petitioner testified he received a letter from Respondent indicating that his employment was terminated. Petitioner testified he has not returned to work for Respondent since December 10, 2014 and he has not worked elsewhere since that time.

Petitioner returned to Dr. Noble was on January 14, 2015. Dr. Noble noted no improvement in Petitioner's condition with the increase in gabapentin. Petitioner requested and Dr. Nobel provided a referral to SIU Orthopedics in Springfield, Illinois for further treatment. Dr. Noble deferred any medical changes pending the referral. PX 5.

Petitioner testified he has not undergone the orthopedic evaluation at SIU Orthopedics, though he testified that he would pursue this treatment if authorized by Respondent. Petitioner testified that he presently experiences throbbing pain in his neck and left arm, and he has sharp pain in his left arm behind the triceps area. He stated that when he wakes up, he notices that "[i]t hurts" in his neck and left arm, and that as the day progresses, "[i]t hurts" in his neck and left arm. Petitioner testified that he has pain at night that interferes with his ability to sleep well, and he sleeps for an hour at a time due to his pain. He stated that he oftentimes has to utilize a pillow under his arm that eases his pain. Petitioner denied suffering any new accidents involving his neck or left arm since April 22, 2014, and he testified that was not experiencing any difficulties with his neck or left arm when he arrived at work on that date. Petitioner denied any neck or left arm injuries prior to his accident of April 22, 2014. He continues to use gabapentin and tramadol as prescribed.

CONCLUSIONS OF LAW

In regard to disputed issue (F), the Arbitrator finds that as a result of his work accident of April 22, 2014, Petitioner suffered symptomatology in his neck and left shoulder. In so concluding, the Arbitrator notes that the preponderance of the evidence, including Petitioner's testimony as corroborated by his treating records from Blessing Hospital, demonstrates that Petitioner suffered acute pain in his neck and left shoulder contemporaneously with his work accident for which he sought immediate treatment at the Blessing Hospital emergency room. PX 1. At Arbitration, Petitioner denied suffering any difficulties or taking any medication for his neck or left shoulder prior to his work accident, and no evidence was presented at trial to demonstrate otherwise. The Arbitrator further notes that at the time of his accident on April 22, 2014, Petitioner working full duty as a laborer, whereas his work status was restricted thereafter. PX 1, 2.

Furthermore, in finding Petitioner's symptomatology in his neck and left shoulder following the work accident causally related to same, the Arbitrator relies upon the opinions of Dr. Cherf enumerated in his Section 12 examination report and Impairment Rating Report of September 3, 2014 and September 4, 2014, respectively. Therein, Dr. Cherf found a "possible causal relationship between this injury and his left shoulder symptoms", based upon the absence of symptoms in his neck or left upper extremity prior to the work accident and the temporal proximity of his onset of symptoms to the work accident. While Dr. Cherf did not diagnosis Petitioner's work-related injuries in his examination report, in his Impairment Rating Report, he opined that Petitioner suffered a "work-related left shoulder injury" of a sprain/strain, "work-related left elbow symptoms" of a painful elbow, and neck complaints with no injury to the cervical spine. RX 2. Dr. Cherf found that Petitioner's left shoulder sprain/strain, neck pain, and painful elbow resultant from Petitioner's work accident of April 22, 2014 do not require further treatment and that Petitioner can return to work without restrictions. RX 2.

The Arbitrator notes that the opinions of Dr. Cherf are the only medical opinions in the record. The Arbitrator finds Dr. Cherf's opinions to be well-informed in that he reviewed Petitioner's medical records and diagnostic studies in formulating his opinions, he conducted a thorough physical examination of Petitioner, and he took a comprehensive history of the mechanism of accident from Petitioner that included a demonstration. The Arbitrator further notes that Dr. Cherf's opinion that Petitioner requires no further medical treatment relative to his work injuries is supported by the preponderance of the evidence, which demonstrates that Petitioner's condition had stabilized as of September 3, 2014. After September 3, 2014, the Arbitrator notes that Petitioner's treatment was primarily pharmacological in nature, and the two diagnostic studies obtained after September 3, 2014, namely a cervical MRI and electrodiagnostic studies, were unremarkable and did not contribute to the furtherance of any treatment. The Arbitrator further notes that Petitioner's diagnostic studies, including a cervical spine radiograph, left shoulder radiograph, cervical MRI, and an EMG that revealed incidental findings, demonstrate that Petitioner did not suffer any objective pathology as a result of his work accident that necessitates further treatment. PX 1, 2, 4.

In accordance with the opinions of Dr. Cherf, the Arbitrator finds that current complaints of Petitioner's neck pain and left shoulder strain/sprain are causally related to his work accident of April 22, 2014 for which he was at maximum medical improvement as of September 3, 2014 and requires no further treatment. The Arbitrator finds that Petitioner's current complaints in his left

arm of triceps pain and radiating pain from his neck to his left hand are not causally related to his work accident. The Arbitrator finds those complaints are not supported by and are wholly inconsistent with his treatment records in the days and weeks following his work accident. At the Blessing Hospital Emergency Room on the date of accident, Petitioner complained of left shoulder, neck and left arm pain, and specifically localized the pain in his left arm to the bicep, shoulder and left trapezius areas. He denied distal numbness, tingling or weakness. PX 1. Upon presentation to Dr. Muller on April 23, 2014, the day after his work accident, Petitioner reported only left shoulder pain and denied any numbness or tingling into his left hand and or forearm. A foraminal compression test revealed no pain radiating down his right or left arm. Similarly, on May 6, 2014, Petitioner again reported neck and left shoulder pain, as well as headaches, and denied any numbness or tingling into the left hand or forearm. A foraminal compression test showed no pain radiating down his left or right arm. PX 2. It was not until June 12, 2014 that Petitioner localized pain in his left triceps region, and on June 27, 2014, Petitioner reported numbness and tingling in his left arm into his left hand, and pain in the ulnar aspect of his left arm into his elbow. PX 2.

While the Arbitrator recognizes that Dr. Cherf assessed Petitioner with "work-related left elbow symptoms", the Arbitrator notes that Dr. Cherf's opinions are based in part upon the temporal proximity of Petitioner's symptom manifestations to the work accident. The Arbitrator disagrees with Dr. Cherf's findings as to Petitioner's left elbow complaints in that the Arbitrator concludes that Petitioner's complaints of triceps pain and radiating pain down his left arm were temporally remote from the work accident, and finds Petitioner's testimony regarding suffering such symptoms immediately following the date of accident irreconcilable with the absence of any corresponding radiating pain complaints in his treating medical records. This inconsistency undermines the credibility of Petitioner's complaints, as does the multiple diagnostic studies, including a cervical MRI and EMG, that were unremarkable for any pathology indicative of a condition consistent with Petitioner's subjective complaints. Petitioner's credibility is also cast into doubt by his two disparate versions of his mechanism of accident. At trial and when he sought treatment at Blessing Hospital Emergency Room, and with Dr. Cherf and Dr. Noble (PX 1, 4, RX 2), Petitioner reported that he was injured when he redirected an I-beam away from himself with his left hand. He reported to Dr. Muller and Dr. Daniels, however, that his left arm became caught on the I-beam, pulled across his chest and jerked upwards. PX 2. The variance in Petitioner's reported mechanisms of injury undermines the veracity and reliability of his testimony, which parallels Dr. Cherf's findings of Petitioner's symptom magnification, limitation of effort, and overreaction to examination. RX 2. The Arbitrator finds the foregoing, coupled with the lack of temporal proximity of triceps and radiating pain complaints in the treating medical records, significant in concluding that Petitioner's complaints in his left arm causally unrelated to his work accident.

Based upon the foregoing and the totality of the record, the Arbitrator concludes that Petitioner's current condition of a left shoulder strain/sprain and neck pain is causally related to his work accident of April 22, 2014. The Arbitrator further concludes that Petitioner's current condition of left triceps pain and radiating pain in his left arm into his left hand are not causally related to his work accident of April 22, 2014.

In regard to disputed issue (J), and consistent with the Arbitrator's foregoing conclusions and the opinions of Dr. Cherf, the Arbitrator finds that Petitioner's medical treatment from the date of accident through September 3, 2014 was reasonable and necessary in the care of his injuries resultant from his work accident of April 22, 2014. Respondent shall pay all reasonable and necessary medical benefits for dates of service from April 22, 2014 through September 3, 2014, as

provided in Sections 8(a) and 8.2 of the Act, and subject to the fee schedule. All medical bills for services rendered after September 3, 2014 are denied as unrelated to Petitioner's work injury. Respondent shall be given credit for all medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (K), and consistent with the Arbitrator's foregoing conclusions and the opinions of Dr. Cherf, the Arbitrator finds that Petitioner does not require any further medical treatment relative to his work injuries of April 22, 2014. The Arbitrator notes that the referral to SIU Orthopedics at issue was effectuated at Petitioner's request, rather than at Dr. Noble's initiation, and the referral is unclear as to what condition or symptoms it is meant to address. Although Dr. Daniels referred Petitioner for an orthopedic consultation on July 16, 2014, said referral was to assess possible cubital tunnel syndrome, which was ruled out by the EMG negative for ulnar nerve compression. PX 2, 4. The Arbitrator further notes that Petitioner did not proffer any medical opinion regarding the necessity of prospective treatment and its relationship to his work accident. Based upon the foregoing and the record in its entirety, the Arbitrator concludes that Petitioner was at maximum medical improvement for all work related injuries as of September 3, 2014 and accordingly denies Petitioner's request for prospective medical treatment.

In regard to disputed issue (L), the issues of whether a claimant is temporarily totally disabled and the length of time for which he is entitled to temporary disability benefits are questions of fact to be resolved by the Commission. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118-119 (1990). In Illinois, it is well-settled that an employee is temporarily totally incapacitated from the time an injury incapacitates him from work until such time as he is far recovered or restored as the permanent character of his injury will permit. *Id.* at 118. In order to be eligible for temporary total disability benefits, a Petitioner must prove not only that he did not work but also that he was unable to work. *City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (1996). "[W]hen an employee who is entitled to receive workers' compensation benefits as a result of a work-related injury is later terminated for conduct unrelated to the injury, the employer's obligation to pay TTD workers' compensation benefits continues until the employee's medical condition has stabilized and he has reached maximum medical improvement." *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill.2d 132, 135-136 (2010).

In this case, Petitioner seeks temporary total disability benefits for a period of 11 2/7 weeks, representing December 10, 2014 through February 4, 2015, the time period following Petitioner's termination from his employment with Respondent until the date of the Arbitration. In light of the Arbitrator's conclusions that Petitioner can work without restrictions, that his condition relative to his work injuries has stabilized, and that he was at maximum medical improvement as of September 3, 2014, all temporary total disability benefits commensurate with that time period are denied.

The parties stipulated that Petitioner was entitled to and Respondent paid temporary total disability benefits from April 23, 2014 through May 14, 2014, after which time Petitioner returned to work with restrictions. Based upon Petitioner's average weekly wage of $543.93, the temporary benefits due to Petitioner from April 23, 2014 through May 14, 2014, a time period of 3 1/7 weeks, are $1,139.66. Respondent paid $2,057.07 in temporary total disability benefits, which results in an overpayment of benefits in the amount of $917.41. The parties stipulated that Respondent shall receive a credit for the overpayment of temporary total disability benefits towards any permanent partial disability benefits to be determined at a subsequent juncture.

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Newbolds,
Petitioner,

vs.

NO: 12 WC 31854

Clesen Brothers, Inc. ,
Respondent.

15IWCC0937

DECISION AND OPINION ON REVIEW

Respondent appeals the decision of Arbitrator Doherty finding that Petitioner sustained an accidental injury arising out of and in the course of his employment on July 20, 2012. As a result Petitioner was temporarily totally disabled from July 31, 2012 through August 28, 2012 and November 16, 2012 through April 17, 2015 for 130-2/7 weeks under §19(b) of the Act, is entitled to current medical expenses and prospective medical expenses as indicated by Dr. Ross. Respondent is entitled to a credit of $2,676.93 under § 8(j) of the Act. The Issues on Review are whether the Commission has jurisdiction under the Act, whether Petitioner sustained an accidental injury arising out of and in the course of his employment on July 20, 2012, whether timely notice was given to Respondent, whether a causal relationship exists between the alleged July 20, 2012 accident and Petitioner's present condition of ill-being, and if so, whether Petitioner is entitled to current and prospective medical expenses, the extent of Petitioner's temporary total disability, the nature and extent of Petitioner's permanent disability, the basis for the §19(b) ruling when no §19(b) Petition was filed. The Commission, after reviewing the entire record, reverses the Arbitrator and finds Petitioner failed to prove he sustained an accidental injury arising out of and in the course of his employment on July 20, 2012.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner testified he worked as a truck driver for Respondent. His duties were to load and unload the truck and anything to do with routing the truck. He drove a 20 foot box straight truck with a solid bench seat without any cushion and very rough suspension. His job was to deliver cases of plants. The plants were contained in a 6-12 pot flat which weighed 20-25 pounds. There were four cases per shelf. The shelves were part of a cart. The plants were put on a cart and the cart was placed in the truck. The empty cart weighed 120 pounds and the loaded cart weighed up to 600 pounds. In order to get the carts off the truck for delivery he would disconnect the load bar that holds the carts in place, remove the cart by pulling the cart to the back of the truck, remove the cases at the stop. Petitioner testified he was 55 years old on July 20, 2012 and he held a GED.

2. Petitioner testified that on Friday, July 20, 2012 when he arrived to work around 5:00-5:30 a.m. he felt "great". He received an assignment to drive the truck to Wisconsin. It was a 2-1/2 to 3 hour drive. He had a total of 8-9 deliveries scheduled that day. After arriving in Wisconsin, he was a little sore from sitting. He made a delivery of a full cart of pansies. There were 28 cases averaging 10-20 pounds each in one cart. When he reached for the cart to pull it to the lift gate at the back of the truck he noticed that his back started really hurting. He lowered the lift gate to the ground, rolled the cart to where the customer wanted it to be unloaded. As he drove to the next stop on the highway he was hurting as he bounced around. By the time he got to his second stop he could barely complete the second stop. He finished all 8-9 deliveries that day. From the first to the last stop, his back became more painful and at the time of the second stop the pain was proceeding into his buttock. Petitioner testified he is not able to relate what activity he was performing when he experienced the pain radiating into his buttocks. He just knows that at some point during that workday he experienced that problem.

3. Patrick Clesen testified he is the operations manager for Respondent and he is in charge of the shipping department. He was also Petitioner's supervisor. He arrives at work between 6-7:30 a.m. It is common for Petitioner to leave on his delivery before he arrives to work. He did not see Petitioner on July 20, 2012 before he left for his deliveries. After Petitioner returned to Respondent's place of business, they had a conversation. There might have been another driver during the conversation, but he is not sure. On July 20, 2012, Petitioner said he slipped either off the lift gate or the side step of the truck and he injured his leg. He did not mention his back. Petitioner denied telling Mr. Patrick Clesen that he fell off the truck. Mr. Clesen said he asked Petitioner twice if he needed medical attention and Petitioner said no. He did not complete an incident report because Petitioner was acting like it was no big deal and Petitioner is an honest guy. Additionally, Petitioner did not look like he was in pain that day. If he was in pain, he would have personally taken Petitioner to the hospital. Even though three years have passed, he is aggravated with himself that he did not insist that Petitioner go to Immediate Care.

4. Petitioner said when he arrived back to Respondent's he spoke with Mike Splinter, the maintenance man. He was unable to locate Eric Clesen, his boss. He called his number and got his voice mail. He did not leave him a message because he thought the pain would go away over the weekend and he would let him know on Monday. The pain was worse over the weekend. He called, Keith McDonald and Ken, two of the other drivers, during the weekend to see if they could take his run on Monday and he left voice messages but he did not hear back from them.

5. Mary Newbold testified she is Petitioner's wife. On July 20, 2012, she saw Petitioner get up. She made him breakfast and packed his lunch. When he got up that day he was walking normally and did not have any facial grimacing. Mrs. Newbold testified that she did not see him get hurt that day. When he came back from work that day he threw his lunch bucket down; he collapsed and he kept grabbing his left hip. She got him over to the chair to sit down. He did not move that weekend. She took his boots off and tried to make him comfortable. He was in excruciating pain.

6. Mr. Patrick Clesen testified he saw Petitioner on July 23, 2012 and Petitioner did not look like he was in pain. If he was in pain, he would have made him go to the hospital. He does not know if Petitioner went to the hospital on Monday, July 23, 2012.

7. Petitioner testified he reported to work on Monday, July 23, 2012 at 5:00 a.m. No one was there to report to so he completed half a day of work. He made a delivery of a truckload to Chicago. He still was experiencing pain in his back and left buttock. When he returned to his route that day he fell off the truck. After returning to Respondent's, he spoke to Pat Clesen, his supervisor, in the shipping shed. He told Mr. Clesen that his back was bothering him; he needed to take off and go to the hospital and have it checked out. Mr. Clesen suggested that he see a chiropractor. Petitioner said he told him he could not afford it and he wanted to go to the hospital to have it checked out, which is what he did. Petitioner went to Delnor Hospital. He told the hospital personnel that he had pain in his back, left buttock and down his left leg after driving a truck, pulling carts, lifting and everything he did on Friday, July 20, 2012. They performed x-rays, gave him morphine and pain pills and referred him to Dr. Scurlock, his primary care physician of 15 years. He had not seen Dr. Scurlock for his low back prior to this. When he saw Dr. Scurlock, he told him that he was driving and making deliveries on Friday and the doctor prescribed medicine, took him off work while he was on the medication and ordered an MRI.

8. The medical records show that on Monday, July 23, 2012 Petitioner was seen at Delnor Hospital. It was noted that the patient states he does not remember doing anything other than he drives a truck and after trying to get in and out of his truck he was having low back pain, which is more so on the left side than the right side. It extends down to his buttock. He reports he had an injury in October where a door hit him in his back. Petitioner testified he did not seek any treatment and did not lose anytime from work as a result of the October incident. He just had a bruise. He did not follow up and did not have an x-ray at that point in time. He reports he had left foot tingling which is not new. It is his chronic pain. Currently, he states his pain is a 9 out of 10 on a 10 point scale. On physical examination, he has a positive straight leg raising on the left along tenderness over the sciatic on the left. His low back x-rays show degenerative disc disease at the L5-S1 level. Petitioner was given medication and instructed to follow up with Dr. Scurlock.

9. On Tuesday, July 24, 2012, Petitioner saw Dr. Scurlock who noted that Petitioner is following up after having been in the emergency room last night for low back pain. He is reporting back symptoms, buttock pain, radiating to posterior aspects of lower extremities, left leg and hip, ending below the knee. He reports he is feeling better, but he had had pain in the left leg since Friday. On examination, Petitioner exhibited tenderness of his lumbar/lumbosacral spine upon palpation; there were muscle spasms of the paraspinal muscles; he did not demonstrate a full range of motion and indicated that just

about any motion caused discomfort. Pain was elicited upon lateral flexion to the right. However, his straight leg raising test on the right was negative while the test was positive on the left side with sitting. Dr. Scurlock diagnosed Petitioner as having sciatica. He recommended that Petitioner reduce physical activity, take his pain medicine, noted that Petitioner cannot work while on pain medication and he ordered a lumbar MRI. On cross-examination, Petitioner testified that he told the doctor that he injured his back when he was pulling carts and he has no idea why Dr. Scurlock's records do not mention a lifting incident while at work. He has no idea why they were not writing down word for word what he told them but he did tell them about a lifting incident at work.

10. Petitioner testified that he worked part of a day on Tuesday, July 24th and for a couple of hours on Wednesday, July 25th. On Wednesday, July 25, 2012, he spoke with Mike and Eric Clesen, the owners, and told them that he had hurt himself on Friday, that he had gone to the hospital on Monday and the doctor on Tuesday. He also told them that the doctor prescribed medication and as a result he cannot drive. Petitioner said he last worked for Respondent on July 25th. Eric said there was no job he could do with his condition, that workers' compensation would not cover him as a driver.

11. Patrick Clesen testified that the employees punch themselves in and out using time cards. Petitioner's time card shows he worked for eight hours on July 25th. He worked on July 26th; he worked on July 27th and the last day he worked on July 30th. As far as he can tell from the card the 40 hours of vacation was paid beginning on the 31st, the first day Petitioner did not enter any time. Mike would have just added 40 hours on Wednesday, before the pay period, and the payroll service would have noted it as 40 hours of vacation time on Friday. Petitioner would have also written Bob N on the time card. Petitioner agreed that it is his handwriting on the card and that he received 40 hours of vacation but said that was so he could cover his health insurance. Petitioner did not provide him or his brothers with a doctor's slip stating that he had to be off of work and he does not have any such slips in Petitioner's employment file. Petitioner agreed that while he told Eric and Mike Clesen that he could not work he did not give them any sort of paperwork that said he could not work. The only paperwork he gave over to Eric showed he had a doctor's appointment lined up. Petitioner testified that if his time card says he worked on July 26th, July 27th and July 30th it should not. It should read that he worked 3 days-Monday, Tuesday, Wednesday and then he had 40 hours of vacation written afterwards. Mr. Clesen testified that Petitioner called him on the 30th to let him know he could not work due to back problems. He said he had been having back issues and they were possibly related to the fact that he had hurt his leg.

12. On July 31, 2012, Petitioner saw Dr. Scurlock for his diabetic condition and at that time he did not mention his low back. Petitioner testified that on July 31st Dr. Scurlock did not give him any paperwork saying he was to remain off of work. Petitioner said he underwent a lumbar MRI on August 2, 2012. The August 2, 2012 lumbar MRI showed a disc herniation at L5-S1 with an associated annulus tear along with multilevel mild facet degenerative changes. Petitioner testified that after the MRI, Dr. Scurlock told him to stay off of work. He was then given a prescription for a series of shots and he referred him to a pain clinic. After his first shot, the pain went away in his buttock and the low back pain was not as bad.

13. Petitioner testified he believes he was terminated on August 6th when he was handed his check and he was advised to turn in his credit card and cell phone; he agreed that he had already requested 40 hours of vacation time prior to this termination.

14. On August 9, 2012, Petitioner followed up with Dr. Scurlock. The doctor noted that Petitioner is not here for exam and there are no real changes. He further noted Petitioner is still having pain; he cannot work due to back pain and he is afraid he will get fired if he claims workers' compensation. Petitioner said he cannot afford to stay home and he is here to discuss the MRI results and his next step. On examination, Petitioner's lumbosacral spine exhibited tenderness on palpation; there were muscle spasms of the paraspinal muscles. Petitioner was limping around the room and he had to stand for comfort. He demonstrated limited range of motion due to his back pain. His MRI was reviewed. Dr. Scurlock diagnosed Petitioner with sciatica and a herniated disc. He instructed Petitioner to return to the clinic if his condition worsens or new symptoms arose. He gave him medication, prescribed moist heat and referred him to Dr. Bathina at Aurora Pain Clinic.

15. On August 16, 2012, Petitioner gave a recorded statement to Jodie Arnett, who is with Respondent's workers' compensation carrier. Ms. Arnett asked Petitioner how long he has been in pain. Petitioner answered since we first got the international truck. It's got a solid bench seat that gives him back pains every time he get in it...but on Friday he was hurt bad and could not get out of the truck. Petitioner reported he fell out and his whole left leg went numb. He further reported he is short legged. So he sits forward away from the back of the seat. He said if he hung on the steering wheel for a short amount of time it was fine but when one does not have anything to lean back against it makes one sore. He was asked why he thinks his pain is work related and Petitioner responded that it was because of the seat in the truck. He was asked, so you are stating that the defects of the truck seat would be your complaint here and Petitioner answered that is the biggest thing, They should have replaced the seat in the truck. On cross-examination, Petitioner agreed that he did not tell Jodie Arnett at that time that he was pulling a cart when he first notice back pain, but he assumed she knew what he did for a living. Ms. Arnett never asked him anything and never specifically asked him about any other aspects of his job. Mr. Clesen testified that Petitioner regularly drives that truck and he has mentioned in the past that the seat is uncomfortable. Other employees have driven that truck and they did not mention any problems with the truck.

16. Petitioner testified that when he talked to Jodi Arnett, during the recorded statement, he figured he could work. He also testified that he asked for a release to return to work from the doctor because he needed his health insurance and he needed to pay his bills. He even talked his wife into getting a release to go back to work. He needed his job and thought he could do it. Petitioner said he had his wife obtain a release from Dr. Scurlock on August 31st to go back to work. He provided a copy to Eric Clesen and he was told that he was no longer employed because workers' compensation carrier would not cover him. He was told to turn in his credit card and cell phone and to leave the premises. Petitioner said on August 6th they did not write terminated. He just asked at that time to turn in his cell phone and credit card. Petitioner said while he believed he was terminated on August 6th, he still tried to go back to work on August 28th.

17. On August 28, 2012, Petitioner saw Dr. Tsang at Fox Valley Pain Management. Petitioner told Dr. Tsang that on July 20, 2012 he was driving a truck on a bumpy road and was bouncing up and down in the truck all day. At the end of the day, he had difficulty getting off the truck and almost fell off the truck because of left leg pain and weakness. The pain was aching and shooting, going down to back of the lower leg and he had some tingling and numbness. Petitioner reported sitting, driving and sleeping aggravated his pain. Since then Petitioner has been taking medicine and he has not been able to return to work. Petitioner rates his pain as still being 6 out of 10 on a 10 point scale. His lumbar MRI revealed a L5-S1 disc herniation associated with an annulus tear. On examination, his straight leg raising was positive on the left leg. There was no S1 joint tenderness. His gait was normal. Dr. Tsang diagnosed radiculopathy secondary to a lumbar herniated disc at L5-S1. He instructed Petitioner to continue taking his current medication and he gave Petitioner a lumbar transforaminal epidural steroid injection.

18. Petitioner testified that after he was terminated he lost his medical insurance coverage and he was not able to follow up with any of his doctors for his diabetes or low back. On September 13, 20012, Petitioner entered into an attorney representation agreement. His attorney arranged for him to be seen by Dr. Ross, a neurosurgeon.

19. From November 6, 2012 through November 11, 2012, Petitioner was an in-patient at Delnor Hospital as a result of diabetes dysregulation. During his stay, Petitioner reported he had recent back pain and a MRI that showed a herniated disc at L5-S1 but no nerve impingement. He was given Vicodin and pain pills, for his back when he was in the hospital.

20. Petitioner said he went to the free clinic on November 14, 2012, three days after he was discharged from the hospital. He dropped off paperwork to see if he was eligible for the program.

21. On November 16, 2012, Petitioner was evaluated by Dr. Ross. At that time, Petitioner stated he was a truck driver. After returning from a delivery to Wisconsin, he experienced severe low back pain and numbness down the left leg. He did not recall any specific accident. He states he simply did his normal work activities of loading plants onto heavy carts, which he pushes and pulls into the flower shops. He assumed the pain would resolve. He rested at home over the weekend. When the pain persisted he went to the emergency room and was given medication. A MRI was subsequently obtained. He was referred to pain management specialist and he received one lumbar epidural cortisone injection which made him feel better. His treating doctor allowed him to attempt to return to work at full duty. When he brought the work release to his job he was fired.

    Petitioner stated that over time the symptoms have worsened. He continued to experience low back pain as well as feeling like he has a "brick" over his left lateral thigh and tingling. While he does not trust that the leg will consistently support his weight, he says he has good strength. His symptoms are worse with sitting. He denies previous problems with his low back. On examination, his gait is normal with toe and heel walking performed with good strength. Deep knee bending is also performed with good strength. The patient has full range of motion in his lumbar spine. There is tenderness over the lower lumbar spinous processes as well as over the left flank musculature just above the iliac crest. There is no sciatic notch tenderness. His straight leg raising is negative to 90

degrees while seated. Motor strength appears to be full throughout except for possible slight weakness of the left extensor halluces longus. His sensation is intact to light touch. The pinprick is diminished over the dorsum of the left foot and great toe. His August 2, 2012 MRI shows early disc desiccation and an annular tear at L5-S1. There may be some slight bulging of this disc toward the right side. He did not detect any actual herniation or nerve impingement. Dr. Ross opined that Petitioner has symptoms of lumbosacral strain as well as mild sciatica. He experienced partial improvement with one epidural injection. He recommend that Petitioner receive additional conservative treatment including further injections and physical therapy. He found Petitioner was capable of working in a restricted duty capacity lifting up to twenty five pounds. He needs to be allowed to vary his position from sitting to standing as-needed.

Dr. Ross stated that although there was no actual work accident, it is more likely than not that the lifting activities at work on July 20, 2012 were the proximate cause of the patient's symptoms. This is based on the fact that there is no evidence of a pre-existing lumbar condition that would have any bearing on his current symptoms.

22. Petitioner went back to Tri City Health Partnership, the free clinic, on November 21, 2012 and treated for his diabetes but did not mention his back. Petitioner subsequently testified that he did not tell then that his back was bothering him every time he went to the clinic.

23. On December 3, 2012, Petitioner returned to the Tri City Health Partnership where he reported that he had had a back injury at work in July and now he has numbness in his left lateral leg (thigh). Petitioner subsequently testified that his low back and radiating pain returned six weeks after the first injection. He noted that originally his pain was a 9 out of 10 on a 10 point scale and after the injection it was a 7/8 out of 10 with no pain in his left buttock.

24. On January 17, 2013, Petitioner was seen at Tri City Health Partnership for his diabetes and he did not mention his back. On February 14, 2013, Petitioner returned to Tri City Health Partnership and stated he was frustrated with trying to find a job. He reported chronic back pain which radiates to his left lower extremity. He reported he has weakness and numbness in left leg secondary to an injury. He had a MRI done last summer and had an injection. Petitioner was referred to Dr. Escobar. On May 9, 2013, Petitioner was again seen at Tri City Health Partnership for his diabetic condition and his back was not mentioned. On July 11, 2013, Petitioner returned to Tri City Health Partnership with complaints of chest pain x 2 weeks since lifting a stove into truck. On October 7, 2013 and December 12, 2013, Petitioner was again seen at Tri City Health Partnership for his diabetic condition and his back was not mentioned.

25. On March 4, 2014, Petitioner filed a Section 19(b) Petition. On March 27, 2014, Petitioner was seen at Tri City Health Partnership. At that time, he reported he has had back pain for one and a half years as a result of a work injury. He in in arbitration to get injections and physical therapy. The past injection was helpful. Currently, he is using Advil and Tylenol at home and he does not want to use any stronger medication. He had a MRI. Petitioner was again referred to Dr. Escobar.

26. On April 22, 2014, Petitioner returned to Tri City Health Partnership and was given a back injection. On June 26, 2014, Petitioner was again seen at Tri City Health

Partnership for his diabetic condition and his back was not mentioned. On September 25, 2014, Petitioner was seen at Tri City Health Partnership and said he was seeing Dr. Ross on Monday regarding his back and his workers' compensation claim.

27. On September 29, 2014, Petitioner again saw Dr. Ross. Petitioner reported to him that his low back was killing him right now and he rated his pain as an 8 out of 10. He reported that the pain is at his waist/belt line and it is made worse with bending, sitting and lifting. It is not as bad with walking. He reported that over time the effects of the epidural had lessened. He began experiencing some recurrence of symptoms in his back and left leg. At times, the left leg goes numb down to his heel. When the leg is numb, it feels dead and is harder to control. He is not sure whether it is actually weakness. He has tries to manage the pain by taking an occasional Advil, but it does not seem to help. He reported that in the intervening two years since he last saw him, Petitioner has received some treatment from the Free Clinic in St. Charles. He had an injection in his buttock that did not offer any relief.

    On examination his gait is normal. Petitioner is able to toe and heel walk with good strength. He has a full range of motion of the low back. There is tenderness to palpation over the lower lumbar paravertebral muscles bilaterally at the level of the belt line. There is also tenderness over the sacrum. There is no sciatic notch tenderness. His straight leg raising aggravated his back pain at approximately 80 degrees on the left. His motor testing revealed weakness in the left hip flexor and quadriceps. It is unclear whether this is true weakness or volitional limitation secondary to pain. His sensation is intact and he did not detect any impingement on the left exiting nerve roots.

    Dr. Ross opined that Petitioner has persistent back and sciatic type pain in his left leg which followed his work activity in July of 2012. He has evidence of disc degeneration and annular tear at the L5-S1 level. While this potentially could be a cause for his low back pain, it would be unlikely to explain his left sciatic pain. From a back standpoint, he remains significantly limited. He is capable of functioning only at a light physical demand level. The prior twenty five pound lifting limitation still stands. He needs to vary his position from sitting to standing as-needed. He is not capable of commercial driving in his current condition. Dr. Ross recommended an updated MRI be performed along with an EMG/NCV of his left leg. He opined that Petitioner may need a discogram and CT of the pelvis to rule out any other problems. Dr. Ross opined that based on the history and a lack of evidence to the contrary, he believes Petitioner's current condition of back and left leg pain continue to be causally related to his July 2012 work activity.

28. On November 20, 2014, December 29, 2014 and February 4, 2015 Petitioner was again seen at Tri City Health Partnership for other health issues and his back was not mentioned.

    The Courts have clearly established that Petitioner has the burden of proving up each and every element of his claim including the issue of accident. Upon reviewing the Application for Adjustment of Claim, Petitioner is both claiming repetitive and specific trauma theories for this case. Specifically, he is claiming repetitive trauma and specific trauma related to falling out of truck, pulling heavy loads and sustaining a rough truck ride.

With those two theories in mind, the Commission reviews the medical histories and testimony of the various witnesses. In examining the various histories, the Commission finds Petitioner's histories to be both generic in nature as well as internally and externally contradictory. Petitioner did not give a specific history of accident to the Delnor Emergency Room personnel. He told them that he does not remember doing anything other than driving and getting in and out of the truck. He next saw Dr. Scurlock and again he provided a generic history of experiencing pain in the left leg since Friday. After that, he gave a recorded history to the insurance representative and he reported that that the solid bench seat caused his back pain and caused his whole leg to be numb which in turn caused him to fall out of the truck. Following that he saw Dr. Tsang and gave him a similar history. He told him that he was driving a truck on a bumpy road and was bouncing up and down in the truck all day and at the end of the day he almost fell off the truck. Depending on whom you believe, Petitioner either had a conversation with Patrick Clesen on July 20, 2012 or he did not. If such a conversation was had, then Petitioner provided a similar mechanism of injury at that time. According to Mr. Clesen, Petitioner again said he slipped off the lift gate or the side of the truck and injured his leg, but he did not mention his back. The evidence shows that it is not until Petitioner is seen by independent medical examiner, Dr. Ross, that he relates something closer to an alleged accident. He states that he does not recall any specific accident and he was performing his normal work activities of loading plants onto heavy carts and pushing and pulling them into flower shops. In the end, the Commission is left with multiple versions/theories regarding the alleged accident. There is everything from generic to specific reports of a work accident and from a repetitive trauma to a specific trauma. The numerous versions result in internal inconsistencies being provided by Petitioner himself and further contrary evidence if one believes the conversation took place between Petitioner and Pat Clesen, his supervisor. Did Petitioner get bounced around day to day on the bench seat (repetitive trauma), did he load plants onto heavy carts (note plants were loaded before he left Respondent's company), did he push/pull carts or did he fall/almost fall off the lift gate or side of the truck. Which of the multiple versions/theories is the Commission to believe? The Commission finds that these are not minor inconsistencies as the Arbitrator held. Nor are there only very slight differences in the medical histories/records. Given all of the above, the Commission finds that Petitioner is not credible and Petitioner failed to prove he sustained a compensable work accident on July 20, 2012.

Furthermore, the Commission finds that Petitioner failed to prove a causal relationship exists between Petitioner's present condition of ill-being and the alleged July 20, 2012 work accident. The Commission further finds Dr. Ross' causation opinions were based on a lack of foundation and did not reach a level of reasonable and necessary medical certainty that is required for a compensable claim. As previously noted, Petitioner provided numerous versions/theories of the alleged July 20, 2012 work accident which span from being generic in nature to being internal and external inconsistent with his own testimony, other witnesses' testimony and the medical histories. Dr. Ross stated that although there was no actual work accident, it is more likely than not that the lifting activities at work on July 20, 2012 were the proximate cause of Petitioner's symptoms. Upon deconstructing this opinion, the Commission finds that Dr. Ross' acknowledgement that there was no actual work accident and his couching in terms of more likely than not does not raise his causation opinion to the level of medical certainty that is needed to find a claim is compensable. The doctor's statement that Petitioner's loading plants onto heavy carts was the proximate cause is not supported by the evidence

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given the fact that the plants were preloaded at the facility, Petitioner did not testify regarding loading the plants at the delivery sites and Petitioner provided various other versions of mechanics of the injury. The Commission finds that Dr. Ross' causation opinion is speculative at best in that there is not sufficient evidence to prove that Petitioner was loading plants onto heavy cart. It appears that while Dr. Ross stayed the course in giving his second causation opinion, he was only told by Petitioner that he had some treatment at the Free Clinic in St. Charles but he was not provided with the Tri-City records to substantiate Petitioner's claim of ongoing problems Give all of the above, the Commission finds that Dr. Ross' causation opinions are not supported by the evidence and little, if any, weight should be assigned to his opinions. Thus, in addition to finding that Petitioner failed to prove he sustained an accidental injury on July 20, 2012, the Commission also finds Petitioner failed to prove his current condition of ill-being is causally related to the alleged July 20, 2012 accident. Lastly, based on the Commission's finding that Petitioner failed to prove a July 20, 2012 work accident and failed to prove a causal connection to the same, the Commission finds that it has jurisdiction over this claim and that the issue of whether this case was properly determined under Section 19(b) of the Act versus a permanency hearing is a non-issue that need not be addressed by the Commission.

IT IS THEREFORE ORDERED BY THE COMMISSION that since Petitioner failed to prove he sustained accidental injuries arising out of and in the course of his employment on July 20, 2012 and since he failed to prove a causal relationship exists between his current condition of ill-being and the alleged July 20, 2012 work accident, his claim for compensation is hereby denied.

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

DATED: DEC 30 2015

Mario Basurto

MB/jm

O: 12/3/15

David L. Gore

43

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b)/8(a) ARBITRATOR DECISION

NEWBOLDS, ROBERT
Employee/Petitioner

Case# **12WC031854**

CLESEN BROTHERS INC
Employer/Respondent

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On 5/26/2015, 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:

2724 THOMAS J STIBERTH LAW OFFICE
47 DuPAGE COURT
ELGIN, IL 60120

5265 WOLF LAW LTD
DANIEL R SARTHER
25 E WASHINGTON ST SUITE 801
CHICAGO, IL 60602

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STATE OF ILLINOIS)
)SS.
COUNTY OF Kane)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(A)

Robert Newbolds
Employee/Petitioner

v.

Clesen Brothers, Inc.
Employer/Respondent

Case # **12** WC **31854**

Consolidated cases: n/a

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 **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Wheaton**, on **04/17/15**. 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. ☒ 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 _____

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FINDINGS

On the date of accident, **07/20/12**, 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 $**27,081.60**; the average weekly wage was $**520.80**

On the date of accident, Petitioner was **54** years of age, ***married*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**2,676.93** for other benefits, for a total credit of $**2,676.93**.

Respondent is entitled to a credit of $**2,676.93** under Section 8(j) of the Act. ARB EX 1.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $347.20/week for 130-2/7 weeks, commencing 07/31/12 through 08/28/12 and from 11/16/12 through the date of the hearing, 04/17/15, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the reasonable and necessary medical expenses incurred for the care and treatment of his causally related conditions pursuant to Sections 8 and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall further authorize and pay for the medical care and treatment recommended by Dr. Ross pursuant to Sections 8 and 8.2 of the Act. SEE DECISION

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.

Carolyn Doherty
Signature of Arbitrator

5/21/15
Date

ICArbDec19(b)

MAY 26 2015

STATEMENT OF FACTS

Petitioner is a 57 year old male. He has a GED. On July 20, 2012, Petitioner worked for Respondent as a truck driver. Prior to this date, Petitioner worked 17 years for Respondent. Respondent operates a commercial greenhouse and nursery. Petitioner's job consisted primarily of performing deliveries of nursery plants to Respondent's customers. Petitioner testified that he drove a 20 foot box straight truck to make deliveries. He testified that the truck had a rough suspension, was not an air ride vehicle, and as a result, he was bounced around the non-cushioned bench seat while driving.

The plants were contained in flats that weighed approximately 20 to 25 pounds per flat. The flats were loaded onto a cart with shelves and then the cart was placed on the truck. The empty cart was 120 pounds and when loaded the cart weighed up to 600 pounds. The carts were on wheels. In order to load the carts onto the truck, the carts were pulled onto a lift gate and then lowered onto the truck. The carts were then pushed or pulled off the truck for delivery. Petitioner testified that during deliveries, he would unload the carts climbing in and out of the truck.

On July 20, 2012, Petitioner reported that his back felt fine when he reported for work at 5 am. Petitioner testified that he was scheduled to make eight or nine deliveries with his first delivery in Wisconsin. The drive to the customer in Wisconsin was approximately 3 hours. Petitioner testified that by the time he arrived in Wisconsin, his back felt stiff. He got out of his truck, opened his lift gate and pushed a cart of plants out of his truck. As he was reaching for the lift gate and pushing the cart he noticed pain in his back. He completed his delivery, climbed back into his truck and drove to the site of his second scheduled delivery. Petitioner testified that he bounced around inside of his truck as he drove to his next delivery and noticed increasing low back pain and pain in his left buttocks. He had never experienced this type of pain before. Petitioner's pain steadily increased throughout the day as he completed all of his deliveries. When he arrived back at Respondent's place of business, he was in severe pain. His pain was in his low back radiating into his left buttock and posterior thigh. He was used to experiencing some muscle soreness after a hard day at work, but testified this was different. He nearly fell as he climbed down from his truck.

When he arrived back at Respondent, Petitioner tried to report his injury to Respondent, but was unable to locate his supervisor or one of the owners. He then attempted to call one of the owners, but received voicemail. He decided not to leave a message in the hopes his pain would improve over the weekend. He went home and rested. His pain continued to persist over the weekend. On Sunday, July 22, 2012, he called two co-workers to see if they would be able to take over his deliveries for the following Monday. He left both coworkers a message on their voicemail, but was unsuccessful in reaching them.

Petitioner reported back to work on Monday, July 22, 2012. He arrived at approximately 5:30 a.m. No one was present. He completed his deliveries for the day and, when he arrived back at Respondent's place of business, he reported his pain to his dispatcher/supervisor, Patrick Clesen. Petitioner testified that he told Mr. Clesen that he hurt his back on Friday. Mr. Clesen suggested to Petitioner that he see a chiropractor. Petitioner declined. Instead, he advised Mr. Clesen he

would go to the hospital. He subsequently left work and went to Delnor Community Hospital in Geneva, Illinois for treatment of his injury.

At Delnor Community Hospital, Petitioner reported he had developed back pain the previous Friday. (PX 1, p.3) Petitioner testified he advised he had developed low back pain extending into his left buttock as he was driving making deliveries at work. He did not recall anything unusual outside of his normal work activities. The records from Delnor Community Hospital show Petitioner was seen in the emergency room on July 23, 2012. (PX 1, p.3) These records show petitioner presented with a chief complaint of low back pain, 9/10, left side greater than right, extending into the left buttock. (PX 1, p.3) Petitioner was noted not to remember doing anything other than driving and noticing back pain as he was getting in and out of his truck. (PX 1, p.3) Petitioner told the emergency room staff he had an injury in October where a door hit him in the back, but he did not seek treatment or follow-up. (Px 1, p.3) He also reported left foot tingling but did not relate that problem to the symptoms that began at work. (PX 1, p.3) He described the left foot tingling as an old complaint. (PX 1, p.3) Petitioner had a positive straight leg raise on the left along with tenderness over the sciatic notch on the left side. An x-ray was taken, which demonstrated degenerative disk disease at L5-S1. (PX 1, p.4) Petitioner was given Morphine, Valium, and Toradol to help control his pain. Additionally, he was prescribed Norco, Toradol, and Valium to take for his pain after his release from the hospital. He was directed to follow-up with his family physician, Dr. Scurlock. (PX 1, p.4)

Petitioner followed up with Dr. Scurlock the following day, July 24, 2012. (PX 2, p.18) His pain had increased and now extended from his low back into his left buttock, posterior thigh, and posterior aspect of his left lower leg, ending below his knee. (PX 2, p.18) Petitioner testified that he advised Dr. Scurlock that his pain developed while working the previous Friday and that Dr. Scurlock knew what Petitioner did for a living. Dr. Scurlock's records do not mention any history of accident or how the onset of Petitioner's problems developed, other than to state that Petitioner's problems began on the previous Friday. (PX 2, p.18) Dr. Scurlock examined Petitioner and noted tenderness to palpation of the lumbar spine, muscle spasms of the paraspinal muscles, limited lumbar range of motion with pain, and a positive straight leg raise on the left. (PX 2, p.18) Petitioner also was observed to have an altered gait and abnormal ankle reflex on the left. (PX 2, p.19) Dr. Scurlock diagnosed Petitioner with sciatica and ordered an MRI to rule out disc pathology. (PX 2, p.20) He directed Petitioner to take pain medication and follow-up in 1-2 weeks. (PX 2, p.20) He advised Petitioner, not to work while taking medication. (PX 2, p.20)

Petitioner testified he reported to work on Wednesday, July 25, 2012, and again notified Respondent of his work injury and further advised Respondent of his restrictions. Petitioner testified he did not work for Petitioner after Wednesday, July 25, 2012.

Petitioner underwent an MRI of his lumbar spine at CDI Geneva on August 2, 2012, which revealed a herniated disc at L5-S1 with an associated annular tear. (PX 3, pp.2-3) Petitioner subsequently followed up with Dr. Scurlock on August 9, 2012, to review the results of the MRI. (PX 2, p.10) Dr. Scurlock's August 9, 2012 record indicates that Petitioner "cannot work due to pain in back, still having pain, afraid to get fired if he claims work comp, cannot afford to stay home, cannot afford insurance, here to discuss MRI results and next step." Dr. Scurlock

noted Petitioner was limping and had to stand for comfort during the office visit. (PX 2, p.10) He did not examine Petitioner. (PX 2, p.10) Dr. Scurlock recommended Petitioner see Dr. Bathina, a pain management specialist, for injections. (PX 2, p.10).

On August 28, Petitioner went to Fox Valley Pain Management and was seen by one of Dr. Bathina's partners, Dr. Tsiang. (PX 4, pp. 7-9) Petitioner testified he told Dr. Tsiang that he had hurt his back while driving and performing deliveries at work on July 20, 2012. Dr. Tsiang's records show Petitioner reported "driving a truck on July 20, 2012, on a bumpy road and was bouncing up and down in the truck all day. At the end of the day, he had difficulty getting off the truck (sic) almost fell off the truck because of leg pain and weakness. He described the pain was aching and shooting, going down to he lower leg especially back of the lower leg associated with some tingling and numbness." (PX 4, pp. 7-9) Petitioner reported sitting, driving, and even sleeping in bed aggravated his pain. (PX 4, pp. 7-9) He had been taking medication, which was helping, but his pain was still 6/10. (PX 4, pp. 7-9) He was not able to return to work. (PX 4, pp. 7-9) Dr. Tsiang examined Petitioner and noted Petitioner was tender in the left lumbosacral region and limited range of motion in all directions due to pain. (PX 4, pp. 7-9) Petitioner's straight leg raise on the left was positive. (PX 4, pp. 7-9) He had absent left ankle reflex. (PX 4, pp. 7-9) Dr. Tsiang diagnosed Petitioner with radiculopathy secondary to lumbar herniated disc at L5-S1. Dr. Tsiang administered a transforaminal lumbar epidural steroid injection under flouroscopy. (PX 4, pp. 5-6)

Petitioner testified he noticed relief of his symptoms following the injection. He wanted to return to work. He had not been paid any benefits for the period of time he had been authorized off work. He asked his wife to go to Dr. Scurlock and request a note permitting him to return to work. He did not see Dr. Scurlock. Petitioner then reported back to work with the note from Dr. Scurlock dated 8/28/12 and was told by one of the owners, Eric Clesen, he was terminated.

Petitioner testified over time his symptoms worsened. Petitioner was subsequently seen by Dr. Matthew Ross on November 16, 2012, at the request of his attorney, for an IME. Petitioner testified he advised Dr. Ross he hurt his back while driving a truck and performing deliveries at work on July 20, 2012. Dr. Ross noted Petitioner reported working as a truck driver and after returning fom a delivery from Wisconsin, he experienced severe low back pain as well as numbness down his left leg. (PX6, p.1) Petitioner did not recall a specific accident but reported he simply did his normal work activities of loading and unloading plants onto heavy carts, which he pushed and pulled into flower shops. (PX6, p.1) Petitioner reported he continued to experience low back pain as well as tingling and the feeling of a "brick" over his left lateral thigh. (PX6, p.1) Petitioner did not trust his leg would consistently support his weight, although he still had good strength. (PX6, p.1) He complained his symptoms were worse with sitting. Dr. Ross examined Petitioner and reviewed his MRI study. (PX6, p.1) Dr. Ross noted that the MRI showed early disk desiccation and an annular tear at L5-S1. He further noted "there may be some slight bulging of this disk toward the right side. I do not detect any actual herniation and nerve impingement." PX 6. He felt Petitioner had symptoms consistent with lumbosacral strain and mild scatica, noting that Petitioner did note partial impovement from one epidural steroid injection. (PX6, p.1) Dr. Ross recommended additional conservative treatment including further epidural steroid injections and a course of physical therapy. (PX6, pp.1-2) He opined Petitioner could return to work with restrictions of no lifting greater than 25 pounds and the ability to vary

his position from sitting and standing as tolerated. (PX6, p.2) Dr. Ross noted "Although there was no actual work accident, it is more likely than not the lifting activities at work on July 20, 2012, were the proximate cause of his symptoms and his need for treatment. There is no evidence that he had a preexisting condition in his lumbar spine that would have any bearing on his current symptoms." (PX6, p.2)

Petitioner testified he was unable to follow through with Dr. Ross' treatment recommendations because he lost his health insurance when he was terminated. He subsequently began treating at Tri-City Health Partnership, a free clinic in St. Charles, Illinois. The records show Petitioner was seen on several occasions from November 14, 2012 through February 4, 2015, for his low back pain, and received over-the-counter medications for his pain, as well as one Kenalog injection into the caudal space. (PX5, pp. 14-17, 26-27, 30-32)

On September 29, 2014, Petitioner returned to Dr. Matthew Ross for a repeat IME. (PX 7) Dr. Ross noted the additional treatment Petitioner had received since his last exam. (PX 7, p.1) He noted Petitioner continued to remain symptomatic. (PX 7, p.1) On exam, Petitioner exhibited tenderness over the lower lumbar paravertebral muscles bilaterally and the sacrum. (PX 7, p.2) Straight leg raise was positive on the left at 80 degrees. (PX 7, p.2) He had weakness in the left hip flexors and quadriceps. (PX 7, p.2) Dr. Ross opined Petitioner continued to remain significantly disabled from his back injury and should continue on the restrictions he had imposed back on the date of his first exam. (PX 7, p.3) Dr. Ross felt Petitioner was not capable of commercial driving in his current condition. (PX 7, p.3)

With respect to medical care, Dr. Ross opined additional medical treatment was necessary for further evaluation and care of Petitioner's back and sciatic pain. He recommended a repeat MRI of Petitioner's lumbar spine as well as an EMG/NCV study of the left leg. (PX 7, p.3) Depending on the outcome of these tests, additional testing may be required, such as a discogram or CT scan of the abdomen and pelvis to fully evaluate the lumbosacral plexus. (PX 7, p.3) Dr. Ross felt Petitioner's current condition of back and left leg pain continued to be causally connected to his work activity of July 20, 2012. (PX 7, p.3).

Mary Newbolds testified briefly as a witness for Petitioner. Ms. Newbolds stated she is married to Petitioner. She lives with Petitioner. On July 20, 2012, she arose from bed with petitioner and had an opportunity to observe Petitioner before he left for work. He appeared fine and did not demonstrate or engage in any behavior that would suggest he was hurt. She saw Petitioner when he arrived home from work that evening. He appeared to be in a lot of pain and had difficulty walking. She had to help him off with his shoes.

Patrick Clesen testified for Respondent. Mr. Clesen is employed by Respondent as an operations manager. Patrick Clesen clearly testified that he saw Petitioner on July 20, 2012 after work. A fact petitioner denied during his testimony. Mr. Clesen testified that he spoke with petitioner, who claimed to have fallen from his truck injuring his leg. Petitioner did not mention any low back pain and did not demonstrate any noticeable signs of pain to Mr. Clesen. Mr. Clesen testified that had petitioner been in noticeable pain, he would have taken petitioner to a hospital or clinic. Mr. Clesen also testified regarding a time slip and stated, according to the time slip, Petitioner worked on July 26, 27, and 30, 2012. Petitioner confirmed that he wrote the hours on

his time card. The time card indicated that petitioner worked 31 ¾ hours and requested 40 hours of a vacation time.

Respondent also offered, over Petitioner's hearsay objection, the transcript of a recorded statement of Petitioner taken on August 16, 2012. (RX 2) In the statement, Petitioner discusses the seat of the truck he is required to drive and complained that he felt it was a cause of his pain. He indicated the seat is a solid bench seat and that he commonly experienced back pain from driving in that truck due to the seat. He expressed he can deal with a little bit of pain, but Friday he was hurt bad and couldn't even get out of the truck – he fell out. (RX 2) His whole left leg went numb. (RX 2) Petitioner also stated that he loaded and unloaded carts of plants as part of his job. (RX 2) Petitioner was never specifically asked regarding how his pain developed on July 20, 2012, but he did indicate he felt his pain was work-related because of the seat of his truck. (RX 2)

CONCLUSIONS OF LAW

The above findings of fact are incorporated into the following conclusions of law.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT, THE ARBITRATOR FINDS AS FOLLOWS:

The record shows that Petitioner exhibited no evidence of severe, debilitating, radiating low back pain until he subjected himself to the physical demands and stress of his job on Friday, July 20, 2012. Petitioner's testimony that he had not ever experienced back pain of this nature before that date was not only supported by the medical records of his family doctor, Dr. Scurlock, which did not reveal any ongoing history of back problems, but also by Petitioner's conduct. Petitioner's unrefuted testimony demonstrated he had never sought medical treatment for a low back problem prior to July 20, 2012, he had not missed time from work due to a low back problem, and that his back felt fine before he started work on July 20, 2012.

The Arbitrator finds the evidence clearly demonstrates a change occurred in Petitioner's low back while he was in the performance of his duties for Respondent on July 20, 2012. Petitioner consistently reported to all of his treating doctors that his pain developed on July 20, 2012. Petitioner testified he reported the work activities he performed to each of his treating doctors. The Arbitrator further notes Petitioner struggled to describe his circumstances while testifying. However, the Arbitrator notes that any discrepancies during Petitioner's testimony arose from Petitioner's inability to articulate and did not detract from Petitioner's credibility. The Arbitrator notes Petitioner did not complete middle school and that he possesses a GED. While the medical records vary slightly in terms of what activities caused the onset of Petitioner's low back and left leg to pain, each of the records mention activities that Petitioner performed while working on July 20, 2012. There is no dispute Petitioner engaged in these activities that date. Given the manner in which Petitioner described the onset of his pain, which began while driving, worsened with pushing and pulling, and progressively increased throughout the day, the Arbitrator is not dissuaded by any minor discrepancies. Even Respondent's own witness, Patrick Clesen, testified that Petitioner returned back from his deliveries complaining of left leg pain. Finally, the

Arbitrator notes that there was no evidence to suggest Petitioner was injured in another manner apart from his work activities on July 20, 2012.

Given the above, the Arbitrator holds that Petitioner sustained an accident involving his low back on July 20, 2012, which arose out of and in the course of his employment with Respondent.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

As noted above, the record shows that Petitioner exhibited no evidence of severe, debilitating, radiating low back pain until he subjected himself to the physical demands and stress of his job on Friday, July 20, 2012. Petitioner's testimony that he had not ever experienced back pain of this nature before that date was not only supported by the medical records of his family doctor, Dr. Scurlock, which did not reveal any ongoing history of back problems, but also by Petitioner's conduct. Petitioner's unrefuted testimony demonstrated he had never sought medical treatment for a low back problem prior to July 20, 2012, he had not missed time from work due to a low back problem, and that his back felt fine before he started work on July 20, 2012.

Dr. Ross was the only medical provider to offer an opinion regarding whether Petitioner's current condition of ill-being was causally connected to his work activities of July 20, 2012. Dr. Ross is a board certified neurosurgeon. He examined Petitioner on two separate occasions, and reviewed his medical records and diagnostic films. Dr. Ross opined, based upon a reasonable degree of medical and surgical certainty, Petitioner's current and continued low back pain and sciatic pain was causally connected to his work activities. Dr. Ross' opinion was not challenged or refuted by respondent. Accordingly, the Arbitrator finds Petitioner's condition of ill-being is causally related to his work accident of July 20, 2012.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY, AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Respondent denied its liability for medical services based upon liability only. Based on the Arbitrator's findings regarding accident and casual connection, the Arbitrator further finds the medical services that were provided to Petitioner were reasonable and necessary. Respondent shall pay Petitioner the reasonable and necessary medical expenses incurred in the care and treatment of his causally related injuries pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid, including credit under Section 8(j) of the Act for the payments made by Plaintiff's group health insurance for this same treatment.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

The medical evidence shows that Petitioner continues to experience low back pain radiating into his left leg that has gone relatively unabated since the date of his work accident. Dr. Scurlock, Dr. Tsiang, and Dr. Ross have all recommended continued physical therapy and injections to treat Petitioner's back condition. Additionally, Dr. Ross has recommended additional testing

consisting of a repeat MRI of the lumbar spine and an EMG/NCV of the left leg to determine all contributing factors to Petitioner's back pain and left leg symptoms. Respondent offered no evidence to refute these opinions.

Based on the above findings, the Arbitrator further finds that Petitioner is entitled to prospective medical care consistent with the recommendations of Dr. Ross, consisting of injections, physical therapy, and additional diagnostic testing. Respondent shall authorize and pay for this recommended care pursuant to Sections 8 and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT TEMPORARY BENEFITS ARE IN DISPUTE—TTD, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner seeks temporary total disability benefits from July 25, 2012 to August 28, 2012 and then from November 16, 2012 to the present. Respondent has not paid any TTD. The Arbitrator notes that testimony regarding Petitioner's time slip shows Petitioner's last day worked was July 30, 2012 and that further equivocal testimony indicates Petitioner may have worked through August 6, 2012. Petitioner was placed under work restrictions by Dr. Scurlock on July 24, 2012. It is undisputed that Petitioner's employment was terminated after he sought treatment and was placed under work restrictions by Dr. Scurlock. Petitioner testified that despite his continued pain and restrictions and the fact that his employment had already been terminated prior to August 28, 2012, he thought he would try to return for Respondent given that he needed to earn money and had worked 17 years for Respondent. As of August 28, 2012, Petitioner requested a return to work from Dr. Scurlock. Petitioner was not returned to work by Respondent at that time. Accordingly, the Arbitrator finds Petitioner was temporarily and totally disabled for the period of 4-1/7 weeks commencing July 31, 2012 through August 28, 2012.

The Arbitrator further notes that the medical records indicate Petitioner continued to experience pain and symptoms between August 28, 2012 and his visit with Dr. Ross on November 16, 2012. The Arbitrator notes Petitioner's credible testimony as well as the unrefuted and unchallenged opinion of Dr. Ross, which established the benefits from Petitioner's transforaminal epidural injection on August 28, 2012 had subsided and Petitioner's condition as of November 16, 2012, had worsened to the point he was again placed under restrictions of no lifting greater than 25 pounds, the ability to sit and stand as tolerated. The Arbitrator notes that Petitioner's restrictions continued to remain unchanged through the date of hearing and that his condition had not stabilized at any time during this period. The Arbitrator finds that Petitioner's restrictions were not accommodated by Respondent as it had previously terminated Petitioner's employment.

Based on the above, and based upon the Arbitrator's earlier finding regarding accident and causal connection, Respondent is ordered to pay Petitioner temporary total disability benefits of $347.20 per week for 130-2/7 weeks, commencing July 31, 2012 through August 28, 2012 and from November 16, 2012 through the date of hearing April 17, 2015.

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 down	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KIMBERLY KAMP,
as widow and beneficiary of
BRUCE KAMP, deceased
,

Petitioner,

vs.

NO: 14 WC 3466

15IWCC0938

RIVERVIEW MATERIAL,

Respondent.

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 burial expenses 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.

Pursuant to Section 7(f) of Act, "The sum of $8,000.00 for burial expenses shall be paid by the employer to the widow or widower, other dependant, next of kin or to the person or persons incurring the expense of burial."

Per the Request for Hearing form, the Commission notes that the sole issue in dispute at hearing was "future payment of compensation benefits to surviving spouse." At hearing, petitioner's attorney asked the petitioner "Did Third Coast or the employer pay for any funeral expenses?" T.16. Petitioner answered "Yes, they did. I believe that Riverview did." *Id.*

The parties did not offer any evidence to establish that an amount was due and owing by Riverview for burial expenses. Further, there was no attempt to clarify petitioner's testimony as to how much was paid by Riverview. Based upon the lack of evidence establishing an outstanding balance, the Commission vacates the Arbitrator's award of $8,000.00 for burial expenses. The Commission finds that the testimony establishes that Riverview paid for burial

15IWCC0938

expenses as required under Section 7(f) of the Act.

The Commission further clarifies the Arbitrator's findings of fact. The arbitrator found that "Petitioner further testified that there are other surviving spouses to the decedent, no other potential beneficiaries under the age of 18 and that she has not remarried." The Commission notes that the word "no" was inadvertently excluded from the above sentence. Ms. Kamp testified that the decedent was never married to anyone else. T.12. Thus, the Commission modifies the findings of fact section so that it reads, "Petitioner further testified that there are no other surviving spouses to the decedent, no other potential beneficiaries under the age of 18 and that she has not remarried."

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay death benefits, commencing January 15, 2014, of $999.99/week to the surviving spouse, Kimberly Kamp, on her behalf until $500,000.00 has been paid or 25 years, whichever is greater, have been pain, because the injury caused the employee's death, as provided in Sections 7 and 8(b)4.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that if the surviving spouse remarries, and no children remain eligible, Respondent shall pay the surviving spouse a lump sum equal to two years of compensation benefits; all future rights of the surviving spouse shall be extinguished.

IT IS FURTHER ORDERED BY THE COMMISSION that commencing on the second July 15th 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: DEC 18 2015

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB/tdm
D: 12-14-15
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
FATAL

KAMP, KIMBERLY AS WIDOW AND BENEFICIARY OF KAMP, BRUCE DECEASED
Employee/Petitioner

Case# **14WC003466**

15IWCC0938

RIVERVIEW MATERIALS
Employer/Respondent

On 6/16/2015, 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:

0787 MEYERS & FLOWERS LLC
JOHN HARP
3 N SECOND ST SUITE 300
ST CHARLES, IL 60174

2822 LITCHFIELD CAVO LLP
LAURA NALEWAY
303 W MADISON ST SUITE 300
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
FATAL

15IWCC0938

Kimberly Kamp, As Widow And Surviving Beneficiary Of Bruce Kamp, Deceased
Employee/Petitioner

v.

Riverview Materials
Employer/Respondent

Case # **14** WC **3466**

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 **Maria S. Bocanegra**, Arbitrator of the Commission, in the city of **Chicago**, on **April 17, 2015**. 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 Decedent's employment by Respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to Respondent?

F. ☐ Is Decedent's current condition of ill-being causally related to the injury?

G. ☐ What were Decedent's earnings?

H. ☐ What was Decedent's age at the time of the accident?

I. ☐ What was Decedent's marital status at the time of the accident?

J. ☐ Who was dependent on Decedent at the time of death?

K. ☐ Were the medical services that were provided to Decedent reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

L. ☐ What compensation for permanent disability, if any, is due?

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☒ Other **Future payment of compensation benefits to surviving spouse**

15IWCC0938

FINDINGS

On the date of accident, **1/15/14**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Decedent and Respondent.

On this date, Decedent ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Decedent's death ***is*** causally related to the accident.

In the year preceding the injury, Decedent earned $**78,000.00**; the average weekly wage was $**1,500.00**.

On the date of accident, Decedent was **59** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**65,000.00** for other (death) benefits, for a total credit of $**65,000.00 (death benefits paid)**.

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

The Arbitrator finds that Decedent died on **1/15/2014**, leaving **1** survivor(s), as provided in Section 7(a) of the Act, including **Kimberly Kamp, surviving spouse.**

ORDER

Respondent shall pay death benefits, commencing **1/15/2014**, of $**999.99**/week ($1500.00 x 66%) to the surviving spouse, ***KIMBERLY KAMP,*** on her own behalf until ***$500,000 has been been paid or 25 years ,*** whichever is greater, have been paid, because the injury caused the employee's death, as provided in Sections 7 and 8(b)4.2 of the Act.

If the surviving spouse remarries, and no children remain eligible, Respondent shall pay the surviving spouse a lump sum equal to two years of compensation benefits; all further rights of the surviving spouse shall be extinguished.

Respondent shall pay ***$8,000*** for burial expenses to the surviving spouse or the person(s) incurring the burial expenses, as provided in Section 7(f) of the Act.

Commencing on the second July 15th 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.

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

6/16/15
Date

JUN 16 2015

15IWCC0938

BACKGROUND

The parties agree that on January 15, 2014 the Petitioner and Respondent were operating under the Illinois Workers' Compensation Act and that their relationship was one of employee and employer. They agree that on that date the Petitioner sustained accidental injuries that arose out of and in the course of employment and that the Petitioner gave Respondent notice of the accident. They further agree that the Petitioner's current condition of ill-being is causally connected to this injury and that in the year preceding the injuries, the Petitioner earned $78,000.00 and that his average weekly wage was $1,500.00. The parties have stipulated that the Respondent has paid $65,000.00 in death benefits, for which credit may be allowed. At trial, Petitioner motioned to amend the application for adjustment of claim to reflect Kimberly Kamp as widow and surviving beneficiary of Bruce Kamp, deceased, which was granted without objection, *instanter*.

The only issue at the hearing, which took place on April 17, 2014, was future payment of compensation benefits to surviving spouse.

FINDINGS OF FACT

Petitioner, Kimberly Kamp, testified that she is the surviving spouse of the decedent, Bruce Kamp. She testified that she and Bruce Kamp were continuously married from February 2, 1977 through his date of death, on January 15, 2014. From that marriage, Kimberly Kamp and Bruce Kamp had three children, all of which are over the age of 18. Petitioner further testified that there are other surviving spouses to the decedent, no other potential beneficiaries under the age of 18 and that she has not remarried.

CONCLUSIONS OF LAW

At the time of his death, Bruce Kamp was married and the father of three (3) children, all of who were over the age of 18. On the date of his death, Bruce Kamp left one surviving beneficiary, namely, Kimberly Kamp, who remains unmarried and is the only beneficiary.

Respondent shall pay death benefits, commencing **1/15/2014**, of **$999.99**/week ($1500.00 x 66%) to the surviving spouse, ***KIMBERLY KAMP,*** on her own behalf until ***$500,000 has been been paid or 25 years*** , whichever is greater, have been paid, because the injury caused the employee's death, as provided in Sections 7 and 8(b)4.2 of the Act. If the surviving spouse remarries, and no children remain eligible, Respondent shall pay the surviving spouse a lump sum equal to two years of compensation benefits; all further rights of the surviving spouse shall be extinguished. Respondent shall pay ***$8,000*** for burial expenses to the surviving spouse or the person(s) incurring the burial expenses, as

provided in Section 7(f) of the Act. Respondent shall be given and otherwise entitled to a credit of $65,000.00 for death benefits already paid.

Commencing on the second July 15th 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.

María S. Bocanegra, Arbitrator

10/16/15
Date

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

Tawanna Johnson,
Petitioner,

vs.

NO: 11WC 9607

15IWCC0939

Walmart Stores Inc,
Respondent.

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 medical expenses, permanent partial disability, temporary total disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 27, 2015, is hereby affirmed and adopted.

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.

Bond for 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: DEC 18 2015
o12032015
DLG/mw
045

David L. Gore

Mario Basurto

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

JOHNSON, TAWANNA
Employee/Petitioner

Case# **11WC009607**

15IWCC0939

WALMART STORES INC
Employer/Respondent

On 2/27/2015, 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 0.06% 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:

1747 SEIDMAN MARGULIS & FAIRMAN LLP
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CHICAGO, IL 60603

0560 WIEDNER & McAULIFFE LTD
BRIAN KOCH
ONE N FRANKLIN ST SUITE 1900
CHICAGO, IL 60606

15IWCC0939

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

Tawanna Johnson
Employee/Petitioner

v.

Walmart Stores Inc.
Employer/Respondent

Case # **11** WC **9607**

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 **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **4/22/14 and 1/21/15**. 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 of Facts

The disputed issues in this matter are: 1) causal connection; 2) medical bills; 3) temporary total disability; 4) overpayment of temporary total disability; 5) an advancement of temporary total disability; and 6) the nature and extent of Petitioner's injuries. *See,* AX1.

On December 3, 2010 Ms. Tawanna Johnson (hereinafter "Petitioner") was working as a sales associate in the produce department at Walmart Stores Inc. (hereinafter "Respondent"). As a sales associate, she would stock the floors with fresh produce, mark down items, clean the storeroom and complete additional tasks requested by her supervisor. Marking down items entailed removing old or damaged goods, marking them out of the system and disposing of them.

Petitioner was capping bananas on December 3, 2010, in the back storeroom when another associate rolled a merchandise cart in her direction. Capping bananas means taking them out of the box and plastic they come shipped in, so they can breathe and not spoil; afterwards, they are restacked and staggered, so they can be put out on the floor. Merchandise carts are approximately 4 by 4 feet and resemble a wheeled table, with flat surfaces on the top and bottom; and a handle at one end. The floor of the storeroom is angled so when cleaning produce the waste runs into the drain. After the associate rolled the cart into the storeroom, it rolled down towards the drain, hitting petitioner in the right leg and ankle. Petitioner noticed a bruise on her right ankle and said her right leg began to swell. She went to her supervisor and asked what she should do. She was told to fill out an incident report and when she continued to have symptoms, she was told she could go see a doctor if she wished. Tr. pp. 13-15.

Petitioner presented to the emergency room at Gottlieb Memorial Hospital and then followed up at Advocate Medical Group where Dr. Judith Law, her primary care physician, was located. Dr. Law referred her to an orthopedic doctor. Tr. pp. 16-17.

On January 7, 2011 petitioner presented to Hinsdale Orthopedic Associates, complaining of pain after being struck by a cart on December 2010. She said she was holding a 40-pound box of bananas when the cart went down the ramp and hit her ankle. Petitioner testified that her ankle has remained painful ever since and hurts with every step. Upon examination, Petitioner was noted as having moderate edema of the lateral ankle and significant pain with inversion range of motion. X-rays showed an incomplete non-displaced fracture through the distal shaft of the fibula. She was diagnosed with a right malleolar fracture. Dr. Miller stated that this fracture should be treated with immobilization and the petitioner was taken off work so she could elevate the foot and try to reduce the swelling. She would be in a boot for six to eight (6-8) weeks. PX5.

metaphyseal junction. The report noted that the anterior talofibular ligament was not visualized in any of the planes, which may be consistent with a chronic tear of the anterior talofibular ligament. The radiology report also noted that focal tenosynovitis of the posterior tibial tendon just distal to the medial malleolus could not be ruled out; and "that findings were consistent with a likely tenosynovitis of the flexor, hallucis longus tendon on the right". PXs3 & 4.

On May 3, 2011, Dr. Miller noted no fracture on the updated MRI and only mentioned what he believed was incidental tenosynovitis of the flexor hallucis longus, as well as decreased visualization of the anterior talofibular ligament. There was no abnormal effusion or fluid signal. Dr. Miller stated, upon examination, that there was no edema to the ankle, no pain to palpation and range of motion was virtually equal to the left ankle. Dr. Miller noted the petitioner was wearing flip-flops. Wearing flip-flops indicated to Dr. Miller a high level of functioning, as they are relatively non-supportive footwear. Petitioner testified that she wears flip-flops when her foot swells. Petitioner testified that she would use her walking boot and then gym shoes, but when it got to the point that a regular shoe hurt, she would wear flip-flops when her feet swelled, so she would not be in pain. Dr. Miller told Petitioner to continue physical therapy and return to work with no prolonged standing or walking. PX5; RX3, p.24; Tr. p.50.

Respondent presented a letter stated to be a "bona fide job offer" dated May 23, 2011, which Petitioner testified she never received. Petitioner testified, at trial, that she did not recall receiving any paperwork from Wal-Mart indicating that work was available to her with no prolonged standing or walking. Petitioner presented a letter from Walmart dated January 13, 2014, advising of unclaimed property, in the form of a final check, dated July 23, 2011. It also included a letter addressed to Petitioner dated November 1, 2011, noting there was a final payment of $24.87, ready for Petitioner to pick up at the store. Tr. pp 43-58; RX2; PX12.

On June 27, 2011, Petitioner presented to Dr. Kane, referred by Instant Care. Petitioner advised Dr. Kane that on December 3, 2010, a cart rolled over her leg and ankle causing her to twist her right leg and ankle. Petitioner testified that she was presenting to Dr. Kane because she was unhappy with the treatment she had received from Dr. Miller. Dr. Kane stated he had no reason to disagree with Dr. Miller and he also believed he might have reviewed some of Dr. Miller's records.

Upon examination, Petitioner was noted to have sharp, shooting pain on dorsiflexion and plantar flexion. Palpation across the anterior talofibular and calcaneal fibular ligaments elicited sharp shooting pain, duplicated when the patient walked. The doctor also noted Petitioner's right ankle was significantly inverted compared to the left. She had right ankle swelling and difficulty walking on her right limb. The doctor reviewed the MRI and compared it with the radiology report. He found that the petitioner suffered from an anterior talofibular ligament rupture of the right ankle with related findings, i.e. a non-displaced cortical fracture of the fibula and some tenosynovitis of the flexus hallucis tendon. Dr. Kane took Petitioner off work. PX2 pp. 9-11; 47, 51-54; PX7.

After surgery, Dr. Kane recommended that Petitioner undergo physical therapy, utilizing a Unna Boot, and a CPM, which is a continuous motion machine. He advised that this machine was medically necessary. Petitioner was also continued off work. PX2 p.24; PX7.

On September 8, 2011, the petitioner returned to Dr. Kane and he notes that she had not been completely compliant with physical therapy. Dr. Kane said he had approximately one patient in the past thirty (30) years who had been completely compliant, so petitioner was fairly compliant. Dr. Kane debrided an abscess by the petitioner's stitches. Dr. Kane admitted this abscess was something that can occur when a patient was not complaint with post-surgical treatment. Petitioner was kept off work. Unna boot therapy was continued. PX2 pp.26, 46; PX3; PX7.

On or about September 2011, it was noted that Petitioner to had developed hydrocephalus, i.e., increased fluid and pressure in her brain for which she had underwent surgery. Dr. Kane noted that the petitioner was unable to perform all the normal physical therapy requirements since she had been hospitalized. Dr. Kane therefore provided a prescription for additional physical therapy and stated that he felt the unrelated condition could cause some peripheral issues, which could have something to do with petitioner's ability to walk confidently. PX2 p.28; PX7.

Dr. Kane released Petitioner to return to work in a sedentary capacity, on October 27, 2011. Petitioner testified that she tried to access the Wal-Mart employee site before her surgery but was unsuccessful. She further testified that she called and left messages for her supervisor, Patrick, the assistant manager of the grocery department, but none of her phone calls were returned. Petitioner testified that she was unable to come to the facility in person, to inquire about a return to work.

Petitioner testified that she did speak to a Veronica in personnel, in October 2011, after her doctor returned her to work. Petitioner said Veronica is the associate who handles personnel concerns regarding time sheets. Petitioner testified that she spoke to Veronica by telephone about returning to work and was told her supervisor would call her back to let her know when she could come in and what she would be doing; but she never got a call.

Petitioner further testified that she called the store on October 27, 2011, approximately two days after being released to return to work, and was put through to Veronica. Petitioner was uncertain whether she was still an employee after her surgery and testified that she did not physically go to the store after her surgery because she did not have the mobility to get to the store. Petitioner admitted that she has no driving restrictions but says she cannot drive and that she had previously been dropped off at the store, to present her work restrictions. Therefore, she only contacted the respondent by telephone calls. Tr. Pp. 23-30, 52-62; PC3; PX7.

On November 3, 2011, the petitioner returned to see Dr. Kane, who responded to Dr. Holmes' IME report. Dr. Kane opined that the condition of ill-being he treated was a direct result of Petitioner's December 2010 work accident. Dr. Kane reviewed the IME report from Dr. Holmes and stated he was surprised that Dr. Holmes would think the surgery he completed was not related or necessary as a result of the work accident. Dr. Kane reiterated that there was a clear relationship between the work injury and Petitioner's ligament tears and non-displaced fracture of the fibula. He strongly disagreed with Dr. Holmes stating petitioner's ankle was stable. Dr. Kane's italicized statement was that "*It should be noted that during the patient's operative report, I clearly mentioned that the anterior talofibular ligament had been ruptured as well as the calcaneofibular ligament and both were repaired.*" PX2 pp.31-33; PX7.

Dr. Kane did not believe that Petitioner had a neuroma and opined that the pain she had, at the incision site, was normal and should resolve in the next several months. Dr. Kane did not believe Petitioner had an entrapped nerve in that area. Dr. Kane agreed that the petitioner would benefit from iontophoresis for several treatments in the area of the surgical site, to help reduce the post-operative inflammation. The doctor reiterated that Petitioner's injury resulted directly from the reported work injury and that the care provided was medically necessary. Dr. Kane stated that the petitioner was worried about being charged for her visits and therefore did not see him as much as he would have liked. PX2 pp.34-35; RX3, p.25; PX7.

On December 13, 2011, Petitioner returned to Dr. Kane and was continuing with her recovery, which had been delayed due to hospitalization for issues with pressure in her brain. She complained of deep pain in her ankle that Dr. Kane stated was from the lack of physical therapy. Dr. Kane prescribed additional physical therapy and recommended an orthopedic device to help her walk. He stated that he wanted to provide the petitioner with orthopedic prosthetic devices, within the next three weeks, regardless of insurance approval. Petitioner was returned to work with restrictions of no climbing, to avoid uneven surfaces and ladder work. PX2 p.29; PX3; PX7.

On February 7, 2012, the petitioner returned to Dr. Kane, complaining of continued pain in her right ankle, upon motion. Dr. Kane related her continued pain to the inability to undergo physical therapy because of her unrelated medical problem. Examination revealed a minor amount of swelling, with a closed, healed and resolving scar that was beginning to retract behind her lateral malleolus. Dr. Kane noted that the anterior drawer sign was negative but her ankle was stiff and in need of physical therapy as soon as possible. Dr. Kane recommended physical therapy and a follow-up MRI to review the status of the anterior talofibular and calcaneofibular ligaments.

On November 7, 2012, Petitioner continued to follow-up with Dr. Kane, presenting with difficulty walking without a cane, while wearing her normal shoes. Dr. Kane stated that due to delay in approval and the fact that Petitioner was disabled from her recent surgery; additional treatments would not be applied until approvals had been received. Her diagnoses were anterior talo-fibular

evaluation by a pain control specialist. She was released to return to work in a sedentary position and was again prescribed physical therapy, orthopedic prosthetic devices and a pair of orthopedic shoes to help support her right ankle. PX11.

Petitioner testified that after October 29, 2011, she was never contacted by Walmart concerning returning to work but she also did not leave any future voicemail messages. Petitioner testified that after her surgery in July 2011, she did not physically return to the store to follow-up on a return to work because she did not have the mobility and could not drive. Because she could not physically get to the store, she relied on phone calls. Petitioner also testified that she was never returned to work, in a full duty capacity; and continues to treat with Dr. Kane. Petitioner stated that she was never offered orthopedic inserts or an orthopedic shoe for the right foot. Tr. 30-33, 62.

Petitioner testified that she is currently in a lot of pain and must use a cane. She further testified that it is hard for her to put pressure on her right foot and that she has fallen a couple of times because her ankle gave out. Petitioner continues to take over-the-counter pain medication (Aleve or Tylenol) every two to three hours, daily. Tr. pp.33-34.

Petitioner's earnings statement showed a total earned of $2,871.93 for the period of time she worked for Wal-Mart, prior to her accident. This results in an average weekly wage of $239.33. RX4.

Petitioner lists outstanding bills totaling $40,303.97 and Respondent provided fee schedule assessments of most of these outstanding bills resulting in the following:

1. $15,010.65 for Instant Care Medical Group (Px3); fee scheduled to $14,630.04 (Rx5)
2. $315.00 balance for Hinsdale/Trinity Orthopedics(Px5)
3. $21,503.32 for Dr. Kane (Px8); fee scheduled and listing payments made reducing this amount to $17,768.00. (Rx6)
4. $1,705.00 for Windy City Anesthesia (Px9); fee scheduled to $1,260.10 (Rx8)
5. $2,080.00 for RC Services & Rentals LLC (Px10); fee scheduled to $1,580.80 (Rx9)
6. $1,467.71 for Prescription Partners (Px13).

Conclusions of Law

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

A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v Industrial Commission*, 47 Ill.2d 144, 265 N.E. 2d 129 (1970). A petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission*, 68 Ill.2d 236, 369 N.E.2d 853 (1977).

Based on this evidence, the Arbitrator finds the opinions of Dr. Kane more persuasive then those presented by Dr. Holmes. The Arbitrator finds the surgery from July 27, 2011 was reasonable and necessary and related to Petitioner's work accident. Therefore, post-surgical treatment is also found related as is the continued prescription for physical therapy and orthotics.

G. What are Petitioner's earnings?

Petitioner worked for twelve (12) weeks at Wal-Mart, prior to her work accident. For that twelve week period she earned $2,871.93. Dividing those earnings by twelve months results in an average weekly wage of $239.33. The Arbitrator finds that, based on the evidence, the proper average weekly wage is $239.33.

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?

Petitioner lists outstanding bills in the amounts of $15,010.65 for Instant Care Medical Group; a $315.00 balance for Hinsdale/Trinity Orthopedics; $21,503.32 for Dr. Kane; $1,705.00 for Windy City Anesthesia; $2,080.00 for RC Services & Rentals LLC; and $1,467.71 for Prescription Partners. These bills total $40,303.97. Respondent presented a fee schedule and payment of some of these bills as part of their exhibits, resulting in a fee scheduled amount for the outstanding bills totaling $37,021.65. The Trinity/Hinsdale amount lists "balance" and if in fact there is a balance, the Arbitrator notes that balance billed, is not allowable under the Act.

The Arbitrator finds that Petitioner's medical treatment through 2014, was related to her work accident and that this treatment was reasonable and necessary to treat her injury, due to the work accident. The Arbitrator awards the outstanding medical bills listed above pursuant to fee schedule totaling $37,021.65.

K. What temporary benefits are in dispute?

Respondent states that Petitioner was off work from December 5, 2010 through March 15, 2011, after which she returned to work, pursuant to a March 18, 2011 note advising of work availability. Respondent also presented a May 23, 2011 "bona fide job offer" letter that Petitioner testified she never received. This May 23, 2011 letter is not signed by the petitioner; and there is no corresponding envelope to verify the date that it was sent.

Respondent asserts that they provided an offer of work to Petitioner prior to her surgery in March and May 2011, which she did not accept. However, Petitioner testified that she tried to return to work within her restrictions, prior to her surgery by presenting in person; and that her restrictions were not accommodated. Subsequent to the surgery, she called to inquire about a possible return to work once

N. Is Respondent due any credit?

The Arbitrator finds that Respondent is due credit in the amount of $4,120.28 for payment of medical bills of Dr. Kane and temporary total disability benefits paid to Petitioner.

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

☒ 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

Anthony Pugh,

Petitioner,

vs.

NO: 11WC 40396
14WC 38363
14WC 38364

Illinois State University,

Respondent,

15IWCC0940

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 accident, temporary total disability, medical, causal connection, notice, permanent partial disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 4, 2015, is hereby affirmed and adopted.

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: DEC 1 8 2015
o121015
DLG/mw
045

David L. Gore

Mario Basurto

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PUGH, ANTHONY
Employee/Petitioner

Case# **11WC040396**

14WC038363
14WC038364

ILLINOIS STATE UNIVERSITY
Employer/Respondent

15IWCC0940

On 2/4/2015, 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 0.06% 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:

0564 WILLIAMS & SWEE LTD
STEVE WILLIAMS
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

0499 CMS RISK MANAGEMENT
801 S SEVENTH ST 6M
PO BOX 19208
SPRINGFIELD, IL 62794-9208

4138 ASSISTANT ATTORNEY GENERAL
WARREN WILKE
500 S SECOND ST
SPRINGFIELD, IL 62706

0903 ILLINOIS STATE UNIVERSITY
1320 ENVIRONMTL HEALTH SAFETY
NORMAL, IL 61790-1320

0904 STATE UNIVERSITY RETIREMT SYS
PO BOX 2710 STATION A
CHAMPAIGN, IL 61825

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

FEB 4 - 2015

RONALD A. RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

FINDINGS

On **8/8/11**, 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; the Petitioner did not sustain accidental injuries on the other two alleged dates of 5/17/12 and 10/11/12.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's condition of ill-being, beginning on August 8, 2011 and resolving on November 16, 2011, ***is*** causally related to the accident; however any condition beyond that point is not causally connected to Petitioner's employment with Respondent.

In the year preceding the injury, Petitioner earned $34,105.56 and the average weekly wage was $655 25.

On the date of accident, Petitioner was **47** years of age, ***single*** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit for all medical expenses paid by Petitioner's group health carrier under Section 8(j) of the Act.

ORDER

RESPONDENT SHALL PAY PETITIONER ALL REASONABLE, RELATED, AND NECESSARY MEDICAL EXPENSES OCCURRING ON OR BEFORE NOVEMBER 16, 2011 PURSUANT TO THE FEE SCHEDULE UNDER SECTION 8(J) OF THE ACT.

RESPONDENT SHALL PAY PETITIONER FOR $393.15 PER WEEK FOR 10 WEEKS FOR 2% LOSS OF USE OF MAN AS A WHOLE FOR PETITIONER'S LEFT SHOULDER STRAIN.

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.

D. Dr Mc Carthy
Signature of Arbitrator

Jan. 28, 2015
Date

FEB 4 - 2015

Petitioner did not seek any further medical treatment for left shoulder complaints for **more than five months**. On April 26, 2012, Petitioner sought, and obtained injections into his let shoulder. (RX 11 pg. 439). Nearly a month later, on May 17 2012, he sought further injections. (RX 11 pg. 7). After this visit Petitioner did not seek treatment for **another five months**. On October 11, 2012, Petitioner sought, and obtained another injection. (RX 11 pg. 8). **Three months** later, on January 31, 2013, Petitioner saw Dr. Newcomer for a follow-up, at which time he reported excellent relief from the injection which had since subsided. Dr. Newcomer recommended surgery on this date. (RX 11 pg. 9). Subacromial decompression and arthroscopic debridement of a type I SLAP tear of the left shoulder was performed on February 28, 2013. (RX 11 pg. 13-15). Following surgery Petitioner continued with conservative treatment and physical therapy until April 19, 2013 when he was released without restrictions. (RX 11 pg. 449).

On August 16, 2013 the Parties deposed Dr. Newcomer. During the deposition, Dr. Newcomer stated that he believed that the incident, as described to him, ***could*** have been a aggravating factor. Dr. Newcomer also stated that the 2005 MRIs showed fraying at the time, but ***was unable to comment*** on whether the 2005 fraying was the same as the 2011-2013 fraying. Dr. Newcomer stated that ***"it would be impossible for me to tell when he developed this"*** in reference to Petitioner's fraying and condition. (RX 13 pg. 355-389) (***emphasis added***).

On October 2, 2013, Dr. Paletta performed an IME of Petitioner. Dr. Paletta believed there was a causal connection between Petitioner's August 8, 2011 accident and a mild shoulder strain which resolved on November 10, 2011, when Petitioner was released without restrictions or a follow-up date, or as Dr. Paletta put it: when Petitioner reached maximum medical improvement. (RX 12). Dr. Paletta noted and the record reflects that after November 10, 2011 Petitioner only periodically sought treatment at intervals for several months. During his October 2, 2014 deposition, Dr. Paletta stated on cross that the next time Petitioner sought treatment after November 10, 2011, which was on April 26, 2012, he did not appear to have complaints, but was instead seeking injections as a prophylactic as he was anticipated heavy polishing. (RX 14 pg. 22). This belief is consistent with Petitioner's trial testimony that the majority of his polishing was done in the summer and began in the spring. Dr. Paletta's belief is confirmed in the medical record he referenced. (RX 11 pg. 439).

Petitioner's testimony conflicts with the medical records and his own statements in the medical records. Petitioner's trial testimony claims that he has had on going pain, limited range of motion, and shooting numbness and tingling in his left arm and shoulder since 2005, that became worse after August 8, 2011 and continued unabated until his surgery in February of 2013. Petitioner's medical records show complaints beginning on August 8, 2011, ending on November 10, 2011, with renewed complaints **after five months** on April 26, 2012, a month long gap in medical treatment till May 17 2012, **another five month gap** till October 11, 2012, and a **three month gap** till January 31, 2012. In short, Petitioner's trial testimony suggests he suffered a baseline level of pain since 2005 that became worse in August of 2011; whereas, his medical record shows intermittent bouts of pain beginning and ending in 2005, resuming in August of 2011, ending in November of 2011, and continuing on a similar cycle until his surgery in February of 2013.

August 8, 2011 narrative offered by Petitioner, but rather one related to the natural aging process. While Dr. Newcomer opined that Petitioner's condition requiring surgery was work related, he offers little to no reasoning for his conclusion and does not address the glaring issues of the gaps in Petitioner's medical treatment and whether the condition was a natural process. Accordingly, Dr. Paletta's opinions through contradicted by Dr. Newcomer stand unrefuted.

Based on the forgoing, and having considered the totality of the evidence adduced at hearing, the Arbitrator finds that Petitioner failed to prove that his medical conditions for which he sought treatment after November 16, 2011 were causally connected to the alleged accident. The Arbitrator incorporates by reference his findings with respect to issue **c.** above.

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?

The Arbitrator finds that, based upon the conclusions under section F, that all medical treatment occurring between August 8, 2011 and November 16, 2011 was reasonable related and necessary.

K. What Temporary Total Disability Benefits are in Dispute?

The Arbitrator incorporates by reference his finding that the Petitioner's condition after November 16, 2011 was not causally related to his accident of August 8, 2011. Accordingly, the claim for TTD benefits around the date of his surgery in 2013 is denied.

L. What is the nature and extent of the injuries?

As noted above, the Arbitrator finds that Petitioner suffered a shoulder sprain as the result of his work related accident on August 8, 2011. Based on the totality of the evidence submitted at trial the Arbitrator awards 2% loss of use of person as a whole for Petitioner's shoulder strain.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☒ 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

Michael G. Smith,

Petitioner,

vs. NO. 12WC032183

NFI Industries,

Respondent. **15IWCC0941**

DECISION AND OPINION ON REVIEW

Timely Petitions for Review under §19(b) having been filed by the parties herein and proper notice given, the Commission, after considering the issues of wage calculations, benefit rates, temporary disability, causal connection, prospective medical care, penalties and fees, vocational rehabilitation and whether petitioner exceeded choice of physicians, 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 19, 2014 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: DEC 1 8 2015
SJM/sj
o-10/22/2015
44

Stephen J. Mathis

Mario Basurto

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b)/8(a) ARBITRATOR DECISION

SMITH, MICHAEL G
Employee/Petitioner

Case# **12WC032183**

15IWCC0941

NFI INDUSTRIES
Employer/Respondent

On 12/19/2014, 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 0.11% 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:

0140 CORTI ALEKSY & CASTANEDA
RICHARD E ALEKSY
180 N LASALLE ST SUITE 2910
CHICAGO, IL 60601

0481 MACIOROWSKI SACKMANN & ULRICH
ROBERT E MACIOROWSKI
10 S RIVERSIDE PLZ SUITE 2290
CHICAGO, IL 60606

15IWCC0941

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Michael G. Smith,
Employee/Petitioner

v.

NFI Industries,
Employer/Respondent

Case # **12** WC **32183**

Consolidated cases: **none**

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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **New Lenox**, on **8/14/14** and in **Ottawa**, on **9/29/14.** 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. [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. [x] 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. [x] What temporary benefits are in dispute?
[x] TPD [ ] Maintenance [x] TTD
M. [x] Should penalties or fees be imposed upon Respondent?
N. [x] Is Respondent due any credit?
O. [x] Other **vocational rehabilitation; 14th Amendment due process**

15IWCC0941

FINDINGS

On the date of accident, **8/31/12**, 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 $**44,915.00**; the average weekly wage was $**863.75**.

On the date of accident, Petitioner was **37** years of age, ***married*** with **6** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**1,357.30** for TTD, $**4,826.76** for TPD, $**0.00** for maintenance, and $**9,342.02** for other benefits (advances toward permanency), for a total credit of $**15,526.08**. (Arb.Ex.#1).

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $578.83 per week for 3-4/7 weeks, commencing 9/11/12 through 9/18/12, from 3/6/13 through 3/22/13, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner temporary partial disability benefits of $328.90 per week for 27-3/7 weeks, commencing 9/19/12 through 3/5/13 and from 3/23/13 through 4/15/13, as provided in Section 8(a) of the Act.

Respondent shall pay reasonable and necessary medical services of $213.78, as provided in Sections 8(a) and 8.2 of the Act.

Petitioner is entitled to prospective medical treatment in the form of a functional capacity evaluation as well as work conditioning program, and Respondent shall be liable for the reasonable and necessary expenses associated therewith pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act.

Respondent shall pay to Petitioner penalties of $**0.00**, as provided in Section 16 of the Act; $**0.00**, as provided in Section 19(k) of the Act; and $**0.00**, as provided in Section 19(l) of 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

12/11/14
Date

ICArbDec19(b)

DEC 19 2014

STATEMENT OF FACTS:

Petitioner had been working for Respondent, NFI Industries, for two years prior to his stipulated accidental injury on August 31, 2012. (T. 68) On that date, Mr. Smith and a coworker (Martinez) were removing a tire from the front of a trailer; this tire was two and a half feet wide and weighed approximately 400 pounds and as Petitioner was lifting it, he hurt his back. (T. 54-55) Petitioner notified his shift supervisor, Todd Dexter, of the injury then spoke to Joseph Ziganto, the service manager. (T. 55) Mr. Ziganto set up a conference call with himself, Mr. Smith and Zurich, Respondent's insurance carrier, then he drove claimant to Physicians Immediate Care, which is Respondent's company clinic. (T. 55) The Physicians Immediate Care records demonstrate that Petitioner had no previous history of injury to his spine until that day when he was lifting a semi tire and began having pain in his left upper lumbar area. (PX1) Exam revealed spasm and tenderness of the paraspinal muscles but lumbar x-rays were unremarkable so the doctor diagnosed lumbar sprain/strain; Petitioner was given a back brace and prescription medications, and directed to rest for the remainder of his shift then return to full duty. (PX1)

Claimant followed up at the company clinic on September 5, 2012. He saw the same doctor who recorded that Mr. Smith was doing worse, with more pain in the left low back which radiated into the left buttock and thigh. (PX1) Exam was positive for tenderness and spasm to the left lumbar paraspinal muscles as well as reduced range of motion. (PX1) Concluding that Petitioner's lumbar strain had worsened, the doctor directed that he continue wearing the back support, prescribed different medications, including Methocarbamol, Prednisone, Tylenol, Tramadol, and ordered a course of physical therapy; in addition, the doctor directed that more stringent work restrictions needed to be applied of no lifting greater than 10 pounds floor to waist, waist to shoulder, and over shoulder level. (PX1) Mr. Smith brought the work status note showing the restrictions imposed by the company doctor to Joe Ziganto. (T. 61)

On September 11, 2012 Petitioner visited Dr. Jason Franklin of Rezin Orthopedics and Sports Medicine. The doctor's notes show that Petitioner reported a work-related back injury while lifting a semi tire; as he continued to work, he started getting more severe symptoms in the back and down the leg. (PX2) He complained of pain in the back and left leg, some weakness in the low back, leg, ankle and foot on left side, as well as some numbness and tingling in the left leg and on the left foot. (PX2) Exam revealed a positive slump sit test and straight leg raise on the left which caused pain in an S1 dermatomal distribution, pain with toe and heel walk, and mildly weak plantarflexion on the left side with toe raises. (PX2) Dr. Franklin diagnosed acute low back pain, left S1 radiculitis versus radiculopathy. Concluding that Petitioner had "at least sciatic nerve irritation, but may be more of a radiculitis versus a radiculopathy", the doctor took him off work, ordered an MRI, and changed the prescription medications to Norco and prednisone. (PX2)

The MRI was done the next day and it demonstrated no lumbar disc protrusion, spinal stenosis or evidence of nerve root impingement but the left piriformis muscle was somewhat more superior than the right. (PX2)

Claimant returned to see Dr. Franklin on September 18, 2012. His symptoms were unchanged, with pain 10/10 in low back area. (PX2) On exam, the doctor noted some tenderness over the PSIS bilaterally and some mild increased pain with simulated axial rotation and axial loading. (PX2) Upon reviewing the MRI, Dr. Franklin opined that it was likely a lot of Petitioner's pain was more mechanical in nature; he recommended physical therapy and completing the prednisone prescription then switching to Naproxen. (PX2) In the meantime, the doctor imposed light duty restrictions of no lifting greater than 20 pounds and no repeated bending, squatting, twisting, or climbing, alternate sit/stand as needed. (PX2)

Mr. Smith gave this work status report note to Mr. Ziganto and continued working. (T. 66) On October 2, 2012, Petitioner followed up with Dr. Franklin. The doctor's notes reflect that Mr. Smith's symptoms were the same and he had not yet started physical therapy as it had not been approved by the workers' compensation carrier; Dr. Franklin also recorded that claimant was working within his restrictions: "they just have him come to work but there is no real work for him to do." (PX2) After an exam, the doctor repeated his order for therapy, prescribed Naproxen, and maintained Petitioner's light duty restrictions. (PX2)

Claimant began a course of therapy at Newsome Physical Therapy on October 2, 2012 (PX3) and returned to see Dr. Franklin on October 16, 2012. Mr. Smith advised his symptoms were unchanged and he felt therapy may be aggravating things to some extent; additionally, driving for periods increased the pain in his low back and left buttock area. (PX2) Exam showed breakaway weakness with extensor hallucis longus on the left, tenderness over the left PSIS and left piriformis, and some increased pain with simulated axial loading and rotation. (PX2) Dr. Franklin diagnosed acute low back pain, left-sided sciatic pain, possible SI joint dysfunction, and possible piriformis syndrome. (PX2) He ordered continued therapy and medications and maintained Petitioner's light duty restrictions. (PX2)

Over the next month, Claimant attended therapy as directed and kept working. At the November 13, 2012 follow appointment, Mr. Smith reported he was still having pain in his back as well as occasional numbness down the left leg. (PX2) He also advised Dr. Franklin that the prior week he had a bad cold and during a coughing spell he felt some discomfort in the left lower abdominal area as well as something that was bulging out in that area. (PX2) Concerned that claimant may have a possible abdominal hernia, the doctor put therapy on hold, recommended an injection to the SI joint, and continued the same work restrictions. (PX2)

Petitioner returned to see Dr. Franklin on November 27, 2012. He had not yet been evaluated regarding the possible hernia as he hadn't yet found anyone that would necessarily treat it. (PX2) The doctor reiterated the need to have a general surgeon evaluate this quickly. (PX2) With respect to his ongoing low back problems, Mr. Smith advised the doctor that he, "feels like at work they are having him do more than the restrictions with lifting-type activities. He is doing a lot of cleaning activities, pushing broom, but having to move some large equipment around the area." (PX2) Dr. Franklin responded by "upping" his restrictions: "do not want him lifting greater than 10 pounds, no repeated bending, squatting, twisting or climbing, alternate sit/stand as needed." The doctor further documented that he had advised Mr. Smith "that if work is not honoring his restrictions, he needs to talk to his supervisor, or supervisor's boss, or his attorney." (PX2)

Petitioner underwent hernia surgery in December and his low back treatment was placed on hold for a short time. He returned to see Dr. Franklin on January 8, 2013 and reported that his pain had flared up in the left low back area and that the symptoms down his leg persisted. (PX2) The doctor recommended moving forward with the SI joint injection, restarting physical therapy but with a different therapist, and trying Celebrex. In the meantime, claimant was to continue under the same work restrictions. (PX2) On January 17, 2013, Dr. Franklin administered a left SI joint injection and the next day, Petitioner began a course of therapy at ATI. (PX4)

Mr. Smith followed up with Dr. Franklin on January 29, 2013, and reported that his pain was no better and that the injection seemed to actually make things worse. (PX2) Exam revealed some tenderness over the left PSIS and left piriformis muscle, and a positive FABER on the left. (PX2) The doctor prescribed additional physical therapy as well as medications, and continued Petitioner's light duty restrictions. (PX2) Dr. Franklin also noted the nurse case manger was present and that "[w]e talked about getting him set up for an IME." (PX2)

Petitioner subsequently visited Dr. Alexander Ghanayem on February 14, 2013. Petitioner testified that his previous attorney "had advised [him] to seek [his] own second opinion" and that he looked Dr. Ghanayem up on the internet. Petitioner went on to state that "... a neighbor of mine had surgery by him, so I felt it would be a good idea to have a second opinion." (T. 180) Following his exam and review of the MRI, Dr. Ghanayem diagnosed lumbago. (PX5) He concluded Petitioner was not a surgical candidate and instead recommended continuing with physical therapy and medications. (PX5) Petitioner indicated that Dr. Ghanayem gave him no off work slip and advised him to "stick" with Dr. Franklin. Petitioner did not return to Dr. Ghanayem after that.

Petitioner continued with therapy over the next weeks and returned to Dr. Franklin on March 6, 2013. He advised the doctor that his pain had flared over the weekend, with no specific precipitating event. He also noted that in addition to his long-standing left leg symptoms, he was having some occasional symptoms down the right leg. Dr. Franklin recommended a new MRI, prescribed a short burst of prednisone, and took claimant off work. (PX2)

The repeat MRI was ultimately performed on March 21, 2013 and Mr. Smith followed up with Dr. Franklin the next day. The doctor noted claimant's pain was still severe and that his exam revealed tenderness over the left PSIS, positive standing flexion test on the right side, increased pain with simulated axial rotation, and decreased sensation in the plantar aspects of both feet. The MRI was reviewed and showed some disc bulging and some facet arthropathy at L3-4 but no significant central canal or foraminal stenosis. (PX2) Dr. Franklin concluded that as "pretty much all the interventions we have tried have not given him significant relief" and that an FCE would be appropriate. (PX2) In the meantime, claimant could continue working with restrictions of no lifting, pushing or pulling greater than 10 pounds, no repeated bending, squatting, twisting, climbing, and sit/stand as needed. (PX2)

On April 9, 2013, Mr. Smith returned to Dr. Franklin and reported that his symptoms felt the same with the exception that maybe the right side was mildly improved. It was also noted that the FCE had not happened because it had been denied. (PX2) Mr. Smith additionally advised that he had been working but "has had to go up and down stairs several times, 3 or 4 times a day, and he feels like that aggravates his back." It was also noted that Petitioner was "on vacation right now while he is trying to get things worked out at work." (PX2) After noting once again noted that claimant was not a surgical candidate and had failed conservative measures, Dr. Franklin reiterated that an FCE was necessary to see if it was appropriate to start work hardening or at the very least get some measurements of what he can reasonably do safely. Dr. Franklin noted that if that is not going to be approved, Petitioner would be considered MMI with the same restrictions of no lifting, pushing or pulling greater than 10 pounds, no repeated bending, squatting, twisting, climbing, sit/stand as needed. (PX2) The doctor also documented that he had informed Mr. Smith that he would be leaving the practice in three weeks. (PX2)

At the request of Respondent, Petitioner visited Dr. Gunnar Andersson on June 13, 2013 for purposes of a §12 examination. Following his examination and review of the record, Dr. Andersson opined that claimant could possibly have strained his back based on the history, although he noted that it was difficult to explain the left-sided symptoms that the patient had had since the very beginning given that he did not have any findings such as herniations or stenosis on the MRI that could explain radicular symptoms into the left leg. (RX5). Dr. Andersson thought it would be prudent to obtain a new MRI. (RX5). Dr. Andersson also noted that while he believed that Petitioner was capable of working, an FCE would be helpful to determine his level of function. (RX5) Dr. Andersson went on to state that it was difficult to know whether the patient actually needed further medical care or treatment, hence the need for the MRI. (RX5). He also indicated that he felt the patient may have work restrictions, given the fact that he had been off work for a long period of time and was likely deconditioned, and that an FCE would "further define that." (RX5).

Petitioner attempted to schedule a follow up appointment at Rezin Orthopedics but again was denied based upon a lack of authorization. Petitioner also testified that it was his understanding that Dr. Franklin had left the practice. He noted that it was his understanding that workmen's compensation needed to pay the bills from Rezin Orthopedics for him to a doctor there. To the best of his knowledge, that authorization was never provided.

The MRI recommended by Dr. Andersson took place one year later, on June 13, 2014. It revealed a very mild L3-4 disc bulge and minimal L4-5 disc bulge but no neural compression. (PX2)

On July 2, 2014, Petitioner was visited Dr. Matthew Ross on his own. The doctor recorded that Mr. Smith had no history of back problems until he had an immediate onset of pain while moving a 300 pound truck tire on August 31, 2012; since then, he'd had pain primarily in the left lower back area, with some extension down the left leg, as well as tingling in the left leg and foot and intermittent spasming in the left thigh and leg. (PX6) Exam revealed tenderness to palpation over the left SI joint area and diminished pinprick over the entirety of the left leg. (PX6) After reviewing the MRIs, Dr. Ross concluded Petitioner's symptoms suggested a sacroiliac joint problem; whether this originated from the joint itself or from the overlying muscle attachments remained to be seen. (PX6) He recommended a left SI joint block and steroid injection, Norco, and referral to an anesthesia pain specialist, Dr. Gary Koehn. Dr. Ross felt claimant was capable of working at sedentary level, lifting up to 15 pounds while varying his position from sitting to standing as needed and limiting bending and stooping. (PX6) Mr. Smith testified that he was not able to follow any of Dr. Ross' treatment recommendations due to them not being authorized.

Petitioner's attorney called Joseph Ziganto as an adverse witness. Mr. Ziganto is the service manager at Respondent's facility, a position he has held for five years. (T. 15-16) Mr. Ziganto acknowledged that Petitioner suffered an injury on August 31, 2012 and that he had participated in a phone conference with Mr. Smith and a representative of the workers' compensation insurance company to obtain authorization for treatment. (T. 16-17) Mr. Ziganto completed the necessary paperwork required by Respondent, certifying that Mr. Smith had been lifting a large truck tire and hurt his back, then he drove claimant to Physicians Immediate Care, the company clinic. (T. 17) Mr. Ziganto agreed that Mr. Smith provided him with work status notes from his doctors. (T. 18) When he received the note with Petitioner's restrictions, Mr. Ziganto met with Todd Dexter, who is claimant's direct supervisor, and told Mr. Dexter what jobs he wanted Mr. Smith to do. (T. 21) Mr. Ziganto reiterated that he was responsible for assigning Petitioner his light duty tasks. He noted that he first directed Mr. Smith to dust shelves, then he was assigned him the task of reorganizing the shop filing system, including all of the financial and maintenance records which had been stored for seven years. Finally, he had Petitioner work on updating the Material Safety Data Sheets regarding hazardous materials. (T. 23-24) Mr. Ziganto testified that the dusting assignment lasted for approximately two weeks. He noted that Petitioner could sit on a chair and reach the shelves and that Mr. Smith was allowed to take breaks, lie down, and sit whenever he needed to at his own discretion. (T. 26)

After the dusting task was finished, Mr. Ziganto directed claimant to reorganize the file system. (T. 27) From a physical standpoint, Mr. Smith was to remove the files from a standard file cabinet and organize them by month, date and year. Petitioner was given a chair and desk to work on. (T. 27-28) Mr. Ziganto agreed that Mr. Smith would have to stand up to look in the top drawer and see the file materials and to take them out. (T. 28) He further acknowledged that he never actually observed Claimant doing this activity. (T. 28) The next task he assigned Petitioner was to update the MSD sheet binder. Mr. Ziganto noted that this task required no physical activity, as Petitioner sat at a table in an upstairs office, opened the binder, and removed and inserted pieces of paper. (T. 29) When asked whether Mr. Smith had to go up and down stairs or climb ladders, his answer was "no." (T. 30) When asked whether Mr. Smith was ever directed by either himself or Mr. Dexter to open up any

trailer doors, he said "no". Mr. Ziganto further denied that Mr. Smith had to climb any ladders. Mr. Ziganto similarly denied that updating the MSD sheets required Petitioner to locate and check the contents of any chemical containers, or bottles or cans related to these MSD sheets. (T. 33)

On cross examination by Respondent's lawyer, Mr. Ziganto reviewed the work status notes and agreed that they limited claimant to 10 pounds of lifting and restricted his bending and stooping. (T. 35) Mr. Ziganto was then asked about an email, identified as Respondent's Exhibit No. 1, that he sent on April 16, 2013 to Marrari Bermudez who works in the work comp department. He testified that the purpose of the document was to let them know that on April 15, 2013, Mr. Smith had dropped off his uniform and his keys, and picked up his toolbox. (T. 41) Mr. Ziganto explained that he had had a conversation with claimant a couple of days before April 15, wherein Mr. Smith came into his office and told him that he did not think that the job he was performing met his light duty requirements and that he was having difficulty performing those activities. (T. 43)

On redirect, Mr. Ziganto testified that Mr. Smith was paid hourly and received his full mechanic's pay while working light duty. (T. 45-46) When shown that in fact Petitioner was receiving Temporary Partial Disability benefits, he admitted that he was unaware that Mr. Smith received reduced pay. (T. 45-46) Mr. Ziganto then testified that he had no recollection of exactly when he had the conversation with Mr. Smith prior to him leaving his employment effective April 15, 2013. (T. 48)

Petitioner testified that after he saw Dr. Franklin on September 18, 2012, and was given light duty restrictions – consisting of no lifting greater than 20 pounds, no repeated bending, no repeated squats, twisting or climbing, alternate sitting and standing as needed -- he took the note to Mr. Ziganto. He noted that he returned to work following a conversation with Mr. Ziganto. He indicated that the job he was assigned was not a position that had been done by any other employees. (T. 66) The job he was given was to dust shelves in the shop area. (T. 67) Mr. Smith described there being nine sets of shelves, each unit had eight shelves and was approximately seven to eight feet tall; the shelves were stacked with parts that weighed anywhere from two pounds to 40 pounds. When asked about how he got to the top of the shelves, Petitioner explained that he had to use a fiberglass stepladder that he carried over to the shelves; he would either move the parts or dust around them if they were too heavy, and he would climb up a ladder to remove stuff from the shelves to facilitate the dusting. He also testified that contrary to Mr. Ziganto's claims, he never sat in a chair while dusting and nobody had given him a chair. In addition to dusting, he was also supposed to sweep and clean when trucks came in and out. (T. 67-72) Mr. Dexter was in the vicinity and he believed Mr. Dexter could see him doing this job.

Petitioner testified that he had a conversation with Mr. Dexter about the work activities he was being assigned and the effect it was having on his back, and he asked Mr. Dexter to document his concerns to make a record. (T. 72-73) Mr. Dexter prepared a memorandum on November 16, 2012 wherein he set forth what Petitioner's restrictions were. (RX2) Claimant explained that even after he discussed the matter with Mr. Dexter he was still required to go up and down ladders to dust the shelves. (T. 74)

In addition to dusting shelves, Mr. Smith testified that he was told to label parts, handle the cartons when deliveries were made, and drive truck drivers back and forth to the truck. He indicated that when those duties ran out in March of 2013, he was provided with the task of updating the MSD sheets. (T. 78) Mr. Smith described the steps involved in updating the MSD sheets as requiring that he do an inventory to determine if the particular part or chemical container was on site. He noted that he would carry the appropriate binder downstairs and then search for the parts to match them up with the MSD sheets. He testified that this required that he look in the cabinets in the shop, on the shelves, as well as in the trailers outside. Petitioner stated the trailers had their wheels removed and sat on the ground, and were used to store parts and materials. In order to verify the presence or absence of any part, he would go out to these trailers, open the trailer doors, climb into

the trailer and search for the part. He noted that there was stuff thrown everywhere throughout the trailer, so he had to dig around, move things, climb over things, and bend over. He indicated that once the item was either located or determined not to be present, he would go back up and file the piece of paper. (T. 80-85) He stated that the process of inventorying the MSD sheets involved going up and down stairs repeatedly over the course of his 10-hour workday, up to 15 times per day, as well as bending over and lifting and moving items. (T. 87, 174) Petitioner testified that these activities caused him increasing pain, which is why he spoke to Joe Ziganto about that job. (T. 88)

In March, Mr. Smith had a lengthy conversation with Mr. Ziganto about the difficulties he was encountering in trying to do his work activity. Petitioner testified that he told Joe that he "really couldn't be doing this and [he] talked to the doctor and the doctor said [he] should not be doing this." Petitioner then asked for a two-week vacation so that he could talk to the doctor as well as to his attorney. (T. 88-89)

Petitioner saw Dr. Franklin on April 9, 2013, in the midst of the aforementioned two-week vacation, and was given work restrictions. It was at this time that Dr. Franklin advised the patient that he was leaving the practice and he would have to pick another doctor in the practice. (T. 92) On the morning of April 15, 2013, Petitioner brought the note from the April 9, 2013 visit to Mr. Ziganto. Mr. Smith indicated that he showed Mr. Ziganto his restrictions and asked him if he had anything else he could do. When Mr. Ziganto responded that updating MSD sheets needed to be completed, Mr. Smith reiterated that inventorying the MSD sheets was what was causing him increased problems. Petitioner testified that Mr. Ziganto then told him, "You're a liability to be here hurt and I don't have anything else for you to do with restrictions, so go home and let your attorney battle it out with corporate." (T. 94) Petitioner indicated that he returned to the shop the next day, April 16, 2013, to get his tools. (T. 94)

Petitioner testified that he received an advance following the pretrial conference of April 22, 2014, but otherwise he had not been paid any compensation since his last day of work on April 15, 2013. (T. 126) He noted that he applied for unemployment compensation and received a favorable ruling. (T. 126) Petitioner then testified that he had been looking for work but was unsuccessful in securing any employment since he stopped working at NFI. (T. 127)

On cross-examination, Petitioner was asked further details regarding his various light duty assignments. He could not recall exactly what jobs he was assigned on September 18, 2012, but he believed that he was doing nuts and bolts and decals, which required him to stand in the shop and sort through bolts and put them where they go in the box and the bolt bins, and the parts that they would bring up and get on the floor and then put decals in. Then after that, he was doing work orders for a while which took some time. This was mostly clerical work. Then he was driving drivers back and forth to trucks. (T. 142-145) Shop cleaning started about four or five months after he'd been placed on restricted duty. He did dusting, cleaning up after trucks would pull out, which required scraping the grease off the floor, putting oil dry down, and sweeping the oil dry up, emptying garbage cans, and cleaning the floors and the bays when the trucks were done with service. (T. 146) When asked as to how this fell outside the restrictions, Mr. Smith replied that the bending, the lifting, the pushing and pulling of brooms that were oil soaked were just aggravating his condition; he spoke to Todd one morning and said he was not able to make it through the day. (T. 146) He tried to call Joe, but that did not have any effect. Once his complaints were known, he then started on MSD sheets.

Mr. Smith testified that he knew what his restrictions were and that the work activities were beyond his restrictions, but he tried to do those tasks anyway. (T. 150) He explained that he was threatened to be written up if he kept missing days because he was hurting and he had spoken many times to Mr. Dexter about his

problems. (T. 151) Claimant acknowledged that he would try to do anything he could, even though technically it exceeded his restrictions.

Petitioner was then asked about April 9, 2013 when he saw Dr. Franklin and he discussed with the doctor that he was going up and down the stairs several times a day and it was aggravating his back; in response to the question of whether he complained to Joe or Todd about it, he said yes, he had several times. (T. 169, 173) In response to the question as to what Joe said, Mr. Smith testified he said, "That's the job that he had for me. They need to know what they had and what they didn't. That's why I needed to do inventory and also the material and safety data sheets." (T. 170) In relating the conversation with Mr. Ziganto, Mr. Smith testified that he told Joe that the doctor had told him that he was at maximum medical improvement with these restrictions and he wanted Joe to tell him what he was supposed to be doing, because bending and lifting and repeated bending and climbing were creating physical problems. In response Joe told him, "You're a liability here, injured anyhow. I don't have anything else for you to do here with those restrictions. I'm going to tell you to go home and let your attorneys battle it out with corporate." Mr. Smith testified that he asked him to "write that down on paper before I left, because I told him I was not quitting, I just couldn't do the job with the restrictions." (T. 175-176) The following day he turned in his uniform and retrieved his toolboxes.

Petitioner testified that he was not aware of a renewed job offer by NFI in a letter dated February 19, 2014. He also indicated that he had looked for work on his own, notably at Kenworth, Great Dane and Conway Trucking, all of which were in the trucking repair business. He also inquired at a roofing company called Zavata. He noted that he was looking for light duty office work. (T. 206-210)

Respondent then called Joseph Ziganto back to the stand. Mr. Ziganto testified that he never ordered Petitioner to do anything outside of his doctor's restrictions. (T. 230) He then was asked to discuss the conversation on April 15, 2013. He admitted that Mr. Smith was complaining about the work activities and the problems he was having given the physical demands. (T. 231) Mr. Ziganto stated that he simply told claimant that Respondent was abiding by the doctor's restrictions. (T. 231) As to the MSD updating, when asked how many times Mr. Smith would have to go up and down the stairs, he said he did not know. (T. 237) Mr. Ziganto also acknowledged that Mr. Smith would have to go up and down stairs and physically go find the specific materials, the containers, wherever they might be to verify if they were present or if they were not present. He agreed that this required him to go out to the storage trailers. (T. 237) In addition, Mr. Ziganto testified that he never had any conversations with Mr. Smith about the problems he was having. (T. 238) Mr. Ziganto also agreed that the tasks he assigned to Petitioner were things that he had been unable to keep up with, and that there was no one who had performed those tasks prior to Mr. Smith. Mr. Ziganto agreed that he made had essentially made up the job duties in order to find claimant something to do. (T. 239)

Respondent then presented the testimony of Todd Dexter. Mr. Dexter testified that it is the policy at NFI to abide by the doctor's restrictions. (T. 248) With respect to Petitioner, Mr. Dexter would get information from Joe with regard to what tasks he was supposed to perform. Mr. Dexter testified that Mr. Smith was assigned to general cleaning of the shop which included mostly dusting, wiping dirt and grease. (T. 251) Anything that he had to move or lift he was to ask for help in accordance with his light duty restrictions. At some point Mr. Smith asked Mr. Dexter to write a memo regarding his acknowledgement of the restrictions. The memo essentially stated that he had been instructed by Joe, the location manager, to "keep Mike Smith busy" cleaning the shop. He had been instructed to make sure that Mike did not lift anything over 25 pounds, bend, reach in a way that would put stress on his back or aggravate his injuries. He also was not to climb in or on any vehicles, shop equipment or ladders. If something needed to be moved, co-workers were available to assist. While on the clock he was to be sweeping, cleaning, organizing sets with reasonable breaks as described in his light duty paperwork. Those were the instructions that Mr. Dexter received from Joe. (T. 252; RX2)

Mr. Dexter noted that he had never heard complaints from Mr. Smith regarding any of his work assignments. (T. 255) Mr. Dexter testified that during the first few weeks Mr. Smith had been back, he watched him dusting shelves all day long. In performing this task he carried a bottle of cleaner in one hand and rags in the other. He testified that he never saw Mr. Smith climb a ladder. (T. 256-257) Mr. Dexter acknowledged that when Mr. Smith worked with the Material Safety Data sheets he would see him down in the shop with the sheets. He claimed that he instructed Petitioner to contact him or another employee if he needed to retrieve something from the shop so he did not have to climb the stairs. Mr. Dexter testified that Mr. Smith had complained to him about climbing the stairs while doing the MSD sheets, and he had advised him he had to talk to Joe. (T. 260)

On cross-examination, Mr. Dexter acknowledged that Mr. Smith complained "regularly" about his back hurting (T. 271), complained "bitterly" about his assignments which is why he agreed to write the memo (T. 272), and "frequently" complained about his back (T. 273) Mr. Dexter testified that he told Petitioner that if he couldn't handle it, then go home. (T. 273) Mr. Dexter stated that he told the Petitioner to talk to Joe about his complaints.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner testified that on August 31, 2012 he and a co-worker were removing a tire weighing 350 to 400 pounds from the front of a trailer when he injured his back. The accident is not disputed. (Arb.Ex.#1). This history is also corroborated by the histories contained in the various medical records, including the records of Physicians Immediate Care, Dr. Franklin, Dr. Ghanayem and Dr. Ross. Moreover, these same medical records establish that claimant had no low back problems prior to the undisputed lifting incident on August 31, 2012.

At the time of his last visit with Dr. Franklin on April 9, 2013, it was noted that in the event the recommended FCE was not approved, I would consider him to be at maximum medical improvement. I would keep him on the same restrictions at this point." (PX2).

At the request of Respondent, Petitioner visited Dr. Gunnar Andersson on June 13, 2013 for purposes of a §12 examination. In his report on that date, Dr. Andersson opined that claimant could possibly have strained his back based on the history, although he noted that it was difficult to explain the left-sided symptoms that the patient had had since the very beginning given that he did not have any findings such as herniations or stenosis on the MRI that could explain radicular symptoms into the left leg. (RX5). Dr. Andersson thought it would be prudent to obtain a new MRI. (RX5). Dr. Andersson also noted that while he believed that Petitioner was capable of working, an FCE would be helpful to determine his level of function. (RX5) Dr. Andersson went on to state that it was difficult to know whether the patient actually needed further medical care or treatment, hence the need for the MRI. (RX5). He also indicated that he felt the patient may have work restrictions, given the fact that he had been off work for a long period of time and was likely deconditioned, and that an FCE would "further define that." (RX5).

In a report dated August 8, 2014, Dr. Andersson noted that the MRI scans revealed minimal degenerative changes and nothing to explain the patient's ongoing symptoms. (RX7). Dr. Andersson went on to state that "[s]ince the MRI is completely normal, I see no reason for any further injections or for any further specific treatment. In fact, I think this patient would benefit from returning to work as soon as possible. He has been off work, as stated, for about 2 years. This means that he is slightly deconditioned. I would either return him to work gradually, initially with restrictions of 20 pounds occasionally and then after about 4 weeks 50 pounds occasionally, and after another weeks without restrictions, or, I would consider sending him to a work

conditioning program, or I would do a functional capacity evaluation and base my work restrictions on that." (RX7).

Petitioner visited Dr. Matthew Ross on July 2, 2014. Following his examination and review of the records, Dr. Ross opined that Mr. Smith's symptoms suggest a sacroiliac joint problem. (PX6). Dr. Ross recommended a left sacroiliac joint block and steroid injection, and noted that Petitioner was capable of working at a sedentary level, lifting up to 15 pounds, with the ability to vary his position from sitting to standing as needed. (PX6). In addition, Dr. Ross recommended that Petitioner limit his bending and stooping, and noted that he could continue to take Norco on an infrequent basis for pain control. (PX6). It would appear that this was the one and only time Petitioner has seen Dr. Ross leading up to the date of the first hearing on August 14, 2014.

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner proved by a preponderance of the evidence that his current condition of ill-being is causally related to the undisputed accident on August 31, 2012. However, in making this determination, the Arbitrator finds that Petitioner failed to prove that any prospective medical care and treatment beyond the FCE and work conditioning program recommended by both Dr. Franklin and Dr. Andersson are reasonable and necessary and/or causally related to said accident. (See issue "K, infra).

WITH RESPECT TO ISSUE (G), WHAT WERE THE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner offered into evidence an exhibit purporting to be an earnings report obtained from Respondent together with a calculation spreadsheet. In reviewing these documents, the Arbitrator notes that claimant worked overtime on a regular basis. Mr. Smith testified that he usually worked eight to 10 hours per day because Respondent required that he "stay until the job is completed." (T. 125) Neither of Respondent's witnesses, Joseph Ziganto and Todd Dexter, disputed Petitioner's testimony that he was required to work overtime.

The Arbitrator finds that Petitioner's overtime hours were mandatory and therefore includable in Petitioner's average weekly wage pursuant to *Airborne Express, Inc. v. Illinois Workers' Compensation Commission*, 372 Ill.App.3d 549 (1st Dist. 2007). The Arbitrator therefore finds that Petitioner's average weekly wage was $863.75 as calculated pursuant to §10 of the Act.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent disputed medical expenses based on the claim that Petitioner exceeded his choices of doctors. Mr. Smith testified in a credible fashion that he initially treated at Physicians Immediate Care at the direction of Respondent. Mr. Ziganto corroborated this, explaining that he had called the workers' compensation carrier to obtain authorization for treatment at the company clinic and then driven Petitioner to the Physicians Immediate Care facility. Under these circumstances, the treatment with Physicians Immediate Care does not represent one of Petitioner's choices of physician.

Instead, Mr. Smith's first choice of doctor would be Dr. Franklin at the Rezin Orthopedics Center, whom Petitioner sought out on his own and visited for the first time on September 11, 2012. The records from this

treatment were admitted as PX2. In an office note dated January 29, 2013, Dr. Franklin indicated that the nurse case manger was present and that "[w]e talked about getting him set up for an IME." (PX2).

Petitioner subsequently visited Dr. Alexander Ghanayem on February 14, 2013. The Arbitrator notes that contained in the "Visit and Patient Information" section of Dr. Ghanayem's records on that date, under the heading "Referring Provider", it was noted that the patient was a "Self Referral." (PX5; RX3).

On cross examination, Petitioner was asked whether his previous attorney had referred him to Dr. Ghanayem, to which Mr. Smith responded: "[h]e had advised [Petitioner] to seek [his] own second opinion." (T.180-181). When asked whether he picked Dr. Ghanayem, Petitioner responded: "Yeah, I looked him up on the internet. Actually a neighbor of mine had surgery by him, so I felt it would be a good idea to have a second opinion." (T.180). The record shows that Petitioner only saw Dr. Ghanayem on one occasion, and that the latter did nothing more than recommend that he continue with physical therapy. (PX5). Petitioner, for his part, testified that Dr. Ghanayem did not provide him with an off work slip and advised him to "stick with" Dr. Franklin.

The above evidence would seem to suggest that Petitioner sought out Dr. Ghanayem for a second opinion either on his own or at the suggestion of his former attorney, and that Dr. Franklin's reference to setting up an "IME" may have actually been a nod to the insurance company looking to do the same. However, Dr. Franklin's subsequent note, dated February 19, 2013, or five (5) days after Petitioner's visit to Dr. Ghanayem, indicates that Petitioner "... was inquiring about another injection that IME doctor talked about ..." (PX2). This, of course, could only be a reference to Dr. Ghanayem, since Respondent's §12 examining physician, Dr. Andersson, did not actually see Petitioner until June 13, 2013, or almost four (4) months later. Thus, while Dr. Franklin's use of the term "IME" sounds a bit odd to the trained legal ear, it would appear that when he had previously talked about "getting [Petitioner] set up for an IME" he was indeed either suggesting such a exam or at the very least acquiescing in same. Therefore, the Arbitrator finds that Dr. Ghanayem was not Petitioner's second choice of physician, particularly in light of the fact that Petitioner did not treat with Dr. Ghanayem beyond the one office visit in question.

Dr. Franklin's records also show that he left the Rezin Orthopedic practice in April of 2013. (PX2) Petitioner testified that when he phoned the Rezin group to schedule an appointment with an alternate doctor, they refused to do so because of an outstanding bill. As a consequence, Petitioner eventually sought and obtained treatment from Dr. Matthew Ross. Dr. Ross' records were offered into evidence and the medical expenses for his treatment were included in the exhibit of medical bills. (PX8) The Arbitrator finds that once Dr. Franklin abandoned the practice at Rezin Orthopedics, it was reasonable under the circumstances to allow Petitioner to obtain treatment by a second choice of doctor, namely Dr. Ross.

Therefore, based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical expenses in the amount of $213.78 pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act. Specifically, the Arbitrator finds that Petitioner did not exceed his two choices of doctors for the reasons set forth above.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

The last time treating physician, Dr. Franklin, saw Petitioner, on April 9, 2013, he repeated his recommendation that Mr. Smith undergo an FCE "... to see if he might be appropriate for work hardening or at the very least get some measurements of what he can reasonably do safely, but has been denied at this point. If that is not going to be approved, I would consider him to be at maximum medical improvement. I would keep him on the same

restrictions at this point." (PX2). Those restrictions included no lifting more than 10 pounds, no repeated bending, squatting, twisting, climbing, alternate sit and stand as needed and no pushing or pulling greater than 10 pounds. (PX2).

Petitioner eventually visited Dr. Matthew Ross on July 2, 2014. Following his examination and review of the records, Dr. Ross opined that Mr. Smith's symptoms suggest a sacroiliac joint problem. (PX6). Dr. Ross recommended a left sacroiliac joint block and steroid injection, and noted that Petitioner was capable of working at a sedentary level, lifting up to 15 pounds, with the ability to vary his position from sitting to standing as needed. (PX6). In addition, Dr. Ross recommended that Petitioner limit his bending and stooping, and noted that he could continue to take Norco on an infrequent basis for pain control. (PX6). It would appear that this was the one and only time Petitioner has seen Dr. Ross leading up to the date of the first hearing on August 14, 2014.

In a report dated August 8, 2014, Respondent's §12 examining physician, Dr. Andersson, noted that the MRI scan he recommended revealed minimal degenerative changes and nothing to explain the patient's ongoing symptoms. (RX7). Dr. Andersson went on to state that "[s]ince the MRI is completely normal, I see no reason for any further injections or for any further specific treatment. In fact, I think this patient would benefit from returning to work as soon as possible. He has been off work, as stated, for about 2 years. This means that he is slightly deconditioned. I would either return him to work gradually, initially with restrictions of 20 pounds occasionally and then after about 4 weeks 50 pounds occasionally, and after another weeks without restrictions, or, I would consider sending him to a work conditioning program, or I would do a functional capacity evaluation and base my work restrictions on that." (RX7).

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner failed to prove the reasonableness and necessity of the additional treatment recommended by Dr. Ross – specifically nerve blocks and steroid injections. Instead, the Arbitrator finds the opinion of Dr. Andersson along these lines to be more persuasive, particularly in light of the dearth of objective findings in the record, most notably in the repeated lumbar MRI studies, as well as Dr. Franklin's determination on April 9, 2013 to the effect that Petitioner had reached MMI short of an FCE.

However, it would appear that both Drs. Franklin and Andersson agree that Petitioner at the very least is in need of a functional capacity evaluation in order to determine his current restrictions. In addition, Dr. Andersson, Respondent's own §12 examining physician, suggested sending Petitioner to a work conditioning program, given his level of deconditioning after having not worked for more than two years (RXRX7), something Dr. Franklin had also mentioned as a possibility following the FCE. (PX2). The Arbitrator similarly views this as a reasonable option under the circumstances, in order to get Petitioner back to work – which, after all, should be the main focus of each and every party in this case.

Therefore, based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner is entitled to prospective medical care and treatment in the form of a functional capacity evaluation as well as work conditioning program, and Respondent shall be liable for the reasonable and necessary expenses associated therewith pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act. However, the Arbitrator denies Petitioner's request for additional treatment as prescribed by Dr. Ross in the form of still more blocks and injections as being unreasonable and unnecessary under the circumstances.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY AND TEMPORARY PARTIAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS:

The record shows that on the date of the accident, August 31, 2012, Petitioner visited Physicians Immediate Care at which time he was with a lumbar strain, taken off work for the rest of the shift, and released to full duty. (PX1). Thereafter, he followed up at the same facility on September 5, 2012 at which time the assessment was "[l]umbar strain, worse" and he was placed on work restrictions of no lifting greater than 10 pounds floor to waist, waist to shoulder and over shoulder level until recheck. (PX1). Petitioner testified that he worked restricted duties thereafter.

On September 11, 2012, Petitioner visited Dr. Franklin at which time he was diagnosed with acute low back pain, left S1 radiculitis versus radiculopathy. (PX2). Dr. Franklin ordered an MRI of the lumbar spine and took Petitioner off work at that time. (PX2).

Petitioner returned to Dr. Franklin on September 18, 2012 at which time the latter imposed restrictions of no lifting over 20 pounds and no repeated bending, squatting, twisting, or climbing as well as being allowed to alternate sit/stand as needed. (PX2).

A review of payment records submitted into evidence shows that Petitioner was paid temporary partial disability ("TPD") benefits as of September 20, 2012. (RX8).

Petitioner testified that he returned to light duty work following Dr. Franklin's release. Petitioner described the jobs that he performed during this time. Petitioner noted that he initially was assigned the task of dusting of shelves standing 7 to 8' high and containing parts weighing possibly 2 to 4 pounds. He also apparently labeled parts during this time. Petitioner indicated that he would move or dust around the parts, and that he would use a step ladder to perform this task. He testified that this was not a job that was otherwise filled by other employees. He also noted that he had a conversation with his supervisor, Todd Dexter, about how these activities were affecting him. As a result, Petitioner asked Mr. Dexter to write a note wherein the latter set forth his understanding of the restrictions imposed by Dr. Franklin and the accommodations that Respondent had made for him, including the fact that a co-worker would be available to help if something needed to be moved. (RX2). Petitioner denied that his attorney asked him to have Mr. Dexter write the note. He also testified that he asked Mr. Dexter to provide him with a co-worker to lift things, which he did. However, Petitioner claimed that he tried to work beyond his restrictions, and that Mr. Dexter threatened to write him up if he did not do so.

Mr. Dexter testified that Petitioner was provided accommodated work in the form of general shop cleaning. He indicated that the job was based on the work restrictions imposed by Mr. Smith's treating physician, as communicated to him by Joe Ziganto, including no lifting more than 10 pounds, no bending, no climbing in or out of trucks, no ladders and nothing that would put stress on his back. Mr. Dexter testified that Petitioner asked him to prepare the document admitted at RX2 at the request of his attorney. Mr. Dexter indicated that Petitioner never complained about this work assignment and never asked for help. He noted that Petitioner did the job well, but slowly, and that he never saw Petitioner on a ladder. He also indicated that he never instructed Petitioner to go beyond his restrictions.

Mr. Ziganto testified that he was aware of Petitioner's restrictions and that he put together the tasks that Petitioner was to perform. Mr. Ziganto indicated that based on these restrictions he had Petitioner dusting shelves and organizing records, and eventually had him updating Material Safety Data Sheets. He indicated that the work that Petitioner was asked to perform was work that needed to be done, and that he never told Petitioner to work outside his restrictions. He also stated that while he did not have someone previously in that job, he was honestly trying to find work for Petitioner to do within his restrictions. He also indicated that

Petitioner was told to ask for help from someone in the shop if he needed it. However, Mr. Ziganto conceded that he did not directly observe Petitioner performing these tasks.

The record also shows that Petitioner was off work for an unrelated hernia condition, and that he returned to work in January of 2013.

On January 8, 2013, Petitioner returned to Dr. Franklin with a flare-up of back pain. (PX2). Petitioner remained on the same light duty restrictions at that time. (PX2). Petitioner returned to Dr. Franklin on January 17, 2013 for an SI joint injection. (PX2). Petitioner testified that he was taken off work for a period of time thereafter and that he returned to work on January 29, 2013, and that Respondent paid TTD during that time. However, Dr. Franklin's records dated January 17, 2013 only show that Petitioner was off work for that day, and that he was then to be placed back on the same light duty restrictions as before. (PX2). Furthermore, the payments records show that Petitioner received TPD payments, and not TTD payments during this period. (RX8).

Petitioner testified that he was eventually asked to drive truck drivers to and from the trucks and to do MSD sheets and inventory. He noted that starting in March of 2013 he had to repeatedly go up and down stairs for MSD sheets, and that he would also have to go search out parts while doing inventory, including the need to go outside to look in semi-trailers. He indicated that he would perform this job 10 hours a day, minus lunch, and that it required him to go up and down stairs and bend down to lift things. He stated that he did not require a helper to assist him in open the doors to or climb into the semi-trailers, but he noted that activity was causing him pain. As a result, he indicated that he had a conversation with Mr. Ziganto in his office in March of 2013 wherein he informed the latter that he could not be doing bending and repeated lifting. Petitioner testified that he then asked for and was allowed a two week vacation to see his doctor and lawyer.

Mr. Dexter testified that with regard to the MSD sheets, Petitioner was instructed to contact either Mr. Dexter or another employee if he needed something in the shop so that he would not have to climb stairs. He also initially testified that the four trailers used for storage had nothing to do with what Petitioner had to do with the MSD sheets. However, on cross examination, Mr. Dexter agreed that the trailers were used for storage, including things involved in the MSD sheets, and that Petitioner would have to go into the trailers to perform this task. In addition, Mr. Dexter indicated that he saw Petitioner doing inventory, which required counting parts on shelves and matching them up to numbers on sheets, as well as some filing. He noted that there was no physical requirement to do the filing. Mr. Dexter stated that Petitioner had the ability to take breaks and to lie down as needed, and that he observed Petitioner doing both. He did agree, however, that Petitioner complained to him about the amount of stairs he had to climb and that he told Mr. Smith to talk to Mr. Ziganto about it. Mr. Dexter also agreed that Petitioner complained to him regularly about his back and that he told Mr. Smith that if he could not handle it to go home. However, he could not recall Petitioner asking for a vacation.

In an office note March 6, 2013, Dr. Franklin related that Petitioner's pain had flared over the weekend and that he was getting some new symptoms on occasion down his right leg. (PX2). Dr. Franklin recommended a new lumbar MRI given his "acute exacerbation of symptoms and new right-sided sciatic symptoms." (PX2). Dr. Franklin also took Petitioner off work until his return the following Tuesday, March 12, 2013. (PX2). On that date, Dr. Franklin noted that the MRI still had not been performed, and that Petitioner was to remain off work. (PX2). The MRI of the lumbar spine was eventually performed on March 21, 2013. (PX2).

Petitioner returned to Dr. Franklin on March 22, 2013. (PX2). On that date, Dr. Franklin noted that the MRI revealed some disc bulging and facet arthropathy at L3-L4, but otherwise no significant central canal or forminal stenosis. (PX2). Since all of the interventions to date had not provided significant relief, Dr. Franklin suggested a functional capacity evaluation ("FCE"). (PX2). He also noted that he believed Petitioner "... could

work safely with restrictions [of] no lifting more than 10 pounds, no repeated bending, squatting, twisting, climbing, alternate sit and stand is (sic) needed. No pushing or pulling greater than 10 pounds." (PX2).

Petitioner returned to Dr. Franklin on April 9, 2013. (PX2). In a note on that date, Dr. Franklin recorded that Petitioner had been at work and that "[h]e has had to go up and down stairs several times, there or four times a day, and he feels like that aggravates his back. Currently, he is on vacation right now while he is trying to get things worked out at work." (PX2). Once again, Dr. Franklin recommended an FCE "... to see if he might be appropriate for work hardening or at the very least get some measurements of what he can reasonably do safely, but has been denied at this point. If that is not going to be approved, I would consider him to be at maximum medical improvement. I would keep him on the same restrictions at this point." (PX2). Dr. Franklin also noted that Petitioner was aware that he was leaving the practice and would be available for a little over three weeks, and that "he can certainly contact someone here in the practice and potentially see if they have a new spine doctor see him in the future." (PX2).

Petitioner testified that on April 15, 2013 returned to work and presented Mr. Ziganto with Dr. Franklin's April 9, 2013. Petitioner indicated that Mr. Ziganto told him that he was a liability and to go home let the lawyers work it out. He noted that the next day he came in with his father-in-law and picked up his tools. He has not worked anywhere else since.

Mr. Ziganto testified that on April 16, 2013 Petitioner came in and dropped off his uniform and shop keys and picked up his tool box. Mr. Ziganto testified that a few days earlier Petitioner came into the office and told him that he was uncomfortable and thought that he was unable to meet the light duty restrictions. Mr. Ziganto testified that he told Petitioner that that was his decision. He also noted that Petitioner did not bring in any other doctor's notes after that, and that P never returned and asked for employment.

Petitioner testified that called Dr. Franklin's former practice, Rezin Orthopedics, thereafter to get an appointment but was told that his treatment had not been authorized.

At the request of Respondent, Petitioner visited Dr. Gunnar Andersson on June 13, 2013 for purposes of a §12 examination. In his report on that date, Dr. Andersson opined that claimant could possibly have strained his back based on the history, although he noted that it was difficult to explain the left-sided symptoms that the patient had had since the very beginning given that he did not have any findings such as herniations or stenosis on the MRI that could explain radicular symptoms into the left leg. (RX5). Dr. Andersson thought it would be prudent to obtain a new MRI. (RX5). Dr. Andersson also noted that while he believed that Petitioner was capable of working, an FCE would be helpful to determine his level of function. (RX5) Dr. Andersson went on to state that it was difficult to know whether the patient actually needed further medical care or treatment, hence the need for the MRI. (RX5). He also indicated that he felt the patient may have work restrictions, given the fact that he had been off work for a long period of time and was likely deconditioned, and that an FCE would "further define that." (RX5).

In a letter from defense counsel to Petitioner's attorney dated February 19, 2014, wherein a copy of Dr. Andersson's report along with the prescription for an MRI was enclosed, it was noted that "[w]e are willing to accommodate your client with the restrictions offered." (RX6). Petitioner testified that he could not recall his attorney sharing this letter with him, but that if he did he would have gone back.

Pursuant to Dr. Andersson's recommendation, Petitioner underwent another MRI of the lumbar spine on June 13, 2014. This test was interpreted as revealing a very mild L3-4 disc bulge and minimal L4-5 disc bulge, both with no neural compression. (PX6).

Petitioner eventually visited Dr. Matthew Ross on July 2, 2014. Following his examination and review of the records, Dr. Ross opined that Mr. Smith's symptoms suggest a sacroiliac joint problem. (PX6). Dr. Ross recommended a left sacroiliac joint block and steroid injection, and noted that Petitioner was capable of working at a sedentary level, lifting up to 15 pounds, with the ability to vary his position from sitting to standing as needed. (PX6). In addition, Dr. Ross recommended that Petitioner limit his bending and stooping, and noted that he could continue to take Norco on an infrequent basis for pain control. (PX6). It would appear that this was the one and only time Petitioner has seen Dr. Ross leading up to the date of the first hearing on August 14, 2014.

In a report dated August 8, 2014, Dr. Andersson noted that the MRI scans revealed minimal degenerative changes and nothing to explain the patient's ongoing symptoms. (RX7). Dr. Andersson went on to state that "[s]ince the MRI is completely normal, I see no reason for any further injections or for any further specific treatment. In fact, I think this patient would benefit from returning to work as soon as possible. He has been off work, as stated, for about 2 years. This means that he is slightly deconditioned. I would either return him to work gradually, initially with restrictions of 20 pounds occasionally and then after about 4 weeks 50 pounds occasionally, and after another weeks without restrictions, or, I would consider sending him to a work conditioning program, or I would do a functional capacity evaluation and base my work restrictions on that." (RX7).

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner was temporarily totally disabled from September 11, 2012 through September 18, 2012 and from March 6, 20013 through March 22, 2013, for a period of 3-4/7 weeks. Furthermore, the Arbitrator finds that Petitioner was entitled to temporary partial disability benefits from September 19, 2012 through March 5, 2013 and from March 23, 2013 through April 15, 2013, for a period of 27-32/7 weeks at a rate of $328.90 per week. Respondent is entitled to a credit for all amounts paid in this regard.

Along these lines, the Arbitrator finds that Petitioner was offered legitimate work within his restrictions, and that Respondent made a valid attempt to accommodate the restrictions imposed by Dr. Franklin. The miscellaneous jobs that Petitioner was asked to do involved such simple tasks as dusting shelves and parts, driving truck drivers to and from their trucks as well as doing inventory and updating MSD sheets. All the while, Petitioner was instructed not to exceed his restrictions and to ask for help if needed. Petitioner worked in this light duty capacity, doing the aforementioned miscellaneous tasks, intermittently through April 15, 2013 when he claims he was told he was a liability and told to leave. Mr. Ziganto, on the other hand, testified that Petitioner indicated that he was uncomfortable with the light duty job he had been doing, and essentially walked off the job. Petitioner also claims that the job in question required bending and lifting and walking up and down stairs in excess of his restrictions, and that he complained to both Mr. Dexter and Mr. Ziganto along these lines. Mr. Dexter conceded that Petitioner had complained about the amount of stairs he had to climb, but reiterated the fact that he had to be told to ask for help if he needed it, and that he was allowed to take as many breaks and lie down whenever he needed to.

The Arbitrator fails to see what more Respondent could have done in this regard. More to the point, the Arbitrator questions Petitioner's claims along these lines, particularly in light of the fact that the tasks in involved appear to fall well within his restrictions, given the acknowledged option of having someone help him lift and/or retrieve items, whether they be MSD sheets downstairs or items outside in the trailers. Furthermore, the Arbitrator questions Petitioner's ongoing complaints given the paucity of objective, medical findings in support of his ongoing complaints, as witnessed by no less than three (3) MRI's that revealed nothing more than slight bulging. In addition, the record shows that following Dr.

Franklin's April 9, 2013 office note, finding that Petitioner had reached MMI absent an FCE, Petitioner offered absolutely no evidence to show that he sought employment elsewhere within his restrictions after he picked up his tools on April 16, 2014 and walked off the job. Therefore, the Arbitrator finds that Petitioner failed to prove his entitlement to ongoing TTD or TPD benefits thereafter.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the above, and the record taken as a whole, and in light of the very real questions as to Petitioner's willingness and ability to perform in the light duty position offered by Respondent, the Arbitrator finds that Petitioner failed to prove his entitlement to additional compensation pursuant to §19(k) and §19(l) and/or attorneys' fees pursuant to §16 of the Act. Accordingly, Petitioner's claim for same is hereby denied.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

The parties stipulated that Respondent is entitled to credit in the amount of $15,526.08, broken down as $1,357.30 for TTD benefits, $4,826.76 in TPD benefits and $9,342.02 in advances toward permanency. This is supported by Respondent's Exhibits Nos. 8 and 9. Therefore, the Arbitrator awards credit to Respondent in the amount of $15,526.08.

WITH RESPECT TO ISSUE (O), VOCATIONAL REHABILITATION, THE ARBITRATOR FINDS AS FOLLOWS:

In light of the Arbitrator's determination that Petitioner is in need of an FCE as well as work conditioning program (issue "K", supra), the Arbitrator finds that consideration of any type of formal vocational rehabilitation plan at this point is premature and is therefore denied.

WITH RESPECT TO ISSUE (O), 14TH AMENDMENT DUE PROCESS, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Respondent's claim that it was denied due process under the 14th Amendment is without merit.

§16 of the Act provides, in pertinent part, that:

> "The records, reports, and bills kept by a treating hospital, treating physician, or other treating healthcare provider that renders treatment to the employee as a result of accidental injuries in question, certified to as true and correct by the hospital, physician, or other healthcare provider or by designated agents of the hospital, physician, or other healthcare provider, showing the medical and surgical treatment given an injured employee by such hospital, physician or other healthcare provider, shall be admissible without any further proof as evidence of such matters. There shall be a rebuttable presumption that any such records, reports, and bills received in response to Commission subpoena are certified to be true and correct. This paragraph does not restrict, limit, or prevent the admissibility of records, reports, or bills that are otherwise admissible. This provision does not apply to reports prepared by treating providers for use in litigation."

Respondent objected to the admission of the records of treating physician Dr. Ross at PX6 as a violation of its 14th Amendment due process rights, namely its right to cross examine Dr. Ross. In addition, Respondent had initially objected to the records going into evidence based on the fact that a subpoena and/or certification page was not included with the original submission. Petitioner was allowed to remedy this oversight, and the records of Dr. Ross eventually admitted into evidence now contain both a certification page as well as a subpoena. Thus, the sole basis for Respondent's objection to these records is the alleged violation of its 14th Amendment rights.

Section 1 of the 14th Amendment to the United States Constitution provides that:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Arbitrator notes that this is the second time Respondent's attorney, Robert Maciorowski, has alleged a similar violation of his client's 14th Amendment rights in a case involving the same Petitioner's attorney, Richard Aleksy, and this Arbitrator. In the prior case, *Alfredo Martinez v. RG Construction Services*, 12 WC 1128, the Commission on Review affirmed the Arbitrator's ruling that Respondent suffered no such violation of his due process rights, noting that Respondent had been offered the opportunity to depose the treating doctors in question but had declined. Similarly, the Respondent in the present matter was at liberty to take the deposition of Dr. Ross provided that it pay for the taking of said deposition, which the Arbitrator considers to be a fair compromise under the circumstances, given that the subpoenaed and certified records of Dr. Ross would otherwise be admissible pursuant §16 of the Act. Instead, Respondent's counsel made it abundantly clear that he and his client had no interest in taking Dr. Ross's deposition under those parameters, arguing that it was under no obligation to pay for said deposition. In support of his argument in this regard, Respondent's counsel cited the case of *Paoletti v. Industrial Commission*, 665 N.E.2d 507, 279 Ill.App.3d 988, 216 Ill.Dec. 447 (1st Dist. 1996). In that case, the Illinois Appellate Court determined that the Commission's refusal to allow the claimant an opportunity to present rebuttal evidence was in error.

In the present case, as in *Alfredo Martinez*, supra, the Arbitrator most assuredly allowed Respondent the opportunity to present rebuttal evidence, as evidenced by the exhibits admitted at RX1 through RX13, including three (3) records/reports by its own §12 examining physician, Dr. Gunnar Andersson. Furthermore, Respondent was at all times capable of filing a dedimus potestatem asking the Arbitrator to order the taking of said deposition, which it did not. More importantly, Respondent was well aware of the Arbitrator's willingness to allow the taking of such testimony via deposition provided that the party demanding same is willing to pay for it. As previously noted, Respondent has steadfastly chosen not to depose the doctor under those circumstances.

In addition, the Arbitrator notes that the *Paoletti* case, supra, involved an arbitration hearing conducted on January 18, 1988, or prior to the amendment of §19(e) of the Act on December 18, 1989 which prohibited the admission of additional evidence on review. Thus, the underlying focus of the appellate court in that case was whether the Commission unreasonably restricted the presentation of rebuttal evidence – specifically, evidence meant to address additional video surveillance -- at a time when additional evidence on review was permitted, not whether or not a party to a proceeding under the current statute has a unilateral right to demand the taking of a treating doctor's deposition when that doctor's records are otherwise clearly admissible pursuant to §16 of the Act.

Furthermore, the Arbitrator does not believe that one could reasonably claim that Dr. Ross is an adverse witness to these proceedings so as to warrant such an overriding and inflexible need to cross examine him. Dr. Ross is a treating physician. §16 allows for the introduction of treating records into evidence via subpoena or certification based on the underlying assumption that such records are reliable and trustworthy, an assumption that would not be valid if one were considered an adverse witness. §16 does provide that such records are not admissible if prepared for litigation purposes, but there is no evidence to suggest that anything in Dr. Ross's records would qualify as such. Instead, counsel for Respondent simply posits that he and his client have an absolute and unmitigated right to cross examine the treating physician in this and any other case, and that his opponent should have to pay for his right to do so. Without further justification, the Arbitrator is once again unwilling to impose such an inequitable burden on any one party, particularly in light of the Arbitrator's strong belief that Respondent's rights, and its ability to adequately defend this and any other claim, are not and never will be seriously compromised by such a holding.

Therefore, based on the above, the Arbitrator finds that the admission of Dr. Ross's treating records under §16 of the Act was proper and fully within the discretion of the Arbitrator and as such did not violate Respondent's 14th Amendment due process rights.

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

Jeremy Bartz,

Petitioner,

vs. NO. 14 WC 22264

Sysco,

15IWCC0942

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of benefit rates, medical expenses, causal connection, prospective medical care, and temporary disability 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 5, 2015 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

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: DEC 1 8 2015
SJM/sj
o-10/29/2015
44

Stephen J. Mathis

David L. Gore

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BARTZ, JEREMY
Employee/Petitioner

Case# **14WC022264**

SYSCO
Employer/Respondent

15IWCC0942

On 2/5/2015, 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 0.06% 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:

1747 SEIDMAN MARGULIS & FAIRMAN LLP
STEVEN J SEIDMAN
20 S CLARK ST SUITE 700
CHICAGO, IL 60603

1120 BRADY CONNOLLY & MASUDA PC
PETER STAVROPOULOS
10 S LASALLE ST SUITE 900
CHICAGO, IL 60603

STATE OF ILLINOIS)SS.

COUNTY OF COOK)

15IWCC0942

☐ 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

Jeremy Bartz
Employee/Petitioner

v.

Sysco
Employer/Respondent

Case # **14** WC **22264**

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 **Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **December 15, 2014**. 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 **prospective medical**

FINDINGS

On **February 18, 2014**, 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 $**50,557.09**; the average weekly wage was $**1,630.89**.

On the date of accident, Petitioner was **40** years of age, ***married*** with **1** dependent child.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**575.76** for TTD, $**1,038.41** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**1,614.17**.

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

ORDER

Respondent shall pay to Petitioner outstanding medical bills in the amount of $6,195.68, pursuant to Sections 8(a) and 8.2 of the Act.

Respondent shall pay to Petitioner temporary total disability benefits of $1,087.26 per week for 4 & 2/7 weeks, totaling $4,659.69, pursuant to Section 8(b) of the Act.

Respondent shall authorize and pay for all reasonable and necessary prospective medical treatment, as recommended by Dr. Freedberg and for all reasonable and necessary rehabilitative care thereafter, pursuant to Section 8(a) and 8.2 of the Act.

Respondent shall be given a credit of $1,038.41, for temporary partial disability benefits paid to Petitioner and a credit of $575.76 for temporary total disability benefits paid to Petitioner.

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.

15IWCC0942

FINDINGS OF FACT

The disputed issues in this matter are: 1) causal connection; 2) Petitioner's average weekly wage; 3) Petitioner's earnings; 4) medical bills; 5) temporary total disability; and 6) whether the petitioner is entitled to prospective medical treatment. *See*, AX1.

Mr. Jeremy Bartz ("Petitioner") is 40 years old and worked as a delivery driver for Sysco Chicago ("Respondent") on February 18, 2014. On that day at approximately 3:45 a.m., Petitioner was making a delivery for Respondent; it was a snowy day. Petitioner testified that he was maneuvering a two-wheeled food cart loaded with product, down the ramp from his trailer, when his left foot slipped out from under him. Petitioner further testified that he slid down about twelve inches before he caught himself, twisting his right hip and left leg in the process. He felt an immediate, sharp pain in his left hamstring and calf and approximately an hour later, he began to notice pain in his right hip, as well.

Petitioner's medical treatment

On February 26, 2014, Respondent sent Petitioner to receive treatment at Physicians Immediate Care, where he was seen by Dr. Amera Gaballa. Petitioner complained of muscle pain, primarily dull, intermittent pain at 6/10 in his left lower leg; and the rear of his left thigh. Petitioner related his history of injury and reported having no similar problems in the past. PX6, notes of February 26, 2014; PX4, notes of March 11, 2014; PX5.

Upon examination, Dr. Gaballa noted tenderness in Petitioner's left calf; moderate tenderness and severe spasm of Petitioner's left thigh muscles; severe tightness of Petitioner's left hamstring muscle in the medial and posterior aspect; and reduced range of motion in Petitioner's left hip. Dr. Gaballa diagnosed Petitioner with an unspecified sprain or strain of the hip/thigh and instructed Petitioner to use roller foam to massage his calf and then ice it once a day. Petitioner was instructed to follow-up on March 6, 2014; and was released to return to work, without restrictions.

Petitioner returned to Physicians Immediate Care on March 3, 2014, complaining of worsened left hamstring and right hip pain, which he described it as sharp; and at a severity of 7/10. He reported that his pain improved with rest, and grew worse with movement, pushing, pulling, and pivoting. PX6.

Dr. Gaballa examined Petitioner, noting tenderness of Petitioner's left calf; mild tenderness and spasm of Petitioner's left thigh muscles; mild tightness, tenderness and spasm of Petitioner's left hamstring muscle in the medial and posterior aspect; and reduced range of motion in Petitioner's left and right hip. Dr. Gaballa took x-rays of Petitioner's lumbosacral spine, which disclosed no bony abnormalities.

Petitioner's diagnosis remained an unspecified sprain/strain of the hip/thigh, but was appended "worsening." Dr. Gaballa prescribed Robaxin, instructed Petitioner to perform hamstring calf and

lower back stretches before work in addition to using the roller foam, and returned Petitioner to work in a light duty capacity, with the following restrictions until March 6, 2014:

> Avoid jumping entirely. Avoid running entirely. Avoid prolonged squatting. Avoid prolonged ladder-climbing. Avoid prolonged walking. No lifting over shoulder greater than 20 lbs No lifting from waist to shoulder greater than 25 lbs No lifting below waist greater than 25 lbs No pulling or pushing greater than 35 lbs.

Petitioner returned to Physicians Immediate Care one last time on March 6, 2014, complaining of continued sharp pain. Dr. Gaballa stated that everything was normal upon examination and that his condition had improved, and released him to return to work, without restrictions.

On March 11, 2014, Petitioner sought a second opinion at Dreyer Medical Clinic, where he was seen by Dr. Tehmina Bajwa. Petitioner complained of a constant, dull, ache in his left calf and hamstring; and right hip pain at 4/10, that worsened with certain activities. Going up and down the ramp caused his pain to increase to 8/10. He further complained to Dr. Bajwa that he was unsatisfied with the care he had received at Physicians Immediate Care. He stated that he was working 10-12 hour days while experiencing sharp shooting pains in his left leg; and that he was trying unsuccessfully to manage the pain by taking several Advil a day. Petitioner stated that he was unable to perform his job duties, and that he had left work early that day due to his pain.

Petitioner related his history of injury and described his pain as a constant, mild ache at 4/10, present in the gluteal and without radiation, and aggravated by standing and twisting. Upon examination, Dr. Bajwa elicited tenderness in Petitioner's left hamstring and left calf just below the knee, as well as mild tenderness of the right pelvic bone.

Dr. Bajwa diagnosed Petitioner as having a contusion of the right hip, injury of the left lower leg; muscle strain of the left lower leg, and ordered Petitioner to begin taking Naprosyn in lieu of Advil. Dr. Bajwa returned Petitioner to work with the restriction that he not work more than eight (8) hours total; and that he receive a break after 4 hours. Dr. Bajwa instructed Petitioner to return if his symptoms did not improve. Work status letter and clinic notes of March 11, 2014.

On March 24, 2014, Petitioner returned to Dr. Bajwa complaining of continued pain in his left calf, left hamstring, and right hip. He reported some improvement in his left calf and hamstring pain, each at 4/10, painful only when stepping down or walking on his toes. However, his right hip pain remained a constant dull ache at 4/10, rising to 7/10 or 8/10 with certain movements. He reported that the hip pain had grown worse since his date of accident.

Petitioner stated that the Naprosyn had helped somewhat but the Robaxin did not. Petitioner had been using ice and a heating pad, as well as performing home exercises. Petitioner indicated that he

wished to be referred to an orthopedic doctor. Dr. Bajwa referred Petitioner to Dr. Larry Brinkman at Dreyer Medical Clinic.

On March 26, 2011, Petitioner returned to Dreyer Medical Clinic where he was seen by Dr. Larry Brinkman. Dr. Brinkman reviewed Petitioner's systems, which he found to be completely negative except for the pain in Petitioner's right hip. Upon examination, Petitioner had pain with flexion, internal rotation and abduction of the hip, with mild tenderness to the rectus femoris and the adductors on the pubic rami.

Dr. Brinkman ordered hip x-rays, which showed mild degenerative hip disease bilaterally, right greater than left, without acute bony abnormality. Dr. Brinkman opined that the images showed bilateral femoral impingement, but displayed calcium reaction deposits about the lateral margin of the acetabulum on the right side only. He opined that Petitioner most likely suffered from pre-existing femoral impingement with only an abductor strain related to his accident, but he ordered an MRI to see if Petitioner had any significant damage to his limbus. PX4.

On April 25, 2014, Petitioner underwent a non-contrast right hip MRI at Joliet Open MRI. The MRI disclosed a possible partial, small labral tear at the junction of the labrum with the acetabular cartilage, as well as an associated paralabral cyst approximately 9 mm wide and 10 mm long. The MRI disclosed no evidence of fracture.

On April 28, 2014, Petitioner presented to Dr. John Cherf, for an independent medical examination, ("IME"), upon request of Respondent. Petitioner related his history of injury and recreated the mechanism of injury for Dr. Cherf, complaining of left hamstring pain, 4/10; and left hamstring function of 70%, exacerbated with stairs, getting up and down, and lifting; and right hip pain, 6/10; and right hip function at 50%, aggravated by shifting his weight and taking long strides. Petitioner stated that he had 40 percent improvement in his hamstring and 10 percent improvement in his hip.

Dr. Cherf opined that Petitioner had received reasonable and appropriate care to date and that his subjective complaints matched the objective findings. He opined that Petitioner should continue his 8-hour day restrictions and that he should continue with conservative treatment, including anti-inflammatory medications and physical therapy. Dr. Cherf opined that Petitioner should reach maximum medical improvement ("MMI") by June 18, 2014. Dr. Cherf's IME report of April 28, 2014.

On May 22, 2014, Petitioner sought treatment with Dr. Howard Freedberg at Suburban Orthopaedics, complaining of a constant, dull ache in his hip and sharp pains near his groin area, when walking. He stated that he would get sharp pains in his joint when taking long strides, when making a sudden change in direction, or when stretching his leg. This pain was so severe that it felt like his leg was going to buckle. He also complained of a constant, dull ache in his hamstring, with sharp pain when he went from a sitting position to standing; or goes up or down stairs. PX2.

Petitioner related his history of injury and stated that he had no prior injuries to either his right hip or left hamstring, before the accident. Dr. Freedberg examined him, noting reduced right hip range of motion on all motions except adduction, as well as sharp, positive tenderness to palpation over the right groin region. Dr. Freedberg reviewed Petitioner's imaging studies, including Petitioner's MRI from April 22, 2014, which was read to disclose an anterior labral tear, with associated paralabral cyst. Dr. Freedberg took x-ray images of the right hip; these showed mild to moderate degenerative changes. Dr. Freedberg diagnosed Petitioner with right hip osteoarthritis with anterior labral tear and paralabral cyst, plus hamstring strain. He reviewed Dr. Cherf's IME report and stated:

> It was his opinion that the diagnosis was a right hip s/s related on 4/18/14. He acknowledged the degenerative changes and paralabral cyst. He felt these changes should be considered independent of the work related injury. I absolutely disagree with that opinion. I would like to review the initial treatment records but it appears to me that the DJD was exacerbated by the accident in question and that all treatment is related to the accident in question.

Dr. Freedberg released Petitioner to return to work, with light duty restrictions of no stooping, no kneeling, no climbing, no repeated bending, no lifting more than twenty (20) pounds, and no working more than eight (8) hours per day. PX2.

On May 27, 2014, Petitioner began physical therapy treatment at Accelerated Rehabilitation in Yorkville, Illinois. His assessment at the initial visit was: "Subjective and Objective findings consistent with possible labral tear in R hip, hamstring strain L. Rehabilitation potential is good." He completed physical therapy on June 13, 2014; the physical therapist stated that there had been no major changes in his condition from physical therapy thus far, with improvements in range of motion and strength but none in terms of his pain or gait. PX2, Accelerated Rehabilitation note of June 13, 2014.

Petitioner returned to Dr. Freedberg on June 19, 2014. Petitioner stated that there had not been much change in his condition since the prior visit; on examination, Dr. Freedberg elicited near-identical results. Petitioner's first MRI had been taken in an open unit without contrast, which Dr. Freedberg did not consider a definitive test. Dr. Freedberg referred Petitioner for an MRI arthrogram of his right hip. PXs 2 & 3, p. 9.

On June 24, 2014, Petitioner underwent a right hip MRI arthrogram, with intra-articular gadolinium injection at Suburban MRI. The MRI disclosed extensive tearing of the anterosuperior acetabular labrum with associated paralabral cyst; increased osseous convexity at the femoral head-neck junction, suspicious for femoroacetabular impingement; and mild to moderate diffuse chondromalacia of the hip joint.

Petitioner followed-up with Dr. Freedberg again on June 30, 3014, who reviewed Petitioner's right hip MRI. He looked at the films in addition to the radiologist's report. Dr. Freedberg noted extensive tearing of the anterosuperior acetabular labrum with associated paralabral cyst, increased osseous convexity at the femoral head-neck junction, suspicious for femoroacetabular impingement; and mild-to-moderate diffuse chondromalacia. PXs 2 & 3, 17.

Dr. Freedberg discussed the necessity of surgery with Petitioner, who agreed. Dr. Freedberg released Petitioner to return to work, in a light duty capacity, with Petitioner restricted to lifting no more than twenty (20) pounds; and restricted to working no more than eight (8) hours per day. Dr. Freedberg also imposed partial restrictions of no stooping, kneeling, repeated bending, and climbing.

On July 9, 2014, Respondent's adjuster left a voicemail message for Dr. Freedberg, stating that as of that time, surgery was not authorized. PX2, Dr. Freedberg's surgery checklist.

Petitioner returned to Dr. Freedberg on July 14, 2014, indicating his desire to return to work and requesting medications or cortisone injections to alleviate his pain, so that he could work while awaiting Respondent's approval to undergo surgery. Dr. Freedberg completed an FMLA Return-to-Work form and Certification of Healthcare Provider for Employee's Serious Health Condition on Petitioner's behalf, releasing him for a full-duty work trial, as of July 18, 2014. PX2, "CareWorksUSA" Return-to-Work forms.

On July 22, 2014, Dr. Freedberg spoke with Respondent's adjuster on the phone, who stated that surgery was denied, based upon Dr. Cherf's IME, and that they wanted to see how Petitioner did working full duty.

Dr. Howard Freedberg's testimony

Dr. Freedberg was deposed on September 10, 2014. Dr. Freedberg has been a licensed orthopedic physician in Illinois since 1982; board certified in 1990, then recertified in 2000 and 2010. Dr. Freedberg testified that Petitioner's MRI arthrogram of June 24, 2014 disclosed extensive tearing of the anterior labrum with associated cyst, diffuse chondromalacia, and increased osseous convexity of the femoral head/neck junction suspicious for femoral acetabular impingement. Dr. Freedberg opined to a reasonable degree of medical and surgical certainty that Petitioner's accident was causally connected to these issues:

> It is causally connected and also an exacerbating factor. I base it off of the history, my examination as well as the MRI and MRI arthrogram. Exacerbating because of the preexisting degenerative changes and the head being out of round, what we say. So the increased osseous convexity is what the report says. I also say causally connected because the extensive acetabular labral tear in all probability was produced from this accident because he was so totally asymptomatic. PX3, pp. 4-5, 10-12.

Dr. Freedberg testified that the accident

> probably did produce some of this acetabular labral tear because it's so extensive and he had no prior history of problems. It's the only logical conclusion to be reached, which is why in my report I said I strongly disagree with the IME doctor.

Dr. Freedberg testified that he recommended a surgical procedure "designed to put the head more in round and repair the acetabular labrum reconstruction," to be followed by rehabilitation. Dr. Freedberg testified that he wanted to perform an arthroscopy with the procedure so as to determine whether the labrum could be debrided, or if it was so extensively torn that it would have to be removed entirely and reconstructed with a graft. He also stated that an arthroscope would allow him to see where the impingement was in Petitioner's hip and take in the convexity of the head to address it. Dr. Freedberg also opined that Petitioner's bills from Suburban Orthopaedics were fair and reasonable for the geographic community in which he practices. PX3, 13-14.

Dr. John Cherf's testimony

Dr. Cherf testified on November 11, 2014. He has been board certified since approximately 1993, then recertified in 2003 and 2013. Dr. Cherf testified that prior to Petitioner's accident; his medical history was negative for anything significant. Dr. Cherf did not dispute that a work accident occurred in this case. Dr. Cherf recognized that after February 18, 2014, Petitioner's hip became symptomatic.

Dr. Cherf opined that Petitioner's symptoms were consistent with degenerative arthritis, and further opined that his accident caused sprains or strains in his left hamstring and right hip. Dr. Cherf testified that when we walk, the forces across our hips can be multiples of our body weight; he opined that "one simple slip" is "really an insignificant contributor" to osteoarthritis. He opined that the accident might have temporarily exacerbated Petitioner's osteoarthritis, but not permanently. Dr. Cherf admitted that he had not reviewed Petitioner's MRI arthrogram. RX2.

Petitioner returned to Dr. Freedberg on November 12, 2014, stating that he was not doing well. He reported that he had been working and was taking Tramadol and Advil throughout the workday, as well as taking Norco on the weekends. Petitioner stated that despite this, he was in constant pain while working. He stated that walking or shifting his weight caused him pain, and that it was the worst when he turned to change direction. Dr. Freedberg took Petitioner off work pending approval for surgery.

On November 26, 2014, Respondent fired Petitioner, ostensibly for obstructing the view of a "Drive Cam" recording the interior of Petitioner's truck cabin on November 6, 2014.

15IWCC0942

CONCLUSIONS OF LAW

F. Is Petitioner's current condition of ill-being causally related to the work accident?

It is not enough that the petitioner is working when an injury is realized. The petitioner must show that the injury was due to some cause connected with the employment. *Board of Trustees of the University of Illinois v. Industrial Commission*, 44 Ill.2d 207, 214, 254 N.E.2d 522 (1969); see also *Hansel & Gretel Day Care Center v Industrial Commission*, 215 Ill.App.3d 284, 574 N.E.2d 1244 (1991).

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to his workplace accident. Although Petitioner had preexisting degenerative conditions in his right hip, it is clear from the record that Petitioner's condition was asymptomatic prior to the injury. The medical record and Petitioner's unrebutted testimony both show that Petitioner had no hip problems prior to the date of accident, and both Petitioner's treating physician and Respondent's Section 12 examiner testified to this fact.

Repeatedly, throughout the course of Petitioner's treatment, Dr. Freedberg opined in his notes that Petitioner's work related injury of February 18, 2014 caused the Petitioner's current condition of ill-being. Dr. Freedberg reiterated that opinion at his deposition, stating that Petitioner's work accident of February 18, 2014 aggravated Petitioner's preexisting degenerative changes, causing them to become symptomatic, and probably caused Petitioner's extensive acetabular labral tear, at least in part.

Dr. Cherf testified that prior to Petitioner's accident; his medical history was negative for anything significant. Dr. Cherf did not dispute that a work accident occurred in this case and recognized that after February 18, 2014, Petitioner's hip became symptomatic. Nevertheless, Dr. Cherf opined that while the accident may have temporarily exacerbated Petitioner's osteoarthritis, it could not have done so permanently because Petitioner's accident was "one simple slip" that could not significantly contribute to osteoarthritis. On this basis, Dr. Cherf opined that Petitioner suffered from a right hip sprain/strain that should resolve after no more than four (4) months.

The Arbitrator notes that Dr. Cherf's characterization of the accident at his deposition does not match the description that Petitioner provided in his statements to his treating physicians. Far from "one simple slip," Petitioner consistently told his treating doctors that he slid down roughly twelve inches at an incline while holding onto a two-wheeled cart heavily loaded with product before finally catching himself, twisting his right hip and left leg in the process. Dr. Cherf testified that when one walks, the forces across our hips can be multiples of our body weight; however, he did not compare these forces to the forces produced by sliding twelve inches down an incline, while holding onto a heavy wheeled cart, then planting one's foot and twisting one's leg and hip. Nor did Dr. Cherf discuss the feasibility of such an event causing an acetabular labral tear; or worsening a pre-existing one. Dr. Cherf discussed only generalized osteoarthritis in this context. The Arbitrator does not find this testimony convincing.

Whether or not the tear was pre-existing, the evidence shows that Petitioner's hip became symptomatic following Petitioner's accident on February 18, 2014, and that it remained painful as of Petitioner's visit to Dr. Freedberg almost nine months later. This suggests that Dr. Cherf's diagnosis of a sprain or strain, which would have resolved after four months, according to Dr. Cherf's testimony was incorrect. Further, the Arbitrator notes that by his own admission, Dr. Cherf never reviewed Petitioner's MRI arthrogram. Given the presence of extensive labral tearing in Petitioner's right hip shown objectively by the MRI arthrogram, a study that Dr. Cherf did not review, the Arbitrator agrees with Dr. Freedberg: the only logical conclusion is that Petitioner's accident either caused or aggravated the tear.
The Arbitrator finds Dr. Freedberg's opinions to be more persuasive than those of Dr. Cherf and concludes that Petitioner has proven, by a preponderance of the evidence, that his current condition of ill-being is causally related to his workplace 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?

Dr. Freedberg opined that Petitioner's bills from Suburban Orthopaedics were fair and reasonable for the geographic community in which he practices. Dr. Cherf likewise opined at his deposition that Petitioner's treatment to date had been reasonable and necessary. The Arbitrator agrees.

Petitioner's medical bills, up to the date of hearing, total $6,195.29. The parties stipulated that Respondent has paid nothing in medical bills, to date. Respondent is ordered to pay all past medical bills.

K. What temporary benefits are in dispute?

Although Respondent disputes temporary total disability benefits, ("TTD"), the Arbitrator has found that Petitioner's current condition of ill-being is causally related to his workplace accident. Petitioner had off-work slips for the time he missed. Respondent paid TTD or temporary partial disability benefits ("TPD"), based on Dr. Cherf's opinion.

Petitioner was off from work between March 12 and March 15, 2014, and again between June 21 and July 17, 2014. Petitioner's Overtime Hours and Earnings Report indicates that Petitioner earned $50,557.09 in regular earnings in the year preceding the injury, as well as $8,598.35 in special, non-overtime earnings, spread across a total of 1,856 hours of non-overtime work, for an average weekly wage of $1,630.89 and a weekly TTD rate of $1,087.26.

Petitioner is due $4,659.68 in TTD benefits up to date of the hearing (4 and 2/7 weeks x $1,087.26 = $4,659.68). Respondent has paid Petitioner $575.76 in TTD benefits and $1,038.41 in TPD benefits, for which it is entitled to a credit.

O. Is the Petitioner entitled to prospective medical benefits?

As mentioned above, the Arbitrator has found that Petitioner's condition of ill-being is causally related to his workplace accident, and that his injury is not merely a sprain/strain, but rather a condition requiring surgical repair. The Arbitrator therefore finds that Petitioner is entitled to prospective medical benefits consistent with Dr. Freedberg's recommendations, for all reasonable and necessary surgery and rehabilitative care.

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
14WC22264
SIGNATURE PAGE

L Thompson Smith
Signature of Arbitrator

February 5, 2015
Date of Decision

FEB 5 - 2015

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

Sadina Mulalic,

Petitioner,

vs.

NO. 14WC 12677

Aramark,

15IWCC0943

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, causal connection, prospective medical care, penalties and fees, and temporary disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 5, 2015 is hereby affirmed and adopted.

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.

No bond is required for removal of this cause to the Circuit Court. 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: DEC 1 8 2015
SJM/sj
o-10/29/2015
44

Stephen J. Mathis

Mario Basurto

David L. Gore

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

SADINA MULALIC
Employee/Petitioner

Case# **14WC012677**

15IWCC0943

ARAMARK
Employer/Respondent

On 1/5/2015, 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 0.13% 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:

0579 FRIEDMAN & SOLMOR LTD
GARY B FRIEDMAN
200 N LASALLE ST SUITE 2570
CHICAGO, IL 60601

1739 STONE & JOHNSON CHTD
PATRICK DUFFY
111 W WASHINGTON ST SUITE 1800
CHICAGO, IL 60602

S. Mulalic v.Aramark, 14 WC 12677 15IWCC0943

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)

Sadina Mulalic
Employee/Petitioner
v.
Aramark
Employer/Respondent

Case # 14 WC 12677

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **October 16, 2014**. 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. ☒ 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 _____

FINDINGS

On the date of accident, **February 19, 2014**, 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 not*** 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**21,878.48**; the average weekly wage was $**420.74**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

Claim for compensation denied. Petitioner failed to prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent on February 19, 2014 and failed to prove a causal connection between any said accidental injuries and her current condition of ill-being regarding her neck and right upper extremity.

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

December 29,2014
Date

ICArbDec19(b)

JAN 5 - 2015

Findings of Fact

Petitioner testified through a Bosnian interpreter.

She worked for the Respondent for 13 years. She worked at a Loyola University dormitory. For the last four to five years, she worked in the cafeteria cutting fruits and vegetables for the salad bar. She worked five days per week, 7-1/2 to eight hours per day. She spent her shift cutting fruits and vegetables, retrieving foods from the basement and refilling the salad bar. She is right handed and used her right hand to cut the items. She demonstrated her method for cutting. She rested her right little finger on the table, and she moved her wrist up and down. This method varied depending on what she was cutting. It is more difficult to remove skin from watermelon and other fruits.

In February of 2014, Petitioner's primary care physician was Dr. Seferovic. Before February 19, 2014, she had reported complaints of right upper extremity/neck pain to Dr. Seferovic, but she never received treatment to the right arm. On November 17, 2008, Petitioner complained to Dr. Seferovic of neck pain. It appears that one of Dr. Seferovic's diagnosis was muscle spasm. On October 11, 2012, Petitioner complained of right shoulder and arm pain located in the right biceps tendon. The pain had persisted for two weeks. Examination was positive for pain in the right shoulder with certain resisted movements and decreased motion of the lumbar spine. She returned to Dr. Seferovic on November 16, 2013 and complained of right arm pain for the prior month. The diagnosis included cervical radiculopathy. (RX 3)

Late in the afternoon on February 19, 2014, Petitioner was cutting cantaloupe and felt a sharp pain in her hand. She changed her grip and the pain moved throughout her upper extremity to the neck. She told her manager, Andrew, that she was not feeling well. The pain was different and unusual and extended from the shoulder and neck to the arm and right hand. Her entire body was shaking. She was holding a knife and Andrew took the knife from her. She was then taken to another room and sat on the floor, and an ambulance was called. It was reported to the paramedics that Petitioner had had a seizure for approximately six to seven minutes. The paramedic noted Petitioner appeared to be in a post-ictal state. Petitioner denied having had a seizure to the paramedics, but it was charted that "says she hasn't had a seizure in years." She reported having had right arm and shoulder pain and had had this pain previously. (RX 1) She was taken to St. Francis Hospital. Her supervisor, Mina, speaks Bosnian. Mina went to the hospital with Petitioner.

Petitioner testified that at the hospital, Mina told the nurse/doctor that Petitioner was cutting fruit/vegetables and had pain. The emergency room physician noted a three day history of right arm and shoulder pain. Petitioner assessed her pain at 7-8/10 and involuntary movements of her right arm were noted. X-rays were taken of the neck and shoulder. Petitioner had a CT scan of the head, which was negative for acute findings, with a possible cavernous malformation. (PX 2)

She followed up with Dr. Seferovic on February 20, 2014 and reported having sudden pressure to her hand while cutting cantaloupe on February 19, 2014. She again reported a three day history of this pain. The pain traveled to the shoulder and neck. Dr. Seferovic noticed her right arm moving involuntarily and concluded Petitioner was unable to work. (PX 6)

Petitioner had treatment by Dr. Rosalyn Aranas, a neurologist, as well. Dr. Aranas noted involuntary movements of Petitioner's right arm, not typical of a focal seizure. Dr. Aranas diagnosed arrhythmic involuntary right arm movements possibly related to underlying cervical radiculopathy or focal dystonia. (RX 2)

Petitioner returned to Dr. Seferovic on March 1, 2014 and complained of neck pain and reported her muscles were moving spontaneously. The diagnosis was cervical radiculopathy and muscle spasm. (PX 4) Petitioner returned to Dr. Aranas on March 14, 2014. Dr. Aranas reported Petitioner had decreased pain but the involuntary movements in her right arm continued. Petitioner was concerned that she had a brain condition and reported occasional episodes of numbness in her whole face and right neck that would last a few minutes. Examination was positive for involuntary movement of the right arm and tenderness of the right trapezius. Dr. Aranas suspected the involuntary movements were due to muscle spasm, related possibly to underlying cervical radiculopathy. She ordered physical therapy, which Petitioner started at St. Francis Hospital. Petitioner underwent an MRI of the brain on March 25, 2014, and it was normal. (RX 2)

She returned to Dr. Seferovic on March 26, 2014 to obtain medication refills. Petitioner complained of muscle weakness and myalgias, tremors, and headaches. Dr. Seferovic noted spontaneous movement of Petitioner's right arm. (PX 4)

Petitioner then began treatment with Dr. Demetrius Louis and Dr. Neeraj Jain, pain management physicians at Michigan Avenue Medical Associates. On April 15, 2014, she told Dr. Louis about working on February 19, 2014 and her neck, shoulder and arm pain. Dr. Louis described Petitioner's duties as cutting fruits and vegetables and restocking and replenishing the salad buffet bar. She had been able to perform this task for years. On the date of the alleged accident Petitioner noticed weakness in her right hand, wrist, elbow and shoulder. The weakness progressively worsened but was not significantly painful. Her complaints at the time of the April 15, 2014 office visit included pain in the right shoulder, trapezius and deltoid extending down the arm to the wrist. In a pain diagram, Petitioner noted bilateral pain in her cheeks. The involuntary spasticity caused cramping and spasm in the right shoulder. Petitioner's son acted as translator and reported no significant trauma to the head or shoulder. Examination was positive for tenderness over the cervical paraspinal, cervical trapezius and deltoid; weakness in the right hand, wrist, elbow and shoulder; and several positive orthopedic tests. Dr. Louis diagnosed a repetitive motion type injury (history?) to the right upper extremity causing involuntary spasticity in her right upper extremity—primarily in the shoulder girdle, shoulder, and wrist pain. The diagnosis was involuntary muscle spasms, cervical radiculitis and radiculopathy, neuralgia/neuritis, muscle spasms and myofascial pain, right shoulder pain, and right cubital tunnel and right carpal tunnel. He recommended continued physical therapy and a TENS unit, a course of medication, an EMG/NCV, follow-up with Dr. Aranas, and to return in three to four weeks. (PX 5)

Petitioner underwent an EMG on April 25, 2014. It was positive for bilateral carpal tunnel syndrome and possible evidence of early onset of cervical radiculopathy. On May 6, 2014, Petitioner returned to Dr. Louis who noted the EMG findings. Examination revealed improved tenderness and persistent but improved weakness. Dr. Louis's diagnosis was the same as on April 15, 2014. His plan did not change. (PX 5)

Petitioner returned to Dr. Aranas on May 20, 2014 and complained of involuntary right shoulder and arm movements. Petitioner reported the gabapentin prescribed by the pain physician (Dr. Louis) helped her symptoms, but she could not tolerate higher doses due to side effects. Dr. Aranas noted the EMG findings. (RX 2)

On June 9, 2014, Petitioner returned to Dr. Louis. Petitioner assessed her pain at 4/10 and located the pain mostly on the right side of the neck into the right shoulder and right elbow with numbness and tingling into the right hand. She assessed her pain to the physical therapist on June 6, 2014 as ranging between 0-2/10). (PX 6) She also complained of "right low back pain, mostly in the upper back on the right side and also into the right leg". She assessed her back and leg pain at 4/10 and appeared to be in mild distress. Petitioner denied ever

complaining of low back pain to Dr. Louis. Examination was positive for wrist weakness and some give-away with strength testing of the shoulder. Dr. Louis' diagnosis and plan did not change except that he ordered an MRI of the cervical spine. (PX 7)

Petitioner underwent the MRI of the cervical spine on June 12, 2014. It revealed straightening of the cervical spine, disc desiccation from C2-3 to C6-7, and a diffuse disc protrusion at C5-6 with effacement of the thecal sac. On July 3, 2014, Petitioner returned to Dr. Aranas. Dr. Aranas noted a delay in Petitioner's work-up due to insurance issues. She noted the MRI of the cervical spine was normal except for a mild disc bulge at C5-6. Petitioner also complained of mild symptoms of depression which Dr. Aranas associated with Petitioner's use of gabapentin. (RX 2)

On July 7, 2014, Petitioner presented to Dr. Louis. Dr. Louis' diagnosis included muscle spasms—improving; cervical radiculitis—improved; neuralgia/neuritis—improved; muscular spasms and myofascial pain—improved; right shoulder pain—improved; right cubital tunnel/carpal tunnel. Dr. Louis recommended medication and continued physical therapy. He mentioned an epidural steroid injection to the cervical spine, but did not recommend the injection. (PX 5)

Petitioner returned to Dr. Aranas on July 22, 2014 and reported no change in her involuntary movements of her right arm. Dr. Aranas referred Petitioner to Dr. Schoneburg, a movement disorder specialist. (RX 2)

Petitioner was examined by Dr. Lawrence Lieber at the request of the Respondent pursuant to Section 12. The exam lasted about 45 minutes. Per Dr. Lieber's report, she described her job duties activities as standing, bending, walking, repetitive use of upper extremities, overhead activity and lifting between 30 and 40 pounds. Petitioner reported an onset of pain on February 19, 2014, when her job duties required repetitive motion of her upper extremities at waist level. While cleaning cantaloupe and moving equipment, she developed right shoulder pain. At the time of the examination Petitioner was in a physical therapy program and an exercise program. She was taking medications. Petitioner complained of numbness in her fingers and shaking in her arm; difficulty with overhead activities but no stiffness; pain at night; and weakness. Examination of the shoulder was normal. Examination of the cervical spine revealed tenderness and decreased range of motion due to pain. Dr. Lieber's diagnosis was right arm causalgia. He found no evidence of any objective abnormality directly related to the February 19, 2014 event. There was no evidence of an aggravation of a pre-existing condition. Dr. Lieber did not recommend any treatment related to the February 19, 2014 event. Petitioner was able to return to work without restriction. With respect to Petitioner's prior lost time, Dr. Lieber thought that as a result of the February 2014 episode, she needed a medical-work up for two or three weeks; i.e., to March 5 or March 12, 2014. Any treatment after that period should not have interfered with her ability to work full duty. Dr. Lieber thought Petitioner was at maximum medical improvement. (RX 4)

On July 29, 2014, Petitioner returned to Dr. Louis and reported mild to moderate improvement with physical therapy. She assessed her pain at 3-4/10 with some numbness and tingling in the arms. The pain was mostly in the right shoulder all the way to the fingers with mild numbness and tingling in the distal third and fourth fingers. Petitioner told the therapist on July 28, 2014 that she had no neck or arm pain but had tremors on occasion. Her pain ranged between 0-1/10. Petitioner's spasticity had worsened recently. Dr. Louis' examination was normal except for tenderness in the cervical spine and right shoulder and arm with involuntary movements throughout the right arm. Dr. Louis' diagnosis was muscle spasms, cervical radiculitis, neuralgia/neuritis, muscle spasms and myofascial pain, right carpal tunnel and cubital tunnel syndrome. He ordered continued physical therapy and medications. He considered a cervical epidural steroid injection but

wanted to wait to learn the results of her visit to the movement disorder neurologist. He prohibited Petitioner from working. (PX 5.)

Petitioner presented to Dr. Bernadette Schoneburg, a neurologist specializing in movement disorders, on August 15, 2014. A history was obtained using a Bosnian interpreter. Petitioner provided a history of an acute onset of pressure and pain in the right neck, shoulder and arm while cutting meat on February 19, 2014. Petitioner was taken to the emergency room. She was referred to Dr. Aranas and had a complete work up without a clear diagnosis. Petitioner received therapy and a Medrol dosepak for presumed cervical radiculopathy. Petitioner complained of pain in the right neck, trapezius and elbow/forearm. Her arm twitched while at rest. If Petitioner tried to suppress the movement, her arm externally rotated. Persistent numbness in the arm wakened her from sleep. Petitioner had a history of depression during the war. The depression worsened after an oophorectomy in 2011. Dr. Schoneburg's examination revealed involuntary movements of the right upper extremity. These movements included contraction of the right trapezius and deltoid, intermittent rapid contractions of the right biceps, and intermittent fast frequency, low amplitude right forearm tremor. The remainder of the exam was entirely normal. Dr. Schoneburg noted Petitioner's history and exam are consistent with a post-traumatic shoulder movement disorder (following acute cervical radiculopathy). She referred to several cases of post-traumatic movement disorder in the literature. The variability in the type of her involuntary movements, distractability, and pain and emotional distress suggested psychogenicity; i.e., physical disorder as a result of a psychological factor. Dr. Schoneburg recommended continued physical therapy and continued medications. Petitioner was to return in one month. (RX 2)

On September 9, 2014 Petitioner presented to Dr. Louis' colleague, Dr. Neeraj Jain. Petitioner completed a "Work Comp." form. She reported that on February 19, 2014 she was cutting vegetables and fruit and felt pain in the right arm. She experienced "massive pain in right arm and shoulder and neck that emergency help was called". At the September 9, 2014 office visit Petitioner complained of radiating pain from the neck to wrist with numbness and weakness in her hand. Dr. Jain noted that an EMG showed bilateral median mononeuropathy, and an MRI showed a C5-6 herniated disc. He acknowledged that Petitioner was seeing Dr. Aranas for involuntary shoulder movement disorder, but he had no details regarding this condition. Dr. Jain diagnosed cervical radiculopathy and recommended an epidural steroid injection and that Petitioner continue with physical therapy. Dr. Jain reviewed Dr. Lieber's IME and noted Dr. Lieber is not a spine surgeon. With respect to Dr. Lieber's comment that there was no objective evidence or abnormality that can be directly attributed to the February 19 incident, Dr. Jain thought that this was not factual. Petitioner had no complaints before the accident and had complaints after the accident. This is not accurate. Petitioner complained of neck/right upper extremity symptoms on several occasions between November 17, 2008 and November 16, 2013. Moreover, Petitioner gave a history of having this pain for three days before February 19, 2014. Dr. Jain thought there was causation between the accident and the Petitioner's right arm/neck condition. (PX 8)

On October 9, 2014 Petitioner returned to Dr. Jain and assessed her symptoms at 3/10. Dr. Jain recommended a C5-6 epidural steroid injection for a herniated disc. Petitioner did not want the injection. Dr. Jain recommended continued medication and physical therapy. (PX 5)

Petitioner testified that she would consider the injection as a last resort.

After Petitioner started treatment at Michigan Avenue Medical Associates, she stopped therapy at St. Francis Hospital and transferred her therapy care to Premier Physical Therapy. She attended physical therapy at Premier Physical Therapy on 66 occasions from April 15 through October 13, 2014. On May 7, 2014, Petitioner assessed her pain as ranging between 0-4/10. The therapist noted on May 16, 2014 that Petitioner had long

periods with no pain. On June 2, 2014, Petitioner assessed her pain as ranging between 0-2/10; i.e., the worst pain she was experiencing was at 2/10. On June 20, 2014, Petitioner reported that she had no pain 75% of the time and had right arm referral pain two times per day on some days and none on other days. On July 1, 2014, Petitioner assessed her pain as ranging between 0-1/10. On July 28, 2014, Petitioner reported no neck or arm pain but she had tremors on occasion. By August 1, 2014 Petitioner had attended 48 therapy visits at Premier Therapy. (PX 10)

Petitioner had no treatment between August 1 and September 4, 2014. When she returned on September 4, 2014, the therapist noted Petitioner had to leave the country for four weeks for family reasons. Her symptoms then ranged from 0-2/10. On September 27, 2014, she reported being pain free for 95% of the time and on October 1, 2014, she told the therapist that her symptoms ranged from 0-1/10. (PX 8)

Petitioner has had no accidents or injuries since February 19, 2014. Currently, her pain starts at the neck and extends into the hand. The pain is worst at the lateral aspect of the biceps. She feels nervous and sad. She takes pain killers and muscle relaxers.

Petitioner claimed that she was entitled to TTD benefits from February 20, 2014 to October 16, 2014 and was entitled to medical benefits in the amount of $44,173.45. (ArbEx. 1)

The Arbitrator observed a tremor in Petitioner's right arm throughout her appearance at the trial. Petitioner testified that the tremor was better than before.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

(C) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? and (F) Is Petitioner's condition of ill-being causally related to the injuries?

It is axiomatic that Petitioner has the burden of proving each and every element of her claim. In order to obtain compensation under the Act, Petitioner must prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent. Sisbro, Inc. v. Industrial Commission, 207 Ill.2d 193, 203 (2003) An injury arises out of the employment if it originates with a risk connected with, or incidental to the employment so as to create a causal connection between the employment and the injury. Baggett v. Industrial Commission, 201 Ill.2d 187 (2002). "In the course of employment refers to the time, place and circumstances surrounding the injury..." Sisbro, 207 Ill.2d at 203.
Here, Petitioner was at work and performing food preparation activities at the time of the onset of her problems. She was in the course of her employment.

Given the medical evidence, the Arbitrator finds that Petitioner has failed to prove that she sustained accidental injuries which arose out of her employment.

The Arbitrator believes the narrative on page one of Respondent's Exhibit 1, the Chicago Fire Department Paramedics' Report. Petitioner had a witnessed seizure for approximately 6-7 minutes. She appeared postictal to the FD crew that gave her initial care. She said that she hasn't had a seizure in years. It was noted on page two that Petitioner denied having a seizure. Petitioner denied prior seizures at trial. The Arbitrator finds that Petitioner had a seizure while cutting cantaloupe, which either led to or was coincidental to her neck and right

upper extremity symptoms. The seizure merely occurred at work and is not causally connected to the employment.

The HPI at St. Francis was R neck/shoulder pain and RUE twitching. The patient said that she had right sided neck pain for the past 3 days which was waxing/waning. She developed acute worsening of her pain with involuntary movement of her RUE down to her elbow with numbness distal to the elbow that lasted for approximately 20 minutes. The discharge diagnosis at St. Francis was: muscle spasm. The indication for the CT of the head was: RUE twitching, right neck and shoulder pain. The indication for the brain MRI was: Seizure, involuntary movement.

Petitioner alleges that she sustained an injury to her right arm, shoulder and neck as a result of her work activities. Petitioner complained of neck pain in 2008 and complained of right shoulder and arm pain on October 11, 2012. On November 16, 2013, about three months before this alleged accident, she complained of right arm pain of a month's duration. Dr. Seferovic diagnosed cervical radiculopathy at that time. In the emergency room at St. Francis, Petitioner said that her right arm pain began three days before.

Dr. Seferovic diagnosed cervical radiculopathy on March 1, 2014. This was also her diagnosis on November 16, 2013 - - three months before the alleged accident.

Dr. Aranas noted arrhythmic involuntary right arm movements possibly related to underlying cervical radiculopathy.

On April 15, 2014, Dr. Louis diagnosed a repetitive motion type injury (history?) to the right upper extremity with the later development of involuntary spasticity of the right upper extremity. He deemed Petitioner's condition of ill-being to include muscle spasms, cervical radiculitis, neuralgia/neuritis, myofascial pain, right shoulder pain, right cubital tunnel syndrome and right carpal tunnel syndrome.

Dr. Bernadette Schoneburg (Neurologist at NorthShore Neurological Institute, Movement Disorders Section) diagnosed post-traumatic movement disorder (following acute cervical radiculopathy) on August 15, 2014. She thought that the condition was most likely psychogenic.

Dr. Neeraj Jain diagnosed cervical radiculopathy and noted the MRI showed a C5-6 herniated disc. (Dr. Aranas described the MRI as showing a mild bulge at this level.) Dr. Jain thought Petitioner's "injury" was directly related to her symptoms, although he was unsure of what type of involuntary spasticity Petitioner had. He noted, incorrectly, that Petitioner did not have this condition before February 19, 2014 but had it after February 19, 2014. In fact, Petitioner was diagnosed with cervical radiculopathy three months before February 19, 2014 and Petitioner confirmed that the onset of her arm complaints was three days before February 19th, at trial.

Dr. Lieber, Respondent's examining physician, diagnosed right arm causalgia unrelated to any February 19, 2014 event. There was said to be no objective evidence of any abnormality of the right upper extremity directly related to the event of February 19, 2014. Of course, the injury needs only to be a causative factor in the abnormality. Dr. Lieber's report says that he examined ""Victoria Herd" and reviewed records from Swedish Covenant Hospital. There was no evidence of treatment at Swedish Covenant. Victoria Herd appears to be associated with Genex. The diagnosis of causalgia is not supported by the record. Causalgia is classically associated with a burning type pain, most often related to a peripheral nerve injury and there is nothing to support this in the Record. Dr. Lieber's opinions are not persuasive.

Dr. Jain's and Dr. Louis' causation opinions do not show that they were aware of the prior diagnosis of cervical radiculopathy and that Petitioner noted an onset of right arm pain three days before February 19, 2014. Further, a sufficient description of Petitioner's work activities was not shown to have been given to these physicians. Dr. Jain and Dr. Louis fail to provide a sufficient basis for their causal connection opinions. The Arbitrator finds their opinions to be not credible and not supported by the evidence adduced.

While Drs. Seferovic, Aranas and Schoneburg concur that Petitioner has cervical radiculopathy, they do not document that this condition is causally related to the work activities that Petitioner performed on February 19, 2014. There is nothing in the Record that persuades the Arbitrator that Petitioner's movement disorder condition is related to her work acvtivities or any accident at work.

Dr. Schoneburg was the only movement disorder specialist that Petitioner has seen. Her diagnosis of psychogenic post traumatic movement disorder is found to be credible, most persuasive and most compatible with the evidence adduced.

Thus, the Arbitrator finds that Petitioner has failed to prove a causal connection between her work activities of February 19, 2014 and her current condition of ill-being with respect to her cervical spine and her right upper extremity.

As there has been a failure of proof on the issues of accident and causation, the claim for compensation is hereby denied.

(J) Medical Expenses; (K) Prospective Medical Treatment and (L) TTD

As the Arbitrator has found that Petitioner failed to prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent and has failed to prove a causal connection between her injuries and her current condition of ill-being, the Arbitrator needs not decide the above issues.

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☒ 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

Josefina Reyes,

Petitioner,

vs. NO. 14WC 32455

Aramark,

15IWCC0944

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and temporary disability, 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 15, 2015 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $9,500.00. 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: DEC 18 2015
SJM/sj
o-11/12/2015
44

Stephen J. Mathis

David L. Gore

Mario Basurto

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

REYES, JOSEFINA
Employee/Petitioner

Case# **14WC032455**

ARAMARK
Employer/Respondent

15IWCC0944

On 4/15/2015, 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:

0000 BARBER LAW OFFICES LLC
SCOTT BARBER
1834 WALDEN OFFICE SQ STE 500
SCHAUMBURG, IL 60173

1739 STONE & JOHNSON
PATRICK DUFFY
111 W WASHINGTON ST SUITE 1800
CHICAGO, IL 60602

15IWCC0944

STATE OF ILLINOIS)
)SS.
COUNTY OF DuPage)

☐ 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)

Josefina Reyes
Employee/Petitioner

v.

Aramark
Employer/Respondent

Case # 14 WC 032455

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 **Carolyn Doherty**, Arbitrator of the Commission, in the city of **ELGIN**, on **03/11/2015**. 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. ☐ 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 _____

FINDINGS

On the date of accident, **06/24/2014**, 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 $**26,205.40**; the average weekly wage was $**503.95**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner the reasonable and necessary medical expenses incurred in connection with the care and treatment of her causally related conditions pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid, if any.

Respondent shall pay Petitioner temporary total disability benefits of $335.96/week for 28 weeks, commencing August 28, 2014 through March 11, 2015, as provided in Section 8(b) of 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.

Carolyn Doherty
Signature of Arbitrator

4/13/15
Date

ICArbDec19(b)

APR 15 2015

FINDINGS OF FACT

At trial, the 42 year old Petitioner testified that she worked for Respondent on 6/24/14 as a janitor. Her duties included cleaning classrooms. At trial, the parties stipulated to an accident on 6/24/14 and that proper notice was provided to Respondent. ARB EX 1. At issue was causal connection for Petitioner's current condition of ill-being as well as medical expenses and TTD. ARB EX 1.

Petitioner testified that on 6/24/14, Petitioner was at work cleaning a classroom. Specifically, she testified that she was spreading a chemical wax on the floor. Petitioner testified that the chemical ran on the floor and that both feet slipped on the chemical. Petitioner testified that as she fell, she grabbed a table on the way down to break the fall and in doing so pulled her right arm and shoulder. Petitioner also testified that as she grabbed the table she twisted her right arm and felt pain in her right arm and neck. She also struck her right elbow and suffered a bruise on her right knee from the landing.

Petitioner testified that three years before this accident she a right shoulder injury. She testified to having minimal treatment in the form of a test with "needles in her right arm." She had no further treatment for that problem and then continued to work for the next 3 years prior to this accident without difficulty from her right arm or shoulder.

On the date of accident 6/24/14, Petitioner presented to the Central DuPage Business Health Clinic, which is the Clinic the Respondent suggested. PX 1. The notes indicate a consistent history of injury from a fall at work resulting in Petitioner twisting her right upper back and shoulder. She complained of back "pain in the upper thoracic to trapezius and parascapular area with pain on shoulder abduction to upper back." PX 1. She was examined and exhibited decreased range of motion, tenderness, pain and spasm in the thoracic area on the right. Petitioner was diagnosed with a thoracic sprain without further work up. She was told to return to the clinic in two days or sooner and was given flexeril and a light duty return to work restriction against repetitive tasks involving the right shoulder and no lifting or carrying over 5 pounds with her right arm. PX 1.

Petitioner testified that she returned to work and while stretching her arms to wipe surfaces she started having pains to her right shoulder and upper back. She returned to the Respondent's clinic on June 26, 2014 complaining of right shoulder and upper back area pain along with a tingling sensation in the area and pain down to the middle of her back when seated. PX 1. An exam revealed muscle spasms on her right upper back near the shoulder. The clinic assessment was a upper thoracic sprain. Under "medical causation" was listed "the cause of this problem is related to work activities." PX 1. No new treatment plan was recommended and she was told to continue taking Flexeril and to follow up in one week. Petitioner was returned to work with light duty restrictions.

On July 3, 2014 she returned to the Clinic and reported that she had pain in her upper right thoracic region and right trapezius. Petitioner reported a "pulling sensation" in her neck area with random shooting pains. On exam Petitioner reported pain on motion in the right upper thoracic and neck area with spasm. The diagnosis was sprain of thoracic with strain of the right

trapezius/neck area. PX 1. The doctors recommended she undergo physical therapy which she started on July 8, 2014 at the Cadence Outpatient Physical Therapy Clinic. PX 1. Work restrictions were continued.

When she returned to the Respondent Clinic on July 10, 2014, she complained that "she now has low back pain which radiates down to right buttocks. Pain in right shoulder is a 3 on the pain scale described as intermittent soreness which occurs with certain movements. States pain in lower back started yesterday, initially it was a 5 on pain scale but now is a 3. States she feels pain also in her right calf when she gets the low back and right buttocks pain. Pain in mid back described as pinching feeling or like needles which occurs mostly when she sneezes or coughs. States this pain is also a 3 on the pain scale." PX 1. Three problems were identified at this visit: pain in the right upper thoracic region and right trapezius into OA, right SI joint localized and right Achilles tendon area localized. PX 1. The diagnosis was sprain of thoracic, strain right trap/neck and sprain lumbar spine. PX 1. Petitioner's work restrictions were continued.

Petitioner presented to Vinita Matthews, M.D on July 21, 2014 as a referral from the Clinic. PX 2. Dr. Matthews noted Petitioner's complains of pain from her right scapular now radiating down to the low back. Dr. Matthews diagnosed her with a cervical strain, thoracic sprain and myofascial pain. She recommended continuing physical therapy, muscle relaxers and return to work light duty with a re-evaluation in four weeks. PX 2. If the pain continued after physical therapy, more imaging would be required. PX 2.

When Petitioner returned to Dr. Matthew on August 18, 2014 she was still complaining of pain in the periscapular muscles after 8 weeks of PT. Petitioner reported that she is "100% better in several places in the body but the pain in the right periscapular muscles is unchanged." PX 2. She reported that overhead activities such as scrubbing, coughing and certain movements increase the pain that she described as a pins and needle sensations. Dr. Matthew thought that the Petitioner's condition was improving but that she had pain which is consistent with trigger points and suggested a trigger point injection to which the Petitioner advised that she wanted to hold off. Petitioner was advised to complete PT and return in 3 weeks. Petitioner was returned to work with restrictions.

The Petitioner returned to Dr. Matthew on August 29, 2014 after having taken one week off work for vacation. She told the doctor that she felt better after having had a week off work but she started experiencing a recurrence of pain in the upper back on the right periscapular muscles and was having neck pain with headaches after she returned to work (Petitioner's Ex. 2.) Dr. Matthew noted that the Petitioner's pain was increasing so she recommended an MRI of the right shoulder and cervical spine. Dr. Matthew noted that cervical radiculitis at right C5 and shoulder pathology were possible. PX 2.

Four days prior to her August 29, 2014 visit to Dr. Matthew, Petitioner was sent for a Section 12 exam by Respondent to Dr. Wehner. At that exam, Dr. Wehner noted that Petitioner reported that she was 50% better and that her pain was 2/10. Dr. Wehner also noted that Petitioner had reported significant improvement during physical therapy of her symptoms. Dr. Wehner noted "She has pain in a nonspecific distribution in the trapezial area. I cannot elicit any specific trigger point injections. Therefore, I do not believe that trigger point that trigger point injections

would be beneficial or indicated as a part of her treatment." Dr Wehner opined that the Petitioner needed no "further diagnostic studies or therapeutic intervention and that Petitioner could return to work full duty." She also stated that Petitioner could "continue to do her own home exercise program." RX 2. Respondent denied the trigger point injections and the MRI.

On November 7, 2014, the Petitioner underwent an MRI of her cervical spine (Petitioner's Ex. 7) and her right shoulder (Petitioner's Ex. 8.) The MRI of the cervical spine demonstrated a 4mm posterior disc protrusion with moderate spinal stenosis and mild cord effacement at the C3-4 level. At C4-5 it demonstrated a 3mm right paracentral disc protrusion with mild spinal stenosis. PX 7. The MRI of the right shoulder demonstrated a partial tearing involving both surfaces of the distal supraspinatus tendon without definite full-thickness tear defect. PX 8.

On November 20, 2014, the Petitioner presented to Dr. Kevin Tu, an orthopedic surgeon. His review of the MRI revealed a partial thickness rotator cuff tear of the supraspinatus tendon in the right shoulder. Petitioner reported that overall her symptoms were 80% improved with conservative care but that she was unable to return to full duty due to continued pain and difficulty with overhead activities and lifting. Dr. Tu performed a cortisone injection into the Petitioner's right shoulder in his office on that day. He also recommended more physical therapy. PX 3.

Once again the Petitioner presented to Dr. Wehner for a Section 12 examination on December 1, 2014. The Petitioner reported to Dr. Wehner that she had worked full duty on August 26 and 27 but that she could not move her neck thereafter and had not returned to work since August 29, 2014. RX 3. She reported her pain as 6/10. Dr. Wehner reviewed the report of the MRI of the cervical spine and the MRI of the shoulder. She concurred with the findings as reported but noted that all findings were pre-existing conditions and that Petitioner "ongoing complaints can no longer be substantiated by her clinical or radiographic findings" and that "she reports pain while walking around downtown and her overall complaints do not fit a specific medical disease pattern." Dr. Wehner noted Petitioner's prior shoulder problem 3 years before this accident and states that Petitioner's ongoing complaints "may be related to her pre-existing condition." Dr. Wehner opined that she found Petitioner at MMI for her thoracic strain as of her last Section 12 exam on August 25, 2014. She found Petitioner's visits to Dr. Matthew and 13 PT visits to be reasonable and necessary treatment. Once again, Dr. Wehner opined that the Petitioner's current condition was not related to the June 24, 2014 work injury, and that Petitioner suffered myofascial injuries as a result of the 6/24/14 accident with MMI as of 8/25/14. RX 3.

On December 8, 2014 the Petitioner followed up with Dr. Tu and reported that she did not experience any relief in her symptoms after the injection. She reported significant pain in her neck. Dr Tu felt that her shoulder symptoms could be originating in her neck so he recommended a cervical spine specialist. Dr. Tu also gave the Petitioner a referral to Dr. Hussain for interventional pain management while continuing the work restrictions. PX 3, PX 4.

On December 12, 2014, the Petitioner presented to Dr Hussain. He reviewed the MRIs of the shoulder and cervical spine. He too recommended physical therapy and an epidural steroid injection at the C6-7 level. PX 4.

Petitioner returned to Dr. Tu on January 15, 2015 for a follow up visit. Dr. Tu noted that she was scheduled for a cervical ESI the next day so he deferred any treatment pending that injection. Dr. Tu noted that he would entertain additional treatment for Petitioner's right shoulder including surgery should the cervical injection not alleviate her symptoms. Once again, Petitioner was released to return to work with restrictions. PX 3.

Petitioner did undergo the cervical injection performed by Dr. Hussain on January 16, 2015. PX 9. Petitioner followed up with Dr. Hussain on 2/6/15 and he noted reports of 30% lasting pain relief but with persistent pain. He ordered a second cervical injection which was performed on February 13, 2015. PX 4, PX 10. Petitioner returned to Dr. Tu on 2/26/15 and he noted that Petitioner reported improvement with injections and was not interested in shoulder surgery. Petitioner is to return to Dr. Tu to discuss shoulder treatment options after completing her treatment with Dr. Hussain. She was to follow up in 6 weeks and Dr. Tu continued Petitioner on restrictions. At her last visit with Dr. Hussain on 3/6/15, she reported feeling about 50% better after the second injection but with persistent pain. Dr. Hussain recommended a third cervical injection which Petitioner testified she had completed just prior to trial. Dr. Hussain also recommended a return to Dr. Tu for shoulder treatment upon completion of the cervical treatment stating "... she does have a right shoulder problem."

At the hearing the Petitioner testified that she still suffers from pain in the right side of her neck and her right shoulder. She testified that the Respondent has had no light duty jobs available for her and that she was off work from August 28, 2014, through the date of the hearing.

CONCLUSIONS OF LAW

The above findings of fact are incorporated into the following conclusions of law.

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

The Arbitrator finds that the Petitioner's current condition of ill-being in her neck and right shoulder is causally related to the June 24, 2014 accident. The Petitioner credibly testified that although she did suffer a previous injury to her shoulder, she had been pain free and treatment free for over three years prior to this accident. Additionally, she was performing her regular job duties for the Respondent that included use of her right arm for those three years. Petitioner's testimony is unrebutted. She testified that she felt immediate pain in her upper thoracic and right shoulder region after the 6/24/14 accident and she sought immediate medical attention. Her complaints of pain have been consistent throughout her treatment and she continues to have complaints of pain today. The Arbitrator finds her testimony to be credible.

Petitioner's testimony regarding her injury and her continued complaints are buttressed by the treatment records. Petitioner presented to the Respondent's clinic and based on the Petitioner's complaints they diagnosed thoracic and cervical strains relating to her reported accident. The Respondent's Clinic then referred the Petitioner to Dr. Matthew who examined Petitioner and because Petitioner's condition was worsening, felt that an MRI was warranted. The MRI studies done of her neck and shoulder show pathology in her neck and her right shoulder that are

consistent with her complaints. Petitioner's treating physicians, Drs. Matthew, Tu and Hussain each found the cervical and shoulder pathology demonstrated on the objective MRI testing and consistent with Petitioner's complaints following the work accident of 6/24/14.

Based on Petitioner's credible testimony and on the treating medical records buttressing that testimony, specifically the cervical and shoulder MRI findings, the Arbitrator assigns greater weight to the opinion of Petitioner's treating physicians than to the opinion of Section 12 examining physician, Dr. Wehner.

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? L. What temporary total disability benefits are due to the Petitioner?

Respondent's dispute on the issue of medical expenses and TTD is based on liability. Accordingly, based on the Arbitrator's findings on the issue of causal connection, the Arbitrator further finds that Respondent shall pay Petitioner the reasonable and necessary medical expenses incurred in the care and treatment of her injuries pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid, if any.

With regard to the issue of TTD, based on the Arbitrator's findings on the issue of causal connection, and on the unaccomodated work restrictions provided Petitioner by her treating physicians, the Arbitrator further finds that Petitioner is entitled to temporary total disability for the disputed period of 8/28/14 through 3/11/15, a period of 28 weeks.

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

Candido Rodriguez,

Petitioner,

vs.

NO. 12WC004017

15IWCC0945

Yoshi's Cafe,

Respondent.

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 accident, medical expenses, causal connection, notice, permanent disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 17, 2015 is hereby affirmed and adopted.

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.

No bond is required for removal of this cause to the Circuit Court. 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: DEC 1 8 2015
SJM/sj
o-10/29/2015
44

Stephen J. Mathis

David L. Gore

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RODRIGUEZ, CANDIDO
Employee/Petitioner

Case# **12WC004017**

15IWCC0945

YOSHI'S CAFÉ
Employer/Respondent

On 2/17/2015, 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
TIMOTHY F WINSLOW
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

2461 NYHAN BAMBRICK KINZIE & LOWRY
AMY E BILTON
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

15IWCC0945

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Candido Rodriguez
Employee/Petitioner

v.

Yoshi's Cafe
Employer/Respondent

Case # **12 WC 04017**

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **March 10, 2014**. 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. [ ] 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. [ ] 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. [x] 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. [x] 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 _____

15IWCC0945

FINDINGS

On **August 14, 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 not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was not*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$15,600.00**; the average weekly wage was **$300.00.**

On the date of accident, Petitioner was **29** years of age, ***single*** with **0** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**. The stipulation of the Parties is that no TTD benefits are due as a result of this accident.

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

ORDER

Claim for compensation denied. Petitioner failed to prove that he sustained accidental injuries, arising out of and in the course of his employment by Respondent on August 14, 2011.

Respondent shall pay Petitioner all compensation that has accrued from 8/14/2011 through 3/10/2014, and shall pay the remainder of the award, if any, in weekly benefits.

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

February 13, 2015
Date

ICArbDec p. 2

FEB 17 2015

FINDINGS OF FACT

Petitioner worked for Respondent as a busboy for 11 years. His job duties required him to pick up plates and help food runners with trays of food. He would always use his left (dominant) arm. He thought that the trays weighed 25 to 30 pounds. He worked 40 hours per week, 8 to 9 hours per day. He had to walk a long way with the trays.

Petitioner testified that he had pain in his left arm over time. On August 14, 2011, Petitioner had a discussion, where he reported pain to Respondent's owner, Fernando and Miguel. Fernando and Miguel gave Petitioner Tylenol over a period of time. Petitioner said that he got Tylenol from Fernando and Miguel about 10 times.

Petitioner's employment with Respondent terminated on January 15, 2012. Petitioner said that he had to close all the time, so he quit.

The first medical treatment was at The Pain Center of Illinois, with Dr. Bayran on March 7, 2012. The history to Dr. Bayran was of left shoulder pain that started on August 14, 2011 after an injury at work. "The patient was lifting dishes when he injured himself." The pain started at night after he went home. "He reported to the cook in charge; however he was not sent to see a physician." Prior shoulder pain was denied. Three days later, he stated having pain and numbness in his right foot. Dr Bayran diagnosed Petitioner with left shoulder and left arm pain, possible cervical radiculopathy and numbness and pain in the right foot, most likely secondary to lumbar radiculopathy. Physical therapy and medication was prescribed. Petitioner had follow-ups with Dr. Bayran on April 4, 2012 and April 18, 2012. Dr. Bayran ordered a cervical MRI which was said to show degenerative disc disease. At the last visit, Dr. Bayran recommended referral to an orthopedic specialist for evaluation of the left shoulder. (PetEx. 2)

The therapy that Dr. Bayran ordered took place at Quest Physical Therapy, Ltd. The history given to the therapist was of an "injury at work on 8/13/2011; works at restaurant and carry/lift plates and cleans." Therapy was from March 14, 2012 through April 18, 2012. (PetEx. 3)

Petitioner had no further medical care.

The Application herein was filed on February 2, 2012, claiming injury to "left hand, left arm, both feet and body" due to an injury at work on August 14, 2011. (PetEx. 1)

There was no claim for TTD made at trial.

Petitioner testified that he has pain at night. He can't lift anything heavy. He can't do what he did before. He has problems lifting above his shoulder.

On cross-examination, Petitioner said that he was busing tables, lifting dishes and trays on August 14, 2011. He had pain in his shoulder at work on that day. He did not remember exactly when his shoulder started to hurt on that day. He did not remember telling Yoshi about the injury on that day. He did recall buttering corn for Halsted Market Days. Petitioner worked the full day on August 14, 2011. He did not leave early. He worked all day the next few days. He continued to work his regular job until he quit.

Petitioner said that he had shoulder pain prior to August 14, 2011. He did not give Dr. Bayran a history of no prior shoulder pain. He did not recall giving a history of a specific injury.

Petitioner saw Dr Bush-Joseph for an IME and Dr. Edward Goldberg for an IME. (PetEx. 4, ResEx. 4) Petitioner did not recall giving Dr. Bush-Joseph a history of an injury on January 15, 2012. He did not recall giving Dr. Goldberg a history of an injury in December of 2011.

Miguel Carchi testified for Respondent. He is in charge of the kitchen. He knows Petitioner. He remembers August 14, 2011. They were working a street festival outside.. They were using Styrofoam dishes. Trays and dishes were not required. Petitioner was buttering corn. Mr. Carchi worked beside Petitioner all day. There was no injury and no complaints by petitioner. Nothing unusual occurred. Petitioner did not report any injury. Petitioner only lifted corn, butter and Styrofoam plates. From August 14, 2011 through January 15, 2012, Petitioner did not complain of pain; he exhibited no pain mannerisms; he did not tell the witness of any injury. Mr. Carchi did not give petitioner any Tylenol. Carchi assigned Petitioner to butter corn both on the accident date and the day before.

Yoshiro Katsumura testified for Respondent. He is the owner of Respondent. He is the chef and president. He recalled that August 14, 2011 was the Halsted Market Day Street Fair. Respondent did not use dishes or trays on August 14, 2011. Manuel Carchi brought food from the kitchen to the tent, not Petitioner. He saw Petitioner throughout the day. Petitioner did not tell Katsumura of any injury. He would have taken Petitioner to the hospital if an injury had been reported. Petitioner never reported any injury. He never complained of his shoulder and never appeared injured. The Application for Adjustment of Claim was the first notice of accident that Respondent received.

Dennis Friedland testified for Respondent. He knows Petitioner. Petitioner worked his usual job from August of 2011 through January 15, 2012. Friedland did not see Petitioner have any problems lifting during this time. Petitioner did not make any complaints of pain during this time. Petitioner quit after an argument about spraying insecticide on January 15, 2012.

Fernando Estrada testified for Respondent. Estrada works as a bartender for Respondent. He was present when Petitioner quit on January 15, 2012 after an argument about roach spray. Estrada worked with Petitioner on August 14, 2011. Petitioner did not report any injury to Estrada on that day, or any other day. Estrada saw Petitioner working from August of 2011 through January of 2012. Petitioner did not look like he was hurt during this time. Estrada did not give Petitioner any Tylenol.

Nobuko Katsumura testified for Respondent. She is the corporate secretary and owner of Respondent. She saw petitioner five days a week from August 14, 2011 to January 15, 2012. She was present when Petitioner quit on January 15, 2012. Petitioner never reported any injury or pain to Ms. Katsumura. She never noticed Petitioner being in pain during this time. The first notice of injury that she had was in February of 2012.

CONCLUSIONS OF LAW

The Arbitrator adopts the Findings of Fact set forth above in support of the Conclusions of Law set forth below.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner failed to prove that he sustained accidental injuries, which arose out of and in the course of his employment by Respondent on August 14, 2011.

Petitioner's testimony was not credible. On direct examination, Petitioner said that he reported arm pain to the owner Yoshi, Fernando and Miguel on August 14, 2011. Then he said that he did not remember telling Yoshi on August 14, 2011. He did not remember when the pain began, but Petitioner had pain at work on August 14, 2011. Petitioner did not testify that the injury occurred during Halsted Market Days on direct examination, but recalled that he was working at Market Days on cross-examination.

The medical histories that Petitioner gave are not consistent and not consistent with his testimony at trial. The history given to Dr. Bayran was of a specific injury on August 14, 2011 that occurred when Petitioner was lifting dishes and the pain started at night after work. The history to the therapist was of an injury occurring on August 13, 2011, without a specific incident being described. The history to Dr. Goldberg was of an injury to the left shoulder in December of 2011, carrying trays. The history to Dr. Bush-Joseph was of an injury to the left shoulder (lifting heavy plates throughout the day and having pain at the end of his shift) on January 15, 2012.

The testimony of all of Respondent's witnesses is found to be credible. Petitioner did not ever report any injury or pain to Respondent while he worked for Respondent. If an injury had been reported, the witnesses would have remembered it. Mr. Katsumura would have taken Petitioner to the hospital if an injury had been reported. The testimony of Respondent's witnesses establishes that Petitioner was buttering corn on August 14, 2011, not carrying dishes and trays. The Arbitrator believes the testimony of Respondent's witnesses and finds that no injury occurred on August 14, 2011.

If Petitioner had suffered an injury at work on August 14, 2011, he would have sought medical care before March 7, 2012 (some 7 months later). This is too long a period to go without treatment if an injury truly occurred. Petitioner worked his regular duties (without complaints or observed pain manifestations, per Respondent's witnesses) until he quit, 5 months after the date of the alleged accident. Petitioner's story is not believable.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT AND WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY AND WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES AND WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

As the Arbitrator has found that Petitioner failed to prove that he sustained accidental injuries which arose out of and in the course of his employment by Respondent on August 14, 2011, The Arbitrator needs not decide the above issues.

In the Order portion of this decision, the Arbitrator found that timely notice was not given and that there was no causal connection between the alleged accidental injuries and Petitioner's current condition of ill-being. These findings are supported by the findings regarding Issue C (Accident) set forth above.

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

William Brewer,

Petitioner,

vs. NO. 12WC002064

Metro Intermodal,

15IWCC0946

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review under §19(b) having been filed by the parties herein and proper notice given, the Commission, after considering the issues of medical expenses, causal connection, prospective medical care, penalties and fees, and temporary disability, 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 23, 2015 is hereby affirmed and adopted.

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

15IWCC0946

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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 $500.00. 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: DEC 1 8 2015
SJM/sj
o-11/19/2015
44

Stephen J. Mathis

Mario Basurto

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b)/8(a) ARBITRATOR DECISION

BREWER, WILLIAM
Employee/Petitioner

Case# **12WC002064**

15IWCC0946

METRO INTERMODAL
Employer/Respondent

On 3/23/2015, 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 0.14% 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:

1067 ANKIN LAW OFFICE LLC
DEREK S LAX
162 W GRAND AVE SUITE 1810
CHICAGO, IL 60654

0445 RODDY LAW LTD
MICHAEL POWALISZ
303 W MADISON ST SUITE 1900
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)/8(a)

WILLIAM BREWER
Employee/Petitioner

v.

METRO INTERMODAL
Employer/Respondent

Case # **12 WC 2064**

15IWCC0946

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **May 5, 2014**. 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. ☒ 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 _____

FINDINGS

On the date of accident, **11/15/11**, 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 with respect to his left shoulder ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$54,808.52;** the average weekly wage was **$1,054.01.**

On the date of accident, Petitioner was **45** years of age, ***married*** with **3** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$48,383.84** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$48,383.84.**

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

ORDER

Petitioner's current condition of ill-being with respect to his left shoulder is not causally related to the injury. Accordingly, the claim for medical expenses incurred after April 26, 2013 (except for certain therapy bills as set forth below) and for TTD benefits after June 1, 2013 is denied.

Respondent has paid the TTD that was owed for the time period of December 30, 2011 through June 1, 2013.

Respondent shall pay reasonable and necessary medical expenses of $372.48, as set forth below.

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

March 23, 2015
Date

MAR 2 3 2015

FINDINGS OF FACT

Petitioner, William Brewer, was employed by Respondent, Metro Intermodel, on November 15, 2011, when he suffered a work related injury. The Parties stipulated to several issues including Accident, Notice and Average Weekly Wage. The Parties agreed that Respondent had paid Temporary Total Disability benefits from December 30, 2011 to June 1, 2013 ($48,383.84), representing 74 1/7th weeks. The issues in dispute were: Causal Connection, Medical Bills, Temporary Total Disability, Prospective Medical Care and whether Penalties and Fees should be imposed upon Respondent. The primary dispute involves Petitioner's left shoulder condition.

Petitioner was employed by Respondent as a mechanic. His job duties were to maintain trucks for Department of Transportation tests, do motor work and electrical work on everything from semis to pick-up trucks. He worked for Respondent for six years. Petitioner was required to do lifting, climbing, bending and squatting and would use impact wrenches weighing 20-25 pounds. He would remove clutches that weigh approximately 150 pounds and flywheels weighing 50 pounds.

On November 15, 2011, Petitioner was working on a service truck trying to fix a fuel leak. Petitioner raised the hood and reached into the engine compartment when the hood spring flew off and the hood came crashing down. Petitioner testified that the hood slightly touched his ear and pinned his entire left arm under the hood. Petitioner testified that he was pinned under the hood up to his shoulder. Petitioner used his free right arm to raise the 50 pound hood and extricate his left arm. Petitioner admitted that he did not yank his arm out from under the hood. Petitioner said that the hood did not cause any external damage to his arm. His work jacket was not torn, there was no blood and the skin on his arm was not cut open.

Petitioner immediately notified his supervisor of the incident.

Petitioner denied prior left arm Workers' compensation injuries and denied prior injuries to his left elbow and to his left shoulder. Petitioner was the only truck mechanic for Respondent, so he did not seek immediate medical care.

Petitioner was sent to Ingalls Occupational Health by Respondent on November 21, 2011. He was initially diagnosed with a contusion to the left forearm/elbow. The history that Petitioner provided Ingalls Occupational Health on November 21, 2011 was that he was taking the hood of a truck off and the spring blew off and the hood fell down on his left arm. Petitioner's primary problem was his left proximal forearm and elbow, although the nurse charted that the elbow pain radiated up to the shoulder and down to the wrist. The PA's physical exam consisted of review of the cervical spine, left elbow/forearm and left wrist. No bruising or swelling was noted. Only the left elbow was x-rayed. There was no history of a left shoulder injury and no physical examination of the left shoulder. (PetEx. 7)

Petitioner was seen by Dr. Akbar at Ingalls on December 8, 2011 for a left elbow/forearm injury with no discussion or examination of a left shoulder injury. On December 22, 2011, the nurse noted complaints of radiating pain up to the shoulder and down to the wrist. Treatment was focused on the left elbow, with a recommendation for an ortho referral for a steroid injection. Petitioner saw Dr. Akbar for a final time on December 29, 2011 and again Dr. Akbar examined the forearm/elbow only. Dr. Akbar recommended light duty restrictions of no lifting greater than 15 pounds. (PetEx. 7)

Respondent could not accommodate the restrictions and began paying temporary total disability benefits on December 30, 2011.

Petitioner then began treatment with Dr. Ram Aribindi at Southland Orthopaedics on January 6, 2012. Petitioner could not recall whether he was referred by Dr. Akbar or if a friend referred him. Dr. Aribindi testified that Petitioner was referred to him by Ingalls.

Petitioner testified that he provided "a similar history of accident and complaints of pain" to Dr. Aribindi. The chart from January 6th states that the hood fell onto Petitioner's left forearm/elbow and Petitioner had left elbow and left shoulder complaints. (PetEx. 4) Dr. Aribindi recommended physical therapy which took place at Flexeon Rehabilitation. (PetEx. 8)

Petitioner continued to follow up with Dr. Aribindi before eventually undergoing a left elbow lateral epicondylar release on December 17, 2012. (PetEx. 4) Petitioner underwent a three month course of physical therapy with Flexeon Rehabilitation (PetExs. 4 and 8) Dr. Aribindi last treated Petitioner's left elbow on April 26, 2013, after which time the focus of the treatment was to the left shoulder, beginning with the May 24, 2013 treatment. Dr. Aribindi testified that the Petitioner had reached maximum medical improvement for his left elbow after having a successful outcome from surgery and that he could return to work without restrictions regarding the elbow. (PetEx. 9, p 27).

Petitioner's left shoulder condition did not improve and, around June 14, 2013, Dr. Aribindi recommended shoulder surgery. Dr. Aribindi testified that Petitioner underwent a steroid injection, without improvement, an MR Arthrogram which was unremarkable and his physical examination was consistent with labral pathology, thus the need for surgery. (PetEx. 9)

Petitioner last saw Dr. Aribindi on January 31, 2014. Dr. Aribindi continues to recommend left shoulder surgery and Petitioner wishes to proceed with surgery.

During his testimony, Dr. Aribindi stated that the surgery would be for diagnostic purposes and, theoretically, it would be possible to not find anything wrong with the shoulder and there would be nothing to repair in the shoulder (PetEx. 9, p 29). Dr. Aribindi confirmed that the history that he received from Petitioner was that the hood fell on his arm and that there was no direct trauma to the petitioner's left shoulder. (PetEx. 9, p 33) Dr. Aribindi stated that he was unaware of any shoulder complaints of pain between November 15, 2011 and when he first saw Petitioner on

January 6, 2012. Dr. Aribindi did not review any medical records from any other providers (PetEx. 9 p 32). Dr. Aribindi would currently restrict Petitioner from any overhead work, restrict lifting to less than 20 pounds and stated that Petitioner should not climb any ladders (due to the shoulder condition). (PetEx. 9 p 39-40)

Dr. Aribindi testified that he is board certified in orthopedic surgery dealing in injuries to the hips, knees and shoulders. (PetEx. 9 p 5) All of his research papers have been regarding hip injuries and not regarding shoulder injuries. (PetEx. 9 p 31) Dr. Aribindi received an award from a hip society in 1994. Dr. Aribindi is not a member of any shoulder societies (PetEx. 9 p 31)

The Respondent had Petitioner examined by Dr. Michael Cohen. Dr. Michael Cohen is a board certified orthopedic surgeon dealing in hand an upper extremity issues only. (ResEx. 1 p 5) Dr. Cohen first examined the Petitioner on April 17, 2012. Dr. Cohen testified that prior to an exam, he reviews medical records so that he can review the records with the examinee and allow for editorializing or corrections. Dr. Cohen confirmed that Petitioner had a chance to review his medical records summary. Petitioner informed Dr. Cohen that the hood fell on his entire arm, but Dr. Cohen noted that this history did not conform with the medical records, which were clear that the hood fell on the forearm/elbow. (ResEx. 1 p 9; ResEx. 2) Petitioner denied that he discussed the history contained in the records with Dr. Cohen. After examination, Dr. Cohen opined that the Petitioner's left elbow condition was related to the accident and that he would require an injection and physical therapy while on light duty restrictions. Dr. Cohen could not provide a diagnosis for the left shoulder, but opined that any symptoms were not related to the accident of November 15, 2011 as Petitioner did not complain of shoulder pain until two months after the accident. (ResEx. 1 pp 12-13; ResEx. 2) Further, Dr. Cohen opined that there was no mechanism of injury to explain shoulder injuries as the hood fell on Petitioner's elbow, not his shoulder and the Petitioner did not yank his arm out from under the hood. There were no signs of force, especially abrasions, lacerations, etc.

Dr. Cohen noted that if the hood did fall on Petitioner's arm and cause a labral tear, as alleged, Petitioner would have had immediate complaints of pain in his left shoulder and they are notably absent from the contemporaneous medical records. (ResEx. 1 p 14; ResEx. 2)

Dr. Cohen examined Petitioner again on October 4, 2012, after reviewing the MR Arthrogram. (ResEx. 3) Dr. Cohen opined that the MR Arthrogram did not reveal a labrum tear and it was a normal diagnostic film. (ResEx. 1 pp 16-17; ResEx. 3) Dr. Cohen noted that Petitioner had an unremarkable shoulder examination. Dr. Cohen opined that surgery is not warranted in this case, as an exploratory shoulder surgery is unlikely to produce positive results in resolving Petitioner's shoulder complaints. Without a diagnosis, a surgeon will not know what is causing the pain in the shoulder and will not know what to repair during surgery. (ResEx. 1 p 20; ResEx. 3) Dr. Cohen opined that shoulder surgery is not warranted because Petitioner's physical examination was benign, the MR Arthrogram was benign and Petitioner had no response to the cortisone injection. (ResEx. 1 p 20; ResEx. 3)

Dr. Cohen authored another report on May 1, 2013, after the elbow surgery. Dr. Cohen opined that Petitioner would be at maximum medical improvement regarding the left elbow around June 1, 2013 (after four to six weeks therapy). (ResEx. 4)

Dr. Cohen authored a final report on January 20, 2014, after reviewing a narrative report from Dr. Aribindi. (ResEx. 1 p 26; ResEx. 5) Dr. Cohen stated that there is nothing in Dr. Aribindi's report to support a change in his causal connection opinion or regarding the need for shoulder surgery (ResEx. 1 pp 30-31).

Petitioner also had treatment by Dr. Blair Rhode on June 10, 2013 and June 17, 2013. Dr. Rhode charted a history of a traction type injury to Petitioner's left shoulder and cervical spine as a result of a hood falling on him at work in October of 2011. A cervical MRI was performed on June 12, 2013. The MRI revealed degenerative findings, which Dr. Rhode thought showed a "left C6-7

disc". Petitioner was given steroid injections to the left shoulder and Dr. Rhode recommended a rotator cuff repair. Petitioner was actually seen by Dr. Rhode on June 17, 2013, the same day that he was working on the roof for several hours. (PetEx. 6)

Petitioner gave a recorded statement to Respondent's insurance company. The exact mechanism of the injury and all of Petitioner's left arm complaints are not sufficiently detailed. (ResEx. 8)

Respondent tendered video surveillance discs and reports into evidence. Included are a Surveillance Report (ResEx. 6), a compilation of surveillance video created by Respondent's attorney (Res.Ex. 7) and a group of full-length, unedited video surveillance discs taken of the Petitioner on June 5, 2013, June 6, 2013, June 11, 2013 and June 17, 2013. (ResEx. 9) Petitioner admitted that he was the subject of the videos. The video surveillance on June 17, 2013 shows Petitioner using his left arm while removing roofing materials and installing shingles. He does appear to be favoring the arm. (ResEx. 9) Petitioner must have climbed a ladder in violation of Dr. Arbindi's recommendations to get on the roof. Petitioner is obviously working on June 17, 2013.

Petitioner also testified that in the summer of 2013 he would ride his Harley Davidson Touring Street Glide motorcycle. He claimed that this did not put much stress on his arm, as the 700-800 pound motorcycle is well balanced.

Petitioner testified that between December 2012 and June 2013, before his temporary total disability benefits were suspended, the benefits would sometimes be delayed from anywhere from one week to one month, taking a financial toll on him and his family. Petitioner did not submit evidence of what dates of benefits were delayed, how long benefits were delayed or how much money was delayed. At Arbitration, Petitioner confirmed that he had been paid in full for temporary total disability benefits from December 30, 2011 to June 1, 2013.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

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

The Arbitrator finds that Petitioner's left elbow condition (status post left lateral epicondylar release) is causally related to the injury. The Arbitrator finds that Petitioner's left shoulder condition (left shoulder pain, possibly related to a labral tear not shown on diagnostic studies with inconsistent physical findings) to be not causally related to the injury.

The Arbitrator finds the opinions of Dr. Cohen to be credible and most persuasive on the issue of causal connection. Clear shoulder complaints are not documented in the medical records until almost two months after the accident. If the trauma of a direct blow to the shoulder from the truck hood or Petitioner's efforts to get out from under the hood would have caused a labral tear (a condition that has not been confirmed by diagnostic studies), there would have been shoulder complaints and immediate medical care would have been necessary. The initial medical care did not occur until six days after the accident and vague complaints of pain radiating from the elbow to the shoulder and wrist were noted only by the nurse. No shoulder x-ray was ordered and no examination of the shoulder was charted in the records of Ingalls Occupational Health. Dr. Cohen explained that pain radiating up from the elbow to the shoulder is not related to shoulder pathology.

Dr. Aribindi's causal connection opinion is not persuasive in this case. Dr. Arbindi based his causal connection opinion on Petitioner's statement that he had shoulder complaints since the accident. As shown above, this is not correct.

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?

The Arbitrator has concluded that Petitioner's current condition regarding his left shoulder (possible labral tear) is not causally related to the injury. The Arbitrator found that Petitioner's left elbow condition (status post lateral epicondylar release) is related to the injury. Petitioner's left elbow treatment ended on April 26, 2013 (with the exception of therapy). Therefore, Petitioner is entitled to medical expenses related to the left elbow condition. Respondent is entitled to a credit for all medical benefits already paid. Petitioner is not entitled to medical benefits from and after May 24, 2013 (with the exception of therapy for four to six weeks after the May 1, 2013 Dr. Cohen report), when Petitioner started treatment exclusively for the left shoulder.

Petitioner's Exhibit 3 was the bills exhibit.

The outstanding bills from Ingalls total $372.48 and they are awarded.

The bills from Dr. Aribindi are said to total $1,618.00 ($1,681.00?), but the claimed amount is not explained and some of the charges are for services rendered after April 26, 2013. Medical bills incurred after April 26, 2013 are not causally related and are denied. It is suggested that the Parties reach an agreement on what unpaid bills, if any, from Dr. Arbindi are related to elbow treatment before May 24, 2013 and these bills should be paid by Respondent.

The bills from Dr. Rhode are denied.

The bill from Flexeon has been paid.

All bills awarded are subject to §§'s 8(a) and 8.2 of the Act. Respondent is entitled to a credit for all bills paid.

K. Is Petitioner entitled to prospective medical care?

As the Arbitrator has found that there is no causal connection between Petitioner's left shoulder condition and the injury, no award for prospective medical expenses is made. Both Dr. Cohen and Dr. Aribindi testified that Petitioner was at MMI for his left elbow injury.

L. What temporary total disability benefits are in dispute?

Petitioner was placed on light duty restrictions that Respondent could not accommodate starting December 30, 2011. Respondent began paying temporary total disability benefits on December 30, 2011 and continued to pay until June 1, 2013, a period of 74 1/7th weeks. TTD benefits are awarded for this time period based upon the evidence adduced and including Dr. Cohen's opinion that Petitioner would be at MMI about June 1, 2013.

No further TTD benefits are awarded based upon the Arbitrator's finding regarding causal connection regarding Petitioner's left shoulder condition.

M. Should penalties or fees be imposed upon Respondent?

The Arbitrator denies Petitioner's claim for Penalties and Fees.

Respondent correctly relied upon Dr. Cohen's opinions in disputing TTD after June 1, 2013. There has been no showing of unreasonable or vexatious conduct which would support an award pursuant to §§'s 19 (k) or 16.

Petitioner's testimony that some TTD payments were late does not support an award pursuant to § 19 (l).

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Albino Herrera,

Petitioner,

vs.

NO: 12 WC 31509

15IWCC0947

Sony DADC,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability and medical both incurred and prospective 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 14, 2014 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

15IWCC0947

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 $10,000.00. 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: DEC 1 8 2015

Charles J. DeVriendt

Joshua D. Luskin

Ruth W. White

HSF
O: 10/27/15
049

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR
& 8(a)

HERRERA, ALBINO
Employee/Petitioner

Case# **12WC031509**
12WC031508

SONY DADC
Employer/Respondent

15IWCC0947

On 10/14/2014, 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 0.04% 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:

0059 BAUM RUFFOLO & MARZAL LTD
JOEL HERRERA
33 N LASALLE ST SUITE 1710
CHICAGO, IL 60602

1296 CHILTON YAMBERT PORTER LLP
DANIEL T CROWE
303 W MADISON ST SUITE 2300
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF **KANE**)

☐ 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) & 8(a)

Albino Herrera
Employee/Petitioner

v.

Sony DADC
Employer/Respondent

15IWCC0947

Case # **12** WC **31509**

Consolidated cases: **12** WC **31508**

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 **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Geneva**, on **August 20, 2014**. 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. ☒ 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 **Prospective TKA surgery as prescribed by Dr. Chudik**

FINDINGS

On the date of accident, **July 18, 2012**, 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 as explained *infra*.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident as explained *infra*.

In the year preceding the injury, Petitioner earned $**39,856.96**; the average weekly wage was $**766.48**.

On the date of accident, Petitioner was **63** years of age, ***married*** with **no** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services as explained *infra*.

Respondent shall be given a credit of $**5,620.89** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**5,620.89**.

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

ORDER

As explained in the Arbitration Decision Addendum, the Arbitrator finds that Petitioner sustained a compensable accident on July 18, 2012 and that his left knee condition is causally related to the injury sustained at work.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $510.99/week for 17 & 6/7th weeks, commencing December 12, 2012 through March 5, 2013 and commencing March 12, 2013 through April 21, 2013, as provided in Section 8(b) of the Act. Respondent shall pay Petitioner the temporary total disability benefits that have accrued from July 18, 2012 through August 20, 2014, and shall pay the remainder of the award, if any, in weekly payments. Respondent shall be given a credit of $5,620.89 for temporary total disability benefits that have been paid.

Medical Benefits

As explained in the Arbitration Decision Addendum, Respondent shall pay reasonable and necessary medical bills for treatment to the left knee beginning July 18, 2012 as provided in Sections 8(a) and 8.2 of the Act.

Prospective Medical Treatment

As explained in the Arbitration Decision Addendum, the Arbitrator awards the prospective total left knee replacement surgery and treatment recommended by Dr. Chudik pursuant to Section 8(a) of 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

October 10, 2014
Date

ICArbDec19(b) p.3

OCT 14 2014

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*
19(b) & 8(a)

Albino Herrera
Employee/Petitioner

v.

Sony DADC
Employer/Respondent

Case # **12** WC **31509**

Consolidated cases: **12** WC **31508**

FINDINGS OF FACT

A consolidated hearing was held in both of Petitioner's above-captioned cases. Arbitrator's Exhibit[1] ("AX") 2; AX1. The issues in dispute in this case include accident, causal connection, Respondent's liability for certain unpaid medical bills, Petitioner's entitlement to temporary total disability benefits from December 12, 2012 through March 5, 2013 and March 12, 2013 through April 21, 2013, as well as Petitioner's entitlement to prospective medical treatment in the form of a total knee replacement recommended by Dr. Chudik. AX2. The parties have stipulated to all other issues. *Id.*

Background

Petitioner testified that he was hired by Respondent in 2006 as an inductor at a sorting machine, and that he remained so employed in 2011 and 2012. His duties included working at a stacker in different areas as assigned. He currently works in the scrap department.

April 18, 2011

Petitioner testified that he was working on April 18, 2011 in area "A" when a machine jammed. He explained that he was to un-jam movies in the machines when an alarm sounded. To do this, he would climb up to the jammed part, remove the movie, and turn off the alarm.

Petitioner testified that he was injured on this date when he stepped back down from un-jamming a movie and fixing the alarm. He fell to the floor from the platform, injured his left knee, and scratched his ribs. Prior to this date, Petitioner testified that he had not injured his left knee or received medical treatment for any left knee complaints.

Medical Treatment

Petitioner was referred to Physicians' Immediate Care where he received treatment from April 18, 2011 through April 27, 2011. PX1. A certified physician's assistant noted some effusion and swelling especially just below the patella and tenderness to palpation at the medial and lateral joint lines. PX1 at 4-5. Petitioner was diagnosed with a sprain/strain of the left knee, as well as abrasions and contusions of the left chest wall and left knee. *Id.*

[1] The Arbitrator similarly references the parties' exhibits herein. Petitioner's exhibits are denominated "PX" and Respondent's exhibits are denominated "RX" with a corresponding number as identified by each party. Deposition Exhibits are further denominated "Dep. Exh." with a corresponding number as identified in the transcript.

On April 20, 2011, Dr. Hirsh examined Petitioner. PX1 at 25. On physical examination, Petitioner had no swelling in the left knee and a normal knee. *Id.* He maintained Petitioner's diagnoses of a sprain/strain of the left knee, as well as abrasions and contusions of the left chest wall and left knee. *Id.* On April 27, 2011, Petitioner was returned to work full duty work and released from treatment. PX1 at 34.

Petitioner testified that he was not prescribed any physical therapy at this time. He also testified that he was off work and paid benefits from April 19, 2011 through April 26, 2011. He returned to work on April 27, 2011 and continued to work regular duty until July 18, 2012 as an inductor at the sorting machine. Petitioner testified that he did not seek any treatment with any doctor until July 18, 2012.

July 18, 2012

On July 18, 2012, Petitioner testified that he sustained another accident on another machine, "sorter number 1" sometime between 9:30 a.m. and 10:00 a.m. He explained that this machine also has a platform. When an alarm goes off he is required to go and turn off the alarm. Petitioner estimated that the height of this machine is the same as the other machine on which he worked.

Petitioner testified that he climbed the machine to turn off an alarm and while descending and placing his left leg down, it bent all the way back and he fell backwards. He testified that he felt that something broke. His knee swelled up enormously.

Petitioner denied injuring his right knee during this accident. He reported the accident and was referred to Physicians' Immediate Care.

Medical Treatment

The Physicians' Immediate Care records of July 18, 2012 reflect Petitioner's report that he "was on a machine trying to fix an alarm, about 3 ft high. No h/o knee injury in past. Was getting off & knee bent/twisted & he fell backwards on his back. Has pain down to ankle from knee [&] also in [left] back. Back pain mild. Pain in knee when walking. Packs DVD's." PX1 at 42-43, 45, 56, 58-59, 119-120. On examination, Petitioner had mild tenderness to palpation of the lumbar spine, ankle swelling over the lateral melleolus and on medial aspect, knee swelling medially and posteriorly, tenderness to palpation of the anterior knee, decreased range of motion of the knee with inability to flex secondary to pain, and decreased ankle range of motion with mild secondary pain. *Id.* The certified physician's assistant diagnosed Petitioner with a left ankle sprain/strain, lumbar strain, left knee effusion, and left knee sprain. *Id.* Petitioner was given a knee immobilizer, laced ankle support, Naproxen and Tramadol, and a left knee MRI was ordered. *Id.* Petitioner was also restricted to sedentary work with no kneeling, squatting, jumping, running or use of ladders until he returned for a follow up. *Id.*

Petitioner testified that the recommended MRI was not immediately performed. The medical records reflect that the MRI was still pending as of Petitioner's visits on July 21, 2012, July 27, 2012, August 3, 2012, and August 10, 2012 and PX1 60-61, 68, 76, 84.

Petitioner underwent the MRI on August 17, 2012 at Future Diagnostic Group. PX1 at 101-102. It revealed medial meniscus degeneration, medial and lateral compartment degenerative changes, a complex tear of the lateral meniscus with loss of substance of the anterior horn and body, an ACL tear, and Grade IV chondromalacia of the patella. *Id.*

After the MRI, Petitioner returned to Physicians' Immediate Care on August 22, 2012 at which time he was diagnosed with a left knee MCL sprain, ACL tear, and meniscal tear. PX1 at 93, 103. He was referred to Dr. John Lee. *Id.*

Petitioner saw Dr. Lee on August 30, 2012. PX2 at 13-16. Petitioner reported sharp, throbbing and piercing pain in his left knee after an injury at work on July 18, 2012 when "he was fixing an alarm and fell of[f] counter[.]" *Id.* He also noted the prior April 2011 accident. *Id.* Dr. Lee diagnosed Petitioner with left knee lateral joint line pain due to degenerative joint disease. *Id.* He noted decreased range of motion, mild swelling, and administered an injection. *Id.* Dr. Lee also returned Petitioner back to work full duty. *Id.*

Petitioner saw Dr. Lee a second time on September 13, 2012. PX2 at 7-10. He administered a second injection and noted Petitioner's report that the last injection did not help him. *Id.* Dr. Lee noted that Petitioner's left knee pain was due to advanced degenerative joint disease at the lateral joint and patellafemoral joint. *Id.* He noted that there was nothing further to offer Petitioner other than a total knee replacement. *Id.*

Petitioner testified at trial that the injections from Dr. Lee did not help.

Petitioner then chose his own doctor and saw Dr. Steven Chudik at Hinsdale Orthopaedics on September 17, 2012. PX3 at 41-45. Dr. Chudik noted that Petitioner sustained a previous injury to the left knee in May[2] 2011. *Id.* He also noted Petitioner's report that on July 18, 2012 he was "working on fixing an alarm when he tripped over something and fell back. He has had pain in his knee since." *Id.*

On physical examination, Dr. Chudik noted that Petitioner had tenderness to palpation, swelling, joint effusion and a valgus alignment in the left knee with significant arthritis. *Id.* Dr. Chudik diagnosed Petitioner with significant arthritis in the knee behind the knee cap and lateral compartment narrowing. *Id.* He indicated that after an "injury event the arthritis can get a lot worse causing pain and muscle atrophy." He prescribed physical therapy, a knee brace, and indicated that Petitioner would likely require a total knee replacement. *Id.* Dr. Chudik also placed Petitioner off work. *Id.*

On September 21, 2012, Petitioner returned to Dr. Chudik with his MRI. PX3 at 37-40. Dr. Chudik continued to recommend physical therapy, wearing the unloader brace, and administered an injection for pain. *Id.* He released Petitioner to sedentary work with no bending, stooping, kneeling or squatting. *Id.*

On October 31, 2012, Dr. Chudik prescribed a left knee Synvisc injection and kept Petitioner restricted to sedentary work. PX3 at 33-36. On December 12, 2012, Dr. Chudik noted that the recommended Synvisc injection had not yet been approved. PX3 at 27-32. At this time, Petitioner reported a very painful left knee and putting more weight on his right knee causing right knee pain. *Id.* He administered the Synvisc injection, indicated that Petitioner would require surgery if his condition did not improve, and placed Petitioner off work. *Id.*

Petitioner testified that in October and December of 2012 he was also complaining of right knee pain. He testified that the pain to his right knee started while carrying most of his body weight on that side however Dr. Chudik did not prescribe any treatment to the right knee.

[2] Petitioner's undisputed prior accident to the left knee was in April 2011. Thus, the Arbitrator notes what appears to be a scrivener's error in Dr. Chudik's record.

On January 16, 2013, Petitioner reported that his left knee condition improved for one week after the Synvisc injection. PX3 at 21-26. Dr. Chudik noted that Petitioner's condition had not improved and he recommended a left total knee replacement. *Id.* He kept Petitioner off work. *Id.*

Section 12 Examination – Dr. Bach

On February 20, 2013, Petitioner underwent an independent medical evaluation with Dr. Bernard Bach at Respondent's request. RX1 (R's Dep. Exh. 2). Petitioner testified that this visit took approximately 30 minutes.

At that time, Petitioner reported that he sustained a left knee injury while descending a stair on July 18, 2012 with an onset of pain on the outside part of his knee and his knee buckled and he fell. *Id.* Dr. Bach reviewed medical records from 2012 and the MRI of August 17, 2012. He opined that the findings therein were more likely than not related to his chronic arthritis. *Id.* Dr. Bach performed a physical examination and diagnosed Petitioner with lateral compartment arthritis in the left knee with valgus malalignment secondary to that arthritis as well as a chronic ACL injury. *Id.*

Ultimately, Dr. Bach opined that Petitioner's left knee condition was neither caused nor aggravated by either incident at work. *Id.* Regardless of causation, he indicated that Petitioner needed a total knee replacement and that he should not return to work full duty because he was an "'accident' waiting to happen." *Id.*

Continued Medical Treatment

Petitioner returned on March 11, 2013 reporting continued left knee pain and that "he still has not heard anything from WC." PX3 at 17-20. Dr. Chudik indicated that Petitioner's left knee arthritis was aggravated by consecutive work-related injuries and that, due to failed conservative treatment, he recommended a total knee replacement. *Id.* He kept Petitioner off work. *Id.*

Dr. Chudik reviewed Dr. Bach's independent medical evaluation report at Petitioner's visit on April 17, 2013. PX3 at 13-16. He disagreed with Dr. Bach's opinions stated that Petitioner's accidents at work clearly aggravated his left knee condition. *Id.* He recommended a lateral unloader brace, cortisone knee injection, and total knee replacement surgery. *Id.* Dr. Chudik returned Petitioner to sedentary work only. *Id.*

Dr. Bach – Deposition Testimony

Respondent called Dr. Bach as a witness and he gave testimony at an evidence deposition on January 23, 2014. RX1. Dr. Bach is a board-certified orthopedic surgeon specializing in sports medicine. RX1 at 5-6.

Dr. Bach testified about the independent medical evaluation that he performed at Respondent's request. RX1. He testified that he reviewed Petitioner's x-rays and MRI, and opined that Petitioner tore his ACL sometime in the past before his incidents at work. RX1 at 11-13, 24. He also indicated that Petitioner's valgus malalignment was due to a deformity and ACL tear developed over approximately 20 years. *Id.*

With regard to Petitioner's ACL and lateral meniscus tears, Dr. Bach testified that these injuries occurred prior to Petitioner's incidents at work. RX1 at 13-15. He maintained the opinion contained in his independent

medical evaluation report that Petitioner's left knee condition was a long-standing one, and that neither incident at work caused, aggravated or accelerated the condition. RX1 at 19-20.

On cross examination, Dr. Bach testified that he personally reviewed Petitioner's x-rays, but was not sure if he reviewed the MRI films. RX1 at 22. Respondent's counsel indicated that the MRI films were forwarded to Dr. Bach. RX1 at 22-23. In any event, Dr. Bach testified that whether he reviewed the films or the report alone, it probably would not change his opinions. *Id.*

Dr. Bach acknowledged that he did not take a history from Petitioner regarding any prior injuries or accidents to the left knee. RX1 at 24-25. He did gather however that Petitioner had two incidents at work with the left knee event stemming from the July 18, 2012 incident. RX1 at 25.

Dr. Bach also acknowledged on cross examination that if someone fell off a ladder and landed off balance or with an extended leg, or if someone twisted their knee, it could cause an ACL or meniscal tear. RX1 at 26-27, 43-44. However, he indicated that Petitioner's radiographic findings show blunting in the intercondylar eminence, which is a classic finding of a chronic anterior cruciate deficient knee. *Id.* He doubted that if Petitioner jumped off a three-foot platform twisting his knee and bearing the weight of his body that it would have caused Petitioner's ACL tear. RX1 at 29-30.

With regard to meniscal tears, Dr. Bach testified that such injuries could occur through more innocuous activities like getting up from a kneeling position, squatting, gardening, hopping off a chair to answer a phone, etc. RX1 at 27-28. He indicated however that Petitioner's meniscal pathology was more likely than not chronic in nature. *Id.*

Continued Medical Treatment

Petitioner saw Dr. Chudik again on February 10, 2014. PX3 at 9-11. He continued to recommend a left total knee replacement and kept Petitioner restricted to sedentary work only. *Id.*

In an appended note dated February 19, 2014, Dr. Chudik indicated that he again reviewed Petitioner's diagnostic films, medical records, and Dr. Bach's independent medical evaluation report. PX3 at 12. He stated that Petitioner's July 18, 2012 injury at work in particular aggravated the underlying arthritis leaving Petitioner with persistent symptoms that were refractory to conservative treatment and now required surgery. *Id.* He also agreed with Dr. Bach that Petitioner required a total knee replacement and that Petitioner was unable to perform the essential duties of his job. *Id.* Dr. Chudik further noted that Petitioner was able to perform his full duty work subsequent to his injury in April 2011 and before his injury on July 18, 2012. *Id.* He stated that the "injury has clearly resulted in a permanent aggravation of his knee condition and the need for a total knee replacement." *Id.*

Additional Information

After Petitioner's incident at work on July 18, 2012, he testified that he continued to work light duty until December 11, 2012 when he was placed off work by Dr. Chudik through March 5, 2013. Petitioner then returned to work on March 6, 2013 and worked for one week. Dr. Chudik took Petitioner off work again on March 11, 2013. He was then off work until April 21, 2013, but he did not receive any temporary total disability benefits during this period of time. On cross examination, Petitioner testified that he was initially offered an accommodation by Respondent, but he later accepted it and returned to work on April 22, 2013.

Petitioner testified that he worked from April 22, 2013 through the date of the hearing. In November 2013, Petitioner testified that he was accommodated with sedentary work by Respondent. He has performed no work other work than sedentary work until this last weekend when he was sent to work elsewhere standing for two days. Petitioner testified that he noticed that his left knee swelled up and he had pain the entire weekend.

Respondent also offered video footage. RX2. Petitioner testified that the video shows a platform, cardboard boxes, and the CDs that come down the shoot into the boxes. He explained that if a jam occurs at the top the machine, the videos stop coming down the shoot and an alarm goes off. He acknowledged that the video showed a step stool by the platform, but testified that there was no step stool available when he had his incidents at work. Petitioner acknowledged that the way that the person in the video cleared the machine is the way that he would clear the machine.

Regarding his current left knee condition, Petitioner testified that it hurts and he feels pain and he cannot be standing. Petitioner has not seen Dr. Chudik since February 2014 because there is nothing that he can do for him other than surgery. Petitioner testified that he wishes to proceed with this surgery.

Bryan Cipolla

Respondent called Mr. Cipolla as a witness. He testified that has been employed by Respondent for approximately three years as the Director of Human Resources.

He testified regarding the video footage in Respondent's Exhibit 2. He explained that the person is clearing a jam in the sortation machine. The sorters are similar looking and they all sort DVDs or Blu-Ray DVDs. There are two components to the machine; a part disbursing DVDs and then those are sent down shoots on either the "A" or "B" side. When there is a jam, a light will turn from green to red indicating a jam on the shoot. An alarm also goes off. Then, either a stacker-operator or an inductor will clear the jam. Mr. Cipolla testified that at least one step stool is standard at every sorter and that employees are instructed to use the step stool if there is a jam.

On cross examination, Mr. Cipolla testified that the shoots can jam often. He also testified that some employees use the step stool, but some employees are tall enough that they do not have to use the step stool. Mr. Cipolla acknowledged that employees are not reprimanded for failing to use the step stool and that the platform is built to hold a person's weight.

Mr. Cipolla testified that Petitioner was driving a floor scrubber as an accommodation and at one point working on destruction of de-commissioned DVDs and video games. In this role, Petitioner would be putting DVDs into a destruction machine. Both positions were sedentary.

ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made a part of the Commission's file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

In support of the Arbitrator's decision relating to Issue (C), whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds the following:

An employee's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (LEXIS 2011). The "in the course of employment" element refers to "[i]njuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing his duties, and while a claimant is at work...." *Metropolitan Water Reclamation District of Greater Chicago v. Ill. Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013-14 (1st Dist. 2011). The "'arising out of' component refers to the origin or cause of the claimant's injury and requires that the risk be connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Metropolitan Water Reclamation District*, 407 Ill. App. 3d at 1013-14 (*citing Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989)). A claimant must prove both elements were present (i.e., that an injury arose out of and occurred in the course of his employment) to establish that his injury is compensable. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (1st Dist. 2006).

In this case, the parties agree that Petitioner has pre-existing degenerative conditions in his left knee. There is no dispute whether Petitioner fell at work and sustained an accident on April 18, 2011 or that he returned to full duty work as of April 27, 2011 through July 17, 2012. The dispute centers on whether Petitioner sustained a compensable accident on July 18, 2012 and fell in the manner to which he testified and whether his left knee condition was chronic such that the incidents at work could aggravate or accelerate the pre-existing degeneration in the knee. First, the Arbitrator addresses Petitioner's alleged fall at work on July 18, 2012 as claimed.

Petitioner testified that he went to clear a jam on a sorter machine and turn off the alarm on July 18, 2012. In the process of descending from the platform and placing his left leg down, it bent all the way back and he fell backwards. He testified that he felt that something broke and that his left knee swelled up enormously.

The medical records from Physicians' Immediate Care shortly after the occurrence confirm Petitioner's testimony about the mechanism of injury. Specifically, they reflect that Petitioner reported that he "was on a machine trying to fix an alarm, about 3 ft high. No h/o knee injury in past. Was getting off & knee bent/twisted & he fell backwards on his back. Has pain down to ankle from knee [&] also in [left] back. Back pain mild. Pain in knee when walking. Packs DVD's." This mechanism of injury is reflected in various handwritten notes taken on the same date. Petitioner also reported a consistent mechanism of injury to Dr. Lee, Dr. Chudik, and to Respondent's Section 12 examiner, Dr. Bach.

The medical records from Physicians' Immediate Care also reflect clinical observations of swelling, pain, and difficulty with range of motion beginning on July 18, 2012. Similar notations of such objective evidence of an acute traumatic injury occurring on July 18, 2012 are subsequently documented by the clinicians at Physicians' Immediate Care and Dr. Lee in the weeks following the injury. Even Respondent's Section 12 examiner conceded that if Petitioner fell off a platform as described he could have sustained a tear although he refuted that such an incident occurred or that Petitioner's tears were acute resulting from the reported mechanism of injury.

In light of the foregoing, the Arbitrator finds that Petitioner's testimony is credible. It is consistently corroborated by other record evidence. Moreover, the findings on physical examination on July 18, 2012 and in the medical treatment thereafter reflect objective evidence of a traumatic injury occurring at work as reported by Petitioner. The Arbitrator does not find the opinions of Dr. Bach to be persuasive given the facts in this case. His explanations about the chronic nature of Petitioner's left knee condition are undisputed. However, Dr. Bach's explanations underlying his belief that Petitioner's left knee condition stemmed solely from chronic degeneration or tears occurring decades past are implausible.

In so concluding, the Arbitrator notes that the Physicians' Immediate Care clinic records from July 18, 2012 reveal objective evidence of swelling and pain. Those symptoms, along with others, failed to subside after injections from Dr. Lee, the physician to whom Petitioner was referred by the clinic, or throughout the subsequent years of treatment with Dr. Chudik.

Moreover, while all of the physicians noted chronic degeneration in Petitioner's left knee, the record also reflects that Petitioner was able to perform all of his work duties after his release from the clinic on April 27, 2011 (just under a week after his fall at work on April 18, 2011) for over a year through July 17, 2012. In light of these facts, the opinions of Dr. Bach are simply not as persuasive as those of Petitioner's treating physician, Dr. Chudik.

Based on all of the foregoing, the Arbitrator finds that Petitioner did sustain a compensable accident that arose out of and in the course of his employment with Respondent on July 18, 2012 as claimed.

In support of the Arbitrator's decision relating to Issue (F), whether the Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

As explained above, the Arbitrator finds that Petitioner sustained a compensable accident at work as claimed. The Arbitrator further finds that Petitioner's current condition of ill being in the left knee is causally related to his accident at work on July 18, 2012 as opined by Dr. Chudik.

In so concluding, the Arbitrator again notes the consistency of Petitioner's testimony with the medical records submitted into evidence, the evidence of a traumatic injury occurring on July 18, 2012 as corroborated by objective evidence in the medical records, and the persuasiveness of the opinions of Dr. Chudik that Petitioner's left knee condition was permanently aggravated and worsened by the acute injury at work on July 18, 2012. Additionally, the evidence establishes that Petitioner had no prior left knee condition requiring medical treatment for over one year or that Petitioner had any other medical treatment to the left knee other than one week of treatment at a clinic after his accident on April 18, 2011 through April 27, 2011.

Based on all of the foregoing, the Arbitrator finds that Petitioner's claimed current condition of ill-being is related to the injury sustained at work on July 18, 2012.

In support of the Arbitrator's decision relating to Issue (J), whether the medical services that were provided to Petitioner were reasonable and necessary, whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following:

"Under section 8(a) of the Act (820 ILCS 305/8(a) (West 2006)), a claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising out of and in the scope of her employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury."

Absolute Cleaning/SVMBL v. Ill. Workers' Compensation Comm'n, 409 Ill. App. 3d 463, 470 (4th Dist. 2011) (*citing University of Illinois v. Industrial Comm'n*, 232 Ill. App. 3d 154, 164 (1st Dist. 1992)). Whether a medical expense is either reasonable or necessary is a question of fact to be resolved by the Commission, and its determination will not be overturned on review unless it is against the manifest weight of the evidence. *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 534 (1st Dist. 2001).

As explained more fully above, the Arbitrator finds that Petitioner sustained a compensable accident and causal connection between his left knee condition and accident on July 18, 2012. Moreover, the medical bills submitted into evidence are for the reasonable and necessary medical treatment rendered to Petitioner to address his left knee condition after his accident at work and as opined by his treating physician, Dr. Chudik.

Based on all of the foregoing, the Arbitrator awards the medical bills incurred by Petitioner that remain unpaid to be paid by Respondent as provided in Sections 8(a) and 8.2 of the Act.

In support of the Arbitrator's decision relating to Issue (K), Petitioner's entitlement to prospective medical care, the Arbitrator finds the following:

As explained above, the Arbitrator finds that Petitioner's current condition of ill being is causally related to his accident as claimed. Thus, the Arbitrator awards the recommended prospective medical care in the form of a total left knee replacement surgery and treatment as recommended by Dr. Chudik pursuant to Section 8(a) of the Act as it is reasonable and necessary to alleviate Petitioner from the effects of his injury at work.

In support of the Arbitrator's decision relating to Issue (L), Petitioner's entitlement to temporary total disability benefits, the Arbitrator finds the following:

"The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, i.e., until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, i.e., reached MMI. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at *28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, *but also that he was unable to work. Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 887 (2nd Dist. 1990) (*emphasis* added).

As explained above, the issue of causal connection between Petitioner's current condition and his accident has been resolved in Petitioner's favor. Moreover, the medical records corroborate Petitioner's testimony that he was placed off work by his treating physicians in relation to his left knee condition during the claimed temporary total disability periods. Given these facts, the Arbitrator finds that Petitioner's medical condition had not yet stabilized and that Petitioner is entitled to temporary total disability benefits commencing December 12, 2012 through March 5, 2013 and commencing March 12, 2013 through April 21, 2013 as claimed.

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 Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTOPHER BIEDRON,

Petitioner,

vs.

NO: 12 WC 31193
13 WC 17744

TRAFIC SERVICES,

15IWCC0948

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, notice, temporary total disability, medical expenses, statute of limitations, and "supplement of record," and being advised of the facts and law, reverses the Decision of the Arbitrator on the issue of accident but attaches the Decision of the Arbitrator for the statement of facts with the additions and modifications outlined below.

The Commission initially addresses Petitioner's Petition for Review, filed on December 2, 2014, which listed as the only issue "Supplement of Record." Petitioner subsequently filed, on January 6, 2015, a Motion to Supplement Record due to the fact that the deposition transcript of Dr. Martin Herman was entered into evidence without objection but only the deposition attachments were included in the record. The actual deposition transcript was inadvertently omitted. Commissioner Charles DeVriendt granted this motion on January 16, 2015. Therefore, this issue has been resolved.

Petitioner filed two separate claims alleging specific lumbar work injuries on August 22, 2012, and May 21, 2013. However, it appears that Petitioner was also attempting to intertwine a repetitive trauma lumbar claim even though no Application for Adjustment of claim for that was filed and it isn't clear what manifestation date might be alleged. Regardless, the Commission finds that Petitioner failed to prove either a repetitive trauma claim or any specific work injuries.

Petitioner testified that he had previously received treatment in 2009 for his low back after an accident while working at Respondent. This treatment required only one visit to the emergency

room and pain medications for a week but he lost no time from work. Petitioner testified that he then worked full duty and had no treatment until the summer of 2012.

Petitioner testified that, other than that limited treatment in 2009, he did not have any problems with his lower back prior to the incident on August 22, 2012. (T.22). However, he contradicted this shortly thereafter with the following testimony:

Q: Now, turning your attention to **June of 2012**, did you notice anything unusual about yourself around that time?
A: I was experiencing more hip pain and lower back pain.
Q: What hip?
A: My left hip.
Q: Is this something that happened on one particular day or over time?
A: I would say over time.

(T.25-26, Emphasis added.)

Based on this testimony, Petitioner clearly had low back and hip pain prior to his first alleged accident date on August 22nd. We note that Petitioner has not filed a claim alleging any work accident in June 2012.

The Commission notes that one of the Arbitrator's bases for finding accident is that despite Petitioner's pre-existing lumbar problems, "Petitioner continued to work full duty without restrictions for Respondent until [8/29/12], the first day that Petitioner was placed on any restrictions for his lower back, and seven (7) days after the first alleged date of accident." (Dec. 9). However, this is not true. Petitioner was actually given light duty restrictions (10 pounds lifting, no standing for long periods without moving or resting one hour, and no sitting more than 2 hours) by Dr. Kalenowski on July 6, 2012. We do note, however, that these restrictions were lifted on July 11, 2012.

The evidence and testimony is very confusing regarding Petitioner's alleged accident dates and, ultimately, do not support his claims. On August 20, 2012, Petitioner underwent bilateral L3-4, L4-5, and L5-S1 facet joint injections with Dr. Yaacoub who recorded that Petitioner was complaining of constant and achy low back pain that was "12/10" that radiated to his thigh.

Petitioner testified that on August 22nd, just two days after he underwent the facet injections and was complaining of 12/10 pain, he was pounding a post with an air compressor in an awkward position. Afterwards, he was having problems walking and told the site manager, Jim Sinirch, that he couldn't do that work anymore.

On August 29th, Petitioner saw another pain specialist, Dr. Murtaza, who noted a date of injury of June 2012 and that Petitioner reported that his pain started with "very rigorous lifting and heavy labor." There was no mention of any specific accident on August 22nd and Petitioner gave a history that his pain had gotten worse about 1½ to 2 weeks prior in August. This would correspond to a time period before Petitioner's alleged work accident on August 22nd. Dr. Murtaza diagnosed Petitioner with a history of low back pain with lumbar disc herniation at L4-5, with lateral paracentral protrusions to the left versus the right, and lumbar radiculopathy. He recommended an electromyelogram (EMG), aggressive physical therapy, and took Petitioner off work.

On August 31, 2012, Petitioner submitted an injury report (Px15) to Respondent alleging that he twisted his back on August 22nd and had severe low back pain while using a compressor to pound a post. However, on that same date, Petitioner submitted a short-term disability claim indicating that his symptoms first appeared on June 28, 2012. Petitioner testified on cross-

examination that he wrote "6/28/12" on the form because that is when he first noticed the lower back pain. On redirect, Petitioner testified that he doesn't know why he wrote "6/28/12" when he first saw Dr. Kalenowski on June 13, 2012.

On September 7, 2012, Petitioner underwent an EMG with Dr. Naveed whose findings were consistent with mild left L5-S1 lumbosacral radiculopathy. Dr. Naveed recorded a history of Petitioner being injured at work in June 2012 "doing roadside work and lifting something heavy when the back pain began." There is no mention of any work injury on August 22nd.

Petitioner returned to Dr. Murtaza on September 14th. This record indicates that the date of injury was changed from "June 2012" to "08/28/2012". Dr. Murtaza recorded a history that Petitioner developed this pain after years of heavy labor and had gotten progressively worse in the last several months. The Commission notes that the injury date listed by Dr. Murtaza does not correspond with Petitioner's alleged accident date of August 22nd.

On October 11th, Petitioner began treating with Dr. Vander Weit, D.C. who recorded a history of: "His condition is related to a work accident. The date of this condition is 08/22/12. This condition is similar to another condition which occurred on 08/22/12." It is confusing that Dr. Vander Weit would reference a "similar" condition on the same date but we note that there is no detail regarding the alleged accident. We find that, in light of the other medical records and evidence, Dr. Vander Weit's mere mention of an accident is not persuasive to prove that an accident occurred on that date.

On October 16th, Dr. Murtaza performed a caudal ESI. Dr. Murtaza wrote that Petitioner had relief of his pain when he did not work and that his pain was "exacerbated by his current work activities." However, we find that Dr. Murtaza did not have a sufficiently detailed description of Petitioner's job duties to give an opinion to a reasonable degree of medical certainty that Petitioner's condition was due to repetitive trauma as opposed to a specific injury in June 2012.

On December 19, 2012, Petitioner saw Dr. Herman for the first time. Dr. Herman recorded a history of a specific accident in June 2012 while lifting barrels and experienced Petitioner experienced severe low back pain. There was no mention of any accident on August 22, 2012. Dr. Herman prescribed physical therapy and planned to perform a left L4-5 micro lumbar discectomy.

Dr. Herman testified via deposition on October 17, 2013. Dr. Herman's diagnosis was left L4-5 herniation with impingement and left L5 radiculopathy. We find it very significant that Dr. Herman causally related Petitioner's diagnosis to lifting barrels in June 2012 at work. Dr. Herman also testified that if Petitioner were to testify that he had incidents at work on August 22, 2012 and May 21, 2013, which resulted in an increase in low back pain, that would not change his opinion that his condition was related to the June 2012 incident. He stated:

> [A]ccording to my history,...the onset of his pain was in June. If he was still working in spite of the pain and the pain was exacerbated with the use of, you know – whatever you said – pneumatic air pumps, then he would...still have a pain that...originated in June of 2012.

(Px17 at 15).

Regarding the alleged injury on May 21, 2013, Petitioner testified that he was pulling Telespar out of a bin and had to reach into it and "kind of twisted my back." (T.48). Petitioner testified that he reported this injury on May 29th. (Px16). The Commission notes that Dr. Herman had already recommended surgery on April 10, 2013. Furthermore, although Petitioner began physical therapy on May 23, 2013, this record indicates that his problem started in July 2012 when

Petitioner experienced sharp pain in the low back while working and that the physical therapy treatment was delayed from that time due to claims issues. There is no mention of any new accident on May 21st nor is there any mention of this alleged accident to Dr. Murtaza on May 31st or to Dr. Herman on June 13th.

The Commission finds that Petitioner's low back condition pre-existed his first alleged date of accident and that, even if Petitioner did experience a temporary increase in pain at work on August 22, 2012 and May 21, 2013, these were not new accidents. They did not permanently change Petitioner's condition, change the course of treatment, nor hasten the need for surgery. We find Dr. Herman's testimony persuasive that Petitioner's condition relates back to an injury in June 2012, which is not the subject of any claim before us.

As for any potential repetitive trauma claim, we find that no doctor had a sufficient description of Petitioner's job duties to give an opinion to a reasonable degree of medical certainty that Petitioner's condition was due to repetitive trauma. The Arbitrator relied on Respondent's Section 12 examining physician, Dr. Salehi, who testified that Petitioner's heavy labor could have aggravated his pre-existing lumbar disc condition. However, this was in the context of a hypothetical question regarding the alleged accident on August 22, 2012. Dr. Salehi testified that Petitioner never told him about any accidents in August 2012 or May 2013 but if that accident actually occurred then it would be consistent with an aggravating injury. We do not find this speculative answer by Dr. Salehi to outweigh the persuasive opinion of Dr. Herman that Petitioner's condition is still related to an injury in June 2012.

Based on the above and the record as a whole, we find that Petitioner has failed to prove he sustained any accidental injuries arising out of and in the course of his employment on August 22, 2012 or May 21, 2013 or due to repetitive trauma. The decision of the Arbitrator is reversed and benefits are denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the benefits ordered in the Decision of the Arbitrator are hereby vacated.

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: DEC 1 8 2015

Charles J. DeVriendt

Ruth W. White

Joshua D. Luskin

SE/
O: 10/28/15
49

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

BIEDRON, CHRISTOPHER
Employee/Petitioner

Case# **12WC031193**

13WC017744

TRAFIC SERVICES
Employer/Respondent

15IWCC0948

On 10/24/2014, 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 0.05% 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:

4239 LAW OFFICE OF JOHN S ELIASIK
180 N LASALLE ST
SUITE 3700
CHICAGO, IL 60601

2965 KEEFE CAMPBELL BIERY & ASSOC LLC
TIMOTHY J O'GORMAN
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

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
CORRECTED ARBITRATION DECISION
19(b)

Christopher Biedron
Employee/Petitioner

Case # **12 WC 31193**

v.

Consolidated cases: 13 WC 17744

Trafic Services
Employer/Respondent

15IWCC0948

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 Lynette Thompson-Smith, Arbitrator of the Commission, in the city of Chicago, on July 29, 2014. 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. ☐ 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. ☒ Does the Statute of Limitations apply?

FINDINGS

On the dates of accident, 8/22/12/ & 5/21/13, Respondent ***was*** operating under and subject to the provisions of the Act.

On these dates, 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 $57,317.53 and the average weekly wage was $1,102.26.

On the date of accident, Petitioner was **36** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner $734.84 per week in temporary total disability benefits from August 29, 2012 to March 14, 2013, and from May 21, 2013 to June 15, 2014, a period of 82 6/7 weeks, pursuant to Section 8(b) of the Act.

Respondent shall pay Petitioner$123,327.56 in medical services as delineated in this Decision, pursuant to Sections 8(a) and 8.2 of 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.

Findings of Fact

The disputed issues in these matters are: 1) accident; 2) notice; 3) causal connection; 4) medical bills; 5) temporary total disability benefits; and 6) whether the Statute of Limitations applies. *See*, Ax1.

As of August 22, 2012, Christopher Biedron ("Petitioner") was 35 years old, employed full time as a traffic control technician with Trafic Services, Inc. ("Respondent"). He has been employed with Respondent in this position since May of 2004.

As a traffic control technician, Petitioner's job duties involved setting up lane closures and reconfigurations, for construction projects on highways. His typical day started at the garage, where he loaded his truck with the equipment necessary for that day's job. Petitioner would then drive the truck out to the job site, unload the equipment, and set up the lane closures. On occasion, he would also break down a lane closure, load the equipment back into the truck, and return it to the garage. Petitioner testified that he did not get any assistance loading or unloading his truck.

The equipment used for a typical project included barrels, tires, cones and verticades. Petitioner described the barrels as about two feet tall, round, and weighing about ten (10) pounds each. The tires, which weighed between twenty-five (25) and thirty (30) pounds, would go around the barrel. Depending on the weather, each barrel would hold up to three (3) tires. Petitioner testified that he would use between one hundred (100) and three hundred (300) barrels per project.

Petitioner described a verticade as being approximately two (2) feet long by one (1) foot wide, with a base at the bottom that would snap on. Petitioner testified that each of these weighed between twenty (20) to twenty-five (25) pounds; and he would use approximately one hundred (100) of these for a typical project.

Petitioner testified that he also used sandbags, barrels and signs. The sandbags were used to hold up signs and barricades and he would typically use between sixty (60) and one hundred (100) sandbags per project.

Petitioner testified that he would set up foldout signs and the sandbags were used to hold them down. Additionally, Petitioner put up "green posts", which range in length from seven (7) to twelve (12) feet; and there were times when twenty (20) to thirty (30) feet was used to construct a Telespar, which could weigh up to four hundred (400) pounds. Putting up this type of sign was a two or three man job and often, the posts were driven into the ground using a compression hammer.

When a job involved painting, he would load tape and painting machines, along with boxes of tape and buckets of paint. He would sometimes have assistance loading his truck, depending on the size of the job. He testified that the paint machine weighs approximately two hundred (200) pounds and the

tape machine about fifty (50) pounds. If he was taping, he would bring out twenty (20) or more boxes of tape, and if they were painting, he would bring ten (10) or more buckets of paint.

Petitioner testified that he had a prior injury to his lower back in 2009, while performing work duties for Respondent. He went to Mercy Hospital's immediate care, where he received x-rays, was given pain medication and discharged. Petitioner received no further treatment for his lower back until the time of the injury, which is the subject of these claims. He missed no time from work, and continued working in a full duty capacity.

Petitioner testified that he began experiencing lower back and left hip pain in June of 2012. He testified that the pain came on gradually and as a result, on June 13, 2012, Petitioner went to Alexian Brothers to see his primary care provider, Dr. Kalenowski. He told Dr. Kalenowski that his work duties were causing him pain in his lower back and hip. The records do not contain a history of Petitioner's condition. The records indicate that Petitioner is a construction work, and that he did have a previous injury or trauma. Dr. Kalenowski diagnosed Petitioner with a backache, gave him a prescription for Meloxicam, and recommended an MRI of his lumbar spine. PX1.

Petitioner had the lumbar MRI at St. Alexius Medical Center on June 22, 2012, which showed a prominent disc protrusion at L4-5 effacing the L5 nerve root, a "tiny" L5-S1 disc herniation; and mild degenerative disc disease at L4-5. PX2.

Petitioner returned to Dr. Kalenowski on June 28, 2012. Again, the records do not contain a specific history of Petitioner's complaints. Petitioner reported "myalgia" and a limited range of motion. Dr. Kalenowski diagnosed Petitioner with anxiety and displacement of thoracic or lumbar intervertebral disc, without myelopathy. He prescribed Fluoxetine and Alprazolam for anxiety and Norco for the low back pain. According to the records, Dr. Kalenowski also recommended that Petitioner see an orthopedic specialist for his lower back and radiating complaints but Petitioner testified and the record reflects that instead, Dr. Kalenowski referred him to a pain management specialist. Petitioner continued to work full duty. PX1.

On or about July 2, 2012, Petitioner was examined by Dr. Chadi Yaacoub, a pain management specialist at Illinois Pain Institute. Petitioner told Dr. Yaacoub that he had been having low back pain for about four years, he denied any trauma, but did indicate that he did a lot of heavy lifting at work and that the pain was aggravated by overworking. After performing an MRI of the lumbar spine, Dr. Yaacoub's assessment was lumbar degenerative disc disease, lumbar facet joint disease, low back pain syndrome and myofascial pain syndrome. He recommended lumbar epidural and lumbar facet joint injections. Petitioner continued working full duty. PX1 & 3.

On July 11, 2012, Petitioner returned to Dr. Kalenowski, who places him on light duty work restrictions. Petitioner testified that Respondent cut his work hours immediately, so he returned to Dr. Kalenowski on July 1, 2012, and asked the doctor to lift his restrictions. Dr. Kalenowski returned Petitioner to work without restrictions, and Petitioner continued to work in a full duty capacity.

On July 18, 2012, Petitioner had epidural steroid injection at L4 on the left and L5 on the right. On August 20, 2012, Petitioner had bilateral facet injections at three (3) levels and fluoroscopy in multiple planes. Dr. Yaacoub performed these procedures at Barsurg Procedure Center. PX3 & 4.

Petitioner testified that on August 22, 2012, he was asked to pound a post into the ground at work, using a compression hammer. He testified that he had to hold the post and the hammer with one hand, while he flipped the switch with his other hand. He testified that the hammer weighed about fifty (50) pounds. Petitioner testified that as he attempted to flip the switch with his arms stretched out, he immediately had pain in his lower back and had trouble walking. He stopped what he was doing, and reported to his supervisor Jim Sinirch that he could not complete the task. The incident happened toward the end of the day and Petitioner finished out his shift. Tr. Pgs. 32-36.

Petitioner testified that when he returned to work the next day, he was not doing well. He had pain in his lower back radiating to his left hip, which he described as constant and intense, to the point that he could not function.

On August 29, 2012, Petitioner went to see another pain specialist, Dr. Murtazza, at Illinois Orthopedic Network. Dr. Murtazza took Petitioner off work completely. PX5.

Petitioner filled out an injury report. In the report, he indicated an accident date of August 22, 2012. He further described how the injury occurred as "while using compressor to pound post twisted back while trying to turn on compressor and hold post". Petitioner testified that he filled the report out on his own, and gave it to his supervisor Dave Wittmus. PX15.

On September 7, 2012, Petitioner had an EMG performed by Dr. Syed Naveed at Neurological Consultants Group. Petitioner indicated he was injured in June 2012, when he was doing roadside work and lifting something heavy. He began experiencing pain in his lower back. The EMG revealed mild left L5-S1 radiculopathy. PX9.

Dr. Murtaza diagnosed the petitioner as having lower back pain, lumbar radiculopathy, possible adhesions; and degenerative disk disease of the lumbar spine. On October 16, 2012, Dr. Murtazza performed a caudal epidural steroid injection for lysis of adhesions in Petitioner's lumbar spine. Petitioner testified that he did not get much improvement with the injection. He reported this to Dr. Murtazza on October 24, 2012. He also reported continued low back pain, radiating primarily into the

left hip, and that his job involved heavy labor. Dr. Murtazza discontinued further injections, and referred Petitioner to an orthopedic specialist for a surgical evaluation. PX5.

Per Dr. Murtazza's recommendation, Petitioner started a course of physical therapy at Vander Weit Chiropractic. He attended therapy approximately three times a week for a month, ending November 12, 2012. Petitioner reported no improvement. PX6.

According to Dr. Murtazza's records, Petitioner returned to him on November 28, 2012, not having seen an orthopedic specialist, and reported improvement of his lower back symptoms after the lysis injection, but that his left hip symptoms persisted. Dr. Murtazza recommended a hip injection, for diagnostic and therapeutic purposes. He also released Petitioner to return to work in a light duty capacity. Dr. Murtazza performed the hip injection on December 6, 2012. Petitioner reported no improvement. PX5.

On December 19, 2012, Petitioner presented to Dr. Martin Herman, a neurosurgeon at The Center for Brain and Spine Surgery. Dr. Herman also testified by way of evidence deposition. At the initial visit, the record indicates Petitioner reported that he lifts barrels on highways, and that in June 2012, he was lifting barrels and experienced severe low back pain. Petitioner also reported that he tried to work after the June injury, but the pain worsened, and he developed hip pain as well. And that he reported his condition as work-related on September 22, 2012. Dr. Herman took an x-ray of Petitioner's left hip, reviewed his history and diagnostic studies; and diagnosed Petitioner with lumbar disc displacement and left-sided L5 radiculopathy. Dr. Herman recommended physical therapy, but opined that eventually Petitioner would need a microdiscectomy. He also returned Petitioner to work in a light duty capacity. PX10 & 17.

Petitioner testified that he returned to work for Petitioner for about a month, and then was laid off. ~~Petitioner returned to work again for Respondent on March 15, 2013. Petitioner also returned to Dr.~~ Herman on April 10, 2012 and told Dr. Herman that he was back to working full duty, and doing alot of twisting. He was still having alot of lower back pain, radiating into his left buttock, hamstring and lower extremity. Petitioner also reported taking Norco every day. Dr. Herman continued to recommend surgery and light duty restrictions.

Petitioner continued to work full duty until he had a subsequent accident on May 21, 2013. Petitioner testified that he was on the back of a truck, reaching into a bin to grab Telespar. When he got toward the bottom of the bin, he felt an immediate, sharp pain in his lower back. Petitioner filled out another report of injury, on May 29, 2013, for this incident. Petitioner filed a second Application for Adjustment of Claim, alleging this date of accident. PX16.

Petitioner returned to Dr. Herman on June 5, 2013. Petitioner reported that although Dr. Herman was recommending light duty restrictions, Respondent continued to require him to work beyond his

restrictions. Dr. Herman opined that Petitioner's condition was work-related, and that he required surgery. He also did not think it was safe for Petitioner to return to work, and so took him off completely, pending surgery.

On June 18, 2013, Dr. Sean Salehi examined Petitioner, by request of Respondent. Dr. Salehi testified by way of evidence deposition on October 1, 2013. Dr. Salehi testified that the surgery recommended by Dr. Herman was appropriate. However, Dr. Salehi also testified that because there was no mention of work activities or a work-related incident in the June 14th and June 28th records from Alexian Brothers, and Petitioner did not mention the compression hammer incident of August, 2012 to him, that Petitioner did not suffer a work-related trauma. Dr. Salehi did not review Petitioner incident report for the August 22, 2012 injury. RX3, pgs. 15-30.

Upon cross-examination, Dr. Salehi admitted that Petitioner told him he thought his low back condition was related to heavy labor at work. He further testified as to not finding any section in the Alexian Brothers records, indicating a history of Petitioner's condition. He admitted not reviewing the medical record from Petitioner's first visit with Dr. Herman or any of the medical records before his examination of Petitioner.

Dr. Salehi further testified that he could not rule out Petitioner's job duties causing or contributing to his disc herniation. Lastly, Dr. Salehi testified assuming the compression hammer incident occurred on August 22, 2012, and that he reported it to his employer on August, 31, 2012, the compression hammer incident of August 22, 2012, could have aggravated his low back injury.

On March 17, 2014, Petitioner called Dr. Herman, because the medication was no longer controlling his pain. Dr. Herman sent Petitioner for another lumbar MRI at Lutheran General Hospital, which was performed on March 17, 2014. It revealed a L4-5 disc herniation, possibly effacing the left L5 nerve root; and an L3-4 disc protrusion displacing the right L3 nerve. PX10.

Petitioner was admitted to Lutheran General, and Dr. Herman performed a L4-5 microdiscectomy on March 19, 2014. Petitioner continued to follow up with Dr. Herman, who sent Petitioner for a course of post–surgical rehabilitation at AthletiCo. Petitioner underwent therapy from April 17 through May 23, 2014 and on June 10, 2014, Dr. Herman released Petitioner, declared him to be at maximum medical improvement, with permanent medium-duty restrictions. Petitioner returned to work for Respondent in a medium-duty capacity on June 16, 2014. PX11.

The petitioner states that a deposition of Dr. Martin D. Herman was taken on October 17, 2013, wherein he testified that Petitioner's need for surgery was related to the work duties that he described of lifting heavy barrels. The Arbitrator notes that only the exhibits to this deposition were entered into evidence therefore, the doctor's testimony is not of record. The Arbitrator further notes that there are certain medical records in the exhibits.

James Giammarino testified on behalf of Respondent. He is employed with Respondent as the shop manager and has been employed in this capacity since July of 2010. He testified that when an accident occurs, Respondent's procedure is for the worker to report the accident to his supervisor or to him.

Mr. Giammarino further testified that he was not Petitioner's direct supervisor and that Petitioner did not report the August 22, 2012 accident to him but to someone else; and that he did not know who that person was. He further testified that Petitioner reported the second accident of May 21, 2013 to him and that the petitioner stated that he had hurt his back at work. *See*, Tr. pgs. 75-79.

Conclusions of Law

C. Did an accident occur which arose out of and in the course of Petitioner's employment with the Respondent?

A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v Industrial Commission*, 47 Ill.2d 144, 265 N.E. 2d 129 (1970). A petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission*, 68 Ill.2d 236, 369 N.E.2d 853 (1977). Where a petitioner fails to prove by a preponderance of the evidence that there exists a casual connection between work and the alleged condition of ill-being, compensation is to be denied. Id. The facts of each case must be closely analyzed to be fair to the employee, the employer, and to the employer's workers' compensation carrier. *Three "D" Discount Store v Industrial Commission*, 198 Ill.App. 3d 43, 556 N.E.2d 261, 144 Ill.Dec. 794 (4th Dist. 1989).

The burden is on the Petitioner seeking an award to prove by a preponderance of credible evidence all the elements of his claim, including the requirement that the injury complained of arose out of and in the course of his or her employment. *Martin vs. Industrial Commission*, 91 Ill.2d 288, 63 Ill.Dec. 1, 437 N.E.2d 650 (1982). The mere existence of testimony does not require its acceptance. *Smith v Industrial Commission*, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much his testimony might be contradicted by the evidence, or how evident it might be that his story is a fabricated afterthought. *U.S. Steel v Industrial Commission*, 8 Ill.2d 407, 134 N.E. 2d 307 (1956).
It is not enough that the petitioner is working when an injury is realized. The petitioner must show that the injury was due to some cause connected with the employment. *Board of Trustees of the University of Illinois v. Industrial Commission*, 44 Ill.2d 207, 214, 254 N.E.2d 522 (1969); see also *Hansel & Gretel Day Care Center v Industrial Commission*, 215 Ill.App.3d 284, 574 N.E.2d 1244 (1991).

The Illinois Supreme Court has held that a claimant's testimony standing alone may be accepted for the purposes of determining whether an accident occurred. However, that testimony must be proved credible. *Caterpillar Tractor vs. Industrial Commission*, 83 Ill.2d 213, 413 N.E.2d 740 (1980). In addition, a claimant's testimony must be considered with all the facts and circumstances that might not justify an award. *Neal vs. Industrial Commission*, 141 Ill.App.3d 289, 490 N.E.2d 124 (1986). Uncorroborated testimony will support an award for benefits only if consideration of all facts and circumstances support the decision. *See generally, Gallentine v. Industrial Commission*, 147 Ill.Dec 353, 559 N.E.2d 526, 201 Ill.App.3d 880 (2nd Dist. 1990), *see* also *Seiber v Industrial Commission*, 82 Ill.2d 87, 411 N.E.2d 249 (1980), *Caterpillar v Industrial Commission*, 73 Ill.2d 311, 383 N.E.2d 220 (1978). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence, and assign weight to the witness' testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v Workers' Compensation Commission*, 397 Ill.App. 3d 665, 674 (2009).

The record is clear that Petitioner had a lumbar spine condition that pre-dated both dates of accident. The record is also clear that, despite this condition, Petitioner continued to work full duty without restrictions for Respondent until August 29, 2012, the first day that Petitioner was placed on any restrictions for his lower back, and seven (7) days after the first alleged date of accident. It is further uncontested that Petitioner has a job in the heavy physical demand category, and that the current condition of his lumbar spine, requires surgery.

It is Respondent's position that Petitioner has failed to carry his burden of proving that his current condition is related to his work duties, because Petitioner has given differing accounts, in the record, regarding the origin of his complaints.

The Arbitrator finds that the only explanation for Petitioner's current complaints are his heavy work duties, and that Petitioner suffered subsequent aggravations, first while twisting his back using his compression hammer and then later when he was bending at the waist and reaching into a storage box on his truck for Telespar. There is no history of any other event to account for his complaints and no evidence of activity outside of work that would cause his current condition of ill-being.

Respondent's Section 12 examiner, Dr. Salehi, conceded that he could not rule out that Petitioner's heavy labor job duties contributed to his current lumbar spine condition; and further conceded that, if the incident regarding the compression hammer did occur, it could also have aggravated Petitioner's condition.

For these reasons, the Arbitrator finds that Petitioner had proven, by a preponderance of the evidence, that he sustained accidental injuries that arose out of and in the course of his employment.

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

Petitioner testified in a credible and unrebutted manner, that he gave notice of the first accident of August 22, 2012, to his immediate supervisor, Dave Wittmus. In support, he introduced into evidence an injury report dated August 31, 2012. Petitioner also testified that he reported the second accident of May 21, 2013, again to Dave Wittmus. Petitioner also entered into evidence a report of injury for this date of accident, which he filled out and dated May 29, 2013.

Mr. Gammarino testified that according to Respondent's procedures, employees were supposed to report work-related injuries to him or to their immediate supervisor. He further testified that he was not Petitioner's immediate supervisor at the time of either accident; that he was made personally aware of Petitioner's May 21, 2013, but Petitioner did not report the August 22, 2012 accident to him. However, he admitted that Petitioner could have reported it to Dave Wittmus instead of to him.

There was no evidence presented to contradict Petitioner's testimony that proper notice of his work accidents was given to Respondent. For the foregoing reasons, the Arbitrator finds that Petitioner provided proper notice to Respondent of both dates of accident, within the meaning of the Workers Compensation Act.

F. Is Petitioner current condition of ill-being related to the injury?

It is within the province of the Commission to determine the factual issues, to decide the weight to be given to the evidence and the reasonable inferences to be drawn there from; and to assess the credibility of witnesses. *See, Marathon Oil Co. v. Industrial Comm'n*, 203 Ill. App. 3d 809, 815-16 (1990). And it is the province of the Commission to decide questions of fact and causation; to judge the credibility of witnesses and to resolve conflicting medical evidence. *See, Steve Foley Cadillac v. Industrial Comm'n*, 283 Ill. App. 3d 607, 610 (1998).

It is established law that at hearing, it is the employee's burden to establish the elements of his claim by a preponderance of credible evidence. *See, Illinois Bell Tel. Co. v. Industrial Comm'n.*, 265 Ill. App. 3d 681; 638 N.E. 2d 307 (1st Dist. 1994). This includes the issue of whether Petitioner's current state of ill-being is causally related to the alleged work accident. *Id.* A claimant must prove causal connection by evidence from which inferences can be fairly and reasonably drawn. *See, Caterpillar Tractor Co. v. Industrial Comm'n.*, 83 Ill. 2d 213; 414 N.E. 2d 740 (1980). Also, causal connection can be inferred. Proof of an employee's state of good health prior to the time of injury and the change immediately following the injury is competent as tending to establish that the impaired condition was due to the injury. *See, Westinghouse Electric Co. v. Industrial Comm'n*, 64 Ill. 2d 244, 356 N.E.2d 28 (1976). Furthermore, a causal connection between work duties and a condition may be established by a chain of events including Petitioner's ability to perform the duties before the date of the accident

and inability to perform the same duties following that date. *See, Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 193 (1986).

The Arbitrator relies of the unrebutted testimony of the petitioner and Mr. Gammarino and the medical records in evidence, to determine that the petitioner has proven, by a preponderance of the evidence, that his current condition of ill-being is related to his work accidents.

J. Were the medical services that were provided to Petitioner were reasonable and necessary? Has Respondent paid all appropriate charges for reasonable and necessary medical treatment?

For the reasons stated above, the Arbitrator also finds the medical treatment reasonable and related to the work accident, and further finds that the amount of these bills should be paid to Petitioner by Respondent, according to the fee schedule, itemized as follows:

Provider	Date(s)	Balance
1. St. Alexius Medical Center	6/14/12–6/22/12	$4,546.00
2. Illinois Pain Institute	7/2/12–8/20/12	$923.35
3. Barsurg Procedure Center	8/20/13	$11,434
4. Illinois Orthopedic Network	8/2912–2/28/14	$6,253.83
5. Vander Weit Chiropractic	10/11/12–11/12/12	$1,859.00
6. Goldcoast Surgical Associates	10/16/12–12/6/12	$6,651.04
7. JMS Supplies	10/16/12	$3,750.71
8. Center of Brain and Spine Surgery	12/19/12–6/10/14	$36,009.86
9. Total Rehab	5/23/13–7/5/13	$4,778.00
10. AthletiCo	4/7/14–5/23/14	$2,585.87
11. IWP	6/28/13	$1,477.87
12. Advocate Lutheran General	12/19/12–3/20/14	$38,965.03
13. Neurological Consultants Group	9/7/12	$4,093.00
Total		$123,327.56

K. What temporary benefits are in dispute?

Based upon the foregoing discussions, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from Respondent for the time periods he was off work for his injury, from August 29, 2012 to March 14, 2013, then from May 21, 2013 to June 15, 2014, a period of 82 6/7 weeks.

O. Should the Statute of Limitations be applied in this case?

It is Respondent's contention the Statute of Limitations has run on any and all of Petitioner's dates of accident. The Arbitrator disagrees and finds that the Statute does not apply in this matter.

15IWCC0948

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
12 WC 31193; 13 WC 17744
SIGNATURE PAGE

Signature of Arbitrator

October 22, 2014
Date of Decision

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sharon DeVincent,
Petitioner,

vs.

NO: 10 WC 26762

Stockton Station/IL State Treasurer as
EX-OFFICIO of the Illinois Workers' Benefit Fund,
Respondent,

15IWCC0949

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 reviewing the decision filed by the Arbitrator on October 17, 2014, Remands this matter back to the Arbitrator for further clarification.

The decision received by the Petitioner, Respondent, and the Workers' Compensation Commission consists of the findings and order form filled out by the Arbitrator. There were no findings of facts or any further explanation why the Arbitrator found causal connection. There were no conclusions of law contained therein. There was no breakdown of the injuries that resulted in the Arbitrator's award.

A review of the record did not indicate that the Respondent or Petitioner waived the Arbitrator's findings of fact and conclusions of law. Therefore, the Commission Remands this matter back to the Arbitrator for a full decision containing his findings of fact and conclusions of law.

IT IS THEREFORE ORDERED BY THE COMMISSION that this matter be remanded to the Arbitrator for him to prepare a complete decision pursuant to the Act.

DATED: DEC 18 2015
o102715
CJD/hsf
049

Charles J. DeVriendt

Joshua D. Luskin

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DeVINCENT, SHARON
Employee/Petitioner

Case# **10WC026762**

STOCKTON STATION/IL STATE TREASURER AS EX OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Employer/Respondent

15IWCC0949

On 10/17/2014, 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 0.04% 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:

0312 BOUDREAU & NISIVACO LLC
NINA MARIANO
120 N LASALLE ST SUITE 1250
CHICAGO, IL 60602

STOCKTON STATION
209 E NORTH AVE
STOCKTON, IL 61085

4987 ASSISTANT ATTORNEY GENERAL
LAURA HARTIN
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

15IWCC0949

STATE OF ILLINOIS)
)SS.
COUNTY OF **Winnebago**)

- [x] 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

Sharon DeVincent
Employee/Petitioner

v.

Stockton Station/IL State Treasurer, as ex oficio custodian of the Injured Workers' Benefit Fund
Employer/Respondent

Case # **10** WC **26762**

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 **George Andros**, Arbitrator of the Commission, in the city of **Rockford, Illinois**, on **9/16/14**. 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. [x] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [x] 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. [x] What was Petitioner's age at the time of the accident?
I. [x] What was Petitioner's marital status at the time of the accident?
J. [x] 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. [x] 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. [x] Other **Mandatory Coverage under the Act and Insurance Compliance**

15IWCC0949

FINDINGS

On **2/17/10**, 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 $**13,312.00**; the average weekly wage was $**256.00**.

On the date of accident, Petitioner was **47** years of age, ***married*** with **2** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

- Respondent shall pay reasonable and necessary medical services of $9,769.42, as provided in Section 8(a) of the Act, or the amount pursuant to the fee schedule, if that is less.
- Respondent shall pay Petitioner permanent partial disability benefits of $256.00/week for 62.5 weeks, because the injuries sustained caused the 12.5 per cent disability person as a whole, as provided in Section 8(d)2 of the Act.
- The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of this Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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.

#51 George J Andros
Signature of Arbitrator

October 13, 2014
Date

OCT 17 2014

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

☒ 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

Tommy Nases,
Petitioner,

vs.

NO: 13 WC 36361
13 WC 42179

15IWCC0950

City of Springfield,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of nature and extent of Petitioner's permanent partial disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 27, 2015, is hereby affirmed and adopted.

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.

15IWCC0950

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: DEC 1 8 2015

Joshua D. Luskin

Ruth W. White

Charles J. DeVriendt

o-12/02/15
jdl/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

NASES, TOMMY
Employee/Petitioner

Case# **13WC036361**
13WC042179

CITY OF SPRINGFIELD
Employer/Respondent

15IWCC0950

On 5/27/2015, 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:

2217 SHAY & ASSOCIATES
STEPHAINE SHAY-WILLIAMS
1030 DURKIN DR
SPRINGFIELD, IL 62704

0332 LIVINGSTONE MUELLER ET AL
DENNIS O'BRIEN
PO BOX 335
SPRINGFIELD, IL 62705

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

TOMMY NASES,
Employee/Petitioner

v.

CITY OF SPRINGFIELD,
Employer/Respondent

Case # **13** WC **36361**

Consolidated cases: **13 WC 42179**

15IWCC0950

The only disputed issue is the nature and extent of the injury. 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 **Maureen Pulia**, Arbitrator of the Commission, in the city of **Springfield**, on **4/20/15**. By stipulation, the parties agree:

On the date of accident, **6/7/12 and 8/28/13**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained 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 on 6/7/12, Petitioner earned $**68,007.82**, and the average weekly wage was $**1.307.80**.

In the year preceding the injury on 8/28/13, Petitioner earned $**72,608.28**, and the average weekly wage was $**1,396.32**.

At the time of injury on 6/7/12, Petitioner was **43** years of age, ***married*** with **2** dependent children.

At the time of injury on 8/28/13, Petitioner was **45** years of age, ***married*** with **2** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

For the injury on 6/7/12 respondent shall be given a credit of $**498.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**498.00**.

For the injury on 8/28/13 respondent shall be given a credit of $**11,568.39** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**11,568.39**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $**712.55**/week for a further period of **37.5** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **petitioner a 7.5% loss of use of his person as a whole**.

Respondent shall pay Petitioner compensation that has accrued from **6/7/12** through **4/20/15**, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected 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

5/11/15
Date

ICArbDecN&E p.2

MAY 27 2015

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 43 year old Operator on 6/7/12, and 45 year old Operator on 8/28/13, in the respondent's Public Works Sewer Division, sustained an accidental injury to his thoracic spine that arose out of and in the course of his employment by respondent on 6/7/12, and 8/28/13, respectively. Petitioner reported the injuries timely. Petitioner's duties include work on a vactor truck using a rodder hose to clean the sewers, and vacuum them out with a suction device. Petitioner's duties include anything that has to do with sewer or storm water. Each day petitioner gets a list from his supervisor telling him what needs to be cleaned. Petitioner will usually pop open the manhole lids and clean 6 to 8 sewers a day. The manhole covers in the street can be difficult to remove due to the buildup of rock and oil around them. Petitioner lifts the manhole covers using a hook. He will stick a hook in the access hole and pull to remove the manhole cover. Sometimes it will get stuck and he will need a sledgehammer to release it. Petitioner testified that only one person lifts the manhole covers. Petitioner will also remove and lift grates that weigh from 10 to 100 pounds. Petitioner's also responsible for maintaining the car wash grates.

On 6/7/12 while attempting to remove a manhole cover, weighing between 50 and 70 pounds, to check out and clean the sewer at Stange and Edwards, petitioner got injured. Petitioner testified that it was an older style manhole cover in a street that had been resurfaced over a dozen times. As petitioner started to pry it out, the gravel on the street came loose. Petitioner then grabbed the hook and pulled real hard. As he did this he noticed discomfort in his back. He continued to clean the sewer. He reported the accident later that day.

Following the injury, petitioner presented to Express Care with upper back pain since jerking a manhole cover that day. He complained of some tingling, "pins and needles" feeling in the back, but denied numbness, weakness, incontinence, dysuria, abdominal pain, leg or arm pain, or other complaints. Petitioner reported that he has chronic back pain and receives monthly hydrocodone and Alprazolam scripts from Dr. Leticia. Petitioner underwent an x-ray of the thoracic spine that showed no acute fractures. He was diagnosed with thoracic pain and given prescriptions for Flexeril and Relafen. He was taken off work for one day, and given restrictions on lifting in excess of 5 pounds, limited driving and reaching, and no climbing.

On 6/8/12 petitioner presented to Dr. Leticia, his primary care physician. He gave a history of injuring his back at work the day before while pulling up a manhole cover, and was treated at Express Care where he was diagnosed with thoracic spasms and pain, and a strain. He stated that he was given Relafen and Flexeril, and underwent an x-ray that was negative. Petitioner complained of numbness and tingling in the middle of his back. Petitioner was given pain medication and muscle relaxants Dr. Leticia referred petitioner to a chiropractor. He was continued off work through 6/18/12.

On 6/13/12 petitioner presented to Dr. McKay, a chiropractor, on the referral of Dr. Leticia. Petitioner gave a consistent history of his injury. He reported that he had been experiencing pain and a tingling sensation in his thoracic region since the accident. Following his treatment, Dr. McKay noted that petitioner left the office completely pain-free.

On 6/15/12 petitioner followed up with Dr. McKay. He stated that "I feel so much better." He reported that he felt about 70% improved. Petitioner reported pain in the morning, but felt better after moving around some.

On 6/15/12 petitioner followed up with Dr. Leticia. Petitioner reported that he was doing well, although he was not completely improved. He reported that he was 70% improved. Dr. Leticia recommended that petitioner continue working with the chiropractor, and continue on pain medications. She prescribed Toradol for breakthrough pain. She released petitioner on an as needed basis. Petitioner was released to full duty work without restrictions as of 6/16/12.

Petitioner underwent additional chiropractic treatments on 6/18/12, 6/22/12, 6/25/12, 6/27/12, 7/3/12, and 7/6/12. On 7/6/12 petitioner reported that he was feeling pretty good that day. Petitioner continued working his regular duty job without restrictions. He testified that although he continued to work he still had some aches and pains in the same area. Petitioner's pain never completely went away following on 6/7/12. He continued to lift sewer covers and clean the sewers.

On 8/28/13 petitioner sustained another injury to his thoracic spine. On this date petitioner was working his regular duty job and attempted to lift a car wash grate in the carwash pit. Petitioner put the hook in to remove the carwash grate that weighed about 80 to 100 pounds. As he attempted to lift it by himself, while straddling the undercarriage wash holes, he felt a sharp stabbing pain in his thoracic spine. When he turned his head it felt like an ice pick in his thoracic spine.

On 8/29/13 petitioner completed an Employer Accident Report. He described the nature of his injury as removing a steel grate on carwash with a hook, and straining upper back between shoulders.

On 8/29/13 petitioner presented to Dr. John Watson for evaluation of a thoracic spine problem which occurred on 8/28/13. He noted that the injury resulted from lifting. Petitioner reported that his symptoms were located in the middle of his back. He described the pain as sharp and burning, and the onset was sudden. He rated his symptoms as moderate in severity and worsening. He identified the exacerbating factors as lifting and pulling. He rated his pain at a 5 out of 10. X-rays of the thoracic spine were taken. They showed no obvious compression fracture, no significant degenerative disc disease for his age, and a very well maintained cervical column. Following an examination Dr. Watson assessed mid back pain and thoracic strain. He could not rule

out a thoracic annular tear. He recommended light duty with no heavy lifting, bending, or twisting. He prescribed Naprosyn for anti-inflammation, and Flexeril to help with muscle spasms.

On 9/3/13 petitioner returned to Dr. Watson. He reported that the Flexeril and Naprosyn had really helped. He continued to experience pain, and was taking his medications regularly. He also reported that he took a couple Vicodin over the weekend, which seemed to help as well. He denied any neck pain, or lower back pain. He also denied any radiating pain down his legs or arms, as well as numbness or tingling. Dr. Watson was of the opinion that petitioner's overall improvement was about 15%. He recommended a physical therapy program. He continued petitioner on light duty. Petitioner began a course of physical therapy on 9/5/13 at Orthopedic Center of Illinois. He underwent 18 physical therapy sessions.

On 9/16/13 petitioner passed out while leaving a boat dock. He was taken to the emergency and released. Petitioner testified that he did not injure his back. He testified that he hit his head and had an MRI of his head.

On 9/24/13 petitioner followed up with Dr. Watson. Petitioner complained of pain and stiffness. He reported that although the physical therapy helps at times, the relief does not last. Given the fact that petitioner continued to have pain in his thoracic spine despite conservative treatment, Dr. Watson recommended an MRI of the thoracic spine. He continued petitioner's light duty restrictions.

On 10/3/13 petitioner underwent an MRI of the thoracic spine. The impression was mild degenerative changes in the thoracic spine; moderate sized left paracentral disc protrusion at the T7–T8 level resulting and mild flattening of the ventral left aspect of the thoracic cord extending to the nerve root zone; no significant foraminal narrowing throughout the thoracic spine; and slightly T1 hypointense marrow lesion in the T7 and T11 vertebral bodies which is most likely due to underlying a typical hemangiomas.

Petitioner last followed up with physical therapy on 10/18/13. Petitioner reported that his back had been feeling better, and hoped that his doctor appointment the following week would go well because he was getting "bored" at home and would like to get back to work. Petitioner essentially met his short and long-term goals. Petitioner was instructed to continue his home exercises and progress with activity level as tolerated.

On 10/21/13 petitioner returned to Dr. Watson to review his MRI results. He reported that he was overall 50% improved. Petitioner reported that since he was on light duty, he was not working. Dr. Watson noted that the MRI of the thoracic spine showed a disc protrusion at T7 – T8, and multilevel degenerative disc disease. There was no evidence of any cord compression. He noted that the protrusion appeared to be more left-sided. Following an examination Dr. Watson was of the opinion that petitioner was much improved from a pain standpoint. However, he noted that petitioner could still not return to work given his light duty restrictions. Dr. Watson recommended a Medrol Dosepak to help with his pain, along with a work hardening program to help

transition him back to work. It was also recommended that he undergo a CT scan, secondary to the spinal lesions seen on the MRI.

On 10/25/13 petitioner underwent a work hardening evaluation. It was noted that petitioner was currently functioning between the light and medium physical demand level. Petitioner stated that overall, he was feeling better with less pain in his mid-thoracic area. He reported that prior to the injury, he used to wear a brace that brought him more "upright" when he was feeling bad. Petitioner was prescribed a new brace that went higher up his back.

On 11/20/13 petitioner was discharged from Work Hardening after 16 sessions. Petitioner noted some discomfort, primarily in the right parathoracic musculature, more so than the left, which changes in intensity depending on activity. It was noted that petitioner progressed well, modifying activities as needed. Petitioner understood that he may have a level of discomfort that he will have to deal with. He also understood how to control his symptoms. It was determined that petitioner was functioning just above the medium physical demand level.

On 11/21/13 petitioner last followed up with Dr. Watson. Petitioner stated that he was in work hardening and it had helped some. He complained of occasional spasms, but overall was much better. Following an examination Dr. Watson was of the opinion that petitioner was doing much better overall. He noted that petitioner has occasional spasms but had done very well with his work hardening. Dr. Watson noted that he spoke with physical therapy and they indicated that petitioner was lifting currently more than his job description requires without difficulty. Therefore, Dr. Watson recommended that petitioner transition back to full duty work on Monday without restrictions. After petitioner returned to work full duty he noted that it was initially a little harder because he was still sore. Pulling lids and grates caused him discomfort, and he was unable to pull all grates by himself. If a grate or manhole was in any way stuck, or there was too much oil mat buildup, he would get the truck driver to do it.

On 10/13/14 petitioner underwent a Section 12 examination performed by Dr. Lawrence Li. Petitioner reported an injury on 8/20/13 while removing a grate to the sewer. He reported that he felt back pain. Petitioner gave Dr. Li a summary of his treatment to date. Petitioner complained of some numbness and tingling in the thoracic spine, and some pain with pulling and lifting. Petitioner reported that he operates a machine that cleans the sewers, and has been doing this for 10 years. He stated that he currently takes two hydrocodone per day for his discomfort. Dr. Li reviewed the initial injury report, the notes of Dr. Watson, the MRI report of 10/3/13, as well as the physical therapy and work hardening notes. An examination revealed only pain on lifting and pulling. Dr. Li performed an impairment rating for petitioner using the AMA Guides to Evaluation of

Permanent Impairment, Sixth Edition. Dr. Li used a diagnosis of chronic thoracic strain since he believed petitioner did not fit the criteria for an actual disc herniation. He determined a whole person impairment of 1%.

As part of his examination and AMA impairment rating Dr. Li had petitioner fill out a pain disability questionnaire. 15 functions of everyday activities were listed. Petitioner was asked to rate them between zero and 10, with 10 being the absolute worse. These ratings were then added up and divided by 15 to determine the pain disability score. Petitioner's was 34 on a maximum pain disability rating of 150. Dr. Li determined 34 to reflect a mild pain disability.

On 1/26/15 the evidence deposition of Dr. Lawrence Li, an orthopedic surgeon, was taken on behalf of respondent. Dr. Li did not believe that the MRI of 10/3/13 showed an actual true herniation at T7-T8. Dr. Li was of the opinion that petitioner had reached maximum medical improvement by the time he saw him. Dr. Li was of the opinion that petitioner had no pain during examination. Based on petitioner's pain questionnaire Dr. Li was of the opinion that petitioner's pain complaints were mild.

On cross-examination Dr. Li stated that all his opinions were based on the second injury on 8/28/13. He testified that he did not examine petitioner after the first injury on 6/7/12, and did not review any medical records before 8/28/13. Dr. Li did not review the actual MRI film of petitioner's thoracic spine. Dr. Li saw no explanation on the MRI for why petitioner would have ongoing numbness and tingling. Dr. Li was of the opinion that a protrusion is simply a bulging of the disc, whereas a herniation would be an actual geometric extrusion of disc material into the canal.

On 2/17/15 the evidence deposition of Dr. Watson, was taken on behalf of the petitioner. Dr. Watson was of the opinion that since petitioner had a disc protrusion, that is possible that the disc injury was causing petitioner's pain, rather than a muscle injury causing the pain. Dr. Watson opined that the disc protrusion can occur from an acute trauma, and petitioner's occurred from his injury on 8/28/13. Dr. Watson opined that the injury of 8/28/13 caused the T7 – T8 disc protrusion of the thoracic spine and flattening of the thoracic cord. He further testified that even if the injury did not cause the disc protrusion it could have caused it to become symptomatic. Dr. Watson noted that petitioner's symptoms were consistent with this finding. Dr. Watson was of the opinion that petitioner had reached maximum medical improvement on 11/21/13.

On cross-examination Dr. Watson noted that petitioner did not have any neurologic deficit. Dr. Watson was of the opinion that petitioner's thoracic strain was temporary and had resolved.

Petitioner testified that he now works smarter, and has the truck driver do more lifting. He no longer restores old cars, because it takes too long, the parts are too heavy, and he gets sore. Petitioner still feels soreness and aching in his mid back. He takes hydrocodone as needed. He also takes Tylenol as needed at the

end of the day. Some days petitioner may have some very minor discomfort, and other days he made experience tingling and numbness. Petitioner does stretching exercises. Petitioner no longer coaches JFL football because he cannot keep up with them, teach the maneuvers, or pull kids off the ground. Petitioner also resigned as Deputy Chief of Operations for the Williamsville Fire Department. Petitioner testified that he did this because he cannot do the training. Petitioner testified that changes in the weather also affects his back. He testified that it tightens up. Petitioner would like to work for another 8 to 9 more years, until his retirement. Petitioner still experiences numbness in his mid back. Petitioner used to use a brace before the injuries and continues to use it today sometimes. Petitioner has a new brace that is taller to protect his mid back.

Petitioner is still working his regular duty job and has not returned for any further treatment from Dr. Watson. He testified that he is doing the same job today and his duties as assigned had not changed. Petitioner testified that he is making more money than he did on the date of injury since he has been promoted to Senior Operator.

Petitioner testified that following the first injury on 6/7/12 his pain was bilateral. Following the second injury on 8/28/13 petitioner's pain was more to the left side and sharp, with some pain on the right.

As a result of the injuries on 6/7/12 and 8/28/13 petitioner sustained an injury to his thoracic spine. As a result of these injuries petitioner underwent conservative treatment that included physical therapy, work hardening, chiropractic treatment, and pain medications and muscle relaxers. After petitioner completed treating following the 6/7/12 he was returned to full duty work. Petitioner testified that his symptoms did not fully resolve following the injury on 6/7/12 and continued up to, and after the date of the injury on 8/28/13. As such , the arbitrator will be assessing the nature and extent of the injury to the first date of injury, 6/7/12.

With regard to subsection (i) of §8.1b(b), Dr. Li performed an impairment rating for petitioner using the AMA Guide to Evaluation of Permanent Impairment, 6th Edition. Dr. Li used a diagnosis of chronic thoracic strain since he did not believe petitioner fit the criteria for an actual disc herniation at T7-T8. However, Dr. Li did not review the actual MRI films. He also determined, based on petitioner's pain disability that petitioner had a mild disability. He noted no pain during petitioner's examination. Dr. Li only based his findings on petitioner's second injury on 8/28/13. He did not review any medical records before 8/28/13, which include all records related to the first injury on 6/7/12. Based on this incomplete record of review, the Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that petitioner was employed as an Operator at the time of the accidents and is currently working as a Senior Operator, since being promoted after he was released to full duty work. Petitioner testified that if the

sewer grate or manhole cover is in any way stuck, or there is too much oil mat buildup, he gets the truck driver to lift it. Petitioner has not requested any formal accommodations since returning to work and being promoted to Senior Operator. Because of this, the Arbitrator gives lesser weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 43 years old at the time of the accident on 6/7/12. He testified that he expects to work another 8 to 9 years until his retirement. Petitioner has not informed any of his superiors that he cannot perform his job, nor has he asked for any accommodations. He testified that he asks for help lifting certain manhole covers or grates because he is afraid he will hurt his thoracic spine again. Dr. Watson noted that when he spoke with physical therapy before 11/21/13 they indicated that petitioner was lifting currently more than his job description requires without difficulty. Because of this, the arbitrator gives lesser weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that since being returned to full duty work and released from care petitioner has been promoted to Senior Operator and earns more money than prior to the injuries. Based on this, the Arbitrator gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the petitioner underwent an MRI of the thoracic spine that revealed mild degenerative changes in the thoracic spine; moderate sized left paracentral disc protrusion at the T7–T8 level resulting and mild flattening of the ventral left aspect of the thoracic cord extending to the nerve root zone; no significant foraminal narrowing throughout the thoracic spine; and slightly T1 hypointense marrow lesion in the T7 and T11 vertebral bodies which is most likely due to underlying a typical hemangiomas. Dr. Watson agreed that the MRI of the thoracic spine showed a disc protrusion at T7-T8, and multilevel disc disease. On 10/18/13 petitioner completed his physical therapy and essentially met all his short and long term goals. When petitioner was discharged from work hardening on 11/20/13 he noted some discomfort, primarily in the right parathoracic musculature, more so than the left, which changes in intensity depending on activity. It was noted that petitioner progressed well, modifying activities as needed. Petitioner understood that he may have a level of discomfort that he will have to deal with. He also understood how to control his symptoms. On 11/21/13 he complained of occasional spasms, but overall was much better. Dr. Watson was of the opinion that petitioner has occasional spasms but had done very well with his work hardening. Dr. Watson noted that he spoke with physical therapy and they indicated that petitioner was lifting currently more than his job description requires without difficulty. On 10/13/14 petitioner complained of some numbness and tingling in his thoracic spine, and some pain with pulling and lifted. He reported that he takes 2 hydrocodone a day for his discomfort. An examination revealed pain on lifting and pulling. Because of this, the Arbitrator gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 7.5% loss of use of petitioner's person as a whole pursuant to §8(d)2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ 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

Dean Taborn,
Petitioner,

vs. NO: 10 WC 15596

State of Illinois,
Dept. of Juvenile Justice,
Respondent.

15IWCC0951

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 the accident, temporary total disability, permanent partial disability, medical expenses, notice 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed, March 20, 2015, is hereby affirmed and adopted.

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.

DATED: DEC 18 2015

Joshua D. Luskin

Charles J. DeVriendt

Ruth W. White

o-12/02/15
jdl/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

TABORN, DEAN
Employee/Petitioner

Case# **10WC015596**

12WC007908

STATE OF IL DEPT OF JUVENILE JUSTICE/IL YOUTH CENTER
Employer/Respondent

15IWCC0951

On 3/20/2015, 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 0.14% 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:

5236 CULLEY FEIST KUPPART & TAYLOR
KREIG TAYLOR
3 S MAIN ST SUITE 2
HARRISBURG, IL 62946

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
AARON L WRIGHT
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

1350 CENTRAL MANAGEMENT SYSTEMS
WORKERS' COMP CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

MAR 20 2015

RONALD A. HARRIA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **Madison**)

☐ 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

Dean Taborn
Employee/Petitioner

v.

State of Illinois Dep't of Juvenile Justice/ Illinois Youth Center
Employer/Respondent

Case # **10 WC 15596**

Consolidated cases: **12 WC 07908**

15IWCC0951

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Herrin**, on **January 21, 2015**. 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 **4/6/9 and 2/9/10**, Respondent ***was*** operating under and subject to the provisions of the Act; however, on 2/9/10; the Petitioner was retired.

On the dates of accident, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On these dates, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of the 4/6/09 accident ***was not*** given to Respondent; timely notice of the 2/9/10 accident was given.

Petitioner's current condition of ill-being ***is not*** causally related to the accidents.

In the year preceding the injury, Petitioner earned $**59,948.00**; the average weekly wage was $**1,152.85**.

On the dates of accident, Petitioner was **51** years of age, ***married*** with **1** dependent child.

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 $**0** for TTD, $- for TPD, $- for maintenance, and $- for other benefits, for a total credit of $-.

Respondent is entitled to a general credit for any medical bills paid by its group medical plan for which credit is allowed under Section 8(j) of the Act.

ORDER

Case # 10 WC 15596 -- Petitioner failed to prove that he sustained an accident on February 9, 2010 that arose out of and in the course of his employment with Respondent or that his condition of ill-being in his right knee was causally connected to his accidental injury/employment duties with Respondent. Petitioner's claim is denied and no benefits are awarded.

Case # 12 WC 7908 -- Petitioner failed to prove that he sustained an accident on April 6, 2009 that arose out of and in the course of his employment with Respondent or that his condition of ill-being in his right knee was causally connected to his accidental injury/employment duties with Respondent. Petitioner's claim is denied and no benefits are awarded.

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.

Nancy Lindsay
Signature of Arbitrator

March 17, 2015
Date

MAR 20 2015

FINDINGS OF FACT and CONCLUSIONS OF LAW

Petitioner has filed two Applications for Adjustment of Claim against Respondent alleging an injury to his right leg arising out of and in the course of his employment for Respondent. Both cases allege the same injury with alternate dates of accident (case number 10 WC 15596 alleges a date of accident of 2/9/10 and case number 12 WC 7908 alleges an accident date of 4/6/09) due to "repetitive stairs, stresses of 6 years at this job, walking on concrete floors, stair climbing and descending." (See AX 2) Both cases were consolidated for purposes of the hearing with the parties requesting one decision issue. The issues in dispute are accident, notice, date of injury, causal connection, temporary total disability benefits, medical bills and nature and extent. This matter was assigned to the Herrin docket but was tried at the Collinsville docket by agreement of the parties. Donald Rumsey was present throughout the hearing as Respondent's representative.

The Arbitrator finds:

Dr. Robert Goltz treated Petitioner between January 1, 2004 and August 29, 2010 (PX 2, PX 3)[1] In October of 2005 Dr. Golz began treating Petitioner for right elbow problems that had gradually developed over time. Petitioner had experienced similar problems with his left elbow. Petitioner was noted to enjoy basketball and bike riding. He "used to do" a lot of weights. While being treated by Dr. Golz the doctor repeatedly noted that Petitioner "discussed pain associated with turning of a key." On January 17, 2006 Petitioner also reported a "traveling type joint complaint. Pain will go from his right elbow to his left elbow, left knee to his right knee." On January 16, 2006 Petitioner noticed significant swelling. Petitioner was to see Dr. Jones for his left knee.

Petitioner returned to see Dr. Golz on February 13, 2006 regarding his left knee. He denied any trauma, indicating it happened "all of a sudden" around the end of December. Petitioner described his job as an IT tech for Respondent and he denied any recreational activities. Petitioner reported a similar knee episode approximately five years earlier involving his right knee for which he underwent an aspiration and injection at that time. Petitioner also mentioned working the night before the swelling appeared and waking up with it. Both knees were examined with a positive patellar compression test being noted and crepitus bilaterally with motion. Petitioner's left knee was aspirated and injected.

Petitioner continued treating with Dr. Golz for his left knee symptoms and underwent surgery on May 8, 2006. As of August 29, 2006 Petitioner was doing very well and working full duty. On December 5, 2006 Petitioner returned to see Dr. Golz reporting he had been doing well until a flare-up in November. Once again, an aspiration and injection was performed. Petitioner continued to be symptomatic in his left knee and in 2007 he began Supartz therapy for his left knee. Petitioner's third left knee injection occurred on March 6, 2007 and he was to return in one week.

Petitioner's last day of work for Respondent was April 6, 2009. He officially retired in late April of 2009.

Petitioner did not return to see Dr. Golz until July 17, 2009. That visit occurred at the request of Dr. Jones with regard to bilateral upper extremity complaints. According to a W/C Information form contained in Dr.

[1] By Affidavit, the records say 1-1-04; however, the records begin 10-26-05.

Golz's records, which Petitioner had completed on June 30, 2009, Petitioner was claiming repetitive trauma to his upper extremities with a manifestation date of May 15, 2009.

According to Dr. Golz's office note of July 17, 2009 Petitioner's left knee was doing well. Petitioner reported retiring in 2009, having "left for multifactorial reasons, but his presenting complaints [bilateral upper complaints] were a significant factor. Petitioner described his job duties as both a correctional officer and with the Bureau of Identification. They required "frequent keyboarding, filing, writing, and 'key work.'" Petitioner's hobbies were yard work and fishing. Petitioner was diagnosed with bilateral carpal and cubital tunnel syndromes and right rotator cuff tendinitis. Bilateral carpal and cubital tunnel releases were ultimately performed. As of December 1, 2009 Petitioner was to begin therapy on the left upper extremity and he did so through January 10, 2010.

Up through January 10, 2010 the records of Dr. Golz (PX 2) are silent as to any right knee complaints or any hint, suggestion, or mention of a right knee work-related problem.

During this time Petitioner was also periodically treating with Dr. Roger Jones. Only right knee-related records were admitted into the record. (PX 1) On February 3, 2009 Petitioner complained of right knee pain and a broken toe. Petitioner's knee was a little tender with the doctor describing it as arthritis. Petitioner was given a kenalog injection. Petitioner followed up on his toe in March with no right knee complaints being noted. Petitioner then returned to see Dr. Jones in October of 2009 for right knee pain stating it was similar to what he had previously experienced in his left knee years earlier. Another injection was given. Petitioner then presented with right knee pain on December 2, 2009 noting he had been on it quite a bit and it was inflamed. He was given an injection and told to reduce activity. Dr. Jones ordered an MRI on December 21, 2009 but Health Alliance denied it. Petitioner then requested an appointment with Dr. Golz and was given a crutch to keep weight off. (PX 1)

Dr. Jones referred Petitioner to Dr. Golz on January 12, 2010 for "swelling, popping, and severe pain in front of [Petitioner's right] knee.]" Petitioner's signature was on a personal injury questionnaire. On the right hand side of the document is a note indicating there was no known injury. In answer to the question; "when did it happen/symptoms begin" the answer was written, "3 mo ago started [complains] soreness in front of knee". Additionally, in answer to the questions, "Where did this happen/How did this happen" it was answered "just happened." Moreover, in answer to the very specific question, "[i]s this a Workman's Compensation Claim/Employer" Petitioner answered "No." He reported his chief complaint as "swelling popping severe pain in front of knee." A handwritten note states, "feels like he overprotected left and has put too much on right." Walking made his symptoms worse. Dr. Golz diagnosed Petitioner with a degenerative medial meniscus tear with mechanical symptoms. Surgery was recommended. Petitioner was advised that his degenerative changes might require hyaluronic acid on the right knee. Petitioner reported having undergone injections with Dr. Jones and it was noted that Petitioner was using a cane and/or crutches because he felt like he was going to fall. Petitioner described the symptoms as similar to his left-sided symptoms. Petitioner made no mention of his work for Respondent.

A right knee arthroscopy was performed on January 25th, 2010. The operative report recorded the Petitioner had a long history of bilateral knee complaints. Again there was no mention of a work- related injury, nor was there anything mentioned about Petitioner's employment.

Post-operatively Petitioner underwent physical therapy with the therapist noting at the initial evaluation "Patient reports had progressive pain and swelling in the right knee over the past year.

Petitioner signed his Application for Adjustment of Claim in 10 WC 15596 (d/a: 2/9/10) on February 9, 2010. The Application for Adjustment of Claim was mailed to Respondent on April 16, 2010 and filed with the Commission on April 23, 2010. (AX 2) Petitioner also completed a Notice of Injury form that same day. Petitioner wrote that Dr. Goltz and PA Nugent advised him that his "right knee received severe damage to repetitive activities as was [illegible] of me as part of my job at IYC Harrisburg." (RX 1)

Assistant Supervisor of Operations, Donald Rumsey, completed a Supervisor's Report of Injury on February 25, 2010. He noted he was unaware of any injury/accident, that Petitioner had retired on May 1, 2009 and that the accident was reported on February 19, 2010 in writing. (RX 1)

Dr. Golz completed an "Initial Workers' Compensation Medical Report" on March 10, 2010 reporting a history as follows: "Right knee pain for approximately 1 year -- recent locking, catching, and giving away." (RX 1)

In his follow-up note of March 16th, 2010 Dr. Golz opined that during surgery Petitioner was found to have significant degenerative changes in his knee. Petitioner treated again on April 2nd, 2010 and, again, there was no,mention of a work-related injury.

As of May 25, 2010 Petitioner was reporting some improvement after undergoing a series of three injections and was now requesting a round of them for his left knee as with "increasing demands he is having increasing symptoms." X-rays were taken with Dr. Golz noting that Petitioner's right knee showed moderate to advanced arthritis and the left knee showed early to moderate arthritis. Petitioner's left knee was injected on June 29, 2010. (PX 2; PX 4) Again, throughout this time, there is no mention of any correlation or suspected correlation between Petitioner's work for Respondent and his right knee complaints.

Petitioner had last seen Dr. Jones for his right knee in December of 2009. He returned to see him on July 28, 2010 when he was seen in "followup on his disability" as he was having quite a bit of trouble with his arms and legs to the point where he couldn't do anything else. Dr. Jones noted that Petitioner expressed the desire to have a lawn mowing business but was unable to do so at that time. (PX 1)

Petitioner presented to Dr. Golz on October 15th, 2010 in follow-up. Petitioner's left knee was continuing to do well. Petitioner's course of hyaluronic injections in April of 2010 had provided some significant, but transient, relief. Dr. Golz noted, "[h]e has had a recent acute exacerbation. He is here for the right knee." Petitioner had a cane and an antalgic gait with soft tissue swelling present in his knee. X-rays showed bone on bone arthritis. Dr. Golz goes on to record, "[f]indings, natural history of degenerative arthritis were discussed with him in detail." No mention of Petitioner's work for Respondent was noted.

At the January 28, 2011 visit between Petitioner and Dr. Golz, Dr. Golz noted ongoing right knee complaints, including pain on ambulation and occasional swelling. Mornings were reportedly worse than evenings. Stairs were "tough." Petitioner was using no assistive devices. A series of Euflexxa injections began and in March they were initiated for Petitioner's left knee. (PX 2)

A gap in treatment follows between March 29, 2011 and July 19, 2011. At the July visit Dr. Golz noted, "he had an acute exacerbation of the right knee discomfort on vacation with some significant swelling. Those acute episodes resolved. Another series of injections followed. (PX 2)

Petitioner signed his Application for Adjustment of Claim in case number 12 WC 7908 on March 2, 2012, alleging an accident date of April 6, 2009.

Petitioner returned to see Dr. Golz on September 7, 2012 for his bilateral knee complaints. Petitioner reported his left knee was tolerable. His right knee, however, was becoming increasingly problematic with increasing pain and functional limitations. Recent injections had not been helpful. His complaints appeared activity related and worse at the end of the day. Petitioner was feeling he was at the point of needing something done and "His situation though is complicated by his wife's chronic back complaints. She did not have a good experience down in Paducah." (PX 6) Findings and options were discussed with Petitioner including a lengthy discussion with Petitioner and his wife regarding Petitioner's status, the nature history of degenerative arthritis especially with malalignment and a good deal of time was spent discussing surgery. Petitioner wished to proceed with conservative care and was to return in three to four months for a recheck. (PX 6)

Petitioner returned on October 23, 2012 to discuss "causality for his knee complaints." Dr. Golz noted Petitioner's history of left knee complaints going back to 2006 and Petitioner's gradual progression of right knee complaints over the years. With regard to causality, Dr. Golz noted, "[Petitioner] feels his work-related duties are both a cause in the exacerbation of his knee complaints. He came with a handwritten letter that describes his dissatisfaction and concerns with the way that he feels he was treated at work in the Bureau of Identification at IYC Harrisburg. He feels that he was 'lied to," that he was 'totally abused by the state.' He feels is job duties "took a great toll on me.'" (PX 6) Petitioner went on to note that he felt his problems were caused by prolonged walking, standing up, and going up and down several flights of stairs on a daily basis. He also described "repetitive bending and squatting to get in and out of file cabinets." According to the doctor's notes:

> I explained to the patient and his wife that it is not possible in any one patient's case to say that his condition was either caused or not caused by his work-related duties. I suspect that his job duties that he describes of prolonged standing on concrete surfaces, frequent climbing of stairs, frequent climbing and squatting, did not cause but most likely aggravated his degenerative complaints and meniscal injuries, and that these likely, by his description, caused onset of symptoms in previously relatively asymptomatic knees. (PX 6)

A copy of the office note was sent to Petitioner's attorney. (PX 6)

Petitioner continued to treat with Dr. Golz for his bilateral knee complaints and he underwent viscosupplementation therapy. The doctor's notes are silent as to any further discussions regarding causality. (PX 6)

Dr. Golz' deposition was taken on January 10th, 2014. When asked to opine about causality Dr. Golz used the following words; "I did suspect.... [c]ould have caused." Again when asked about the need for surgery being caused by his work duties his answer was , "[i]t could have been." Dr. Golz was then asked, "..is it more likely than not that his work duties caused Petitioner's need for surgery which you performed?" Dr. Golz answered, "I don't think I can answer that." He was again asked about the need for treatment being caused or made symptomatic by his work duties and he answered; "I would have to answer again they could have been."

On cross-examination Dr. Golz admitted Petitioner's bilateral knee conditions were similar and they both suffered from a degenerative condition. Dr. Golz testified that when Petitioner presented on January 12th, 2010 his symptoms had lasted for year but had worsened in the previous three months. He admitted Petitioner's condition of being in his knee was bone on bone caused by arthritis. Respondent's counsel asked Dr. Golz about his causation opinion, "[b]ut you can't say one way or the other whether they did; is that correct?" His answer

was, "I could not." On redirect examination, Dr. Golz again stated he believed Petitioner's duties "could have" aggravated his pre-existing condition. (PX 9)

Petitioner returned to see Dr. Golz on June 13, 2014 regarding his bilateral knees. He was using a cane for ambulation. Petitioner was still not ready for surgery but getting closer to that point. He wished another course of viscosupplementation which was to be arranged by the doctor. (PX 7) The injection was provided on July 15, 2014 and Petitioner was told to return in six months for a recheck or earlier if necessary. Aspirations were performed prior to the injections with 1.5 cc being removed from the left knee but nothing from the right knee. Petitioner also mentioned some left thumb complaints and he was to be set up for an evaluation concerning that. (PX 7)

Petitioner was seen by Dr. Golz on September 16, 2014 regarding a left trigger thumb. He was noted to be scheduled for a follow-up on his knees in the future. (PX 7)

At the time of trial Petitioner was retired and had been since April 30th, 2009. Petitioner testified that he began working as a Juvenile Justice Specialist with the Illinois Youth Center-Harrisburg on April 30th, 1984 His last day of work was April 6, 2009. Petitioner worked as a Youth Supervisor from 1984 until 2003 and then he began working as a bureau of identification technician.

Petitioner testified that his last day of work was April 6, 2009. He recalled having a doctor's slip showing he could use sick time because he was having so much trouble with his leg.

Petitioner testified that the facility in which he worked had several different living units, consisting of multiple levels and the facility sat on approximately 70 acres of land. Petitioner testified at length regarding his job duties as a bureau of identification technician. As a bureau of identifications technician, Petitioner testified as to some of job duties which consisted of booking all offenders coming in to the facility, taking fingerprints, DNA samples, identification cards, computer work reports and files. Petitioner also testified that as part of his job he would have to move between houses on a regular basis to retrieve youths, which required him to walk across the entire facility. Petitioner indicated that he rarely had help when performing this task.

Petitioner further noted that his job required him to walk up and down stairs on a daily basis to get to and from the clinical services office where all of the paperwork that he used each day was generated. Petitioner estimated that the stairwell in which he walked up and down consisted of approximately 20 to 25 stairs, one-way, and that he would go up and down this particular stairwell approximately 10 times a day. This would equate to Petitioner walking up and down approximately 400 to 500 stairs each day. Petitioner estimated that about 65 percent of his day was spent on his feet and that he would walk approximately 3 miles a day. Petitioner also testified that he was regularly required to squat and kneel as part of his job duties.

Petitioner testified that he began experiencing pain in his right leg in approximately 2006. Petitioner noted that the pain was much more noticeable when he was at work. Petitioner noted that he did seek medical treatment for this pain after he first noticed it; however, he did not miss any time off of work. Petitioner indicated that the pain eventually got so bad that he began treating for the pain with his primary care doctor, Dr. Roger Jones. The first time he saw him was October 16, 2009. Dr. Jones referred Petitioner for an orthopedic evaluation with Dr. Golz of the Southern Orthopedic Associates.

Petitioner was asked why he waited until after he retired to start significantly treating for his right leg. Petitioner explained that he had so much other stuff going on that he waited until he leg was hurting so bad that

he figured he better get it checked out. When he first presented to Dr. Golz on January 12, 2010 he didn't tell him his right knee was work-related because he didn't know it was at that time.

At trial Petitioner was asked if Dr. Golz ever told him he had a work-related injury. Petitioner responded that when he first went in and talked to the doctor's assistant he was told it looked like his left leg was so weak that it took a toll on his right leg. Petitioner was also asked if he had ever spoken with Dr. Golz regarding his work duties and he responded that he thought he said a "few things" at one time or another. Petitioner was also asked if he recalled telling anyone at the Youth Center that he was having pain in his leg while he worked there and he responded he just "pretty much went to work."

Petitioner was also asked whether or not he had discussed with Dr. Golz that his left knee might be related to his employment and he testified that "it all" came together after he had his right knee done. Petitioner explained that it "all worked like a hand in a glove" and he knew within himself that his body had taken a toll on him. Petitioner acknowledged undergoing treatment for his right knee during the period of 2006-2009 and that the treatment was primarily with his family physician. On redirect examination Petitioner testified that by the time he had his right knee "fixed" it was too late to file on his left leg/knee.

Petitioner claimed he remembered experiencing pain back in 2006. Petitioner recalled it swelled up real big and he had 55 cc's of fluid taken off of it. On cross-examination Petitioner admitted he suffered from degenerative arthritis in both of his knees. He also has rheumatoid arthritis in one knee but isn't sure which one. Furthermore, he admitted he did not have to go up or down any steps to get to his office from the parking lot and that it was probably less than 200 meters from lot to office. On re-direct examination he testified this would take him between ten to fifteen minutes to walk that distance.

On cross-examination Petitioner was shown a series of photographs contained within Respondent's Exhibits 4-8. He agreed they accurately reflected his office space. When asked whether or not he could simply stay in his chair to file he vigorously testified that to reach the back of the filing cabinets or the rear drawer one would have to bend down and pick the files up.

Petitioner was asked about a personal injury questionnaire he filled out when he went to visit Dr. Golz. Specifically he was asked about an answer to the questions; "Where did this happen" and "How did this happen?" The handwritten answer to both questions was "just happened." He was then asked about the question of when the symptoms began and the answer was, "three months ago, soreness in the front of his knee". His answer was essentially, "[t]hat's what it says." There was an additional question as to whether this was a workers' compensation claim and the answer was "No." Petitioner testified that he did not know the issues with his right knee were related to his work when he saw Dr. Golz in January of 2010 but that later on during his treatment it was "discovered."

Petitioner testified that he has filed for social security because of his leg problems. He feels his right leg has affected his ability to obtain any employment. Everything has been affected. He can sit on a lawn mower but no longer does any push mowing.

Petitioner testified that he continues to have weakness and pain in his right leg and difficulty performing most of the activities that he once performed. Further surgery may be necessary, including a total knee replacement but Petitioner just isn't yet ready for that.

Respondent called Assistant Superintendent of Operations Donald Rumsey to testify. Mr. Rumsey had been at IYC Harrisburg for almost exactly eleven [11] years at the time of the trial. Mr. Rumsey testified he

had been the Petitioner's direct supervisor from some time in 2004 until July 2005 and then again from 2007 until the Petitioner's retirement. He also corroborated the photographs tendered in Respondent's exhibits were an accurate reflection of both the stairs and Petitioner's work station. He also corroborated the Petitioner's testimony regarding his job duties but added Petitioner also took pictures for the staff I.D.'s as well as printing them. Mr. Rumsey was asked if the Petitioner had ever informed him of right knee complaints that he believed were caused by work. His response was, "I know nothing of a right knee until the facility had me sign workers' compensation paperwork in I believe 2010." He was then handed Respondent's exhibit #1 and shown the Supervisor's report of injury. He testified he had signed it and documented he was not aware of any injury and it was dated February 25th, 2010, almost a year after the Petitioner had retired. His testimony was this was the first time he was aware of any claim by Petitioner with reference to his right knee.

Mr. Rumsey also testified that there is more than one entrance to the gym and that actually one is at ground level and the other has only approximately ten steps. He also testified that Petitioner would have been required to go to the master files at the clinical services, "at times." He stated he could not testify as to whether this would have been done on a daily basis or not. He also indicated that it was probably about 100 yards to the Petitioner's office from the parking lot.

The Arbitrator concludes:

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner failed to prove he sustained an accident on April 6, 2009 or on February 9, 2010 that arose out of and in the course of his employment with Respondent. Petitioner also failed to prove that his condition of ill-being in his right knee was causally connected to either injury or his job duties/employment with Respondent.

April 6, 2009 was the last day of work for Petitioner. He failed to present any persuasive or credible evidence to show how a repetitive trauma injury to his right knee manifested itself on that date. He did not quit working because of his right knee. He did not tell anyone that he was leaving or retiring because of his right knee and any problems he associated with his job duties. The Arbitrator cannot conclude that on that day both the fact of injury and its relationship to Petitioner's employment would have been plainly apparent to a reasonable person.

February 9, 2010 was the date on which Petitioner filed his Application for Adjustment of Claim in 10 WC 15596 and notified his former employer, in writing, of his alleged accident. While this might amount to a manifestation date, more importantly, Petitioner has failed to prove how any alleged accident to his right knee "arose out of his employment." To begin with, the date of February 9, 2010 has no other significance than to serve as the date he reported the injury and filed his claim. The statements contained in Petitioner's Notice of Injury form to Respondent regarding what he may have been told by Dr. Golz and/or his staff is not corroborated by the doctor's records. There is simply no mention of Petitioner's job duties (stairs, squatting, bending, concrete floors) until October 23, 2012 when Petitioner presented to the doctor's office for the specific purpose of addressing whether his right knee problems could be work-related.

Petitioner suffers from a degenerative condition bilaterally in his knees. His physician acknowledged his condition had continued to deteriorate after retirement. Dr. Golz was unable to give a persuasive and definite

opinion as to whether Petitioner's work duties would have necessitated Petitioner's surgery nor was he able to give a definite statement on whether Petitioner's condition was caused or aggravated by Petitioner's work duties. At most, Dr. Golz testified that Petitioner's work duties "could have caused an aggravation." The use of the word "could have" suggests some speculation on the part of the doctor, rather than reasonable certainty. All Dr. Golz really knew about Petitioner's job was what Petitioner told him -- ie., that he did prolonged walking, standing, up and down several flights of stairs daily, and repetitive bending and squatting to get in and out of file cabinets. Dr. Golz had no independent knowledge of Petitioner's job duties.

Prior to his retirement Petitioner never sought treatment for right knee complaints he associated with his employment duties. Petitioner certainly knew how to do so as he was also treating with Dr. Golz for upper extremity complaints he associated with his job duties for Respondent (see PX 2, office note of 7/17/09). When Petitioner first sought treatment in January of 2010 for right knee complaints he denied any known injury and reported his complaints had "just happened" three months earlier (which would be after his retirement in April). Petitioner never credibly explained or addressed how he could suddenly have a problem in January of 2010 (as reflected in the office note) and then report a work-related problem in February of 2010. Petitioner testified that he didn't tell Dr. Golz his right knee was a work-related problem in January of 2010 because he didn't know it was. Yet, he also testified he began experiencing right leg pain in 2006 which he found far more noticeable at work. Then, in other doctor's visits Petitioner suggested some correlation between overcompensating for his left knee condition by using the right knee too much or would suggest or note recent or acute exacerbations, including one while on vacation. There are too many inconsistencies in Petitioner's testimony, as well as the records themselves. Finally, there is some concern on the Arbitrator's part as to Petitioner's motivation. In that regard she notes the handwritten letter which Petitioner provided to Dr. Golz on October 23, 2012, in which he set forth his dissatisfaction and unhappiness with the way he had been treated by Respondent. This was the same date he sought out a causation opinion from the doctor.

A repetitive trauma case is no different than a specific trauma case in that one looks for corroboration of Petitioner's testimony within the medical records themselves. In this instance Petitioner's testimony as to an injury to his right knee caused by repetitive work activities for Respondent is not corroborated by the records. Setting aside the treatment Petitioner received to his right knee even before 2006 (ie., 2001), Petitioner began treating for his right knee in late December of 2009. At that time (which was only a few months after his retirement from Respondent) he did not correlate his symptoms with his work duties for Respondent; rather, he acknowledged having symptoms similar to what he had previously experienced in his left knee beginning in 2006. Thereafter, he associated his symptoms with overcompensation for his left knee, acute exacerbations, and other sudden events. Even after filing his first claim in 2010 he didn't address the issue with any doctors. No mention was made until October 23, 2012. Petitioner's delay in providing a history any earlier, combined with his questionable motivation for pursuing the matter as work-related, makes his overall credibility suspect. Petitioner's credibility was further hampered by his testimony regarding why he stopped working on April 6, 2009. He testified that he did so because he was having so much trouble with his leg. However, he didn't indicate which leg and, more importantly, there is nothing in the exhibits admitted into evidence, corroborating his testimony. Petitioner wasn't treating for either knee during that time period. Petitioner also testified that he began having problems with his right knee in 2006 and that it swelled up "real big" and he had 55 cc's of fluid taken off of it. According to the medical records admitted into evidence, Petitioner was treating for his left knee in 2006. Lastly, the Arbitrator cannot help but note the contrast in documentation between Petitioner's upper extremity complaints and his right leg complaints. While Petitioner's upper extremity complaints are unrelated to the instant proceeding, it is clear from the medical records that Petitioner knew how to document a work-related injury when he believed he has sustained one. There is no similar pattern presented with regard to Petitioner's right leg condition. Additionally, while it is possible to have a repetitive trauma injury "manifest itself" after one has left the employment allegedly causing the problem, Petitioner's credibility and motivation

herein undermine such a theory. Petitioner failed to prove he sustained an accident that arose out of and in the course of his employment or that his right knee condition is causally connected to his injury or his employment with Respondent. Petitioner's claims are denied.

Issue (E): Was timely notice of the accident given to Respondent?

Petitioner failed to prove he gave timely notice of an alleged accident on April 6, 2009.

Petitioner gave timely notice of an alleged accident on February 9, 2010 as he completed a written accident report on February 19, 2010.

Petitioner had been retired from his employment for almost ten months before he filed any paperwork notifying Respondent of a workers' compensation claim. His supervisor testified in unrebutted testimony that he was not aware of Petitioner's claim until he had been told Petitioner had filed paperwork in February of 2010. Petitioner filled out his paperwork on February 19th, 2010, after having retired at the end of April of 2009. Notice in case # 10 WC 15596 was timely. Notice in 12 WC 7908 was not.

In summary:

Case # 10 WC 15596 -- Petitioner failed to prove that he sustained an accident on February 9, 2010 that arose out of and in the course of his employment with Respondent or that his condition of ill-being in his right knee was causally connected to his accidental injury/employment duties with Respondent. Timely notice of the alleged accident was provided. Having found in favor of Respondent on the issues of accident and causal connection, all other issues are moot.

Case # 12 WC 7908 -- Petitioner failed to prove that he sustained an accident on April 6, 2009 that arose out of and in the course of his employment with Respondent or that his condition of ill-being in his right knee was causally connected to his accidental injury/employment duties with Respondent. Additionally, timely notice of the alleged accident was not provided to Respondent. Having found in favor of Respondent on the issues of accident, causal connection, and notice all other issues are moot.

****

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

☒ 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

Gregory Johnson,
Petitioner,

vs. NO: 12 WC 27824

Ruan Transportation,
Respondent.

15IWCC0952

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, permanent partial disability, medical expenses 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 14, 2015, is hereby affirmed and adopted.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: DEC 18 2015

Joshua D. Luskin

Ruth W. White

Charles J. DeVriendt

o-12/15/15
jdl/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

JOHNSON, GREGORY
Employee/Petitioner

Case# **12WC027824**

15IWCC0952

RUAN TRANSPORTATION
Employer/Respondent

On 1/14/2015, 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:

0412 RIDGE & DOWNES
101 N WACKER DR
SUITE 200
CHICAGO, IL 60606

0560 WIEDNER & McAULIFFE LTD
ONE N FRANKLIN ST
SUITE 1900
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF LaSALLE)

☐ 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

Gregory Johnson
Employee/Petitioner

v.

Ruan Transportation
Employer/Respondent

Case # **12** WC **27824**

Consolidated cases: **N/A**

15IWCC0952

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 **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Ottawa**, on **October 30, 2014**. After reviewing all of the evidence presented, the undersigned 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 **July 10, 2012**, 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 ***in part*** to the accident as explained *infra.*

In the year preceding the injury, Petitioner earned **$67,693.60**; the average weekly wage was **$1,301.80**.

On the date of accident, Petitioner was **56** years of age, ***single*** with **two** dependent children.

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

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

Respondent shall be given a credit of **$3,223.51** for TTD, **$1,338.74** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$4,562.25**.

The parties have stipulated that Respondent is entitled to a credit **pursuant to Section 8(j) of the Act for any group health payments made for conditions found to be related**, and the parties have further stipulated that **any outstanding balances for conditions found to be related will be awarded pursuant to Section 8.2 and 8(a) of the Act.** *See* AX1.

ORDER

As explained in the Arbitration Decision Addendum, Petitioner established a causal connection between his left lower leg condition and accident at work and failed to establish a causal connection between his left knee condition and accident at work.

Medical Benefits

As explained in the Arbitration Decision Addendum, Petitioner's claim for payment of medical bills related to the left knee is denied.

Temporary Total Disability & Temporary Partial Disability

As stipulated by the parties, Respondent shall pay Petitioner temporary total disability benefits of $867.87/week for 3 & 5/7th weeks, commencing July 11, 2012 through August 5, 2012, as provided in Section 8(b) of the Act. Respondent shall also pay Petitioner temporary partial disability benefits of $867.87/week for 1 & 3/7th weeks, commencing August 6, 2012 through August 15, 2012, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $3,223.51 for temporary total disability benefits and $1,338.74 for temporary partial disability that have been paid.

Petitioner's claims for temporary total disability benefits commencing August 28, 2012 through January 8, 2013 and for temporary partial disability benefits from August 16, 2012 through August 27, 2012 are denied.

Permanent Partial Disability: Left Leg

As explained in the Arbitration Decision Addendum, Petitioner failed to establish ongoing disability in his left leg and his claim for permanent partial disability benefits is denied.

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 30, 2014
Date

JAN 14 2015

15IWCC0952

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Gregory Johnson
Employee/Petitioner

v.

Ruan Transportation
Employer/Respondent

Case # **12** WC **27824**

Consolidated cases: **N/A**

FINDINGS OF FACT

The issues in dispute at this hearing include causal connection, Respondent's liability for certain unpaid medical bills, Petitioner's entitlement to temporary total disability benefits from August 28, 2012 through January 8, 2013, Petitioner's entitlement to temporary partial disability benefits from August 16, 2012 through August 27, 2012, and the nature and extent of Petitioner's injury. Arbitrator's Exhibit[1] ("AX") 1. The parties have stipulated to all other issues including that Respondent is entitled to a credit pursuant to Section 8(j) of the Act for any group health payments made for conditions found to be related, and that any outstanding balances for conditions found to be related will be awarded pursuant to Section 8.2 and 8(a) of the Act. See AX1.

Background

Prior to working for Respondent, Petitioner drove a truck and was a project manager for a company that did underground retention ponds. He explained that this was physical work and that he has primarily owned and driven trucks since he was 19 years old.

Petitioner had worked for Respondent approximately 2 ½ years as a truck driver and steel delivery driver on the date of his accident. His duties were to make sure everything was on the truck and make sure everything on the truck was tied down. Petitioner testified that he did not load or unload the trucks. He drove a semi-tractor/trailer to different states up to 12-14 hours in a day.

Previous to his injury at work, Petitioner testified that he was involved in a motorcycle accident over Labor Day weekend in 2006 when he injured his left leg. He broke his left leg and injured his face. The medical treatment for this injury ended in March of 2007. Petitioner testified that he had no other injury or medical treatment to his left leg until the accident at work on July 10, 2012.

July 10, 2012

On July 10, 2012, Petitioner testified that he was in Iowa driving to five or six different businesses. He would go out and see where the product was to be delivered and hand the client a bill. He was on his fourth stop with a bundle of 2 x 24 foot steel hydraulic tubing located in the middle of the trailer. Petitioner estimated this bundle weighed 6000 pounds.

He explained that the forklift could not reach far enough, so he used a 3 ½ foot long piece of steel and lever the steel over. In this process, there were pieces of six-to-eight inch pipe that were untied and loose. Petitioner

[1] The Arbitrator similarly references the parties' exhibits herein. Petitioner's exhibits are denominated "PX" and Respondent's exhibits are denominated "RX" with a corresponding number as identified by each party.

testified that he put his right foot against the loose pipes putting pressure against the bar to move the bundle and injured his foot.

Petitioner testified that he noticed that when he went to bump the other end of the bundle, his left leg gave out and he landed on the trailer against "dunnage," which he described as 4 x 4 blocking pieces of wood, to allow forklifts to get under the pipes. He testified that he was in extreme pain in his left leg. Petitioner testified that he crawled to the trailer and someone helped him back into the truck. Petitioner was unable to drive to his next stop. An ambulance was called.

Medical Treatment

The emergency room records reflect that Petitioner was transported to Regional Medical Center in Manchester, Iowa. PX1. Petitioner reported that he "felt a sharp pain and heard a crack in his left lower leg," while "using a pry bar and lifting heavy metal on his semi-trailer." *Id.* Petitioner indicated his belief that his leg was broken, as his symptoms were similar to a prior injury. *Id.* He reported that he "had a severe leg fracture in approximately 2006 secondary to an accident which he had plates and screws and infection in. He states he couldn't walk for a year." *Id.*

Petitioner's x-rays revealed no evidence of fracture, other than the older healed injury, and some soft tissue swelling. *Id.* The physician noted that "between his knee and his ankle anteriorly mid shaft of the left lower tibia he has significant pain," but no swelling. *Id.* The notes reflect that the normal x-rays were discussed with Petitioner and he was "adamant" that he did have a fracture and "because of his temperament and demanding nature" a CT scan of the lower leg was ordered. *Id.* The CT scan was also negative. *Id.* Petitioner was released with crutches. *Id.* Petitioner was diagnosed with left leg pain secondary to reported injury, given crutches and Vicodin for pain, and discharged. *Id.*

Petitioner testified that he was taken across the street to a hotel and his supervisor, Darren Ross ("Mr. Ross") went to pick him up the next morning. Petitioner testified that he then went to St. Margaret's Occupational Health Center as directed by his employer on July 11, 2012. He testified that he could not put any weight or pressure on his leg at all and that his knee was not normal at this time.

The medical records reflect that Petitioner was evaluated by Dr. Koogler. PX2. He reported an injury to his left lower leg while moving a pipe and experiencing sudden pain in the left lower leg over the left posterior half of the lower leg. *Id.* He also reported no significant pain at rest, with pain up to a level of 9-10/10 with spasms or weightbearing. *Id.* Petitioner further reported an injury approximately three weeks earlier when he hit the upper leg against something and developed an infection to an old wound area over the proximal anterior tibia for which he was being treated by his primary care physician, Dr. Safdar. *Id.* Dr. Koogler noted tenderness over the left lower leg, near the posterior lower half of the leg. *Id.* He also noted that the left anterior upper tibial area did have a bandage over an old draining wound. *Id.* Dr. Koogler diagnosed Petitioner with left lower leg pain and a left lower leg strain. *Id.* Petitioner was released to work light duty with limited weight bearing and use of crutches with an increase to partial weight bearing after three days as tolerated. *Id.*

Petitioner's primary care physician, Dr. Safdar, show Petitioner's treatment to the left leg beginning July 14, 2012. RX3. At this time, Petitioner reported left leg swelling and pain secondary to his leg giving out at work. *Id.* Dr. Safdar indicated that Petitioner's preexisting cellulitis was improving, and recommended a venous Doppler of the left leg on an expedited basis. *Id.* The results of that test were normal. *Id.*

Petitioner returned to Dr. Koogler on July 25, 2012. PX2. Petitioner reported using crutches until approximately four days prior, at which time he began using a cane. *Id.* He also reported occasional spasms when pivoting at which time he uses the cane and taking aspirin and anti-inflammatory medications only. *Id.* Dr. Koogler noted that Petitioner walked with a stable gait with the use of a cane, minimal discomfort to palpation over the left lower lateral calf. *Id.* Petitioner's diagnosis remained a left lower leg strain and left lower leg pain. *Id.* Dr. Koogler recommended an increase in cycling activities for exercise and to help strengthen the leg and decrease the tendency to spasm. *Id.*

Petitioner reported back to Saint Margaret's Occupational Health on August 8, 2012. PX2. He reported that "his leg pain, over the last 2 weeks, has improved and only has mild pain once in a while when he is using the leg a lot. There is no pain when touching and he denies any swelling, erythema or any abnormal appearance to the skin over the site of pain." *Id.* Petitioner also reported that he had begun cycling to keep his legs conditioned, as suggested by Dr. Koogler, riding 1½ miles in the morning and 1½ miles at night over the past 10 days. *Id.* However, Petitioner noted that he began to experience cracking and popping in his left knee while bike riding. *Id.*

On examination, the physician's assistant, Kristie Shin, PA-C, noted Petitioner's complaint of mild pain with valgus strain on the knee on the medial aspect. *Id.* She also noted crepitus across the anterior aspect of the knee with flexion and extension. *Id.* Petitioner was diagnosed with left lower leg pain, a left lower leg strain, and left knee crepitus and mild pain. *Id.* The physician's assistant noted that she did not believe that Petitioner's knee crepitus was related to his injury at work since it did not begin until after he started using the bicycle. *Id.* Petitioner was advised to follow up with an orthopedic surgeon regarding the left knee. *Id.*

At the hearing, Petitioner testified that he rode his bicycle from home and that his knee began to become very tender and "started to swell up." Petitioner testified that prior to bicycle riding he had not placed any weight on the leg. Petitioner further testified that he had pain throughout his leg ever since the July 10, 2012 accident, but then his knee "started blowing up because of the bicycle riding." *Id.* On cross examination, Petitioner also testified that August 8, 2012 was the first time that he reported knee pain. He testified that the swelling got increasingly worse after riding the bicycle.

Petitioner reported to Dr. Safdar August 9, 2012. RX3. At that time, the diagnosis changed to left knee pain, with degenerative joint disease. *Id.* Petitioner first reported left knee pain which he attributed to the work injury. *Id.*

Petitioner returned to Saint Margaret's on August 15, 2012. PX2. Petitioner reported no further leg cramping and that the leg was better in the location of the original injury. *Id.* He also reported left knee pain primarily when ascending stairs and that his left knee "started grinding when he began exercising on his regular bicycle ...." *Id.* Petitioner indicated that he saw his personal physician and was awaiting an orthopedic referral. *Id.* After an examination, Dr. Koogler diagnosed Petitioner with bilateral knee crepitus, a largely resolved left leg strain, and left knee pain suggesting patellofemoral syndrome and degenerative changes in the knee to include a possible diseased meniscus. *Id.* Dr. Koogler released Petitioner to regular work for the work-related injury involving the lower leg, and noted that Petitioner's left knee complaints were intermittent with exercise activity and that he would visit an orthopedic specialist. *Id.*

Petitioner testified that on August 11, 2012 and August 15, 2012 Dr. Koogler told him to strengthen the leg muscle by riding a bicycle. Petitioner testified that his knee was very tender and started to swell up. Petitioner

explained that he did not feel that he could perform his job duties, so he asked Dr. Koogler for a "DOT" physical as requested by his boss. Petitioner also testified that he told his boss what happened.

Petitioner returned to Dr. Safdar on August 22, 2012, at which time the diagnosis was left knee pain and left leg cellulitis. RX3. Dr. Safdar referred Petitioner to Dr. Anuj Puppala at Hinsdale Orthopedics. PX5.

Petitioner underwent a left knee MRI at Morris Hospital on August 23, 2012. PX5. The interpreting radiologist noted a comminuted, depressed and fragmented fracture of the lateral tibial plateau with mild bone marrow edema suggesting a subacute to chronic process, an extensive tear of the lateral meniscus, and tricompartmental chondromalacia and chondral defects. *Id.*

Petitioner testified that he was off work from July 11, 2012 through August 5, 2012. The parties have stipulated that Petitioner is entitled to benefits during this period of time. AX1. He explained that physicians at St. Margaret's then imposed work restrictions and that Respondent wanted him to clean books at the Morris library, which Petitioner did through August 27, 2012. Thereafter Petitioner testified that he was placed off work by his primary care physician.

Petitioner then saw Dr. Puppala for the first time on September 4, 2012. PX3; PX5. Petitioner reported left knee pain and that he was moving steel from a trailer when he felt a pop in his left knee. PX5. He indicated that he never had this type of problem with his left knee before and reported mostly medial pain with locking of the knee. *Id.* On examination, Dr. Puppala noted a minimal limp, a well-healed incision over the left leg with a small area of serous drainage from an incision point, some tenderness medially over the left knee and range of motion to approximately 125 degrees. *Id.* Dr. Puppala diagnosed Petitioner with left knee pain with mechanical symptoms such as locking, and degenerative lateral compartment arthrosis status post infectious process requiring removal of hardware from left tibial plateau fracture. *Id.* Dr. Puppala recommended an arthroscopy with lateral compartment chondroplasty and a lateral meniscectomy, noting that Petitioner would likely need a knee replacement down the road, and indicated that he would also evaluate the medial compartment at the time of surgery. *Id.* He restricted Petitioner to sedentary work and, if such work was unavailable, placed Petitioner off work. *Id.*

On cross examination, Petitioner testified that he told Dr. Puppala that he felt a pop in his knee and collapsed at the time of his accident. He also acknowledged that he completed an intake form for Dr. Puppala on September 4, 2012 in which he reported "no knee problems." PX6.

Petitioner underwent the recommended surgery on September 13, 2012. PX5; PX6. Pre-operatively, Dr. Puppala diagnosed Petitioner with left knee arthritis with mechanical symptoms of locking and a lateral meniscus tear. *Id.* He performed a left knee arthroscopy with medial and lateral meniscectomy. *Id.* Post-operatively, Dr. Puppala also diagnosed Petitioner with a medial meniscal tear, grade III-IV chondromalacia of the medial femoral condyle, and grade III-IV chondromalacia of the lateral compartments. *Id.*

Petitioner returned to Dr. Puppala post-operatively on September 17, 2012 reporting that the locking in his knee stopped and denying an increase in pain. PX6. At the hearing, Petitioner testified that he had a vast improvement in the knee compared to how it was after the accident, and he testified that the locking disappeared. Petitioner testified that he still had some pain, but nothing like before the accident.

Thereafter, Petitioner returned to Dr. Puppala for post-operative care that was somewhat complicated by drainage from one of his incisions. PX3; PX6. On September 21, 2012, Dr. Puppala performed an arthroscopy[2] with irrigation and debridement and closure of wound with synovial cutaneous fistula closure. PX6. Petitioner's knee was then aspirated on November 134 2012 and he was referred out for antibiotic treatment. *Id.* Dr. Puppala last saw Petitioner on November 26, 2012, at which time he indicated a follow up visit in six weeks, which Petitioner did not attend. *Id.* Petitioner testified that he returned to work for Respondent as a truck driver in the same job.

Section 12 Examination – Dr. Levin

Petitioner submitted to a Section 12 examination at Respondent's request with Dr. Mark Levin on March 12, 2013. RX1 (Dep. Exh. 2). Dr. Levin reviewed the records of Regional Medical Center, Saint Margaret's Occupational Health, Dr. Safdar, St. James Hospital, and Dr. Puppala. *Id.* He also examined Petitioner and took a history, at which time Petitioner reported that he was trying to bump 6,000 pounds of tubing and felt a "pop" in his left knee and specifically experienced left knee pain. *Id.*

Ultimately, Dr. Levin concluded that Petitioner's July 10, 2012 injury was to the lower left leg and not to the knee. *Id.* He indicated that the history given to him, as well as his orthopedic surgeon (Dr. Puppala), "does not fit with the history in the medical records." *Id.* Dr. Levin concluded that Petitioner could work full duty and that his left knee condition, septic arthritis, and subsequent treatment were not related to his injury at work, but rather to his underlying pre-existing conditions. *Id.*

Narrative Report – Dr. Puppala

In a narrative letter dated April 28, 2014, Dr. Puppala summarized his care and treatment of Petitioner's left knee. PX3. He also opined that Petitioner's left knee condition was causally related to his injury at work in July of 2012. *Id.* Dr. Puppala indicated that Petitioner reported symptoms of locking in the knee occurring only after his accident and that his pre-existing post-traumatic arthritis in the left knee was aggravated by the accident on July 10, 2012. *Id.*

Deposition Testimony – Dr. Puppala

On June 5, 2014, Petitioner called Dr. Puppala as a witness at which time he provided testimony about Petitioner and his left knee condition. PX4. Dr. Puppala testified consistent with his narrative report that Petitioner's pre-existing left knee condition was aggravated by his accident at work. PX4 at 11-12.

On cross examination, Dr. Puppala acknowledged that in reaching his causal connection opinion, he relied quite a bit on Petitioner's reports to him. PX4 at 17. He testified that he did not review other treating medical records other than his own and Petitioner's MRI. PX4 at 15-16. Dr. Puppala also testified that he would have less confidence in making a causal connection opinion (such as he did) if there was a report of left knee pain both before and after the injury. PX4 at 18-19. However, a patient did not need to notice a pop in order to have had a ligamentous injury. PX4 at 22. He further testified that Petitioner's report that he experienced knee pain right after the accident was important; had Petitioner first complained of left knee pain 30 days after the accident, the causal relationship would be less definitive. PX4 at 19.

[2] While the operative report references Petitioner's right knee, it also references the recent surgery to the right knee. PX6. It appears that this is a scrivener's error and that the operative report is referencing the operated left knee.

Dr. Puppala also explained that, if he was examining a patient with the type of injury reported by Petitioner, he would expect to see swelling, tenderness, and stiffness in the hours and days after the injury; although those symptoms were not always present. PX4 at 19-20, 22-23. With regard to the meniscal tears, he explained that there was no definitive way to rule out that such tears were related to the accident, which was not the same as saying that the tears were more likely than not caused by the accident. PX4 at 20.

Deposition Testimony – Dr. Levin

On September 19, 2014, Respondent called Dr. Levin as a witness at which time he provided testimony about Petitioner and his left knee condition. RX1. Dr. Levin testified consistent with the opinions contained in his reports, and in particular with the conclusions contained in his report. *Id.*

Dr. Levin noted that the body part involved in the work accident appeared to be Petitioner's lower leg above the ankle, and not the left knee. RX1 at 11. He noted that the documented clinical exams of the knee were normal, other than the incidental finding of the preexisting infection. *Id.* Dr. Levin noted that the history provided to him regarding a left knee injury occurring on July 10, 2012 did not correspond with the records documenting Petitioner's reports of injury and treatment records on and around that date. RX1 at 12, 18-19. He also noted that, if Petitioner had a pop in the knee at the time of injury, he would expect to see swelling documented in the contemporaneous medical records, which was not. RX1 at 20. Dr. Levin concluded that there was no evidence of a left knee injury from his treating medical records at that time; rather, these records showed an injury to the left lower leg and a benign left knee exam. RX1 at 13.

Additional Information

Regarding his current condition, Petitioner testified that he cannot do anything on his knees anymore. Stairs are difficult after a couple of flights. He also gets out of his truck every two hours to move around, otherwise his left knee stiffens. He also testified about handyman duties that he used to perform on his property, which he testified are now done by his daughter. Petitioner testified that he takes over-the-counter Arthritis Aleve, which he did not take before 2012.

ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made a part of the Commission's file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

In support of the Arbitrator's decision relating to Issue (F), whether the Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

Based on the totality of the evidence, the Arbitrator finds that Petitioner's lower left leg condition is causally related to his injury at work, but further finds that Petitioner failed to establish that his left knee condition of ill being is causally related to his accident at work.

In so finding, the Arbitrator first addresses the lower left leg condition. The emergency room records reflect Petitioner's complaints of pain and symptoms in the lower left leg and physical examination by physicians at the emergency room, at St. Margaret's Occupational Health Center, and by his primary care physician, Dr. Safdar, through early August 2012. Petitioner's reports of an injury to the lower left leg are generally consistent during this period of time to the various providers. Thus, the Arbitrator finds that Petitioner's lower left leg condition of ill being is causally related to his injury at work.

Next, the Arbitrator addresses Petitioner's left knee condition. The first reference to knee pain or symptoms in the medical records occurs 30 days after the July 10, 2012 accident when Petitioner returned to St. Margaret's Occupational Health Center on August 8, 2014. Petitioner reported that he began riding a bicycle approximately 10 days prior to "keep his legs conditioned," as suggested by Dr. Koogler. At this time, Petitioner reported that he felt "cracking and popping in his left knee." The records from August 8, 2012 reveal that Petitioner's lower leg strain had largely resolved at this point, and Petitioner was diagnosed with left knee crepitus which the physician's assistant noted was unrelated to the injury, "since it did not start until after he started using the bicycle." Notwithstanding her opinion, Petitioner was also later examined at Respondent's request by Dr. Levin.

Dr. Levin noted the inconsistency, from a medical standpoint, between Petitioner's reported "pop" in the knee at the time of his Section 12 examination and the complete lack of reference to any knee symptoms or objective evidence of a knee condition in the medical records during the days and weeks following the July 10, 2012 accident. In addition, Petitioner's testimony at the hearing about the symptoms occurring at the time of the injury on July 10, 2012 and the continuing symptoms within the weeks thereafter are inconsistent with contemporaneous medical records. As noted by Dr. Levin, there is no reference by Petitioner to any symptoms in the left knee shortly after his injury at work or within the following weeks. There is also a lack of objective medical evidence to support the type of acute ligamentous injury he testified he suffered (i.e., swelling, etc.), which undermine his claim that his left knee condition is causally related to the July 10, 2012 accident.

Moreover, Petitioner's orthopedic physician, Dr. Puppala, did not have the opportunity to review Petitioner's emergency room or any medical records prior to his first visit on September 4, 2012. Dr. Puppala also acknowledged that his opinions about causal connection may change if Petitioner's reported symptoms and physical examination findings within the days and weeks after the accident were different than those reported to him.

The inconsistencies between Petitioner's testimony at trial and his reports as contained in the initial treating medical records, as compared to his reports to Dr. Puppala and Dr. Levin, render his testimony about the circumstances giving rise to his left knee condition less than credible. The inconsistencies regarding Petitioner's reports initially to medical providers, then Dr. Puppala, and the lack of corroborating objective medical evidence of the type of acute injury claimed by Petitioner were noted by Dr. Levin. In conjunction with the concessions of Dr. Puppala, that Petitioner's reported history and documented physical condition at or near the time of the injury could lessen the confidence with which he rendered his causal connection opinion, the Arbitrator finds the opinions of Dr. Levin to be persuasive.

Based on all of the foregoing, the Arbitrator finds that Petitioner failed to prove that his claimed current condition of ill-being in the left knee is causally related to the injury sustained at work on July 10, 2012.

In support of the Arbitrator's decision relating to Issue (J), whether the medical services that were provided to Petitioner were reasonable and necessary, whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following:

"Under section 8(a) of the Act (820 ILCS 305/8(a) (West 2006)), a claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising out of and in the scope of her employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury." *Absolute Cleaning/SVMBL v. Ill. Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470 (4th Dist. 2011) (*citing University of Illinois v. Industrial Comm'n*, 232 Ill. App. 3d 154, 164 (1st Dist. 1992)). Whether a medical expense is either reasonable or necessary is a question of fact to be resolved by the Commission, and its determination will not be overturned on review unless it is against the manifest weight of the evidence. *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 534 (1st Dist. 2001).

As explained more fully above, the Arbitrator finds that Petitioner failed to prove a causal connection between his current left knee condition and accident at work. There is no evidence that any of the charges relating to the left lower leg strain remain unpaid. Thus, the Arbitrator denies Petitioner's claim for payment of the medical bills incurred by Petitioner related to the left knee.

In support of the Arbitrator's decision relating to Issue (K), Petitioner's entitlement to temporary total disability and temporary partial disability benefits, the Arbitrator finds the following:

"The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, i.e., until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, i.e., reached MMI. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at *28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, *but also that he was unable to work. Gallentine*, 201 Ill. App. 3d at 887 (*emphasis* added); *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

Based on the facts, and causal connection conclusions explained in detail above, the Arbitrator finds that Petitioner has failed to prove that he is entitled to further temporary total disability benefits or temporary partial disability benefits due to any causally related condition. Thus, Petitioner's claims for temporary total disability benefits from August 28, 2012 through January 8, 2013 and for temporary partial disability benefits from

August 16, 2012 through August 27, 2012 are denied.

In support of the Arbitrator's decision relating to Issue (L), the nature and extent of Petitioner's injury, the Arbitrator finds the following:

Section 8.1b of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. 820 ILCS 305/8.1b (LEXIS 2011). Specifically, Section 8.1b states:

> For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:
>
> (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
>
> (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:
>
> (i) the reported level of impairment pursuant to subsection (a);
> (ii) the occupation of the injured employee;
> (iii) the age of the employee at the time of the injury;
> (iv) the employee's future earning capacity; and
> (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. *Id.*

Considering these factors in light of the evidence submitted at trial, the Arbitrator addresses the factors delineated in the Act for determining permanent partial disability.

First, no 8.1b subsection (a) report delineating Petitioner's level of impairment was submitted into evidence by either party. Thus, the Arbitrator considers the parties to have waived their right to do so and assigns no weight to this factor.

Second, the evidence established that Petitioner was a truck driver. The Arbitrator finds Petitioner's testimony regarding his duties at work on the date of accident to be credible and, as this evidence is uncontroverted, the Arbitrator assigns it significant weight.

Third, the parties stipulated that Petitioner was 56 years old on the date of accident. This evidence is uncontroverted and, thus, the Arbitrator assigns it significant weight.

Fourth, while there is evidence reflecting Petitioner's physical capabilities (i.e., Petitioner's own testimony about a full duty release to work, treating medical records, a Section 12 examination report, etc.) no evidence was introduced regarding Petitioner's future earning capacity as a result. Thus, no weight is assigned to this factor as there is no evidence of any impact on Petitioner's future earning capacity as a result of his injury.

Fifth, the treating medical records reflect that Petitioner underwent medical treatment to the left lower leg for several weeks after his injury at work and he reported that his symptoms had largely resolved. As of July 25, 2012, Dr. Koogler continued to diagnose Petitioner with a left lower leg strain and left lower leg pain, noted Petitioner's reports of occassional spasms, and his use of over-the-counter aspirin and anti-inflammatory medications. On examination, Dr. Koogler noted some objective evidence of left lower leg symptoms. By August 9, 2012, Petitioner's reported symptoms related to the left knee. Petitioner's claim regarding the relatedness of his left knee condition has been denied and is addressed above. Petitioner returned back to full duty work and testified about continuing symptoms only in his left knee. In view of all of the foregoing, the Arbitrator finds that there is no credible evidence of even minimal ongoing disability relating to the left lower leg. This evidence is uncontroverted and, thus, the Arbitrator assigns it significant weight.

Based on all of the foregoing, and in consideration of the factors enumerated in Section 8.1b, which does not simply require a calculation, but rather a measured evaluation of all five factors of which no single factor is conclusive on the issue of permanency, the Arbitrator finds that Petitioner failed to establish permanent partial disability to the left leg pursuant to Section 8(e) of the Act.

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

Robert Palmer,
Petitioner,

vs. NO: 12 WC 31548

UPS,
Respondent.

15IWCC0953

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, medical expenses, prospective medical expenses 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 16, 2015, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

15IWCC0953

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 $4,500.00. 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: DEC 1 8 2015

Joshua D. Luskin

Ruth W. White

Charles J. DeVriendt

o-12/15/15
jdl/wj
68

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

PALMER, ROBERT
Employee/Petitioner

Case# **12WC031548**

UNITED PARCEL SERVICE
Employer/Respondent

15IWCC0953

On 3/16/2015, 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:

1067 ANKIN LAW OFFICE
SCOTT GOLDSTEIN
162 W GRAND AVE SUITE 1810
CHICAGO, IL 60654

0075 POWER & CRONIN LTD
RORY M McCANN
900 COMMERCE DR SUITE 300
OAKBROOK, IL 60523

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Robert Palmer
Employee/Petitioner

v.

United Parcel Service
Employer/Respondent

Case # **12** WC **31548**

Consolidated cases: **N/A**

15IWCC0953

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 **Stephen Friedman**, Arbitrator of the Commission, in the city of **Chicago**, on **February 2, 2015**. 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. [x] 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. [x] 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. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On the date of accident, **August 28, 2012**, 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 $**46,219.87**; the average weekly wage was $**939.43**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **2** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**9,752.21** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**9,752.21**.

Respondent is entitled to a credit for any payments proved under Section 8(j) of the Act.

ORDER

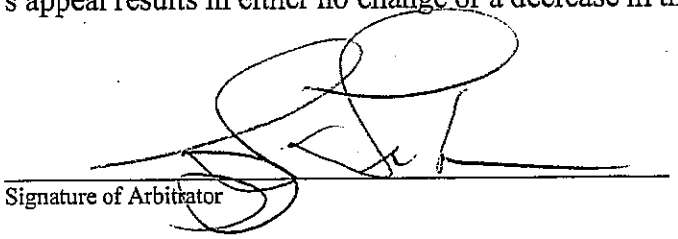
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $914.20 to Advocate Medical Group and $7,605.82 to ATI Physical Therapy, as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made under Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $626.29/week for 22 4/7 weeks, commencing September 13, 2012 through November 27, 2012 and from April 29, 2013 through July 19, 2013, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $9,752.21 for temporary total disability benefits that have been paid.

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

March 16, 2015
Date

ICArbDec19(b)

MAR 16 2015

Statement of Facts

On August 28, 2012, Petitioner Robert Palmer was employed by Respondent United Parcel Service as a forklift driver. He had been employed by Respondent for about 10 years. Petitioner testified that on August 28, 2012, he had a pallet on his forks and the blade caught a metal protrusion on the floor. The forklift stopped suddenly, jolting his back. Petitioner testified that he did not fall out of the forklift. He was wearing a seatbelt. He was able to get down off the forklift on his own.

Petitioner reported the injury and was taken to Ingalls Clinic. The records of Ingalls were admitted as Petitioner's Exhibit 2. Petitioner gave a consistent history of accident and complained of localized back pain. The physical exam recorded no spasm and a negative neurological exam, but limited forward flexion and positive straight leg raising at 45 degrees. After X-rays and a physical exam, he was released with a prescription for Ibuprofen and cleared to return to full duty work. Petitioner testified that he went on vacation three days after his return to work. They took a six hour drive. Petitioner testified that he was not driving. He testified that they did not drive six hours straight. They took a break.

Petitioner testified that he then saw his family doctor at Advocate. The records of Advocate Medical Center were admitted as Petitioner's Exhibit 3. Petitioner was first seen on September 5, 2012. He received a diagnosis of a low back strain and was prescribed physical therapy. Petitioner returned on September 18, 2012. The lumbar exam and neurological exam were negative. Petitioner was diagnosed with a sprain. Petitioner was taken off work on September 18, 2012. Petitioner testified that he was initially placed on restricted duty which Respondent accommodated. He was then taken completely off work. He received physical therapy. Petitioner continued to advance complaints including numbness and tingling down his leg and stiffness. He was scheduled for an MRI. Dr. Taylor noted that if the MRI was negative he would release Petitioner to return to work. The MRI was denied by Respondent. Petitioner testified that he returned to work on November 28, 2012. He returned to full duty. Petitioner returned to Advocate Medical Group on December 5, 2012. He stated he had returned to work for 2 days but was unable to continue due to low back pain.

Petitioner testified that underwent the MRI on December 12, 2012 It was read as normal. Dr. Clanton at Advocate Medical Group saw Petitioner on December 19, 2012 for follow up on right sided back pain and left foot pain. He confirmed the MRI was normal and released Petitioner to return to work. On December 21, 2012, Dr. Dixit at Advocate Medical Group diagnosed the foot pain as plantar fasciitis. Petitioner continued to complain of back pain and at the February 27, 2013 office visit, requested referral to a specialist. The April 2, 2013 record reflects that the podiatrist scheduled an EMG which was performed on March 15, 2013 and showed an L5-S1 radiculopathy. His doctor then referred Petitioner to Dr. Brooker.

He first saw Dr. Brooker on April 1, 2013. Dr. Brooker placed him on restrictions. He received further physical therapy at ATI. On April 29, 2013, Dr. Brooker took him off work and referred him for a pain management consultation.

Petitioner saw Dr. Kapur from Advocate on May 13, 2013 and complained of sharp cramping pain in the left foot. His pain did not shoot down his legs. This doctor indicated that corticosteroid injections might be helpful but surgical evaluation would probably not, given the negative MRI.

Petitioner was seen by Dr. Kumar on May 22, 2013 for a pain management consultation. Petitioner was complaining of low back pain radiating into his legs. Dr. Kumar notes the unremarkable MRI, and the EMG showing left sided L5-S1 radiculopathy. The physical examination was unremarkable with normal range of motion, normal straight leg raising, and a normal neurological exam. Dr. Kumar notes that based upon Petitioner's pain pattern, it suggests an S1 radiculopathy. He offered a series of epidural injections even though there were no active nerve root tension signs. Petitioner was reluctant, indicating his current pain was very minimal. Dr. Kumar states the exact etiology of his radicular pain is not understood. He recommended work hardening prior to Petitioner returning to work.

Petitioner participated in work hardening at ATI on referral from Dr. Kumar beginning July 16, 2013. Petitioner participated through July 19, 2013. He was discharged on July 22, 2013 when he stated he was returning to work per the IME recommendation (Px 4).

Dr. Brooker testified by deposition on June 23, 2014 (Px 1). Dr. Brooker testified that he is a board certified orthopedic surgeon. He treats back and neck pain but does not do spinal surgery. He would refer a patient to a spine surgeon outside of Midland. Dr. Brooker diagnosed S1 radiculopathy based upon the positive straight leg raising test and the EMG. He also testified to paraspinal muscle spasm and tenderness and radiating pain with activity. He testified that the Petitioner's condition was caused by the accident. He opines that the Petitioner needs an epidural or two. While Petitioner was initially reluctant, he has been willing to undergo the injection for the last year. He opined that Petitioner is unable to return to regular work. He could do sedentary work. The MRI showed some arthritis which Dr. Brooker opined became inflamed resulting in nerve irritation. The MRI findings were age appropriate, without evidence of any acute injury. Dr. Brooker agreed that if there are no neurological findings then the EMG findings in and of themselves are of no clinical significance.

Petitioner testified that he received compensation through May 31, 2013. He attended a Section 12 examination with Dr. Jay Levin on June 17, 2013. Dr. Levin testified by deposition on August 19, 2014 (Rx 1). He testified that the MRI findings were age appropriate. He testified that the March 15, 2013 examination

recorded normal sensation, muscle strength and reflexes and is inconsistent with radiculopathy. Based upon the negative neurological examination he diagnosed Petitioner with a myofascial strain, not an S1 radiculopathy. He opined that Petitioner was at MMI and could return to full duty work.

Petitioner testified that he was initially frightened to undergo the injections, but that he has reconsidered and now wants the treatment. Petitioner testified that he has confidence in Dr. Brooker; that he trusts him. Petitioner testified that he continues to see Dr. Brooker every six weeks. He is receiving prescription medication; Ibuprofen 800 mg. Dr. Brooker's records of November 7, 2014 and December 22, 2014 (Px 5) reflect that petitioner remains neurologically intact. Dr. Brooker is awaiting a decision on further treatment and continues Petitioner off work. The medication has a little effect on his pain. Petitioner testified that he continues to have back pain between 6/10 and 8/10. Petitioner testified that he wants to get back to work. He never injured his back before August 28, 2012. Petitioner testified that he has not received any recommendation for surgery.

Respondent submitted a Utilization Review by Dr. Antonelli dated April 25, 2013 which found additional physical therapy not certified as beyond the ODG guidelines (Rx 2).

Conclusions of Law

In support of the Arbitrator's decision with respect to (F) Causal Connection, the Arbitrator finds as follows:

As a result of the accident on August 28, 2012, Petitioner suffered injuries to his low back. The Ingalls emergency records confirm complaints of moderate pain in the right lower back with no pain on straight leg raising. The examination of the lower extremities was normal. The diagnosis was a back contusion. Petitioner was discharged.

His further care at Advocate Medical Group confirms the diagnosis of a lumbar strain. The records reflect a pre existing diagnosis of peripheral neuropathy in the left upper extremity. Petitioner's initial evaluation on September 5, 2012 also confirms a negative neurological examination, with negative straight leg raising. The treatment records of Advocate Medical Group do not support the claim of radiculopathy. The neurological examinations remain negative. Petitioner's complaints of left foot pain were diagnosed at plantar fasciitis. The MRI performed was read as normal. The diagnosis remains a lumbar strain.

Petitioner's treatment with Dr. Brooker also supports this conclusion. The initial April 1, 2013 examination also finds that Petitioner was vascularly and neurologically intact. The records continue to list the diagnosis as a

lumbar sprain. Dr. Brooker's opinion that Petitioner has a left S1 radiculopathy is based upon the EMG findings and a slightly positive straight leg raising. Dr. Kumar's May 22, 2013 office visit also supports the diagnosis of a sprain based upon the negative neurological examination and negative straight leg raising.

Based upon the treating medical records, particularly those of Ingalls, Advocate Medical Group and Dr. Kumar, the Arbitrator finds the opinions of Dr. Levin more persuasive that those of Dr. Brooker. The opinions of Dr. Levin are supported by the complaints presented, the physical examinations recorded, and the opinions of these treating doctors. Even Dr. Brooker's examinations confirm Petitioner was and remains neurologically intact. The EMG was initiated by the complaints of foot pain. The Arbitrator notes the pre existing diagnosis of peripheral neuropathy.

Based upon the record as a whole including the testimony of the Petitioner, the medical records and deposition testimony, the Arbitrator finds that, as a result of the accidental injuries sustained on August 28, 2012, the Petitioner sustained a sprain/strain injury to the lumbar spine.

In support of the Arbitrator's decision with respect to (J) Medical, the Arbitrator finds as follows:

Based upon the Arbitrator's decision with respect to causal connection, the Arbitrator finds that Petitioner sustained a sprain/strain injury to the lumbar spine. The Arbitrator does not find the diagnosis of lumbar radiculopathy causally connected to the accidental injuries sustained. The treatment received must therefore be reviewed in light of the sprain/strain condition which has been found causally connected to the accident.

Petitioner has submitted bills from Advocate Medical Group ($914.20) and ATI Physical Therapy for therapy from April 4, 2013 through May 14, 2013 ($4,454.94) and for work hardening from July 10, 2013 through July 19, 2013 ($3,150.88).

The Advocate Medical Group bill is for services documented in Petitioner's Exhibit 3 as causally connected to Petitioner's lumbar sprain and is reasonable, necessary and causally connected treatment.

The physical therapy and work hardening have been disputed by Respondent based upon the opinions expressed by Dr. Levin in his deposition and the Utilization Review performed April 25, 2013. These opinions are that the therapy was beyond the recommendations based upon ODG guidelines.

The additional therapy was prescribed by Dr. Brooker at his initial visit on referral from Advocate Medical Group. The Advocate notes dated April 24, 2013 record the treatment plan. Dr. Kumar, in his May 22, 2013

report recommends work hardening prior to Petitioner returning to work and provided the script to ATI for the work hardening. The Arbitrator finds these opinions persuasive. Dr. Levin did not see Petitioner until after the therapy had been completed. The Arbitrator also finds the opinion of Dr. Kumar that work conditioning would be appropriate more persuasive as to the ATI treatment rendered in July. The Arbitrator does not find the Utilization review persuasive. Given the gap in treatment, continued subjective complaints and the limited scope of additional therapy recommended, the Arbitrator finds an additional course of physical therapy reasonable.

The Arbitrator finds that the bills from Advocate Medical Group ($914.20) and ATI Physical Therapy for therapy from April 4, 2013 through May 14, 2013 ($4,454.94) and for work hardening from July 10, 2013 through July 19, 2013 ($3150.88) are reasonable, necessary and causally connected to the accidental injuries sustained. Respondent shall be responsible for payment of these bills. Pursuant to the stipulation of the parties, Respondent shall receive credit for any payment made pursuant to Section 8(j) of the Act.

In support of the Arbitrator's decision with respect to (K) Prospective Medical, the Arbitrator finds as follows:

Dr. Brooker is prescribing epidural steroid injections for a diagnosis of radiculopathy. Based upon the Arbitrator's decision with respect to causal connection, the Arbitrator finds that this recommendation is not reasonable, necessary or causally connected to the accidental injuries sustained. No other recommended treatment has been outlined for Petitioner. Dr. Brooker's records reflect that he is simply waiting for a decision on the authorization of the injections. His testimony at deposition confirms that there really is not much else to offer. Petitioner is not a surgical candidate and that Dr. Brooker testified that he would release him to return as needed. Dr. Levin opined that as of the date of his examination on June 17, 2013 that the Petitioner was at maximum medical improvement and that Petitioner was not in need of additional medical care.

Based upon the evidence submitted, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that he is entitled to any additional prospective medical care.

In support of the Arbitrator's decision with respect to (L) Temporary Compensation, the Arbitrator finds as follows:

The parties have stipulated that Petitioner was temporarily totally disabled from September 13, 2012 through November 27, 2012, and again from April 29, 2013 through May 31, 2013, a period of 15 4/7 weeks. Petitioner is seeking additional temporary total benefits from April 29, 2013 through the present. Dr. Brooker placed Petitioner on light duty as of April 1, 2013 and recommended additional physical therapy. On April 29, 2013 he took Petitioner completely off work and referred Petitioner for pain management to Dr. Kumar. Dr. Kumar, in

his May 22, 2013 report stated that Petitioner should undergo work hardening before returning to work. Petitioner underwent work hardening at ATI through July 19, 2013. Dr. Levin opined that as of his examination on June 17, 2013, Petitioner was at maximum medical improvement and capable of returning to full duty work.

Based upon the Arbitrators decisions with respect to causal connection and medical, the Arbitrator finds the opinions of Dr. Levin more persuasive that those of Dr. Brooker, as supported by the treating records. The Arbitrator finds the opinion of Dr. Kumar that work hardening would be necessary before a return to work a reasonable recommendation, not inconsistent with the opinion of Dr. Levin given the extent of Petitioner's lost time.

The Arbitrator therefore finds that Petitioner reached maximum medical improvement and was capable of return to regular work as of the completion of the work hardening provided at ATI on July 19, 2013. The Petitioner is entitled to 22 4/7 weeks of temporary total disability, from September 13, 2012 through November 27, 2012 (10 6/7) and from April 29, 2013 through July 19, 2013 (11 5/7), as provided in Section 8(b) of the Act. Respondent shall be given a credit of $9,752.21 for temporary total disability benefits that have been paid.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEBAGO

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Moore,
Petitioner,

vs. NO: 13 WC 04395

15IWCC0954

Chrysler,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses and prospective medical treatment, and being advised of the facts and law, reverses the Decision of the Arbitrator on the issue of causation and denies benefits related to this claim after June 15, 2011. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

Petitioner, a 43 year old assembly line "fitter", testified that he first started working for Respondent in 2006 before he was fired in 2008 and rehired on 2/12/10, his seniority date. He indicated he worked as a fitter from 2010 through 2011, fitting the lift gates and hoods or fitting doors on automobiles that would move on a conveyor belt. He noted that he would perform his duties on each car within approximately 44 seconds. He testified that in fitting hoods he would lift up the hood and access screws on a hinge that would either raise or lower the back of the hood. He noted that he would do this either by himself or with a partner, doing it by himself if the hood had to go sideways, which was not as common as raising it up and lowering it.

Petitioner testified that he stands about 5'7" or 5'8" and that he is left handed. He noted that when he worked on the right side of the car he would use his right hand to lift the hood, and would use his left hand to lift it when he worked on the left side. He indicated that he worked in a rotation where he would be on the right hand side of the car at times and on the left hand side at other times. Once he had the hood up, which he would hold up with his hand over his head, he would reach inside with a tool to make an adjustment on a bolt. In addition, he would perform lift gate (i.e. trunk) adjustments by checking the gap on the lift gate with a taper gauge, then use a hammer and chisel to hit the hinge left, right or forward while either he or his partner lifted the gate up. He noted that when he performed this job involving the lift gate he would use his left hand over his head while working on the right side of the vehicle, and would use his right hand over his head if he was on the left side. He also indicated that he would hold the hammer in his left hand and the chisel in his right hand while adjusting the hinges. How much force he used in using the hammer and chisel in adjusting the lift gate would depend on how big the gap was. He stated that he would also use a little air gun to adjust the fenders and a ratchet to adjust the hood hinge. In addition, he would have to take the "twist" out of doors which would require pushing and pulling.

Petitioner testified that back in March of 2011 he worked an 8-hour shift 5 days a week, but that there would be additional overtime at times. He indicated that once the 4-day a week, 10 hours-a-day shifts were implemented there still would be overtime.

Petitioner testified that he had not injured his left shoulder in any way prior to March of 2011. He noted that on approximately 3/1/11 he was fitting a lift gate when he raised the gate and "... heard something pop in [his] shoulder, and it just went on from there." Petitioner noted that he visited the plant medical department, described his work duties and told them he was having a problem with his left shoulder. He indicated that they put ice on his shoulder and he returned to his work station. He agreed that he visited the plant medical department from 3/2/11 through 6/15/11.

The plant medical records were admitted at RX1. In the note dated 3/2/11, it was recorded that "... EE comes to medical today with c/o left shoulder pain. DOi – 03/01/11, time – 10:00pm, Job – fitter. EE states Having to hit lift gates on MK74, to get in spec. Also having to take twist out of MK49 doors tight side because Eng. Will not make a move. This pushing and pulling makes my left shoulder hurt... Time on job – 2 year, Job station – doors and lift gates, Job names – fitter for Doors and lift gates. Incident witnessed by Abdul..." (RX1). Upon exam, it was noted that Petitioner exhibited no edema or ecchymosis and that the range of motion (ROM) of the left shoulder was within normal limits (WNL).

Petitioner returned to the plant medical department on 3/4/11 and the same history as above was recorded with respect to the left shoulder. (RX1). It should be noted that both entries, and all subsequent entries relating to the left shoulder, contain the following heading: "*Occ 1st Aid DOI 3/1/11 Lt Shoulder." (RX1). Petitioner returned to the plant medical department on 5/11/11 and 5/26/11 for recheck of his left shoulder complaints. The assessment on 5/26/11 was "Lt. shoulder pain – improving[,] Trapezius muscle stiffness." (RX1).

Petitioner testified that he eventually bid into another job in the same group as a team leader in approximately May or June of 2011. He noted that as a team leader he would still engage in the same physical duties as a regular fitter, only not as much. On cross, Petitioner testified that as a team leader he would have to perform the tasks of a fitter "... if one of my operators needs a break or they need to go to the bathroom, to medical or to do a safety test or something." He estimated that as a team leader he would fill in and perform these operations maybe two to three hours throughout the day. However, he noted that some days are worse, such as those times when someone calls in sick and Petitioner would have to go on the line until the supervisor found a replacement, which could take anywhere from a half hour to all day. He indicated that the rotation remained the same from 2010 through 2014, including working both the right and left side fitter's job. In addition, he would rotate into other jobs involving the fitting of doors and body parts. He stated all of these jobs involved the use of his shoulders.

On cross, Petitioner agreed with the note for his last visit to the plant medical department on 6/15/11 when he related that the job he was doing at that time did not hurt his left shoulder. He indicated that he was in a pool back then doing an open job in the body shop that had an assist arm. Petitioner believed that he was in that job for maybe six or 8 months.

Petitioner testified that when he started working as a team leader he noticed that his left shoulder would still hurt and that the symptoms had not completely resolved. He noted that prior to moving to the team leader position the pain in his shoulder would range from 9 to 10; once he moved to the team leader position his level of pain changed to about a 7. He also noticed that his range of motion in his left shoulder got less and less after March of 2011, and that there was no change when he moved to team leader. He indicated that Respondent never sent him to a physician outside the plant for treatment in 2011.

Petitioner testified that he saw the plant physician Dr. Mehta on 5/26/11. He subsequently visited Dr. Amir at the plant medical department on 6/15/11. On cross, Petitioner agreed that he did not receive medical treatment for his left shoulder from any other outside provider from March 2011 through June 2011.

Petitioner testified that in December of 2012 he visited his primary care physician, Dr. Jason So with complaints of left shoulder pain. In an office note dated 12/19/12, Dr. So recorded that Petitioner was being seen "... for evaluation of left shoulder pain. Started about 1 year ago. Very painful. No trauma. He was painting 2 days ago and he woke up the next day in a lot of pain." (PX3). In a nursing note on that same date it was recorded that Petitioner complained of "[l]eft shoulder pain, he thought he pulled it but it's not improved. He's been having pain for 6-7 months. Recently he was painting, and again it was painful the following day." (PX3).

Petitioner agreed that he told Dr. So at that time that his shoulder had been bothering him for about a year. When asked whether he informed Dr. So that he had awoken with shoulder pain after two days of painting, Petitioner testified that "... they said I did, but I don't recall it." On cross, when asked about this reference, Petitioner testified that he did not recall saying it, but that he "painted [his] living room and stuff off and on, because [he's] a smoker." Previously, on direct, he had indicated that he noticed his left shoulder would hurt when he tried to do things around the house. When asked on cross what sort of activities he was referring to, Petitioner

noted "[p]utting deodorant on, getting a cup out of the cupboard, cutting the grass, playing with my Doberman. Just about anything I do, because I'm left hand dominant. I do everything with my left hand."

Dr. So administered an injection into Petitioner's left shoulder on 12/31/12 but did not take him off work at that time. In fact, Petitioner has not lost any time from work due to the injury.

Petitioner underwent an MRI of the left shoulder on 1/15/13 which was interpreted as revealing 1) advanced degenerative changes at the glenohumeral joint including advanced degenerative changes within the glenoid labrum with degenerative tearing; 2) notable tendinopathy supraspinatus tendon with a very small partial thickness bursal surface tear at the distal anterior free edge; and 3) notably increased fluid long head biceps tendon sheath compatible with tenosynovitis. (PX3).

Petitioner agreed that he returned to the plant medical department on 1/30/13.

On 2/17/13, Petitioner was seen by Dr. Steven Milos at Lundholm Surgical Group. Petitioner indicated that he told Dr. Milos about his job duties and his shoulder problems, and that Dr. Milos recommended left shoulder surgery. In his note on that date, Dr. Milos indicated that Petitioner "... has significant arthritis in the shoulder with a work-related injury which aggravated his symptoms. At this point his options are continue with conservative treatment versus shoulder replacement. He wishes to avoid surgery at this time. We will prescribe an anti-inflammatory cream and a home exercise program..." (PX6).

Dr. So then referred Petitioner to Dr. Trenhaile at Rockford Orthopedic Associates where he was first seen on 4/9/13 for evaluation. On that date, Dr. Trenhaile noted that Petitioner presented with complaints of "...left shoulder pain. Patient stated he injury [sic] left shoulder at work... Pain present for 1 year (2012). He states the injury is from constant swinging and hitting with a hammer..." (PX6). Following his examination, Dr. Trenhaile's assessment was osteoarthrosis of the shoulder and cervicalgia. Dr. Trenhaile recommended an intra articular cortisone injection and noted that Petitioner was not a candidate for a total shoulder replacement at that time.

In a subsequent note dated 12/17/13, Dr. Trenhaile stated "...[g]iven the patient has failed conservative treatment, but is too young and active for a replacement surgery, my recommendation is an arthroscopy... My final surgical plan would be a right shoulder arthroscopy, subacromial decompression, distal clavicle excision, joint debridement and capsular release." (PX6).

Petitioner returned to Dr. Milos on 1/14/14. In his office note on that date, Dr. Milos recorded that Petitioner" ... has long-standing arthritis with an aggravating injury; essentially an aggravation of a pre-existing condition. His options are conservative treatment, arthroscopic debridement or humeral head resurfacing." (PX4).

Petitioner was also seen by Dr. Trenhaile on 1/14/14. In an office note on that date, Dr. Trenhaile indicated that he felt "... the pre existing shoulder arthritis was not caused by his job. However, his lifting of tailgates and hoods has at least temporarily exacerbated his arthritic symptoms by his job consisting of over shoulder height and pounding work. His job and overhead activities did not cause the arthritis per se, but has caused the shoulder OA to flare and cause pain. Given the modification of activities and conservative modalities to ease the symptoms of pain, he may have permanent symptoms of arthritis that are being made worse by his job..." (PX6).

Petitioner has continued to treat at Rockford Orthopedic Associates. Petitioner was seen at this facility on 2/10/14, 4/14/14 and 5/27/14 by Dr. Enke. On 7/15/14 Dr. Enke recorded that Mr. Moore had returned for recheck of his left shoulder and was "... doing worse in comparison to last visit." The pain was noted to be 10/10 at rest and 10/10 with activity. Dr. Enke indicated that Petitioner was taking Norco and that he had completed physical therapy with no symptomatic relief. Dr. Enke's assessment included osteoarthrosis of the left shoulder, rotator cuff tendinitis, myofascial pain and long term use of drug. Dr. Enke went on to state that Petitioner "... has chronic left shoulder pain with osteoarthritis. He is not a candidate for shoulder replacement at this time, but he may consider arthroscopy with Dr. Trenhaile at some point in the future..." (PX6).

Petitioner's last visit with Dr. Enke occurred on 7/15/14. (PX6). He testified that he continues to work for Respondent as a fitter and team leader. He indicated that his left shoulder still hurts when he lifts a gate or swings a hammer. He noted that his pain level in his left shoulder is currently a 9 out of 10 and that he would like the surgery recommended by Dr. Trenhaile. Petitioner denied injuring his left shoulder outside of work, and other then the one incident with painting he has not seen a doctor due to any shoulder activities at home.

Jeffrey Gander testified on behalf of Petitioner. Mr. Gander is an employee of Respondent and is classified as a millwright. He noted that his present job is that of ergonomics analyst, a position he was appointed to in November or December of 2010 by his union, the United Auto Workers. He noted that this position requires a 240-hour certification program at Ferris State University, followed by 24 hours of yearly classes as well as two weeks of health and safety conferences to maintain your certification. He indicated that his credentials along these lines are currently up to date.

Mr. Gander presented documents compiled as part of his ordinary duties with the union that were marked as PX1. These documents pertain to the specific job of fitter in the body shop at the Chrysler plant in question and describe the job that Petitioner was performing from approximately 2010 through 2014. He noted that the analysis pertains to employees working on the right side of the vehicle being assembled. He indicated that he reviews what is known as a SEWO or Safety Emergency Work Order report which identifies the job that a worker was performing when a medical visit was necessitated. He notes repetition values and "tac times," or the amount of time an operator has to complete his task before the next car enters his work station. He stated that the tac time for a fitter job is 44 seconds, give or a take a few seconds given an occasional electrical surge in the conveyor motor. He noted that the job in question is performed on a moving conveyor system that moves the auto and auto parts, specifically doors,

hoods and lift gates.

Mr. Gander described the activities of a fitter as involving the use of a gauge in two spots between the fender and the hood and then in the lift gate in three spots. He indicated that it is a natural progression, and if at any time the fit is not within specifications, it would be the fitter's job to fix it by using a tool called a "spoon." He noted that the fitter would then manipulate the door and fender in or out to fix it, and that this procedure would require use of the wrists, shoulders and elbows, with the elbow up in the air. If the fitter is unable to get it to specification, they are required to lift the hood and make adjustments to one or more of the five "tie-downs," which are mechanical connections or screws, using a torque tool and a ratchet.

Mr. Gander testified that the hood that the fitter would lift isn't latched down at this point in the assembly process, like a typical car, and that the fitter and the worker directly across from him or her would both lift the hood in "somewhat of an elliptical motion with their hands rotating as they go up" with their hands above their heads. He noted that when the hands are done and at the final position they are 75 inches from the floor. He later indicated, on cross, that this distance would vary based on the height of the worker. Once the hood is lifted, one worker would hold the hood open while the other did the adjustment while keeping one hand on the hood for safety reasons. Then the worker doing the adjustment would reach out with either the torque wrench or pneumatic torque tool, loosen it, readjust it and then retighten it down.

Mr. Gander indicated that the fitter would work on the "lift gate" or "deck lid", which is the trunk of the vehicle. He noted that fitters work on two vehicles – the Patriot Jeep and the Compass, which are the MK models. He indicated that working on the lift gate is similar to the hood. He stated that you would make sure your fellow operator is there to help you lift the gate up, and that the only difference is that you have to physically go higher and lift both arms directly above your head. He noted that the lift gate would probably be at mid-thigh to knee level where it sits on the operator, and that the fitter would grasp under the lift gate with his or her palms up and step back in order to lift it up, with the gate swinging out in an outward motion towards the fitter. He indicated that you would rotate the wrist upwards in the process, and end up with the arms in a locked position with the wrists flexed. He noted that that is when you need to have total trust in your fellow operator because the fitter would then have to go in there with a chisel and hammer in separate hands and adjust the tie-downs or mechanical hinge for the lift gate. He stated that the fitter would swing the hammer to strike the chisel to move the hinge and fine tune the adjustment. He noted that the hinge would be 65 inches high and would be considered overhead. On cross he stated that the lift gate would then be at least seven inches above where the hinge would be. He also indicated that the fitter would be looking for any imperfections or "up dings" in the metal that they would write up on the computer.

Mr. Gander testified that there was a definite risk factor in lifting the hoods and lift gates, requiring 25 to 30 pounds of vertical push effort to extend as measured by a Wagner FDX force gauge. He indicated that Respondent and UAW try to keep all vertical push/pulls under 24 pounds when you have two hands free and available and under 12 pounds when it is one-handed. In addition, he noted that the report identifies risk factors for the fitter job relative to the shoulder. Mr. Gander testified that the job of fitter scored as a moderate plus to high risk job for some type of injury. He also stated that upon viewing the job in person he noted that the fitter

was using a substantial amount of force, or more than 20 pounds, based on his expertise. He also referred to a previous ergonomic report from 2010 which he characterized as very similar to his conclusions in his report dated 9/8/14. Finally, Mr. Gander testified that he was of the opinion the fitter job in question presented a risk factor and placed the worker at a high risk for shoulder injuries.

On cross examination, Mr. Gander explained that the fitter job currently involves spending 2 hours on the left side of the vehicle and two hours on the right. In addition, he indicated that the worker would also rotate into other operations as well, including the installation of hoods and possibly the two inspection/measurement-type jobs in front of that. He indicated that at the time of his report in 2014, the typical shift length was 10 hours, not counting overtime, which meant that assuming two-hour rotations a worker would rotate into 4 or 5 different positions during the course of a shift. He also agreed that switching from the left to the right side would be considered a separate rotation. When asked what prompted the preparation of his 2014 report, Mr. Gander testified that the ergonomic committee had had numerous discussions about the fitting jobs and had asked him to do an update. He also stated that after he received a subpoena requesting ergonomic information he wanted to confirm the original report by Mr. Ferguson dated 6/19/10 and make sure he had current data. Mr. Gander also agreed that there were some differences in how the two reports were scored, and that he believed the plant was still building the Caliber in 2010. However, Mr. Gander could not comment if both the PM model (Caliber) and MK model (Patriot & Compass) were on the line at that time. He also conceded that with respect to the 2010 report there was nothing indicated in the symptom survey/medical review in relation to 402 R, meaning the right side of the vehicle. In addition, he noted that the "M2-22" score in his 2014 report with respect to 402 R might or might not include risk factors relative to the shoulders, although they specifically reference the wrist, hand and low back. He also agreed that he had not reviewed Petitioner's medical records and did not know Petitioner's diagnosis with respect to his shoulder. However, speaking as an ergonomist, he would not concede that he was not qualified to express a causation opinion with respect to any incident and a diagnosis, noting that "... if I saw you, for instance, lifting a thousand pounds and you blew your shoulder out ... I think it's reasonable for any person to think there was a causation there."

On redirect, Mr. Gander noted that to the best of his knowledge, the duties of a fitter on the Patriot and Compass were the same in 2010 as in 2014, specifically with respect to the hood and lift gate and striking of the hinges with a chisel and hammer, as well as the 44 second tac time. However, he could not recall exactly when the facility went from 8 hour to 10-hour shifts, although he noted that even with the 8 hour shifts people worked overtime in excess of 8 hours and for more than 40 hours per week. Mr. Gander indicated that performing the jobs more times over a period of time means more repetitions and thus would increase the risk factor.

James Gille was called to testify at the request of Respondent. Mr. Gille is currently employed by Respondent as a business unit leader (BUL) in the north body shop. He noted that he is familiar with the job designation of fitters for doors, hoods and lift gates and that he has had supervisory responsibilities in the body shop. He indicated that Petitioner works in the south body shop. He noted that currently the body shop operates at two different flows – one at 65 jobs an hour where two fitters are utilized and the other at 85 jobs an hour, at which point extra people are added. On cross, he equated the 65 jobs an hour speed to closer to one minute per

cycle, but then agreed that the time frame was between 45 and 60 seconds. He stated that fitters rotate "upstream" from the lift gate to the bay location to the door fitters. He indicated that fitters typically use a taper gauge, hammer, chisel, spoon and ratchet or air pneumatic gun. He noted that it is a two-man job for the hood and deck lid or lift gate with one worker holding the lift gate and the other performing the work to get it within "spec" or specification. If the vehicle was within spec there would be no need to use the tools mentioned. He estimated that the last time he observed the job, several weeks prior to his testimony, the fitters would have to make adjustments about half the time.

Mr. Gille is familiar with both Petitioner and the team leader position, although he did not directly supervise Mr. Moore. He agreed that team leaders only perform the actual operation for a limited period of time, specifically when someone has to use the bathroom, goes to medical or is absent and the team leader cannot afford the coverage from the absentee pool. On cross, Mr. Gille agreed that it was fair to say that at times fitters have to adjust every hinge for every lift gate and hood that comes down the line for a period of time. On re-direct, he noted that there are a lot of variables that would affect how soon corrections are made earlier in the line, and thus how often every vehicle would require adjustments. He indicated that checks are made throughout the day and on an ongoing basis. However, he conceded that not all problems can be fixed in a day.

Plant occupational physician Dr. Deepak Mehta testified at the request of Respondent. Dr. Mehta is employed by a contractor and is not directly employed by Respondent. Dr. Mehta noted that he saw Petitioner on one occasion, 5/26/11, at which time he complained of an injury on 3/1/11. Dr. Mehta indicated that his assessment at that time was left shoulder pain, as well as trapezius muscle stiffness. Dr. Mehta agreed that he did not order any x-rays at the time of this visit, and that nowhere in these plant medical records was Petitioner's problem ever coded as non-occupational. He also initially indicated that the extent of his communication with the third-party administrator, Sedgwick, is limited to whether his treatment recommendations will be approved or not. However, he then went on to admit that at times he visits the job site to observe where the patient works in order to render an opinion as to what caused the injury, which he puts in his notes and which "Sedgwick has a way of finding out."

Dr. Mehta noted that at the time of his initial visit Petitioner described left shoulder pain accompanying "taking the twist out of the doors." Dr. Mehta interpreted this as being "... the car that he works on ha[ving] some defect in terms of the alignment of the door. If the doors are not properly fitting because either they are not properly [aligned with] the hinges or ... a part of the door is sticking out ... that's what they try and fit in by the manual manipulation." Dr. Mehta agreed that he would consider this a plausible mechanism of injury. He also agreed that the work Petitioner did on the lift gate wherein he utilized a hammer and chisel to move the hinges likewise represented a plausible mechanism of left shoulder injury. Petitioner was next seen at the plant medical department on 6/15/11 by Dr. Amir, who was filling in for Dr. Mehta. Dr. Mehta indicated that he reviewed Dr. Amir's notes and agreed that the assessment was consistent with a trapezius strain. Dr. Mehta noted that Petitioner did not present to the medical department again for his left shoulder until 1/30/13.

Dr. Scott W. Trenhaile testified by way of evidence deposition on 7/16/14. (PX5). Dr. Trenhaile indicated that he is board certified in orthopedics and also has a CAQ in sports medicine, shoulder and knee surgery. He noted that he first saw Petitioner on 4/9/13 at which time he presented with left shoulder pain for approximately one year after injuring himself while swinging and hitting a hammer. Dr. Trenhaile also noted that Petitioner complained of neck pain, popping, catching and radiating pain. Dr. Trenhaile reviewed the MRI which he noted revealed advanced degenerative changes of the glenohumeral joint, advanced degenerative changes of the glenoid labrum and degenerative tearing, increased fluid along the biceps tendon, which I agreed with ..." Following his examination, Dr. Trenhaile's diagnosis was osteoarthritis of the left shoulder and cervicalgia or basically neck pain without radiculopathy-like symptoms. Dr. Trenhaile recommended that Petitioner see another doctor in his practice, rehab physiatrist Dr. Enke, for possible ultrasound-guided injections in his shoulder and to evaluate his neck. Dr. Trenhaile did not document any abnormalities with respect to the right shoulder at that time. Dr. Enke performed a series of injections in the left shoulder thereafter.

Dr. Trenhaile noted that Petitioner returned on 12/17/13 at which time Mr. Moore claimed that his left shoulder pain was worse than when he was last seen. Dr. Trenhaile's diagnosis remained osteoarthrosis and acromioclavicular joint pain. At that time Dr. Trenhaile recommended consideration of arthroscopic surgery of the left shoulder consisting of a subacromial decompression to eliminate the impingement, the distal clavicle excision to eliminate the symptoms from the acromioclavicular joint and to do a joint debridement and a capsular release to improve the range of motion and hopefully offset the glenohumeral joint arthritis symptoms. Dr. Trenhaile did not believe that anything beyond that would be beneficial to Petitioner in his current state.

Dr. Trenhaile next saw Petitioner on 1/14/14 at which time the latter continued to complain about left shoulder pain, although it was slightly better than before, albeit still fairly severe at 9 out of 10. Dr. Trenhaile's assessment remained osteoarthrosis of the left shoulder. Dr. Trenhaile then went on to opine that Petitioner was aggravating his pre-existing osteoarthritic condition of his left shoulder. (PX5, p.17). Dr. Trenhaile stated that he thought Petitioner's "... work continually aggravates his shoulder – his arthritis in his shoulder" and that the work activity was a causative factor in the need for the proposed surgery. (PX5, p.18). Dr. Trenhaile also did not believe that Petitioner will have a resolution of his symptoms if he continues the work that he is doing. Dr. Trenhaile testified that the reference in Dr. So's records with respect to painting and waking up with pain did not change his opinions along these lines.

On cross, when asked about his knowledge with respect to Petitioner's job duties, Dr. Trenhaile testified that "... I know there's hammering." However, when asked if swinging and hitting a hammer for about 2 hours a day would be considered constant, Dr. Trenhaile stated "I mean two hours is not a whole day, so no." Dr. Trenhaile also agreed that the plant medical record for 3/2/11 would not appear to reference a traumatic injury to the shoulder or objective findings upon examination of same. He also agreed that findings at later visits, particularly with Dr. Mehta, would also be consistent with a pre-existing osteoarthritic condition.

Dr. Trenhaile also agreed that the painting activity referenced in Dr. So's 12/19/12 note could have aggravated Mr. Moore's pre-existing osteoarthritis, and that it in fact did aggravate it. (PX5, pp.33-34). When asked whether the incident in March of 2011 would then be considered a temporary aggravation, given that Petitioner did not visit a physician for his left shoulder complaints from June of 2011 until December of 2012, Dr. Trenhaile responded as follows: "I would say partially. I think his symptoms wax and wane, but I think he's had them all along. I mean – and, you know, my history says it's one year because that's what he told us, but he's had it for a long time." (PX5, p.35). When asked whether the work activities in March of 2011 adversely altered the course or progression of Petitioner's osteoarthritis, Dr. Trenhaile noted that "[i]t's difficult to say if it was from 2011 or if it's been throughout this entire time up to 2014 ... or '13 I guess was the last – when was the last time I saw him? But I think he continues to aggravate his shoulder with the activities he's doing." (PX5, pp.35-36). However, Dr. Trenhaile also agreed that basically any type of reaching, out of his range and including activities of daily living, could cause him symptoms. In addition, Dr. Trenhaile conceded that Petitioner had not reported to him that his job had changed in any respect since the original onset of symptoms in March of 2011. However, on re-direct, he agreed that he had previously reviewed Dr. Weiss's report wherein he referenced this change in job. In any event, Dr. Trenhaile did not feel this information would affect his opinion.

At the request of Respondent, Petitioner was examined by board certified orthopedic surgeon Dr. Stephen F. Weiss for purposes of a §12 examination on 11/4/13. Dr. Weiss testified by way of evidence deposition on 8/27/14. (RX2). Dr. Weiss noted that at the time of his visit Petitioner related that he began to notice left shoulder pain in approximately February of 2011 and visited Respondent's medical clinic on 3/2/11. Petitioner informed him that his job involved lifting gates and pushing and pulling doors, and that this bothered his left shoulder. Following his examination and review of the record, Dr. Weiss diagnosed Petitioner with degenerative joint disease of the left shoulder, including degenerative tears of the labrum and rotator cuff as well as bicipital tenosynovitis. Dr. Weiss noted that Petitioner "... had had manifestations of this condition in March of 2011, and then, after he was resolved, again in March, 2012." (RX2, p.13). Dr. Weiss also indicated that he was of the opinion that Petitioner's condition of ill-being was not causally related to an alleged accident on 3/2/11 (sic), noting that "[h]e had a preexisting condition which is degenerative in nature, extensive, severe enough that surgery was not felt to be an option at the time. And the nature of that injury is that when you use the degenerative joint, it becomes symptomatic. And when you stop using it, it stops being symptomatic, which is the usual history for an arthritic joint." (RX2, p.15).

Dr. Weiss testified that he did not believe "... the work activity altered the pathology here, a long-standing process which had been going on for years. And he did have what I consider to be a manifestation of this, and it resolved when he stopped the problematic activity, which is exactly what you would expect in a long-standing degenerative condition." (RX2, pp.17-18). Dr. Weiss went on to state that in his opinion "... nothing after June of 2011 was related to anything that happened in March. I'm going to quibble with you and say there was no injury because I think it was a manifestation, but whatever went on in March of 2011 did not require treatment after June." (RX2, pp.18-19).

In addition, Dr. Weiss noted that the history of injury recorded in Dr. Trenhaile's records – which he had just seen for the first time that morning and which referred to constant swinging and hitting with a hammer – differed from what Petitioner told him and from what Dr. Weiss understood to be Mr. Moore's work activities. When asked if these records might change his opinions, Dr. Weiss indicated that "... potentially it might cause me to alter my diagnosis slightly. That is, I believe, based upon my understanding of his work activities that his condition represented in March is a manifestation of a preexisting condition. The history that he gave Dr. Trenhaile is constantly swinging and hitting with a hammer. That is forceful activity. And I don't know how often he did it. I don't know what he's alleging. I know it's very different from the history that I got. I would leave open the possibility that my diagnosis might change from manifestation of a preexisting degenerative condition to a temporary exacerbation of the condition. The end result is the same. He goes back to work where he was. But I would say that the work that he described to Dr. Trenhaile at least has the potential of being very forceful and very strenuous..." (RX2, p.23). Dr. Weiss then noted that if it was a temporary exacerbation, the date of resolution would be June of 2011 based on the history given and the fact that Petitioner did not seek treatment for a year and half (from June 2011 until December of 2012). (RX2, pp.24-25).

On cross, Dr. Weiss agreed that Petitioner was not pain free as of June 15, 2011, and that he would not be expected to be pain free given the degree of degenerative arthritis he had, but that his work-related left shoulder symptomatology had resolved by that date based on the reference in the record that his job was no longer making him symptomatic. (RX2, pp.48-49). Dr. Weiss also opined that "... the partial rotator cuff was part and parcel of the severe degenerative arthritis of the left shoulder... and the need for his surgery is due to the severe degenerative arthritic changes. I don't believe that the work activities that he did were a sufficient magnitude of force to have progressed the severe degenerative arthritis... If you ask me to accept what Dr. Trenhaile put in his record, that he had a history of hammering and forceful work, I could change my opinion... [and] say that that was forceful enough to temporarily exacerbate the condition... But, again, it would not produce permanent problems. He has severe, severe, severe arthritis of the left shoulder, and he's had it, and his work activities did not permanently aggravate it." (RX2, p.54). In addition, Dr. Weiss testified that painting is "... more strenuous than routine activities of daily living... [and] is particularly problematic for people with shoulder disease", although he conceded that it would be less problematic if it was done below shoulder level. (RX2, pp.65-66).

Based on the above, and the record taken as a whole, the Commission finds that while Petitioner sustained an aggravation of his pre-existing degenerative left shoulder condition arising out of and in the course of his employment on March 1, 2011, he failed to prove by a preponderance of the credible evidence that his condition of ill-being subsequent to June 15, 2011 was causally related to said accident. This finding is based on the opinion of Respondent's §12 examining physician, Dr. Weiss, as well as the fact that Petitioner changed jobs to the less strenuous team leader position in June of 2011 and thereafter failed to seek treatment again for his left shoulder until December of 2012, or approximately one and a half years later, at which time he reported increased symptoms after painting at home for two days. Accordingly, the Commission finds that Petitioner's claim for compensation for dates of service subsequent to June 15, 2011, including medical expenses in the amount of $10,306.12 as well as his request for

prospective medical treatment in the form of left shoulder surgery, is hereby denied.

All else is otherwise affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator with respect to causation is reversed and Petitioner's claim for medical expenses and prospective medical treatment subsequent to June 15, 2011 is hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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: DEC 1 8 2015

Joshua D. Luskin

o-10/28/15
jdl/po
68

Ruth W. White

DISSENT

I must respectfully dissent from the majority's decision to reverse the Arbitrator's decision as to causation. I find that the Arbitrator's decision should be affirmed and adopted.

The Petitioner never had any complaints regarding his left shoulder until March 1, 2011. On that date he was lifting a lift gate and felt pain in that shoulder He sought treatment the next day. The medical department provided Petitioner with ice and he returned to his regular duties. (Transcript Pgs.111-112)

Petitioner continued to work at his job as a fitter until June of 2011 when he was moved into a team lead position. A team leader does all of the things the fitter does but not as often. (Transcript Pgs. 103-104, 113)

Petitioner sought treatment with Dr. Jason So on December 19, 2012 and gave him a history that his shoulder had been bothering him for about a year. Dr. So gave him an injection into his left shoulder on December 31, 2012 which resulted in very little relief. Petitioner continued to work while he was being treated and an MRI of his left shoulder was completed on January 5, 15, 2013. Dr. So referred Petitioner to Dr. Trenhaile. Following conservative treatment, Trenhaile recommended left shoulder surgery. (Transcript Pgs. 117-119)

Dr. Mehta, the Respondent's plant physician, first saw Petitioner on May 26, 2011. He noted the prior treatment rendered by the Plant nurse and felt that Petitioner had trapezius muscle stiffness and shoulder pain. (Transcript Pg. 190) Mehta agreed that Petitioner's history of pain in his left shoulder, while performing the work on lift gates, was a plausible mechanism of the left shoulder injury. (Transcript Pg. 186) He also testified that Petitioner never told him that his left shoulder pain had completely resolved. (Transcript Pg. 188)

Even the Respondent's employee, an ergonomic analyst for the United Auto Workers, found that to a reasonable degree of ergonomic and scientific certainty the fitter job did pose a risk for shoulder injuries. (Transcript Pg.57)

Dr. Trenhaile saw Petitioner on April 9, 2013. He diagnosed Petitioner's condition of ill-being as osteoarthritis in the left shoulder and cervicalgia without radiculopathy. (Petitioner Exhibit 5) He recommended an arthroscopic procedure of the left shoulder and indicated no other conservative treatment would be beneficial. He was of the opinion that Petitioner's work activities in March 2011 aggravated the pre-existing osteoarthritis of the left shoulder. He also testified that the work activities consistently aggravated the shoulder condition thereafter, and were a causative factor for the need for surgery. (Petitioner Exhibit 5)

Petitioner saw Dr. Milos on January 14, 2014 and he noted that Petitioner had long standing arthritis with an aggravating injury and also indicated that one of his options was arthroscopic surgery. (Petitioner Exhibit 4)

It is clear that Petitioner never had any pain problems with his left shoulder until he lifted the gate at Respondent's facilities on March 1, 2011. It is also clear that the credible testimony of Dr. Trenhaile that Petitioner consistently and constantly aggravated his pre-existing arthritis with every gate he lifted, is causative factor for his need for surgery.

The Arbitrator's decision should therefore be affirmed and adopted.

Charles J. DeVriendt

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☐ 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 Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Teri Rule,
Petitioner,

vs. NO. 12 WC 1104

15IWCC0955

Community Care Systems, Inc.,
Respondent.

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 causation, wages, rate, temporary total disability, medical expenses and permanent disability, 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.

The Commission notes that since Petitioner worked less than 52 weeks during the year preceding the accident, her average weekly wage ("AWW") would be calculated utilizing the third method set forth in §10 of the Act – specifically, "... [w]here the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed." In *Greaney v. Industrial Commission*, 358 Ill.App.3d 1002, 832 N.E.2d 331, 295 Ill.Dec. 190 (2005), the claimant was also a full-time worker, scheduled to work a full work week, who worked less than 52 weeks in the preceding year, but not such a short period of time that the fourth method would apply. *Greaney*, 832 N.E.2d at 344-346. In discussing the

15IWCC0955

"number of weeks and parts thereof", the court noted that "[a]s our supreme court observed in *Sylvester*, only the fourth method under section 10 ... refers to hours worked per week." *Id.*, at 346. The court went on to state that "[t]he claimant has not cited any authority for calculating an average weekly wage under the third method by dividing the total number of hours worked prior to an injury by the number of hours in a full workweek to arrive at the number of weeks and parts thereof worked and then dividing the claimant's gross wages by the number." *Id.*, at 346. As a result, the court held that when "... a claimant is a full-time employee, scheduled to work a full workweek, and his average week wage is to be determined by applying the third method set forth in section 10, the number of days that a claimant worked prior to his injury should be divided by the number of days in a full work week to arrive at the 'number of weeks and parts thereof' by which the claimant's pre-injury wages are to be divided." *Id.*, at 346-347.

Similarly, Petitioner in the present case did not present evidence of the number of days that she worked prior to the injury. Instead, the evidence only shows that Petitioner was scheduled to work 40 hours per week, that she started out earning $10.00 per hour, and that she earned regular pay totaling $8,624.73 during the year preceding the injury, from November 1, 2010 through May 31, 2011, or a period of 30-2/7 weeks. As a result, Petitioner's average weekly would be based on full weeks and not the "weeks and parts thereof." Therefore, the Commission finds that Petitioner's average weekly wage was equal to $284.78 based on earnings of $8,624.73 divided by 30-2/7 weeks. Petitioner's TTD and PPD rates would remain $220.00, or the minimum rate required.

Furthermore, the Commission modifies the decision of the Arbitrator to show that Respondent was entitled to a credit of $186.75 for overpayment of TTD ($752.46 paid less $565.71 [$220 x 2-4/7 weeks]).

All else is hereby affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $220.00 per week for a period of 2-4/7 weeks, as provided in §8(b) of the Act, 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 pay to Petitioner reasonable and necessary medical expenses in the amount of $10,651.20 under §8(a) of the Act, subject to the fee schedule pursuant to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $220.00 per week for a period of 25 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the permanent partial loss of use of 5% person as a whole.

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.

15IWCC0955

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $16,100.00. 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: DEC 18 2015

Joshua D. Luskin

Charles J. DeVriendt

Ruth W. White

o-12/01/15
jdl/po
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RULE, TERI
Employee/Petitioner

Case# 12WC001104

COMMUNITY CARE SYSTEMS INC
Employer/Respondent

15IWCC0955

On 2/11/2015, 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:

4599 SCHUCHAT COOK & WERNER
CLARE R BEHRLE
1221 LOCUST ST SUITE 250
ST LOUIS, MO 63103

0332 LIVINGSTONE MUELLER ET AL
KEN BIMA
620 E EDWARDS PO BOX 335
SPRINGFIELD, IL 62705

STATE OF ILLINOIS)
)SS.
COUNTY OF **Madison**)

☐ 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

Teri Rule
Employee/Petitioner

v.

Community Care Systems, Inc.
Employer/Respondent

Case # **12** WC **01104**

Consolidated cases: **N/A**

15IWCC0955

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 **Collinsville**, on **December 16, 2014**. 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 **June 6, 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 in part*** causally related to the accident.

In the 30 2/7 weeks preceding the injury, Petitioner earned $**8,187.75**; the average weekly wage was $**270.35**.

On the date of accident, Petitioner was **53** years of age, ***single*** with **0** dependent children.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**186.84** for overpaid TTD benefits.

ORDER

Pursuant to the fee schedule, Respondent is ordered to pay $10,651.20 for medical bills incurred by Petitioner related to the 6/06/2011 accident. See Findings.

Respondent is ordered to pay 25 weeks of permanent partial disability at a rate of $220.00 per week as Petitioner sustained 5% loss of use of the person as a whole as a result of the 6/06/2011 accident.

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.

Carl Lee — Signature of Arbitrator

2/9/15 — Date

FEB 11 2015

The Arbitrator finds the following facts regarding all disputed issues:

Petitioner has worked for Respondent for four years. She works as a home care aid which consists of performing activities of daily living for the elderly. Throughout her employment, Petitioner has had multiple clients. At the time of her accident, Petitioner was scheduled to work 40 hours per week. At the time of the injury, Petitioner testified that she was paid $10.00 per hour. Petitioner was reimbursed $0.40 per mile which is reflected in the miscellaneous column of her wage statement (See RX2).

Prior to the accident of June 6, 2011, Petitioner treated for various health conditions. Medical records from Petitioner's primary care physician, Dr. Oscar Florendo document that from 2009 up until the motor vehicle accident, Petitioner was diagnosed with osteoporosis, peripheral neuropathy, restless leg syndrome, arthritis, and fibromyalgia. On 7/21/09, Petitioner was seen in the emergency room for left wrist pain and underwent an x-ray. Petitioner was diagnosed with osteoarthritis. On 2/04/2010, Petitioner was seen by Dr. Florendo for an osteoporosis follow-up. On that date, it was noted that Petitioner's pain was in her pelvis and spine and had been ongoing for many years. Dr. Florendo also noted that on that date, Petitioner presented with arthritis (PX5). In January and February of 2006, Petitioner was seen by Dr. James Fernandez for left ear complaints. Dr. Fernandez diagnosed Petitioner with Eustachian tube dysfunction and rhinitis. An audiogram secured on 2/10/2006 revealed high frequency hearing loss in the left ear and hypocompliant tympanic membrane with conductive asymmetry at 1,000 Hz in the left ear (RX1). Petitioner testified that prior to the motor vehicle accident of June 6, 2011, she was not experiencing any problems other than some minor left shoulder complaints if she slept on it wrong.

On June 6, 2011, Petitioner was driving from one client to another when she was struck by a truck on the driver's side of her car. The airbags in Petitioner's vehicle deployed, striking her on the left side of her body including her chest, head and ear. Petitioner also testified that she heard a loud noise at the time of the collision. Petitioner testified that she felt immediate pain in her left hand, ribs and everywhere on her left side.

Petitioner testified that she was transported to the Anderson Hospital Emergency Room by an ambulance. The ambulance/EMS records document that Petitioner complained of left rib cage pain. There is no documentation of hearing loss or left hand pain (PX3).

The ER records state "The patient presents with pain at left shoulder, left chest after having motor vehicle accident one hour ago." Petitioner denied back pain, joint pain, myalgia, headaches, numbness, weakness or ear pain (otalgia). Petitioner's physical exam revealed that her ears were within normal limits and she was able to move all extremities without limitations. X-rays were secured to Petitioner's left rib area/chest and thoracic and lumbar spine. These studies were interpreted as being unremarkable. The emergency room record contains no documentation of left ear or left hand complaints. No treatment was administered to Petitioner's left hand or ear (PX3).

Petitioner followed up her care with Dr. Florendo. Petitioner was seen by Dr. Florendo on 6/09/2011. The history in that record states "She presented with an MVC/MVA. Mechanism of injury was a side swipe-T-bone. The accident happened at city streets on 143. The time of injury was in the afternoon, 12:50 p.m. The date of injury was 6/06/2011. Associated signs and symptoms include neck pain/stiffness and left rib area and shoulder pain. Left injuries include the shoulder pain and neck pain/stiffness, dizziness, and left L rib area." Petitioner denied "ear pain and hearing loss". The record contains no documentation of left ear or left hand complaints. No treatment was administered to Petitioner's left hand or ear. Dr. Florendo prescribed Vicodin and a facial x-

ray. The facial bone x-ray was secured at Anderson Hospital on 6/09/2011 and was interpreted as being unremarkable. Petitioner was placed off of work for two weeks (PX5).

Petitioner returned to Dr. Florendo on 6/24/2011. That record states that Petitioner complained of left shoulder pain. The record also states that Petitioner denied ear pain and hearing loss. There is no documentation of left ear or left hand complaints. No treatment was administered to Petitioner's left hand or ear. Petitioner was diagnosed with left shoulder pain and multiple contusions. Dr. Florendo noted that Petitioner could return to full duty work starting on 6/25/2011. Physical therapy was prescribed (PX5).

Petitioner began her physical therapy at Apex Network Physical Therapy on 6/27/2011. The history in that record states "The patient is a 53 year old female who presents for physical therapy evaluation with the primary complaint of left scapular pain following a motor vehicle accident on 6/06/11 when she was hit on the driver's side. She was immediately taken to the emergency room where x-rays were taken of her left rib and left shoulder with negative findings. She continued to report ringing in her left ear, dizziness and numbness in the left side of her face and x-rays were later performed of her scull with negative findings. No other diagnostic testing has been performed. Her primary complaint is her left scapular pain. However, she reports soreness of the left ribs, tenderness at her left elbow, and pain in her left breast." Petitioner was to be seen two-three times per weeks for the next three-four weeks (PX7).

Petitioner testified that on 7/09/2011 she went to the emergency room of St. Joseph's Highland Hospital for left ear pain and loss of hearing. The ER records state "Patient is a 53 year old female that presents with left ear pain. She notes the pain has been going on for a few days but she had similar episode approximately one month ago when she was in motor vehicle accident and struck her head." Petitioner was diagnosed with otitis and prescribed medication (PX4).

Petitioner testified that on 7/11/11 she went to the emergency room of Anderson Hospital for similar complaints. These records state "Left ear pressure since MVA on 6/06/11. States left ear has bothered her since MVA since 6/06/11. Currently in therapy. Was dizzy with nausea on 7/09/11-seen in local ER and given Amox and Flonase NS for serious otitis media, left ear – not better yet. Also, HX of fibromyalgia. Petitioner's physical exam revealed "external ear normal, auditory canal normal, TM normal (good light reflexes of both TM's, there may be some minimal fluid in the left middle ear space, but there is no negative pressure or retration present). Petitioner was diagnosed with "baratitis media, resolving (unrelated to MVA)" (PX3).

Petitioner continued to undergo physical therapy at Apex Network. A progress note from 7/18/2011 states "The patient is a 53 year old female who initially presented for physical therapy evaluation with the primary complaint of left scapular pain following a motor vehicle accident on 6/06/11 when she was hit on the driver's side. She continues to complain of posterior left shoulder pain at her scapula that she rates as 3/10 and left ear pain and ringing that she rates as 4/10. She is employed as a home healthcare agent and has continued to work full duty, but states her clients are helping her with any lifting activities. The therapist recommended an additional two visits and then discharge unless further orders were received" (PX7).

Petitioner returned to Dr. Florendo on 7/28/2011. The history in his record states "She presented with ear pain. It is located on the left. It is described as acute. The incident happened two weeks ago. The complaint is mild. . . In addition she presented with arm pain. It is located in the left arm. It is radiating to the hand. It is described as acute and aching." Petitioner denied hearing loss. Dr. Florendo ordered additional physical therapy and referred Petitioner to an ear doctor (PX5).

Petitioner returned to physical therapy on 8/03/2011. The assessment portion of that record states "Teri is a 52 year old female who presented initially for physical therapy evaluation with primary complaints of left scapular pain. She now presents with additional left wrist pain specifically at the left thumb region. . ." Despite Petitioner's testimony, the physical therapy records document that Petitioner first complained to them of left wrist pain and received therapy for her left wrist beginning on the 8/03/2011 visit (PX5, PX7).

Petitioner testified that at the request of Dr. Florendo, she was seen by Dr. James Fernandez on 8/15/11 for her left ear complaints. On that date, Petitioner complained of hearing loss and left ear pain since the motor vehicle accident. Dr. Fernandez prescribed an audiogram that was performed on 8/22/2011. Petitioner returned to Dr. Fernandez on 10/31/11 who interpreted the audiogram as demonstrating "a very mild high frequency hearing loss in the left ear." Dr. Fernandez diagnosed the claimant with tinnitus and chronic serous otitis media (PX6).

Petitioner continued physical therapy and a progress note from 8/31/2011 states "Teri reported on 8/24/11 that she was no longer having any problems with her left shoulder and neck region. She still reports some discomfort overall, reports her thumb is 70% better. Driving is the one activity that causes her the most discomfort." Petitioner was last seen by physical therapy on 9/14/2011. That note states "She has received 13 visits for treatment to her left wrist and thumb region. Previously she has been seen for her left shoulder and cervical area which was discharged as of 8/31/11 note. Teri reports that there is a little soreness at the base of her thumb and rates it at 2/10. She reports that she is able to perform all ADL's and IADL's as well as work activities. She does report some mild discomfort with driving, however." Petitioner exhibited full strength, range of motion, and functional grip in her left hand and was discharged from physical therapy (PX5).

Subsequently, Petitioner returned to Dr. Florendo on 9/21/11 and reported improved left wrist and shoulder pain. Petitioner denied ear pain or hearing loss (PX4).

Petitioner did not receive any further treatment for over a year. Petitioner testified that on 1/08/13 she returned to Dr. Florendo due to left ear pain and hearing loss. However, Dr. Florendo's record states that he saw Petitioner on that date for "headaches in the left posterior area." Dr. Florendo documented that on 1/08/2013, Petitioner "denied ear pain and hearing loss." A CT scan was prescribed and Petitioner underwent that study on 1/23/13. That study was interpreted as being unremarkable. Petitioner was last seen by Dr. Florendo on 1/28/13 to discuss Petitioner's headaches and CT findings. Dr. Florendo again documented that Petitioner denied ear pain and hearing loss (PX4).

At the request of her attorney, Petitioner was seen by Dr. David Volarich for an independent medical evaluation on 10/09/13. Dr. Volarich's evidence deposition proceeded on 4/03/14. Dr. Volarich is board certified in nuclear medicine, occupational medicine, and independent medical examiner. 50% of his practice involves interpreting imaging studies, 25% consists of performing IME's, and 25% consists of treating patients. It is Dr. Volarich's opinion that as a result of the motor vehicle accident, Petitioner sustained a left thumb pain with residual tendinitis, left ear barotrauma with high frequency hearing loss and tinnitus, cervical strain, thoracic strain and lumbar strain and chest wall and left shoulder pain. Dr. Volarich testified that Petitioner's left shoulder pain had resolved, however she had residual complaints from the other conditions. Dr. Volarich recommended continued pain management for Petitioner's residual complaints.

Dr. Volarich agreed that none of Petitioner's treating doctors diagnosed her with a left thumb sprain, cervical sprain, lumbar sprain or whiplash. Dr. Volarich testified that he spoke to Petitioner about the lack of documentation of her left hand and ear complaints in the contemporaneous medical records. Dr. Volarich testified that Petitioner could not explain this. Dr. Volarich agreed that when Petitioner saw Dr. Florendo in

January of 2013, his records indicate that Petitioner was being seen for headache complaints and not ear pain. Dr. Volarich spoke to Petitioner about this discrepancy and Petitioner could not explain this (PX9).

At Respondent's request, Petitioner was seen by Dr. Russell Cantrell for an independent medical evaluation on 4/28/14. Dr. Cantrell is board certified in physical medicine and rehabilitation. As a result of the motor vehicle accident, Dr. Cantrell opined that Petitioner may have sustained a cervical strain, left parascapular strain, and chest wall contusion. Dr. Cantrell opined that Petitioner's left thumb tendinitis was not related to the motor vehicle accident based on the contemporaneous medical records. Dr. Cantrell also opined that Petitioner's left ear pain and hearing loss complaints were not related to the motor vehicle accident. Specifically, Dr. Cantrell stated "Although Ms. Ruyle describes subjective complaints of hearing loss in her left ear that she attributes to her involvement in the motor vehicle accident from June 6, 2011, my review of her pre-injury medical records indicates that she had been seen for audiometric evaluation in 2006. At that time, she was noted to have not only a high frequency hearing loss in the left ear similar to the audiometric studies performed in 2011, but was also found to have a hypocompliant tympanic membrane on the left, with conductive asymmetry at 1,000 Hz in the left ear. As such, it is my opinion that any complaints in reference to her left ear, including tinnitus, hearing loss or pain, are not a result of her involvement in the accident from June 6, 2011." (RX3).

Petitioner testified that she still has pain in her left shoulder, left thumb, and left hand when she drives. Petitioner testified that she has a hard time hearing out of her left ear and has a dull ache behind her ear

Therefore, the Arbitrator concludes:

1. Causal Connection

It is incumbent upon Petitioner to prove each and every element of her claim. The Arbitrator finds that as a result of the 6/06/11 accident, Petitioner sustained soft tissue injuries to her left chest and left shoulder area. The Arbitrator finds that Petitioner failed to prove that any other complaints were related to the 6/06/2011 accident including complaints to her left ear and left hand/left thumb. This is based on the lack of documentation of complaints and the lack of treatment recommendations for these other body parts in the contemporaneous medical records including the ambulance records, emergency room records, the physical therapy records and the records of Dr. Florendo. The Arbitrator notes that none of the contemporaneous medical providers were deposed to explain the discrepancy between their documentation and the testimony of Petitioner. The Arbitrator also notes that the Illinois Supreme Court has held that contemporaneous medical records are more reliable than later testimony because it is presumed that a person would not falsify such statements to a physician from whom she expects and hopes to receive medical aid. Shell Oil Company v. Industrial Commission, 2 Ill Dec. 590, 119 N.E. 2d 224 (1954). The opinion of Dr. Cantrell is supported by the contemporaneous medical records. The Arbitrator also notes the documentation from the 7/11/11 emergency room record from Anderson Hospital noting that Petitioner's ear condition was unrelated to the 6/06/11 motor vehicle accident.

2. Medical Bills

Pursuant to the fee schedule, the Arbitrator finds that Respondent is responsible for the following medical bills:

Date of Service	Provider	Amount Subject to Fee Schedule Review
6/06/2011	Laughlin Ambulance Service	$960.00
6/06/2011	Anderson Hospital	$2,291.70
6/06/2011	Maryville Radiology	$216.00

6/06/2011	Uptown Emergency Physicians	$792.00
6/09/2011	Anderson Hospital	$370.00
6/09/2011	Maryville Radiology	$48.00
6/09/2011	Dr. Oscar Florendo	$135.00
6/27/2011-8/31/2011	Apex Network Physical Therapy	$5,298.50
7/05/2011	Dr. Oscar Florendo	$135.00
8/08/2011	Dr. Oscar Florendo	$135.00
9/07/2011	Dr. Oscar Florendo	$90.00
9/21/2011	Dr. Oscar Florendo	$90.00
9/22/2011	Dr. Oscar Florendo	$90.00

Respondent is to receive a credit for all medical bills that they have paid.

3. Average Weekly Wage

In Sylvester v. Industrial Commission, 197 Ill. 2d 225, 230-231 (2001), the Illinois Supreme Court noted that Section 10 provides four different methods for calculating average weekly wage. Since Petitioner's employment began during the 52 week prior preceding the date of injury and no evidence was entered regarding a "like employee", the Arbitrator notes that the third method is used. The third method states "(3) If the employee's employment began during the 52 week period, the earnings during employment are divided by the number of weeks and parts thereof during which the employee actually earned wages."

After deducting Petitioner's mileage reimbursement, the Arbitrator notes that for the period of 11/01/2010 – 5/31/2011 (30 2/7 weeks), Petitioner earned $8,187.75.

Under the third method of calculating average weekly wage, the "weeks or parts thereof" loss by Petitioner must first be deducted, or factored out. However, Petitioner offered no evidence indicating how many days she worked in the 30 2/7 weeks that she was employed by Respondent prior to her injury. Since Petitioner failed to prove that she worked only parts of weeks during this period, the Arbitrator calculates her average weekly wage to be $270.35 ($8,187.75 ÷ 30 2/7). See McDaniel v. Industrial Commission (Kelly Community Fire Department), 307 Ill. App. 3d 1045, 718 N.E. 2d 722.

4. Temporary Total Disability Benefits / Credit

The medical records of Dr. Florenda document that Petitioner was taken off work through 6/24/2011. Therefore, Petitioner is entitled to temporary total disability benefits from 6/07/2011 – 6/24/2011 or 2 4/7 weeks. Therefore, Respondent is entitled to temporary total disability benefits for 2 4/7 weeks at the minimum TTD rate of $220.00 or $565.62.

The parties stipulated that Respondent has paid TTD benefits of $752.46. Therefore, Respondent is entitled to a credit of $186.84.

5. Nature and Extent of the Injury

The Arbitrator notes that Petitioner treated for left shoulder and chest complaints conservatively with Dr. Florendo and physical therapy through 8/31/2011 or approximately three months. The Arbitrator notes that Petitioner missed 2 4/7 weeks of work before she was allowed to return to full duty activities by Dr. Florendo. Petitioner testified that she continues to have problems with her left shoulder, especially while driving.

Based on this, the Arbitrator finds that as a result of the accident, Petitioner sustained injuries to the extent of 5% loss of use of the person as a whole.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Barbara Carlini,
Wife of Donald Carlini, deceased
Petitioner,

vs. NO: 09 WC 12891

15IWCC0956

DRC Eclectic Insurance Agency, Inc.,
Respondent.

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 permanent partial disability, medical expenses, occupational disease, penalties and attorney's fees 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 20, 2014, is hereby affirmed and adopted.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: DEC 18 2015

Joshua D. Luskin

o-12/16/15
jdl/wj
68

Ruth W. White

Charles J. DeVriendt

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CARLINI, BARBARA WIFE OF CARLINI, DONALD DECEASED
Employee/Petitioner

Case# 09WC012891

15IWCC0956

DRC ECLECTIC INSURANCE AGENCY INC
Employer/Respondent

On 11/20/2014, 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:

1129 LAW OFFICES OF JORDAN B RIFIS PC
PO BOX 3637
OAK PARK, IL 60303

0507 RUSIN & MACIOROWSKI LTD
MARK P RUSIN
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

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

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

BARBARA CARLINI,
WIFE OF DONALD CARLINI, DECEASED,
Employee/Petitioner

Case #09 WC 12891

v.

15IWCC0956

DRC ECLECTIC INSURANCE AGENCY, INC
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 September 25 and October 29, 2014. 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

- On February 20, 2007, the respondent was operating under and subject to the provisions of the Act.

- On this date, an employee-employer relationship existed between the petitioner and respondent.

- In the year preceding the injury, the petitioner earned $33,600.00; the average weekly wage was $646.15.

- At the time of injury, the petitioner was 55 years of age, married with no children under 18.

ORDER:

- The petitioner's request for benefits is denied and the claim is dismissed.

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 E. Williams

Signature of Arbitrator

November 20, 2014

Date

NOV 20 2014

FINDINGS OF FACTS:

On February 20, 2007, the deceased, Donald R. Carlini, was an insurance agent and the owner and operator of the respondent, an insurance agency business with approximately five to six employees. Donald Carlini had a myocardial infarction while exercising on a treadmill at a health club on February 20, 2007. He did not regain consciousness and died on February 26, 2007.

In 1993, the deceased had a myocardial infarction and received a triple bypass. On June 26, 2004, the deceased received care at West Suburban Hospital Medical Center for intermittent chest pain with radiation to his left arm and followed up with Dr. Konarzewska in July 2004. The decedent's primary care physician was Dr. Humowiecki, who he saw periodically for his general well-being and his heart condition after 1993. The decedent reported increased anxiety and stressful and depressing work on November 9, 2006. On December 26, 2006, Dr. Humowiecki noted the petitioner's continuing symptoms of anxiety and depression and increased the Wellbutrin medication. On February 14, 2007, Dr. Humowiecki noted that the decedent had a good blood pressure reading and no evidence of ischemia. Dr. Humowiecki testified that during the medical visit on February 14th he attempted to ascertain the amount of caffeine being consumed by the decedent since caffeine could increase anxiety.

FINDING REGARDING WHETHER THE PETITIONER'S ACCIDENT AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH THE RESPONDENT:

Based upon the testimony and the evidence submitted, the petitioner failed to prove that the decedent sustained a myocardial infarction on February 20, 2007, arising out of and in the course of his employment with the respondent.

Decedent was engaged in a purely personal physical activity when he suffered a myocardial infarction. The decedent was not at work nor was he working when his heart attack occurred and therefore, he did not sustain an accident in the course of his employment.

The petitioner postulates that the decedent's heart condition and resulting myocardial infarction was the result of stress, anxiety and depression over an extended period of time due to his work duties, implying, although not stated, something akin to an occupational disease that arose out of and in the course of the decedent's employment. The medical evidence only indicates that the decedent had anxiety going to work on Monday mornings and depression. There is no medical evidence that the decedent had any unusual stress due to his work duties or that his anxiety continued after arriving at work on Mondays. Moreover, it is noted that the decedent's business was successful and that he received significant personal wages and income from his business in the year prior to his death. His business was not in receivership or liquidation. While the decedent was probably concerned about the claim that was filed and probably disappointed about not obtaining a bonus for his business, the evidence indicates that the business was thriving and his goal to increase sales and grow was an ordinary, routine daily objective and not any more stressful than any other business. The implication that there was an increased level of stress on the decedent due to the failure of his business to get a bonus is not supported by any medical or objective evidence. Also noted is that there was no evidence of the dollar amount of the desired bonus or how it would have been distributed. The decedent was the owner of a profitable business and had he chosen to, he could have given bonuses out of the profits of his business to his daughter and other employees.

Dr. Dan Fintel opined that an emergency coronary angiography on the decedent revealed a blood clot in the distal right coronary artery at the site of the previous bypass surgery occluding and reducing the blood flow in the artery leading to a fatal arrhythmia. The petitioner's theory that the decedent had fresh, unstable plaque due to the stress, anxiety and depression caused by his work duties that dislodged and caused his myocardial infarction is conjecture based on conjecture, hearsay and inadmissible statements and is not consistent with the medical evidence. Even the inference that the physical activity on the treadmill was the ultimate trigger of the decedent's myocardial infarction is guesswork, especially, without evidence of the level of the exercise, the speed or pace, the duration of the exercise, his heart rate and/or any prior exercise or activity that day. However, it is more unreasonable to speculate that the decedent's plague was fresh, therefore more unstable and was due to psychological stresses and pressures associated with his work duties.

The opinions of Dr. Levy and Dr. Humowiecki are not supported by competent medical evidence, findings or tests. The petitioner failed to establish by a preponderance of evidence that the decedent sustained a work injury or disease on February 20, 2007, arising out of and in the course of his employment. The petitioner's request for benefits is denied and the claim is dismissed.

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Willie Davis,
Petitioner,

vs. NO: 12 WC 00499

Dakkota Integrated Systems, LLC,
Respondent.

15IWCC0957

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, medical expenses, vocational rehabilitation 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 7, 2015, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

15IWCC0957

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 $55,500.00. 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: DEC 18 2015

Joshua D. Luskin

Ruth W. White

Charles J. DeVriendt

o-12/16/15
jdl/wj
68

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

DAVIS, WILLIE
Employee/Petitioner

Case# **12WC000499**

DAKKOTA INTEGRATED SYSTEMS LLC
Employer/Respondent

15IWCC0957

On 5/7/2015, 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:

0320 LANNON LANNON & BARR LTD
MICHAEL S ROLENC
200 N LASALLE ST SUITE 2820
CHICAGO, IL 60601

4234 RIPES NELSON BAGGOT KALOBRATSO
PERRY GENTILE
2353 HASSELL RD
HOFFMAN ESTATES, IL 60169

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)

Willie Davis
Employee/Petitioner

v.

Dakkota Integrated Systems, LLC
Employer/Respondent

Case # 12 WC 499

15IWCC0957

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **8/12/14**. 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. ☐ 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 **Vocational rehabilitation**

15IWCC0957

FINDINGS

On the date of accident, **12/15/2011**, 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 $**31,160.48**; the average weekly wage was $**599.24**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**31,388.32** for TTD, $**0** for TPD, $**0** for maintenance, and $**12,584.05** for other benefits, for a total credit of $**43,972.37**.

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 **$399.49/week** for **130-1/7 weeks**, commencing **12/16/11 through 6/13/14**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner **maintenance benefits** of **$399.49/week for 8-4/7 weeks**, commencing **6/14/14 through 8/12/14**, as provided in Section 8(a) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of **$43,972.37**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for any payments they may have already made to the providers of the medical bills which are itemized in this decision.

Respondent shall provide vocational rehabilitation to the Petitioner including all maintenance costs and expenses incidental thereto, as provided in Section 8(a) of the Act.

Petitioner's claim for Penalties and Attorney's Fees is denied.

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

May 6, 2015
Date

ICArbDec19(b)

MAY 7 - 2015

FINDINGS OF FACT

Petitioner was employed by Respondent as a material handler. He began work for Respondent, working through a temporary agency, in January of 2010. He worked three months on the assembly line and then became a material handler. He became an employee of Respondent in April of 2011. His job duties as a material handler were to load the lines and to supply them with materials and tools that were needed to build the product. As a part of his job, he worked with 45-60 pound boxes of light harnesses or wire harnesses.

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on December 15, 2011. He was operating a tugger (a stand-up rollaway), pulling a trailer. He got a call on his radio to bring some supplies. In order to respond to the call, he released the handle to stop the tugger and it kept rolling. The tugger flew around the next aisle and Petitioner was thrown into the scaffolding where material was stocked. Petitioner's head and left shoulder hit the scaffolding and then he hit the floor and passed out. He did not remember exactly how he hit the floor, but he felt like he hit his lower back because he was bent over.

Petitioner testified that when he came to, he was being loaded into an ambulance. He testified he was hurting all over when he got to the hospital.

Petitioner was taken by ambulance to St. Margaret Hospital and was treated in the emergency room. The records reflect that Petitioner was complaining of low back and neck pain and was diagnosed with lumbar and cervical strains due to a fall and a concussion with loss of consciousness. CT scans of Petitioner's brain and of his cervical spine was performed and there was no evidence of any acute pathology. A lumbar x-ray was negative for acute pathology, although DDD was noted at L4-L5 and spondylosis was noted at L2-L4 (Px. 2).

Petitioner testified that he then went to Ingalls Memorial Hospital on December 17, 2011 because he was in severe pain. The records from Ingalls reflect that Petitioner was complaining of low back and left shoulder pain. He was diagnosed with a shoulder strain (Px. 3).

Petitioner then came under the care of his primary care physician, Dr. Bewley-Thomas, on December 21, 2011. Dr. Bewley Thomas diagnosed Petitioner with low back pain and a left shoulder strain and recommended MRI's, pain medication, physical therapy and restricted work duties. Petitioner had been seen on December 14, 2011 by Dr. Bewley-Thomas as a new patient. It was noted that Petitioner had undergone a L4/5 laminectomy in 2001. The chart regarding the new patient visit shows that no lumbar pain was noted, along with a negative straight leg raising test and muscle strength of 5/5, bilaterally (Px. 5).

On January 17, 2012, Petitioner underwent a left shoulder MRI at Open MRI of Olympia Fields. The MRI revealed rotator cuff tendinosis, a partial articular surface tear of the subscapularis tendon at the humeral head and mild degenerative changes of the AC joint along with bicipital tendonitis (Px. 6).

On January 18, 2012, Petitioner underwent a lumbar MRI at Open MRI of Olympia Fields. That MRI revealed disc degeneration at L3-L4 and L5-S1, moderate broad-based left lateral protrusion and extension into the left side of the canal and left foramin at L4-L5, a protrusion into the left foramin at L3-L4 with annular fissure and right stenosis at L5-S1 with a small right lateral protrusion.

Petitioner then returned to Dr. Bewley-Thomas who reviewed the MRI's and referred Petitioner for an orthopedic consult.

On February 8, 2012, Petitioner was seen by Dr. Ram Aribindi at Southland Orthopedics. Dr. Aribindi examined Petitioner and administered a steroid injection to his shoulder. Dr. Aribindi referred Petitioner to Dr. Kesani for the lumbar spine injury (Px. 6).

On February 20, 2012, Petitioner saw Dr. Kesani for his back. Petitioner was complaining of constant pain worsened by bending, lifting, and twisting, after an accident at work on December 15, 2011. A history of 2001 low back surgery (L4-L5 and L5-S1 Laminectomy by Dr. Alan Fabi in Michigan) was noted. The patient said that his back was asymptomatic prior to the new injury. Dr. Kesani diagnosed Petitioner with predominantly mechanical axial low back pain with mild left lower extremity radiating pain and paresthesis. Dr. Kesani thought that the lumbar MRI was of poor quality. Dr. Kesani prescribed physical therapy and light-duty work only.

Petitioner began physical therapy on February 27, 2012 at Southland Orthopedics. He attended 12 therapy sessions through April 3, 2012 (Px. 6).

When Petitioner saw Dr. Aribindi on April 4, 2012, he was still complaining of left shoulder and lower back pain. Dr. Aribindi advised Petitioner to continue with physical therapy and modified work activities.

Petitioner attended an additional 10 therapy sessions for his shoulder.

On April 18, 2012, Petitioner returned to Dr. Kesani with no change in his complaints. Again noting the poor quality of the lumbar MRI, Dr. Kesani ordered a new MRI for Petitioner.

On June 16, 2012, Petitioner was seen in the emergency room of St. Margaret Hospital because he slipped on a pickle and twisted his back at the Ameristar Casino. The records reflect that Petitioner never struck the floor and he denied any numbness and tingling. He advised that the pain starts in his low back and goes to his butt on the right side. Petitioner was diagnosed with a lumbar spine strain and low back strain. He was advised to follow-up with his doctor (Px. 2).

On June 20, 2012, Petitioner underwent a left shoulder arthroscopy with repair of a SLAP lesion and repair of the anterior inferior labral tear and a debridement of tendinosis of the subscapularis, synovectomy, acromioplasty and debridement of tendinosis of the supraspinatus (Px. 6).

Thereafter, Petitioner had physical therapy for his left shoulder. The records reflect he attended 36 sessions between July 2, 2012 and October 15, 2012. Following physical therapy, Petitioner underwent a work conditioning program at Southland Orthopedics. Petitioner was discharged from work conditioning on November 13, 2012.

On November 14, 2012, Petitioner returned to Dr. Aribindi, who released him without restrictions for his left shoulder only. Dr. Aribindi also found Petitioner to be at MMI for his left shoulder at that time.

On November 28, 2012, Petitioner underwent a new lumbar MRI at High Tech. The MRI revealed a moderately sized left lateral herniated disc/osteophyte complex at L3-L4 with moderate left foraminal stenosis. A large posteral/lateral herniated disc at L4-L5 was also noted (Px. 6).

Petitioner returned to Dr. Kesani on December 7, 2012. Dr. Kesani noted that as of the last time he saw him, the Petitioner had failed conservative treatment. Dr. Kesani recommended that Petitioner follow-up with his pain management specialist for epidural injections and continue medications and home exercise.

On December 26, 2012, Petitioner was seen at South Suburban Hospital by Dr. Lindsey Job. Petitioner gave Dr. Job a history of the accident of December 15, 2011 as well as of his present complaints. Dr. Job examined Petitioner and diagnosed him with a left L5 radiculopathy and recommended a series of epidural steroid injections. Dr. Job also opined that if Petitioner does not get any significant relief with the epidural, she would recommend a left L5 transforaminal epidural steroid injection. Dr. Job made no changes to Petitioner's medications (Px. 4).

On March 11, 2013, Petitioner returned to Dr. Kesani, who reviewed the recent lumbar MRI and diagnosed Petitioner with a lumbar disc herniation. Dr. Kesani specifically opined that there was a left disc herniation at L4-L5 and a disc herniation at L3-L4. Dr. Kesani discussed various treatment options with Petitioner and then referred him to the pain specialist for epidural steroid injections.

There were subsequent visits with Dr. Kesani on May 20, 2013, July 1, 2013, August 12, 2013, September 23, 2013, November 4, 2013, and December 20, 2013. At all of those visits, Dr. Kesani continued to restrict Petitioner's work activities to light-duty only.

In the chart note of July 1, 2013, it was noted: "Prior to this injury (12/15/2011), he denied any low back pain or radiating pain. However, after his injury he experienced considerable left lower extremity radiating pain and milder low back pain." The chart note of August 12, 2013 states: "#2. Once again, as documented in my previous notes he denies any prior history of low back problems prior to his injury at work..." As noted above, Dr. Kesani charted the 2001 back surgery the first time that he saw Petitioner in February of 2012 (Px. 6).

On December 27, 2013, Petitioner was seen by Dr. Donald Roland of the Pain Treatment Center of Illinois. Dr. Roland administered 3 epidural steroid injections to Petitioner's L3-L4 and L4-L5 levels. These injections were administered on January 3, 2014, January 17, 2014 and January 31, 2014 (Px. 7).

On February 7, 2014, Petitioner returned to Dr. Kesani with the same symptoms in his back. Dr. Kesani recommended non-operative treatment versus a two level discectomy. The same recommendations were made by Dr. Kesani on the February 14, 2014 visit.

On April 4, 2014, Petitioner saw Dr. Kesani who again discussed various treatment options including surgery.

On May 29, 2014, Petitioner underwent an FCE at Flexeon Rehabilitation. The results of the FCE revealed Petitioner to be functioning at the light work capacity, whereas his job with the Respondent was identified as being a heavy physical demand job (Px. 6).

Petitioner then returned for a final visit with Dr. Kesani on June 13, 2014, advising he did not wish to undergo any lumbar surgery. Dr. Kesani released Petitioner, PRN, to return to work per the restrictions of the FCE.

Petitioner was seen by Dr. Jay Levin on March 14, 2013 for a § 12 examination. Petitioner's prior surgery and the recommendation for repeat surgery in 2009 were noted by Dr. Levin. Dr. Levin requested further medical records and copies of the MRI films from 2005 and 2012 in order to provide his opinions. He was able to review the 2012 studies, but relied upon the reports from the 2005 and 2009 lumbar MRIs. He thought that the films that he reviewed were consistent with the older studies and the work-up that Petitioner received by Dr.

Fabi in 2009. Dr. Levin did not think that the December 15, 2011 injury resulted in any acute pathology to the lumbar spine. Petitioner had a chronic condition that pre-dated the occurrence and for which surgery had been recommended. Surgery would not be unreasonable, but would not be related. Any change in work capacity is not related. Petitioner was at MMI regarding the back injury of December 15, 2011, per Dr. Levin's report of June 18, 2013 (Rx. 1 & 2).

Petitioner was examined by Dr. Charles Slack at the request of his lawyer on September 27, 2013. Dr. Slack reviewed the MRI films of September 24, 2001, April 16, 2005 and November 28, 2012. The scan from 2005 showed progressive worsening of an extradural defect and increased narrowing of the canal on the left side, compared to the scan from September of 2001. The scan of November 28, 2012 shows further narrowing at L4-L5, due to further progression of the left-sided disc/scar material of the extradural defect. At L3-L4, a left sided foraminal disc protrusion was noted (said to be a mild diffuse disc bulge in 2005). Dr. Slack opined that the December 15, 2011 accident caused progressive worsening of disk protrusions at L4-L5 and L3-L4, causing "a further aggravation of the patient's preexistent condition." Dr. Slack suggested a series of lumbar ESI'S and medication such as Neurontin. The patient's prognosis was guarded. Petitioner should remain off work. The treatment that had been received was reasonable and necessary (Px. 8).

Petitioner has a high school education. He attended one year of college for the purpose of being certified in HVAC. He did not finish this program, being 30 hours short of obtaining a degree. He was a C/C- student. He worked in factories as a machine operator until he worked as a driver for Ryder Truck between 1999 and 2001. He was laid off from Ryder and did not renew his CDL. He worked for Pulver Dryer USA building machines. For about five years before Petitioner started at Respondent, he was off work, trying to rehabilitate himself after a motor vehicle accident that occurred in 2005.

Respondent has not offered Petitioner a job within the restrictions given by Dr. Kesani. He has not received TTD since June 19, 2013. He has not worked anywhere since the injury.

Petitioner looked for work within the restrictions that Dr. Kesani placed upon him. He looked for work and applied for jobs online. His Job Search Record was admitted as Petitioner's Exhibit 11. He has not been successful in finding a job. He would like professional help in finding a job.

Petitioner testified that he still has pain in his shoulder and back. His left shoulder is very weak. He can't carry any weight or push with it. He has problems sleeping. He has back pain. He has numbness in his leg and has problems sitting or standing for too long.

Petitioner's Exhibit 10 was the bills exhibit. The Parties agreed that if Respondent had paid any of the bills, it would be entitled to a credit.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The unrebutted testimony of Petitioner and the medical records establish that Petitioner's left shoulder condition is causally related to the injury.

Regarding Petitioner's low back condition, clearly Petitioner had significant prior medical treatment for his low back. He underwent a L4-L5 laminectomy in 2001. He injured his low back in a motor vehicle accident in 2005 and there was a recommendation for another back surgery in 2009. An EMG was said to show chronic L4-L5 and S1 radiculopathy. He had low back and left leg pain. Petitioner spent about five years " rehabilitating" after the accident, before going to work for Respondent.

Petitioner was able to perform his job duties for Respondent for almost two years prior to the accident. The last time that Petitioner saw Dr. Bruno for his low back was in December of 2010, some one year before the accident. Significantly, Petitioner was seen by Dr. Bewley-Thomas the day before the accident and the examination regarding his low back was benign. He had no lumbar pain, a negative straight leg raise test and 5/5 strength bilaterally. Petitioner also reported to Dr. Kesani that his low back was asymptomatic prior to the injury when he was first seen by Dr. Kesani on February 20, 2012.

The Arbitrator finds the opinion of Dr. Slack to be credible and persuasive on the issue of causal connection in this case. Petitioner's current condition of ill-being regarding his lumbar spine is causally related to the injury. The accident caused a further aggravation of Petitioner's preexisting condition. Dr. Slack reviewed the 2001 and 2005 MRI scans, along with the November 2012 lumbar MRI that was done after the accident and noted progressive worsening of the disc protrusions at L4-L5 and L3-L4, along with further narrowing of the spinal canal.

Dr. Levin's opinion was that the injury did not result in any acute pathology in Petitioner's lumbar spine, and was related to a chronic condition that pre-dated the injury. Whatever injury resulted from the accident should have resolved in 6 weeks. Dr. Levin did not review all of the MRI scans, relying upon the report for the scan that was given prior to the injury and reviewing the 2012 films. Dr. Levin's opinion is not persuasive.

Significantly, there is no medical proof of ongoing back complaints or treatment in the year preceding the accident. In fact, Petitioner's low back was examined the day before the accident as a part of a new patient exam and the examination results were benign.

The Arbitrator finds that Petitioner's current condition of ill-being regarding his low back is causally related to the injury, based upon the credible testimony of Petitioner, along with the medical records and the credible causation opinion of Dr. Slack.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that the treatment that Petitioner has received is reasonable, necessary and causally related to the injury. Petitioner's bills exhibit contained the following claimed bills, which are awarded pursuant to §8(a) and §8.2 of the Act::

• Advocate South Suburban Hospital	$ 263.00
• Pain Treatment Surgical	$21,182.70
• Flexeon Rehabilitation	$ 1,920.00
• Southland Orthopedics	$20,590.00

The total amount of the bills is $43,972.37 and the same is awarded, subject to the Parties' agreement that Respondent is entitled to a credit for awarded bills that it has paid.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner claims temporary total disability benefits from December 16, 2011 through present. Respondent stipulated that Petitioner is entitled to temporary total disability benefits from December 16, 2011 through June 19, 2013.

Based on the medical records and the report of Dr. Slack, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from December 16, 2011 through June 13, 2014, the date that Dr. Kesani released Petitioner to return to work with permanent restrictions per the FCE (130-1/7 weeks).

The Arbitrator further finds that Petitioner is entitled to maintenance benefits from June 14, 2014 through present (8-4/7 weeks), as Petitioner has not been returned to work by Respondent. The Arbitrator also notes that Petitioner is conducting his own independent job search and has not yet obtained employment.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES OR FEES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner had significant medical treatment (with the recommendation for repeat back surgery) prior to the injury. Respondent's reliance upon the opinion of Dr. Levin is not unreasonable and it's failure to pay benefits is not vexatious.

Accordingly, the claim for penalties and attorney's fees is denied.

WITH RESPECT TO ISSUE (O) VOCATIONAL REHABILITATION, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner is 52 years old, with a high school education and limited skills. He has significant work restrictions that are related to the injury. His prior employment was largely in factory assembly/machine operator positions, along with two years as a truck driver. He no longer has a CDL. Petitioner was able to perform his job duties at Respondent for almost two years before the accident. Respondent has not offered Petitioner work within the limitations of the FCE, relying upon the no causation opinion of Dr. Levin. Petitioner's attempt at a self directed job search (while not the best effort) has not been successful. Petitioner is an appropriate candidate for vocational rehabilitation.

Apparently, no vocational assessment or plan was prepared by Respondent, as is required by Rule 7110.10. Neither Party offered opinion evidence regarding vocational rehabilitation.

The Arbitrator finds that Petitioner is in need of and would benefit from vocational rehabilitation and assistance in order to return him to employment. Accordingly, the Arbitrator orders Respondent to provide Petitioner with vocational rehabilitation, including all maintenance costs and expenses incidental thereto, as provided in §8(a) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☐ 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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Cary Peplow,

Petitioner,

vs.

NO: 12 WC 05598

15IWCC0958

Keystone Steel & Wire Company,

Respondent.

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 medical expenses, permanent partial disability ("PPD"), temporary total disability, causal connection, 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.

So that the record is clear, and there is no mistake as to the intentions or actions of this Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical / legal perspective. We have considered all of the testimony, exhibits, pleadings and arguments submitted by the Petitioner and the Respondent. One should not and cannot presume that we have failed to review any portion of the record made below. Though our view of the record may or may not be different than the Arbitrator's, it should not be presumed that we have failed to consider any evidence taken below. Our review of this material is statutorily mandated and we assert that this has been completed.

Because the accident date of this case is September 23, 2011, the Commission must undertake an analysis under §8.1b regarding any PPD award. Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability, if any, for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent

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partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of §8.1b(b), the Commission notes that the record contains an impairment rating of 2% of loss of use of a man as a whole as determined by Dr. Mitchell B. Rotman pursuant to the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment. (Rx3). The Commission notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making such a disability evaluation. In the present case, Dr. Rotman's report notes that he based the 2% recommendation on the Petitioner's loss of external rotation of his left shoulder. The Commission finds that this factor is relevant to the §8.1b analysis and gives it greater weight.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Commission notes that the record reveals that Petitioner was employed as a brick mason at the time of the accident and that he was able to return to work in his prior capacity after said injury. The Commission finds that this factor is relevant to the §8.1b analysis and gives it greater weight.

With regard to subsection (iii) of §8.1b(b), the Commission notes that Petitioner was 41 years old at the time of the accident. The Commission finds that this factor is relevant to the §8.1b analysis and gives it lesser weight.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Commission notes that there was not any evidence proffered that the Petitioner's future earning capacity would be affected in any way. Furthermore, Petitioner returned to his job full-duty without any restrictions. The Commission finds that this factor is relevant to the §8.1b analysis and gives it lesser weight.

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With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Commission notes that the Petitioner did not seek out medical treatment for his left shoulder in the approximately twenty-three months prior to the date of hearing. At the Petitioner's last post-operative appointment with his surgeon on October 4, 2012, the Petitioner did not have any complaints and stated that he was doing well. Petitioner's surgeon, Dr. Steven K. Below, found that Petitioner had full range of motion in his shoulder and that it felt stable. At the time of hearing, the Petitioner was neither taking pain medication nor did he have any medical appointments scheduled regarding his left shoulder. The Commission finds that this factor is relevant to the §8.1b analysis and gives it greater weight.

Based on the above factors, and the record taken as a whole, the Commission finds that Petitioner sustained permanent partial disability to the extent of 2.5% loss of use of man as a whole pursuant to §§8(d)(2) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,095.18 per week for a period of 53 and 3/7 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 pay to Petitioner the sum of $695.78 per week for a period of 12.5 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the Petitioner a disability to the extent of 2.5% man as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner reasonable and necessary medical expenses as provided in §8(a) and §8.2 of the Act, as awarded in the Arbitrator Decision, which is attached hereto and made a part hereof.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $46,000.00. 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: DEC 2 1 2015
TJT/ gaf
O: 10/26/15
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PEPLOW, CARY
Employee/Petitioner

Case# **12WC005598**

KEYSTONE STEEL & WIRE COMPANY
Employer/Respondent

15IWCC0958

On 11/25/2014, 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:

1184 VONACHEN LAW FIRM
MARK WERTZ
456 FULTON ST SUITE 425
PEORIA, IL 61602

0507 RUSIN & MACIOROWSKI LTD
JOHN MACIOROWSKI
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606-3833

15IWCC0958

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

CARY PEPLOW
Employee/Petitioner

v.

KEYSTONE STEEL & WIRE COMPANY
Employer/Respondent

Case # 12 WC 005598

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 **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Peoria**, on **10/17/14**. 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. [x] 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. [x] 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] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] TTD
L. [x] 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 **Septemer 23, 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 $**85,424.04**; the average weekly wage was $**1,642.77**.

On the date of accident, Petitioner was **41** years of age, ***married*** with **2** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**4,850.08** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $ for other benefits, for a total credit of $.

Respondent is entitled to a credit of $**15,925.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,095.18/week for 53 3/7 weeks, commencing 9/24/11 through 10/24/11 and 10/26/11 through 10/4/12, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $4,850.08 for temporary total disability benefits that have been paid and Respondent shall be given a credit of $15,925.00 under Section 8(j) of the Act for non-occupational indemnity disability benefits paid.

Respondent shall pay reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act, as described in the Arbitrator's findings of fact and conclusions of law contained within this decision.

Respondent shall pay Petitioner permanent partial disability benefits of $695.78/week for 37.5 weeks, as the Petitioner has sustained disability to the extent of 7.5% Person As A Whole under Section 8 (d) (2) of the Act.

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.

D. Blow McCarthy
Signature of Arbitrator

Nov. 19, 2014
Date

ICArbDec p. 2

NOV 25 2014

CAUSAL CONNECTION

In support of the Arbitrator's finding as to (F), Causal Connection, the Arbitrator finds the following evidence:

The Petitioner testified that he has worked for the Respondent 23 ½ years. At the time of Petitioner's accident on September 23, 2011 he was employed by Respondent as a Brick Mason. His job involved many tasks including building ladles, building furnaces, building tundishs, gunning using high air pressure, operating overhead cranes and the use of "air rammers." Also, as a Brick Mason Petitioner was required to reline furnaces and ladles, utilizing ladle brick which weighs approximately 17 pounds and furnace brick which weighs between 23 and 30 pounds. Also, Petitioner was required to handle 45 to 50 pound bags of backfill that are emptied and placed behind bricks.

On September 23, 2011 Petitioner testified that he started his shift at 6:30 a.m. At approximately 8:00 a.m. he began moving a steel sawhorse that weighed at least 250 pounds. At the hearing he demonstrated his physical posture while moving the steel sawhorse and it was evident that he was pulling, dragging and lifting the sawhorse at the time he experienced what he testified to be a pop and "immediate sharp pain" in his left shoulder. Within a few minutes he went to the Medical Unit located on the Respondent's premises and reported pain of 8 on a 1 to 10 scale. He testified that he did not want to report pain of any greater magnitude because this would have required transport to a hospital by ambulance.

Petitioner's co-worker James Rawlings testified that on September 23, 2011 he was working with Mr. Peplow and he witnessed Mr. Peplow reach for a shoulder and heard him make some type of verbal comment while attempting to pull a sawhorse.

Both, Mr. Peplow and Mr. Rawlings testified that the sawhorse involved in Petitioner's accident was the same or similar to the sawhorse depicted in the photographs contained in Petitioner's Group Exhibit C.

Mr. Peplow and Mr. Rawlings' testimony regarding the accident is consistent with the Keystone Steel & Wire Company Report of Injury or Illness dated September 23, 2011 (Petitioner's Group Exhibit D, Section 1, page 20) and Respondent's Physician's Nurse's Notes. (Petitioner's Group Exhibit D, Section 1, page 16).

Petitioner testified that he had no previous problem with his left shoulder. This is consistent with Respondent's physician Homer Pena's notation on his patient visit record on the date of accident, September 23, 2011. (Petitioner's Group Exhibit D, page 17).

On the day of the accident Dr. Pena suspected a rotator cuff injury at that time. Dr. Pena noted the patient was holding his left upper limb with the right upper limb in a guarded, protective posture and he kept his shoulders as immobile as much as possible. (Petitioner's Group Exhibit D, Section 1, page 17). Dr. Pena recommended the Petitioner not work at that time. (Petitioner's Group Exhibit D, Section 1, page 17).

Petitioner testified that he was sent home from work by the medical unit in a cab.

Dr. Pena referred the patient for two MRIs prior to October 24th. The first was conducted on September 29, 2011 without contrast. (Petitioner's Group Exhibit D, Section 2, page 24). The second MRI was performed on

October 19, 2011 with contrast. (Petitioner's Group Exhibit D, Section 1, page 22). Mr. Peplow's treatment with Dr. Pena, the employer's physician, continued until October 24, 2011 when Dr. Pena released Mr. Peplow to return to work without restrictions. (Petitioner's Group Exhibit D, Section 1, pages 8 - 9).

Petitioner testified the next day, October 25, 2011, he was having significant difficulties with his left shoulder while working. Petitioner testified that the pain was "unbearable". He therefore returned to Dr. Pena but the employer's physician refused to see Mr. Peplow. The medical records reflect that Dr. Pena was updated by his nurse and Mr. Peplow was instructed to see his personal care physician. (Petitioner's Group Exhibit D, Section 1, pages 4 – 5). At that time, Mr. Peplow complained to Dr. Pena's nurse that on top of his pain it felt like his muscles or nerves were twitching in his left shoulder and that he had a tingling feeling. Mr. Peplow said that he was experiencing these problems from his shoulder to his anticubital area and down to the elbow. The Petitioner explained this problem was constant. (Petitioner's Group Exhibit D, Section 2, pages 4 – 5).

On October 26, 2011, the day after returning to work, and as instructed by Respondent's physician's nurse, Mr. Peplow sought the direction of his family physician at Tremont Medical Clinic, SC, Brian J. Kellenberger, MD. (Petitioner's Group Exhibit D, Section 4, page 109). Dr. Kellenberger documented tenderness to abduction of the left arm at the shoulder and that Mr. Peplow's pain limited flexion and extension of the arm at the elbow and external rotation. Dr. Kellenberger did find the right side normal.(Petitioner's Group Exhibit D, Section 4, page 110) Dr. Kellenberger continued the petitioner's work restrictions of no lifting, pulling or tugging more than 10 pounds with the left arm. (Id at 111) Dr. Kellenberger referred Petitioner for physical therapy and to Dr. Mitzelfelt, an orthopedic surgeon. (Petitioner's Group Exhibit D, Section 4, page 55). When see for his initial therapy evaluation on November 2, 2011, the examination showed a positive anterior apprehension test, indicating possible instability. (Id at 120)

Petitioner subsequently sought the advice of two orthopedic surgeons. The first was Donald Mitzelfeldt of Pekin Orthopedics in Pekin, Illinois. Dr. Mitzelfeldt's initial Progress Note dated December 12, 2011 is contained in Petitioner's Group Exhibit D, Section 2, pages 4 – 6. Dr. Mitzelfelt's assessment included left shoulder anterior/inferior instability s/p work injury. Dr. Mitzelfelt noted that the MRI's were negative and he did not see any evidence of a tear. Dr. Mitzelfelt recommended a left shoulder arthroscopy and debridement with arthroscopic anterior reconstruction and estimated the patient would be off work from regular duty for a minimum of 4 to 6 months, but that the patient could return to work light duty with no use of his left arm or no lifting with his left arm much sooner. (Petitioner's Group Exhibit D, Section 2, page 5).

It should be noted that Dr. Mitzelfelt stated specifically in his Assessment that the MRI's both with and without contrast were negative, but that the anterior capsule and ligaments could stretch up to 30% without tearing and so the negative MRI did not change or alter his recommendation. (Petitioner's Group Exhibit D, Section 2, page 5).

Mr. Peplow sought a second orthopedic opinion when he visited Steven Below, M.D. on February 23, 2012. (Petitioner's Group Exhibit G, Dr. Below's Deposition). Dr. Below made an initial diagnosis of left shoulder subacromial bursitis with minimal rotator cuff tenderness. His examination at that initial office visit revealed some minimal inferior posterior shoulder instability, but the doctor indicated that there were similar findings on the Petitioner's right side. (Below Deposition, page 7, lines 4 - 13). Dr. Below recommended a conservative plan of treatment which included continuing physical therapy and a cortisone subacromial injection and the use of an anti-inflammatory medication. (Below Deposition, page 7, lines 14 – 19). Dr. Below again saw the patient on March 5, 2012 and he recommended continuing with the initial plan. At Dr. Below's third patient office visit there remained instability in the shoulder and he recommended surgery. (Below Deposition, page 12, line 16 – page 14, line 11). Dr. Below's surgery recommendation was based on the patient's subjective

complaints and Dr. Below's clinical exam. (Below Deposition, page 14, lines 12 – 16). Dr. Below summarized his diagnosis after the three office visits as left shoulder impingement, subacromial bursitis and acromioclavicular joint inflammation with anterior inferior plus one shoulder instability. (Below Deposition, lines 6 – 12).

Dr. Below testified that the condition he diagnosed was causally connected to the work injury as described by the patient and he also factored in the fact the patient was having no problems before the injury and that when Mr. Peplow moved the sawhorses he felt a pop in his shoulder and had some immediate increased pain that either caused the injury or aggravated the pathology in the shoulder. *(See* Below Deposition, page 16, line 6 - page 20, line 7).

Respondent had Mr. Peplow examined by Dr. Mitchell Rotman on January 30, 2012 and May 13, 2013. (Rotman Deposition, page 8, lines 5-9. Dr. Rotman felt the patient had a normal shoulder. (Rotman Deposition, page 17, lines 2 – 3). Dr. Rotman testified that he had no disagreement with the employer's nurses diagnosis of sprain or strain on September 23, 2011, that being the date of the accident. (Rotman Deposition, page 30, line 23 – page 32, ln 23; *Also see* Petitioner's Group Exhibit D, Section 1, page 11). Dr. Rotman also testified that a diagnostic arthroscopy could be considered after seeing the patient initially on January 30, 2012. (Rotman Deposition, page 20, lines 10 – 15). In his deposition, Dr. Rotman explained that he will recommend a diagnostic arthroscopy for patients for whom he cannot determine a diagnosis, but whom he thinks may have something wrong with them. (RX 1 at 44)

Mr. Peplow's testimony regarding his pain before and after the surgery performed by Dr. Below on April 17, 2012 is noted. Mr. Peplow testified that his pain greatly improved after the surgery and that he is now able to perform his same job tasks for his employer as he did before this accident.

Respondent makes two closely related arguments against causation. First, they argue that the Petitioner's accident or mechanism of injury was not consistent with a shoulder injury. Secondly, they argue that the Petitioner did not suffer any injuries beyond a simple strain, and the surgical findings of Dr. Below involved degenerative conditions not caused or aggravated by the accident.

The Arbitrator does not find either of the Respondent's arguments to be persuasive. With respect to the mechanism of injury, one must consider what injuries were actually treated by Dr. Below. There were no tears of the rotator cuff. In fact, Dr. Below described the Petitioner's subacromial joint as only showing minimal degenerative changes. (PX G at 23) The Arbitrator notes that rotator cuff tears related to trauma generally involve accidents while one's arms are at shoulder level or above. While the Petitioner did have some evidence or bursitis an impingement which the doctor treated, his most prominent problem involved a feeling of looseness in the gleno-humeral joint capsule which houses the ball and socket joint, consisting of the humeral head and the glenoid. Dr. Below understood that the Petitioner's arms were below shoulder level when he was pulling the heavy sawhorse as he explained his opinion on causation. He said that a person could be pulling something which causes a little more instability of the soft tissue, causing a feeling of looseness in the shoulder. (Id at 41,42) On the other hand, Dr. Rotman opined that it would be "impossible" to stretch the capsule of the shoulder joint while pulling the sawhorses in the manner described by the Petitioner. He did not explain his basis for that opinion. (RX 1 at 25)

We know from the unrebutted evidence that the Petitioner had no shoulder symptoms prior to September 23, 2011. We know he was attempting to pull a saw horse weighing at least 250 pounds, which is something he normally did not try to do in his job. As he pulled with his hands gripping the legs of the sawhorse, he felt a pop and pain in his left shoulder which was observed by his co-worker. He reported the accident immediately. He

began treating with the occupational doctor that day, and his notes show complaints of ongoing sharp pain in the shoulder despite engaging in conservative care. He told the occupational doctor, Dr. Pena, that his felt looseness in the shoulder when he saw him on October 24, 2011, and he continued to complain of looseness to his treating physicians on a regular basis until undergoing surgery in April 2012. Along with that timeline, the Arbitrator finds Dr. Below's opinions concerning the mechanism of injury more persuasive than Dr. Rotman's conclusory statement referenced above.

With respect to the injury itself, the Arbitrator believes the evidence supports the Petitioner's claim that his joint capsule looseness, found by Dr. Below in surgery, was causally related to his accident. While Dr. Below did indicate that he saw no evidence of instability during his early examinations, his findings in surgery established its existence. After the Petitioner was anesthetized but before any incisions were made, Dr. Below manually observed anterior left shoulder instability. No such finding was seen in the Petitioner's right shoulder. After making his incision, Dr. Below found that his arthroscope passed easily between the humeral head and the glenoid, meaning there was a positive pass through sign, indicative of looseness in the joint. ((RX 1, Dep X. 12) In order to treat the condition, the doctor minimally tightened the capsule. (PX G at 23)

Dr. Rotman maintained that there was no looseness in the shoulder capsule. He based his opinion on his exam of January 30, 2012. The Arbitrator notes that his exam findings were different than those of the therapist at the Tremont Clinic and Dr. Mitzfeldt, referenced above. Dr. Rotman also relied upon some surgical images provided to him by the Petitioner. There is no indication, however, that Dr. Rotman had images of Dr. Below's manual testing for instability or the positive pass through test which established the diagnosis.

The Arbitrator further believes the timeline referenced above supports the conclusion that the bursitis and impingement found and treated by Dr. Below were also causally related to the accident.

Based on the above, the Arbitrator finds there was a causal connection between the Petitioners's left shoulder condition and his work injury of September 23, 2011.

TEMPORARY TOTAL DISABILITY

In support of the Arbitrator's finding as to (K) Temporary Total Disability, the Arbitrator finds the following evidence:

The Petitioner testified that he was taken off work on September 23, 2011 by Dr. Pena and this fact is confirmed by Dr. Pena's record. (Petitioner's Group Exhibit D, Section 1, page 17). Mr. Peplow was directed by Dr. Pena to return to work full duty at Dr. Pena's office visit on October 24, 2011 and Petitioner, in fact, returned to work the next day; however, he was unable to work because of the pain in his left shoulder and he returned to Dr. Pena's office. Dr. Pena refused to see Petitioner according to Mr. Peplow's testimony.

On October 26, 2011, the day after returning to work, Mr. Peplow sought the direction of his family physician at Tremont Medical Clinic, SC, Brian J. Kellenberger, MD. (Petitioner's Group Exhibit D, Section 4, page 54). Dr. Kellenberger documented tenderness to abduction of the left arm at the shoulder and that Mr. Peplow's pain limited flexion and extension of the arm at the elbow and external rotation. Dr. Kellenberger did find the right side normal (Petitioner's Group Exhibit D, Section 4, page 55) and that the patient had been off work since September 23, 2011. (Petitioner's Group Exhibit D, Section 4, page 54). Dr. Kellenberger referred Petitioner for physical therapy and to Dr. Mitzelfelt, an orthopedic surgeon. (Petitioner's Group Exhibit D, Section 4, page 55).

Mr. Peplow initially saw Dr. Mitzelfelt on December 12, 2011. Dr. Mitzelfelt instructed the patient to remain off work as documented on a disability script. (Petitioner's Group Exhibit D, Section 2, page 7). Dr. Mitzelfelt noted that that it was unknown when the patient would be able to return to work and that he would be reevaluated on January 23, 2012. (Petitioner's Group Exhibit D, Section 2, page 7). Dr. Mitzelfelt recommended surgery. (Petitioner's Group Exhibit D, Section 2, page 5).

Mr. Peplow sought a second orthopedic opinion from Steven Below, MD, of Great Plains Orthopedics and he initially saw Dr. Below on February 23, 2012. (Below Deposition, page 5, lines 21 – 23). Dr. Below instructed the patient to remain off work. A disability script was issued on March 5, 2012 and disability scripts were consistently issued by Dr. Below's office for either full or light duty until he authorized the patient to return to work full duty on October 4, 2012. (Petitioner's Group Exhibit D, Section 5, page 3).

Mr. Peplow testified that he attempted to return to work light duty when instructed by Dr. Below on July 12, 2012 with a maximum 7 lb. weight lifting restriction and no above or away from the body lifting. (Petitioner's Group Exhibit D, Section 5, page 11). He notified the Respondent's representative, Mr. Lauterbach; however, he was not allowed to return to work until he was released for full duty on October 4, 2012 by Dr. Below. (Petitioner's Group Exhibit D, Section 5, page 3).

Based on the above, the Arbitrator finds the Petitioner is awarded TTD benefits from September 24, 2011 through October 24, 2011 representing 4 & 3/7ths weeks, and October 26, 2011 through October 4, 2012 representing 49 weeks. The total Temporary Total Disability owed for both periods at the rate of $1,095.18 is $58,513.90. The Respondent is entitled to a credit for Temporary Total Disability paid from September 24, 2011 through October 24, 2011 (4 & 3/7ths weeks or $4,850.08) and non-occupational indemnity disability benefits paid in the amount of $15,925.00. Deducting the previously paid TTD in the amount of $4,850.08 and non-occupational indemnity benefits paid by Respondent in the amount of $15,925.00, Petitioner is owed the balance of $37,738.82 in Temporary Total Disability benefits.

MEDICAL EXPENSES

In support of the Arbitrator's finding as to (J) Medical, the Arbitrator finds the following evidence:

The Petitioner incurred total medical expenses in the amount of $51,680.27 as outlined on Petitioner's Group Exhibit F, page 1 – 30. On the Request For Hearing, signed by the parties, there is a list of medical bills totaling $1541.05 which the parties agree have not been paid. The Petitioner is awarded that amount, pursuant to the Fee Schedule.

It appears that the additional charges were paid by the Workers Compensation provider, CCMSI, or the Petitioner's group insurance carrier. Obviously, the Respondent is entitled to credits for amounts paid by either source. To the extent that any of the other charges contained in the Petitioner's Exhibit F remain unpaid, the respondent is ordered to pay them, again pursuant to the Fee Schedule.

Petitioner has paid out-of-pocket medical expenses in the amount of $1,541.05.

NATURE AND EXTENT

The Arbitrator finds as to (L) Nature and Extent, the Arbitrator finds the following evidence:

The Arbitrator must consider and explain his analysis of the five factors set forth in Section 8.1b of the Act.

The first factor is the AMA Impairment Report. Neither party submitted a report as described by subsection (a) of the above referenced section, so consideration of that factor is deemed waived. Dr. Rotman did opine that the Petitioner would have a rating of 2% of the left arm but no report or testimony was offered to show that his opinion was based upon an exam as prescribed by the Act.

On the date of his accident, the Petitioner was a forty-one year old brick mason. No evidence was presented from which the Arbitrator could use to properly assess the age factor, so that factor is not considered.

The Petitioner is a brick mason, and the evidence shows that he returned to his regular job on October 4, 2012. The job description shows that the job requires lifting up to 75 pounds, and obviously more lifting is required if and when there is a need to move iron saw horses. The Petitioner testified to problems he encounters when performing his job. He testified that he experiences fatigue after lifting. He also experiences achiness and dull pain, which he described as extending from the center of his shoulder down his shoulder blade and through his arm. He also described how he protects his left arm by holding it at his side when he is required to lift at work. The Petitioner testified that he must constantly protect his left arm and shoulder and guard the left upper extremity with every move. Petitioner further explained that he has difficulty carrying eight inch cinder blocks and he must make more frequent trips because of his inability to lift them with his left arm and shoulder. The Petitioner also described the problems he experiences operating an Air Rammer. He described his inability to utilize this tool at shoulder height. Also he testified about his loss of strength.

The Petitioner's testimony is credible when you consider the last medical exam recorded in the evidence by Dr. Rotman on May 13, 2013. At that time, he found fairly extensive atrophy in the muscles in the left shoulder area, along with a limit in the external rotation which equates to roughly 25% when compared with his dominant right arm. (RX 1 at 26) Accordingly, the Arbitrator attaches some weight in the Petitioner's favor on this factor.

As stated above, the Petitioner is doing his regular job. There is no evidence of a decrease in his future earning capacity.

Finally, the treating medical records show that he had minimal arthritic changes causing impingement in the subacromial joint, and minimal looseness in the gleno-humeral joint. Both conditions were successfully repaired by Dr. Below in surgery in April 2012. The doctor's office records of his post surgery visits show steady improvement in strength and range of motion until his release from care on October 4, 2012. At that time, Dr. Below found a full range of motion with no impingement. (PX F5) The Petitioner has now gone over two years without any left shoulder treatment. Accordingly, the Arbitrator feels this factor favors the Respondent in that the Petitioner has had a good result according to his treating surgeon.

After considering all of the above factors, the Arbitrator finds the Petitioner entitled to an award of 7.5 % Person As A Whole under Section 8(d) (2) of the Act.

The Petitioner also described the effects of his shoulder condition on his non-work life. He must keep his left elbow close to his side when pushing a lawnmower. He can only carry trash with his right arm and is no longer able to do push-ups. The Petitioner also described how it is impossible for him to crawl on his hand and knees when he changes a furnace filter in his crawl space.

Petitioner testified he had no previous problems with his left shoulder.

Petitioner's wife, Carrie Peplow testified regarding the physical affects this accident has had on Mr. Peplow. She corroborated his testimony particularly about his guarding of the left arm and shoulder by holding his left arm close to his torso.

Based on the above, the Arbitrator finds that Petitioner did sustain a loss of man as a whole of 16%.

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☒ 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

Lydia Catalon,

Petitioner,

vs. NO: 14WC 25006

Roundy's d/b/a Mariano's,

15IWCC0959

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, medical, causal connection 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 6, 2015, is hereby affirmed and adopted.

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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: DEC 2 1 2015
o102215
DLG/jrc
045

Mario Basurto

Stephen Mathis

GORE DISSENT

I respectfully dissent from the majority decision and would reverse the decision of the Arbitrator.

Section 11 of the Illinois Worker's Compensation Act provides that "No compensation shall be payable if (i) the employee's intoxication is the proximate cause of the employee's accidental injury or (ii) at the time the employee incurred the accidental injury, the employee was so intoxicated that the intoxication constituted a departure from the employment." 820 ILCS 305/11. Section 11 further states that "if at the time of the accidental injuries . . . there is any evidence of impairment due to the unlawful or unauthorized use of (1) cannabis as defined in the Cannabis Control Act, (2) a controlled substance listed in the Illinois Controlled Substances Act, or (3) an intoxicating compound listed in the Use of Intoxicating Compounds Act or if the employee refuses to submit to testing of blood, breath or urine, then there shall be a rebuttable presumption that the employee was intoxicated and that the intoxication was the proximate cause of the employee's injury." However, the presumption may be rebutted "by the preponderance of the admissible evidence that the intoxication was not the sole proximate cause of the accidental injuries." 820 ILCS 305/11.

Petitioner's unrebutted testimony was that as a result of slipping and falling in the water, her clothes were wet and she suffered a bad laceration. Petitioner testified to immediately notifying the overnight manager who cleaned and wrapped her wound and completed an incident report. Petitioner testified that upon being relieved prior to the end of her shift (approximately 4:15 am), she was taken by cab to the Central DuPage Hospital emergency room.

Petitioner clearly refused to take a drug test at the Emergency Room. Petitioner testified of smoking cannabis 2.5–3 weeks prior to the accident. However, there is no indication in the medical records of Petitioner being disoriented or otherwise seeming intoxicated or impaired via visual inspection and normal orientation checks in the ER by trained medical professionals. While there is a rebuttable presumption that the employee is intoxicated by refusing to take the drug test; logically and evidentiary that presumption is rebutted by the ER records which indicated that Petitioner did not appear impaired. Petitioner clearly reported the accident to her supervisor who observed Petitioner and prepared the accident report on that day. There was nothing noted in the accident report regarding Petitioner's actions or appearance that would indicate a suspicion of intoxication. Further, there was neither testimony by Petitioner's supervisor that Petitioner may have been intoxicated nor testimony to rebut Petitioner's testimony that her clothes were wet after slipping in water. Regardless, Petitioner's unrebutted testimony was that she slipped on water from the display case in the dimly lit area of the closed store and fell causing her injury. The proximate cause of Petitioner's accident was not being so intoxicated, by some possible trace of cannabis she may have had in her system from weeks prior, to have

15IWCC0959

constituted a departure from her employment. The proximate cause of Petitioner's accident and injury was the water on the floor. Accordingly, I would reverse the decision of the Arbitrator.

David L. Gore

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

CATALON, LYDIA
Employee/Petitioner

Case# 14WC025006

15IWCC0959

ROUNDY'S D/B/A MARIANO'S
Employer/Respondent

On 3/6/2015, 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:

4036 MILLON & PESKIN LTD
MITCHELL PESKIN
2100 MANCHESTER RD SUITE 1060
WHEATON, IL 60187

0075 POWER & CRONIN LTD
JEFFREY REDICK
900 COMMERCE DR SUITE 300
OAK BROOK, IL 60523

15IWCC0959

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE)

☐ 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)

Lydia Catalon Case # **14 WC 25006**
Employee/Petitioner

v.

Roundy's d/b/a Mariano's
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 **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Wheaton**, on January 23, 2015. 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. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance xx TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On the date of accident 06/17/2014, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between the Petitioner and Respondent.

On this date, the Petitioner ***did not*** 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 -- causally related to the accident. No findings made – See Decision

In the year preceding the injury, the Petitioner earned $4,059.54; the average weekly wage was $270.61.

On the date of accident, Petitioner was 54 years of age, ***single*** with 0 children under 18.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00.

Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act.

ORDER

Based on the evidence submitted at trial the Arbitrator finds that the Petitioner did not sustain an accident that arose out of and in the course of her employment in accordance with the requirements of the Illinois Workers' Compensation Act. As such, all claims for compensation are hereby denied.

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.

Carolyn Moody
Signature of arbitrator

3/5/15
Date

MAR 6 - 2015

ICArbDec19(b)

FINDINGS OF FACT

Petitioner, a 54 year right handed old bakery worker, testified that she began work as a donut fryer for Respondent in March 2014. Petitioner testified that she worked from 11 pm to 6 am 3 to 5 days per week. She worked during the hours when the store was closed for business. Her stipulated average weekly wage was $270.61. ARB EX 1. Petitioner testified that her job duties required her to retrieve the frozen donuts and place the donuts onto trays. Petitioner then placed the trays on racks in a proofer in order for the dough to rise. The donuts trays were then placed onto another rack for dipping into a fryer. Thereafter, Petitioner would frost the donuts.

Petitioner testified that on June 16, 2014, she began her normal shift at 11 pm. At the start of her shift she went to in the back storage room to get an apron. When she could not find an available apron she returned to her duties. Petitioner testified that she later returned to the storage room and found an apron. The storage room is in an employee only area near the bakery and deli areas of the store. Petitioner testified that as she was returning from the back of the store and walked in front of the bakery case she slipped and fell. Specifically, she testified that she slipped on water that was coming out from under the bakery counter onto the tile floor and that her clothes were wet after the fall. Petitioner testified that she did not see the water because it was dark in the work area. Petitioner testified that as she was falling her right arm struck a shelf sticking out of the bakery area and as a result cut her right arm. Petitioner testified that she landed on her buttocks and back of her legs onto the tile floor. The incident occurred during her shift after midnight on June 17, 2014. Respondent does not dispute that it received timely notice of this incident and the Form 45 contained in PX 2 indicates timely notice. PX2. The form 45 does not reflect any report of employee unsafe practice involved with the incident. PX 2.

Petitioner testified that she immediately noticed pain and a laceration on her right arm as well as pain in her lower back up to her right shoulder. Petitioner immediately reported the incident to Jason the overnight manager at approximately 1:15 am. Respondent does not dispute the issue of notice. Jason cleaned and wrapped the right arm laceration. Petitioner testified that Jason also applied pressure to the wound as the bleeding was significant. Petitioner and Jason completed the accident report together. Petitioner testified that she continued to work her shift until 4 am when a replacement was available to relieve her. Petitioner testified that she did not suffer any right shoulder or right thumb injury before or after this incident on 6/17/14.

PX 3 contains the emergency room records from Central DuPage Hospital. On 6/17/14, Petitioner arrived at the ER at 5:16 am and reported a fall at work with a right forearm laceration, right thumb pain and back pain. The records note at 5:25 am "Maria from CDBH notified and no testing is required." Between 6:02 am and 7:40 am Petitioner's right arm laceration was cleaned and sutured with 6 stitches. At 7:50 am the record notes indicate "Spoke with Nancy Wilson from CDBH and pt does need testing—discussed with MD." At 8:15 am the notes indicate "Pt states she needs to use restroom- encourage Pt to hold as long as she possibly could CDBH needs urine pt expressed understanding." At 8:35 am the notes indicate "CDBH at bedside PT went to restroom – pt unable to hold urine- pt resp reg and easy skin normal warm dry cms intact cap refill 2 secs shoulder pain controlled radial pulse 2+." At 8:45 am the notes indicate "Pt given water – resp reg and easy skin normal warm dry cms intact." At 9:15 am the notes indicate "Pt remains unable to give urine specimen CDBH at bedside pt given more water." At 9:55 am the notes indicate "spoke with cdbh tester – pt now refusing test." PX 3.

The ER records further indicate a detailed history which reads, "the patient fell at work. She works at the local grocery store. She slipped on water and fell into a display area. She injured her right hand, along the thumb. You can feel a clicking at the IP joint where the tendon is but there are no lacerations or anything. We will get an x-ray of that. She has a laceration of about 3 cm long in the right forearm, kind of the distal aspect. It appears to be superficial. Distally she has good cap refill, full range of motion of all her tendons in her fingers, normal sensation and is able to flex, extend and adduct, abduct at the wrist without any pain, so I do not suspect a deep injury in that area. We will clean it and close it with our usual methods. She is also complaining of shoulder pain and back pain with this now, so we will get x-rays of that before she goes." On physical exam, Petitioner exhibited musculoskeletal tenderness in the right shoulder, lumbar back and right hand with decreased range of motion in the right hand. The psychiatric exam indicates, "she has a normal mood and affect. Her behavior is normal. Judgment and thought content normal." It was also noted that her eyes had normal extraocular muscle function and her pupils were equal, round and reactive to light. PX 3. Dr. Sutherland also noted that the Petitioner was oriented to person, place and time. PX 3. All of Petitioner's reported conditions were diagnosed and assessed as "requires workup."

Petitioner was diagnosed with laceration of the arm, right; fall from other slipping, tripping or stumbling; hand strain, left [sic] ; shoulder strain, right; low back strain. The doctor further noted that her x-rays "looked fine" but that she had a tendon injury of her thumb and "will follow up with CDBH and then her primary care doctors with DuPage Medical Group." Petitioner was discharged. PX 3. Petitioner was given work restrictions of light duty or alternative work if available, no lifting, pushing or pulling over 10 pounds for 3 days. PX 3.

Petitioner followed up at Cadence Occupational Health on 6/24/14 with Dr. Matheu. Petitioner complained of constant sharp pain in the right thumb with popping and difficulty pushing, gripping and bending. She also complained of an aching laceration of the right arm and pain with limited range of motion in the right shoulder. On exam, Dr. Matheu noted pain present with flexing of the right thumb DIP joint and trigger finger, a normal right shoulder, and an infection of the right arm laceration. He diagnosed Petitioner with trigger finger of the right thumb, infected wound to the right forearm and right shoulder strain. Petitioner was to return on 6/26/14 for recheck and suture removal. PX 2. Dr. Matheu ordered Augmentin and Ibuprofen along with a thumb spicca splint to the right thumb. He noted that Petitioner was "unable to perform her job at this time" and Petitioner was recommended a no work status.

At the follow up with Dr. Matheu on 6/27/14. On that date, Dr. Matheu noted that "4 stitches remain intact, wound appears clean and dry, presented with bandage and brace. Shoulder pain has subsided. The splint helps the right thumb, however it still locks." Petitioner reported that her laceration was "no longer a problem ... it is almost entirely resolved. Her pain level is 1/10." She continued to report sharp pain in the right thumb made worse by grasping and improved with rest with a pain of 7/10. Petitioner's diagnosis at that visit was "trigger finger right thumb, infected wound right forearm, resolving and right shoulder strain resolving." It was noted in these records that "the cause of this problem is related to work activities." Petitioner's medications were continued but she was released to restricted duty left hand work only. PX 2. Petitioner was referred to Cadence Physician Group Orthopedics for continued treatment of her right thumb. PX 2.

On 7/15/14, Petitioner saw Dr. Makowiee at Cadence Orthopedics. Dr. Makowiee noted Petitioner's accident history including her fall and striking her right hand on a shelf with lacerations and injuries to her

spine and shoulder. Petitioner reported pain at the base of her thumb and difficulty with movement with intermittent numbness in her fingers. Triggering and catching of the right thumb was noted on exam along with acute tenderness to palpation about the A1 pulley region. Dr. Makowiee diagnosed stenosing tenosynovitis and performed a right thumb injection. He further recommended a short course of occupational therapy to progressively improve her hand range of motion after having been in a splint for one month. Light duty capacity was continued. He further noted that "should she have restriction on her spine and his [sic] shoulder, those would be directed by her referring physician. Petitioner was sent back to Dr. Matheu. PX 2.

Petitioner saw Dr. Matheu on 7/18/14. At that time, Dr. Matheu noted that Petitioner reported continued clicking in her right thumb and right shoulder stiffness and pain to the anterior, posterior and superior deltoid. Petitioner reported that the pain in her right shoulder never went away and returned when she stopped taking the flexeril. She reported the pain was "achy" and wakes her from sleep. PX 2. Petitioner's shoulder pain was made worse by reaching and was at the level of 4/10. On exam of the right shoulder pain was present with abduction and with palpation to the anterior deltoid. Dr. Matheu also noted "pain with impingement sign, negative Jobs." He assessed a right shoulder strain and sent Petitioner to physical therapy for her right shoulder. She was to return on 8/8/14. Petitioner's restricted duty status left handed work only was continued.

Petitioner attended physical therapy for her shoulder and occupational therapy for her thumb at Central DuPage Hospital from 7/24/14 through 9/5/14. PX 2 PX 3.

On 9/2/14, Petitioner saw Dr. McCarthy at Cadence Occupational Health as Dr. Matheu had reduced his work hours. Dr. McCarthy noted that right thumb therapy had been completed and that Petitioner was on her last week of right shoulder physical therapy. Petitioner reported continued problems with her right shoulder including pain with reaching above shoulder level and waking from sleep due to pain. Petitioner was referred to an orthopedist, Dr. LaBelle, for her right shoulder by Dr. McCarthy. PX 2. Her restrictions were continued at no lifting over shoulder height and no lifting more than 5 pounds with the right arm.

At her last shoulder physical therapy visit on 9/5/14, it was noted that Petitioner initially demonstrated improvement but then plateaued. Her right shoulder strength and range of motion remained limited with notes of "painful arc persists; positive for impingement and RC involvement." Petitioner was discharged with a recommended orthopedic consult. PX 2 PX 3.

Petitioner saw Dr. LaBelle on 9/15/14. PX 2. Dr. LaBelle prescribed a right shoulder MRI to rule out a rotator cuff injury due to persistent pain after three months of conservative treatment failed to resolve Petitioner's pain complaints. Petitioner returned to Dr. LaBelle after the MRI. Dr. LaBelle noted that the MRI showed a large rotator cuff tear, impingement and AC joint arthritis. He concluded that "with her lack of any shoulder pain prior to her injury and now persistent pain since her injury, her rotator cuff tear is quite likely related to her injury on June 17, 2014. According to the patient that is when her pain started." Following an exam which showed crepitus at the subacromial space, a positive drop arm test consistent with a rotator cuff tear, and some weakness in abduction and external rotation, Dr. LaBelle diagnosed a right rotator cuff tear, right rotator cuff syndrome, right shoulder pain and right shoulder mild acromioclavicular joint osteoarthritis. Dr. LaBelle prescribed a right shoulder arthroscopic rotator cuff repair, subacromial decompression, possible distal clavical excision and debridement. Dr. LaBelle

concluded "It is my opinion to a reasonable degree of medical and surgical certainty based on the patient's history, physical findings, and the appearance of the tear on the MRI, that this tear was related to her injury at work on June 17, 2014." Dr. LaBelle further noted that Petitioner was to remain on light duty if available and off duty if no light duty was available. PX 4.

At trial, Petitioner testified that she would like to undergo the recommended procedure and requested the procedure pursuant to Section 8(a) of the Act. Petitioner has continued pain in her right shoulder with limited range of motion and difficulty with activities of daily living. She is unable to raise her right arm over head. Petitioner has not returned to see Dr. LaBelle since 9/30/14.

Petitioner attended a Section 12 exam at Respondent's request on 11/19/14. RX 4. Dr. Wolin noted the consistent accident history of 6/17/14 in his report. Dr. Wolin did not review the MRI report as it was listed as "not available for review." Further, the report submitted at RX 4 references an attached record review but so such attachment was submitted at trial along with RX 4 or any exhibit. Dr. Wolin noted that the "diagnosis is right rotator cuff tear with right trigger thumb". He further noted "the condition of the right shoulder is causally related to the work episode. The trigger thumb represents a temporary exacerbation of a pre-existing condition." Further, Dr. Wolin agreed with the recommendation for rotator cuff repair but that no further treatment was indicated for the thumb. He noted the current restrictions of no repetitive or over shoulder use of the right upper extremity with a 5 pound weightlifting restriction. Dr. Wolin noted that the treatment for the right shoulder to date "was reasonable, necessary and causally related to the work episode but that the trigger thumb represents a temporary exacerbation of a pre-existing condition." RX 4.

Petitioner's employment was terminated by Respondent as of 6/17/14. Petitioner testified that she currently works full time as the Director of Psychiatric Rehab Services supervising case workers in a residential facility for patients with high medical and psychiatric needs. Petitioner began that position on 1/12/15, shortly before trial. Petitioner testified that she has been exposed to some medical training during the course of her education.

The Arbitrator notes there is no evidence of the Petitioner ever having any employment performance issues prior to June 17, 2014.

At trial, Petitioner testified that she was fired from her employment with Respondent as of 6/17/14 for failure to take the drug test at the emergency room. As such, Petitioner has received no benefits from Respondent for the period she was off work between 6/17/14 and 1/12/15. Petitioner's refusal to take the urine drug test at the ER is detailed above. Petitioner candidly testified that she was aware of Respondent's policy that failure to take the urine test would result in immediate termination of her job and that she assumed her employment was ended when she refused to take the test. Petitioner agreed that when she was hired by Respondent in March 2014 she was given a document and went through training which made her aware of Respondent's substance abuse policy. Petitioner signed the policy. RX 1. Again, Petitioner testified that she knew that according to the policy, a drug test would be given following any work accident. According to Respondent's Substance Abuse Policy, employees are tested "post accident" if the accident results in an injury requiring treatment by a medical provider. RX 1. The policy further states that "An employee failing a test or refusing to cooperate with the collection process or to comply with requests of the company may be disciplined up to and including discharge." RX 1. Again, Petitioner further testified that she knew at the time she made the decision to refuse the test that the refusal would likely result in the termination of her employment. RX 1.

At trial, Petitioner specifically, candidly and forthrightly testified regarding her reasons for refusal to take the test. Petitioner specifically testified that on Memorial Day weekend approximately two weeks before the accident she was at a party and that she smoked cannabis sharing one joint that was passed around between several people at the party. Petitioner testified that she did not smoke cannabis between the date of the party, approximately 5/26/14, and the date of the accident on 6/17/14. Petitioner further testified that she did not smoke pot before or during her shift at work starting on 6/16/14 and that she was not under the influence of cannabis while at work on 6/17/14. Petitioner testified that she has smoked cannabis on approximately 10 occasions during her life span. She could not remember the last time she smoked cannabis prior to 5/26/14.

On cross exam, Petitioner was asked "You thought it was possible that you had no cannabis in your system on 6/17/14 is that right?" Petitioner responded "It was possible that I had none? More likely that I did but possible that I had none." T. 33-34. Petitioner was asked why she did not take the test if it was possible that she did not have cannabis in her system on 6/17/14. Petitioner responded "Because like right now--- I didn't know what to do. I waited a long time and talked to the person that came to test me. I was trying to determine exactly what I should do because I didn't know". She further testified that after thinking about it for "probably two hours I refused." She further testified that she made the decision to refuse knowing that she would be fired for not taking the test. T. 35.

Petitioner further candidly explained that she was taught in the course of her education that cannabis could stay in a person's system for 30 days after it is smoked. Since she smoked cannabis three weeks before the accident Petitioner was uncertain whether it would show in her system. T. 33-35, 44. Petitioner has a master's degree in mental health and counseling but no toxicology training. T. 44-45. She agreed that cannabis can impair a person's motor skills, coordination and perception when a person is under the influence of cannabis. T. 46-47. Although not trained in toxicology, Petitioner testified that based on her education and personal experience with cannabis she did not believe she was intoxicated or under the influence of cannabis at the time of her accident. T. 45.

Finally, Petitioner testified that on either 6/18 or 6/19/14 she called the store and spoke to Andy Dillon. She reported that she did not take the test because she "had smoked a little weed" and that she assumed her employment was terminated. Petitioner testified that after the phone call she understood she was no longer employed. T. 36. She subsequently received documentation of the termination and that she never filed a grievance, asked for reinstatement or disputed the fact that she failed to take the test in violation of company policy. Petitioner was asked, "And you have never disputed it was because of concern that you thought you might have cannabis in your system, is that right?" Petitioner responded "That's correct." T. 37. Petitioner agreed that she had no idea of what level of cannabis may have been in her system on 6/17/14. T. 38.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to C. Whether an accident occurred that arose out of and in the course of Petitioner's employment with the Respondent the Arbitrator makes the following findings:

Section 11 of the Act states in part:

No compensation shall be payable if
(i) the employee's intoxication is the proximate cause of the employee's accidental injury or
(ii) at the time the employee incurred the accidental injury, the employee was so intoxicated that the intoxication constituted a departure from the employment. Admissible evidence of the concentration of
(1) alcohol,
(2) cannabis as defined in the Cannabis Control Act,
(3) a controlled substance listed in the Illinois Controlled Substances Act, or
(4) an intoxicating compound listed in the Use of Intoxicating Compounds Act in the employee's blood, breath, or urine at the time the employee incurred the accidental injury shall be considered in any hearing under this Act to determine whether the employee was intoxicated at the time the employee incurred the accidental injuries.

If at the time of the accidental injuries, there was 0.08% or more by weight of alcohol in the employee's blood, breath, or urine or if there is any evidence of impairment due to the unlawful or unauthorized use of
(1) cannabis as defined in the Cannabis Control Act,
(2) a controlled substance listed in the Illinois Controlled Substances Act, or
(3) an intoxicating compound listed in the Use of Intoxicating Compounds Act **or** if the employee refuses to submit to testing of blood, breath, or urine, then there shall be a rebuttable presumption that the employee was intoxicated and that the intoxication was the proximate cause of the employee's injury.

The employee may overcome the rebuttable presumption by the preponderance of the admissible evidence that the intoxication was not the sole proximate cause or proximate cause of the accidental injuries. ...

The Arbitrator initially notes that there is no question Petitioner refused to submit to testing of blood, breath or urine while at the ER in violation of Respondent's company policy. Petitioner testified to her studied refusal and the ER records confirm her refusal. Accordingly, pursuant to Section 11, there is a rebuttal presumption that Petitioner was intoxicated and that the intoxication was the proximate cause of her injury on 6/17/14. Also, according to Section 11, Petitioner may overcome the rebuttable presumption by the preponderance of the admissible evidence that the intoxication was not the sole proximate cause or proximate cause of her accidental injuries to her right arm, shoulder and thumb.

The Arbitrator notes that Petitioner testified she smoked cannabis three weeks before this accident, that she thought it likely the cannabis was still in her system and that she knew her refusal to take the test would result in her employment termination. She also testified it was possible that no cannabis remained in her system from three weeks earlier. The Arbitrator notes that it was within Petitioner's right to refuse the test. However, given that a possible negative result would have secured continued employment, the Arbitrator is unable to reconcile the circumstances surrounding Petitioner's refusal to test, with the credibility necessary to rebut the presumption.

The Arbitrator further notes Petitioner's testimony that she did not smoke cannabis before or during work on 6/16/14 or 6/17/14. Petitioner did not consider herself impaired at work on 6/17/14. However, Petitioner also testified that she thought it likely that the cannabis from three weeks prior was still in her system on 6/17/14 and agreed that cannabis could affect a person's motor skills, coordination and

perception. The Arbitrator notes that the incident occurred when Petitioner slipped at work, lost her balance and fell. The incident was not witnessed and Petitioner set forth no corroborating testimony of her appearance or abilities at work before or after the fall. Petitioner relies on the normal results of the routine ER psychiatric and eye exams to buttress her position that she was not under the influence of drugs several hours after the accident. However, based on a review of these ER findings in conjunction with the testimony of Petitioner, the Arbitrator does not find the ER exam records sufficient to buttress Petitioner's position or rebut the presumption assigned to this set of facts. Based on the record in its entirety, the Arbitrator finds that Petitioner failed to meet her burden to rebut the presumption of intoxication by the preponderance of the admissible evidence.

Accordingly, the Arbitrator finds that the Petitioner did not sustain an accident that arose out of and in the course of her employment and all benefits under the Illinois Workers' Compensation Act are thereby denied.

All other issues are moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☒ 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

Joseph Farmer,

Petitioner,

vs. NO: 14WC 25091

15IWCC0960

Farmer Construction, Inc.,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of medical, causal connection, temporary total disability 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 13, 2015, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: DEC 2 1 2015
o121015
DLG/mw
045

David L. Gore

Mario Basurto

Stephen Mathis

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

FARMER, JOSEPH
Employee/Petitioner

Case# **14WC025091**

FARMER CONSTRUCTION INC
Employer/Respondent

15IWCC0960

On 5/13/2015, 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:

0969 THOMAS C RICH PC
6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

2674 BRADY CONNOLLY & MASUDA PC
NOAH P HAMANN
705 E LINCOLN ST SUITE 313
NORMAL, IL 61761

15IWCC0960

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

☐ 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)

Joseph Farmer
Employee/Petitioner

v.

Farmer Construction, Inc.
Employer/Respondent

Case # 14 WC 25091

Consolidated cases: N/A

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Herrin**, on **March 13, 2015**. 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. ☒ 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 _____

FINDINGS

On the date of accident, **10/25/13**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**79,040.00**; the average weekly wage was $**1,520.00**.

On the date of accident, Petitioner was **48** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**N/A** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**N/A**.

Respondent is entitled to a credit of $**N/A** under Section 8(j) of the Act.

ORDER

Petitioner has proven a right knee medial meniscus tear for which he reached maximum medical improvement on June 30, 2014. Petitioner has failed to prove a causal connection between the work accident and any other right knee conditions of ill-being thereafter and no further medical care or benefits are awarded for the right knee.

Petitioner failed to prove a causal connection between his work accident and his condition of ill-being in his low back. No benefits are awarded with regard to Petitioner's low back claim.

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

May 6, 2015
Date

ICArbDec19(b)

MAY 13 2015

Farmer v. Farmer Construction, 14 WC 25091 (19(b))

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the time of arbitration the disputed issues were causal connection, medical bills, temporary total disability benefits, and prospective medical care. Petitioner was the sole witness at the hearing. At the outset of the hearing, counsel for Petitioner requested leave to submit "Petitioner's Exhibit 15" with his proposed decision. "Petitioner's Exhibit 15" was received and has been included with the Record.

The Arbitrator finds:

Petitioner's medical records with Illini Medical Associates were admitted into evidence as Respondent's Exhibit 1. The records date back to September of 2008. On May 9, 2013, Petitioner reported bilateral knee pain due to climbing up and down ladders at work. Petitioner reported knee joint pain bilaterally in the patellofemoral region, which slowly worsened with extended activity, bending, and kneeling. On exam his right knee patella demonstrated crepitus, tenderness on palpation to the anteromedial aspect on palpation, and pain with range of motion. Petitioner's left knee revealed tenderness on palpation to the anteromedial aspect and painful range of motion. Petitioner was diagnosed with osteoarthritis of his knees and prescribed Mobic. (RX1, 5/9/13).

On June 10, 2013 Petitioner returned to see Dr. Lyons at Illini Medical and reported that his bilateral knee complaints had improved with Mobic. However, he still complained of bilateral knee pain which severely worsens with activity. His active problem listed right knee osteoarthritis. No further treatment for his knees was provided. (RX1, 6/10/13).

On October 25, 2013 Petitioner reported to Illini Medical again reporting right knee pain. Petitioner stated he had been climbing his ladder at work and felt his knee cap pop out of place. Petitioner could put weight on his toes but not his heel. Petitioner stated that he could not walk with his heel on the ground and could not straighten his leg. On examination PA - C Skolaskinski noted no swelling, no effusion, no erythema, no warmth, no deformity, normal mobility, no muscle spasms, no instability, no tenderness to palpation and no crepitus. McMurray's test was negative. Petitioner was limping. Petitioner was diagnosed with a right knee sprain and arthralgia. An x-ray was ordered and conservative treatment recommended. (RX 1, 10/25/13; PX 3) X-rays taken at the office that same day revealed moderate degenerative changes of the anterior and medial joint regions. (RX 1)

Petitioner had no further treatment until he saw a chiropractor, Dr. Daniel Jones, for back pain on December 16, 2013. (PX4) Dr. Jones noted that Petitioner was being seen for acute onset of back pain from a "possible work-related injury." He also noted that Petitioner had no prior low back pain. Petitioner also advised him of knee pain rated as 7 on a scale of 10. X-rays of the

lumbar spine and right knee showed left convexity of the lumbar spine and moderate decrease in the right knee tibiofemoral joint space with subchondral sclerosis, osteophyte formation and degeneration. .

On February 19, 2014 Petitioner telephoned Illini Medical to advise that he was going to a specialist for his knee and he wanted a copy of his knee x-ray. (RX 1; PX 3)

On February 27, 2014, Petitioner presented to The Orthopedic Center of St. Louis, where he saw Dr. Matthew Gornet for low back pain, and Dr. Mark Miller for right knee pain. (PX5, 2/27/14; PX6, 2/27/14). Dr. Gornet's history of illness noted that Petitioner was descending a ladder, 6 to 7 feet up in the air, when his knee buckled and he fell backwards off of the ladder onto his back. He noted that Petitioner was given anti-inflammatory medication by his family physician, but that Petitioner's back pain slowly worsened despite same, prompting him to seek care with a chiropractor who recommended further treatment. Petitioner's back pain was constant and worse with prolonged sitting, standing, bending or lifting. Petitioner candidly advised Dr. Gornet of his past slip and fall, which Dr. Gornet noted did not create any problems of significance. Dr. Gornet noted that Petitioner had not had any prior MRI scans or any doctor visits in more than 15 years for his back. *Id.*

After his examination and review of Petitioner's x-rays, Dr. Gornet suspected a new disc injury versus potential aggravation of his pre-existing asymptomatic degeneration. He recommended an MRI scan, which revealed central disc herniation at L4-5, best seen on image #14 of the T2 sagittals, bilateral facet arthropathy and L5-S1, and disc degeneration predominantly at L3-4 and L4-5. (PX5, 2/27/14; PX7, 2/27/14). Dr. Gornet recommended physical therapy. (PX5, 2/27/14).

Petitioner saw Dr. Mark Miller on the same day, and Dr. Miller noted that Petitioner's injury occurred as a result of falling backwards from a ladder. (PX6, 2/27/14). Dr. Miller noted Petitioner's increasing back pain since the accident and right knee pain. Petitioner reported that he was having difficulty going up and down stairs, and that his knee was weak and prone to buckling or giving way. Petitioner's right knee examination showed medial knee pain with flexion, medial and lateral joint line tenderness, and medial knee pain with McMurray's testing. Dr. Miller noted:

> The patient's x-rays show arthritic changes that are preexisting. However, the patient had an acute injury a month ago that has taken a pain free knee and converted it into a pain free knee and converted it into a painful knee. He likely has a medial meniscus tear, acute/chronic with overlay of arthritis.

Dr. Miller recommended an MRI and stated, "There is a causal relationship between the injury and his current symptoms." Dr. Miller imposed work restrictions.

Petitioner returned to Dr. Miller following an MRI of his right knee. (PX6, 3/6/14). Dr. Miller reviewed the MRI and noted that it showed significant signal changes consistent with an acute and chronic meniscal tear, chondral breakdown of the trochlea and loose bodies posterior to the PCL. The patellofemoral articulation also showed some fissuring of the medial facet and thinning of the lateral trochlear articular cartilage. Dr. Miller recommended surgery.

On March 19, 2014 Petitioner telephoned Illini Medical requesting a copy of his October 25, 2014 office note. The message states, "He has a tear in his knee and needs the report for work comp that states that he was supposed to be off for 3 - 6 weeks. Please advise." On that same note PA-C noted that the office visit note could be sent; however, she also added that she did not advise Petitioner to be off work for 3 - 6 weeks and he never followed up further. (RX 1; PX 3)

On March 28, 2014, Dr. Miller performed a right knee arthroscopic partial medial meniscectomy, tricompartmental chondroplasty and tricompartmental synovectomy. (PX8). Petitioner was referred for physical therapy following surgery. (PX6, 3/28/14; PX8)

Petitioner presented for physical therapy on March 31, 2014, providing a history of descending a ladder, falling "through" it, and injuring his right knee/back. He also reported going to the hospital and being told his knee pain was most likely arthritis. Petitioner underwent therapy on April 3, 8, and 9 of 2014. At the April 10, 2014 visit further therapy was placed on hold as Petitioner had developed an infection in his knee. (PX 9)

Petitioner resumed therapy on April 16, 2014. He cancelled on April 17th but attended on April 24th. (PX 9)

On April 28, 2014, Dr. Miller noted that Petitioner was making improvement in his range of motion, strength and pain with therapy, but deficits remained and Petitioner also reported popping within his knee. (PX6, 4/28/14). Dr. Miller stated that the majority of Petitioner's residual irritability was due to the arthritic nature of his knee, and he stated, "He was encouraged to diligently work through these issues." Dr. Miller believed Petitioner was capable of light to medium duty work, minimizing ladders, stairs and scaffolding. *Id.* Petitioner was instructed to continue physical therapy and to anticipate some degree of symptomatology based upon the underlying conditions in his knee. (PX 6)

Petitioner attended therapy on April 29, 2014. As of May 2, 2014 Petitioner reported that his back was really sore and he didn't want to do any exercises that might irritate it. (PX 9)

On May 5, 2014, Petitioner returned to Dr. Gornet and reported that he was continuing to have significant central back pain into his buttocks and hips, and pain with Valsalva maneuver in his legs. (PX5, 5/5/14). It was noted that Petitioner was having trouble walking, standing and sitting. He reported pain affecting all aspects of his life and having trouble performing physical therapy due to his knee pain. He noted that Petitioner was still recovering from knee surgery with Dr. Miller. Dr. Gornet recommended injections at L4-5, more physical therapy, and a CT

Myelogram with potential surgical treatment if Petitioner showed no improvement. Light duty work was authorized.

Petitioner cancelled therapy on May 6, 2014. He attended on May 7 and 8th. (PX 9 -- check)

Petitioner received the first injection from Dr. Kaylea Boutwell on May 14, 2014. (PX10, 5/14/14).

On May 12, 2014, Petitioner returned to Dr. Miller and reported several episodes of giving way, the most recent having occurred after his last session of physical therapy. (PX6, 5/12/14). As a result, Dr. Miller discontinued formal physical therapy on his knee and instructed Petitioner to continue with his home exercise program. Dr. Miller observed that Petitioner's back was not playing a healthy role in his knee problem. He recommended viscosupplementation to address progressive synovitis from the injury and surgery. Petitioner was to return in a month.

As of May 14, 2014 Petitioner called physical therapy to notify it he was released from knee therapy. (PX 9)

On May 21, 2014, Petitioner began the physical therapy program prescribed by Dr. Gornet. According to the notes, Petitioner had forgotten to do his home exercises as a family member was in the hospital. Petitioner was reported to be "not too sore" after his initial evaluation. His treatment involved 10 minutes of NuStep at level 5 followed by 10 minutes of Alter G anti-gravity treadmill at 50% weightbearing at 1.5mph for aerobic conditioning, sidestepping with sports cord x5 in each direction for core strengthening; posterior pelvic tilts x 15, bridges x 15, and isometric hip flexion for core strengthening; added hamstring stretches x 10 for each leg for flexibility, isometric hip adduction x 20, hip abduction with green band x 20, and standing isometric abdominal push downs with ball x 25: He did report soreness with "bridges" that day and stated he thought he would be sore later that day.(PX9, 5/21/14).

Petitioner was under surveillance on May 21, 2014. Petitioner was observed painting a door frame, during which time he bent at the waist, knelt, stood and reached overhead. He also sat on a bucket in a slightly bent forward position. Petitioner was also observed driving to a gas station, walking and shopping. Surveillance from May 21, 2014, shows Petitioner painting a door frame, during which time he bent at the waist, knelt, stood and reached overhead. (Rx7, 10:22-10:35). He also sat on a bucket in a bent forward position. (Id.) Petitioner was also observed driving his truck on errands (Id. 10:56, 11:59). Surveillance also shows him walking and shopping. While shopping, he is seen on multiple occasions bending at the waist with no apparent signs of pain (Id. 11:33, 11:34, 11:36).

Petitioner was under surveillance on May 25, 2014.

On May 28, 2014 Petitioner reported increased soreness after his last visit as he believed the "bridge" exercise caused pain. He also mowed the day before and was sore from the riding mower. (PX 9)

Petitioner "no showed" for his physical therapy on May 30, 2014. (PX 9) Petitioner was under surveillance that same day. Petitioner was seen driving, sitting on a lawnmower, unhooking a trailer from his vehicle and spraying pesticides on weeds. On May 30, 2014, he was seen sitting on a lawnmower free from pain (7:57-7:58). He was also observed bending at the waist while picking up debris in a yard (8:03-8:04). Surveillance captured him unhooking a trailer from his vehicle and pushing it (8:03-8:09). He was also seen spraying for weeds in a somewhat bent position (8:10-9:00). He was also observed driving again (7:41). At no time did Petitioner display pain behavior. RX 6)

Petitioner was under surveillance on June 3, 2014, June 9, 2014, and June 16, 2014. (RX 6) On May 21, 2014, Petitioner was not observed being active. (RX)

On June 9, 2014 Petitioner called therapy stating he could hardly walk when he left there on May 28. (PX 9)

Petitioner received his second injection from Dr. Boutwell on June 23, 2014. (PX10, 6/23/14).

Respondent had Petitioner examined by Dr. Michael Milne on June 30, 2014 with regard to his right knee. (RX2). Dr. Milne took a history of Petitioner's accident occurring as a result of Petitioner's right knee giving out and his falling backward off of a ladder onto his back. (RX2). Petitioner advised Dr. Milne that he had undergone a right knee partial medial meniscectomy and chondroplasty on March 28, 2014 but was continuing to experience symptoms of frequent popping and locking in his knee. Petitioner reported a feeling of give away and pain after lying in bed. Petitioner would awaken with significant knee pain. Dr. Miller was now recommending viscosupplementation injections.

On examination Petitioner displayed mild effusion in his right knee. Active range of motion was full and equal compared to the left side. Petitioner had pain with palpation over the medial joint line but not the lateral joint line or along the posterior aspect of his knee. Patellofemoral crepitus was noted. Other tests were negative. Standing x-rays taken that same day showed significant tricompartmental degenerative changes with significant joint space narrowing about the medial compartment of Petitioner's knee. Petitioner was noted to be 6'2" tall and 340 lbs. After examining Petitioner and reviewing his medical records (Dr. Miller's records through 5/12/14), Dr. Milne opined that Petitioner's current complaints were consistent with his objective findings and current condition, and that Petitioner's meniscus tear was related to his October work injury. He believed, however, that the viscosupplementation recommended by Dr. Miller was related to longstanding degenerative changes in Petitioner's knee, and that Petitioner had reached maximum medical improvement with respect to his right knee work injury and was capable of full duty work. In support of his opinions he noted that Dr. Miller described eburnated

bone throughout Petitioner's knee which obviously pre-dated Petitioner's work injury. He further felt Petitioner could resume full duty work without any restrictions. (RX 2)

Respondent also had Petitioner examined by Dr. Mirkin on June 30, 2014 with regard to his back. (RX3). Dr. Mirkin indicated Petitioner arrived twenty (20) minutes late. Petitioner gave the doctor a history of climbing on a ladder and falling ten feet. Dr. Mirkin examined Petitioner, reviewed his medical records, and also reviewed a surveillance video of Petitioner provided by Respondent, which he described as showing Petitioner engaging in painting, bending, stooping, getting in and out of his truck, picking up objects and reaching overhead. (RX3). Dr. Mirkin's impression notes that Petitioner has significant anatomical pathology, and notes that Petitioner appeared to have sustained an aggravation of his pre-existing conditions; however, he believed that the video footage was inconsistent with Petitioner's described level of function, and he believed Petitioner could return to work without restrictions. *Id.* He believed that the only thing Petitioner needed to do was lose weight and continue his home exercises. *Id.*

Petitioner returned to see Dr. Gornet on July 7, 2014, for his lumbar spine, and noted that Petitioner's condition failed to improve with conservative measures. (PX5, 7/7/14). Dr. Gornet made the following recommendations:

> He has had physical therapy now and he has had injections. We believe he has stenosis, particularly lateral recess stenosis at L4-5 and potentially also L3-4. He has bilateral facet changes at L5-S1. We believe that his work injury of 10/24/13 [sic] aggravated his underlying condition. Our recommendation for him would be a CT myelogram and at that point we will see whether or not he is amenable to some type of surgical correction. His work status remains the same. His exam today continues to show 5/5 strength, but with continued pain, which is significantly affecting his quality of life. . . We continue to believe his need for treatment is causally connected to his injury as described . . . (PX 5)

Petitioner signed his Application for Adjustment of Claim herein on July 16, 2014. (AX 2)

Dr. Miller's Deposition

Dr. Miller testified by way of deposition taken on January 15, 2015. (PX11). Dr. Miller confirmed that Petitioner had no prior injury or surgery to his right knee. (PX11, p.9). Dr. Miller also confirmed that Petitioner was not actively treating with anyone before the fall. *Id.* at 11. Dr. Miller testified that Petitioner's meniscus tear was acute and his need for surgery was caused by the fall. *Id.* at 9. He stated:

> Everything that I saw and observed – especially intraoperatively, where it looked like it was a traumatic tear – again, sometimes you'll see these degenerative type of tears where the meniscus is just beat up all over the

> place. This looked like a fair – what I would consider an acute traumatic tear that was well-defined, so I felt that the fall was the cause. *Id.* at 11.

He also testified that the accident made Petitioner's pre-existing condition symptomatic. *Id.* at 22.

Dr. Milne's Deposition

Dr. Milne also testified by way of deposition taken on January 26, 2015. (RX4). Dr. Milne's diagnosis based upon Dr. Miller's operative report was a right knee primary flap tear and a horizontal cleavage tear of the posterior horn of the medical meniscus, and preexisting degenerative joint disease. (RX4, p.10). He testified on direct examination that he believed that end treatment for the work-related component of Petitioner's right knee condition had been achieved. *Id.* at 11. On cross-examination, however, he acknowledged that Petitioner was not having any knee complaints prior to his work accident, and that Petitioner's complaints since the accident have not subsided. *Id.* at 13, 14. When asked whether this clear sequence of events established connection between Petitioner's current complaints and the accident, he stated:

> Well, as you've said there's no evidence to the contrary, you know- you're experienced, I'm experience to the contrary. You know you're experienced, I'm experienced. This guy's got a picture of arthritis – there's no medical records that I know of that say he sought medical treatment, so I guess that your statements have to be seen as true. *Id.* at 15, 16.

He acknowledged that viscosupplementation was an appropriate treatment for aggravation of pre-existing arthritis. *Id.* at 16.

Dr. Gornet's Deposition

Dr. Gornet testified by way of deposition on March 5, 2015. (PX12). Dr. Gornet testified that Petitioner requires a CT Myelogram so that the doctor can determine whether there is any reasonable surgery that could help cure and relieve the effects of Petitioner's work-related injury. (PX12, p.14). Dr. Gornet testified that he had an opportunity to review Dr. Mirkin's report, and that his report was inconsistent with Petitioner's candor in reporting his medical history. *Id.* at 18, 19. Dr. Gornet also pointed out that his notes clearly indicate that Petitioner was able to do light work. *Id.* at 18. He testified that Petitioner should be reasonably comfortable so long as he stays within his restrictions. *Id.* at 16, 17. Dr. Gornet testified that Petitioner needed to lose weight and undergo diagnostic testing prior to any surgery, and stated:

> . . . I essentially in this situation agree with Dr. Mirkin that the recommendation for him would be an aggressive weight loss program and at that point continued light duty. If he has a reasonable period of time and he fails his weight loss program, then he would be subject to an FCE and

placed at maximum medical improvement based on the FCE recommendations. *Id.* at 19.

Dr. Gornet believed that Petitioner's need for treatment, need for light duty restrictions and his current condition was causally related to the October 25, 2013, work injury. *Id.* at 21, 22.

Dr. Mirkin's Deposition

Dr. Mirkin's deposition was taken on March 9, 2015. He testified consistent with his report. Regarding his opinion on causation he added that he felt Petitioner aggravated his back in the accident, "assuming he fell ten feet." (RX 5, p. 31)

The Arbitration Hearing

Petitioner testified that on October 25, 2013 he was coming down a ladder and fell on concrete approximately six to seven feet. He also buckled his knee.With regard to his low back, Petitioner testified that he injured his back 20 years earlier when he slipped, but he was told there was nothing wrong with his back, and testified that he has not received any care or treatment for same in 20 years. Petitioner testified that he neither took any medication nor missed any time from work because of low back pain prior to the accident of October 25, 2013.

Petitioner testified that his knee condition did not improve with his knee surgery or his therapy. He felt, in fact, that therapy made his knee worse. Petitioner testified that he cannot walk forward-facing down a set of stairs. Petitioner testified that his knee buckles and he will tip forward if he does not descend sideways. He stated that both his back and knee are responsible for his persistent problems. Petitioner continues to experience back pain which travels into his leg. Petitioner testified that he can barely rotate his back to turn and cleanse himself after using the restroom because of the sitting position. He also testified that if he sits for a prolonged period of time and coughs, he experiences severe pain in his low back. He also testified that driving for long periods causes pain in his back. He testified that sometimes he will get into a coughing fit from sitting in his truck and his pain becomes so intense that he has to pull over and stand up. Petitioner testified that he has been released by his doctor with regard to his knee injury.

As for his back, Petitioner testified he was referred to Dr. Gornet and he was experiencing constant pain coming from his back and down his leg. Petitioner testified that he would like to have the treatment recommended by Dr. Gornet. Although Petitioner has been released with respect to his knee injury, Petitioner remains off work for his back injury per Dr. Gornet. Petitioner testified that he cannot walk down a set of stairs "forward," but, rather, must go sideways to avoid having his knee buckle. Petitioner attributes part of this problem to his back.

Petitioner testified that there is no work available with Respondent within his restrictions.

Petitioner testified that he underwent an examination with Dr. Milne at Respondent's request and "it went fine." Petitioner also acknowledged an examination with Dr. Mirkin. He also reviewed Dr. Mirkin's report and felt it incorrectly stated that he was twenty minutes late for the exam as Petitioner testified he was twenty minutes early. Petitioner also testified that Dr. Mirkin spent less than one minute with him and that he didn't review any films with him but mentioned seeing a video of Petitioner painting. Petitioner described the doctor as being "very hateful" during the exam.

Petitioner testified that he reviewed the video and the written description of the activities he was engaged in and candidly acknowledged that he performed all of the activities described. He testified that he was painting the front door of his home because he moved in with his girlfriend and began renting his house. Petitioner also candidly testified to performing some work inside of his father and stepfather's house, but stated that this was not any more eventful than what was depicted in Respondent's video. Petitioner testified that he was engaged in a formal physical therapy program and a home therapy program at the time that Respondent's videos were taken. When asked what type of activities he was encouraged to do during physical therapy, Petitioner testified that he was told to do as much as he possibly could as the more weight he could lose, the better he should feel. Petitioner was trying to do just that.

Petitioner further testified that during this time he was also doing home exercises and physical therapy, which were far more strenuous that anything that was depicted in Respondent's video. Petitioner testified that he did not earn any compensation for the activities depicted in the video, that he was doing the activities for his father and step-father, and stated that he did not perform any work at Moore Cattle. Petitioner testified that his daughter owns Respondent's company.

Petitioner wasn't sure when he reported his injury to Respondent. He didn't recall being seen for osteoarthritis in his knees back in 2013.

Petitioner testified that with regard to his back he has trouble sitting.

On cross-examination Petitioner testified that he landed on his back when he fell. When asked about the 10/25/14 office note describing that he was climbing a ladder when he felt his knee pop, he denied recalling telling her that. Rather, he believed he was coming down the ladder. However, he wouldn't refute the history if that is what it stated. Petitioner also testified that he told her his back was a little sore.

The Arbitrator concludes:

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

While accident is not disputed, the details and mechanism of it are important to the

causation analysis. Also intertwined with this is Petitioner's credibility. There seems to be no real dispute that Petitioner injured his right knee on October 25, 2013. However, in order to conclude that he also injured his low back at that time Petitioner's testimony that he was descending down the ladder and fell six to seven feet onto his back must be deemed credible. The Arbitrator finds his testimony was not and in support thereof relies upon the following.

Petitioner sought medical treatment on the day of the accident, reporting that he was "climbing his ladder" and felt his right knee cap go out of place. The office note fails to mention a fall onto concrete or any back pain complaints. Petitioner testified that he recalled telling PA-C Skolaskinski that his back was sore. However, the records don't corroborate that nor was Physician Assistant's Skolaskinski's deposition taken.

Petitioner also testified that he hasn't worked since the accident; yet, no doctor or medical professional took him off work on October 25, 2013, December 16, 2013, or anytime prior to Petitioner's visit with Dr. Miller at which time Petitioner was given work restrictions. Interestingly, Illini Medical records indicate that Petitioner called on March 19, 2014 requesting his "3 - 6 week" off work slip for his knee. He was advised that no such slip was ever discussed or given and that Petitioner had failed to follow up with his earlier visit as instructed. Petitioner's actions in requesting an "after the fact" off work slip that was never discussed or previously given casts suspicion on his credibility and motivation.

Additionally, Petitioner underwent no treatment between October 25, 2013 and December 16,, 2013. He then went to Dr. Jones, rather than returning to Illini Medical. He again gave a history of right knee pain after "climbing a ladder." The doctor's notes also mention "lbp ache hx of back pain stiffness." There is no mention of a fall from a ladder or back pain connected to an alleged fall. Dr. Jones' notes state "Possible work related injury" but the context within which that statement was given is unclear. Petitioner also provided no known cause for his symptoms. Finally, Dr. Jones' note suggests prior visits with Petitioner as it states, "getting worse. Since last visit;....." No other records were admitted nor was any evidence (ex. the doctor's deposition) provided to clarify these matters.

The first mention of a fall off a ladder came when Petitioner presented to Dr. Gornet and Dr. Miller in February of 2014. At trial Petitioner provided no explanation for this change in history four months post-accident.

Petitioner is an employee of a family owned business. Medical records suggested Petitioner owned the business but Petitioner testified that his daughter is the owner. The change in history over time, gap in treatment, and family connection between the parties is very troublesome.

Petitioner also failed to explain the inconsistent history given to the therapist on March 31, 2014. At that time Petitioner reported going to the hospital and being told his knee problems were due to arthritis. He reported being told he needed a knee replacement. None of this is reflected in Dr. Miller's reports nor are they evident from other records in evidence. The history suggests Petitioner may have been seen elsewhere but those records weren't made a part of the record.

With the above in mind:

Petitioner failed to prove a causal connection between his current condition of ill-being in his right knee and his accident of October 25, 2013. Petitioner's right knee condition was causally related to his accident through June 30, 2014. Dr. Miller and Dr. Milne agree Petitioner sustained a right knee medial meniscus tear as a result of the work accident, but that Petitioner's continued complaints pertain to underlying arthritis and not the work injury. (PX11, pg. 18-19, Rx4, pg. 10-11). Both also agree the need for any further treatment is related to the underlying arthritis and not the work accident. (Id.). Accordingly, the Arbitrator finds that Petitioner sustained only a right knee medical meniscus tear as a result of the work accident. Petitioner is at maximum medical improvement (MMI) for the right knee as of Dr. Milne's June 30, 2014, IME examination. Petitioner himself testified that he has been released with respect to his knee.

Petitioner failed to prove a causal connection between Petitioner's current condition of ill-being in his low back and his accident of October 25, 2013.The Arbitrator does not find Petitioner's testimony regarding the onset of his back complaints in conjunction with the accident to be credible. This is based on the differing histories/descriptions of the mechanism of accident found in the medical records.

First, the initial history given by Petitioner was to his primary care provider, Illini Medical Associates, on the date of accident, October 25, 2013. (RX 1). The history in that record reflects, "was climbing out of his ladder at work and felt knee cap pop out of place." No mention is made of a fall. A fall, especially one from six feet, is a significant event and the Arbitrator finds it relevant that Petitioner did not recall the fall at the first medical visit.

The Arbitrator also notes no history of a fall was shown in Petitioner's second medical treatment record, which was at Jones Chiropractic on December 16, 2013. (PX4). The first mention in the medical records of a fall came at the Dr. Gornet visit on February 27, 2014. (PX 5). The Arbitrator finds it significant that the first mention of a fall of any kind does not show up in the medical records until 18 weeks after the accident. As such, the Arbitrator finds that Petitioner did not sustain a fall as he claims on the date of accident.

Also relevant to the Arbitrator is that the first medical record makes no mention of back pain. (RX1). The Arbitrator finds this to be contrary to Petitioner's testimony of an acute injury. Petitioner did not make any complaint of back pain in the medical records until December 16, 2013. (PX4). The first back treatment was seven weeks after the accident date.

The surveillance further contradicts Petitioner's testimony. Petitioner testified he is in daily pain limiting his ability to do average daily living activities, such as using a toilet and walking down stairs. He testified that he has been unable to work since the accident and he gave a similar history to Dr. Mirkin. (RX3). The surveillance video rebuts Petitioner's testimony as to his true level of activity.

The Arbitrator recognizes that Petitioner testified the activities on surveillance were within his restrictions. However, the surveillance shows that Petitioner was far more active than the medical records depict. The surveillance also contradicts Petitioner's

testimony of pain with average daily living activities so severe that it prevented him from working. The video does not show someone in severe pain.

The Arbitrator also recognizes that Petitioner has no pre-existing history of back pain reflected in the medical records. However, this alone does not prove causation. Dr. Mirkin testified that he found no radicular component to Petitioner's exam. (RX5, pg 9). This fact was confirmed by Dr. Gornet. (PX15, pg 25). Dr. Gornet opined that the basis for his treatment recommendation was solely subjective complaints and there were no objective exam findings. (Id.). Also, Dr. Gornet's opinion is based on a history of a fall and an understanding that Petitioner had been experiencing back pain since the fall. Petitioner's medical records pre-dating treatment with Dr. Gornet do not corroborate that. As was previously discussed, the Arbitrator does not believe a fall occurred.

Given the analysis above concerning accident and surveillance, Petitioner's subjective complaints are deemed not to be credible. The Arbitrator finds Petitioner did not sustain a low back injury on the date of 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?

Petitioner has failed to prove a causal connection between the work accident and the right knee, subsequent to the June 30, 2014 IME report. All knee benefits subsequent to June 30, 2014 are denied.

Petitioner has also failed to prove a casual connection between the work accident and his low back. All benefits are denied.

K. Is Petitioner entitled to any prospective medical care?

Petitioner has failed to prove a causal connection between the work accident and s right knee condition subsequent to the June 30, 2014, IME report. All knee benefits subsequent to June 30, 2014 are denied.

Petitioner has also failed to prove a casual connection between the work accident and his low back condition. All benefits are denied.

L. What temporary benefits (TTD) are in dispute?

Petitioner is seeking TTD for two periods of time. Those being from October 25, 2013 through February 26, 2014, and again, from May 29, 2014, through the date of trial. All TTD is denied.

The first period of TTD (10/25/13-2/26/14) is denied because there is no medical evidence corroborating the off work status. Petitioner does not have a work excuse from a medical provider until February 27, 2014. Thereafter, it is undisputed that TTD was paid for the right knee from February 27, 2014 through May 28, 2014.

The second period of TTD (5/29/14 through trial) is denied because Petitioner has failed to prove a causal connection between the work accident and the right knee and/or low back for this time period.

****

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☐ 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 Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary Harrison,
Petitioner,

vs. NO. 13 WC 39985

15IWCC0961

Casey's General Store,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses and prospective medical expenses, and being advised of the facts and law, modifies the Decision as set forth below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission modifies the decision of the Arbitrator to find that Petitioner was entitled to the balances due to the following medical providers as set forth in PX6: Prairie Spine & Pain ($4,047.73), Prairie SurgiCare ($6,390.98) and IWC Pharmacy ($1,412.86). Therefore, the Commission finds that Petitioner is entitled to reasonable and necessary medical expenses totaling $11,851.57 pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act.

All else is hereby affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner reasonable and necessary medical expenses in the amount of $11,851.57, representing outstanding balances set forth in PX6, pursuant to §8(a) and subject to the fee schedule pursuant to §8.2 of the Act.

15IWCC0961

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to prospective medical treatment consistent with the recommendations of Dr. Richard Kube pursuant to §8(a) of the Act and subject to the fee schedule pursuant to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $12,000.00. 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: DEC 2 1 2015

Joshua D. Luskin

Charles J. DeVriendt

Ruth W. White

o-12/01/15
jdl/po
68

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

HARRISON, MARY
Employee/Petitioner

Case# **13WC039985**

CASEY'S GENERAL STORE
Employer/Respondent

15IWCC0961

On 3/4/2015, 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:

1824 STRONG LAW OFFICES
SEAN OSWALD
3100 N KNOXVILLE AVE
PEORIA, IL 61603

0264 HEYL ROYSTER VOELKER & ALLEN
CRAIG S YOUNG
PO BOX 6199
PEORIA, IL 61101

STATE OF ILLINOIS)
)SS.
COUNTY OF Peoria)

☐ 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)

MARY HARRISON

Case # 13 WC 39985

Employee/Petitioner

v.

CASEY'S GENERAL STORE

15IWCC0961

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 **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Peoria**, on **January 21, 2015**. 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 **Causal connection, Medical, and Authorization for surgery**

15IWCC0961

FINDINGS

On **9/17/13**, 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 $**24,736.17**; the average weekly wage was $**475.70**.

On the date of accident, Petitioner was **58** years of age, ***married*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

ORDER

Respondent shall pay reasonable and necessary medical services directly to the Petitioner as included as Px 6, to be paid directly to the Petitioner through Petitioner's attorney, subject to the Fee as provided in Section 8(a) of the Act.

Respondent shall authorize and pay for treatment consistent with the recommendations of Dr. Richard Kube.

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.

D. R. McCarthy Feb. 24, 2015

Signature of Arbitrator

MAR 4 - 2015

15IWCC0961

Mary Harrison v Casey's General Store

13 WC 39985

In support of the Arbitrator's decision relating to:

(F) Is Petitioner's current condition of ill-being causally related to the injury?

(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) Causal connection, Medical, and Authorization for surgery

The issue presented before the arbitrator is a very simple one. There is no question as to whether an accident occurred, there is no question as to whether some injury was sustained as a result of that accident. What the real question is, is whether the petitioner's current condition of ill-being is causally related to that work accident.

The petitioner testified credibly to the accident which occurred on September 17, 2013 when she fell at work and she testified how she landed striking her left knee, right wrist and back as she twisted and fell. She further testified that she was in such intense pain that she sat on the floor for a while and would not allow anyone to assist her up. She had to crawl to a place where the floor was not wet as she was able to then pull herself up. She testified that she completed the injury report, as required by store policy, two days later because

she was the acting manager and there was no on-site manager for her to report to. She testified that she did not immediately seek medical treatment because she was not allowed to by the employer and was not aware of how she could go about getting her own medical treatment. She testified that eventually she went to see Dr. Richard Kube because her husband had seen Dr. Kube and had such a great outcome from his treatment with Dr. Kube. She testified that she requested to see Dr. Kube but was not able to get in to see him until an initial visit on October 15, 2013. She testified that Dr. Kube's office could not set an earlier appointment because he was on vacation and traveling out of the country.

The petitioner does have a prior history of some back-related problems. On August 11th of 2010, she treated with Dr. Kevin Miller for pain in her legs while walking and some hip pain. (Respondent's Exhibit #4). On November 4th of 2010, she treated for right leg paresthesia and lumbar pain. There is also mention on that date of difficulty with tripping and drop foot on the right side. (Respondent's Exhibit #4). An MRI of the lumbar spine was performed on November 18th of 2010, which showed numerous degenerative findings in the thoracic and lumbar spine. On November 22nd of 2010, Dr. Miller ordered physical therapy as a result of multiple disc bulges and restricted the petitioner to no lifting over 20 pounds. (Respondent's Exhibit #4).

In June of 2011, the petitioner again began treating for pain in the lumbar area. She was diagnosed with upper extremity paresthesia and a lumbar herniation in a visit with Dr. Miller on June 16th of 2011. (Respondent's Exhibit #4). The doctor again prescribed physical therapy. In August of 2011, the doctor had an MRI of the cervical

spine performed. (Respondent's Exhibit #4). Petitioner thereafter began a course of treatment for cervical spine problems extending through March of 2012.

In May of 2012, the petitioner again began treating with Dr. Miller for lower extremity problems which were described as bilateral knee problems. She also began treating for lower quadrant pain at the same time, and was treated with medication for these symptoms through May 16th of 2013 with Dr. Kevin Miller. (Respondent's Exhibit #4).

Once she did get in to see Dr. Kube, she underwent a very prompt course of treatment. She had an evaluation on October 15, 2013 by Dr. Kube where he recorded a history that, "The patient was here today for a self-referral with complaints predominantly of pain in her low back, legs and occasional numbness and tingling, buttock pain as well. This has been going on since a fall that occurred in September 2013." (PX 2) Dr. Kube testified that he understood that the petitioner slipped and fell from ground level height and hit the floor. (PX 5 at 86)

He also recorded in his history prior injuries that she discussed with him from 2004 and 2012 but he recorded that "those injuries were resolved ultimately, and she has not had any significant problems since that time." Physical examination on that initial visit found her to be positive bilaterally FABER maneuvers. The assessment from Dr. Kube on that initial visit was that of a "Patient with a substantial amount of pain and bilateral sacroiliac joins, likely caused by the fall she had. Certainly, this is a common mechanism. I think we will be able to get her into physical therapy and provide her with a couple of

injections and hopefully be able to knock this out and go forward from there." (Id)

Petitioner was seen by her family doctor Miller on October 17, 2013 to obtain medical clearance for the injections. Her history was that she fell in September "on butt," and his diagnosis was sacral torsion. (RX 4)

The petitioner did undergo injections on October 29, 2013 to her SI joints and had a follow up with Dr. Kube on November 7, 2013. On that date the history that, "She has had almost complete relief of the pain she had with the bilateral sacroiliac joint injections. Unfortunately, the pain all came back. She has been having this pain again. She has been trying to work and has been unable to work, and she has actually been laid off."

Following that examination, she underwent the unilateral injection on the left side. Following that unilateral injection, the petitioner followed up with Dr. Kube on November 19, 2013. He recorded the history that, "Her sacroiliac joint injections have been very effective. They have not lasted long enough, but they are diagnostic. We know that we are looking good at this point for these being the source of her problem." (PX 2)

At that point, based upon the diagnostic outcome of the SI joint injections, Dr. Kube recommended a left sacroiliac joint fusion, since that was the pain generator. Since that time, the petitioner has continued to follow up with Dr. Kube periodically but, has not been able to have the surgery due to a lack of authorization.

Dr. Kube's evidence deposition was taken on June 6, 2014, at which time he testified consistent with the history of his notes in all regards plus testified as to his expertise with doing the new minimally invasive SI joint fusions. He stated that in fact, he was one of the people who helped test and develop the procedure as well as being the first person to do one worldwide. He indicated that he is authoring reports on this procedure and does significant teachings on this particular procedure and its benefits.

Dr. Kube was asked in his deposition to respond to the statements by Dr. DeGrange in his report where Dr. DeGrange stated that the patient had been evaluated by several different providers and there was no easily diagnosable or compelling source of the patient's defuse wide spread complaints and Dr. Kube stated that he disagreed with that opinion. It should be further noted that factually that is inaccurate, the petitioner was only seen by Dr. Kube and by a family physician and only for pre-operative screening. She has not undergone treatment with any other doctors since her work place accident for this injury.

Dr. Kube also stated that he disagreed that the term, "no easily diagnosable or compelling source", he testified, "I mean we are getting ready to actually publish all of our data on SI dysfunction here in the near future. We have had it accepted at international meetings. Cochran review articles in Pain Physician, which is one of the, if not the, most reputable pain journal and publication today. Those review articles all discuss the diagnostic ways to deal with SI join dysfunction. And its two separate SI joint injections demonstrating 75 percent plus pain relief." (PX 5 at 26) It should be noted that the petitioner did

undergo those two separate injections and experienced almost complete relief of her pain on a short-term basis. Moreover, Dr. Kube also testified, "So you know, I don't know how to explain his statement there, because the current medical literature in the last two, three, four years would all be consistent with what I am talking about." (Id at 27)

Dr. Kube was also asked to testify about his opinion with regard to the causal relationship and to base that opinion upon his physical exam, the diagnostics of the injections that he had performed and his knowledge of SI joint dysfunction. He answered, "Well, my opinion is that it would be. You know, the primary force directions that we discuss and describe in pelvic injuries would be vertical shear, lateral compression and anterior posterior compressive forces. So, you know, any type of a fall is going to impart some type of vertical shear. And if she came down on that side, also lateral compression. I mean, disruption of that joint occurs, you know, depending on how significant the trauma is. But, the ligaments are strong enough they usually need to be – you know, hit a tree in a car or something to really disrupt that joint. It is quite powerful. But, the people that we see with SI joint issues are typically doing some kind of a pivoting issue where they are lifting and pivoting or twisting. Whether it is that or playing golf or something or it is somebody who does have a fall. And often just ground level. But if your feet flip out from under you and you come down, that more than enough force to cause an SI joint problem." (Id at 29-30)

Dr. Kube's basis for opinion is well laid out. Dr. Kube's credentials with regard to this particular type of injury and procedure are without a doubt superior

credentials. Dr. DeGrange had no experience with these procedures, whereas Dr. Kube, in fact, helped with the designing of and was the first person to perform the procedure worldwide. Dr. Kube is publishing articles on this procedure and teaching this procedure. Thus it is clear that Dr. Kube has superior qualifications to render an opinion with regard to this.

Moreover, Dr. Kube's opinions are more consistent with the actual facts of the case. There were no other providers giving treatment and the petitioner's mechanism is entirely consistent with what Dr. Kube testified is normative for these types of injuries.

Despite testifying that Dr. Kube's proposed treatment was not reasonable and necessary, Dr. DeGrange acknowledged that the petitioner had positive findings during his examination of the Faber test, which he said was the most common test for SI joint involvement. (RX 3 at 10-11) He went on to say that one should have two positive tests before concluding that the SI joint was a cause of one's symptoms. (Id at 12) When asked on cross-examination about the findings of Dr. Kube with respect to the two joint injections also being positive for SI joint injury, Dr. DeGrange said he wasn't really sure what that response meant. (Id at 20)

It appears to the arbitrator that the positive Faber test, also seen by Dr. Kube during his initial exam, and the petitioner's response to the diagnostic injections would satisfy the two positive test requirements of Dr. DeGrange.

Accordingly, the arbitrator finds that the petitioner's condition of ill-being is in fact causally related to her condition of SI joint dysfunction.

Based upon such finding of causal connection, the arbitrator awards payment of all previously incurred medical bills outlined in Petitioner's Exhibit 6, subject to Fee Schedule, to be paid directly to petitioner through petitioner's attorney.

Further the arbitrator orders authorization for treatment consistent with the recommendations of Dr. Kube, a left SI joint fusion.

Dated and entered: Feb. 24, 2015

Arbitrator Douglas McCarthy

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Hoskins,
Petitioner,

vs.

NO: 11 WC 39806

15IWCC0962

Metropolitian Water Reclamation District,
Respondent.

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 temporary total disability, permanent partial disability, medical expenses 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 9, 2015, is hereby affirmed and adopted.

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.

15IWCC0962

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: DEC 21 2015

Joshua D. Luskin

o-12/16/15
jdl/wj
68

Ruth W. White

Charles J. DeVriendt

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HOSKINS, WILLIAM
Employee/Petitioner

Case# **11WC039806**

13WC015884
14WC001272

METROPOLITIAN WATER RECLAMATION DISTRICT
Employer/Respondent

15IWCC0962

On 1/9/2015, 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 0.11% 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:

0320 LANNON LANNON & BARR LTD
MICHAEL S ROLENC
180 N LASALLE ST SUITE 3050
CHICAGO, IL 60601

3147 NEUSON LAW PC
BRIDGET A NEUSON
1701 E LAKE AVE SUITE 235
GLENVIEW, IL 60025

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

William Hoskins
Employee/Petitioner

v.

Metropolitan Water Reclamation District
Employer/Respondent

15IWCC0962

Case # 11 WC 39806

Consolidated cases: 13 WC15884
14 WC 01272

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 **Jessica A. Hegarty**, Arbitrator of the Commission, in the city of **Chicago**, on **10/7/14**. 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 _____

15IWCC0962

FINDINGS

On **9/27/2011**, 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 $**71,676.80**; the average weekly wage was $**1,378.40**.

On the date of accident, Petitioner was **42** years of age, ***single*** with **1** 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 $**11,026.80**for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**11,026.80**.

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

ORDER

1. Respondent shall pay Petitioner temporary total disability benefits of $918.93/week for 12 weeks, commencing 9/28/2011 through 12/20/11, as provided in Section 8(b) of the Act.

2. Respondent shall be given a credit of $11,026.80 for TTD benefits paid.

3. The Arbitrator finds that Petitioner has suffered a loss of 2% of a man a whole as provided by section 8(d)2 of the Act.

4. Respondent shall pay reasonable and necessary medical services in the amount of $1,987.25 provided said bills have not already been paid, as provided in Section 8(a) and 8.2 of the Act.

5. Respondent shall be given a credit for whatever benefits have been paid and hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

1/8/15
Date

JAN 9 - 2015

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Hoskins, Petitioner,	)	15IWCC0962
vs.	)	Case No.: 11 WC 39806, 13 WC15884, 14 WC 01272 (consolidated)
Metropolitan Water Reclamation District of Greater Chicago Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

Background

On October 7, 2014, this matter proceeded to hearing pursuant to Section 19(b) of the Illinois Workers' Compensation Act (the "Act) before Arbitrator Jessica A. Hegarty in the City of Chicago, County of Cook.

Petitioner filed three separate claims: 11 WC 39806, 13 WC 15884, 14 WC 1272, that were consolidated for pre-trial and trial purposes. At the arbitration hearing, the parties presented evidence with respect to all three claims. Due to the overlapping nature of these cases, the Arbitrator will issue a single decision that addresses all claims.

I. FINDINGS OF FACT: 11 WC 39806

The disputed issues with respect to this case are:

- Causal connection;
- Unpaid medical;
- Petitioner's entitlement to TTD from 9-28-11 through 12-20-11;
- Nature and extent of the injury
- Credit due Respondent on medical bills. (Arb. Ex. 1.)

Petitioner testified he has been employed by the Respondent as a Maintenance Laborer for the last 20 years. His duties include cleaning and maintenance work.

On September 27, 2011, Petitioner was involved in an undisputed slip and fall accident while cleaning a messy work area that was wet with water and algae. Petitioner landed on his left side and
felt pain in his back. Petitioner was taken to MacNeal Hospital where his complaints of lower back pain radiating to his left leg were noted. Petitioner reported a history of falling at work. Petitioner was administered Valium, Norco and Toradol for pain. X-rays of Petitioner's lumbar back were unremarkable. Petitioner was discharged with prescriptions for Flexeril and Vicodin and instructed to follow-up at the Occupational Health Clinic. (PX 1.)

On October 5, 2011, Petitioner presented to Dr. Lim at Midwest Orthopedic Consultants who noted evidence of weakness and a positive straight leg raise upon exam. Dr. Lim's impression was acute left lumbar radiculopathy. Dr. Lim provided Petitioner with Norco, placed him in lumbar corset and ordered an MRI. Petitioner's off duty work status was maintained. (PX 4.)

On October 11, 2011, an MRI of Petitioner's lumbar spine revealed mild bilateral stenosis due to a subtle disc bulge with end plate spurring and a small typical hermangioma within the L2 vertebra. (Id.)

On October 14, 2011, Dr. Lim reviewed the results of the MRI with Petitioner noting Petitioner has minimal disc degeneration and no severe nerve root compression. (Id.) Dr. Lim recommended physical therapy, refilled Petitioner's muscle relaxants and told him follow up once he started therapy.

On October 25, Petitioner saw Dr. Lim who noted that Petitioner was having difficulty sleeping. The doctor advised Petitioner to pursue the issue with his primary doctor as he could not prescribe sleep aids to him. Petitioner was told to follow up in ten (10) days for re-evaluation and status on whether Petitioner could return back to work. (Id.)

On October 25, 2011, Petitioner started physical therapy at Accelerated Rehabilitation.

On November 8, 2011, Petitioner returned to Dr. Lim who noted Petitioner's continued complaints of left-sided lumbar pain. The doctor recommended that Petitioner stay in physical therapy instructed him to follow-up in ten days after he has completed his therapy sessions. Petitioner was kept off work in the interim. (Id.)

On November 22, 2011, Petitioner returned to Dr. Lim reporting 60% improvement in his back. Dr. Lim released Petitioner to return to light-duty work as of November 28, 2011.

Petitioner testified there was no light-duty work offered to him by the Respondent.

On December 6, 2011, Petitioner returned to Dr. Lim reporting 60% improvement. The doctor noted concern "as he should be better than where he is right now." The doctor

ordered a Functional Capacity Evaluation (FCE) and told Petitioner to follow-up afterwards. (Id.)

On December 13, 2011, Petitioner underwent the FCE at Midwest Rehabilitation Services. The results of the FCE were deemed valid.

On December 20, 2011, Petitioner returned to Dr. Lim who reviewed the results of the FCE with Petitioner. The doctor noted that Petitioner met all the requirements of his job. The doctor returned him to work full duty as of the next day. The doctor instructed Petitioner to follow-up in two weeks and noted that "assuming his symptoms have not worsened or his neurologic exam has not changed....[h]e will be at MMI at that point".

On January 10, 2012, Petitioner followed up with Dr. Lim who noted that Petitioner had been back to work full-duty for almost three weeks and was doing well. Petitioner reported occasional aches and pain but that the pain is significantly less than what it initially was. The doctor noted that no further treatment was needed and that Petitioner was at MMI.

Petitioner testified when he returned to work, he continued noticing pain in his back. He testified that he would notice the pain upon sitting and standing. Petitioner continued his full duties as a Maintenance Laborer. Petitioner worked full duty until his second claimed accident.

II. CONCLUSIONS OF LAW: 11 WC 39806

F. Causal Connection

The Arbitrator finds that Petitioner has presented sufficient evidence of a causal connection between the undisputed work-related accident of September 27, 2011, and his subsequent low back injury. Petitioner was taken by ambulance directly to MacNeal Hospital where he was treated and diagnosed with acute left lumbar radiculopathy. (PX 1.). On October 5, 2011, Dr. Lim examined Petitioner noting objective evidence of weakness and a positive straight leg raise. Dr. Lim's impression was acute left lumbar radiculopathy. Dr. Lim provided Petitioner with Norco, placed him in lumbar corset and ordered an MRI which revealed mild bilateral stenosis due to a subtle disc bulge with end plate spurring. Petitioner treated conservatively until Dr. Lim released him to full duty work on December 21, 2011. The Arbitrator notes that Petitioner returned to a physically demanding job as a laborer for Respondent at an unrestricted level. The Arbitrator notes that the medical records placed into evidence reflect no prior back treatment.

Based on the undisputed medical evidence in the record, and after careful consideration, the Arbitrator finds that Petitioner's lumbar back injury is casually related to the September 27, 2011 accident.

15IWCC0962

J. Medical Bills

Petitioner placed into evidence medical bills from:

1. Metropolitan Advanced Radiological services - $52.00
2. MacNeal Hospital - $1,935.25.

The Arbitrator reviewed these bills and finds that the treatment provided was reasonable, necessary and directly related to the injuries Petitioner sustained in his September 27, 2011, work accident.

The Arbitrator further finds Respondent to be liable for payment of these medical bills if they have not already been so paid by the Respondent.

The Arbitrator further notes that both parties agreed that if these medical bills were paid by Petitioner's group carrier, the Respondent would receive an 8(j) credit for those payments and the Petitioner would receive a hold harmless from the Respondent.

L. Nature & Extent of the Injury

After undergoing conservative treatment, Petitioner returned to work following twelve weeks off. Petitioner testified that upon his return to work he still had pain in his low back when standing and sitting. He testified that he had the same back pain on a regular basis up until the time of his second accident on May 1, 2013.

Petitioner testified that currently, it is hard for him to do his job and that he does the best he can. He testified that since his September 2011, work accident, his back starts aching if he sits or stands for too long. He testified that his everyday life has changed "a little bit". Petitioner testified that he has two grandsons and a godson and it is hard for him to interact with them physically. Petitioner also testified that he takes muscle relaxers and ibuprofen for his back pain. Petitioner testified that he last treated for his back on February 18, 2014, with Dr. Warakomski who recommended he see Dr. Robinson for trigger point injections. Petitioner testified that he has no intention of having the injections based on his own independent research.

Given the fact that Petitioner's injury occurred after the 2011 amendments to the Illinois Worker's Compensation Act ("the Act") which applies to accidents that occur on or after September 1, 2011, the Arbitrator must consider Section 8.1(b) of the Act in her determination of Petitioner's permanent partial disability for which the following criteria was weighed:

In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

i. the reported level of impairment as assessed pursuant to subsection (a) (the AMA "Guides to the Evaluation of Permanent Impairment);

ii. the occupation of the injured employee;
iii. the age of the employee at the time of the injury;
iv. the employee's future earning capacity; and
v. evidence of disability corroborated by the treating medical records.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a Maintenance Laborer at the time of the accident and that he is able to return to work in his prior capacity as a result of said injury. The evidence at hearing and in the record reveals Petitioner's occupation as a laborer is a heavy physical job, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was forty-two (42) years old at the time of the accident. Because of the Petitioner's relatively young age, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner continues in his pre-accident job and per the stipulation sheets (Arb 1, 2, 3) has had an increase in his wages since the initial accident. The Arbitrator therefore gives *greater* weight to this factor as Petitioner has not suffered a loss of earning capacity.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes:

- On September 27, 2011, MacNeal Hospital records reflect Petitioner's complaints of lower back pain radiating to his left leg were noted. Petitioner was administered Valium, Norco and Toradol for pain. (PX 1.)

- On October 5, 2011, Dr. Lim noted evidence of weakness and a positive straight leg raise upon exam. Dr. Lim's impression was acute left lumbar radiculopathy. Dr. Lim provided Petitioner with Norco, placed Petitioner in a corset. (PX 4.)

- MRI of Petitioner's lumbar spine dated October 11, 2011, showed mild bilateral stenosis due to a subtle disc bulge with end plate spurring and a small typical hermangioma within the L2 vertebra. (Id.)

- Petitioner's course of treatment from October 14, 2011, through On January 10, 2012, with Dr. Lim. (PX 4.)

The Arbitrator gives *greater* weight to this factor as the above-mentioned medical records are corroborative of Petitioner's claimed disability relating to this accident.

Based on all the above factors, and the record taken as a whole, the Arbitrator awards permanency equivalent to 2% loss of use of the person as a whole, or 20 weeks of benefits under Section 8(d)2 of the Act. In making this award, the Arbitrator relies upon the above-mentioned findings of fact.

III. FINDINGS OF FACT: 13 WC 15884

The disputed issues with respect to this case are:

- Causal connection;
- Unpaid medical;
- Petitioner's entitlement to TTD from 5-2-13 through 6-15-13; 6-17-13 through 6-25-13;
- Nature and extent of the injury
- Credit due Respondent on medical bills. (Arb. Ex. 2.)

On May 1, 2013, Petitioner testified he was working for the Respondent raking down a grit dumpster when he noticed a pull in the left side of his back. Petitioner called his supervisor to report the injury.

On May 2, 2013, Petitioner consulted with Tina Murphy, an Advanced Practice Nurse at Olympia Fields Internal Medicine whom he had seen before for his asthma. The medical records reflect that Petitioner felt something pop 12-24 hours ago while raking a dumpster. Petitioner complained of low back pain and a tingling foot. Petitioner described the pain as aching and reported the pain radiated to his left leg/foot. Petitioner was diagnosed with a lumbar strain and told to apply heat to his back. A Medrol Dosepak and prescriptions for Flexeril and Ibuprofen prescribed and Petitioner was ordered to follow-up in two weeks. (PX 2.)

On May 3, 2013, Petitioner was sent to the company clinic, Excel Occupational Health Clinic where he reported left-sided low back pain occurring on May 1, 2013, while raking grit in a dumpster. Petitioner reported that he felt something pop when he twisted to the right. Petitioner reported radiating pain from his lumbar region down his left leg and numbness to his toes. Petitioner was diagnosed with a lumbar strain. Petitioner was prescribed Ibuprofen, Cyclobenzaprine, told to alternate ice/heat and placed on light duty. (PX 5.)

On May 7, 2013, Petitioner was seen at Excel Occupational Clinic. Petitioner's reports of back pain were noted and his light-duty work restrictions were continued. (Id.)

On May 9, 2013, Petitioner was seen at Excel Occupational Clinic where he reported that his low back pain had improved. Petitioner's light-duty work restrictions were continued. (Id.)

On May 22, 2013, Petitioner was seen by Dr. Lim whom he had last seen on January 10, 2012. Petitioner informed Dr. Lim that he had been having low back pain for the last three weeks resulting from twisting and lifting at work on May 1, 2013. Dr. Lim diagnosed Petitioner with a lumbar strain and prescribed no work and physical therapy. (PX 5.)

On May 23, 2013, the records from Excel Occupational Clinic reflect that Petitioner reported that he wanted to follow-up with his own doctor. Petitioner was discharged from their care. (PX 4.)

On June 7, 2013, Dr. Bryan Neal performed an independent medical exam on behalf of Respondent. Neal found non-physiologic and nonorganic findings on exam and noted that Petitioner's findings were "unexplainable." Dr. Neal opined that there was a significant element of symptom magnification displayed by Petitioner. Dr. Neal did not find a causal connection between Petitioner's reported symptoms and the May 1, 2013, incident. The doctor noted that pain is a subjective complaint that cannot be imaged. Dr. Neal diagnosed Petitioner with left sided flank and lumbar pain of unknown etiology. Dr. Neal opined that Petitioner was capable of full duty work. He opined that Petitioner could benefit from two (2) weeks of physical therapy and a home exercise program including gentle walking. (RX 1.)

On June 12, 2013, Petitioner returned to Dr. Lim and informed him that physical therapy had not been approved. (PX 4.)

On June 16, 2013, Petitioner returned to full duty work. After approximately three (3) hours, he notified his supervisor that he was having back pain and requested an ambulance. He was taken by ambulance to MacNeal Hospital whose medical records indicate Petitioner reported suffering from the "same injury as prior for which he was cleared to work recently." Pain complaints were noted at low back radiating down the left leg. It was noted that Petitioner was wearing a back brace. X-rays revealed no fracture. He was given prescriptions for Hydrocodone, Flexeril and Naprosyn . (PX 1.)

On June 18, 2013, Petitioner was seen at Excel Clinic where Dr. Edward Pillar noted Petitioner's complaints of persistent low back pain since his last visit of May 23, 2013. Dr. Pillar acknowledged that he reviewed Dr. Neal's June 7, 2013 IME report and that he also found non-physiologic and unexplainable findings on exam. Dr. Pillar also could not attribute these symptoms to an alleged work accident of May 1, 2013. The doctor diagnosed low back pain of an uncertain etiology. Dr. Pillar noted that due to the significant complaints that Petitioner was making, he should be cleared by his own physician. (PX 5.)

The Arbitrator notes that Petitioner is not claiming a new work accident for June 16, 2013.

On June 21, 2013, Petitioner returned to Dr. Lim and informed him that he had returned to work on June 16, 2013, and sustained another injury to his back while raking a dumpster. Dr. Lim recommended Petitioner return to work with restrictions. Dr. Lim prescribed muscle relaxants and Ibuprofen. (PX 4)

On June 25, 2013, Dr. Lim's records reflect that Petitioner telephoned him, advising that he needed a full release to return to work. (Id.)

Petitioner testified that his back pain had never gone away between the first and second accident. Petitioner testified that when he returned to work on June 26, 2013, he returned to his regular job working full time for the Respondent. Upon his return to work, Petitioner testified that he continued to have back pain and that he did the best he could. He testified that he endured the pain without telling his supervisor because he was afraid that he would be sent home.

IV. CONCLUSIONS OF LAW:: 13 WC 15884

F. Causal Connection

Following his undisputed accident on May 1, 2013, Petitioner reported his accident and pain complaints to his supervisor and sought treatment the next day where he complained of low back pain radiating into his left leg/foot. Petitioner was diagnosed with a lumbar strain and told to apply heat to his back. A Medrol Dosepak and prescriptions for Flexeril and Ibuprofen prescribed and Petitioner was ordered. The subsequent medical records document Petitioner's pain complaints.

The Arbitrator finds that based on the medical evidence in the record which document Petitioner's complaints of low back pain radiating into his left lower extremity, the Petitioner did sustain an injury on May 1, 2013, that caused an aggravation of his pre-existing back condition caused by his September 27, 2011, work accident.

J. Medical Services

Petitioner placed into evidence the medical bills from Midwest Orthopedics in the amount of $126.00, MacNeal Hospital in the amount of $1,062.00, the Village of Stickney $580.00, and Excel Occupational Health in the amount of $25.00.

The Arbitrator reviewed the medical bills and the corresponding treatment and finds that the treatment provided was reasonable, necessary and directly related to the injuries Petitioner sustained in his work accident of May 1, 2013. The Arbitrator finds

that Respondent is liable for payment of these medical bills pursuant to the Fee Schedule of the Act.

The Arbitrator further notes that both parties agreed that if these medical bills were paid by Petitioner's group carrier, the Respondent would receive an 8(j) credit for those payments and the Petitioner would receive a hold harmless from the Respondent.

K. Temporary Total Disability Benefits

Petitioner was authorized off work between May 2, 2013, and June 15, 2013, and again from June 17, 2013, through June 25, 2013. Petitioner did make an attempt to return to work on June 16, 2013 but had a flare-up of back pain which resulted in his being treated in the emergency room at MacNeal Hospital.

The Arbitrator notes that Petitioner testified that part of this time that he was off, he did receive pay of $1,378.40 which comprised his sick time and vacation time.

The Arbitrator finds that Petitioner was temporarily and totally disabled for 7-5/7 weeks comprising the period May 2, 2013 through June 15, 2013 and from June 17, 2013 through June 25, 2013.

The Arbitrator further finds that Respondent is not entitled to an 8(j) credit for the benefits Petitioner received totaling $1,378.40 as that was his personal time that he was forced to use. Respondent is, however, entitled to a credit for the $6,313.24 in temporary total disability benefits they paid.

L. Nature and Extent of the injury

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. Accordingly, the Arbitrator gives this factor no weight.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a Maintenance Laborer at the time of the accident and that was able to return to work in his prior capacity as a result of said injury. The evidence at hearing and in the record reveals Petitioner's occupation as a laborer is a heavy physical job, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was forty-four (45) years old at the time of the accident. Because of the Petitioner's relatively young age, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner continues in his pre-accident job and per the stipulation sheets (Arb 2,) has had an increase in his wages since the initial accident. The Arbitrator therefore gives *greater* weight to this factor as Petitioner has not suffered a loss of earning capacity.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the following:

- May 2, 2013, Olympia Fields Internal Medicine records which reflect Petitioner's complaints of low back pain and a tingling foot. Petitioner described the pain as aching and reported the pain radiated to his left leg/foot. Petitioner was diagnosed with a lumbar strain and told to apply heat to his back. A Medrol Dosepak and prescriptions for Flexeril and Ibuprofen prescribed. (PX 2.)

- On May 3, 2013, Excel Occupational Health Clinic records reflect Petitioner's complaints of radiating pain from his lumbar region down his left leg and numbness to his toes. Petitioner was diagnosed with a lumbar strain. Petitioner was prescribed Ibuprofen, Cyclobenzaprine, told to alternate ice/heat and placed on light duty. (PX 5.)

- On May 7, 2013, Petitioner was seen at Excel Occupational Clinic. Petitioner's reports of back pain were noted and his light-duty work restrictions were continued. (Id.).

- On May 9, 2013, Petitioner was seen at Excel Occupational Clinic where he reported that his low back pain had improved. Petitioner's light-duty work restrictions were continued. (Id.).

- On May 22, 2013, Petitioner was seen by Dr. Lim, his treating back doctor, who noted a history of low back pain for the last three weeks resulting from twisting and lifting at work on May 1, 2013. Dr. Lim diagnosed Petitioner with a lumbar strain and prescribed no work and physical therapy. (Id.).

Based on the treating medical records which reflect a consistent history of low back complaints, the Arbitrator therefore gives *greater* weight to this factor.

Based on all the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner permanent partial disability to the extent of 1% loss of use of the man as a whole pursuant to §8(d)2 of the Act.

V. FINDINGS OF FACT: 14 WC 01272

15IWCC0962

The disputed issues with respect to this case are:

- Causal connection;
- Petitioner's entitlement to TTD from 1-11-14 through 2-5-14;
- Nature and extent of the injury
- Credit due Respondent. (Arb. Ex. 3.)

On January 8, 2014, Petitioner was on the job shoveling grease into a five (5) gallon bucket. Petitioner then proceeded to carry the bucket up thirteen (13) stairs in order to dump the bucket into a dumpster. Petitioner noticed pain in his back from doing this activity.

On January 9, 2014, Petitioner presented to Excel Clinic reporting low back pain arising from shoveling material from the floor into a dumpster while at work the day before. Dr. Edward Pillar's impression was low back pain with apparent lumbar strain. Dr. Pillar noted that despite rather significant pain complaints, there were no significant objective abnormalities other than some mildly limited range of motion. The doctor opined that conservative care would resolve Petitioner's complaints. Dr. Pillar ordered ibuprofen, ice, Tylenol, and light duty work of no lifting over 10 lbs. and no bending/twisting/climbing. (PX 4.)

On January 10, 2014, Dr. Pillar noted Petitioner's complaints of increased low back pain while cleaning bathrooms at work. Dr. Pillar noted Petitioner complaints of pain on light palpation over the left lumbar paraspinal region, despite the absence of spasm. Dr. Pillar described positive findings on Waddell testing. Dr. Pillar stated that there was "no clear evidence of work related injury." However, due to Petitioner's subjective complaints Dr. Pillar was uncomfortable clearing him for work and recommended that Petitioner see his own doctor for further evaluation of "these most unusual complaints." Dr. Pillar stated that Petitioner could return to work when cleared by his personal physician. (Id.)

On January 14, 2014, Petitioner presented to Dr. Warakomski who did not note any report of a January 8, 2014 work injury. (PX 2.)

On February 4, 2014, Dr. Warakomski's records reflect that Petitioner reported a work injury on December 8, 2013 while shoveling scum at work. Dr. Warakomski prescribed an x-ray and physical therapy. At trial, Petitioner testified that he did not tell Dr. Warakomski of a December 8, 2013 accident but that he did report January 8, 2014, accident. Dr. Warakomski ordered x-rays and noted that an MRI was not needed at that time. (Id.)

Petitioner was off work January 11, 2014, through February 6, 2014. He testified that he was paid sick time and vacation time during this period.

On February 14, 2014, Petitioner followed up with Dr. Warakomski and began physical therapy which he participated in from February 14, 2014 through March 11, 2014. (Id.)

Petitioner testified that he last saw Dr. Warakomski for his back on February 8, 2014, and that Dr. Warakomski recommended that Petitioner see Dr. Robinson for trigger point injections. (Id.)

Petitioner testified that he never went to see Dr. Robinson and that he did some research on his own didn't want to have injections.

As of the date of trial, Petitioner testified to difficulty sitting or standing for long periods of time due to pain in his back. Petitioner testified that due to his back condition he now asks for help from coworkers. He testified that he takes muscle relaxers and ibuprofen sometimes for pain.

Petitioner has worked full duty since his return to work on February 6, 2014.

VI. CONCLUSIONS OF LAW: 14 WC 01272

Petitioner was involved in an undisputed accident on January 8, 2014. Petitioner was on the job engaged in heavy manual labor when he noticed a reoccurrence of the same type of low back pain originating from his primary accident of September 27, 2011 (11 WC 39806) which the Arbitrator has already deemed a compensable accident. On January 9, 2014, Petitioner presented to Excel Clinic reporting low back pain arising from shoveling material from the floor into a dumpster while at work the day before. Dr. Pillar's impression was low back pain with apparent lumbar strain. Dr. Warakomski's records of February 4, 2014, reflect that Petitioner reported a work injury on December 8, 2013, while shoveling scum at work. Dr. Warakomski prescribed an x-ray and physical therapy. Petitioner testified at trial that Dr. Warakomski's records were inaccurate in that he reported the injury occurring on January 8, 2014, and not December 8, 2013. Petitioner was off work January 11, 2014, through February 6, 2014 and participated in physical therapy from February 14, 2014 through March 11, 2014.

The Arbitrator finds that based on the credible medical evidence in the record that on January 8, 2014, Petitioner suffered a temporary exacerbation of his pre-existing back injury.

J. Medical

The Following medical bills were submitted into evidence:

Metropolitan Advanced	$52.00
MacNeal Hospital	$1,935.25
Midwest Orthopedics	$126.00
MacNeal Hospital	$1,062.00
Stickney Fire Dept	$580.00

Excel Clinic $25.00

After reviewing the aforementioned bills along with the corresponding treatment records, the Arbitrator finds that Petitioner's treatment was reasonable, necessary and related to his back condition.

The Arbitrator orders that Respondent shall satisfy the expenses as provided in Sections 8(a) and 8.2 of the Act.

The parties stipulated that Respondent will satisfy these listed bills either through group health benefits or the medical fee schedule and will hold Petitioner harmless for the bills and any amounts paid through group insurance.

K. Temporary Total Disability (TTD)

Petitioner was authorized off of work from January 11, 2014, through February 5, 2014, a period of 3 and 4/7 weeks. This period of time is supported by the medical records of Excel Occupation Clinic and Dr. Warakomski. The Arbitrator finds that Petitioner was temporarily and totally disabled for the aforementioned period of time.

Petitioner testified that he used his sick time and vacation time for this period and it was stipulated between the parties that Petitioner received $4,206.27 in benefits. Since Respondent stipulated to accident and presented no evidence on the issue of lost time, the Arbitrator finds that Petitioner is entitled to TTD for the aforementioned period.

The Arbitrator further finds that the benefits Petitioner received for this period were not subject to 8(j) and therefore, Respondent is not entitled to an 8(j) credit.

L. Nature & Extent of the Injury

With regard to subsection (i) of §8.1b(b), no impairment report and/or opinion was submitted into evidence. Accordingly, the Arbitrator gives this factor no weight.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a Maintenance Laborer at the time of the accident and that was able to return to work in his prior capacity as a result of said injury. The evidence at hearing and in the record reveals Petitioner's occupation as a laborer is a heavy physical job, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was forty-four (45) years old at the time of the accident. Because of the Petitioner's relatively young age, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner continues in his pre-accident job and per the stipulation sheets (Arb 2,) has had an increase in his wages since the initial accident. The Arbitrator therefore gives *greater* weight to this factor as Petitioner has not suffered a loss of earning capacity.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the following:

- On January 9, 2014, Petitioner presented to Excel Clinic reporting low back pain arising from shoveling material from the floor into a dumpster while at work the day before. Dr. Pillar's impression was low back pain with apparent lumbar strain.

- Dr. Warakomski's records of February 4, 2014, reflect that Petitioner reported a work injury on December 8, 2013, while shoveling scum at work. Dr. Warakomski prescribed an x-ray and physical therapy. Petitioner testified at trial that Dr. Warakomski's records were inaccurate in that he reported the injury occurring on January 8, 2014, and not December 8, 2013.

Based on the treating medical records which reflect a consistent history of low back complaints, the Arbitrator therefore gives *greater* weight to this factor.

Based on all the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner permanent partial disability to the extent of 1% loss of use of the man as a whole pursuant to §8(d)2 of the Act.

Based on all the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner permanent partial disability to the extent of 1% loss of use of the man as a whole pursuant to §8(d)2 of the Act.

M. Credits Due Respondent

The Arbitrator finds that Respondent is entitled to a credit for all amounts paid towards medical treatment by its group insurance plan. The parties stipulated that Respondent has paid for a portion of the medical treatment through group insurance and will pay any remaining amounts due on the bills as awarded by the Arbitrator pursuant to the medical fee schedule and will have credits for all amounts paid.

Additionally, Respondent stipulated to hold Petitioner harmless for all these bills and for any group insurance lien.

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Hoskins,
Petitioner,

vs. NO: 14 WC 01272

Metropolitian Water Reclamation District,
Respondent.

15IWCC0963

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 temporary total disability, permanent partial disability, medical expenses 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 9, 2015, is hereby affirmed and adopted.

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: DEC 2 1 2015

Joshua D. Luskin

Ruth W. White

Charles J. DeVriendt

o-12/16/15
jdl/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HOSKINS, WILLIAM
Employee/Petitioner

Case# **14WC001272**

11WC039806
13WC015884

METROPOLITAN WATER RECLAMATION DISTRICT
Employer/Respondent

15IWCC0963

On 1/9/2015, 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 0.11% 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:

0320 LANNON LANNON & BARR LTD
MICHAEL S ROLENC
180 N LASALLE ST SUITE 3050
CHICAGO, IL 60601

3147 NEUSON LAW PC
BRIDGET A NEUSON
1701 E LAKE AVE SUITE 235
GLENVIEW, IL 60025

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

William Hoskins Case # **14 WC 01272**

Employee/Petitioner

v. Consolidated cases: **11 WC 398006**
13 WC15884

Metropolitan Water Reclamation District 15IWCC0963

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 **Jessica A. Hegarty**, Arbitrator of the Commission, in the city of **Chicago**, on **10/7/14**. 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. [x] 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. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [x] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **1/08/2014**, 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 $**72,898.80**; the average weekly wage was $**1401.90**.

On the date of accident, Petitioner was **45** years of age, *single* with **1** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

1. Respondent shall pay Petitioner temporary total disability benefits of $934.60/week for 3 & 4/7 weeks, commencing 1/11/2014 through 2/5/14, as provided in Section 8(b) of the Act.

2. The Arbitrator finds that Petitioner sustained an aggravation of a pre-existing work related condition. The Arbitrator awards 1% loss of a person.

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

1/6/15
Date

JAN 9 - 2015

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Hoskins,
Petitioner,

vs.

NO: 13 WC 15884

Metropolitian Water Reclamation District,
Respondent.

15IWCC0964

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 temporary total disability, permanent partial disability, medical expenses 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 9, 2015, is hereby affirmed and adopted.

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.

15IWCC0964

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: DEC 21 2015

Joshua D. Luskin

Ruth W. White

Charles J. DeVriendt

o-12/16/15
jdl/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HOSKINS, WILLIAM
Employee/Petitioner

Case# **13WC015884**

11WC039806
14WC001272

METROPOLITAN WATER RECLAMATION DISTRICT
Employer/Respondent

15IWCC0964

On 1/9/2015, 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 0.11% 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:

0320 LANNON LANNON & BARR LTD
MICHAEL S ROLENC
180 N LASALLE ST SUITE 3050
CHICAGO, IL 60601

3147 NEUSON LAW PC
BRIDGET A NEUSON
1701 E LAKE AVE SUITE 235
GLENVIEW, IL 60025

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION 15IWCC0964

William Hoskins
Employee/Petitioner

v.

Metropolitan Water Reclamation District
Employer/Respondent

Case # 13 WC15884

Consolidated cases: 11 WC 39806
14 WC 01272

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 **Jessica A. Hegarty**, Arbitrator of the Commission, in the city of **Chicago**, on **10/7/14**. 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. [x] 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. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [x] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **5/1/2013**, 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 **$72,575.36**; the average weekly wage was **$1395.68.**

On the date of accident, Petitioner was **44** years of age, ***single*** with **1** 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 **$6,313.24** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$6,313.24**.

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

ORDER

1. Respondent shall pay Petitioner temporary total disability benefits of $930.45/week for 7 & 5/7 weeks, commencing 5/2/2013 through 6/15/13, and 6/17/13 through 6/25/13 as provided in Section 8(b) of the Act.

2. Respondent shall be given a credit of $6,313.24 for TTD benefits paid.

3. The Arbitrator finds that Petitioner sustained an aggravation of a pre-existing work related condition. The Arbitrator awards Petitioner 1% loss of a person.

4. Respondent shall pay reasonable and necessary medical services in the amount of $1,793.00, provided said bills have not already been paid, as provided in Section 8(a) and 8.2 of the Act.

5. Respondent shall be given a credit for whatever benefits have been paid and hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

1/6/15
Date

JAN 9 - 2015

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

Eileen Perkins,
Petitioner,
vs.

NO: 13 WC 19882
consol. 13 WC 41989

City of Chicago,
Respondent.

15IWCC0965

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 sole issue of the nature & extent of Petitioner's permanent disability 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.

In following the criteria laid out in Section 8.1b on review, the Commission notes that:

(i) *the reported level of impairment pursuant to subsection (a);*
Dr. Klaud Miller, Respondent's Section 12 examiner, issued an impairment rating of 8% of the person as a whole.

(ii) *the occupation of the injured employee;*
Petitioner at the time of the January 26, 2012 and November 18, 2013 undisputed work accidents, Petitioner worked as a crossing guard. Petitioner retired in September of 2014.

(iii) *the age of the employee at the time of the injury;*
Petitioner was 65 and 67 years old, respectively, at the time of the accidents.

(iv) *the employee's future earning capacity; and*
As previously noted, Petitioner voluntarily retired from her position as a crossing guard in September of 2014.

(v) *evidence of disability corroborated by the treating medical records.*
Petitioner testified at hearing that she continues to suffer from problems in her right knee, despite having undergone a total right knee replacement. Petitioner testified that her knee is "[v]ery stiff" in the mornings and becomes stiff if she sits for long periods of time. (T.31-32) Petitioner also gets knots in the knee which she treats with cold compresses. (T.31-32) Petitioner has difficulty using stairs and can no longer exercise as she used to

before the accident. (T.31-32) Petitioner also explained that the most she can walk is about two blocks. (T.31-32)

The Commission notes that while Petitioner had previously suffered from a right knee injury for which she received a settlement of 25% loss of use of the right leg, Petitioner subsequently suffered two additional right knee injuries which worsened her condition and required additional right knee surgery. The Commission also finds that the accidents accelerated her need for a total right knee replacement and has resulted in Petitioner continuing to have right knee difficulties.

After considering the facts and following the criteria listed in Section 8.1b of the Act, the Commission finds that Petitioner has suffered a 50% loss of use of the right leg under Section 8(e)12 of the Act. Respondent is entitled to a credit of 25% loss of use of the right leg based on Petitioner's prior settlement.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 5, 2015 is modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $220.00 per week for a period of 107.5 weeks, as provided in Section 8(e)12 of the Act, for the reason that the injuries sustained caused the 50% loss of use of the right leg. Respondent is entitled to a credit of 53.75 weeks loss of use of the right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that the October 24, 2012 bill from Dr. Maday is denied.

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.

15IWCC0965

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: DEC 2 1 2015
MJB/ell
o-12/14/15
52

Michael J. Brennan

Thomas J. Tyrrell

Dissent

I respectfully dissent from the decision of the majority. I would affirm and adopt Arbitrator Black's thorough and well-reasoned decision.

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PERKINS, EILEEN
Employee/Petitioner

Case# **13WC019882**
13WC041989

CITY OF CHICAGO
Employer/Respondent

15IWCC0965

On 5/5/2015, 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:

0320 LANNON LANNON & BARR LTD
MICHAEL S ROLENC
200 N LASALLE ST SUITE 2820
CHICAGO, IL 60601

0113 CITY OF CHICAGO
STEPHANIE LIPMAN
30 N LASALLE ST SUITE 800
CHICAGO, IL 60602

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

Eileen Perkins
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **13** WC **19882**

Consolidated cases: **13 WC 41989**

15IWCC0965

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 **Milton Black** , Arbitrator of the Commission, in the city of **Chicago**, on **February 20, 2015**. 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 **January 26, 2012**, 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 $**15,715.96**; the average weekly wage was $**302.23**.

On the date of accident, Petitioner was **65** years of age, ***single*** 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 $**2,702.98** for TTD, $**0** for TPD, $**0** for maintenance, and $**15,715.96** for other benefits, for a total credit of $**18,418.94**.

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $**220.00**//week for **32.25** / weeks, because the injuries sustained caused the **40%** loss of the **right leg (86 weeks)**, as provided in Section 8(e) of the Act and because Respondent is entitled to a credit of **53.75** weeks loss of use of the right leg.

The claimed October 24, 2012, bill from Dr. Maday is denied

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

May 5, 2015
Date

MAY 5 - 2015

Petitioner worked as a crossing guard at the time of both of her injures. She is now retired. On January 26, 2012, she fell which caused her to land on both knees. Petitioner had previously injured both knees, for which she had filed workers' compensation claims, which had been settled for 25% loss of use leg.

Petitioner underwent a right knee MRI on February 11, 2012. It revealed medial meniscal tears and extrusion and a lateral meniscal tear. It also revealed mild degenerative joint disease and osteoarthritis along with Grade 3 chondromalacia. Petitioner underwent right knee arthroscopic surgery performed by Dr. Maday on March 12, 2012.

In May of 2012, Petitioner was involved in an unrelated motor vehicle accident. Petitioner testified that she was not injured in that accident.

Petitioner testified that she has undergone two right knee injections since her work accident. When asked about a third injection, she testified that she did not remember and then testified that she just had two injections.

On October 21, 2012, Petitioner was examined by Dr. Jay Levin at the request of her employer. He opined that she had aggravated her degenerative arthritis, which had remained symptomatic. He recommended that she either live with her condition or undergo a total right knee arthorplasty.

Dr. Maday billed Petitioner for a third injection dated October 24, 2012. Dr. Maday's medical records do not document that a third injection was administered on October 24, 2012.

Petitioner was seen by Dr. Nelson on November 13, 2012. X-rays showed bone on bone in the medial compartment. Dr. Nelson's assessment was significant degenerative arthritis in the medial compartment. He recommended a right total knee replacement. Petitioner underwent that surgery on December 3, 2012, at Mercy Hospital.

On March 19, 2013, Petitioner complained of left knee pain to Dr. Nelson. He provided her with a cortisone injection.

Petitioner returned to her usual and customary position as a crossing guard following a full duty release in April of 2013. Petitioner testified that she continued to have right knee symptoms.

Petitioner re-injured her right knee at work on November 18, 2013, when she fell striking both of her knees. Petitioner went to Swedish Covenant Hospital on November 19, 2013, and she followed up at MercyWorks. She was diagnosed with a right ankle sprain and a right leg strain.

Petitioner was examined by Dr. Miller on June 14, 2014 at her employer's request. He opined that the progression of arthritis was inevitable and that Petitioner would have required a right knee replacement whether or not she was injured at work. Dr. Miller provided an impairment rating of 8%.

Dr. Nelson authored a report dated September 19, 2014. Dr. Nelson opined that Petitioner aggravated her degenerative arthritis on January 26, 1012, and he had criticisms of Dr. Miller's opinions.

Petitioner testified that her knee gets stiff. Petitioner testified that she cannot kneel, although she agreed that she has no kneeling restrictions. Petitioner testified that she no longer walks her dog. Petitioner testified that takes stairs one at a time as self-limiting behavior.

CAUSATION

Dr. Levin opined that Petitioner's condition was related to the accident of January 26, 2012. Dr. Levin further opined that Petitioner could consider undergoing a right total knee arthroplasty. Dr. Maday referred Petitioner to Dr. Nelson for evaluation for a total knee replacement. Dr. Nelson opined that Petitioner aggravated her degenerative arthritis on January 26, 1012, and he had criticisms of Dr. Miller's opinions.

Dr. Miller's opined that Petitioner had pre-existing osteoarthritis which was unrelated to the accident and that progression of it was inevitable and she would have required a right total knee whether or not she suffered the accident in question. He is the only physician to so opine. Much if not most of Dr. Miller's opinions read like advocacy.

The Arbitrator finds the opinions of Dr. Levin and Dr. Nelson are more reliable and more persuasive than the opinions of Dr. Miller.

Based upon the foregoing, the Arbitrator finds that petitioner's current condition of ill being is causally related to the injury of January 26, 2012.

MEDICAL

Petitioner claims the October 24, 2012 $609.79 bill from Dr. Maday into evidence. The bill is for an injection, but there are no medical records supporting the bill. When asked about a third injection, Petitioner testified that she did not remember and then testified that she just had two injections. Both of the proposed decisions state that the bill should be denied.

Based upon the foregoing, the claim for that medical bill is denied.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that the record contains an impairment rating of 8% of the whole person as determined by Dr. Miller pursuant to the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment. The Arbitrator notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making such a disability evaluation. Based upon Dr. Miller's advocacy as well as Dr. Nelson's criticisms the Arbitrator gives lesser weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a crossing guard at the time of the accident and that she is able to return to work in her prior capacity as a result of said injury. The Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 65 years old at the time of the accident. Because of Petitioner's retirement, the Arbitrator gives no weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner has voluntarily retired. The only reason that Petitioner is not working at this time is that she voluntarily retired. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that the treating medical records are corroborative of Petitioner's complaints. Because the treating medical records are corroborative, the Arbitrator gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 40% loss of use of the right leg pursuant to §8(e) of the Act. Respondent is entitled to a credit of 25% loss of use of the right leg. There is no evidence of any permanent loss of use of any other body part.

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

Marry Larry,
Petitioner,

vs.

NO: 14 WC 13161

Delta Airlines, Inc.,
Respondent.

15IWCC0966

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, current and prospective medical and temporary total disability 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

During the October 22, 2015 oral argument, the Commission viewed Respondent's RX2, the surveillance video taken on the October 18, 2013 date of accident and found, like the Arbitrator, that the footage did not impeach Petitioner's credibility.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 13, 2015 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $461.42 per week for a period of 61-5/7 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 pay to Petitioner the sum of $271.73 for current medical expenses and Respondent shall pay for prospective care in the form of return visits to Drs. Zelby and McLaughlin along with a repeat epidural steroid injection, if the doctors believe this additional treatment is warranted under §8(a) and §8.2 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 be given a credit of $13,711.07 for payment of temporary total disability benefits and $8,228.04 for payment of non-occupational disability benefits for a total credit of $21,939.11 paid to or on behalf of Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $6,900.00. 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: DEC 2 2 2015

Mario Basurto

MB/jm

David L. Gore

O: 10/22/15

43

Stephen Mathis

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

MARY, LARRY
Employee/Petitioner

Case# **14WC013161**

15IWCC0966

DELTA AIR LINES
Employer/Respondent

On 2/13/2015, 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:

0197 LARRY L FLEISCHER & ASSOC LTD
RICHARD O KRUMBACHER
205 W RANDOLPH ST SUITE 2200
CHICAGO, IL 60606

5001 GAIDO & FINTZEN
JUSTIN KANTER
30 N LASALLE ST SUITE 3010
CHICAGO, IL 60602

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)

Mary Larry
Employee/Petitioner

15IWCC0966

Case # 14 WC 013161

v.

Consolidated cases:D/N/A

Delta Air Lines
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 **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **January 23, 2015**. 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 **Prospective Medical**

FINDINGS **15IWCC0966**

On **October 18, 2013**, 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 **$35,991.28**; the average weekly wage was **$692.14**.

On the date of accident, Petitioner was **50** years of age, ***single*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$13,711.07** for TTD, $- for TPD, $- for maintenance, and **$8,228.04** for non-occupational disability benefits, for a total credit of **$21,939.11**.

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

ORDERS

RESPONDENT SHALL PAY PETITIONER REASONABLE AND NECESSARY MEDICAL EXPENSES OF $224.00 (DR. ZELBY VISIT OF 6/11/14 – SEE PX 1). RESPONDENT SHALL ALSO PAY PETITIONER REASONABLE AND NECESSARY MEDICAL EXPENSES OF $47.73 (OCCHEALTH & IMMEDIATE CARE OF MACNEAL - SEE PX 2), ASSUMING THAT AMOUNT DOES NOT REPRESENT IMPROPER BALANCE BILLING. BOTH PAYMENTS ARE SUBJECT TO THE STATUTORY FEE SCHEDULE.

RESPONDENT SHALL AUTHORIZE AND PAY FOR PROSPECTIVE CARE IN THE FORM OF RETURN VISITS TO DRS. ZELBY AND MCLAUGHLIN ALONG WITH A REPEAT EPIDURAL STEROID INJECTION IF THE DOCTORS BELIEVE THIS ADDITIONAL TREATMENT TO BE WARRANTED.

RESPONDENT SHALL PAY PETITIONER TEMPORARY TOTAL DISABILITY BENEFITS IN THE AMOUNT OF $461.42 PER WEEK DURING THE FOLLOWING INTERVALS: 10/19/13 THROUGH 10/21/13, 10/26/13 THROUGH 2/26/14 AND 3/24/14 THROUGH THE HEARING OF 1/23/15, WITH RESPONDENT RECEIVING CREDIT FOR THE TEMPORARY TOTAL DISABILITY BENEFITS IT PAID PRIOR TO THE HEARING. ARB EXH 1.

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.

Molly C Mason
Signature of Arbitrator

2/13/15
Date

FEB 13 2015

Mary Larry v. Delta
14 WC 13161

15IWCC0966

Arbitrator's Findings of Fact

Petitioner testified she has been employed as a customer service agent by Respondent since May 2007. After being hired, she worked at various locations inside Midway Airport. Her duties varied from helping customers check in to weighing, tagging and transferring various items of luggage. She typically weighed each bag on a scale but the scales were sometimes broken. Bags could weigh from 50 to 70 pounds. There was no limit as to the amount she had to lift.

The parties agree that Petitioner sustained an accident at work on October 18, 2013. Arb Exh 1. Petitioner testified this accident occurred at around 8 AM, while she was assisting a customer with a bag at a kiosk. The customer put the bag on a scale. Petitioner testified the scale was "off" and she thus could not determine the bag's weight. It was her job to transfer the bag from the scale to a nearby conveyor belt. As she began the transfer, she realized the bag was heavier than she had anticipated. She fell, striking her left side against the metal edge of the belt. A co-worker came to her aid and helped her up. She noticed pain in her left side and notified her immediate supervisor, George, of the accident. George came to her work area and they completed a report. Petitioner testified that George instructed her to see her doctor.

Petitioner testified she left work and went to the office of a female physician in Oak Brook. She could not recall this physician's name. She had previously seen this physician for routine check-ups. After she arrived at the doctor's office, but before being seen, she received a call from Respondent's hub manager. According to Petitioner, the hub manager was upset about her having gone to her own doctor. He told her she had to see Respondent's doctor. She left and went to a Respondent-selected facility, the Clearing Clinic, where she saw Dr. Ellen Fertelmeister.

Dr. Fertelmeister's note of October 18, 2013 describes Petitioner's chief complaint as follows: "I was lifting a bag. I didn't realize it was a heavy bag. I fell down and injured the left side of my back." She also noted that Petitioner reported falling onto the edge of the belt, striking her posterior mid back and chest wall.

On thoracic spine and rib cage examination, Dr. Fertelmeister noted no bruising, a normal range of motion and tenderness to palpation in the left rib cage and left lateral paraspinous muscles. On lumbar spine examination, Dr. Fertelmeister noted no bruising, pain with forward flexion or rotation, a normal range of motion, 5/5 strength, tenderness to palpation in the paraspinous muscles bilaterally and negative straight leg raising bilaterally.

Dr. Fertelmeister obtained chest and left rib X-rays. PX 2. She described the films as normal on preliminary reading. She diagnosed contusions of the rib cage and chest wall and a lumbar strain. She prescribed Ibuprofen and cold packs. She released Petitioner to light duty

as of October 21, 2013, with no lifting over 20 pounds and no bending more than six times per hour. PX 2.

Petitioner testified that, per Respondent's rules, a customer service agent has to be able to perform full duty. Petitioner further testified that Respondent did not make any alternative light duty available to her.

Petitioner returned to the Clearing Clinic on October 21, 2013 and saw Dr. Russell. Dr. Russell noted that Petitioner reported improvement and expressed a desire to try regular duty as of her next scheduled workday, October 23rd. The doctor also noted that Petitioner requested some muscle relaxers to use at night. He prescribed Cyclobenzaprine, to be used over the next 3 to 5 days as needed, and released Petitioner to full duty with instructions to continue using the soft wrap for another 7 to 10 days. He instructed Petitioner to return to the clinic as needed. PX 2.

Petitioner testified she resumed full duty thereafter but this caused her back symptoms to worsen.

Petitioner returned to the Clearing Clinic on October 26, 2013 and saw Dr. Gorovits. The doctor noted a complaint of 10/10 back pain. On examination, he noted mild spasm in the thoracic spine area and no lumbar spine abnormalities. He instructed Petitioner to continue the Cyclobenzaprine and Ibuprofen and return in one week. He released Petitioner to light duty with no lifting over 15 pounds. He indicated Petitioner might require therapy. PX 2.

Petitioner testified that Respondent did not make light duty available.

Petitioner returned to the Clearing Clinic on November 2, 2013 and saw Dr. Delis. The doctor noted a complaint of 9/10 pain in the lower mid back on the left side. He prescribed physical therapy and continued the medication and 15-pound lifting restriction. PX 2.

Petitioner underwent an initial evaluation at Clearing Clinic Physical Therapy on November 7, 2013. The evaluating therapist noted that Petitioner complained of constant 7-8/10 low back pain and occasional numbness and tingling in her left leg.

Petitioner attended several therapy sessions thereafter. On November 21, 2013, she returned to the Clearing Clinic and saw Dr. Davison. On examination, Dr. Davison noted mild spasm and pain in the thoracic area and tenderness to palpation from L2 to L5 in the left paraspinal area. He continued the medication and 15-pound lifting restriction. PX 2.

Petitioner returned to the Clearing Clinic on December 5, 2013 and saw Dr. Sorokin. The doctor diagnosed thoracic and lumbar strains. He dispensed Cyclobenzaprine and Meloxicam and instructed Petitioner to continue therapy. He continued the 15-pound lifting restriction. PX 2.

occasionally and 10 pounds frequently. He directed Petitioner to return to him following the EMG. PX 1, 2.

Petitioner returned to Dr. Zelby on February 26, 2014, having undergone the recommended EMG in the interim. The EMG report is not in evidence. Dr. Zelby indicated that Petitioner's complaints were unchanged and that the EMG, performed five days earlier, showed "findings consistent with a left L5 and S1 radiculopathy." He prescribed Gabapentin, a repeat "better quality" MRI and a home exercise program. He noted that Petitioner "would like to make a return to full duty work." After discussing Petitioner's job duties with her, he issued a full duty release but directed Petitioner to return to him after undergoing the repeat MRI. PX 1, 2.

Petitioner testified that, when she saw Dr. Zelby on February 26th, he told her he wanted her to stay off work but she begged to be allowed to resume full duty. Dr. Zelby allowed her to try this with the understanding that he was not releasing her from care.

Based on records in PX 2, it appears Petitioner underwent the repeat MRI on March 18, 2014. The MRI report is not in evidence.

On March 24, 2014, Petitioner returned to the Clearing Clinic and saw Dr. Russell. The doctor prescribed Cyclobenzaprine and Meloxicam and instructed Petitioner to follow up with Dr. Zelby.

On April 2, 2014, Dr. Zelby issued a work status report recommending lumbar epidural steroid injections and releasing Petitioner to work with occasional lifting up to 20 pounds and frequent lifting up to 10 pounds. PX 2.

Petitioner testified she, her mother, her sisters and a friend flew to Aruba on April 21, 2014 for a vacation they had previously scheduled. Petitioner testified she and her mother were in wheelchairs at the airport, with her sisters tending to the luggage. Petitioner recalled being in Aruba for about three days. She had massages while she was there due to her back pain. She testified she did not really enjoy the vacation because of her pain. She had discussed the vacation with Dr. Zelby.

Petitioner returned to Dr. Zelby on April 30, 2014 and reported she had not undergone the recommended injections due to lack of authorization. Dr. Zelby expressed some surprise, indicating he had "received a letter indicating that these injections were approved." Dr. Zelby noted that Petitioner continued to complain of left-sided lower back pain radiating down the back of her left leg. He described Petitioner as "neurologically normal on exam." He noted that Petitioner was scheduled to undergo an IME in the near future. He refilled the Gabapentin and recommended home exercises. He also suggested that Petitioner "pursue the epidural injection." He indicated he would recommend a left L4-L5 microdiscectomy if the injection did not provide relief. He continued the previous work restrictions and directed Petitioner to return in six weeks. PX 1.

A note in the Clearing Clinic chart reflects that Petitioner reported she was going to switch to NovaCare for therapy because the facility was closer to her home. Records in evidence reflect that Petitioner attended therapy at NovaCare throughout January 2014 but the records concerning this therapy are not in evidence.

At Petitioner's next Clearing Clinic visit, on January 4, 2014, Dr. Amir ordered a lumbar spine MRI and instructed Petitioner to continue the Cyclobenzaprine and discontinue the Meloxicam. PX 2.

According to records in evidence, Petitioner underwent the lumbar spine MRI on January 15, 2014. The MRI report is not in evidence.

A Clearing Clinic "order form" dated January 17, 2014 reflects that Petitioner was continuing to complain of back pain despite therapy and that the MRI revealed "L4-L5 annular tear with protrusion." The order form also reflects that the clinic contacted the adjuster and ultimately secured authorization for Petitioner to see Dr. Zelby, a neurosurgeon. The clinic set up a January 31, 2014 appointment with Dr. Zelby and notified Petitioner of the appointment via voice mail. PX 2.

Petitioner did not see Dr. Zelby on January 31, 2014. She returned to the Clearing Clinic that day and saw Dr. Ryan. Petitioner reported attending four sessions of therapy. She complained of increased back pain secondary to sliding off of a machine during therapy. Dr. Ryan noted an upcoming appointment with a specialist. He released Petitioner to light duty. PX 2.

Petitioner first saw Dr. Zelby on February 7, 2014. The doctor's letterhead reflects that he is a board certified neurosurgeon and assistant professor of neurosurgery at Rush University Medical Center.

Dr. Zelby wrote to Dr. Ryan on February 7, 2014, indicating that Petitioner complained of left-sided lower back pain radiating to her left buttock and intermittently down her left leg to her foot. Dr. Zelby noted that Petitioner reported trying to lift and transfer a heavy bag to a conveyor on October 18, 2013 and falling, striking her left side on a piece of metal. He further noted that Petitioner denied any prior history of low back or leg pain.

On initial examination, Dr. Zelby noted tenderness with palpation of the lumbar spine, a limited range of motion, negative straight leg raising bilaterally and abnormal heel and toe walking bilaterally. He also noted no inconsistent behavioral responses. He interpreted the MRI as showing mild thickening of the posterior longitudinal ligament at L3-L4 and L4-L5 and a broad-based and left disc/osteophyte complex with mild left foraminal stenosis at L4-L5. He described the degeneration as "less than would be expected as typical for the patient's age."

Dr. Zelby prescribed an EMG of the left lower extremity. He also recommended that Petitioner lose weight. He released Petitioner to light duty with lifting up to 20 pounds

At Respondent's request, Petitioner underwent a Section 12 examination by Dr. Hsu on May 19, 2014.

In his report of May 19, 2014, Dr. Hsu indicated he reviewed both lumbar spine MRIs along with various treatment records. He indicated there was "no significant change" between the two MRIs. He described the MRIs as showing "age-appropriate spondylotic changes" and "no evidence of instability, disc herniations or stenosis." Dr. Hsu also indicated he reviewed an "E-mail from Mr. Slifka that documents multiple flights taken on Delta Airlines with a last trip to Aruba the week of 4/20/14."

Dr. Hsu diagnosed a resolved lumbar strain and lumbar spondylosis. He described the latter as pre-existing the work accident. He did not find any causal relationship between Petitioner's ongoing complaints and the work accident. He attributed the ongoing complaints to the pre-existing spondylosis. He did not see the need for any additional care. He described the conservative care to date as appropriate. He described Petitioner's prognosis as very good. Citing information he had received concerning Petitioner's duties, he found Petitioner capable of resuming full duty as a customer service agent. RX 7.

Petitioner testified she underwent the recommended injection at MacNeal Hospital on May 20, 2014.

On June 11, 2014, Dr. Zelby noted that Petitioner reported improvement of her leg symptoms following the injection. He also noted that Petitioner reported a recent increase in her back pain secondary to lifting a bag of potatoes a few days earlier. He recommended a second epidural steroid injection. Pending that injection, he released Petitioner to light duty with occasional lifting up to 40 pounds and frequent lifting up to 20 pounds. He noted that Petitioner expressed confidence she would be able to resume full duty following the second injection. He indicated that a nurse case manager was present when he discussed his treatment plan with Petitioner. PX 1.

Petitioner testified she submitted to a second independent medical examination, this time with Dr. Lewis, on July 14, 2014. Dr. Lewis's examination report is not in evidence.

On July 21, 2014, Dr. Zelby sent a letter to the adjuster, after reviewing Dr. Lewis's examination report. Dr. Zelby responded to Dr. Lewis's opinions as follows:

> "I have reviewed the evaluation from Dr. Lewis concerning Ms. Larry. Ms. Larry indicated that her regular job requires lifting that places her job in a heavy physical demand level. If this is an accurate representation of her actual job duties, then I disagree with Dr. Lewis's suggestion that Ms. Larry is currently qualified to pursue full duty work without restrictions. I have given Ms. Larry light duty restrictions based on her

objective medical condition, with lifting up to 20 pounds occasionally and 10 pounds frequently. I think that she is safely qualified to work within these restrictions now."

PX 1.

On August 9, 2014, Petitioner returned to the Clearing Clinic and saw Dr. Davison. The doctor noted a 30-pound lifting restriction imposed on March 24, 2014. He instructed Petitioner to discontinue Ibuprofen. He provided Petitioner with Meloxicam and Tramadol and referred her to Dr. Zelby. PX 2.

On November 6, 2014, Petitioner saw Dr. McLaughlin at Advocate Good Samaritan Hospital. In his note of that date, Dr. McLaughlin indicated that Petitioner was complaining of 9/10 low back pain radiating down her left leg as well as left leg weakness. He also noted that Petitioner reported deriving transient and partial relief from a previous injection administered at a different facility. He indicated that Petitioner had run out of Ibuprofen a few days earlier and reported little relief from Mobic. After examining Petitioner and reviewing the January 2014 MRI, he prescribed a one-month trial of Norco and instructed Petitioner to return to him in December for another injection. He administered this injection at the L4-L5 interspace on November 20, 2014. On that date, he recommended that Petitioner return to him in one month "for a possible repeat injection." He also prescribed additional Norco and therapy. He imposed a 10-pound lifting restriction. PX 3.

Petitioner testified she has not undergone any additional injury-related care since the November 2014 injection. She testified she derived about three weeks of pain relief following that injection. She feels she needs another injection. Her left leg is no longer a problem but she is experiencing "tremendous" left-sided lower back pain. This pain prevents her from feeling like herself. She performs prescribed exercises at home but these exercises are not as helpful as the injections.

Under cross-examination, Petitioner testified she reinjured her lower back when she resumed working and performed lifting. She reported this re-injury to the adjuster but did not file a second Application for Adjustment of Claim. When the accident of October 18, 2013 happened, she was trying to obtain lifting assistance from a TSA. She only had to transfer the bag a short distance, from a scale to a belt. After she started transferring the bag, the bag "went down" and she went down on top of the bag. She plans to return to Dr. Zelby after she undergoes a third injection. She considers Dr. Zelby to be a "company doctor" but finds him "brilliant." When she saw Dr. Zelby on February 26, 2014, he wanted her to remain off work but she begged to be allowed to resume full duty. He allowed her to do this but indicated, in writing, that he was not releasing her from care. She was honest with Dr. Hsu, Respondent's examiner. Dr. Hsu asked her a question she could not answer. He asked her whether she was traveling. She denied this but indicated that Dr. Zelby had given her the okay to resume regular activity. It is her impression that Dr. Hsu believed her boss, Carl Slifka, to be a physician. She mentioned this to the ESIS nurse case manager. This individual looked at her file and told her

that Slifka should be reprimanded for posing as a physician. Her immediate manager, George, would be a good person to comment on her day-to-day activity level. Slivka would not be a good person to address this because he is "vindictive." Because Respondent has not been able to accommodate her restrictions at Midway, Slifka scheduled trips for her to travel to other Respondent facilities to interview for alternative positions. It is her understanding that Respondent's corporate department instructed Slifka to set up these trips. At one point, while she was on full duty, she made a personal one-day trip to Memphis to check on property she owns there. She has also made trips to Minnesota and Detroit to check on the availability of another job. Slifka booked her on these trips. Respondent eventually offered her a job in Cincinnati, starting on Monday, January 26, 2015 (the Monday after the hearing). She plans to go to Cincinnati and start this job because otherwise she will be terminated. She has not worked in any other capacity since going off work the last time. She serves as the liquor commissioner of Maywood, Illinois. She receives no pay for this service. The commissioner position requires her to attend meetings about twice yearly and to meet with residents on a sporadic basis. If a resident wants a liquor license, she has to meet with that resident and listen to the request. She attended a commission meeting on January 14, 2015. Her son runs a program called "Larry Boys School." She mentors her son in the running of this program. On one occasion after the work accident, she felt back pain at home while cooking. She reported this pain to Dr. Zelby in June 2014.

On redirect, Petitioner testified she has not seen Dr. Hsu's report. The job in Cincinnati involves booking reservations via telephone. As far as she knows, the job is less physical than her previous job in that it does not involve moving luggage. However, she has not been given any document stating she will not be required to move luggage.

Under re-cross, Petitioner reiterated it is her belief Dr. Hsu obtained information from Carl Slifka. It is Respondent's nurse case manager who caused her to form this belief. After the nurse case manager alerted her to Slifka's involvement, she wrote a letter to Dr. Hsu. Dr. Hsu did not respond. After being shown RX 1 [a copy of Dr. Hsu's report with handwritten comments in the margins], she testified she could not recall whether she marked up Dr. Hsu's report. She was unable to say whether her handwriting appears on RX 1.

Emma Burse testified on behalf of Petitioner. Burse testified she is Petitioner's sister. She accompanied Petitioner to Aruba in April 2014. The trip to Aruba was planned before Petitioner's work accident. After the accident, Petitioner indicated she was not going to go on the trip after all but then her doctor gave the okay to it. Petitioner did not carry any suitcases during the trip. At the airport, Petitioner obtained assistance with her luggage and stayed in a wheelchair. The trip to Aruba lasted about four days. During the trip, Petitioner was in a lot of pain and had a massage once or twice. Petitioner did not engage in the same activities that other family members engaged in during the trip.

Under cross-examination, Burse testified she has not gone on any other trips with Petitioner since Petitioner's work accident.

Carl Slifka testified on behalf of Respondent. Slifka testified he has worked as a station manager for Respondent for 4 ½ years. He is based at Midway Airport. He oversees all Respondent employees at this location.

Slifka testified he knows Petitioner. He oversees the supervisors and performance leaders who are over Petitioner, seniority-wise.

Slifka testified that Petitioner worked at a ticket counter on October 18, 2013. There are surveillance cameras in the area where Petitioner worked. He has access to the footage captured by these cameras.

Slifka testified that RX 2 is a disc showing surveillance footage of Petitioner working at a ticket counter between 8:20 and 8:21 AM on October 18, 2013. RX 2 also shows other areas of the airport. [The Arbitrator and parties watched RX 2 during the hearing. RX 2 shows two levels of walkways/concourses and a number of people on both levels. Respondent's ticket counter can be seen in the upper right hand corner of the footage.]

Slifka testified he had custody of Petitioner's personnel file until he sent that file to Atlanta.

Slifka testified that, after the accident, Petitioner returned to work in February 2014. He believed her first day back was February 27, 2014. On that date, he saw her working in the lobby and asked her how she was. She said she missed the "Delta family" and was glad to be back at work. She seemed okay and did not voice any complaints. She continued performing full duty thereafter. It was following her return to work that Respondent addressed issues concerning her job performance. On March 6, 2014, Respondent issued a "CAN," or "corrective action notice," to Petitioner alleging she mishandled a security-related matter during the boarding process. He, George and Petitioner attended a meeting concerning the "CAN." A Respondent human resources manager also "attended" via conference call. Petitioner was given a letter at that meeting. As soon as the "CAN" was issued, Petitioner claimed to be in pain and stated she wanted to see her own doctor. Before that, Petitioner made no complaints of pain. After the meeting, Petitioner continued to be categorized as full duty. Respondent then issued a second "CAN" to Petitioner concerning an alleged attendance infraction. Petitioner requested vacation days. After the request was denied, Petitioner called in sick on the days she had requested off. Petitioner did not present any doctor notes to support her claim for sick days. On March 20, 2014, he, George and Petitioner met again, with a human resources manager participating via telephone. At that meeting, Petitioner was given a letter (RX 4).

Slifka denied setting up any independent medical examinations for Petitioner. It is ESIS that schedules such examinations.

Slifka denied speaking with or writing to Dr. Hsu. He also denied posing a doctor in any interaction with Dr. Hsu.

Slifka testified that Petitioner has requested travel passes to other cities since being off work again. Petitioner has requested those passes in order to interview at other Respondent facilities. Respondent is not able to accommodate Petitioner at its Midway facility. He helped Petitioner make flight arrangements. He would learn that Petitioner was attending an interview one day in advance of the interview.

Under cross-examination, Slifka testified that Respondent still employs Petitioner but Petitioner is categorized as "inactive." He is not aware of Respondent having made any job offer to Petitioner. He did not send Petitioner to Detroit or Minnesota. He merely facilitated travel passes to those cities at Petitioner's request. Petitioner is unable to work at the Midway facility unless she can perform full duty.

Shannon Lechner, a surveillance and claims investigator employed by Global Options, also testified on behalf of Respondent. Lechner testified she received an assignment to conduct surveillance of Petitioner. She did some research after receiving this assignment and learned that Petitioner serves as a liquor commissioner for the Village of Maywood. She was also able to determine Petitioner's license plate number. After learning that the liquor commission was holding a meeting at 7:00 PM on January 14, 2015, she drove to the street where the meeting was being held and waited. Petitioner arrived at the location at 6:52 PM, driving a white Mercedes Benz with a tag that matched the license number Lechner had found during her investigation. Petitioner got out of her car, walked across the street and entered the building where the meeting was to be held. Lechner identified RX 5 as the footage she captured of Petitioner at that time. She identified RX 6 as her report. After Petitioner left the meeting, she followed Petitioner to a residence but it was too dark to obtain any footage.

Petitioner was called in rebuttal. She acknowledged attending the liquor commission meeting on January 14, 2015. When she walked into the meeting, she was carrying a purse and a white bag. The bag contained a pair of "slipper shoes." She typically changes into these shoes when she goes to a meeting.

Petitioner testified that the first "CAN" Respondent issued related to an event that occurred before her work accident. She returned to full duty in late February 2014 and worked about three weeks before going off work again. Respondent issued two "CANs" during that three-week interval. She had never received any other "CANs" in the past. The alleged attendance infraction stemmed from a trip she made to Atlanta in order to undergo training. Her return flight was delayed. She did not arrive back at Midway until about midnight. She called her immediate supervisor, George, and requested a "late start" that day. It was her impression that George agreed to this. She called off work on March 2, 2014 and came in at 5 AM on March 9, 2014. As of March 19, 2014, she was already off work. She was not scheduled to work on March 19th. She requested vacation time in April, not March.

Petitioner testified that no doctor ever suggested she avoid attending a liquor commission meeting. The items she carried into the meeting were within her lifting

restrictions, weight-wise. She attended the meeting in question but cannot verify that RX 5 depicts her.

Arbitrator's Credibility Assessment

Petitioner was an animated witness. Her testimony concerning her duties and undisputed accident was detailed and credible. Her account of her interaction with Dr. Zelby on February 26, 2014 is corroborated by the doctor's note of that date. The doctor clearly described Petitioner as asking to be allowed to resume full duty. Petitioner's testimony concerning her brief trip to Aruba in April 2014 was credible and corroborated by her sister. Her attempts to resume full duty weigh in her favor, credibility-wise. Respondent took corrective action against her following one such attempt, which occurred in February 2012. Respondent's station manager, Carl Slifka, testified that Petitioner seemed fine before this action was taken and that Petitioner began voicing complaints only after being given a disciplinary notice at a meeting held on March 6, 2014. The clear implication of Slifka's testimony was that Petitioner fabricated those complaints in reaction to the notice. The Arbitrator notes, however, that Respondent did not take issue with the three-month period of temporary total disability that followed this meeting. Respondent only disputed disability from June 16, 2014 forward. Arb Exh 1.

Respondent's first examiner, Dr. Hsu, noted 2/4 positive Waddell signs in his report of May 19, 2014. RX 7. Petitioner testified she underwent a second Section 12 examination with a different physician, Dr. Lewis, on July 21, 2014. Respondent did not offer Dr. Lewis's report into evidence. The Arbitrator finds this omission significant. See REO Movers, Inc. v. Industrial Commission, 226 Ill.App. 3d 216 (1st Dist. 1992). Dr. Zelby, a spine surgeon selected by the company clinic, noted no positive Waddell signs.

The surveillance video obtained on January 14, 2015 does not show Petitioner engaging in strenuous activity. It merely shows Petitioner briefly driving a car, hugging someone and walking across a street while carrying personal items. RX 2, 6.

As to some peripheral issues (including whether or not she read Dr. Hsu's Section 12 examination report prior to the hearing), Petitioner was less than credible but, overall, the Arbitrator found Petitioner to be a believable witness.

Arbitrator's Conclusions of Law

Did Petitioner establish a causal connection between her undisputed accident of October 18, 2013 and her current condition of ill-being?

The Arbitrator finds that Petitioner established a causal connection between her undisputed accident of October 18, 2013 and her current condition of ill-being. In so finding, the Arbitrator relies on the following: 1) Dr. Zelby's initial note, which reflects that Petitioner denied any pre-accident history of lower back or leg pain; 2) the fact that Petitioner was able to

perform lifting-related duties for Respondent before the accident; 3) Petitioner's credible account of the mechanism of injury; 4) the consistent documenting of left-sided complaints in the treatment records, from the date of the accident forward; 5) the MRI, which (according to Dr. Zelby) showed left-sided pathology at L4-L5; 6) the EMG, which (according to Dr. Zelby) demonstrated findings "consistent with a left L5 and S1 radiculopathy"; 7) the causation-related comments that appear in Dr. Zelby's treatment records; and 8) Dr. Zelby's July 21, 2014 report.

The Arbitrator views the home lifting incident of early June 2014 as a flare-up rather than an intervening incident. On June 11, 2014, Dr. Zelby noted that Petitioner reported increased back pain secondary to lifting a bag of potatoes a few days earlier but he described her leg complaints as unchanged. Dr. Zelby contemplated injections and possibly surgery on April 30, 2014, before the lifting incident occurred.

The Arbitrator views the post-accident work flare-up similarly. Petitioner testified she experienced increased back pain after attempting to resume her previous duties. This testimony is consistent with Dr. Zelby's June 11, 2014 note, which reflects Petitioner tried to return to work "but found that pulling bags off the carousels was difficult." There is no clear evidence of a specific re-injury.

Is Petitioner entitled to reasonable and necessary medical expenses?

Petitioner claims two unpaid medical bills: $224.00 from Neurological Surgery & Spine Surgery, S.C. (Dr. Zelby) and $47.73 from the Clearing Clinic.

The Arbitrator finds that the care rendered by Dr. Zelby was reasonable and necessary, as well as related to the undisputed work accident. As noted previously, Dr. Zelby was a specialist selected by Respondent's medical facility, the Clearing Clinic, not Petitioner. The Arbitrator awards Dr. Zelby's outstanding charges, as reflected in PX 1, subject to the fee schedule. Petitioner maintains those charges total $224.00 but Dr. Zelby's bill reflects a balance of $724.00, with that balance including a $500.00 charge for a "confirmatory consult" of July 21, 2014. The Arbitrator award $224.00 rather than $724.00 since it appears Dr. Zelby viewed the flat $500.00 charge as a fee for a consultation performed at the request of the carrier rather than a treatment charge. See itemized bill in PX 1.

The Arbitrator further finds that the care rendered by the Clearing Clinic was reasonable and necessary, as well as related to the undisputed work accident. The clinic bill, which appears in PX 2, shows charges totaling $3,937.87, payments totaling $2,167.56, adjustments totaling $1,722.58 and a balance of $47.73. Petitioner claims this balance but, since neither party provided a fee schedule analysis, it is not clear whether the $47.73 represents improper balance billing. The Arbitrator awards $47.73 so long as that amount does not represent improper balance billing.

Is Petitioner entitled to temporary total disability benefits?

Petitioner claims she was temporarily totally disabled during three intervals: October 18 (the date of accident) through October 21, 2013; October 26, 2013 through February 26, 2014 and March 24, 2014 through the hearing of January 23, 2015. Respondent disputes liability for temporary total disability benefits only from June 16, 2014 onward. The parties agree that Respondent paid $13,711.07 in temporary total disability benefits prior to the hearing. Arb Exh 1.

The Arbitrator finds that Petitioner was temporarily totally disabled during the following three intervals: October 19 (the day after the accident) through October 21, 2013; October 26, 2013 through February 26, 2014 and March 24, 2014 through the hearing of January 23, 2015, with Respondent receiving credit for the $13,711.07 in benefits it paid prior to the hearing. The Arbitrator finds that Petitioner's causally related lumbar spine condition of ill-being was unstable during the disputed period, i.e., from June 16, 2014 through the hearing of January 23, 2015. See Interstate Scaffolding v. IWCC, 236 Ill.2d 132 (2010). The Arbitrator elects to rely on the opinions and treatment records of Petitioner's treating physicians rather than those of Respondent's first examiner, Dr. Hsu. There is no indication that Dr. Hsu is board certified. His letterhead merely states "orthopaedic surgery" below his name and address. RX 7. Dr. Zelby, in contrast, is a board certified neurosurgeon and assistant professor of neurosurgery. PX 1. Dr. Hsu conceded that Petitioner had persistent left leg symptoms and correlative EMG findings yet found that Petitioner required no additional care and could resume her regular lifting duties. Respondent obtained a second examination with a different physician, Dr. Lewis, in July 2014 yet did not offer Dr. Lewis's report into evidence. Dr. Zelby read Dr. Lewis's report and took issue with the doctor's opinion that Petitioner could resume full duty. He continued to impose significant restrictions "based on [Petitioner's] objective medical condition." The Arbitrator is persuaded by Dr. Zelby's conclusions and those of Dr. McLaughlin, who imposed a 10-pound lifting restriction and contemplated a third injection when he last saw Petitioner on November 20, 2014. There is no evidence that Respondent offered Petitioner work within Dr. Zelby's or Dr. McLaughlin's restrictions at any point prior to the hearing. Respondent did offer work, in Cincinnati rather than Chicago, but that work was not scheduled to begin until very shortly after the hearing.

Is Petitioner entitled to prospective care?

Petitioner seeks prospective care in the form of a third epidural steroid injection. She testified she plans to return to Dr. Zelby after this third injection is performed.

The Arbitrator has already found in Petitioner's favor on the issue of causation. When Dr. McLaughlin administered a second epidural injection, on November 20, 2014, he recommended that Petitioner return to him in one month for a possible repeat injection. He also prescribed therapy and medication. Petitioner testified she has not undergone any additional care since November 20th and wants to undergo a third injection. She testified she experienced about three weeks of pain relief following the second injection. The Arbitrator awards prospective care in the form of return visits to Drs. Zelby and McLaughlin, along with a third injection and additional therapy if the doctors find these measures to be necessary.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☐ 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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Cary Johns,
Petitioner,

vs.

NO: 09 WC 13749

Williamson County Housing Authority,
Respondent.

15IWCC0967

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 sole issue of permanency 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.

The Commission views this case differently than the Arbitrator and reduces the permanently partially disabled award from 30% to 22.5% of a man as a whole under Section 8(d)2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $566.15 per week for a period of 112.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 22.5% loss of a man as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $7,405.67 for medical expenses under §8(a) and §8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving a credit as provided in §8(j) of the Act.

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

15IWCC0967

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid 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: DEC 2 2 2015

MB/jm

O: 11/5/15

43

Mario Basurto

David L. Gore

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

JOHNS, CARY JAY
Employee/Petitioner

Case# **09WC013749**

15IWCC0967

WILLIAMSON COUNTY HOUSING AUTHORITY
Employer/Respondent

On 5/12/2015, 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:

0250 HOWERTON, DORRIS & STONE
STEVE STONE
300 W MAIN ST
MARION, IL 62959

0000 RUSIN & MACIOROWSKI LTD
SARAH TRIPP
231 W MAIN ST SUITE 2E
CARBONDALE, IL 62901

15IWCC0967

STATE OF ILLINOIS)
)SS.
COUNTY OF **WILLIAMSON**)

- ☐ 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
NATURE AND EXTENT ONLY

CARY JAY JOHNS
Employee/Petitioner

v.

WILLIAMSON COUNTY HOUSING AUTHORITY
Employer/Respondent

Case # **09** WC **13749**

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. 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 **Michael Nowak**, Arbitrator of the Commission, in the city of **Herrin**, on **01/14/15**. By stipulation, the parties agree:

On the date of accident, **10/27/08**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained 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 $**49,066.74**, and the average weekly wage was $**943.59**.

At the time of injury, Petitioner was **48** years of age, ***single*** with **0** dependent children.

Necessary medical services and have not been provided by Respondent.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $**566.15**/week for a further period of **150** weeks, as provided in Section **8(d)(2)** of the Act, because the injuries sustained caused **30% loss of use of a person as a whole**.

Respondent shall pay reasonable and necessary medical services as set forth in Petitioner's Exhibit 1, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected 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

4/30/15
Date

Nature and Extent of Injury

Petitioner works as a maintenance man at the Williamson County Housing Authority. He repairs, plumbs, paints, and otherwise provides upkeep of one or more of the seven hundred housing units in the county. His duties call upon him to bend, twist, lift, climb, crouch, and carry. On October 27, 2008, he fell from a ladder from a height of 10 feet, onto concrete, striking his back and head.

Petitioner provided a consistent history to the ambulance personnel and emergency department at Herrin Hospital. (Petitioner's Exhibit 1, Red Tabs 12 and 4)[1] Petitioner injured his back, broke two ribs and bruised his kidney. (Pet's Ex. 1, Red Tab 4.) Following his hospitalization, petitioner's back pain never fully relented. His primary care physician prescribed physical therapy and medication. (Pet's Ex. 1, Red Tabs 6 and 7.) These modalities improved his condition, but upon a return to more normal activities, petitioner's back pain increased and thereafter did not substantially subside. His primary care physician ordered an MRI. (Pet's Ex. 1 Red Tab 5.) It revealed abnormalities but failed definitively to assist in the diagnosis of an acute lumbar injury. (Pet's Ex. 1, Red Tab 5 and Red Tab 3.) Petitioner saw neurosurgeon Franklin Hayward for persistent low back pain with radiating pain into the buttocks. (Pet's Ex. 1, Red Tab 3.) Dr. Hayward ordered physical therapy anew, and planned to proceed with a discogram if a new round of physical therapy did not help relieve petitioner's symptoms. (Pet's Ex. 1, Red Tab 3.) Additional physical therapy did not improve petitioner's symptoms. (Pet's Ex. 1, Red Tab 3 & 10.) The discogram revealed annular tears, so Dr. Hayward recommended injection therapy. (Pet's Ex. 1, Red Tab 3.) Petitioner was evaluated by respondent's Section 12 physician, Dr. Vaught. (Pet's Ex. 1, Red Tab 21.) Dr. Vaught's treatment recommendations were similar.

Petitioner underwent injection therapy three times throughout the remainder of 2009, but without significant relief. (Pet's Ex. 1, Red Tab 3 & 9.) A facet block was also tried. Dr. Hayward recommended a fusion, but petitioner declined. Thus, petitioner was referred for pain management. (Pet's Ex. 1, Red Tab 3, 13.)

Petitioner underwent pain management and additional injection therapy for the whole of 2010 and the first half of 2011, but petitioner never received significant lasting improvement. (Pet's Ex. 1, Red Tab 13) Ultimately, petitioner was evaluated by another neurosurgeon, Dr. Boland, who recommended surgery – an L4-L5 decompressive laminectomy with partial facetectomy, which was performed on October 27, 2011. (Pet's Ex. 1, Red Tab 14.) Unfortunately, surgical intervention did not provide lasting significant relief. Post-operatively, petitioner still required pain management in the form of medication, injections, nerve blocks, and therapy continuing through May of 2014 (Pet's Ex. 1, Red Tab 6, 9, 11, 13, 14, 18, 19, & 20.), all of which was deemed medically necessary by respondent's section 12 examiner, Dr. Vaught. (Pet's Ex. 1, Red Tab 21.)

Dr. Newell, the physiatrist that last saw petitioner for pain management in May of 2014, released petitioner on an "as needed" basis. Petitioner remains reliant on prescription pain medications, which he needs a couple of times a month. For full function, petitioner must participate in daily home exercises provided to him by his physical therapists. Even with those exercises, his ability to function is limited – activities such as weed

[1] Petitioner's Exhibit 1 is a two volume compilation of the medical bills ("One of Two") and medical records ("Two of Two"). Petitioner's Exhibit 1 also contains a medical summary, which serves as a table of contents and evidences amounts charged by medical providers together with outstanding balances. The medical bills are tabulated in blue numerically 1-21. The medical records are tabulated in red numerically 1-21.

eating, working in confined spaces (under a sink or painting baseboards) cause his back to get "stoved up," meaning stiff and painful. Petitioner has a six year consistent history of functionally limiting lumbar disability that has never fully recovered despite years of medications, physical therapy, home exercise programs, injections, blocks and surgery. With continued aging, he is certainly not likely to improve but worsen. He is working unrestricted duty, but his colleagues help him do things that he used to do on his own, or they pick up the slack for what might cause additional pain and dysfunction. Based upon the foregoing and the record taken as a whole, the Arbitrator finds Petitioner sustained serious and permanent injuries that resulted in the 30% loss of his body as a whole.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☐ 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

Daren Roach,
Petitioner,

vs.

NO: 14 WC 20060

15IWCC0968

Aramark,
Respondent,

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 permanency 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.

The Commission finds that the Arbitrator's ultimate conclusion that the impairment rating given by Dr. Rende should be given little weight in the Commission's permanency determination is correct. However, the Commission bases its decision on a different analysis than was undertaken by the Arbitrator. Namely, the Commission notes that while Dr. Rende admitted that he was never provided with the surgical report for the microfracture surgery, he still rendered an opinion that Petitioner's microfracture was not related to the February 17, 2014 work injury. As such, the Commission finds that Dr. Rende's causation opinion is based on a lack of knowledge pertaining to the foundational medical materials related to Petitioner's injury. Secondly, Dr. Rende performed not one but a total of three independent medical evaluations. The last of the evaluations consisted of not only an examination but a performance of an AMA impairment rating. When asked if an employee must give consent before an impairment rating is determined under the AMA guides, Dr. Rende initially noted that no consent was needed from the Petitioner but he subsequently agreed that that was the case. In terms of the AMA rating itself, Dr. Rende acknowledged that although quick dash scores are sometimes taken into consideration, the Petitioner in this case had not completed quick dash scores. When asked why he did not ask Petitioner to complete the quick dash scores he said that these scores are only

needed in cases where there is not a clear cut diagnosis and they are not needed when a doctor is using a diagnosis based criteria. The Commission notes that Dr. Rende indicated he was using a diagnosis based criteria. Yet, as noted earlier, the doctor was not provided with Petitioner's surgical report for the microfracture surgery. So, at issue is how the doctor could have used a diagnosis based criteria when he was not provided with all of the foundational medical reports. When the doctor was subsequently asked whether a review of the microfracture portion of the operative report would have changed the PPI rating in the AMA report, the doctor answered that access to the report would not have changed the results of the PPI rating because the PPI rating was based on his opinion. The Commission notes that irrespective of the doctor's opinion regarding the PPI rating it appears that he ultimately performed a complete analysis of both Petitioner's microfracture and meniscus conditions. However, with that said, the Commission finds that the primary purpose of the AMA guides is to take the subjectivity out of the equation when the doctor is making an impairment assessment and as such the doctor's opinions serve no purpose in this exercise.

Based on the lack of foundational materials that were provided to the doctor, the doctor's opinion that Petitioner's microfracture was not causally related to the February 17, 2014 work accident, the multiple independent medical evaluations that were performed, the failure to obtain Petitioner's consent prior to performing the impairment assessment, the fact that the doctor did not obtain quick dash scores from the Petitioner supposedly based on the lack of need for the same in a diagnosis based setting along with the fact that the doctor lacked all the pertinent materials necessary in which to make a factually grounded diagnosis, as well as the doctors' acknowledgment that the PPI rating was based on his opinion, these factors all lend themselves to the Commission's belief that the doctor both lacked a foundational basis in which to express his causation opinion and that subjectivity was at play in the performance of the impairment rating to the degree that the Commission must question whether or not Dr. Rende properly utilized the AMA Guides in rendering his impairment rating. Thus, the Commission finds that there is no need to assign more than a minimal weigh in its own analysis of what degree, if any, the doctor's impairment assessment should be factor into the Commission's permanency determination.

IT IS THERFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $674.10 per week for a period of 43 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 20% loss of use of the right leg.

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 is entitled to a e credit in the amount of $4,789.00 under §8(j) of the Act; provided Respondent shall hold Petitioner harmless from any claims or demands by any providers of the benefits for which Respondent is receiving credit under this order.

15IWCC0968

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $24,300.00. 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: DEC 2 2 2015

MB/jm

O: 11/5/15

43

Mario Basurto

David L. Gore

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ROACH, DAREN
Employee/Petitioner

Case# **14WC020060**

ARAMARK
Employer/Respondent

15IWCC0968

On 5/13/2015, 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:

0969 THOMAS C RICH PC
6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0000 INMAN & FITZGIBBONS LTD
COLLIN MILLS
201 W SPRINGFIELD AVE #1002
CHAMPAIGN, IL 61820

15IWCC0968

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Daren Roach
Employee/Petitioner

v.

Aramark
Employer/Respondent

Case # 14 WC 20060

Consolidated cases: N/A

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Herrin**, on **March 12, 2015**. 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. [x] Is Petitioner's current condition of ill-being causally related to the injury? **(microfracture procedure only)**
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. [x] 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 **February 17, 2014**, 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 $**58,422.08**; the average weekly wage was $**1,123.50**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **1** dependent child.

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

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

Respondent shall be given a credit of $**all benefits paid** for TTD, $- for TPD, $- for maintenance, and $- for other benefits, for a total credit of $**all benefits paid**.

Respondent is entitled to a credit of $**4,789.00** for medical bills paid by its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of **$674.10/week** for **43** weeks, because the injuries sustained caused the **20% loss of use of the right leg**, as provided in § 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued between February 17, 2014 and March 12, 2015 and shall pay the remainder of the award, if any, in weekly installments.

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.

Nancy Lindsay
Signature of Arbitrator

May 7, 2015
Date

MAY 13 2015

15IWCC0968

FINDINGS OF FACT and CONCLUSIONS OF LAW

At the time of arbitration the only issues in dispute were causal connection (solely with regard to Petitioner's microfracture procedure) and the nature and extent of Petitioner's injury. Petitioner was the sole witness at the hearing.

The Arbitrator finds:

Petitioner has been employed as a Route Sales Representative for Respondent for 27 years, loading, unloading and delivering rugs and uniforms. The parties stipulated that Petitioner sustained accidental injuries that arose out of and in the course of his employment on February 17, 2014, when he slipped on ice in a parking lot and injured his right knee while delivering a bunch of rolled rugs. (AX 2). He testified that he immediately felt crunching and excruciating shooting pain in his right knee. Petitioner testified that he usually doesn't complain about pain a lot, but "this was a very painful matter." Petitioner testified that he suffered no injuries and sought no treatment for his right knee prior to the accident.

Following the accident, Petitioner was seen at the office of his family physician, Dr. Mark Smith, where the nurse noted swelling, intermittent pain that worsened with turning of the knee and radiated into his shin, inability to bend his knee beyond 90 degrees, and some locking with walking. (PX3, 3/19/14). Physical examination demonstrated pain to the medial aspect of his right knee just inferior to the patella. *Id.* Petitioner was given restrictions, given a knee compression sleeve and prescribed Tylenol with Codeine. *Id.* When Petitioner returned 3 days later with persistent symptoms, 25 cc. of serous fluid was aspirated from his knee and he received an 80 mg Depo-Medrol injection. (PX3, 3/20/14). Petitioner was also referred for physical therapy. (PX5, 3/27/14 through 4/29/14). However, none of Petitioner's long or short term goals were met.

When Petitioner's pain persisted, Dr. Smith ordered an MRI, which revealed complex tearing of the lateral meniscus from the level of the body through the anterior horn and root extending from the free edge at the level of the body and into the peripheral third of the meniscus from the body with intrameniscal/parameniscal cyst formation, moderate joint effusion with synovitis with a slit-like popliteal cyst, scarring of various acute and chronic sprains and significant aggravation of degenerative changes. (PX3, 4/3/14; PX5, 4/3/14). Thinning and irregularity of the cartilage of the patella along the median ride and lateral/medial facet with subchondral cystic change and thinning and superficial irrecularity of the cartilage along the trochlear groove were also noted. *Id.* Petitioner was referred to an orthopedic surgeon, Dr. Wright, and instructed to "let [him] assume care." (PX3, 4/8/14, 4/9/14). Petitioner was discharged from therapy and recommended for surgery on April 29, 2014. (PX5, 4/29/14 Full Discharge Note). Petitioner saw Dr. Rick Wright on April 30, 2014, and Dr. Wright agreed with the recommendation or surgery and proposed arthroscopic meniscectomy and microfracture versus chondroplasty to address the lateral femoral condyle. (PX6, 4/30/14).

On May 20, 2014, Respondent had Petitioner examined by Dr. Richard Rende. Dr. Rende's report is not in evidence; however, he testified by way of deposition on February 17, 2015. (RX1).

On June 24, 2014, Petitioner underwent arthroscopic partial medial meniscectomy surgery with Dr. Wright. (PX6). During surgery, Dr. Wright noted that Petitioner's medial compartment demonstrated cartilage injury, and he also performed arthroscopic lateral femoral condyle microfracture surgery. *Id.* Petitioner slowly progressed with post-surgery therapy. (PX4). Dr. Wright recommended that Petitioner continue to ice and elevate his right knee to control swelling. (PX6, 8/4/14, 11/3/14). Petitioner began his therapy on July 2, 2014, and reached and/or made progress toward milestones in his therapy on July 30, 2014, September 11, 2014, until he met all of his goals on October 29, 2014. (PX4, 7/2/14, 7/30/14, 9/11/14, 10/29/14). As of October 29, 2014 Petitioner was noted to be doing steps carefully but without pain. He completed a questionnaire that day that asked about certain physical activities and Petitioner indicated the degree of difficulty he had with those activities. Running, jumping, kneeling, and stair climbing were among the activities Petitioner marked as difficult.

Petitioner was discharged by Dr. Wright on November 3, 2014. According to the doctor's notes, Petitioner was doing well but the doctor also advised him to continue ice and elevation of his knee to control any swelling that might occur as he returned to work. Petitioner was told to contact the doctor if he had any new complaints or problems. (PX 5)

Petitioner resumed full duty work on November 3, 2014. (PX6, 11/3/14).

At Respondent's request, Petitioner was examined a second time by Dr. Rende. This exam took place on July 22, 2014. A written report was prepared; however, it is not a part of the record.

Dr. Rende re-examined Petitioner once again on January 19, 2015. He again issued a report but it is not a part of the record. As a result of this exam, Dr. Rende provided an impairment rating.

The deposition of Dr. Rende was taken on February 17, 2015. (RX 1) Dr. Rende is a licensed physician in the states of Missouri and Colorado. He specializes in sports injuries with his primary emphasis being hips, and shoulders. He is board certified. Dr. Rende presently has two practices: one in Colorado and one in St. Louis. In Colorado he is the orthopedic physician for a group of family practice doctors and manages/treats their patients' orthopedic injuries. When he is in St. Louis, Dr. Rend performs independent medical examinations for Orthopedic Associates. Dr. Rende usually returns to St. Louis on a monthly basis.

Dr. Rende testified that he performed three examinations for Respondent's third party administrator, Genex Services. He charged six to eight hundred dollars for each examination and, while he performed an impairment rating examination at the time of his third examination of Petitioner, he did not believe that he charged any further fee. Dr. Rende's deposition charge was $1,250.00.

Dr. Rende testified that when he initially examined Petitioner in May of 2014 he took a history of Petitioner's injury, reviewed his treatment with him, and independently reviewed medical records provided to him (ie. Dr. Smith and Dr. Wright). He also reviewed an April 1, 2014 MRI film. As a result of his examination of Petitioner (for which he could not recall the length of time it took) he diagnosed Petitioner with a lateral meniscus tear and a moderate amount of pre-existing degenerative osteoarthritis, the former of which he felt was caused by Petitioner's work injury. He agreed with the need for arthroscopic surgery but did not feel a microfracture procedure was necessary due to Petitioner's weight. He further testified that the microfracture surgery would be aimed at Petitioner's degenerative osteoarthritis which he did not feel was caused or aggravated by Petitioner's work injury. He added, however, that even if it was, it would not change his opinion. Pending surgery, Dr. Rende felt Petitioner needed restrictions. (RX 1, pp. 1 – 16)

On July 22, 2014 Dr. Rende re-examined Petitioner who, by then, had undergone his surgery. Petitioner was still on crutches. Dr. Rende reviewed the operative report pertaining to the partial meniscectomy but he was not provided with the operative report for the microfracture procedure. His physical examination was limited since Petitioner was post-op but he felt that since Petitioner was non-weight bearing the most he could in terms of work was sedentary in nature. (RX 1, pp. 16 – 20)

Dr. Rende's third examination of Petitioner was held on January 19, 2015. Petitioner reviewed his post-operative recovery and treatment with the doctor and had eventually returned to work in his normal job working ten to fourteen hour long days. Petitioner reported some slight increase in his symptoms and was still walking with a limp and taking Aleve for pain. Dr. Rende reviewed Dr. Wright's records through November 3, 2014. He also performed a physical examination.

On physical examination Petitioner had well healed punctures of the right knee, and range of motion from zero to 130 degrees. Petitioner had limited additional flexion due to his calf touching his thigh as he is a big man. He had normal varus valgus stress testing and no joint line tenderness medially or laterally. McMurray's sign was negative. Apley grinding was negative. Petitioner had no evidence of patellar femoral compression or pain or crepitation. Dr. Rende did note some mild crepitation of the knee in general with range of motion. Petitioner also had some one plus effusion, noting "four plus" was considered severe. Petitioner had no quadricep atrophy or loss of strength.

Dr. Rende testified that he felt Petitioner was at maximum medical improvement and that he was requested to provide a permanent partial disability impairment report as part of the exam. [1] Dr. Rende testified that he went through an accreditation in Colorado for interpreting impairment ratings based on the AMA Guides. The course took two weeks. He became re-accredited in December of 2014.

Dr. Rende testified that he did not have Petitioner "file [sic – fill out]" any forms during that exam. (RX 1, p. 24) He went on to explain that he performed the necessary examination and the referred to the Sixth Edition Guide under knee injuries. Using diagnosis-based codes, he performed a total impairment with both diagnoses (that is the pre-existing degenerative osteoarthritis and then the lateral meniscus tear). He then subtracted the percentage of impairment due to the work injury and calculated the impairment. In Petitioner's case, Dr. Rende concluded that Petitioner had a two percent impairment of the leg at the level of the knee due to the lateral meniscus tear.

Dr. Rende also explained that there are grade modifiers ranging from "A" to "E". Petitioner's lateral meniscus placed him in a class of one and the default grade of C was given, resulting in two percent lower extremity impairment. He then used the grade modification or functional history in terms of pain and stiffness to increase Petitioner's grade to "D." That would still be two percent lower extremity impairment. Petitioner's one plus effusion was consistent with a mild problem so he didn't further modify the grade and left Petitioner at "D" or two percent. (RX 1, pp. 26-27) Dr. Rende also did the same calculation for the lesion over Petitioner's medial femoral condyle and looking at primary knee arthritis and a full thickness articular defect Petitioner would be placed in a class of one with a default grade of "C" and seven percent lower extremity impairment. Petitioner's functional history was consistent with a mild problem which would not further modify the grade. He had some one plus effusion on physical exam which slight loss of flexion which Dr. Rende attributed to Petitioner's body habitus and so his grade remained a "C". Finally, since diagnostic

[1] The rating report is not a part of the deposition.

studies could not be used since it was the MRI scan and radiographs used to determine the diagnosis, Dr. Rende concluded Petitioner had a seven percent lower extremity impairment secondary to the diagnosis of primary knee arthritis. In order to reconcile those two together Dr. Rende relied upon Appendix A and use the combining table which results in a nine percent lower extremity impairment total which results in whole person impairment without apportionment of four percent. If he then apportioned out the primary knee arthritis (7 % lower extremity impairment or 3% whole person impairment) using Table 16.10 he came up with a whole person impairment of one percent due to the lateral meniscus tear and subsequent surgery. (RX 1, p. 29)

On cross-examination Dr. Rende testified that he currently resides in Colorado and does not have an active practice in the St. Louis Area. *Id.* at 32. He admitted that he only comes to the St. Louis area to perform IMEs and give depositions at the behest of insurance companies, third party administrators and defense attorneys, which he testified constitutes approximately 80% of his practice. *Id.* at 32. He admitted that the he has not stepped into an operating room and performed surgery since 2005. *Id.* at 33. When he was asked to describe the process of microfracture surgery, he stated, "I did not review that portion of the operative report. But I can still answer the question." *Id.* at 36. He testified that the purpose of the procedure is to stimulate vasculature so that fibrocartilage growth will develop over the end of the defect and heal. *Id.* at 36. Dr. Rende acknowledged that he never saw any intra-operative photographs of Petitioner's knee nor did he review the operative report pertaining to the microfracture procedure. He further testified that this was the first time in his career where he had seen two separate operative notes for a procedure. Dr. Rende didn't believe there was ever an indication for a microfracture procedure involving the patella because it's sheer stress and doesn't typically work. In Petitioner's case he underwent the microfracture procedure on the lateral femoral condyle and Dr. Rende didn't believe Petitioner had sustained any injury to Petitioner's lateral femoral condyle. He acknowledged that Dr. Wright found a 1.5 cm. defect on Petitioner's femoral condyle but nevertheless did not feel that constituted "an injury"; rather, it was a degenerative condition. (RX 1, pp. 38-39) Upon further questioning, Dr. Rende indicated he didn't know if Petitioner's defect was symptomatic before the accident. He was unaware of any treatment to Petitioner's right leg in 2013 or 2012. "To [his] knowledge, he had no prior treatment." (RX 1, pp. 40 - 41) Dr. Rende acknowledged that he didn't examine Petitioner's left leg.

Dr. Rende was asked if the trauma sustained by Petitioner on January 27, 2014 could have caused a left femoral condyle defect to which the doctor replied, "It could, yes." (RX 1, p. 41) However, when asked if the care and treatment Petitioner received was appropriate, he answered, "Yes, except for the mirofracture, I don't think that it was indicated." (RX 1, p. 42) He did not think seeing the photographs would change his opinion regarding the microfracture. He was later asked where the microfracture lateral femoral condyle came from if not Petitioner's injury and Dr. Rende referenced the MRI scan that showed diffuse degenerative changes. When then asksed if it was just a coincidence that Petitioner became symptomatic after his accident, Dr. Rende replied he didn't know how to answer the question. (RX 1, pp. 54-55)

Dr. Rende testified that he has spent the bulk of the last decade in Colorado and was unaware tha tDr. Wright was the team physician for the St. Louis Blues and the associate head physician for the St. Louis Rams.

Turning to the impairment rating it was Dr. Rende's understanding that Petitioner worked as a route salesman diving a panel truck and delivering uniforms and rugs. He felt Petitioner would probably lift small rugs rolled up and place them on a bin at the top of his truck and lift uniforms placed on hangers and put

them on wheeled racks for delivery. He thought he probably lifted ten pounds but never really asked him. He did not feel Petitioner had to complete a quick dash form because there is no need to do so when using diagnosis-based criteria.

Dr. Rende agreed that impairment is defined by the AMA Sixth Edition as a significant deviation, loss or loss of use of any body structure or any body function and that the Guide further states in Chapter one that patients experience significant activity limitation and participation restrictions in the absence of demonstrable impairment. In terms of activity limitations Dr. Rende noted that Petitioner (per his report) had returned to work and was working five days a week up to ten nor twelve hours per day with a slight increase in his symptoms and he walked with a limp. He was taking Aleve intermittently for his pain and reported knee stiffness with weather changes. Dr. Rende had no reason to doubt the validity of Petitioner's statements.

Dr. Rende went on to explain that a partial meniscectomy places a patient automatically in a class of one. He testified, however, that *his* impairment rating would not change even if he reviewed the microfracture portion of the operative report, "Because I performed the PPI rating based upon my opinions." *Id.* at 58.

At trial Petitioner testified that his condition im proved as a result of his surgery and three months of physical therapy. Petitioner, however, continues to experience swelling and significant pain in his right leg after working a full shift. Petitioner attempts to control the swelling by icing throughout the day and taking Motrin before he begins his work route. Petitioner testified that he ascends and descends stairs in the course of his duties, and he finds himself compensating for his right knee with his left leg. He testified that he has modified the way he exits his truck and depends on the handle and his left leg to bear his weight . His testified that his route takes longer to run as a result thereof, and Respondent has discussed cutting his route. Petitioner testified that this will damage his earning capacity because his pay is based on commission. Petitioner testified that he has great difficulty kneeling to pray as a result of his injury.

The Arbitrator concludes:

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner's current condition of ill-being in his right knee, including the lateral femoral condyle injury, is causally connected to his undisputed accident of February 17, 2014.

When a pre-existing condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers' Comp. Comm'n*, 864 N.E.2d 266, 272-273 (5th Dist. 2007).

An accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 797 N.E.2d 665, 672 (Ill. 2003). [Emphasis original]. "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 723 N.E.2d 846 (3d Dist. 2000). Employers are to take their employees as they find them. *Sisbro, Inc. v. Indus. Comm'n*, 797 N.E.2d 665, 672 (Ill. 2003); *A.C. & S. v. Indus. Comm'n*, 710 N.E.2d 837 (1st Dist. 1999) citing *General*

Electric Co. v. Indus. Comm'n, 433 N.E.2d 671, 672 (Ill. 1982). If a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Sisbro, Inc. v. Indus. Comm'n*, 797 N.E.2d 665, 672 (Ill. 2003); *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967); *see also Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 362 N.E.2d 339 (Ill. 1977).

A causal connection between one's work duties and an injured condition may be established by a chain of events showing a workers' compensation claimant's ability to perform duties before the date of accident and an inability to perform the same duties following date of accident. *Darling v. Indus. Comm'n of Illinois*, 176 Ill. App. 3d 186, 530 N.E.2d 1135 (1st Dist. 1988). Circumstantial evidence, especially when entirely in favor of the petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Industrial Comm'n,* 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724 (4th Dist. 1994); *International Harvester v. Industrial Comm'n,* 93 Ill.2d 59, 442 N.E.2d 908 (Ill. 1982).

The uncontroverted evidence demonstrates that Petitioner herein did not suffer from any right knee complaints and required no treatment prior to his accident. Dr. Rende acknowledged same during his deposition. (RX1, p.39-41). Immediately following the accident, during which Petitioner distinctly noted feeling a crunching sensation, he experienced excruciating pain. Consequently, it is clear that Petitioner's current condition of ill-being as a whole is related to the undisputed accidental injury of February 17, 2014. Whether Petitioner's lateral femoral condyle injury is acute or an aggravation of a pre-existing condition, it is compensable as the accidental work injury is the only thing which prompted treatment for the condition. *Sisbro supra.*

The Arbitrator finds that the causation opinion of Dr. Rende is not persuasive. Despite acknowledging on cross-examination that Petitioner's chondral injury could have been caused by the February accident which created a crunching sensation and pain, despite acknowledging that Petitioner did not suffer from any structural injury prior to the accident, despite acknowledging that Petitioner had not required any care whatsoever, structural or nonstructural, for over 14 years prior to the accident, Dr. Rende testified that "he did not see any evidence" that Petitioner's lateral femoral condyle condition was caused or aggravated by the February 17th accidental injury. (RX1, p.15, 16, 39-41). However, he didn't see the operative report either and no longer performs surgery, unlike Dr. Wright. Dr. Rende's concession on cross-examination was enough to lessen the persuasiveness of his opinions especially given the chain of events present in this case.

Issue (L): What is the nature and extent of the injury?

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: The Arbitrator notes that Dr. Rende gave an impairment rating of both 2% and 1% for Petitioner's right knee meniscus injuries. (RX1, p.25, 29). While ignoring Petitioner's degenerative conditions, his lateral femoral condyle defect, and his microfracture

surgery in his evaluation, he acknowledged that Petitioner's rating per the Guides ***should be*** higher if these were included. *Id.* at 58, 59. He testified, however, that *his* impairment rating would not change, however, "Because I performed the PPI rating based upon my opinions." *Id.* at 58. The Arbitrator gives little weight to the impairment rating as it did not adequately evaluate Petitioner's injuries causally related to his accident.

(ii) **Occupation**: At the time of his accident, Petitioner was employed as a sales delivery driver for Respondent, which requires him to perform lifting, stair climbing, and a significant amount of ambulation as he loads, unloads and delivers rugs and uniforms in his sales route. He has returned to that same position although he testified he tends to compensate for his right knee by favoring his left leg when stair climbing and has modified the manner in which he exits his work truck. Accordingly, the Arbitrator affords some weight to this factor.

(iii) **Age**: Petitioner was 49 years old at the time of his injury. This factor is given some weight.

(iv) **Earning Capacity**: Petitioner testified that due to modifications he has made in the manner in which he performs his job it takes longer for him to run his route. He further testified that Respondent has discussed cutting his route as a result of which he will see a reduction in earnings as he is paid by commission. At this time any diminishment in Petitioner's future earning capacity is speculative as no specific action has been taken. No other evidence was presented as to whether Petitioner's earning capacity has been affected by his disability.

(v) **Disability**: Petitioner testified that his condition proved as a result of his surgery and three months of physical therapy. Petitioner, however, continues to experience swelling and significant pain in his right leg after working a full shift. Petitioner attempts to control the swelling by icing throughout the day and taking Motrin before he begins his work route. Petitioner testified that he ascends and descends stairs in the course of his duties, and he finds himself compensating for his right knee with his left leg. He testified that he has modified the way he exits his truck and depends on the handle and his left leg to bear his weight. He testified that his right knee condition negatively impacts his employment, as it takes longer for him to service his route and Respondent has discussed reducing his route, which would reduce his pay based on commission. Petitioner testified that he has great difficulty kneeling to pray as a result of his injury. The Arbitrator finds that Petitioner was a credible witness, and his testimony as a whole is corroborated by his medical records, including his therapy records. The Arbitrator places weight on this factor.

After considering all of the foregoing factors, the Arbitrator concludes that Petitioner has sustained serious and permanent injuries resulting in 20% loss of use of the right leg.

****

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Dave Robson,
Petitioner,

vs. NO: 11 WC 43010

Continental Tire The Americas, Inc.,
Respondent,

15IWCC0969

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 accident, medical, temporary total disability, causal connection, permanent partial disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 7, 2015 is hereby affirmed and adopted.

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.

~~No bond is required for removal of this cause to the Circuit Court. 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: DEC 2 2 2015

Mario Basurto

David L. Gore

Stephen Mathis

MB/mam
o:11/5/15
43

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ROBSON, DAVE
Employee/Petitioner

Case# **11WC043010**
13WC030286

CONTINENTAL TIRE THE AMERICAS INC
Employer/Respondent

15IWCC0969

On 1/7/2015, 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 0.11% 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:

1312 BEMENT & STUBBLEFIELD
GARY BEMENT
PO BOX 23926
BELLEVILLE, IL 62223

0299 KEEFE & DePAULI PC
NEIL A GIFFHORN
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

15IWCC0969

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

- ☐ 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

Dave Robson
Employee/Petitioner

v.

Continental Tire The Americas, Inc.
Employer/Respondent

Case # **11** WC **043010**

Consolidated cases: **13 WC 030286**

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **November 6, 2014**. 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 _____

15IWCC0969

FINDINGS

On **09/09/11**, 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 not*** 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**44,928.00**; the average weekly wage was $**864.00**.

On the date of accident, Petitioner was **50** years of age, ***married*** with **2** 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 $- for TTD, $- for TPD, $- for maintenance, and $**7,700.00** for other benefits, for a total credit of $**7,700.00**.

Respondent is entitled to a credit of $**26,713.07** under Section 8(j) of the Act.

ORDER

Petitioner has failed to prove he has sustained an accident of either traumatic or repetitive traumas on September 9, 2011, that arose out of and in the course of his employment with Respondent or that his condition of ill-being in his left knee was causally-related to his injury. Petitioner's claims for compensation are denied and no benefits are awarded.

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.

Nancy Lindsay
Signature of Arbitrator

January 2, 2015
Date

JAN 7 - 2015

Dave Robson vs. Continental Tire The Americas, Inc., 11 WC 043010; 13 WC 030286

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner has two claims pending against Respondent. Both allege an accident date of September 9, 2011 and injury to Petitioner's left lower extremity. Prior to the hearing both claims described the nature of the injury as "repetitive trauma;" however, at the commencement of the hearing Petitioner amended the Application for Adjustment of Claim in case number 13 WC 30286 to allege a specific trauma occurring on September 9, 2011. (AX 2, 3) On oral motion at the time of trial, both cases were consolidated with the parties requesting that one decision issue for both cases. The disputed issues are identical for both cases. Damian Dawson was present throughout the hearing as Respondent's representative. Petitioner was the sole witness testifying.

The Arbitrator finds:

Pre-Hearing Evidence

Petitioner's medical records from Southern Illinois Primary Care Associates were admitted into evidence as RX 2. These records go back to 1994. Over the years Petitioner has treated there for a variety of health issues including, but not limited to, shoulder complaints, severe degenerative lumbar disc disease, neck pain, and upper extremity complaints. In July of 2000 Petitioner was examined by Dr. Froehling, an orthopedic surgeon, in regard to back and neck pain stemming from what the doctor called a "complicated history." He noted Petitioner had been working and doing okay for about a year before their visit despite daily back and neck pain which he had learned to live with. In the previous two years there had been numerous changes at his work which led to increased rates of production which Petitioner felt was worsening his condition. Petitioner's job was noted to be that of a tire builder for trucks and Petitioner was noted to be pretty "worn out" by the time he got home after a twelve hour shift. Petitioner reported back pain and occasional alternating leg pain. He also had neck pain. Dr. Froehling recommended Vicoprofen noting Petitioner was working without restrictions and managing his pain with medication. In October and November of 2000 Petitioner was treating for bilateral upper extremity issues and ongoing neck pain, primarily. Dr. Kovalsky, a specialist in spine surgery, began treating Petitioner's low back pain and radicular symptoms around this time. (RX 2)

Petitioner was again examined by Dr. Kovalsky on February 15, 2006. Petitioner was working full-time for Respondent, hadn't missed any time from work but was noticing back pain aggravated by

prolonged standing or activity and usually relieved by rest. Petitioner was working without restrictions as a fork lift operator. By July of 2006 Petitioner was feeling much better having undergone facet injections and rhizotomies for his back which dramatically helped his pain. Petitioner was on work restrictions which he wanted changed so that he could bid on a different job. As of August 15, 2007 Dr. Mitchell noted Petitioner was working for Respondent with a permanent 75 lb. lifting restriction and doing well. Petitioner reported feeling good, losing weight, exercising regularly and working as a tire builder which didn't aggravate his symptoms. In February of 2010 Dr. Kovalsky was treating Petitioner for a work-related lower back injury with some associated left buttocks and leg pain. Petitioner was working full duty for Respondent and not missing any work but mentioned noticing some increased buttocks and leg pain if he overdid it at work or engaged in any wood cutting or chopping for his woodstove at home. Petitioner was noted to be taking Tramadol, Vicodin, and Lyrica, as needed for control of his symptoms. As of August 10, 2011 Dr. Kovalsky noted Petitioner was on a maintenance exercise program and medically managing his back pain. He was still taking medications as needed for symptom relief but was working full-time, not missing any work, and exercising regularly. Petitioner's back and leg pain was no worse than six months earlier -- "very tolerable." Dr. Kovalsky noted, "He's had no problems at work." (RX 2)

Petitioner presented to Dr. Mitchell at Southern Illinois Primary Care on September 13, 2011, reporting that for the previous two weeks he had been experiencing low back pain and on Friday[1] he went to his chiropractor for adjustments and then went to work after which he had left knee pain and stiffness. He reported experiencing an increase in pain and swelling in the left knee while off work on Saturday and Sunday. It is specifically noted "The patient denies any type of injury at work or injury that caused the pain the start." (PX 5) Dr. Mitchell referred the claimant for an orthopedic evaluation at Tri-State in Evansville, Indiana. There is no mention of Petitioner's work status. (PX 5)

Petitioner presented to Dr. Hamby's office at Tri-State Orthopedics on September 14, 2011 where he was examined by a physician's assistant. He gave a history of left knee pain since September 9, 2011, with "no injury and no trauma." (PX 1) Petitioner admitted to having left knee surgery in 1979 and being told he had cartilage injury but it was not repaired. Petitioner was limping and using a cane. He described pain around his knee cap with some swelling. Petitioner was taking Mobic. He also

[1] September 9, 2011

mentioned undergoing a hip adjustment on the right the week before. Upon physical examination, Petitioner was diagnosed with left knee pain and arthritis. The nature of his condition and the likelihood of him "flaring up his arthritis and symptoms" were discussed. Petitioner's symptoms were to a point that Petitioner elected to receive an injection that day. There was no mention of Petitioner's work status. (PX 1)

Petitioner returned to Dr. Hamby on September 26, 2011. The injection had helped; however, he still felt pain over the lateral aspect of his knee where he had previously undergone surgery. Petitioner reported that Respondent's doctor would not allow him to return to work without an MRI. Petitioner's diagnosis remained left knee degenerative joint disease and he was given a new prescription for Mobic, an excuse to return to work, and released to return as needed. (PX 1)

On October 11, 2011 an accident report was completed by Petitioner indicating an injury to his left knee on 9/9/11 at 3:30 p.m. Petitioner described a twisting event and indicated he had reported it on September 12, 2011, Petitioner's last day of work. (RX 1, Res. Ex. C)

Petitioner telephoned Respondent's dispensary on October 12, 2011 reporting that he had an MRI scheduled for his left knee per his primary care physician. Petitioner was then given an appointment with the company doctor for the following Monday. (PX 3)

Petitioner signed his Application for Adjustment of Claim in case number 11 WC 043010 on October 14, 2011. (AX 2) He also underwent a left knee MRI that day. (PX 1,2)

On October 17, 2011 Petitioner was seen at Respondent's dispensary where he was examined by the company physician whose notes (found in PX 3) reflect the MRI findings from Petitioner's MRI of October 14, 2011. According to the doctor, the MRI showed several "issues" -- a torn ACL, several meniscus tears, effusion. Petitioner's doctor was referring him to an orthopedist. The doctor's notes include the following, "Patient states he thinks he 'tweaked' his knee here at work, and that walking on concrete here at work has contributed to it. He will discuss with workers' compensation administrator." (PX 3)

On October 18, 2011, Petitioner returned to Tri-State Orthopedics and was seen by Dr. Deppe. He gave a history to Dr. Deppe that "he states that he did not really have an injury, just kind of woke up with left knee pain." (PX 1) Dr. Deppe noted Petitioner had tried to go back to work but Respondent

would not let him without getting an MRI so Dr. Mitchell had ordered one. Dr. Deppe noted that the MRI was obtained and showed degenerative changes. The doctor recommended Petitioner undergo physical therapy. He also felt Petitioner should be off work. (PX 1)

Petitioner attended a physical therapy appointment on October 20, 2011. He gave a history of twisting his knee on September 9, 2011 and feeling a pop in his knee followed by instant pain and swelling. Petitioner also reported going to work on Monday[2] and having to leave after four hours due to increased pain. Petitioner had been told he could not return to work until he underwent an MRI. (PX 4)

Petitioner was seen again on November 1, 2011, reporting soreness that Dr. Deppe thought was muscle soreness from the therapy. Petitioner reported that the soreness in the medial side of his knee and the patellofemoral joint was something he could live with. Nothing much more was available except the knee replacement but the doctor felt Petitioner should hold off as long as possible and recommended cortisone injections every three to four months, non-steroidals, strengthening, and use of an elastic sleeve. Petitioner reported the sleeve was very effective and Dr. Deppe felt that since that was the case, Petitioner could continue to work on a regular basis although crawling might be troublesome. Petitioner explained that crawling wasn't a major problem. Otherwise, pain should be Petitioner's guide for going back to work. Petitioner was returned to work on November 7, 2011. (PX 1)

Petitioner was examined by Respondent's doctor on November 7, 2011 and allowed to return to work at that time. The visit was described as non-occupational. (PX 3)

On November 8, 2011 Respondent completed a Form 45 indicating an accident date of ~~"9/12/11" at 15:30 when Petitioner "Twisted left getting off a walkie in "Trucker Breaker in tire room."~~ (RX 1, Res. Ex. C) That same day an Incident Report was completed for an accident occurring on September 9, 2011. (RX 1, Res. Ex. C)

Dr. Deppe next saw Petitioner on January 5, 2012. Petitioner reported he was doing okay and taking Mobic but not really noticing any difference. Petitioner was exercising his knee but having trouble doing so due to discomfort. Petitioner also reported lots of pain with extended periods of activity. "He does work on concrete all day and says his knee is really quite sore afterwards." Petitioner had full range of motion of his knee and a small joint effusion. Petitioner was noted to be exquisitely tender in the

[2] September 12, 2011

medial joint line and lateral joint line. An injection was provided and a knee reconstruction was discussed but Petitioner was encouraged to hold off as long as possible. (PX 1)

On February 15, 2012 Petitioner was again seen by Dr. Kovalsky for his old work-related lumbar injury with some chronic low back pain and minor radicular symptoms on the left. Petitioner reported taking 4 Tramadol a day, between 3 and 4 Vicodin ES a day and Lyrica 100 bid. Overall Petitioner's back pain was described as "relatively well controlled." Petitioner also reported sustaining a twisting injury to his knee a few months earlier and being seen by the company doctor and then his family doctor who referred him to a surgeon where he was diagnosed to have fairly significant joint disease and degeneration of the left knee. The doctor advised him to try and live with it as long as he could and then undergo a knee replacement. Petitioner reported that limping on his left knee had slightly increased his back pain but, overall, his knee was presently more bothersome than his back. Dr. Kovalsky noted, "The company doctor insisted that he have an MRI scan done of his left knee which was done, and he apparently has a meniscal tear." The surgeon did not recommend surgery for the tear since Petitioner ultimately needed a knee replacement in the near future. On exam Petitioner had some medial joint and mild patella-femoral symptoms but no instability. Realizing he was not a knee specialist, Dr. Kovalsky suggested to Petitioner that he consider seeing Dr. Houle, his partner and a knee specialist. In the interim, Petitioner was to continue with his medications and return in six months. Dr. Kovalsky did not feel the limping would have a significant effect on Petitioner's back. (RX 2)

On March 12, 2012, Petitioner returned to Dr. Deppe reporting he was in terrible pain and having difficulty getting around. The last shot had not helped much and Petitioner was having trouble sleeping at night. Despite being off work for the weekend he was sore and in pain. His right knee hurt, his hips hurt, and his long-term back problem was noted. Dr. Deppe examined Petitioner's back, hips and both knees. Petitioner expressed concern that his left knee was going to give away and he was overdoing it. The doctor's notes are a little confusing regarding his examination findings on Petitioner's knees but there were positive signs on both sides. Right knee x-rays showed mild arthritis on the medial side which the doctor attributed to overuse. Petitioner's hip x-rays showed minimal arthritis on the left and "hardly any" on the right. Dr. Deppe's assessment was chronic anterior cruciate liagament deficiency with significant tri-compartmental arthritis, persistently painful, and not responding to conservative treatment, mild arthritis of the right knee and, possibly, a small meniscus tear, although findings were equivocal and the history for same not strong, mild arthritis of both hips, and long-term

degenerative back arthritis. Petitioner was noted to be having a "reaction" to the sleeve, too much pain, and nothing seemed to be working. They discussed changing jobs which Petitioner indicated was not a good option. A full discussion regarding a knee replacement was held with Petitioner electing to proceed. (PX 1)

A left knee arthroplasty was performed on June 4, 2012. (PX 1)

On June 7, 2012 Dr. Collard issued a written report based upon his review of medical records as requested by Respondent's attorney. Dr. Collard concluded that Petitioner's significant degenerative joint disease in his left knee was not likely related to repetitive or traumatic injury. He felt Petitioner had a chronic ACL tear dating back to 1979 which accounted for his current symptoms and complaints rather than any repetitious injury or traumatic injury and that these are natural occurring consequences of a chronic ACL deficient knee and would occur with normal activities of daily living, whether Petitioner was working or not. In sum, he felt Petitioner's condition had no relationship to an occupational disease. (RX 1, Res. Ex. B)

Post-operatively Petitioner made slow progress initially. (PX 1)

On August 8, 2012 Dr. Matthew Collard issued another written report to Respondent's attorney based upon a records review. His opinion on causation remained unchanged. While he felt Petitioner's arthritis was caused by his ACL deficiency rather than a repetitive traumatic injury associated with an occupational disease, he felt surgery was appropriate(RX 1, Res. EX. D)

On August 24, 2012, Petitioner was seen by Dr. Deppe, noting significant improvement and doing very well. Petitioner was released to return to work and placed at maximum medical improvement. (PX 1)

On September 19, 2012, Petitioner was evaluated by Dr. Matthew Collard at the request of Respondent and a written report issued. (RX 1, Res. Ex. E) Petitioner gave a history that on September 9, 2011 he twisted his left knee getting out of a walkie while turning. Petitioner told Dr. Collard that he did have major reconstructive surgery and he reported some pain that he was able to work through from that prior surgery. Dr. Collard had reviewed a large amount of prior medical records and was of the opinion that the claimant's total knee arthroplasty was not related to his employment, but rather from the prior surgical intervention. Dr. Collard felt Petitioner's arthroplasty was stable and that he

should do well overall. He felt the procedure was not related to his employment but earlier surgery in 1979. He specifically stated that the twisting injury on September 9, 2011 was not the reason Petitioner needed a total knee replacement. (RX 1, Res. EX. E)

On August 29, 2013 Petitioner signed his Application for Adjustment of Claim in case number 13 WC 30286 alleging repetitive trauma injuries to his left lower extremity. (AX 3)

The deposition of Dr. Deppe was taken on June 10, 2014. When asked about the Petitioner's work activities, he testified that they talked about it quite a bit. They talked about the fact that Petitioner was standing on concrete and doing lifting and pulling, although the he did not independently recall the specific job duties. He was given the following hypothetical facts regarding causation:

> "...he stands in front of a machine with a drum that's operated by foot pedals. And the foot pedals cycle the machine to turn the tire. There's a reverse, a forward, and an advance. And he would have to use both feet to push these tires, which do require some force. Immediately above the pedals is a platform that the operator will step up will then use a stitcher to stitch part of the tire, and them come back off of the platform, recycle the machine, and the tire will come off. He will then turn, grab another tread, throw it back onto the machine, and repeat the procedure. That will happen several times a day generally. In addition to those activities – and, by the way, let me add that this is standing in a small area on a concrete floor with no cushioning. This job also involves, in addition to pushing pedals, and the twisting to throw the treads, there is something called a cassette breaker, which is a cart that weight approximately 400 pounds that he will have to push in and out of the machine, and that would be by... taking your hands and your legs and pushing the machine. There's also something called a tread book, which is substantially heavier. That's estimated at several thousand pounds, also on wheel, that has to be pushed manually in and out of the machine...this is eight hours a day for some 20 years...in September 2011, while getting off a walkie...he felt a pop in his knee when he twisted his knee." (PX 7, p. 14-15)

Dr. Deppe answered, stating that he did not believe that the facts necessarily caused his injury, as it was caused by an anterior cruciate rupture that happened in the past. On the other hand, he believed that

the job as described to him absolutely aggravated Petitioner's condition. According to Dr. Deppe, if one has arthritis and an unstable knee, then standing on concrete and pushing heavy objects would aggravate it. (PX 7, pp 14-17) He also testified that it was possible that Petitioner may have needed the knee replacement even absent his job activities (PX 7, 22).

Dr. Deppe further testified that he released Petitioner to return to work on 8/29/12. (PX 7)

Dr. Deppe did admit that his partner, Dr. Hamby, did not take a history of the claimant having a traumatic injury at work and other than Petitioner standing on concrete, he did not have any independent understanding of Petitioner's job activities beyond the hypothetical as posed. (PX 7 at 20-21) Dr. Deppe also admitted that having a surgery like Petitioner had in the 70's would have ultimately led to a knee replacement even absent his activities of employment. (PX 7 at 22)

On August 15, 2014 Dr. Collard issued another report to Respondent's attorney. This report was based upon his review of Dr. Deppe's deposition transcript/testimony. He agreed with Dr. Deppe that Petitioner's arthritic condition in his knee was not caused by Petitioner's work or his work injury. He disagreed that Petitioner's work was an independent risk factor for arthritis or that standing on concrete would be an independent risk factor for it or play a role in the arthritis in Petitioner's knee. While he agreed that any potential injury could potentially aggravate an underlying chronic condition, including arthritis, it would be a temporary aggravation and not necessitate a total knee arthroplasty. Petitioner's MRI showed no acute injury. Dr. Collard was also of the opinion that if there was an aggravation related to the claimed injury this would have been temporary and not led to the need for a total knee arthroplasty. (RX 1, Res. Ex. F)

Dr. Collard was deposed on September 24, 2014. It was his opinion that the cause of Petitioner's condition was the prior surgical intervention and that the alleged traumatic event of September of 2011, did not cause, contribute, or accelerate the need for the knee replacement. (RX 1, pp. 14-17) With regard to repetitive trauma, Dr. Collard specifically disagreed that standing and walking on concrete would have accelerated Petitioner's arthritis and that otherwise his activities of employment did not impact the condition and need for surgery either. (RX 1, pp. 13-17)

The Arbitration Hearing

At the commencement of the hearing Petitioner amended his Application for Adjustment of Claim in 13 WC 30286 to allege a specific trauma, rather than repetitive trauma.

Petitioner testified that he had been employed with Respondent for 22 years, working 20 of those years as a tire builder. Petitioner testified that this job involved building tires including operating tire building machines and loading material (tire components) into the machines on wheeled carts called "cassettes." These cassettes weighted in excess of 1000 lbs. The cassettes would have to be changed as they ran out of material several times a shift and co-workers would oftentimes assist with moving the cassettes. The cassettes would be placed close to the machines by other workers called truckers. According to Petitioner, builders are required to push very heavy "cassettes" and "books" into the machine. Photos of these were admitted into evidence. Petitioner testified that some of these roll relatively easy, but most are very difficult. He stated that there is often rubber on the floor which makes rolling the carts difficult on the concrete floor. He testified that he had to push the carts with his whole body, pushing off with his legs. These heavy carts are pushed in and out of the machine multiple times each per shift.

In addition to pushing the carts, the operator of the machine had to operate three foot pedals. The actual tire building machines were operated by three foot pedals to cycle the tire building machines. Petitioner testified that this took very little force as it was a pressure switch inside the pedals. However, the pedals were operated several hundred times per shift. The pedals cause the machine to cycle forward or reverse or advance. The operator used both feet to operate the pedals. Petitioner was also required to step onto a pedestal in order to make a more even splice of the tire components. He had to step up on the hundreds of times each shift. After the tread is compete, the operator removes it, twists to throw off and twists back to grab another tread. The operator builds 150 tires per day.

It was Petitioner's testimony that on September 9, 2011, he was working in an altogether different position as a trucker. He did this as fill-in as necessary and while operating a "walkie" he turned to step off the walkie platform, which was approximately 6-inches off the ground. Petitioner explained that a "walkie" is a forklift type vehicle that is operated while standing. While turning and stepping he reported a pop. He admitted that prior to this he occasionally had pops in his knee when twisting or pushing. He also testified that he had been taking prescription Tramadol, Vicodin, and Lyrica, which was prescribed for back and neck problems and he admitted that this helped with general aches and pains also.

Petitioner testified that he reported his accident, but continued to work. The next work day he continued to have pain in his knee and reported to the nurse at the plant and was seen by the company

doctor and taken off work. Petitioner testified that he was not allowed to return to work by the company doctor until after he had an MRI, which was not performed until 10/14/11.

Petitioner also testified that he had a significant left knee surgery by Dr. Coast in 1979. He testified that he had little difficulty after that surgery and had returned to full duty work and was active in things like golfing with no difficulty.

Petitioner testified that he now golfs less and does not run. He continues to take Vicodin, Lyrica, and Tramadol for his back pain and this also impacts his knee. He reported that walking on concrete while shopping increases his knee pain.

Petitioner testified that he was honest with Dr. Hamby and Dr. Deppe. He did not remember seeing Dr. Collard.

Petitioner's medical bills are found in PX 6.

Photographs of the cassette and book were admitted into evidence. They show wheeled carts seemingly heavy in appearance and with rubber wheels. They are sitting on a concrete floor. (PX 8)

The Arbitrator concludes:

Issue (c): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Issue (f): Is Petitioner's condition of ill-being causally related to the injury?

Petitioner failed to prove that he sustained an accident on September 9, 2011, that arose out of and in the course of his employment with Respondent or that his condition of ill-being in his left knee was causally related to his employment with Respondent or a specific accident of September 9, 2011. Two theories have been presented by Petitioner --one for a specific incident and one for a repetitive trauma incident. Petitioner has failed to prove a compensable claim under either theory.

Petitioner's testimony that he sustained a specific trauma on September 9, 2011 is not corroborated by the medical records contemporaneous to the alleged event. Petitioner denied any specific accident or injury when seen by Dr. Mitchell on September 13, 2011 or Dr. Hamby on September 14, 2011 and September 26, 2011. Petitioner testified to informing his supervisor and being seen by the nurse at the company dispensary; however, he submitted no medical records in support thereof. While these records are arguably Respondent's records and in its possession, the Arbitrator notes that Petitioner submitted the dispensary records as his exhibit, thereby indicating that the records were available to him and he chose not to produce them. As it stands, Petitioner's injury is described as "non-occupational" according to those records in evidence (PX 3).

The first mention of an accident as Petitioner described at arbitration is found in an October 11, 2011 accident report completed by Petitioner. Petitioner describes a twisting event occurring on September 9, 2011. The next mention is found in PX 3 for the dispensary visit of October 17, 2011. At that time Petitioner reported "He states he thinks he 'tweaked' his knee here at work, and that walking on concrete here at work has contributed to it." Petitioner then saw Dr. Deppe on October 18, 2011 and again denied any real injury stating, he just kind of "woke up with left knee pain." Two days later, at a therapist's visit, he reported feeling a pop in his knee followed by instant pain and swelling. The first problem with all of this is that it falls right around the time Petitioner signed his Application for Adjustment of Claim in the first filing (11 WC 30286). Curiously, that filing alleged repetitive trauma, not specific trauma. Furthermore, the descriptions of the alleged accident occurring at this time are inconsistent. Most notably, if Petitioner did indeed feel a pop and immediate pain and swelling as he told the therapist that is completely inconsistent with his testimony that he didn't think it was that serious at the time. In this instance, the Arbitrator concludes that the contemporaneous medical histories have greater weight than Petitioner's testimony at trial.

Even assuming, arguendo, that Petitioner did sustain a compensable accident on September 9, 2011 he failed to prove that his current condition of ill-being in his left knee is causally connected to that specific accident. Dr. Deppe never gave an opinion regarding causation and a specific accident. Furthermore, after the alleged events of September 9, 2011 Petitioner was released to return to work without restrictions on November 7, 2011 and he did so. Thereafter, he returned to see Dr. Deppe in January of 2012; however, Petitioner made no complaints of knee problems he associated with the alleged accident of September 9, 2011; rather, his pain complaints were associated with extended periods of activity in general and soreness after working on concrete all day. Petitioner's claim in 13 WC 30286 is denied.

With regard to a repetitive trauma theory (claim number 11 WC 43010), there are several troubling aspects. First, Petitioner's medical records going back to 1994 contain no reference or suggestion of any correlation between Petitioner's job duties, or standing on concrete, and any left knee symptoms or complaints until well after Petitioner had filed his first claim herein. Thus, nothing in the medical records suggests a gradual development or onset of knee symptoms that Petitioner associated with his job duties or set-up. Second, the causation/"arising out of" dispute in the repetitive trauma claim centers around the opinions of each party's expert. There is no dispute that Petitioner required a total knee arthroplasty as both Dr. Deppe and Dr. Collard agreed that was reasonable and necessary. However, Dr. Deppe was of the opinion that the claimant's job activities, including specifically standing on cement for extended periods of time, accelerated the need for the total knee arthroplasty. Petitioner did not provide any testimony as to the surface that he worked on or that he felt the concrete floor was troublesome for his knee. The only surface that Petitioner testified to was that currently his walkie has a rubberized pad that he stands on and that currently he has soreness in his knee after walking on cement while shopping for an extended period of time. Dr. Collard specifically testified that standing and working on cement did not have an impact on Petitioner's knees because as he put it, everyone in New York City, or the concrete jungle, would have knee replacements. Dr. Collard was in a more credible

position to opine on Petitioner's repetitive trauma claim because he had not only had an examination with Petitioner, like Dr. Deppe, but also had a formal job description and a voluminous set of medical records to review. Dr. Deppe relied on a hypothetical that was flawed. Petitioner's claim in case number 11 WC 43010 is denied on both the basis of accident and causal connection.

Petitioner bears the burden of proving by a preponderance of the credible and persuasive evidence that he sustained an accident arising out of and in the course of his employment and that his condition of ill-being was causally-related to his employment. For the reasons set forth above, the Arbitrator has concluded that Petitioner has not met his burden of proof on accident in either case and causal connection in 11 WC 43010. Petitioner's claim is denied and no benefits are awarded.

All other issues are moot.

****

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☒ 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

Michael Sullivan,

Petitioner,

vs. NO: 13 WC 13145

Alwan Pharmacy,

Respondent,

15IWCC0970

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 medical, causal connection, temporary total disability, permanent partial disablilty 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 20, 2015 is hereby affirmed and adopted.

~~No bond is required for removal of this cause to the Circuit Court. 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: DEC 22 2015

Mario Basurto

David L. Gore

Stephen Mathis

MB/mam
o:11/5/15
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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SULLIVAN, MICHAEL
Employee/Petitioner

Case# **13WC013145**

15IWCC0970

ALWAN PHARMACY
Employer/Respondent

On 2/20/2015, 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 0.06% 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:

4707 LAW OFFICE OF CHRIS DOSCOTCH
2708 N KNOXVILLE AVE
PEORIA, IL 61604

0264 HEYL ROYSTER VOELKER & ALLEN
VINCENT M BOYLE
124 S W ADAMS ST SUITE 600
PEORIA, IL 61602

15IWCC0970

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MICHAEL SULLIVAN
Employee/Petitioner

v.

ALWAN PHARMACY
Employer/Respondent

Case # 13 WC 13145

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 **DOUGLAS McCARTHY**, Arbitrator of the Commission, in the city of **PEORIA**, on **1/20/15**. 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. [x] 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. [x] 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] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
L. [x] 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 **02/02/13**. 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$21,840.00**; the average weekly wage was **$420.00**.

On the date of accident, Petitioner was **65** 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.

ORDER

- The Petitioner is not entitled to medical and/or financial benefits under the Act because he has failed to prove by a preponderance of the credible evidence that his condition of ill-being is causally related to the accident of February 2, 2013.

- The Petitioner is not entitled to any temporary total disability benefits, reimbursement of medical expenses or permanency award for the reason(s) cited above.

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

Feb. 16, 2015
Date

FEB 20 2015

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The petitioner filed an Application for Adjustment of Claim alleging injury to his right leg as a result of a slip and fall while exiting his service vehicle. The parties have stipulated to an accident on February 2, 2013. On this date, the petitioner was employed with the respondent, Alwan Pharmacy, as a delivery driver. The petitioner testified he had been employed with Alwan Pharmacy since March of 2012. Prior to that time, he was employed at OSF as a lab technician and carrier, and at Methodist Medical Center as a carrier and phlebotomist. He testified he performed similar work duties for these employers.

The petitioner testified that while he was employed by Alwan Pharmacy, he delivered pharmaceutical drugs to patients. These deliveries were primarily made to the patients' homes or nursing homes. The petitioner would utilize his service vehicle to make the deliveries, get in and out of the vehicle at each stop, and would walk the deliveries into each home or facility. He testified there were approximately 40 deliveries each day and the locations for these deliveries were in Peoria and/or Farmington.

On February 2, 2013, the petitioner testified that he slipped and fell on some ice while exiting his service vehicle. He indicated his right leg slid under the vehicle. He testified he experienced immediate pain in his right knee and on the left side of his body. He reported the accident to the pharmacist that was working that day. The petitioner testified he did not seek immediate treatment. He indicated he was waiting for the insurance company to contact him to set up an appointment, but the workers' compensation carrier never made contact with him. The Employer's First Report of Injury, completed by the respondent, alleges that the petitioner declined treatment when he initially reported the injury. (Respondent's Exhibit 1)

The petitioner testified that he continued his regular employment following the date of accident. He continued working through March 28, 2013, when he voluntarily left his employment with Alwan Pharmacy. The petitioner testified that he continued to experience pain and catching in his knee, which made his work more difficult. He further testified he requested a less demanding delivery route, but the other routes were not available to him, which is why he chose to end his employment.

During arbitration, the petitioner provided testimony regarding his severe preexisting osteoarthritis in his right knee, the body part at issue. He testified he had age-related pain and stiffness in both knees, but this was the extent of his complaints prior to the work accident. The petitioner also testified to a prior history of Synvisc injections to both knees. On cross examination, the petitioner testified he could not recall the extent of his treatment for osteoarthritis, but did testify he was previously a candidate for total knee replacements of both knees. He also said that between 2008 and 2013, he had no orthopedic treatment for his right knee. Eventually he testified that he had pain in the right knee prior to his accident.

Medical records from the Midwest Orthopedic Center show that the petitioner began complaining about his right knee in late 2006. At the direction of Dr. Kube, who was treating him for a left shoulder problem, x-ray's of the right knee were done showing advanced tricompartmental degenerative arthritis of both knees, the right being the most advanced. He was referred to Dr. Levine, who treated him throughout 2007 for knee complaints. At his initial visit on January 31, 2007, the petitioner reported that he had sharp pain with and without activity in the right knee reaching a level of 9+ to 10. He said that he could only walk two to three blocks without pain, and that he had to use the bannister to climb stairs. On exam, Dr. Levine found decreased ranges of motion and significant tenderness of the medial joint line. He opined that the petitioner was a candidate for a right total knee replacement due to significant tricompartmental osteoarthritis. He said that the petitioner was not quite ready for the procedure and recommended continued injections instead. On a visit in April 2007, Dr. Levine noted that the petitioner was likely going to schedule his knee replacement later that fall. In August of the same year, he was given a video describing the total knee replacement procedure. After Dr. Levine left the practice, the petitioner treated with Dr. Mulvey for his knees. On July 11, 2008, Dr. Mulvey

noted the condition: advanced right knee osteoarthritis, and said that the petitioner was aware he would eventually need a replacement. On August 20, 2010, Dr. Mulvey's PA gave him a cortisone injection, and said that the petitioner knew he would need a knee replacement at some point. A week later when seen for a left knee injection, the petitioner reported that the right knee injection did not provide substantial relief. (RX 6)

Following his resignation, the petitioner sought treatment with Dr. Joshua Schupbach on April 4, 2013, approximately two months after the date of accident. This was the first time the petitioner sought treatment following the work accident. During the visit, the petitioner reported pain and catching since the slip and fall. X-rays of the right knee were taken which showed advanced arthritic changes – bone-on-bone end state osteoarthritis of the medial join line and of the patellar femoral joint. An MRI of the right knee was taken on April 8, 2013, which showed a full thickness cartilage loss in the medical compartment, extrusion and maceration of the medial meniscus, tear of the lateral meniscus, and chronic ACL and PCL tears. (Respondent's Exhibits 7 & 8, Petitioner's Exhibit 7)

Ultimately, the petitioner was referred to Dr. Richard Driessnack by Dr. Schupbach. He first saw Dr. Driessnack on May 16, 2013. The petitioner reported the February 2, 2013 incident and complained of burning pain with episodes of locking. Dr. Driessnack noted the petitioner "never complained of having knee problems, though based on subsequent information here, I have strong reservations about that." Dr. Driessnack reviewed the x-rays and the MRI and noted the "MRI was not surprisingly read as showing a lot of abnormalities including severe osteoarthritis, extensive tearing of the medial meniscus, focal tear of the lateral meniscus, and chronic ACL/PCL injuries." He further noted in his May 16, 2013 report, "The patient asked me about these injuries and problems today and I reported that these are a given with the degree of arthritis that he has." (Respondent's Exhibit 5)

Dr. Driessnack diagnosed the petitioner with severe osteoarthritis of the right knee and treated the petitioner with a steroid injection. This only helped minimally, so Dr. Driessnack recommended a total knee replacement. This procedure was performed by Dr. Driessnack on August 12, 2013. (Respondent's Exhibits 5 & 7, Petitioner's Exhibits 4 & 5)

Following surgery, the petitioner underwent a course of physical therapy and continued to follow up with Dr. Driessnack. The petitioner testified that his last visit with Dr. Driessnack was on December 6, 2013. At that time, the petitioner was doing well and had no complaints. Dr. Driessnack noted the petitioner did not require any pain medication and did not need to limit his activity. (Respondent's Exhibit 5, Petitioner's Exhibits 4 & 5)

During arbitration, the petitioner testified that since he was released from treatment by Dr. Driessnack, he has not needed any pain medications and is able to work for his current employer without any issues. He is currently employed as a delivery man for a local florist and testified his job activities are similar to those he had before. His wages and hours are also comparable to his employment with Alwan Pharmacy. He testified to some residual aches and stiffness following surgery, but said this pain is consistent with his age.

The petitioner has since submitted to two independent medical examinations; one set up by his attorney and one at the request of the respondent. The arbitrator notes the petitioner's orthopedic surgeon, Dr. Driessnack, did not provide a causation opinion.

The petitioner was seen by Dr. Joseph Newcomer on March 28, 2014. Dr. Newcomer noted the petitioner's preexisting arthrosis of the right knee during his examination. In his report, he stated, "I don't think there is any question and no one would argue that at some point in this gentlemen's life, he was going to require a total knee arthroplasty. The question becomes would he have had to have the knee replacement at this stage in his life had he not fallen and I don't know the answer to that question." Ultimately, Dr. Newcomer opined the

petitioner sustained an aggravation of the preexisting condition and this precipitated the need for the total knee arthroplasty. (Petitioner's Exhibit 8)

During his evidence deposition, Dr. Newcomer testified his opinions were based on the petitioner's report that he was asymptomatic prior to the February 2, 2013 fall. Dr. Newcomer testified, however, that he did not have the opportunity to review prior medical records which document the petitioner's pain complaints and treatment history related to his right knee. He did not review medical records from Dr. John Shallot with OSF Medical Group; he did not review medical records from Dr. Schupbach, the petitioner's primary care physician; he did not review the aforementioned records of prior right knee treatment at the Midwest Orthopedic Center, and he did not have all the treatment records from Dr. Driessnack. He conceded there was no medical evidence to indicate the February 2, 2013 fall worsened the preexisting condition; however, he testified the need for the surgery was not related to the preexisting condition because "he wouldn't have needed surgery if he wasn't complaining of pain. The only reason we ever do knee arthroplasty is because patients are having pain." As indicated earlier, Dr. Newcomer was unaware of the petitioner's prior pain complaints to many treating physicians; he was not aware the petitioner was taking Etodolac and Celebrex prescribed by Dr. Schupbach immediately prior to the work accident; and was not aware that the same surgery had already been recommended by multiple doctors prior to the work accident. (Petitioner's Exhibit 8)

The petitioner was seen by Dr. Lawrence Li for an independent medical examination at the request of the respondent. The exam was performed on July 8, 2013. Dr. Li spoke with the petitioner regarding his work accident and his right knee condition. He also reviewed the petitioner's full medical history and related medical records. Following his examination, Dr. Li found the petitioner's condition of ill-being was not related to the slip and fall of February 2, 2013. He indicated that while the petitioner suffered a twisting event of the knee, his severe preexisting osteoarthritis was the cause for the knee surgery. (Respondent's Exhibit 9)

During his deposition, Dr. Li described the petitioner's condition as "bone on bone." This is consistent with Dr. Driessnack's records. He testified that he was skeptical the petitioner was actually asymptomatic with regard to his knees prior to the slip and fall. Again, this is consistent with Dr. Driessnack's May 16, 2013 note in which Dr. Driessnack documents his skepticism regarding the petitioner never having knee problems prior to the date of accident. Dr. Li based this belief on the petitioner's prescriptions of Etodolac and Celebrex, which he had been taking for quite some time. Dr. Li testified that long-term use of Celebrex is pretty much exclusively for osteoarthritis. Dr. Li further testified the slip and fall incident did not cause the preexisting condition and that the petitioner's present condition of ill-being was related to his preexisting osteoarthritis. Dr. Li noted the degenerative findings on the x-rays and the MRI scan. He further testified that while the February 2, 2013 incident may have caused some acute pain, it did not accelerate the need for the total knee arthroplasty. (Respondent's Exhibit 10)

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

The petitioner has alleged his right knee condition is causally related to the February 2, 2013 slip and fall incident at work. He has relied on his testimony, the medical records submitted into evidence, and the causation opinion of Dr. Newcomer. Both parties agree the petitioner had severe preexisting osteoarthritis of the right knee, but a preexisting condition does not preclude an employee from obtaining benefits under the Illinois Workers' Compensation Act. When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers Compensation Commission,* 371 Ill.App.3d 882, 864 N.E.2d 266, 272, 309 Ill.Dec. 400 (5th Dist. 2007). Even when a preexisting condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. *Sisbro, Inc. v. Industrial Commission,* 207 Ill.2d 193, 797 N.E.2d 665, 278

Sec. 70 (2003). In this case, the petitioner has failed to show that the February 2, 2013 work accident aggravated his osteoarthritis to the extent that it accelerated the need for the right knee arthroplasty.

Initially, the arbitrator notes that the petitioner's claim is based in large part on his suggestion that pre existing right knee pain was minimal: akin to normal pains due to aging. The arbitrator does not believe the petitioner is credible insofar as his testimony on that point. He was treated extensively for parts of three years for his right knee, discussing a knee replacement on several occasions and even viewing a videotape of the procedure. He should have been able to immediately recall the treatment and testify about when asked at arbitration. He also should have described the treatment in more detail to Drs. Dreissnack and Newcomer when providing his histor

The medical records clearly show the petitioner was diagnosed with end-stage bone-on-bone osteoarthritis prior February 2, 2013. Due to this condition, Dr. Brett Levine recommended total knee arthroplasties in 2007. Records from Midwest Orthopaedics indicate the petitioner considered scheduling the surgery in the fall of 2007, but ultimately opted for conservative case because he underwent shoulder surgery. The petitioner continued to treat for his right knee condition with Dr. Thomas Mulvey with Midwest Orthopaedics. Dr. Mulvey's PA discussed surgical intervention in 2008 and again in 2010, when the petitioner returned for treatment for his osteoarthritis. On May 16, 2013, the petitioner's condition of ill-being was no surprise to Dr. Driessnack given the petitioner's degree of arthritis. (Respondent's Exhibits 5 & 6)

There is no medical evidence indicating the petitioner's preexisting arthritic condition was materially changed by the February 2, 2013 work incident. This fact distinguishes the case from the two cases submitted by the petitioner in support of his claim, Wheaton v. State of Illinois, 13 IWCC 467; and Peterson v. SSM, 13 IWCC 416. In each case the Commission found causation between knee replacements and accidents for petitioner's with extensive pre-existing osteoarthritis. However, in each case there was objective evidence seen on MRI's of new traumatic injury to the injured knees. Here, the radiologist who performed the post accident MRI opined that the ligament tears were likely chronic. (PX 3) Dr. Newcomer said that he could not tell whether the meniscal tears seen on the scan were old or new, but Dr. Li testified that they were degenerative and that there were no acute findings based on his review of the diagnostic images. (Respondent's Exhibit 10, pg. 9-10) Dr. Newcomer confirmed this when he testified there was no objective medical evidence to indicate the February 2, 2013 work incident worsened the petitioner's preexisting condition. (Petitioner's Exhibit 8, pg. 27) Dr. Newcomer based his causation opinion solely on the petitioner's reported symptomatology, which is not consistent with the prior medical history or his continued use of Celebrex, as noted by Dr. Li. (Respondent's Exhibit 10, pg. 29-30) Accordingly, the Arbitrator finds the opinions of Dr. Li to be more persuasive on the issue of causation. He opined that when the petitioner suffered the twisting injury, he developed some acute pain, but that the twisting injury did not change the structure of the knee; it did not cause the degenerative changes in the knee, and did not cause an acceleration of the osteoarthritis beyond its normal progression. (Respondent's Exhibit 10, pg. 11)

The burden is on the party seeking an award to prove by a preponderance of credible evidence the elements of the claim. Based on the petitioner's testimony during arbitration, the records submitted into evidence, and the opinions rendered by Dr. Li, the Arbitrator finds the petitioner has failed to prove his condition of ill-being was causally related to the work injury of February 2, 2013. He has further failed to prove the work injury necessitated the need or accelerated the need for the total knee replacement surgery performed by Dr. Driessnack. The Arbitrator finds the petitioner's condition of ill-being was the result of a normal degenerative process of his preexisting condition, as opined by Dr. Li.

Accordingly, the claim is denied. All other issues become moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ 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

Angela Crain,
Petitioner,

vs.
Menard Correctional Center,
Respondent,

NO: 13 WC 32268

15IWCC0971

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, medical, prospective medical, notice 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 31, 2015 is hereby affirmed and adopted.

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.

No bond or summons is required for State of Illinois cases.

DATED: DEC 22 2015

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Mario Basurto

David L. Gore

Stephen Mathis

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

CRAIN, ANGELA
Employee/Petitioner

Case# **13WC032268**

15IWCC0971

MENARD CORRECTIONAL CENTER
Employer/Respondent

On 3/31/2015, 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 0.13% 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:

0969 THOMAS C RICH PC
6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0558 ASSISTANT ATTORNEY GENERAL
FARRAH L HAGAN
601 S UNIVERSITY AVE SUITE 102
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ATTORNEY GENERAL
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1350 CENTRAL MANAGEMENT SYSTEMS
WORKERS' COMP CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy pursuant to 820 ILCS 305/14

MAR 31 2015

RONALD A. RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC0971

TATE OF ILLINOIS)
)SS.
COUNTY OF **Madison**)

- ☐ 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)

Angela Crain
Employee/Petitioner

v.

Menard Correctional Center
Employer/Respondent

Case # **13** WC **32268**

Consolidated cases: **N/A**

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Collinsville**, on **January 28, 2015**. 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. ☒ 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 _____

15IWCC0971

FINDINGS

On the date of accident, **August 30, 2013**, 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 not*** sustain an accident that arose out of and in the course of employment.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$79,220.50**; the average weekly wage was **$1,523.47**.

On the date of accident, Petitioner was **39** years of age, ***married*** with **3** dependent children.

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

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

Respondent is entitled to a credit **for any medical bills paid by its group medical plan for which credit is allowed** under Section 8(j) of the Act.

ORDER

Petitioner failed to prove she sustained an accident on August 30, 2013 that arose out of and in the course of her employment with Respondent or that her condition of ill-being in her upper extremities (hands and elbows) is causally connected to her accident or her employment duties with Respondent. Petitioner's claim for compensation is denied and no benefits are awarded.

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.

Nancy Bordley
Signature of Arbitrator

March 25, 2015
Date

ICArbDec19(b)

MAR 3 1 2015

CRAIN V. MENARD C.C., 13 WC 32268 (19(b))

FINDINGS OF FACT and CONCLUSIONS OF LAW

Petitioner alleges repetitive trauma injuries to her bilateral hands and shoulders. (AX 2) At the time of arbitration the disputed issues in the 19(b) proceeding were: accident; notice; causal connection; medical bills; prospective medical care; and temporary total disability benefits. Petitioner and Gail Walls, Respondent's representative throughout the proceeding, testified at the hearing.

At the commencement of the hearing, Petitioner's attorney requested leave to submit medical bills from Dr. Goldfarb and the Rehab Institute of St. Louis. Petitioner's request was allowed without objection. Subsequent to the hearing the Arbitrator received the bill from Dr. Goldfarb and it was attached to "Petitioner's Exhibit 1." The Arbitrator was further advised that no bill from the Rehab Institute of St. Louis was being tendered.

During the hearing, photographs were taken of Petitioner's left hand. Subsequent to the hearing, the attorneys for both parties entered into a Stipulation to have those photographs included in the record as an Arbitrator's Exhibit. The signed Stipulation and three photographs have been marked as "Arbitrator's Exhibit 5A, 5B, 5C, and 5D" and made a part of the record herein.

When AX5A - 5D and the bill form Dr. Goldfarb were received by the Arbitrator she also received records from Rehab Institute of St. Louis. These have been included with the record as "Rejected" because there was no agreement entered into between the attorneys regarding their late submission and/or admission.

The Arbitrator finds:

On August 28, 2013, Petitioner presented to Red Bud Internal Medicine & Pediatrics. Her chief complaint was that she thought she had carpal tunnel syndrome. Petitioner reported numbness and tingling in her hands. She reported that the symptoms woke her up at night. She reported that she had this for a while. Petitioner's problems were noted to be: morbid obesity; iron deficient anemia; anxiety; depressive disorder, carpal tunnel syndrome; backache, other malaise and fatigue; and abnormal weight gain. Petitioner's medications included Citalopram and Ultram. Petitioner's surgical history included lap banding in 2009. Petitioner's weight was 252 lbs. Petitioner complained of possible carpal tunnel syndrome. She stated that it started about 2 years earlier when she was pregnant with her son. She had numbness and tingling in both hands; the right more than the left. Petitioner assumed it was related to pregnancy, so she thought it would go away after pregnancy. She talked to her OB who recommended wearing wrists splints at night, which Petitioner did. Petitioner stated that since then the symptoms had gotten much worse. She reported that it was now to the point that her right hand 2, 3, 4, 5 fingers felt numb

all the time and she had numb feelings in her left fingers as well, just not as bad as the right. The pain and numbness now was getting so intense that she was waking up at night and not sleeping well because of the symptoms. Petitioner had been taking Aleve, and had not noticed much difference. Petitioner reported that it was now to the point that she had to stop and "shake her hand awake" when putting on makeup or brushing her teeth. Petitioner was noted to be right-hand dominant. Neurological examination revealed a negative Tinel's and a positive Phalen's to the hands bilaterally. Petitioner was diagnosed with carpal tunnel syndrome. An electromyogram/nerve conduction study was ordered. Petitioner was given a prescription for Ultram. Amber Harriman, P.A. noted that, clinically, it looked like carpal tunnel syndrome and that Petitioner had failed conservative measures. Petitioner was to proceed with bilateral upper extremity nerve conduction studies, and given Ultram to use at night as needed. (PX 3)

Petitioner underwent an electrodiagnostic study on August 30, 2013 which revealed bilateral moderate to advanced carpal tunnel syndrome. (PX 4)

On August 30, 2013, Petitioner completed a "Workers' Compensation Employee's Notice of Injury." She reported that the duties she was performing at the time of the injury were the following: unlocking large heavy doors—repetitively; typing >75% of the time; filing; work station ergonomically unsound—desk chair unable to raise and lower; opening and closing large heavy wood desk drawers. When asked how the injury occurred, Petitioner wrote "injury occurred over 18 month period of employment and has progressively worsened to point of numbness and tingling of 3 fingers on right hand which instigated medical attention". Petitioner described her injury as severe bilateral carpal tunnel syndrome of wrist, continuous numbness and tingling of 3 fingers on right hand. (RX 1)

On September 4, 2013, Nikki Malley completed a "Supervisor's Report of Injury or Illness". Ms. Malley noted that Petitioner's job duties included clerical (typing, filing, etc.); manipulation of keys. Older facility with heavy doors including office door. Signing multiple slips/forms on a regular basis. The "Cause of Accident" was noted to be the following: "Menard Correctional Facility is an older facility. Doors are large and heavy. Humidity adds to difficulty in opening doors. No unsafe acts noted per employee. When asked was the condition corrected, Ms. Malley wrote: "unable to correct due to facility age/humidity". (RX 3)

Petitioner filed her Application for Adjustment of Claim in this matter on September 23, 2013 alleging repetitive trauma injuries to her hands, wrists and shoulders which manifested themselves on August 30, 2013. (AX 2)

Petitioner presented to the office of Dr. Nathan Mall on December 30, 2013 complaining of bilateral hand numbness and pain which would wake her up at night. Petitioner also reported dropping things and having difficulty driving due to her symptoms. (PX 5) Dr. Mall took the following history:

> She works as an RN nursing supervisor at Menard Correctional Facility. She states that she does typing about 80% of the time that she is there. The rest of the time she does writing and pulling charts. She has to lug around charts that are several ounces each carrying several pounds at a time. She also has to use the same doors the majority of the prison guards use having to turn big heavy keys in doors repetitively. She states that her work station is not very ergonomic as she has an old wooden desk as well as a chair that does not raise or lower. She ended up having to sit on her leg to try to get her body high enough that her arms do not go to sleep as she is typing. The old wooden desk also has very difficult drawers to open and frequently breaks. She does not have any significant outside of work risk factors for carpal or cubital tunnel syndrome other than being mildly overweight. She has no thyroid disorders, no diabetes. She cooks and does normal household activities, however, does do not do anything specific outside of work that would potentially cause carpal or cubital tunnel syndrome.
>
> She does state that she initially was diagnosed with carpal tunnel syndrome when she was pregnant with her last child, however, she is not having any symptoms for over a year before she started developing symptoms while at work in July 2013. She has been with Menard Correctional Facility since January 2012.

(PX 5, p. 1)

Dr. Mall reviewed the electrodiagnostic study done on August 30, 2013, showing bilateral carpal tunnel syndrome, but his physical examination demonstrated evidence of bilateral carpal and cubital syndromes. (PX 5) Dr. Mall noted that Petitioner tried to improve her symptoms conservatively with splinting and medication, but her condition failed to improve. He believed conservative treatment failed and recommended surgery. Regarding causal connection, Dr. Mall stated:

> In terms of causation, clearly Mrs. Crain's bilateral carpal and cubital tunnel syndrome has worsened due to the lack of ergonomic conditions at Menard Correctional Facility given the inability to adjust her chair height and not being able to put herself in a good position to type as this is the majority of what she does at work. I have seen other patients that just based on the amount of times they have to turn these big heavy keys to get in and out of the doors have developed carpal and cubital tunnel syndrome. Mrs. Crain is not shy about the fact that she had a history of gestational carpal tunnel syndrome and, therefore, is likely somewhat predisposed to developing carpal tunnel syndrome based on her anatomy, however, she was not having any problems during the time when she worked at Menard from January 2012 through approximately July 2013, however, just the repetitive nature of her job had again flared up her symptoms. Therefore, even if it is claimed that she had preexisting carpal tunnel syndrome clearly her symptoms associated with carpal tunnel syndrome and cubital tunnel syndrome have been aggravated significantly by her job at the Menard Correctional Facility as a nursing supervisor. Therefore, I do believe that carpal and cubital tunnel syndrome is work related.

(PX 5, p. 1)

Petitioner next underwent wrist x-rays on December 30, 0213 which were read as negative. (PX 6)

Surgery was performed on Petitioner's right upper extremity on January 23, 2014, and on her left upper extremity on February 7, 2014. (PX7). Both procedures involved carpal tunnel and cubital tunnel releases. (See also PX 5) Surgery went very well on the right side and Petitioner could not wait to proceed on the left side. Petitioner was taken off work as of January 23, 2014. As of February 12, 2014 Dr. Mall noted Petitioner was doing well from both procedures and had no complaints. Petitioner's left side was noted to be a little more sore than the right side;

however, Petitioner already noticed some significant benefit in her pain symptoms on that side. Dr. Mall recommended Petitioner remain off work until the following Monday when she could resume light duty work. (PX 5)

Respondent had Petitioner examined by Dr. Anthony Sudekum on April 14, 2014. Petitioner reported that she first began to experience numbness and tingling in both hands several months prior to starting her job with Respondent, in late 2011 during the latter half of her most recent pregnancy. Petitioner stated that she used wrist splints during her pregnancy and delivered in November 2011. Petitioner stated that her bilateral hand numbness and tingling symptoms improved after delivery but did not resolve completely. Petitioner began working for Respondent in January 2012, approximately 2 months after she delivered, and she indicated that within a few months thereafter she began experiencing the same upper extremity symptoms including numbness and tingling in both hands, involving the bilateral thumbs, index and middle fingers. Petitioner stated that the symptoms occurred throughout the day and also at night. Petitioner complained of bilateral medial elbow pain. Petitioner stated that she was using splints again with some improvement but did not seek evaluation or treatment for these symptoms until the summer of 2013 when she was evaluated for these symptoms by her primary care provider. Dr. Sudekum reviewed Petitioner's job descriptions, work documents, and medical records. Petitioner reported that the right side post-operative recovery was uneventful. On the left side, Petitioner stated that she noticed an immediate post-operative weakness of her left hand which had persisted and worsened since surgery. Petitioner also noted gradual development of left hand intrinsic muscle atrophy post-operatively and stated that since her surgery the fingers of her left hand "just don't work right." Petitioner stated that she now had difficulty gripping and manipulating objects with her left hand and felt that her left thumb was especially lacking in coordination and strength and had limited flexion/opposition. Petitioner denied that she had significant weakness, muscle atrophy or lack of dexterity or coordination of the left hand, fingers or thumb preoperatively. Petitioner's complaints in the left hand included weakness, decreased range of motion, loss of dexterity and lack of coordination upper left hand. Petitioner was unable to move her left thumb across her palm fully (opposition deficit) and had significant weakness and loss of dexterity of her left hand and thumb. Petitioner denied any significant pain, paresthesia or numbness in either elbow, forearm, wrist or hand. Physical examination revealed Petitioner to be 5'4", weighing 240 pounds, which equated to a BMI of 41.2 indicative of morbid obesity. Physical examination revealed notable intrinsic muscle atrophy of the left hand including atrophy of the 1st dorsal interosseous muscle group, the 2nd dorsal interosseous and the ulnar enervated thenar muscle group. Petitioner had a claw deformity of the left hand including hyperextension of the left middle, ring and little finger MP joints and weak extension of the PIP and DIP joints of the same digits. Petitioner had weak and incomplete left thumb palmar abduction including a 4 cm thumb opposition deficit. Petitioner was unable to maintain full composite flexion of the index, middle and ring fingers. Her left hand posture at rest and with active motion indicated significant intrinsic muscle dysfunction and weakness. Extrinsic muscle strength was full and normal in the bilateral forearms and wrists. Nerve conduction studies on

the left upper extremity revealed a significant left median neuropathy and a mild abnormality of the left ulnar nerve compound motor action potential (CMAP) across the elbow. (RX 10)

Dr. Sudekum reviewed Petitioner's job description as a nursing supervisor with Respondent and her medical records. Dr. Sudekum noted that Petitioner had multiple significant non-work-related risk factors which could potentially predispose her to the development of upper extremity peripheral neuropathy symptomatology, carpal tunnel syndrome and/or cubital tunnel syndrome including being female, her age over 40 years, onset of her peripheral neuropathy symptoms during pregnancy (prior to starting her job with Respondent) and morbid obesity. Dr. Sudekum noted that Petitioner's problem with her left hand was most likely secondary to a complication of her left carpal/cubital tunnel surgeries. Dr. Sudekum opined to a reasonable degree of medical certain that he did not feel that Petitioner sustained a work-related injury on August 30, 2013. Dr. Sudekum noted that Petitioner developed carpal tunnel syndrome prior to her employment with Respondent and those symptoms persisted during her employment there. Dr. Sudekum noted that there was no indication that her job duties caused or aggravated her pre-existing carpal tunnel syndrome. Dr. Sudekum noted that Petitioner's job duties as a nursing supervisor with Respondent included a mixture of industry, clerical and clinical activities. Dr. Sudekum noted that he was familiar with the activities performed by nurses such as Petitioner and it was his opinion within a reasonable degree of medical certainty that her job duties as a nursing supervisor did not cause or aggravate her pre-existing carpal tunnel syndrome. Dr. Sudekum noted that Petitioner's primary care provider and the neurologist did not give a diagnosis of cubital tunnel syndrome. Dr. Sudekum noted that Petitioner had no objective evidence of cubital tunnel syndrome. Petitioner's subjective symptoms noted by Dr. Mall would be atypical for cubital tunnel syndrome, since Petitioner apparently did not complain of significant numbness or paresthia of her little fingers which is pathognomonic for cubital tunnel syndrome. Dr. Sudekum opined that the diagnosis of cubital tunnel syndrome as given by Dr. Mall and/or the decision to perform bilateral cubital tunnel releases was questionable, based on the medical records reviewed. Dr. Sudekum opined that Petitioner's current condition of ill health pertaining to her left hand was due to an intraoperative and/or postoperative complication related to the surgery. He noted that it was possible that she may have sustained an intraoperative or postoperative insult, injury and/or laceration of the median nerve motor nerve branch in the palm, the deep motor branch of the ulnar nerve in the palm (in Guyon's Canal) and/or the motor component of the ulnar and/or median nerve at the elbow. Dr. Sudekum did not feel that Petitioner's current upper extremity diagnoses were caused or aggravated by her work activities as a nursing supervisor for Respondent. Dr. Sudekum opined that Petitioner could continue to work and perform her full normal work duties; however, she might have some relative weakness and/or loss of dexterity of the left hand which could affect her ability to perform some tasks effectively or efficiently. Dr. Sudekum did not believe that any limitations or deficiencies that Petitioner suffered pertaining to Petitioner's left hand were causally related to a work-related condition or injury. (RX 10)

Although Dr. Sudekum did not believe Petitioner's condition was work-related, Dr. Sudekum did recommend a repeat nerve conduction study and EMG including "inching technique" to more precisely identify the location of the nerve lesion or injury. Dr. Sudekum also opined that Petitioner would require additional treatment including possible surgical treatment for her left upper extremity. Dr. Sudekum recommended surgical exploration of the median and ulnar nerves in the wrist and elbow including specific exploration and dissection of the median nerve motor branch and the deep motor branch of the ulnar nerve in the palm. Dr. Sudekum noted that if either of those structures were injured, then surgical repair, including possible microsurgical repair of those nerve should be performed at that time as needed. (RX 10)

Petitioner was scheduled to return to Dr. Mall's office on March 12, 2014; however, she did not do so until April 23, 2014. At that time she reported doing "great" with regard to her right hand; however, upon activating the muscles of her left hand she was noticing a deformity. Petitioner reported not coming in any sooner because she did not think there was anything wrong. On exam Petitioner's hand was normal except that the motor function of the median and ulnar nerves of the left hand and wrist were not working and Petitioner displayed a claw deformity when attempting to use her left hand. Intrinsic testing in terms of the first dorsal interosseous and thenar muscle group was not working either. Dr. Mall recommended a nerve conduction study to "quickly" see what was going on. He added that a recent office study performed by Dr. Sudekum was of poor quality and unreliable. He wanted a formal study with Dr. Peeples. (PX 5)

Petitioner was released to full duty work on April 24, 2014. (PX 5)

Petitioner underwent the electrodiagnostic studies with Dr. Peeples and they revealed that despite Petitioner's left wrist median nerve improving in sensory function, the motor function was less than half of what it should be, producting 4+ fibrillations in the APB and severe weakness. He concluded that the study was notable for severe acute denervation restricted to the left APB with no definite recruitable motor units seen and he felt open exploration would certainly be reasonable. He also noted slowing of the median motor conduction across the asymptomatic right wrist which was felt to possibly be residual in nature. There were no electrodiagnostic findings for a right or left ulnar neuropathy or cervical radiculopathy. Clinically Petitioner was noted to have dystonia in the left wrist and hand which might be a secondary phenomenon as a result of peripheral nerve injury. (PX 8)

Dr. Mall followed up with Petitioner on April 28, 2014. Petitioner reported feeling better than she has in some time with "full feeling" in both hands but posturing problems with the left hand when grabbing objects. They reviewed her nerve conduction study taken earlier in the day and the doctor spoke with Dr. Peeples. The ulnar nerves appeared okay on the EMG/NCS. Dr. Peeples could get no motor function out of the median nerve distribution. There was some improved sensory function on the left side but the motor response was less than half of what it should have been. Dr. Mall referred Petitioner to Dr. Goldfarb. (PX 5)

Petitioner presented to Dr.Charles Goldfarb at Washington University Physicians on May 1, 2014. Petitioner completed an "Orthopedic History" in which she noted that following left hand carpal tunnel release and ulnar release surgery, her left hand had been "contracted". Petitioner reported that the problem had been present since February 2014. Petitioner noted that surgery started the problem. Dr. Mall had asked Petitioner to be seen by Dr. Goldfarb. Dr. Goldfarb noted that Petitioner now had posturing with extension of the MCP joints of the left hand. Function was very difficult. Petitioner was frustrated by her status. When able to relax, she was better. With attempted use, Petitioner has difficulties. Petitioner reported no pain. This was simply a functional issue. A recent nerve study was done, but Dr. Goldfarb did not have that. Petitioner denied clicking popping or catching. She had not undergone any therapy. Physical examination of the left side revealed excellent elbow, forearm and wrist motion. Fingers were very limited. She had an intrinsic minus position. When Dr. Goldfarb flexed her MP joints, she could hold IP joints flexed but cannot actively do so. Median, radial, and ulnar nerves were intact to motor and sensory function. 2+ radial pulse and brisk capillary refill. No swelling was noted. There was no atrophy and strength was satisfactory. Grip was 60/5 and pinch was 15/0. Negative carpal and cubital tunnel provocative sings. Negative pronator provocative signs, negative Spurling's, negative Roos. Petitioner had no fixed contractures but had limited active motion again especially in flexion. No swelling or bruising to suggest CRPS. Two point discrimination was 5 mm diffusely. Thenar muscles to fire including APB. It was difficult to assess the hyperthenar muscles or the first dorsal interosseous but he did believe both of those muscles fire although weakly. Dr. Goldfarb's impression/diagnosis/plan was as follows:

> Unusual presentation of intrinsic minus posture. However while is difficult to assess, I do believe her ulnar motor is working. I am concerned about interossei and lumbrical function. I would like to review the nerve conduction study. I the meantime, I recommend a lumbrical bar type splint for motion as well as modalities. I will see her back in 4 weeks. All questions were answered. She is comfortable with this plan. (PX 9)

In a phone note of May 6, 2014 Dr. Goldfarb noted Petitioner was reporting some help through therapy; therefore, he recommended she continue with it and then return. (PX 9)

Petitioner returned to see Dr. Mall on August 27, 2014. Petitioner stated she was doing better. She had less posturing and increased strength but still felt that her left side was not normal. She had no problems with the right side. She reported that she was not able to sleep at night. She no longer had any numbness or symptoms in terms of numbness. Physical examination revealed full motor sensation in bilateral upper extremities. Petitioner had intact sensation in the median, ulnar, and radial nerve distributions of bilateral upper extremities. Petitioner had decreased grip strength on the left side as opposed to the right side. Petitioner had the ability to abduct and oppose her thumb on the left side as well as on the right side. She still had some hyperextension of the MCPs and clawing of the left upper extremity with intentionally trying to grab objects; however at rest she did not have this any longer. Petitioner had this in each of the fingers. Dr.

Mall's assessment was status post aforementioned procedures with continued left upper extremity weakness and posturing. Dr. Mall referred Petitioner to Dr. Goldfarb one additional time to see if he felt that any additional surgery or treatment for the left upper extremity was needed. Dr. Mall noted that he was still somewhat perplexed by this given the fact that she has full sensation in all her nerve distributions; however, it appeared to be some of the intrinsics were not working appropriately. At that point, Dr. Mall was not recommending an additional nerve conduction study; however, he noted that may be needed at some point prior to any other surgical intervention if deemed necessary. If no additional surgery was felt to be needed for this condition, then they would likely place Petitioner at maximum medical improvement with this condition. (PX 5)

Petitioner returned to see Dr. Goldfarb on September 25, 2014. At that time she reported improved left sided function but some ongoing difficulty with functional activities and strength. She felt 60% improved. Dr. Goldfarb wanted another EMG/NCS performed to see how she was doing. (PX 9)

Dr. Mall was deposed on October 6, 2014. (PX 10) Dr. Mall testified that he is a board-certified orthopedic surgeon who specializes in sports medicine, including wrist and elbow conditions such as carpal and cubital tunnel syndrome. (PX10, p.4) Dr. Mall testified that studies have shown that significant typing with poor ergonomics were risk factors for the development of carpal tunnel syndrome. (*Id.* at 8, 9) He testified that typing with the wrists flexed or extended too much contributed to the symptoms of carpal tunnel syndrome. (*Id.*at 9) Other factors involved repetitive gripping or grabbing of objects and repetitive force application through the wrist. (*Id.* at 9) Dr. Mall testified that similar forces contribute to cubital tunnel syndrome. (*Id.* at 10, 11)

Dr. Mall testified that gestational carpal tunnel syndrome resolves after pregnancy:

> So there are reports of carpal tunnel syndrome developing with pregnancy. It typically goes away once a pregnancy is over, and rarely, if ever, requires any treatment following the pregnancy. So almost universally that'll go away after the pregnancy is over. (*Id.* at 11)

He testified that gestational carpal tunnel syndrome was due to hormonal changes. (*Id.* at 11-12)

Dr. Mall further testified that Petitioner told him about her work station, sitting in a chair that would not raise or lower, the forceful pulling of difficult desk drawers, the pulling/pushing of the heavy doors in the facility, turning keys and pulling and carrying charts which weigh several pounds. (*Id.* at 14) Dr. Mall testified that Petitioner did not have any significant systemic risk factors for the development of compression neuropathy, except that Petitioner was somewhat overweight. (*Id.* at 14, 15)

Dr. Mall testified that his physical examination of Petitioner's elbows revealed positive flexion compression test and Tinel's over Petitioner's elbows and subluxation over the right elbow. (*Id.* at 15, 16) Examination of the bilateral wrists revealed positive flexion compression tests, positive Tinel's tests and positive electrodiagnostic findings for carpal tunnel syndrome. (*Id.* at 16) Dr. Mall assessed confirmed carpal tunnel syndrome and clinical cubital tunnel syndrome. (*Id.* at 17) Dr. Mall testified that he performed both surgeries at the same time to reduce recovery time. (*Id.* at 19) When asked about causation given her history of gestational carpal tunnel syndrome, Dr. Mall testified as follows:

> Q: And also at that point, did you form an opinion within a reasonable degree of medical certainty as to whether her employment in any way caused contributed to, or aggravated her carpal and cubital tunnel syndromes?
>
> A: I did. And I think that it was interesting that she was very forthcoming about her gestational carpal tunnel syndrome, which was related to her pregnancy, and that it had resolved following her pregnancy, which is the typical course of events with that type of carpal tunnel syndrome, and that she really had been working at the facility for over a year without really having a lot of symptoms, and then started having symptoms develop.
>
> The thing that she described to me in terms of poor ergonomic condition also was obviously a major risk factor based on the medical literature that we have described. And then also turning the heavy keys at the facility and the doors that are quite heavy can obviously cause carpal and cubital tunnel syndrome in and of themselves, and that, combined with the poor ergonomic typing, I felt like her duties were a significant risk factor for the development of carpal and cubital tunnel syndromes. (*Id.* at 19-20)

Dr. Mall based his opinion on Petitioner's description of her job duties, her un-ergonomic work station, and the absence of other risk factors associated with carpal and cubital tunnel syndrome. (*Id.* at 20) With regard to Petitioner's weight being a risk factor, he stated:

> So her weight, but again, I think that you have to take that with some causation in that BMI is a relatively difficult thing to look at and has to be applied to each patient specifically. I typically look at the obesity around the wrist, and if there is a lot of fat around the wrist, then that potentially could be a risk factor for carpal tunnel syndrome. However, there are also several studies that have looked at carpal tunnel syndrome and obesity and have separated out the two statistically and noted that, even despite -- or sorry – even after separating that out and getting rid of obesity as a potential confounding factor, the activities that we mentioned in terms of the non-ergonomic typing, the repeated gripping and grabbing of objects, are significant risk factors for the development of carpal tunnel syndrome above

and beyond what a normal patient – or a normal person would experience. (*Id.* at 21)

On cross-examination, Dr. Mall testified that he would potentially expect the clawing to have potentially been present immediately after the surgery. Dr. Mall testified that this was the first time he had ever seen clawing after a carpal or cubital tunnel syndrome.

On further cross-examination Dr. Mall testified that he is an orthopedic surgeon who began his practice in August of 2012. His practice consists of 30-40% knee; 30-40% shoulder, and the other 20% elbow and wrist. Dr. Mall confirmed that he does not have an added qualification in hand surgery or upper extremity surgery, is not a member of the American Hand Society, and did not undergo a hand fellowship. Dr. Mall confirmed that he was not board-certified as an orthopedic surgeon until July 2014, after he performed the surgeries on Petitioner's hands and arms.

Dr. Mall did not know how many times Petitioner opened a door during the day or the type of keys she used. Dr. Mall testified that Dr. Goldfarb said the likely cause of the clawing was unknown and that Dr. Goldfarb believed, as did Dr. Sudekum, that there could be a problem at any part of the median or ulnar nerve, and he had no specific ability to determine where that lesion may be to cause Petitioner's symptoms. Dr. Mall testified that he did not know what the cause would be of the clawing nor did Dr. Goldfarb did not delineate any specific causes for the clawing. Dr. Mall testified that Dr. Goldfarb, a hand surgeon, wasn't able to explain it because it didn't make sense based on the anatomy of the nerves. Dr. Mall acknowledged that there has not been any association between typing and cubital tunnel syndrome, even when there's a non-ergonomic workstation involved. Dr. Mall testified that Petitioner's job duties for Respondent that he believed caused or aggravated the cubital tunnel syndrome was the repetitive pushing and pulling activities of the drawers and the cell doors—or the doors at the facility. However, Dr. Mall did not know how many hours per day she was performing those activities. Dr. Mall also testified that if Petitioner's medical records showed that Petitioners' symptoms of carpal tunnel syndrome never resolved after delivery of her child in November 2011 that could change his opinion. Dr. Mall testified that he didn't think that there had been any good research to show that female gender was at any higher risk than male gender for the development of carpal or cubital tunnel syndrome. Dr. Mall did not believe being in her fifth decade of life was a risk factor for the development of carpal or cubital tunnel syndrome. Dr. Mall did agree with obesity as a risk factor for the development of carpal and cubital tunnel syndrome. (PX 10)

Dr. Sudekum testified by way of deposition taken on December 18, 2014. (RX 11) Dr. Sudekum is a hand and upper extremity surgeon and specialist. He is board-certified in plastic and reconstructive surgery and also board-certified in surgery of the upper extremity. Dr. Sudekum holds a certificate of added qualification for surgery of the hand. He has been in private practice for 18 years. Dr. Sudekum's practice involves the evaluation and treatment of conditions affecting the upper extremity. Ninety-five percent of his practice is treating patients.

Dr. Sudekum testified that he treats at least a couple hundred patients per year who have a diagnosis of carpal tunnel syndrome, and he performs surgery on approximately one-third of those patients. Dr. Sudekum has toured Respondent's facility, including the healthcare unit where Petitioner worked. Dr. Sudekum opined that he believed Petitioner had been suffering from bilateral carpal tunnel syndrome; however, he did not agree with the diagnosis that Dr. Mall gave of bilateral cubital tunnel syndrome. Dr. Sudekum noted that Petitioner was a nurse and was relatively reasonably sophisticated about medical things and Petitioner told him that her symptoms were in the median nerve distribution, that is, the thumb, index and middle fingers. Dr. Sudekum noted that Petitioner did not indicate that she had symptoms consistent with cubital tunnel syndrome, certainly not symptoms requiring surgery. Dr. Sudekum opined to a reasonable degree of medical certainty that Petitioner's job duties as a nursing supervisor at Menard did not cause or aggravate her carpal tunnel syndrome or cubital tunnel syndrome. Dr. Sudekum testified that he did not believe the keyboarding Petitioner described was a causative or aggravating factor for either carpal or cubital tunnel syndrome.

Dr. Sudekum testified that he believed that Petitioner suffered from carpal tunnel syndrome prior to her employment with Respondent. (RX11). Even though Petitioner reported improvement in her gestational carpal tunnel symptoms until her return to work, he did not feel as though Petitioner's job duties aggravated her carpal tunnel syndrome. (*Id.* at 44) Contrary to Petitioner's testimony, Dr. Sudekum testified that he did perform a Neurometrix test on Petitioner and charged the State $665.00 for same. (*Id.* at 72) He testified that he did not do a specific ergonomic analysis of Petitioner's work station. (*Id.* at 110)

On cross-examination Dr. Sudekum testified that he has been paid $1,165,000.00 for his medical-legal services for the State of Illinois. (*Id.* at 58-69)

At her hearing Petitioner acknowledged that she had a pregnancy in 2011, during which time she had carpal/cubital tunnel-like symptoms, but was not formally diagnosed with carpal or cubital tunnel syndrome. She further testified that after she gave birth on November 8, 2011, her symptoms improved but did not totally go away. Petitioner testified that, while pregnant, it hurt from her elbows down.

Petitioner testified that she began working for Respondent on January 16, 2012, as a nursing supervisor. Prior to her employment with Respondent, Petitioner worked as a floor nurse at Red Bud Regional Hospital, which she testified did not involve any typing. Petitioner also worked at Red Bud Regional Hospital as an interim manager which she testified involved minimal typing activities but more traditional patient oriented activities associated with the field of nursing.

Petitioner testified that when she began working for Respondent she typed and did a lot of writing and charted audits. Petitioner testified that her work station was not ergonomically set up. She described her desk as an older one with drawers that opened and closed but not easily

as they were wooden and would stick. She further testified that her chair would not raise up or down and she frequently had to sit on one leg to get her self up high enough so she could type or write. Petitioner testified that while working in that position she began to notice that her hands and wrists hurt and were becoming numb.

According to Petitioner her charts could weigh from ounces to pounds and the number of times she might pull charts, lift them, and take them apart could depend on the number of inmates in the infirmary. If an audit or grievance was going on she might pull up to thirty files at a time. Petitioner estimated she used her hands and arms 75% to 80% of her day.

Petitioner also testified that she had a keyboard and mouse located on top of her desk with no support for her arms and hands. Petitioner testified that when she worked in this position, she began noticing that her hands would begin to hurt, go numb and tingle. Petitioner testified that she spoke to Respondent about correcting the setup of her work station, but nothing was done.

Petitioner testified that at times she would type for 3 to 4 hours in a row without a break and perform additional intermittent typing throughout the day; and that she used her hands and arms for 75% to 80% of her shift. She also believed she spent at least three hours, looking through files, pulling charts, and performing nursing supervisor activities.

Petitioner testified that she used keys approximately 15-30 times per shift. While on direct examination she testified that she used Folger-Adams keys, on cross-examination she confirmed that she did not know what a Folger-Adams key was and did not use the same keys that are used at Menard Correctional Center to open cell doors. Petitioner testified that she began sitting at the wooden desk she complained of in July 2012 and sat there until October 2014. She testified that she pulled on the drawers 15-30 times per shift. She testified that when she was promoted to her current position she was the direct supervisor of the nursing supervisor who sat at her old desk. Even though Petitioner claims that the "unergonomic workstation" led to her development of bilateral carpal and cubital tunnel syndromes, Petitioner confirmed on cross-examination that she did not have the workstation changed for the person she was supervising. Petitioner testified on cross-examination that she typed at least three hours a day, sometimes intermittently and sometimes consecutively. She confirmed that her other job duties included looking through files, pulling charts, and other nursing supervisory activities. Petitioner testified that her troubles sleeping through the night began in June 2013.

Petitioner testified that she prepared a job description (PX 12) and that it reflects the nursing supervisor duties for the 3:00 to 11:00 p.m. shift. Petitioner reviewed Respondent's job description (RX 6) and testified that it was not "very inclusive" or in depth. Petitioner noted that it did not detail the actual amount of time that she used her arms and hands at work.

Petitioner described it as very general ("bland") in description without any depth. Petitioner noted that it did not detail the actual amount of time she spent using her hands and arms at work.

Petitioner testified that the amount of time she would spend keyboarding would depend upon what was going on in the building. Sometimes she would be able to go several hours and other times she would be interrupted within ten minutes and get to take a break. Petitioner estimated she spent about three to four hours during her shift typing nonstop and that as she did so she would notice her hands hurting and becoming numb.

Petitioner denied any outside activities, such as crocheting, painting, or sculpting that involved substantial use of her hands.

Petitioner testified that she went to Dr. Nancy Birner, her family doctor, for her symptoms. Petitioner testified that she told Dr. Birner about her symptoms while pregnant and that the history she gave the doctor was correct. Dr. Birner recommended diagnostic testing which was something she had never undergone before. Petitioner further testified that she had never previously been diagnosed with carpal or cubital tunnel syndrome. Upon receiving the results of the nerve conduction study, she reported a work injury and completed a "Form 45" (PX 11). Petitioner testified that she gave the information contained in PX 11 to Brenda Nucomb (associated with TriStar) via telephone.

Petitioner testified that conservative measures such as splinting and medication did not improve her injuries. Thereafter, she underwent surgery on her elbows and wrists/hands. Petitioner testified that Dr. Mall performed cubital tunnel releases despite the negative diagnostic studies on her elbows because she was symptomatic. She did not try conservative care for her elbows first because she had a baby and splints would keep her arms straight. Even though the splints would be worn primarily at night her son gets up throughout the night and her husband works a night shift so she would need to be able to pick him up and care for him.

Petitioner testified that her symptoms resolved in her upper extremities following surgery and that her elbow conditions and right hand conditions certainly improved. However following surgery, Petitioner developed a claw deformity, which she testified affects her ability to work and her activities of daily living. Petitioner notices weakness in the left hand and difficulty typing. Petitioner cannot make a complete fist with her left hand. Pictures of the deformity were taken and admitted into evidence as Petitioner's Exhibit 5.

Petitioner testified that she was then referred to Dr. Mall by Dr. Birner. Dr. Mall has recommended a way to fix the claw deformity and Petitioner wishes to undergo the procedure. First she needs to go through another nerve conduction study. According to Petitioner, Dr. Peeples won't perform another study unless it is covered by workers' compensation.

Petitioner acknowledged that she was asked by Respondent to undergo an examination with Dr. Sudekum. She further acknowledged having had the opportunity to review Dr. Sudekum's deposition and she disagreed with some of the doctor's comments. Petitioner explained that the healthcare unit (HCU) is entered via a button that one pushes which alerts the officer that entry to the unit is needed. Once she enters the HCU there are no buttons to push open doors, cabinets, or lock boxes. Rather, they are opened with keys. Petitioner testified that she frequently has to use keys throughout the day and estimated she would enter and exit the infirmary fifteen to thirty times per day. She further testified that the keys are old and don't always work smoothly. Occasionally, she would need to use two hands to operate the key. The keys also stick and sometimes have to be jiggled. Petitioner testified that she used a larger key to get into her office on the third floor (the infirmary); however, it was not as large as a Folger Adam key. Entry to the infirmary is via a heavy steel door which could be difficult to open at times and require both hands to manipulate the door. Petitioner further testified that Dr. Sudekum incorrectly testified that after the delivery of her son, Colt, her complaints continued. According to Petitioner her symptoms "improved" after Colt's birth and she then began having "significant problems" again in July.

Petitioner also described the efforts of Dr. Sudekum's office in an attempt to perform a Neurometrix test. She explained that the nurse performing the test unsuccessfully tried to perform it on two occasions but it would not work. Petitioner would feel the shock but the machine did not read it. According to Petitioner the nurse got the assistance of Dr. Sudekum; however, he was unable to make it work so the test was aborted.

Petitioner testified that she is currently the acting director of nurses which gets her away from the work station.

Petitioner denied having diabetes, gout, hypothyroidism, or rheumatoid arthritis. She has three children and never had any problems with numbness or tingling during the first two pregnancies.

On cross-examination Petitioner was asked to clarify her testimony regarding the status of her symptoms post-pregnancy with her son, Colt, and any alleged discrepancy in Dr. Sudekum's report regarding that. She acknowledged that her symptoms did not resolve post-pregnancy but they did improve significantly. Petitioner also testified that she knew her work station was not ergonomically correct because she had used an ergonomically correct one at her previous job. She further acknowledged having a desk and office when she worked as the interim manger at Red Bud Hospital; however, the typing was minimal.

As a nursing supervisor, Petitioner estimated she oversaw twenty to thirty nurses. Her direct supervisor would have been the director of nursing. Now that she is director of nursing, her direct supervisor is the healthcare unit administrator. Petitioner testified that she told Nikki Malley, the healthcare unit administrator, about her work station around June of 2013.

Petitioner testified that she spoke to both Ms. Nalley and Mr. Trindle to see if her desk could be lowered or something else could be done. Nothing was ever done.

Petitioner acknowledged being given bilateral wrist splints by her OBGYN while pregnant. Those were the same splints she wore when she initially saw Dr. Mall.

Petitioner agreed that she did not report her symptoms to Respondent until August 30, 2013.

Petitioner has worked three different shifts while working for Respondent. She began on the 10:00 a.m. to 6:00 p.m. shift. She estimated about the same amount of time typing regardless of the shift. Her shifts are 7 1/2 hour shifts.

Petitioner is right hand dominant. Petitioner does not know if Dr. Mall has ever performed the recommended surgery before. She believes that Dr. Goldfarb would perform the surgery, with Dr. Mall assisting. She is aware that Dr. Mall does not hold a certificate of qualification in hand surgery.

Petitioner sat at the wooden desk she was provided from July of 2012 through October of 2014.

Petitioner acknowledged that she has always struggled with her weight. Other than her pregnancy, she has not associated any symptoms with any weight gain.

Petitioner testified that her symptoms of numbness, tingling, and pain have completely resolved and her only ongoing problem is the deformity in her left hand. Petitioner further explained that despite her left hand symptoms post-surgery she didn't go to Dr. Birner or request an appointment any earlier with Dr. Mall than April 23, 2014 because her father was terminally ill and passed away in March of 2014.

Petitioner also testified that she disagreed with Dr. Sudekum's testimony that she was a "no show" for some visits, explaining that she had cancellation letters from Integrity. She did agree that one scheduled for October of 2013 had to be rescheduled because she was scheduled to be on vacation and one scheduled for March of 2014 was cancelled due to her father's death.

Petitioner acknowledged on cross-examination that she is not claiming any problems with her shoulders despite the allegation on her Application for Adjustment of Claim.

Gail Walls, the healthcare unit administrator, was called to testify by Petitioner. Ms. Walls agreed that Petitioner was a good employee. She agreed that there is a lot of typing but felt it would be extremely rare to type 3 to 4 without rest because that is usually with grievances and you have to look at the inmate's file and think about your response and then type. She also acknowledged seeing Petitioner's desk but denied that Petitioner ever said anything about it to her. She never saw Petitioner sitting at her desk. Ms. Walls also testified that the charts usually don't get above 2 to 2.5 inches high, but pulling and carrying multiple charges is problematic.

Ms. Walls was not aware that Petitioner had asked Ms. Malley and the sergeant for alterations to her desk.

A Position Description for a "Nursing Supervisor" was admitted as RX 6. It contains a general overview of the position's essential functions. The manner in which those functions are performed is not identified.

PX 12 is a job description for the "3 p - 11p Nursing Supervisor" position. Job duties include: grievance responses; pre-release HIV testing; inmate discharge planning; inmate chart audits; inmate cell house permits; HCU training coordinator; offender education coordinator; and tool counts. These duties are further described and include tasks such as typing, hand writing, filing, pulling files, copying, assembling, and disbursement. PX 12 notes: "Each one of the above duties requires the nurse supervisor to write manually, type, file, punch holes, fold and staple documents daily in an ergonomically unsound work station. Each offender medical record varies in weight. The nurse supervisor unlocks many doors and secured cabinets/boxes many times a shift. I type and respond to emails each shift. "

Petitioner's time sheets for 2012 and 2013 were admitted as RX 7.

The Arbitrator concludes:

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner failed to prove that she sustained an accident that arose out of and in the course of her employment with Respondent. Petitioner failed to prove that her condition of ill-being in her hands and elbows was related to her employment with Respondent. By her own testimony, Petitioner claims no work-related injury to her shoulders despite her Application stating to the contrary.

In a repetitive trauma case, the issues of accident and causation are intertwined. In the instant case both parties have proffered expert opinions and liability boils down to which physician has the more persuasive opinion. Petitioner relies upon the opinions of Dr. Mall. Respondent relies upon those of Dr. Sudekum. In the end, Petitioner bears the burden of proof on the issue of causation and Petitioner has failed to meet her burden of proof on that issue. In so concluding, the Arbitrator notes that Dr. Mall's opinion on causation is based upon a faulty premise.

Dr. Mall is very clear in his deposition testimony that his causation opinion is based upon his understanding from the history provided to him by Petitioner that she had complete resolution of her bilateral carpal tunnel symptoms after she gave birth to her son in 2011 and

that her symptoms began again with her employment duties for Respondent. Dr. Sudekum's opinions, in contrast, were based upon an understanding that Petitioner never had a complete resolution of her symptoms. Petitioner's testimony at trial was contrary to the understanding of Dr. Mall. Petitioner testified that she developed symptoms in her hands and wrists while pregnant with her son, Colt, in 2011. She noticed symptoms of numbness, tingling, and burning both during the day and at night and while working. At that time she was not working for Respondent. Petitioner began working for Respondent on January 16, 2012. When asked what happened to her symptoms after the birth of her child in November of 2011, Petitioner testified that they improved but she could not say that they totally went away. On cross-examination Petitioner again testified that her symptoms never resolved completely after her pregnancy. In his deposition Dr. Mall testified to his understanding that Petitioner's symptoms resolved following her pregnancy and that she worked for Respondent approximately one year without any symptoms. (PX 10, pp. 19, 20, 32, 71-72) That understanding formed the basis for his causation opinion; however, it was contrary and unsupported by Petitioner's actual testimony. Furthermore, Dr. Mall never rendered an opinion based upon an aggravation theory that was in accord with Petitioner's testimony. He was never asked to address whether her job duties for Respondent aggravated any pre-existing symptoms, assuming that they had not resolved completely post-pregnancy. Additionally, Dr. Mall did not have an accurate and complete understanding of Petitioner's job duties. Petitioner, by her own testimony and written job description, engaged in a variety of different tasks throughout her work day and they varied day by day.

Dr. Mall was also of the opinion that Petitioner's job duties of turning heavy keys, the opening of "quite heavy doors" (pushing and pulling) and the pushing and pulling activities of her desk drawers could cause cubital tunnel syndrome. In particular, the "repetitive nature of the pulling and grabbing [of] the doors can cause ... cubital tunnel syndrome." (PX 10, pp. 20, 33, 66) He acknowledged, on cross-examination, that he had not reviewed any records from Dr. Birner, that it was his understanding that Petitioner's upper extremity complaints "began" in July of 2013, and that he had no knowledge as to how many times a day she used "large keys," had to "open doors repetitively," or pushed/pulled drawers. (PX 10, pp. 40 - 54, 66)He acknowledged having never seen a video with regard to Petitioner's job or what occurs in the health care unit. (PX 10, p. 55) He also acknowledged that nerve conduction testing was negative for cubital tunnel syndrome. (PX 10, p. 63) He also agreed that there haven't been any studies finding an association between typing and cubital tunnel syndrome, even when there's a non-ergonomic work station involved. (PX 10, p. 65)

While Petitioner attempted to cast doubt on Dr. Sudekum's opinions by noting some disagreement with statements in his report, her attempt to diminish the extent of her symptoms post-pregnancy was not convincing. Dr. Sudekum believed her symptoms continued and Petitioner never stated that the completely stopped after child birth. She acknowledged the

symptoms never resolved but became worse. Again, Dr. Mall never addressed that scenario as he believed her symptoms completely resolved.

Petitioner's claim for compensation is denied. No benefits are awarded. All remaining issues are moot.

****

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEFFERY A. MERCER,

Petitioner,

15IWCC0972

vs.

NO: 14 WC 14938

VILLAGE OF ARTHUR,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner Respondent herein and notice given to all parties, the Commission, after considering the issues of, changes the Decision of the Arbitrator as specified below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total disability compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

On page 5, in the final sentence of the Decision, the Arbitrator wrote in explaining his denial of Petitioner's Petition for Penalties and Fees: "While the Arbitrator was not persuaded by Dr. Paletta's opinions, Respondent's reliance on same was either vexatious nor in bad faith." The Commission corrects this clerical error and changes the word "either" to "neither."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 29, 2015 is hereby changed as specified above and otherwise is affirmed and adopted.

15IWCC0972

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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 proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

DATED: DEC 2 2 2015

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

RWW/dw
O-12/1/15
46

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

15IWCC0972

MERCER, JEFFERY A
Employee/Petitioner

Case# **14WC014938**

VILLAGE OF ARTHUR
Employer/Respondent

On 1/29/2015, 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:

0874 FREDERICK & HAGLE
JEFFREY D FREDERICK
129 W MAIN ST
URBANA, IL 61801

0445 RODDY LAW LTD
ROBERT DOHERTY
303 W MADISON ST SUITE 1900
CHICAGO, IL 60606

15IWCC0972

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

- ☐ 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)

Jeffery A. Mercer
Employee/Petitioner

Case # 14 WC 14938

v.

Consolidated cases: n/a

Village of Arthur
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 William R. Gallagher, Arbitrator of the Commission, in the city of Urbana, on December 22, 2014. 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. ☒ 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 _____

FINDINGS

On the date of accident, January 10, 2012, 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 $52,109.20; the average weekly wage was $1,002.10.

On the date of accident, Petitioner was 43 years of age, married with 2 dependent child(ren).

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $17,465.25 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $17,465.25. At the time of trial, the parties stipulated TTD benefits were paid in full.

Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibits 11 and 12 as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

Respondent shall authorize and pay for prospective medical treatment including, but not limited to, the left shoulder surgery recommended by Dr. Frank Lee and Dr. Lawrence Li.

Petitioner's petition for penalties and attorneys' fees is denied.

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.

William R. Gallagher, Arbitrator
ICArbDec19(b)

January 26, 2015
Date

JAN 29 2015

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on January 10, 2012. According to the Application, Petitioner was tightening nuts on a flange and sustained injuries to the right shoulder and arm and left shoulder and arm (Petitioner's Exhibit 1). Respondent stipulated that Petitioner sustained a work-related accident; however, Respondent disputed liability on the basis of causal relationship. At trial, counsel for Petitioner and Respondent stipulated that Petitioner sustained a work related injury to his right shoulder and that medical and temporary total disability benefits regarding same had been paid in full. The causality relationship that was disputed was in regard to Petitioner's left shoulder. This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills and prospective medical treatment in regard to Petitioner's left shoulder.

At the time of review of the file for issuance of a Decision, the Arbitrator noted that the Application for Adjustment of Claim (Petitioner's Exhibit 1) had a case number of 14 WC 19125. It appears case number 14 WC 19125 was previously dismissed by Arbitrator Dearing. The case was listed on the trial docket as case number 14 WC 14938 which alleged injuries to the same body parts. It appears that Petitioner inadvertently submitted the wrong Application for Adjustment of Claim.

At trial, Petitioner testified that he worked for Respondent as the Water Plant Superintendent. Petitioner was the only employee of that department and performs all of the job duties associated with maintenance of the water plant including digging, replacing/repairing lines, etc. Petitioner described this work as being very physically demanding.

Petitioner testified that on January 10, 2012, he was in the process of attempting to drain a water softener and he tried to forcibly breaking a nut loose from a bolt. At that time, Petitioner sustained an injury to his right shoulder.

Petitioner initially sought medical treatment from Dr. Patrick Hartman, who saw Petitioner on January 10, 2012. Dr. Hartman initially diagnosed Petitioner with a rotator cuff strain and ordered an MRI scan (Petitioner's Exhibit 5). An MRI was performed on January 13, 2012, which revealed a full thickness tear of the supraspinatus tendon (Petitioner's Exhibit 6).

Dr. Hartman referred Petitioner to the Bonutti Clinic where Petitioner came under the care of Dr. Daniel Dethmers, an orthopedic surgeon. Dr. Dethmers performed an arthroscopic surgical repair of the right rotator cuff on February 28, 2012 (Petitioner's Exhibit 7). Shortly after that surgery, Dr. Dethmers left the Bonutti Clinic and Petitioner's care was transferred to Dr. Frank Lee, another orthopedic surgeon with the Bonutti Clinic.

Following surgery, Dr. Lee ordered physical therapy and work hardening. Petitioner received work hardening at Champion Fitness from July 16, 2012, through August 27, 2012. Petitioner testified that on July 25, 2012, he was in the process of performing an incline bench press with 30 pounds of weight and he felt a painful sensation in his left shoulder. Petitioner stated he reported this occurrence to Mandy, a physical therapist, at Champion Fitness that same day.

The Champion Fitness record of July 25, 2012, stated that Petitioner's left shoulder felt just as sore as the right from doing the exercises. The record of July 30, 2012, noted that Petitioner had discomfort in the left shoulder (Petitioner's Exhibit 8).

Petitioner was seen by Dr. Lee on July 31, 2012, and Dr. Lee's record of that date noted that Petitioner was receiving work hardening and was not yet released to return to work. There was no reference to Petitioner having injured his left shoulder while in work hardening or any left shoulder complaints at all (Petitioner's Exhibit 7); however, Petitioner testified that he did not have the opportunity to inform Dr. Lee of the left shoulder injury because Dr. Lee was running late and spent very little time with him.

When Petitioner was at Champion Fitness the next day, August 1, 2012, the record indicated that Petitioner continued to have pain in his left shoulder and that he did not have a chance to ask Dr. Lee about it the preceding day. Petitioner was at Champion Fitness on several occasions during August, 2012, and he regularly complained of left shoulder symptoms. The record of August 6, 2012, indicated that Petitioner was unsure why he was having left shoulder symptoms. When Petitioner was at Champion Fitness on August 15 and 16, 2012, he noted a decrease in his left shoulder symptoms because he had not been using it as much (Petitioner's Exhibit 8). At trial, Petitioner denied having any left shoulder symptoms prior to the incident of July 25, 2012.

Petitioner was seen by Dr. Lee on August 28, 2012, and Dr. Lee released Petitioner to return to work at that time. Dr. Lee's record of that date did not contain any reference to Petitioner having any left shoulder symptoms (Petitioner's Exhibit 7); however, Petitioner testified that he did not complain of left shoulder symptoms because he had decreased his use of the left shoulder and was not experiencing any significant symptoms at that time.

Petitioner testified that when he returned to work he started to do overhead activities and his left shoulder symptoms returned. When Petitioner saw Dr. Lee on September 25, 2012, Petitioner advised he was having more left shoulder pain than right and that he first noticed left shoulder symptoms when he was doing the incline bench press in therapy (Petitioner's Exhibit 7).

Petitioner continued to be seen by Dr. Lee during October and November, 2012, for his left shoulder symptoms. Dr. Lee gave two injections in Petitioner's left shoulder which provided him some temporary relief. When Dr. Lee saw Petitioner on November 16, 2012, he recommended that Petitioner have an MRI performed (Petitioner's Exhibit 7).

Respondent would not authorize the MRI and had Petitioner examined by Dr. George Paletta, an orthopedic surgeon, on November 28, 2012. In connection with his examination of Petitioner, Dr. Paletta reviewed medical records provided to him by Respondent. According to Dr. Paletta's report, Petitioner informed him that on July 30, 2012, while in work hardening, Petitioner was doing some incline bench presses with 30 pounds and he felt left shoulder pain. On clinical examination of the left shoulder, Dr. Paletta diagnosed AC joint pain but no evidence of significant rotator cuff or labral pathology. Dr. Paletta attributed the AC joint pain to pre-existing joint arthritis which may have been irritated by Petitioner's physical therapy activities. Dr. Paletta recommended Petitioner have a Depo Medrol injection; however, he opined that an MRI of the left shoulder was not indicated (Respondent's Exhibit 1).

Dr. Lee saw Petitioner on December 14, 2012, and gave Petitioner a Depo Medrol injection in the left shoulder. When Dr. Lee saw Petitioner on January 16, 2013, his left shoulder was pain-free; however, Petitioner continued to have popping in the left shoulder (Petitioner's Exhibit 7).

At the direction of Respondent, Dr. Paletta examined Petitioner for the second time on July 17, 2013. Dr. Paletta noted that Petitioner still had tenderness of the left AC joint which he still attributed to the AC joint arthritis (Respondent's Exhibit 2).

Dr. Lee again saw Petitioner on September 10, 2013, and he renewed his recommendation that Petitioner have an MRI of the left shoulder. The MRI was performed on October 9, 2013, and it revealed a full thickness tear of the rotator cuff involving the anterior aspect of the supraspinatus tendon. Dr. Lee saw Petitioner on October 11, 2013, reviewed the MRI and recommended Petitioner have left rotator cuff surgery. Dr. Lee saw Petitioner again on December 18, 2013, and renewed his surgical recommendation (Petitioner's Exhibit 7).

At the direction of Respondent, Dr. Paletta reviewed the MRI scan and prepared a supplemental report dated November 19, 2013. Dr. Paletta agreed that the MRI revealed a full thickness tear of the anterior aspect of the supraspinatus. He also opined that Petitioner's mechanics of injury would not be consistent with it causing a rotator cuff tear but that it could have increased it symptoms. He recommended Petitioner have an injection and further physical therapy, but if that did not improve the symptoms, arthroscopic repair would be considered (Respondent's Exhibit 3).

Again, at the direction of Respondent, Dr. Paletta prepared two additional supplemental reports dated January 29, and February 13, 2014. In those reports, he restated his prior opinions as to the etiology of Petitioner's left shoulder complaints and that left rotator cuff surgery might be indicated (Respondent's Exhibits 4 and 5).

Petitioner was subsequently examined by Dr. Lawrence Li, an orthopedic surgeon, on May 29, 2014. When seen by Dr. Li, Petitioner informed him that he had injured his left shoulder while in work conditioning (work hardening) for his right shoulder. Dr. Li reviewed the MRI scan and opined that a left arthroscopic rotator cuff surgical procedure was indicated. Dr. Li saw Petitioner again on August 14, 2014, and reaffirmed his surgical recommendation. In a narrative report dated August 19, 2014, Dr. Li opined that Petitioner's lifting weights overhead caused the rotator cuff tear and, further, that lifting weights overhead is a major cause of rotator cuff tears. Petitioner has continued to be seen by Dr. Li from September, 2014, through December, 2014, with no improvement of his left shoulder symptoms (Petitioner's Exhibit 10).

Dr. Li was deposed on August 25, 2014, and his deposition testimony was received into evidence at trial. Dr. Li's testimony was consistent with his medical records and reports and he reaffirmed his opinion that Petitioner's left shoulder condition was related to the weightlifting Petitioner participated in while in work hardening. He also noted that overhead weightlifting is one of the most stressful activities that can be imposed on a shoulder. He also opined that the AC joint probably became symptomatic as a result of the increased blood flow following the rotator cuff tear. In regard to treatment, Dr. Li testified that Petitioner had undergone conservative treatment

which had failed and that arthroscopic surgery on the left rotator cuff was reasonable and necessary (Petitioner's Exhibit 9; pp 9-15).

Dr. Paletta was deposed on October 30, 2014, and his deposition testimony was received into evidence at trial. Dr. Paletta's testimony was consistent with his narrative medical reports and he reaffirmed his opinion that Petitioner's left shoulder condition was not related to lifting weights while in work hardening. Specifically, Dr. Paletta testified that Petitioner did not describe a dramatic event that would have caused an acute sudden tear of the rotator cuff, nor was one described in the medical records he reviewed (Respondent's Exhibit 7; pp 31-32).

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being in regard to both the right and left shoulders is related to the accident of January 10, 2012.

In support of this conclusion the Arbitrator notes the following:

At trial, Petitioner and Respondent stipulated that there was no dispute that Petitioner sustained a work-related injury to the right shoulder.

Petitioner's testimony that he had no left shoulder symptoms prior to July 25, 2012, was unrebutted.

The Champion Fitness records clearly indicated that Petitioner started experiencing left shoulder symptoms after exercising. Petitioner continued to have left shoulder complaints while in work hardening although they did decrease once he stopped using his left shoulder as much.

Petitioner's testimony that he did not have the opportunity to inform Dr. Lee of his left shoulder injury when he saw him on July 31, 2012, was confirmed by the Champion Fitness record of August 1, 2012.

Dr. Paletta initially opined that there was no left rotator cuff pathology; however, his opinion changed when he reviewed the MRI scan which clearly revealed a tear of the supraspinatus.

Dr. Li opined that Petitioner's left shoulder condition is clearly related to the overhead weightlifting Petitioner did while he was in work hardening and, further, this is one of the most stressful activities that can be imposed on a shoulder.

The Arbitrator finds the opinion of the treating physician, Dr. Li to be more persuasive than that of the Section 12 examiner, Dr. Paletta.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibits 11 and 12, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is entitled to prospective medical treatment including, but not limited to, the left shoulder surgery recommended by both Dr. Lee and Dr. Li.

In support of this conclusion the Arbitrator notes the following:

All three orthopedic surgeons that have treated and/or examined Petitioner, Dr. Lee, Dr. Li and Dr. Paletta, have opined that left rotator cuff surgery is appropriate.

In regard to disputed issue (M) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is not entitled to Section 19(k) and Section 19(l) penalties or Section 16 attorneys' fees.

In support of this conclusion the Arbitrator notes the following:

While the Arbitrator was not persuaded by Dr. Paletta's opinions, Respondent's reliance upon same was either vexatious nor in bad faith.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Carla Rients,

Petitioner,

15IWCC0973

vs.

NO: 11 WC 45973

Vactor Manufacturing,

Respondent.

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 accident, causal connection, medical treatment, temporary total disability and the nature and extent of the injury and being advised of the facts and law, modifies and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The fourth line on page five of the Decision states that the Arbitrator is "not convinced that Petitioner's job activities for Respondent were sufficiently variable and repetitive in nature." On review, we hereby delete "variable and" as we find this wording unintentionally inconsistent with the Arbitrator's findings. The sentence shall be modified to read the Arbitrator "is not convinced that Petitioner's job activities for Respondent were sufficiently repetitive in nature."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 13, 2015 is modified as stated above and otherwise affirmed and adopted.

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 DEC 2 2 2015
o-12/2/15
46

Ruth W. White

Joshua D. Luskin

Charles J. DeVriendt

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0973

RIENTS, CARLA
Employee/Petitioner

Case# **11WC045973**

VACTOR MANUFACTURING
Employer/Respondent

On 3/13/2015, 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:

2186 BRASSFIELD KRUEGER & RAMLOW LT
MOLLIE J RALPH
203 ARMORY CT
STREATOR, IL 61364

1120 BRADY CONNOLLY & MASUDA PC
MARK F VIZZA
10 S LASALLE ST SUITE 900
CHICAGO, IL 60602

15IWCC0973

STATE OF ILLINOIS)
)SS.
COUNTY OF LASALLE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Carla Rients,
Employee/Petitioner

v.

Vactor Manufacturing,
Employer/Respondent

Case # **11** WC **45973**

Consolidated cases: **none**

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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Ottawa**, on **12/22/14**. 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. [ ] 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. [ ] 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. [x] 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] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] TTD
L. [x] 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 _____

15IWCC0973

FINDINGS

On **7/13/11**, 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 not*** 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**41,379.52**; the average weekly wage was $**795.76**.

On the date of accident, Petitioner was **54** years of age, ***single*** with **no** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**4,039.49** for other benefits (non-occupational disability), for a total credit of $**4,039.49**. (Arb.Ex.#1).

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that Petitioner failed to prove by a preponderance of the credible evidence that she sustained accidental injuries arising out of and in the course of her employment on July 13, 2011 and failed to prove that her current condition of ill-being is causally related to said accident. Accordingly, Petitioner's claim for compensation is hereby denied.

No benefits are awarded.

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

3/10/15
Date

MAR 13 2015

STATEMENT OF FACTS:

Petitioner testified that she had been employed by Vactor Manufacturing since November 1999. She testified that on July 13, 2011, she was working as an MRO Crib Attendant. Her duties were varied. She would start the day on her computer checking emails and responding to them, then she would fill cabinets with parts and also fill orders from employees for various parts. These duties could interrupt her working on the computer. She would have to push carts to the cabinet to fill it. She would have to take items off the cart and put them into the cabinet. She would have to take things out of inventory to refill what she took to fill the cabinets. She would have to deliver boxes of paper to various parts of the factory. She had to open boxes with a box cutter and also break down the boxes. The cart she had to push could weigh up to 60 pounds. Sometimes she would have to push one cart and pull another at the same time.

Every day was different. She worked the second shift 40 hours per week. She began to develop tingling in her thumb and first finger and then down her wrists in October 2010. It would wake her up at night. She saw her family physician, Dr. Brian D. Sipe, in January 2011, and he recommended a carpal tunnel test. She had the EMG on July 13, 2011, and was referred to Dr. Travis Richardson for surgery. She had carpal tunnel release on the right in August 2011, and carpal tunnel release on the left after that. She was doing well after the surgeries. She had no further treatment after the surgeries. She had no physical therapy and was released to return to work full duty on October 24, 2011. She has not seen any doctors for her wrist problems since 2011, and has not missed any days from work because of her wrists since October 24, 2011. She does the same job, doing the same duties as she did before July 13, 2011. She does the same duties every day, but the amount of time and the order in which she does them is varied every day, as it was before July 13, 2011. No two days are the same. Everything she does involves flexion and extension of her hands and wrists. She does not use any power tools or any hand tools. She did treat for this condition as early as October 2010 with Dr. Larry Stalter.

Dr. Travis Richardson testified that he is a board certified orthopedic surgeon. He practiced in Illinois for approximately five to six years, and now practices in Arkansas. 50% of his practice is soft tissue injury, and 10% or less of his practice involves carpal tunnel syndrome. He was board certified in 2010 by the National Board of Osteopathic Medical Examiners. He worked at the same clinic as Dr. Sipe in 2011. He believes he first saw the patient August 26, 2011. He did issue a report dated August 2, 2011, that went through the petitioner's job duties and medical treatment. In that report, he found her carpal tunnel syndrome was causally related to work activities. He feels she does repetitive activities and it is his opinion that is the number one cause of carpal tunnel syndrome. The doctor testified that the petitioner wrote out a job description in front of him. The doctor could not explain how if the first time he saw the petitioner was August 26, 2011, he could write a report with a job description dated August 2, 2011. He had no independent recollection of the first time he saw the petitioner, and the first record he had was from August 26, 2011.

Dr. Richardson testified he would do a carpal tunnel release without any EMG/NCV having been performed if the clinical signs showed carpal tunnel syndrome. He performed the carpal tunnel release on the right on August 29, 2011, and he believes the carpal tunnel release on the left was done on September 23, 2011. He saw her on October 7, 2011, and she had no subjective complaints, and her symptoms had completely resolved. He felt she could return to work full duty on October 24, 2011. He does not believe that in order for repetitive work activities to cause or contribute to carpal tunnel, they need to be forceful and repetitive grasping with extension and flexion of the wrists. He believes that just repetitive activities alone can cause carpal tunnel syndrome. He believes that typing can cause carpal tunnel syndrome. He does not believe that a certain type of grip is needed to cause carpal tunnel syndrome. He believes that any repetitive activity at all will cause or aggravate carpal tunnel syndrome.

Dr. Ramsey Ellis testified that she is a board certified plastic and reconstructive surgeon with an added credential of hand surgery. She concentrates her practice in the treatment of the hand and wrist. She is familiar with and has treated carpal tunnel syndrome. She examined the petitioner on August 5, 2012. She reviewed various medical records and examined the petitioner. The petitioner's chief complaint was bilateral carpal tunnel syndrome status post surgery. She took a history from the petitioner. The petitioner gave a history of working for 13 years for the respondent and uses no hand tools. She occasionally uses a hand dolly or pallet jack. She told the doctor she packs and unpacks boxes, opens boxes, does computer work, and at most will lift 30 pounds with a two-handed lift. She told the doctor that her activities over the course of the day are varied between all the activities previously described. She denied any highly repetitive activities. Upon completion of the examination and review of the medical records, Dr. Ellis diagnosed bilateral carpal tunnel syndrome status post carpal tunnel release with resolution of symptoms. Dr. Ellis could find no evidence that her carpal tunnel syndrome was either caused or aggravated or exacerbated by her job at Vactor Manufacturing. The petitioner described no highly repetitive activities that involved forceful grasping with flexion and extension of the wrists. In fact, the petitioner described a varied work routine involving no tool use and no heavy grasping. She described no heavily repetitive activities involving forceful gripping coupled with flexion and extension of the wrists. Dr. Ellis did ask the petitioner about variability of her work activities and believes the petitioner understood her question about variability and highly repetitive work.

Dr. Ellis testified some types of jobs can cause or aggravate carpal tunnel such as assembly line work where you do the same motion highly repetitive and it involves extension and flexion with forceful gripping or use of vibratory tools. There is no evidence associating typing with carpal tunnel syndrome. There is no evidence associating cashier work with carpal tunnel syndrome. Carpal tunnel syndrome can be idiopathic and, in fact, in most patients it is idiopathic. Dr. Ellis testified we really don't understand what causes it in the cases that are idiopathic. Dr. Ellis testified that carpal tunnel syndrome is very common in middle-aged men and women and the petitioner fits this category, based upon her age. Dr. Ellis testified there is nothing in her job duties as described by the petitioner or in the job description that could be considered highly repetitive with extension and flexion and forceful gripping. Dr. Ellis felt there was nothing in the petitioner's work activities that could cause, aggravate or exacerbate carpal tunnel syndrome.

WITH RESPECT TO ISSUES (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, AND (D), WHAT WAS THE DATE OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner testified that her job duties varied. She testified she used no vibratory tools or hand tools. She testified that she did no forceful gripping.

Treating physician, Dr. Richardson, testified that any repetitive activities alone can cause carpal tunnel syndrome. He believes that typing can cause carpal tunnel syndrome. He does not believe that any certain type of grip is needed to cause carpal tunnel syndrome. He believes that any repetitive activity at all will cause or aggravate carpal tunnel syndrome. (PXA).

Respondent's §12 examining physician, Dr. Ellis, testified that she is a board certified plastic and reconstructive surgeon with an added credential of hand surgery. Dr. Ellis discussed Petitioner's job duties with Ms. Rients and found nothing in her job duties that would cause, aggravate or exacerbate carpal tunnel syndrome. Dr. Ellis testified that the variability of Petitioner's work activities, along with no extension or flexion with forceful gripping or the use of vibratory tools, supports her opinion that Ms. Rients' job activities did not cause, aggravate or exacerbate her carpal tunnel syndrome. (RX1).

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner failed to prove by a preponderance of the credible evidence that she sustained repetitive trauma-type injuries arising out of and in the course of her employment on or about July 13, 2011. More to the point, the Arbitrator is not convinced that Petitioner's job activities for Respondent were sufficiently variable and repetitive in nature so as to cause and/or aggravate her condition of carpal tunnel syndrome. Towards this end, the Arbitrator finds the opinion of Dr. Ellis to be more persuasive than that offered by Dr. Richardson, although the Arbitrator does not go so far as to agree with the entirety of Dr. Ellis's testimony, particularly her categorical denial that typing could ever cause or aggravate carpal tunnel syndrome. In any event, given Petitioner's failure to sustain her burden of proof in this regard, her claim for compensation is hereby denied.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

For the same reasons the Arbitrator determined that Petitioner failed to prove that she suffered an accident arising out of and in the course of her employment on July 13, 2011 (issues "C" & "D", supra), the Arbitrator finds that Petitioner failed to prove by a preponderance of the credible evidence that her current condition of ill-being is causally related to the alleged accident on or about July 13, 2011. Accordingly, Petitioner's claim for compensation is hereby denied.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

In light of the Arbitrator's determination as to accident and causation (issues "C", "D" & "F", supra), the Arbitrator finds that Petitioner failed to prove her entitlement to medical expenses. Accordingly, Petitioner's claim for same is hereby denied.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS:

In light of the Arbitrator's determination as to accident and causation (issues "C", "D" & "F", supra), the Arbitrator finds that Petitioner failed to prove her entitlement to temporary total disability benefits. Accordingly, Petitioner's claim for same is hereby denied.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

In light of the Arbitrator's determination as to accident and causation (issues "C", "D" & "F", supra), the Arbitrator finds that Petitioner failed to prove her entitlement to an award for permanent partial disability. Accordingly, Petitioner's claim for same is hereby denied.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Edward Hagene,
Petitioner,

15IWCC0974

vs.

NO: 10 WC 49259

Pinckneyville Correctional Center,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, notice, permanent disability, temporary disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May27, 2015, is hereby affirmed and adopted.

~~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.

DATED: O12/1/15 DEC 22 2015
RWW/rm
046

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

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

HAGENE, EDWARD
Employee/Petitioner

Case# **10WC049259**

PINCKNEYVILLE CORRECTIONAL CENTER
Employer/Respondent

15IWCC0974

On 5/27/2015, 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:

1580 BECKER SCHROADER & CHAPMAN
TODD J SCHROADER
3673 HWY 111 PO BOX 488
GRANITE CITY, IL 62040

0558 ASSISTANT ATTORNEY GENERAL
KENTON J OWENS
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

1350 CENTRAL MANAGEMENT SYSTEMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

MAY 27 2015

RONALD A.RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

15IWCC0974

☐ 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)

EDWARD HAGENE
Employee/Petitioner

v.

PINCKNEYVILLE CORRECTIONAL CENTER
Employer/Respondent

Case # **10** WC **49259**

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 **Michael Nowak**, Arbitrator of the Commission, in the city of **Herrin**, on **01/14/15** 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. ☒ 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

15IWCC0974

FINDINGS

On the date of accident, **12/9/10**, 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 not*** 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**56,381.00**; the average weekly wage was $**10884.25**.

On the date of accident, Petitioner was **54** years of age, ***married*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**n/a** for TTD, $**n/a** for TPD, $**n/a** for maintenance, and $**n/a** for other benefits, for a total credit of $**n/a**.

Respondent is entitled to a credit of $ **any benefits paid through group** under Section 8(j) of the Act.

ORDER

Because Petitioner failed to meet his burden of establishing that an accident occurred which arose out of and in the course of his employment with Respondent, and further failed to prove that his current condition of ill-being is causally related to his employment, benefits are denied.

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

5/12/15
Date

ICArbDec19(b)

MAY 27 2015

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

These issues are somewhat overlapping, therefore the Arbitrator will address them jointly. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture,* 99 I.I.C. 0961 (1999) A claimant must prove by the preponderance of credible evidence all elements of the claim in order to receive compensation under the Act. *Orisini v. Industrial Commission*, 509 N.E.2d 1005 (1987)

The Petitioner in this case is relying upon a repetitive trauma theory rather than one of traumatic injury. The Petitioner must show the injury arose out of and in the course of his employment. *Peoria County Bellwood Nursing Home v. Industrial Commission*, 505 N.E.2d 1026 (1987) In such cases the claimant generally relies on medical testimony to establish causal connection between the claimant's work duties and the condition of ill-being. *Id.* When the question at issue is one specifically within the purview of experts, expert medical testimony is mandatory to show that the work activities caused the condition of which the employee complains. See, e.g., *Nunn v. Industrial Commission*, 157 Ill. App. 3d 470, 478 (4th Dist. 1987). The causation of compression neuropathy due to repetitive trauma has been deemed to fall in the area requiring such expert testimony. *Johnson v. Industrial Commission*, 89 Ill. 2d 438 (1982) In a repetitive trauma claim arising prior to 2011, a claimant need not establish that work activities are the sole or even the primary cause of his or her condition. It must be proven, however that work activities are at least a cause of his or her condition. The right to recover benefits cannot rest upon speculation or conjecture. *County of Cook v. Industrial Commission*, 68 Ill. 2d 24 (1977)

The Petitioner, a 54-year-old Correctional Officer for Respondent who works at Pinckneyville Correctional Center, alleges accidental injuries to both of his upper extremities stemming from repetitive work activities with an effective date of loss of December 9, 2010. The Petitioner began working for Respondent in July 1998 as a Correctional Officer at Pinckneyville Correctional Center.

Petitioner described his duties as shaking down or searching every bit of inventory of the inmates going into and out of the facility. For the first four years of his employment he did not have any help with this task. He has been the Personal Property Officer for approximately eight to nine years. Petitioner testified the inmates have two different type of property boxes whenever they come into the facility. The first box is a legal correspondence box which is approximately 12 by 24 by 10 inches deep. It mainly holds paperwork, legal work, books, and that type of thing. The second box is mainly for food items or clothing. The second box is 24 by 36 by 10 inches deep. Both boxes have lids. The property boxes could weigh up to 150 pounds if they are filled with books and legal work. On an average, the property boxes would weigh 50 pounds if they have the average amount of food items and clothing. Petitioner might see as many as 70 boxes in a given day. Petitioner testified he goes through every item in every box to check for contraband.

Petitioner testified in going through the items, the clothing is squeezed and felt for contraband. He is specifically looking for needles, sandpaper, drugs or any other form of contraband. Petitioner further testified whatever is in the property boxes, you have to take it apart, feel it, sort out and itemize it. He testified when he

is picking up the items, he is gripping and squeezing them. When searching clothing you are trying to find weapons so you are working hard at it. During the course of performing his job, he has felt his hands hurt and go numb. He shakes them out and continues working. As Petitioner went through the property boxes, he would search all the books, magazines, leaf through them. When searching the magazines he would squeeze them and feel through the seam because they will hide needles up in the seams of the magazine. If you work the seam hard enough you will feel the needle or whatever else may be hidden. Petitioner described searching a magazine and squeezing hard to feel along the seam and then roll it up and flip through all the pages and try to find out what is in there. Petitioner has found needles, sandpaper and drugs over the years in his contraband searches. Petitioner testified he is responsible for all incoming and outgoing property boxes and legal correspondence boxes. Petitioner testified that he works on the 7:00 a.m. to 3:00 p.m. shift. He keeps all of the inmate's property on a spread sheet on a computer and he does up to two hours of keyboarding a day. Petitioner testified when he was lifting the property boxes, he felt pain in his elbows; while he was keyboarding, he felt pain and numbness in his hands having to shake them out and rub them.

On September 15, 2010, Petitioner saw his family physician regarding his upper extremity symptoms. The following day Petitioner called the office of Dr. C. David Wood, an orthopedic surgeon, and made an appointment. Petitioner was examined by Dr. Wood on November 9, 2010. (PX. 2, p. 5) At that time, Petitioner had complaints of numbness and tingling in the first three fingers of his hand and at times in his ring and small fingers. (Id.) Dr. Wood's assessment was probable bilateral carpel tunnel syndrome and possible cubital tunnel syndrome. (Id.) Dr. Wood recommended nerve conduction studies which were completed on December 3, 2010. (PX. 3) The testing showed moderate bilateral median neuropathy at the wrists and mild to moderate bilateral ulnar neuropathy at the elbow. (Id.) Petitioner returned to see Dr. Wood on December 9, 2010 and Dr. Wood recommended surgery. (PX. 2, p. 8) Petitioner was next seen by Dr. Wood on May 17, 2011. (PX. 2, p. 10) Petitioner complained of nocturnal symptoms in his hands and wrists. (Id.) Dr. Wood diagnosed Petitioner as having bilateral elbow lateral epicondylitis, right worse than left and bilateral carpal tunnel and cubital tunnel syndrome. (Id.) Petitioner was given wrist splints to see if they improved his symptoms and was given an injection for the epicondylitis for his elbow. (Id.)

Respondent had Petitioner's records reviewed by Dr. James Williams. (RX. 8, 9) Dr. Williams is an orthopedic surgeon. (RX. 9, p. 4) Dr. Williams testified that in July 2011 he toured the Pinckneyville Correctional Center. (RX. 9, p. 10) While at the facility Dr. Williams performed several of the job duties of a correctional officer, including opening and closing cell doors, opening chuckholes, cuffing and uncuffing a person and lifting property boxes and food trays. (RX. 9, p. 10-11) Dr. Williams also toured the property box room while at Pinckneyville Correctional Center. While there, he lifted two or three property boxes. Dr. Williams estimated that the boxes weighed between 20 and 100 pounds. Dr. Williams did not believe Petitioner's work for the State of Illinois caused or aggravated Petitioner's bilateral carpal tunnel syndrome. (RX. 9, p. 26-27) Dr. Williams testified that Petitioner's work for Respondent did not involve any significant repetitive forceful gripping and/or grasping that was highly repetitive in nature and did not involve significant exposure to vibration. (RX. 9, p. 27)

Dr. Wood also testified by deposition. (PX. 4) Dr. Wood's opinion regarding the relationship between Petitioner's condition and his employment is equivocal at best. In his note of November 9, 2010 Dr. Wood indicated Petitioner had "an exacerbation of his symptoms with work activities." (PX 4, p. 10). In response to a

lengthy hypothetical question posed by Petitioner's attorney which contained details of Petitioner's job duties, the doctor indicated that work activities that contribute to compressive neuropathy would require heavy gripping and grasping. He stated "the activity that I think most reliably does contribute [to compressive neuropathy] are things such as heavy gripping, grasping activities. In reviewing his everyday work activities I don't see many of those." (PX4, p. 13). When specifically asked if the work activities have aggravated Petitioner's condition the doctor stated "I think, in hearing your hypothetical, that did not impress me that his work activities necessarily contributed to his carpal tunnel syndrome. I think that – – and, unfortunately, all I have got is that first record where I indicate that it seems that I'm going to suggest that his symptoms were provoked at work with activities." (PX4, p. 15, lines 11 - 19). The doctor admitted that he had no idea of Petitioner's specific job duties, hours of work, or other details of his employment. (PX4, pp. 26 – 27) His only knowledge of Petitioner's job duties came from the hypothetical question posed by Petitioner's attorney. On cross-examination the doctor testified that the tasks described in the hypothetical are not "the typical provocations that I consider likely to be associated with exacerbating or making compressive neuropathy worse." (PX 4, p. 31). When asked about the basis of his causation opinion the doctor replied "[m]y best explanation would be that, from my history from him, that included information on when he was most symptomatic, and with what particular activities he had difficulty. And I grouped them into his work activities, in that I would anticipate that he said that, 'at work, with what I do at work, that's when it will particularly bother me, and I have difficulty getting through the day.'" (PX4, p. 39) Again, the doctor indicated that he'd he doesn't "know any of the specifics of his job activities other than the fact that he is a correctional officer." (PX4, p. 40).

The Arbitrator finds the testimony of Dr. Wood does not satisfy Petitioner's burden of establishing that he sustained injuries which arose out of and in the course of his employment with Respondent. Dr. Wood is fairly clear in that the duties described in the hypothetical question posed by Petitioner's attorney are not of the type which typically contribute to the cause, aggravation, or exacerbation of compressive neuropathy. He is unaware of any of Petitioner's specific details of employment other than what was contained in the hypothetical question posed by Petitioner's attorney. He simply indicated that based on what Petitioner had told him, the symptoms appear to be exacerbated at work. This opinion is insufficient to satisfy Petitioner's burden of proving accident and causal connection. Further, even assuming the doctor wood's opinions were sufficient to satisfy the threshold standard for proving accident and causation, the doctor clearly did not possess knowledge of the specific details of Petitioner's employment which would allow him to render a valid and reliable causation opinion.

Based upon the foregoing and the record taken as a whole, the Arbitrator finds that Petitioner has failed to prove that he sustained injuries which arose out of and in the course of his employment or that his condition of ill-being is causally related to his employment. Benefits are therefore denied.

Issue (D): What was the date of the accident?
Issue (E): Was timely notice of the accident given to Respondent?

Petitioner saw his family physician due to upper extremity symptoms on September 15, 2010. On September 16, 2010, Petitioner called the office of Dr. and made an appointment. Petitioner was examined by Dr. Wood on November 9, 2010. (PX. 2, p. 5) Dr. Wood's assessment was probable bilateral carpel tunnel syndrome and possible cubital tunnel syndrome. (Id.) Dr. Wood recommended nerve conduction studies which

were completed on December 3, 2010. (PX. 3) The test showed moderate bilateral median neuropathy at the wrists and mild to moderate bilateral ulnar neuropathy at the elbow. (Id.) Petitioner returned to see Dr. Wood on December 9, 2010. Petitioner was given the results of the testing and Dr. Wood recommended surgery. Petitioner claims this date was the date of manifestation of his injuries. Dr. Williams, Respondent's records examiner agreed this was the first date Petitioner had a confirmed diagnosis of bilateral carpal tunnel and cubital tunnel syndromes. It is undisputed that Petitioner reported the Accident on December 17, 2010. (PX5)

Based upon the foregoing and the record taken as a whole, the Arbitrator finds December 9, 2010 is an appropriate date for the manifestation of Petitioner's condition and that notice was properly provided to Respondent on December 17, 2010. Having previously found that Petitioner failed to prove that he sustained injuries which arose out of and in the course of his employment or that is condition of ill-being is causally related to his employment with Respondent, however, benefits are denied.

Issue (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?
Issue (K): Is Petitioner entitled to any prospective medical care?

Both Dr. Wood and Dr. Williams agree that Petitioner has mild to moderate bilateral carpal tunnel and cubital tunnel syndromes. Both also agree that in light of the time that has passed since Petitioner was last examined he would need to be reevaluated prior to moving forward with surgery. They indicated that if his condition was unchanged he would be a candidate for surgical treatment of his bilateral carpal and cubital tunnel syndromes. The Arbitrator therefore finds that the treatment provided up to the time of hearing was reasonable and necessary in light of Petitioner's condition. However, since Petitioner failed to prove that he sustained injuries which arose out of and in the course of his employment or that his condition of ill-being is causally related to his employment with Respondent, benefits are denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☒ 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

Jacqueline Schackmuth,
Petitioner,

vs.

Triton Manufacturing,
Respondent.

15IWCC0975

NO: 13 WC 34977

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 permanent disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 31, 2015, is hereby affirmed and adopted.

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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $19,000.00. 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: DEC 22 2015
O12/15/15
RWW/rm
046

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0975

SCHACKMUTH, JACQUELINE Case# **13WC034977**

Employee/Petitioner

TRITON MANUFACTURING

Employer/Respondent

On 3/31/2015, 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 0.13% 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:

1836 RAYMOD M SIMARD PC
221 N LASALLE ST
SUITE 1410
CHICAGO, IL 60601

2389 GILDEA & COGHLAN
FRANK S GILDA
901 W BURLINGTON AVE SUITE 500
WESTERN SPRINGS, IL 60558

15IWCC0975

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Jacqueline Schackmuth,
Employee/Petitioner

v.

Triton Manufacturing,
Employer/Respondent

Case # **13** WC **34977**

Consolidated cases: **none**

The only disputed issue is the nature and extent of the injury. 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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **New Lenox**, on **2/17/15**. By stipulation, the parties agree:

On the date of accident, **8/26/13**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained 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 $**27,512.68**, and the average weekly wage was $**529.09**.

At the time of injury, Petitioner was **58** years of age, ***single*** with **no** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $**906.96** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**906.96**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $317.45 per week for a further period of 62.5 weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **permanent partial disability to the extent of 12.5% person-as-a-whole**.

Respondent shall pay Petitioner compensation that has accrued from **8/27/13** through **2/17/15**, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected 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

3/11/15
Date

ICArbDecN&E p.2

MAR 31 2015

STATEMENT OF FACTS:

Petitioner was employed by Respondent as a flex operator on August 26, 2013. She denied any prior injuries to her left shoulder or ever having received any medical attention to her left shoulder. Her left shoulder was "fine" when she reported to work on that date.

Her work week consisted of four 10 hour shifts during which time she operated three separate machines. The pemming machine required holding parts weighing from 1 to 15 pounds at or slightly above shoulder level with the arms extended. She repeated this process 1,000 to 2,000 times per shift. The punch press required her to place a part weighing 1 to 15 pounds into a machine and then activate the punch press by pressing her palms on buttons located above her head. This process also repeated 1,000 to 2,000 times per shift. The drill press required her to place parts into the machine and then bring her arms from overhead downward to drill through the parts. This process was repeated 500 to 1,000 times per shift.

On August 26, 2013, she was working in a new area when she tripped on a platform located behind her. She fell landing on her left forearm. She noted the immediate onset of pain in her left arm and shoulder but finished her shift. She reported to work the next day and was immediately directed to the Ingalls Occupational Health Clinic.

Petitioner was first treated on August 27, 2013 at the Ingalls Occupational Health Clinic where she complained of pain in her left shoulder. (PX1). Dawn Anthony, a nurse practitioner, found that Petitioner had a positive Crossover test, a positive Hawkin's test and a decreased range of shoulder motion. She prescribed physical therapy, medication and light duty work. Petitioner failed to improve and an MRI examination performed on September 9, 2013 revealed a large chronic full thickness tear of the distal supraspinatus tendon, a full thickness tear of the anterior aspect of the infraspinatus tendon and a torn biceps tendon. Ms. Anthony referred Petitioner to Dr. Daniel Weber, an orthopedic surgeon, at Integrity Orthopedics.

On September 20, 2013, Dr. Weber injected the left shoulder and prescribed continued physical therapy and light duty. Petitioner noted no improvement in her symptoms. Dr. Weber performed surgery on November 14, 2013 where he found a chronic longstanding tears of the supraspinatus and infraspinatous tendons which did not have enough viable tissue for repair. Dr. Weber also found a 50% partial tear of the biceps tendon which he repaired.

Petitioner began a course of physical therapy on November 29, 2013 and was able to return to a clerical position for Respondent on December 2, 2013. Petitioner attended physical therapy while performing light duty until April 24, 2014. At that time Dr. Weber prescribed a home exercise program and ordered a functional capacity evaluation. The FCE was performed at WCS on May 9, 2014. (PX4) The examiner noted that Petitioner was compliant. The FCE concluded that Petitioner was capable of working at the light-medium duty level. Petitioner could safely lift 30 pounds to her waist, 6 pounds overhead, lift and carry 20 pounds and lift 10 pounds to shoulder level. Petitioner testified that these weight tolerances were for bilateral lifting as the FCE did not assess the strength in each arm separately.

On May 16, 2014, Dr. Weber reviewed the FCE and imposed permanent lifting restrictions consistent with the FCE results. Petitioner may not perform work involving repetitive pushing, pulling or overhead activity. Dr. Weber placed Petitioner at maximum medical improvement.

Dr. Peter E. Hoepfner, an orthopedic surgeon, examined Petitioner pursuant to Section 12 of the Act on October 14, 2014. (RX1) Dr. Hoepfner noted on page 2 of his report that Petitioner worked as a machine operator for 10 hours per day at a job which required her to lift her arms up and down regularly to manipulate copper pieces

and to activate a machine. These pieces weighed one-half to 11 pounds and Petitioner handled 1,000 such pieces per shift.

On physical examination, Dr. Hoepfner found that Petitioner had 135 degrees of forward flexion and abduction of the left arm. Petitioner had a full 180 degrees of forward flexion and abduction in the right arm. Dr. Hoepfner also found that the Hawkin's, Speed's and O'Brien's tests were positive on the left side. (RX1, p. 4) When asked to comment on the issue of causal connection, Dr. Hoepfner stated that the accident involved "sufficient energy to cause aggravation of an underlying pre-existing condition" of a chronic massive rotator cuff tear and left glenohumeral joint arthritis. (RX1, p. 5). Dr. Hoepfner opined that the current subjective complaints of the Petitioner were primarily due to the pre-existing conditions. (RX1, p. 6). Dr. Hoepfner also opined that Petitioner could return to her regular job and that the FCE "likely overstates the limitations for her". (RX1, p. 6).

Dr. Hoepfner prepared an AMA Rating pursuant to the AMA Guide, Sixth Edition. Using the shoulder regional grid on page 403, Dr. Hoepfner concluded that Petitioner had a 7% loss of use of the left arm or 4% impairment to the whole body.

Petitioner testified that she has constant pain and weakness in her left arm. She was not holding anything in either hand when Dr. Hoepfner tested the range of motion in her shoulders. She has pain in her left shoulder whenever she lifts anything as light as a water bottle to shoulder level. Her employer has observed the permanent restrictions imposed by Dr. Weber. She currently works in the quality control department. Her job involved mostly computer work but she does get onto the production floor to test approximately 20 pieces per day. The pieces weigh 1 to 15 pounds and she examines them at chest level.

WITH RESPECT TO THE ISSUE OF THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that the record contains an impairment rating offered by Dr. Hoepfner of 7% of the upper extremity which the doctor noted converted to 4% impairment of the whole person pursuant to the 6th edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment. (RX1). The Arbitrator notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making such a disability evaluation.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals Petitioner was employed as a flex operator at the time of the accident and that she is not able to return to work in her prior position as a result of said injury. Instead, Petitioner works for Respondent in the quality assurance lab where she inspects pieces on the floor and performs clerical work.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 58 years old at the time of the accident.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner currently works for Respondent in the quality assurance lab earning the same amount she was at the time of the accident. Therefore, it does not appear that Petitioner's future earnings capacity has been diminished.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that an MRI performed on September 9, 2013 revealed a large chronic full thickness tear of the distal supraspinatus tendon, a full thickness tear of the anterior aspect of the infraspinatus tendon and a torn biceps tendon. Dr. Weber subsequently performed surgery on November 14, 2013 consisting of a combined arthroscopic and open left shoulder procedure including rotator cuff debridement and open subpectoral bicep tenodesis. Petitioner began a course of physical therapy on November 29, 2013 and was able to return to a clerical position for Respondent on December 2, 2013. Petitioner attended physical therapy while performing light duty until April 24, 2014. At that time Dr. Weber prescribed a home exercise program and ordered a functional capacity evaluation. The FCE was performed at WCS on May 9, 2014 and concluded that Petitioner was capable of working at the light-medium duty level. Petitioner could safely lift 30 pounds to her waist, 6 pounds overhead, lift and carry 20 pounds and lift 10 pounds to shoulder level. On May 16, 2014, Dr. Weber reviewed the FCE and imposed permanent lifting restrictions consistent with the FCE results. Petitioner testified that she currently works in the quality assurance lab inspecting pieces on the floor and doing clerical work. She indicated that she currently experiences constant pain and that she is unable to lift a bottle of water above shoulder height. She noted that the pain is in her left shoulder joint and moves into her chest a little bit. She also stated that the left shoulder locks and snaps at times, if she is in a certain position, and that it feels like it is coming out of the joint. She also noted that she experiences weakness at times. Petitioner testified that she did not have any of these complaints before the accident.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 12.5% loss of use of a person-as-a-whole pursuant to §8(d)2 of the Act.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alejandro Rangel,
Petitioner,

vs. NO. 12 WC 12105

15IWCC0976

Labor Power, Inc. and Tower Group,
Respondent.

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 causation, medical expenses and permanent disability, 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.

The Commission modifies the decision of the Arbitrator to find that Petitioner failed to prove entitlement to additional compensation pursuant to §19(k) and §19(l) and/or attorneys' fees pursuant to §16 of the Act. The Commission finds that Respondent's conduct in delaying payment of TTD benefits in this matter was neither unreasonable nor vexatious under the circumstances, particularly in light of the fact that Respondent at one point was awaiting the report of its §12 examining physician, which it was duly entitled to procure in defense of this matter. Accordingly, the Commission hereby vacates the Arbitrator's award of additional compensation pursuant to §19(l) and §19(k) as well as attorneys' fees pursuant to §16 of the Act.

Furthermore, the Commission modifies the decision of the Arbitrator to find that Petitioner sustained the permanent partial loss of use of 30% of his left foot pursuant to §8(e)11 of the Act. The Commission notes that given a date of accident of January 11, 2012, an analysis pursuant to §8.1b is required. Along these lines, the Commission notes that Petitioner was a 49 year old general laborer at the time of the accident. On January 11, 2012, Petitioner injured his left ankle when a skid struck his left leg. An MRI of the left ankle performed on February 17, 2012 was interpreted as revealing 1) moderate to large subtalar joint effusion, 2) no evidence of stress reaction, contusion or fracture; 3) mild subchondral osseous reaction at the superolateral and supermedial talus dome, probably reflecting reactive degenerative changes; 4) scarring and tear of the anterior tibiofibular ligament; 5) scarring of the anterior talofibular ligament and mild sprain of the posterior talofibular ligament; and 6) small plantar calcaneal spur with no significant thickening of the central cord plantar fascia. Petitioner eventually came under the care of Dr. Michael Pinzur who performed surgery on January 16, 2013 consisting of 1) left ankle arthroscopy, 2) extensive synovectomy, and 3) retrograde drilling of osteochondral lesion of the talus. On May 1, 2013 Dr. Pinzur performed a left first metatarsal osteotomy following a diagnosis of cavus left foot. Petitioner underwent physical therapy and completed a course of work hardening on September 8, 2013. A Functional Capacity Evaluation performed on September 10, 2013 demonstrated that Petitioner had the ability to work at a "medium/heavy physical demand level." Dr. Pinzur eventually released Petitioner to return to work with "medium/heavy" restrictions on October 15, 2013. Petitioner tried to return to work for Respondent thereafter but noted that he was "ignored." He eventually found work and is currently employed doing general labor type work in a warehouse setting through Metro Staffing, working 40 hours a week at a rate of $8.25 per hour (AWW=$330). The Commission notes that Petitioner was earning approximately the same amount at the time of the injury while working for Respondent (AWW=$327.61). Thus, it would appear that Petitioner has not suffered a diminution in future earnings capacity as a result of his injuries. Furthermore, the Commission notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. Currently, Petitioner testified that his left foot becomes numb walking up stairs and that his toes, especially his big toe, falls asleep. He also noted that he experiences difficulty falling asleep at night and feels depressed. He indicated that he immerses his foot in cold water to help temporarily relieve his symptoms.

Based on the above factors, and the record taken as a whole, and in full consideration of the factors enumerated under §8.1b of the Act, the Commission finds that Petitioner sustained the permanent partial loss of use of 30% of his left foot pursuant to §8(e)11 of the Act.

All else is hereby affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner reasonable and necessary medical expenses admitted at PX4-PX7 under §8(a) of the Act, subject to the fee schedule pursuant to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $253.00 per week for a period of 50.1 weeks, as provided in §8(e)11 of the Act, for the reason that the injuries sustained caused the permanent partial loss of use of 30% of the left foot.

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

15IWCC0976

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 $15,000.00. 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: DEC 2 3 2015

Joshua D. Luskin

Charles J. DeVriendt

Ruth W. White

o-12/15/15
jdl/po
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RANGEL, ALEJANDRO
Employee/Petitioner

Case# 12WC012105

LABOR POWER INC; TOWER GROUP CO
Employer/Respondent

15IWCC0976

On 11/24/2014, 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:

1876 PAUL W GRAUER & ASSOC
EDWARD ADAM CZAPLA
1300 WOODFIELD RD SUITE 205
SCHAUMBURG, IL 60173

1872 SPIEGEL & CAHILL PC
PATRICK J JESSE
15 SPINNING WHEEL RD SUITE 107
HINSDALE, IL 60521

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

ALEJANDRO RANGEL
Employee/Petitioner
v.
LABOR POWER, INC.;, TOWER GROUP CO.
Employer/Respondent

Case # **12** WC **12105**

15IWCC0976

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 **Kurt CARLSON**, Arbitrator of the Commission, in the city of **Chicago**, on **June 9, 2014 and Sept. 12, 2014**. 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 1/11/12, 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 $1,310.43 the average weekly wage was $ 327.61.

On the date of accident, Petitioner was 49 years of age, ***single*** with 1 dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $ 21,505.00 for TTD, $ 0 for TPD, $ 0 for maintenance, and $ -0- for other benefits, for a total credit of $ 21,505.00.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE ATTACHED.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $253/week, for 58.45 weeks, because the injuries sustained cases a 35% loss of use of the left foot, as provided in Section 8(e)(11) of the Act.

Respondent shall pay Petitioner the reasonable and necessary medical services, pursuant to the medical fee schedule, as provided in sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner 19(k) penalties of $2,530.00, 19(l) penalties of $4,200.00 and Section 16 attorneys fees of $506.00 pursuant to the Act.

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

11.24.14
Date

NOV 24 2014

FINDINGS OF FACT

Petitioner, a 53 year old gentleman, worked for Respondent, Labor Power, Inc., as a general laborer. (Tr. 8). Petitioner's work involved "warehouse and factory work" which consisted of lifting, loading and unloading materials. (Tr. 9). Petitioner was assigned to work at various companies (Tr. 9).

On January 2012 Petitioner was working for a company that coated metals with chrome. (Tr. 10). Petitioner was required to lift large blocks of metal that weighed more than 50 pounds. (Tr. 11). On January 11, 2012 Petitioner injured his left ankle when a forklift picking up a skid struck another skid striking Petitioner's left leg. (Tr. 12-13).

Petitioner reported the accident at work and received medical treatment from the company doctor at Advanced Occupational Medicine Specialists on January 12, 2012. (Px. 1). Petitioner was issued crutches and restricted to office work. (Px. 1). Petitioner returned on January 16, 2012 complaining of left ankle pain and swelling. (Px. 1). Petitioner was released to regular work and discharged from treatment but continued to experience left ankle pain.

Petitioner returned on January 27, 2012 complaining of increased left ankle pain. (Px. 1). Petitioner's ankle was placed in an aircast and he was instructed to ice the ankle 3 times a day. (Px. 1). On February 10, 2012, Petitioner was issued light duty work restrictions which respondent accommodated.

MRI of the left ankle revealed: 1) moderate to large subtalar joint effusion; 2) mild subchondral osseous reaction at the superolateral and superomedial talus dome; 3)

scarring and tear of the anterior talofibular ligament; 4) scarring of the anterior talofibular ligament, calcaneofibular ligament and mild sprain of the posterior talofibular ligament. (Px. 1). Petitioner was prescribed a course of physical therapy treatment which failed to relieve his left ankle pain. (Px. 3). Cortizone injection also failed to relieve his ankle pain. (Px. 1).

Petitioner was referred to an orthopedic specialist, Dr. Michael Pinzur, at Loyola University Medical Center. (Px. 2). Dr. Pinzur reviewed the MRI and diagnosed Petitioner with an anterolateral osteochondral lesion of the talus and lateral ligament instability. (Px. 2). Dr. Pinzur recommended arthroscopic surgery for the osteochondral lesion along with reconstruction of the lateral ligaments and plantar flexion osteotomy of the first metatarsal. (Px. 2).

Thereafter, on June 9, 2012, Dr. Simon Lee examined Petitioner pursuant to section 12 of the Act. Dr. Lee agreed with the diagnosis of the osteochondral defect, tendonitis and loose body. It was Dr. Lee's opinion that the condition is causally related to the January 11, 2012 injury at work and recommended a repeat MRI of the ankle which was done on October 23, 2012.

On January 16, 2013, Dr. Pinzur performed left ankle arthroscopic surgery with extensive synovectomy and retrograde drilling of the osteochondral lesion of the talus. (Px. 2). Petitioner remained restricted from work activity post-operatively and followed up with Dr. Pinzur on January 22, 2013. Petitioner's left ankle was placed in a fracture boot and he began a course of physical therapy at ATI Physical Therapy. (Px. 3). Petitioner returned to Dr. Pinzur on March 12, 2013 and reported "it is no better" and

was still walking with the boot. (Px. 2). By March 14, Petitioner had progressed to where he would ambulate with a CAM boot and one crutch. (Px. 3).

Petitioner continued to complain of left foot numbness and returned to Dr. Pinzur on March 26, 2013 and reported no change in symptoms. Dr. Pinzur stopped the physical therapy and placed Petitioner's left ankle in an aircast support and continued to restrict him from all work activity. Petitioner continued to experience left ankle pain and saw Dr. Pinzur on April 9, 2013. At that time Dr. Pinzur recommended plantar flexion osteotomy of the first metatarsal. (Px. 2).

On May 1, 2013, Petitioner underwent a left first metatarsal osteotomy. (Px. 2). The operative note reflects that at "the time of the initial operation the synovectomy was sufficient and there were sufficient findings to warrant not doing the osteotomy, however, he has had persistent varus deformity secondary to his cavus and has had persistent ankle pain requiring a second surgery." (Px. 2).

Post-operatively Petitioner remained restricted from work activity and resumed physical therapy at ATI Physical Therapy. (Px. 3). Petitioner participated in physical therapy treatment throughout June and July 2013. He complained of shooting pain in his great toe and lateral calf. (Px. 3). On August 6, 2013, Dr. Pinzur noted Petitioner was "walking on the side of his foot" and "is developing symptoms of complex regional pain syndrome." (Px. 2). Dr. Pinzur recommended a course of work conditioning followed by a functional capacity evaluation for Petitioner.

The August 15, 2013 discharge note from ATI Physical Therapy reflects Petitioner was still experiencing shooting pain in his great toe and lateral calf. At that time Petitioner was still walking in his aircast. (Px. 3).

Petitioner completed a course of work hardening at ATI between August 26, 2013 and September 8, 2013. (Px. 3). Thereafter, on September 10, 2013, Petitioner completed a functional capacity evaluation which demonstrated his ability to work at the "**medium/heavy** physical demand level". (Px. 3). On October 15, 2013, Dr. Pinzur examined Petitioner and noted he had reached MMI with a "moderate degree of permanent limitation of function". (Px. 2). Dr. Pinzur issued Petitioner permanent "**medium/heavy**" work restrictions of lifting and carrying up to 70 pounds. (Px. 2).

Petitioner tried to return to work for Respondent but testified "they ignored me completely". (Tr. 25). On November 17, 2013, Petitioner found alternative employment at Metro Staffing for general labor type work. (Tr. 26). Petitioner works full time 40 hours a week earning $8.25/hour.

Since his return to work Petitioner testified he deals with ankle pain every day. (Tr. 27). Petitioner testified "the ankle pain is very uncomfortable, very discomforting when I am doing work there". (Tr. 27). Petitioner testified that standing for long periods, bending his ankle, bending down, and going upstairs at work cause left ankle problems. (Tr. 27). Lifting boxes from the floor and pushing heavy things also cause ankle pain. (Tr. 28).

Petitioner has difficulty climbing the stairs to his second floor apartment and his foot and toes become numb and fall asleep. (Tr. 27). Petitioner testified that he will

immerse his foot in cold water to relieve the ongoing ankle pain. (Tr. 30). Petitioner testified he tried to return to Dr. Pinzur for treatment of the ongoing ankle pain but the treatment was not approved by Respondent. (Tr. 30).

CONCLUSION OF LAW

The Arbitrator adopts the above Findings of Fact in support of the following Conclusions of Law.

WITH RESPECT TO ISSUE F - IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY? THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that based upon the evidence presented at trial along with the medical records admitted into evidence and the testimony of Respondents section 12 physician, Dr. Simon Lee, that petitioner proved that his current condition of ill-being with respect to his left ankle injury is causally related to the January 11, 2012 accident at work.

WITH RESPECT TO ISSUE 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? THE ARBITRATOR FINDS AS FOLLOWS:

Based on the evidence presented at trial including the medical records and itemized medical bills the Arbitrator awards Petitioner the outstanding medical bills contained in Petitioner's exhibits 4 through 7 pursuant to Section 8.2 of the medical fee schedule.

WITH RESPECT TO ISSUE L – WHAT IS THE NATURE AND EXTENT OF THE INJURY? THE ARBITRATOR FINDS AS FOLLOWS:

Finding regarding the nature and extent of the injury:

Pursuant to Section 8.1b of the Act, the following criteria and factors must be considered in assessing permanent partial disability:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion, loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.

(b) Also, the Commission shall base its determination on the following factors:

(i) the reported level of impairment as assessed pursuant to the current edition of the AMA "Guides to the Evaluation of Permanent Impairment";

(ii) the occupation of the injured employee;

(iii) the age of the employee at the time of the injury;

(iv) the employee's future earning capacity; and

(v) evidence of disability corroborated by the treating medical records.

The Act provides that no single enumerated factor shall be the sole determinant of disability. In applying the factors of Section 8.1b to the facts and evidence in this matter, the Arbitrator notes that neither party submitted a report regarding the level of impairment pursuant to the AMA guidelines. Regarding factor (ii), the Arbitrator finds that the petitioner,

although working for a different employer, is performing essentially the same exact job and duties as he was prior to the injury and working in the same capacity as a general laborer. The petitioner testified to this on direct and cross-examination. Regarding factor (iii), the petitioner's age, the Arbitrator notes that the petitioner was age 49 at the time of the injury. The Arbitrator does not find any evidence as to how the petitioner's age might affect his alleged disability. In terms of factor (iv), the employee's future earning capacity, the Arbitrator notes that the petitioner testified that he earns the same exact wage, $ 8.25 per hour at a forty hour a week capacity for Metro Staff as he did for Respondent or $ 330.00 per week. The Stipulation sheet marked as Arbitrator Exhibit 1 revealed a stipulated Average weekly wage of $ 327.61. The Arbitrator therefore finds no evidence to support that the petitioner's disability has had any impact upon his future earning capacity.

Regarding factor (v), the Arbitrator finds the petitioner to be at maximum medical improvement per Dr. Pinzur's October 15, 2013 office note. The petitioner testified to subjective pain complaints in his left ankle, however, he does not use any pain medication and only soaks his foot in cold water. He did not testify to any inability to perform his current job duties and in fact the valid FCE found that he was functioning at the medium to heavy physical demand level. Dr. Pinzur's last note indicated that the petitioner had a permanent restriction of no lifting or carrying greater than 70 pounds. There was no testimony that the petitioner is required to lift over that amount.

The Arbitrator further finds the petitioner only partially credible with respect to his pain complaints and disability. The petitioner testified to a significant amount of swelling in his left ankle, however, when the Arbitrator viewed the petitioner's feet, the Arbitrator could not find any evidence of swelling. The medical records of Dr. Pinzur do not mention any swelling either.

It also appears at least from the Dr. Pinzur's notes that he may have questioned the petitioner's reported pain complaints on more than one occasion. (See August 6, 2013 note and March 12, 2013 note). Furthermore, the Arbitrator asked the petitioner to rotate his feet, which the petitioner's hesitantly moved his left foot. The Arbitrator notes that the last physical examination from Dr. Pinzur revealed "good motion" per his August 6, 2013 office note. This appears contrary to what the Arbitrator visualized at hearing on September 12, 2014. The petitioner also claimed to be depressed but he did not testify to seeking treatment for depression. The petitioner also gave inconsistent testimony on cross about his depression, first denying that he made such a statement on direct and then qualifying his testimony by stating that was how he "felt before".

The Arbitrator also notes that at least some of the pain complaints may or may not be related to the left ankle. It is noted in the PT records that the petitioner did complain of back pain during one of the examinations. The petitioner also testified at trial to problems with lifting and carrying. The Arbitrator takes into account that the petitioner did have a prior back surgery while working for Costco which resulted in an inability of the petitioner to return to work as a stocker. Petitioner ultimately settled that case for a significant amount of money in excess of $200,000.00. Although there were no medical records regarding prior permanent restrictions, if any, the Arbitrator takes the petitioner's prior condition into account with respect to assessing the credibility of his pain complaints as they relate to the January 11, 2012 left ankle injury and the fact that the prior injury resulted in a need for a job change.

In applying the factors of 8.1b to this instant matter, the Arbitrator has determined that the petitioner has sustained permanent partial disability to his left foot in the amount of 35%

loss of use of the left foot. The respondent shall pay the petitioner a sum of $253.00/week for a period of 58.45 weeks, as provided in Section 8(e) of the Act.

WITH RESPECT TO ISSUE M - SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT? THE ARBITRATOR FINDS AS FOLLOWS:

It is undisputed that Petitioner sustained an injury to his left ankle on January 11, 2012. Petitioner initially was restricted to light duty work which Respondent accommodated. However, as of March 12, 2012, Respondent was no longer able to accommodate the light duty work restrictions entitling Petitioner to temporary total disability benefits. (Tr. 18).

Respondent failed to issue Petitioner's temporary total disability benefits during the period March 12, 2012 through June 24, 2012. (Rx. 2). On April 26, 2012, Petitioner filed a petition for penalties and attorneys fees pursuant to Section 19(l) and 19(k) for the unpaid temporary total disability benefits. Pursuant to the section 19(l) of the Act Petitioner is entitled to additional compensation in the sum of $30/day for each day that the benefits under section 8(b) have been so withheld or refused, not to exceed $10,000. 820 ILCS 305/19(l). A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay. 820 ILCS 305/19(l).

Respondent delayed payment of Petitioner's temporary total disability benefits from March 12, 2012 through June 24, 2012 when they issued a check in the amount of

$3,795. (Rx. 2). This was a delay of **105** days. Pursuant to 19(l) Petitioner is entitled to penalties of **$3,150.00**. (105 days x $30/day = $3,150.00)

Respondent also denied Petitioner's temporary total disability benefits during the period June 25, 2012 through July 29, 2012, a period of 35 days. (Rx. 2). Accordingly, the Arbitrator awards Petitioner 19(l) penalties of **$1,050.00.** (35 days x $30/day = $1,050.00).

Moreover, the Arbitrator finds Respondents failure to timely issue temporary total disability benefits unreasonable in the absence of any medical opinion supporting their denial of Petitioner's temporary total disability benefits. The Arbitrator notes that Respondent denied Petitioner's temporary total disability benefits until they obtained a section 12 medical opinion. However, Respondent's section 12 physician, Dr. Simon Lee, causally relates Petitioner's left ankle injury to the January 12, 2012 accident at work. Consequently, the Arbitrator finds Respondent's denial of Petitioner's temporary total disability benefits unreasonable and awards Petitioner 19(k) penalties as follows:

1st delay (105 days)
15 weeks x $253/week = $3,795;
50% $3,795 = **$1,897.50**

2nd delay (35 days)
5 weeks x $253/week = $1,265;
50% $1,265 = **$632.50**

Finally, the Arbitrator awards Petitioner section 16 attorneys' fees of 20% of the 19(k) penalties in the amount of **$506.00.** ($1,897.50 x 20% = **$379.50**; $632.50 x 20% = **$126.50**.

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 down	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jesus Perez,
Petitioner,

vs. No: 11 WC 48326

R&S Auto Service d/b/a Citgo and State Treasurer as Ex-Officio of the Injured Workers' Benefit Fund,
Respondents.

15IWCC0977

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by both Respondents herein and notice given to all parties, the Commission, after considering all of the relevant issues, and being advised of the facts and law, modifies the Arbitrator's award of permanent partial disability and otherwise affirms and adopts the September 4, 2014 Decision of Arbitrator Milton Black, which is attached hereto and made a part hereof.

Habib Fazal owned and operated Respondent auto repair shop, R&S Auto Service, which was no longer in business at the time of hearing. Fazal testified that he had never purchased workers' compensation insurance, despite that requirement in his lease. Because Respondent R&S Auto Service was uninsured, Petitioner named the State Treasurer as Ex-Officio of the Injured Workers' Benefit Fund (IWBF) as co-Respondent.

Petitioner, a 29 year old auto mechanic, alleged he was injured while working as a master technician for Respondent on November 23, 2011. He testified at hearing through an interpreter that he worked a 60 hour week, 10 hours per day, and was paid $550 in cash every week. Petitioner testified that on November 23, 2011, he was leaning over a Nissan's engine, when a co-worker started the car, amputating part of his ring and pinky fingers. Petitioner believed that the accident occurred around 5:30 PM, but Fazal and two former employees testified that the business had closed early that day, due to the Thanksgiving holiday. Petitioner's co-workers testified that Petitioner was outside the closed shop when he screamed for help and that he had not been assigned to work on the vehicle by which he was injured.

Petitioner ran to Fazal's office in the auto shop with a bloody towel draped over his hand to seek help. Either Fazal or one of the co-workers drove Petitioner to the Emergency Room at Swedish Covenant Hospital, where Petitioner provided a history of work accident through an interpreter. X-rays were taken and Petitioner's wounds were sutured. Petitioner followed up at the Emergency Room at Rush University Medical Center on November 26, 2011, and with Dr. Tom Karnezis at Rush University Medical Center on November 28, 2011 for pain and numbness in his right hand. Dr. Karnezis performed revision surgery to repair the wounded fingers. Petitioner provided each treating facility with a consistent history of accident. Petitioner also sought treatment at Cook County Hospital Emergency Room on November 29, 2011, due to pain and a yellowish discharge from his ring finger, and he continued to treat at Cook County Hospital until March 16, 2012. Petitioner remained off work by order of his medical providers through February 13, 2012.

Petitioner testified that Respondent Fazal fired him on the day he took a letter from his attorney to him, probably in December 2011 or January 2012. At the time of the last hearing date, Petitioner was not working. He had held a cleaning job for a few months at $200-250 per week, but had been laid off from that position prior to the final trial date. He testified that his right hand remained numb on the last three fingers and dorsum of the hand itself. He stated that he could not return to work as a mechanic due to his hand injury. Petitioner testified that he received no temporary total disability while off work and his medical bills were not paid. However, Respondent Fazal testified that he continued to pay Petitioner while he was off work due to his injury.

Petitioner obtained a §12 evaluation by Dr. John Fernandez, an orthopedic surgeon at Rush University Medical Center, on October 23, 2013. At that time, Dr. Fernandez reported that Petitioner was essentially "one-handed" due to the pain and stiffness in his dominant right hand. Petitioner reported pain in the whole hand, especially the ring finger and between his thumb and index finger. He told Dr. Fernandez that his hand is hypersensitive to cold, changes color, and is always damp with sweat. Dr. Fernandez noted objective evidence of injury, including scarring, color change, excessive sweating, loss of skin creases (indicating stiffness), and osteopenia. The doctor diagnosed complex regional pain syndrome (CRPS) and causally related that condition to Petitioner's work accident. He opined that Petitioner had not received appropriate therapy to address the CRPS and had only a 1 out of 3 chance of returning to moderate or heavy duty after undergoing appropriate treatment. Dr. Fernandez concluded that Petitioner could not return to work as an auto mechanic due to his hand and finger numbness, significant stiffness, flexion contractures, atrophy of fingertips, and CRPS that affected his entire dominant hand.

Arbitrator Black found Petitioner more credible than Respondent Fazal or his former co-workers. The Arbitrator found Petitioner's testimony to be supported by his medical records, which contained a consistent history of accident and confirmed the time of accident reported by Petitioner. The Arbitrator also noted that no medical expert other than Dr. Fernandez provided a causation opinion, and that doctor causally related Petitioner's hand condition and CRPS to his work accident. Therefore, the Arbitrator awarded Petitioner all related medical expenses and 11-1/7 weeks of temporary total disability. He concluded that Petitioner suffered a loss of trade and awarded him 35% loss of use of the person as a whole. Arbitrator Black noted that Respondent employer was uninsured, so he ordered the award paid to the extent possible under §4(d) by

Respondent Injured Workers' Benefit Fund. Respondent employer was ordered to reimburse the Fund for any compensation paid to Petitioner by the Fund.

After considering the entire record, and for the reasons set forth above, the Commission agrees with the Arbitrator's finding that Petitioner was more credible than Respondent Fazal or his witnesses and therefore affirms the Arbitrator's findings that an employer-employee relationship existed within the purview of the Act and that an accident occurred on November 23, 2011, arising out of and in the course of Petitioner's employment. The Commission further finds that Petitioner proved a causal connection between his hand condition and work accident. However, the Commission finds the Arbitrator's award of permanent partial disability excessive under the facts as interpreted by the Commission.

Dr. Fernandez was the only physician to diagnose CRPS or to find that Petitioner required additional treatment; he saw Petitioner only once for purposes of a §12 examination, and that was almost two years after the accident and over a year and a half after Petitioner was discharged from care without restrictions by a physician at John Stroger Hospital.

Under these circumstances, the Commission finds that Petitioner suffered permanent partial disability in the amount of 20% loss of use of the person as a whole. The Arbitrator's award of permanent partial disability in the amount of 35% loss of use of the person as a whole is hereby modified to 20% loss of use of the person as a whole.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the September 4, 2014 Decision of the Arbitrator is modified with regard to the award of permanent partial disability, as described above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $366.66/week for a period of 11-1/7 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 pay to Petitioner reasonable and necessary medical expenses of $14,505.38, as provided in §8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $330.00 per week for a period of 100 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the permanent partial disability to Petitioner to the extent of 20% loss of use of the person as a whole.

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 injuries.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $52,000. 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: DEC 23 2015

Joshua D. Luskin

Charles J. DeVriendt

Ruth W. White

o-12/15/15
jdl/
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PEREZ, JESUS
Employee/Petitioner

Case# **11WC048326**

R & S AUTO SERVICE D/B/A CITGO AND STATE TREASURER AS EX-OFFICIO OF THE INJURED WORKERS' BENEFIT FUND
Employer/Respondent

15IWCC0977

On 9/4/2014, 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 0.05% 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:

5317 JOHN J CASTANEDA PC
47 DuPAGE COURT
ELGIN, IL 60120

4265 FISH LAW GROUP LLC
DARREN A FISH
309 W WASHINGTON ST SUITE 700
CHICAGO, IL 60606

4980 ASSISTANT ATTORNEY GENERAL
COLIN KICKLIGHTER
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

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

Jesus Perez
Employee/Petitioner

v.

R&S Auto Service d/b/a Citgo and
State Treasurer as ex-officio Custodian of the Injured Workers' Benefit Fund
Employer/Respondent

Case # **11** WC **48326**

15IWCC0977

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 **Milton Black**, Arbitrator of the Commission, in the city of **Chicago** , on **March 20, 2014, April 16, 2014 and May 22, 2014**. 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 **November 23, 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 $**28,600.00**; the average weekly wage was $**550.00**.

On the date of accident, Petitioner was **29** years of age, ***single*** with **3** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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 $**366.66**/week for **11 1/7**th weeks, commencing **November 28, 2011** through **February 13, 2012**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from **November 23, 2011** through **May 22, 2014**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay reasonable and necessary medical services of $**14,505.38**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**330.00**./week for **175** weeks, because the injuries sustained caused the **35%** loss of the person as a whole, as provided in Section 8(d)2 of the Act.

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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

September 4, 2014
Date

SEP 4- 2014

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING WHETHER THE RESPONDENT WAS OPERATING UNDER AND SUBJECT TO THE ILLINOIS WORKER'S COMPENSATION ACT THE ARBITRATOR CONCLUDES AS FOLLOWS:

Mr. Habib Fazal, owner of the respondent, stated that his business involved mechanical repairs on taxis. Mr. Perez, petitioner, via a Spanish interpreter, stated in order to perform repairs on the vehicles in R & S Auto's garage the mechanic would have to use power tools such as air impact guns and operate the vehicles to troubleshoot and diagnose the required repairs. Pursuant to 820 ILCS 305/3: "(t)he provisions of this Act hereinafter following shall apply automatically . . . to all employers and all their employees, engaged in any department of the following enterprises. . . namely: (15.) (a)ny business or enterprise in which electric, gasoline or other power driven equipment is used in the operation thereof."

Based upon the unrebutted testimony of the petitioner and the testimony of Mr. Fazal, the Arbitrator finds and concludes that the respondent automatically was subject to and under the Illinois Workers' Compensation Act.

B. IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING WHETHER THERE EXISTED AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE RESPONDENT AND THE PETITIONER THE ARBITRATOR CONCLUDES AS FOLLOWS:

Petitioner, Jesus Perez, stated that he went to the address of the respondent at 5300 North Western looking for employment. He met Mr. Fazal at that location who inquired whether he was a mechanic. After Mr. Perez acknowledged that he was, Mr. Fazal requested that Mr. Perez start working the same day and provided him with mechanics' tools. Mr. Fazal informed Mr. Perez that he would be paid $550.00 per week and that his hours would be from 9:00 a.m. through 7:00 p.m.

Mr. Fazal's testimony confirmed that he met with Mr. Perez in May of 2009; that he agreed to hire Mr. Perez as a mechanic paying him $550.00 per week; and that he did not deduct any taxes or other deductions from his pay. See, Pet.Ex.#8

Based upon the unrebutted testimony of the petitioner and the testimony of Mr. Fazal, the Arbitrator finds and concludes that the respondent and petitioner had an employer-employee relationship as defined by the Illinois Workers' Compensation Act.

C. IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING WHETHER AN ACCIDENT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT AND (D.) THE DATE OF ACCIDENT, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

The events that occurred on November 23, 2011, are disputed. Mr. Perez's version of the events that day involved a repair of a vehicle that was not a taxi. Mr. Perez stated that Mr. Fazal requested that Mr. Perez inspect the vehicle and the alternator. The vehicle was a Nissan. Mr. Perez indicated another co-worker (described by Mr. Perez as a "white, heavy-sized man") was on a phone with the keys to the vehicle while Mr.

Perez was trying to replace a belt while standing over the vehicle's engine. Mr. Perez stated he had his right hand in the vehicle when the other worker started the engine unexpectedly causing the belt to run and injured Mr. Perez's right hand. Mr. Perez stated he ran to the office of Mr. Habib, threw a cloth on his hand and was taken by a co-worker to the local hospital. Mr. Perez stated that the time of the incident was approximately 5:30 p.m. and that the repair shop was still open for business. Mr. Perez stated that he would normally work until 7:00 p.m.

The respondent submitted three witnesses. The first witness, Mr. Hummus Mesho, stated he previously worked for Mr. Fazal but now is employed by Advance Auto Clinic. Mr. Mesho stated he was a lube tech and was required to make sure everything was locked and keeping service bays clean. Mr. Mesho worked for Mr. Fazal from August of 2011 through February of 2012. Mr. Mesho admitted that Mr. Perez was injured on November 23, 2011 but recalled the incident happening at 3:30 or 4:00 p.m. after the repair shop was closed. Mr. Mesho claimed the garage doors were closed and locked. Mr. Mesho claimed that Mr. Perez was outside by the gas station vacuum cleaners.

Mr. Mesho admitted that Mr. Perez worked for Mr. Fazal and was the master technician. The other employee, "Fema" was also a master technician. Mr. Mesho stated that the repair shop closed early at 3 p.m. because of the Thanksgiving holiday the next day. According to Mr. Mesho, "Fema" was in the office with Mr. Fazal waiting for a ride home. Mr. Mesho stated that he worked mainly on taxis because he didn't have time to work on private vehicles.

On cross-examination, Mr. Mesho admitted that he did not witness Mr. Perez being injured. Mr. Mesho admitted that the mechanics' tools always remained in the shop and stayed inside the shop and once the doors were locked the tools remained locked inside.

Mr. Mesho stated he heard someone screaming in the parking lot. Mr. Mesho admitted he didn't see any vehicle that Mr. Perez was working on and didn't recall what cars were inside or outside the car wash. Mr. Mesho admitted there was a lot of blood in Mr. Perez's hand. Mr. Mesho also admitted that Mr. Perez did all the major work – transmissions and engine overhauls.

The second witness was Mr. Yfim Rabinosh. Mr. Rabinosh also previously worked for Mr. Fazal. Mr. Rabinosh currently worked for Okay Auto Repair. Mr. Rabinosh stated he worked in the repair shop from 2011 through 2012. Mr. Rabinosh stated that on November 23, 2011 the repair shop had already closed and around 4:00 p.m., the time to leave, he went to the main office from the outside. Mr. Fazal was in the office. Mr. Rabinosh denied that he had Mr. Perez working on a vehicle.

On cross-examination, Mr. Rabinosh admitted that sometimes Mr. Fazal would instruct him to work on private vehicles and do troubleshooting. Mr. Rabinosh also admitted he came to testify when Mr. Fazal told him he had a court date.

Mr. Rabinosh also testified on cross-examination that all the doors were closed and locked and that there were only two exits – coming from the shop to the office or coming into the office from outside.

The third and final witness for respondent, Mr. Fazal, stated he was the owner and manager of R&S auto. He signed a lease for his auto repair shop. Mr. Fazal stated there were two bays in the repair shop. The normal working hours for the shop were from 9 to 6 Monday through Saturday.

Mr. Fazal recalled the incident of November 23, 2011. He was sitting in his office with "Fema," whose real name is "Yfim," who was waiting for a ride home. Mr. Fazal stated the shop was closed early because of Thanksgiving the next day. "Hummi" told Mr. Fazal that all the lights were off, and that everyone was gone except "Fema."

Mr. Fazal stated that "Hummi" came running through the main door to advise Mr. Fazal that Mr. Perez was injured. Mr. Fazal stated Mr. Perez came in holding his bloody hand. He could not recall which hand. Mr. Fazal denied instructing Mr. Perez to work on a vehicle outside the shop. Mr. Fazal stated his auto business is no longer in operation.

On cross-examination, Mr. Fazal admitted that Mr. Perez worked for R&S Auto from July 2010 through January 2012. Mr. Fazal admitted that he did not purchase a policy of worker's compensation insurance that was contrary to his obligation per the signed lease. See, Resp.Ex#1. Mr. Fazal hired Mr. Perez in October 2010 and terminated Mr. Perez in December of 2011. He also received a letter from Mr. Perez's attorney in December of 2011.

Mr. Fazal admitted that he did not see any vehicles and Mr. Fazal did not check to see if any bays or everything was closed down before Mr. Perez came into the office.

On re-direct examination, Mr. Fazal stated that Mr. Perez was instructed to only work on taxis. Mr. Fazal also instructed "Hummi" to take Mr. Perez to the hospital. Mr. Fazal stated his repair shop closed at 3:00 p.m. that day. Mr. Fazal stated he did not find any of the bays of the shop open after Mr. Perez left for the hospital. Mr. Fazal stated Mr. Perez did not show up for work and he denied informing Mr. Perez he was fired. Mr. Fazal stated he wasn't aware he needed to purchase workers' compensation insurance.

Mr. Perez testified briefly on rebuttal that Mr. Mesho was not an employee of the respondent; and that he was injured in the bay working on a vehicle; that there were three bays not two; and that he went into the office from the bay. Mr. Perez stated he was working on the alternator and the belt; and that the keys were remote control; and that Mr. Rabinosh was in the vehicle in the middle bay. He also stated there are security cameras all over.

In reviewing the medical records the Arbitrator notes that the initial hospital visit at Mt. Sinai Hospital occurred on November 23, 2011, the date of the accident. PX#1, p.1. The Arbitrator notes that the registered time of arrival indicated 6:46 p.m; that the information presented indicated this was a work-related injury and that the patient's (Mr. Perez's) employer was R & S Auto. PX#1, p.1. The history relayed by Mr. Perez indicated the following:

"Patient's (sic) 29-year-old male who speaks Spanish only but per the interpreter he is a mechanic and was working on a car when somebody accidentally turned on the car and 2 of his fingers on his right hand got caught in a moving part. . . ." PX#1, p. 2.

In reviewing the medical records of Rush University Medical Center (PX#2) the Arbitrator notes that Mr. Perez presented on November 26, 2011. PX#2, p. 1. Again the history provided to the medical provider indicated the following:

"Pt here today with c/o pain and numbness to right hand 4th and 5th digits. Pt gauze on right hand, states ***he had a work related accident 3 days ago and was seen at Swedish Hospital.***" (emphasis added). PX#2, p 5.

In reviewing the medical records of Dr. Tom A. Karnezis for an evaluation dated November 28, 2011 (5 days after the injury), Dr. Karnezis noted the following history:

". . . He is a pleasant 29-year-old Hispanic speaking gentleman who is accompanied by his girlfriend, Ms. Brito. Approximately three days ago, while working on an engine on a car. (sic) His co-worker started the ignition. In doing so, he suffered a direct injury and amputation of his right ring finger and small fingers." PX#4, p.1.

Considering the totality of the evidence, the testimony of all the witnesses and the medical evidence, the Arbitrator finds and concludes that the petitioner, Mr. Perez, is more credible and his testimony more persuasive than the respondent's witnesses whose testimony was inconsistent, unreliable, and not credible. The Arbitrator specifically notes that the medical providers document the petitioner's version of the events of November 23, 2011 - that the petitioner injured his right hand while repairing a vehicle. The initial report of Mt. Sinai Hospital noted petitioner's arrival within one hour of his claimed accident time of 5:30 p.m.

The Arbitrator also notes that Mr. Fazal stated that the employees were not allowed to work on any private vehicles and were only to work on taxis. However, Mr. Rabinosh testified that sometimes mechanics were instructed to work on private vehicles. The petitioner was injured while working on a private vehicle, which he described as a Nissan.

The Arbitrator finds and concludes that on November 23, 2011, the petitioner incurred an accident arising out of and in the course of his employment with the respondent R&S auto while repairing a vehicle for the respondent.

E. IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING NOTICE OF THE ACCIDENT THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

Petitioner, Mr. Perez, stated that after his accidental injury he ran to the office and notified Mr. Habib Fazal what had just occurred. Mr. Fazal's testimony confirmed that on the date of the injury, Mr. Perez came into the office holding his bloody hand. The Arbitrator finds and concludes that petitioner gave notice of the accidental injury when he reported the events to Mr. Fazal immediately after its occurrence.

F. IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING WHETHER OR NOT THE PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE ACCIDENTAL INJURY THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

Petitioner, Mr. Perez, stated that prior to November 23, 2011 he suffered no prior accidents or injuries to his right hand and that since that date he has not suffered any new accidents or injuries to his right hand. The emergency physician at Swedish Covenant Hospital confirmed on the date of the accident that there was no pertinent past medical history. PX#1, p.2. Dr. John J. Fernandez, petitioner's Section 12 examiner, noted that there was no significant past medical or other contributory history prior to Mr. Perez's accidental injury. PX#6. P.15. Dr. Fernandez diagnosed the petitioner as suffering from Complex Regional Pain Syndrome and ring finger tip amputation with neuromas. PX#6, pp. 20-22. Dr. Fernandez opined that Mr. Perez's condition of Complex Regional Pain Syndrome (CRPS) and all his physical complaints had to do with the work injury. PX#6, p. 23. Dr. Fernandez explained that the basis for his opinion was that "he had no prior history, the fact that he had an injury that could have caused these conditions, all of that basically pointed towards that diagnosis and that causality." PX#6, p. 23.

The Arbitrator notes that no other medical opinion on causality was submitted into evidence. Based upon the credible testimony of the petitioner and the persuasive testimony of Dr. Fernandez, the Arbitrator finds and concludes that the petitioner's current condition of ill-being, namely CRPS and ring finger amputation, are causally related to the petitioner's accident of November 23, 2011.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING G. (EARNINGS), H. (AGE), AND I. (MARITAL STATUS) THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

Petitioner noted that he was paid $550.00 per week in a gross amount by the respondent. Petitioner identified the weekly time record submitted as PX#8 as evidence of what his regular weekly pay had been prior to his accidental injury of November 23, 2011. Petitioner also stated he was 29 years of age at the time of the injury, single, and had three dependents. Based upon the unrebutted testimony of the Petitioner, the Arbitrator finds and concludes that the petitioner's average weekly wage was $550.00 per week; that he was 29 years of age, single and with three dependents at the time of his injury.

J. IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER WERE REASONABLE AND NECESSARY, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

The Arbitrator notes that there was no objection to the admissibility of the medical bills other than as to liability. The Arbitrator, having found that the petitioner was an employee of the respondent; that the petitioner suffered an accidental injury arising out of and in the course of his employment on November 23, 2011; and that petitioner's current condition of ill-being is causally related to that injury, the Arbitrator finds and concludes that the medical services provided to the petitioner were reasonable and necessary in an attempt to alleviate his condition of ill-being. The Arbitrator awards those medical expenses subject to the medical fee schedule.

K. IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO WHAT, IF ANY TEMPORARY TOTAL DISABILITY BENEFITS ARE DUE, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

The petitioner claimed that he was temporarily and totally disabled from November 28, 2011 through February 13, 2012, a period of eleven and 1/7th weeks. Arb.Ex#1, p. 2. Although the petitioner appeared at three different medical centers on an emergency basis from November 23, 2011 through November 26, 2011, the first medical provider to document a work status occurred on November 28, 2011. PX#4. On that date, Dr. Tom Karnezis examined the petitioner, debrided his fourth and fifth digits, applied finger splints and a wrist immobilizing splint, recommend further surgery and advised petitioner to refrain from work. PX#4, p.1.

The Arbitrator notes from the medical records that the petitioner was not allowed to attempt to resume work activities until February 13, 2012. PX#5, p. 55, 63. The Arbitrator notes that no other medical evidence was submitted disputing petitioner's treatment or his restrictions from work. Therefore, the Arbitrator finds and concludes that the petitioner is entitled to receive $366.66 per week for 11 and 1/7th weeks as provided in Section 8(b) of the Act as he was temporarily and totally disabled from November 28, 2011 through February 13, 2012.

L. IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

As a result of his accidental injury of November 23, 2011, the petitioner suffered a partial amputation to his right ring finger and subsequently developed Complex Regional Pain Syndrome. PX#6, pp. 20-22. Dr. Fernandez recommended that the petitioner be evaluated by a pain clinic to consider medications, sympathetic ganglion blocks and occupational therapy. PX#6, pp. 23-24. Dr. Fernandez also noted that the petitioner should not engage in any significant use of the affected hand . . . formal restriction would be a one-handed restriction with light use of the non-affected hand. PX#6, 25. Dr. Fernandez further opined that "it would be impossible for (Perez) to go back to work as a mechanic or a technician in a normal capacity. . . ." PX#6, pp. 26-27.

On cross-examination, Dr. Fernandez explained the basis for his opinion that petitioner could not return to work as a mechanic:

. . . he's got two centimeters of an inability to close the hand, meaning he's got significant stiffness of flexion. He's got flexion contractures. He can't close his hand. He's got pencilling atrophy of the tips of the fingers. . . . I have a lot of mechanics who have lost even more than the tip of their ring finger and they're able to return to work. So this is because it has affected the whole hand. This is not a condition of just his ring finger. This is the whole hand that's been affected. CRPS is not just in the ring finger. It's his whole hand that's been affected by the CRPS.

PX#6, pp. 28-29.

Petitioner noted that he has numbness in his hand and especially in three fingers of his right hand; namely his middle, right and small fingers. He also has numbness in the dorsum of the right hand. Petitioner noted he is right hand dominant.

After the respondent fired the petitioner he sought employment elsewhere. He is currently working as a maintenance person for a company at Lake & Halsted earning approximately $200.00 to $250.00 per week. He has worked for this company for about four months.

The Arbitrator finds and concludes that the petitioner has suffered a loss of trade due to his injuries that he sustained on November 23, 2011. Based upon the opinions of Dr. Fernandez and the testimony of the petitioner, the Arbitrator concludes that the petitioner's injuries caused the 35% loss of use person as a whole as provided in Section 8(d) 2.

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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Doris Martinez,
Petitioner,

vs. NO. 13 WC 36742

Hot Mama's Foods,
Respondent.

15IWCC0978

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, temporary total disability, medical expenses and prospective medical expenses, and being advised of the facts and law, modifies the Decision regarding temporary total disability and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission modifies the decision of the Arbitrator to show that Petitioner reached maximum medical improvement as of June 5, 2014, or the date of Dr. Levin's §12 examination. In this respect, Dr. Levin diagnosed Petitioner with a lumbar myofascial strain and opined that Petitioner's current clinical complaints were not supported by the objective imaging tests. (RX1). As a result, the Commission finds that Petitioner reached maximum medical improvement as of June 5, 2014 and affirms the Arbitrator's denial of temporary total disability benefits, medical expenses and prospective medical treatment thereafter.

All else is hereby affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner reasonable and necessary medical expenses in the amount of $18,115.58 under §8(a) of the Act, subject to the fee schedule pursuant to §8.2 of the Act.

15IWCC0978

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $18,500.00. 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: DEC 2 3 2015

Joshua D. Luskin

Charles J. DeVriendt

Ruth W. White

o-12/16/15
jdl/po
68

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

MARTINEZ, DORIS
Employee/Petitioner

Case# **13WC036742**

HOT MAMA'S FOODS
Employer/Respondent

15IWCC0978

On 2/13/2015, 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:

2553 LAW OFFICES OF JAMES McHARGUE
BRENTON M SCHMITZ
123 W MADISON ST SUITE 1000
CHICAGO, IL 60602

2965 KEEFE CAMPBELL BIERY & ASSOC
SHAWN R BIERY
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Doris Martinez
Employee/Petitioner

v.

Hot Mama's Foods
Employer/Respondent

Case # 13 WC 36742

Consolidated cases: D/N/A

15IWCC0978

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 **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago, IL**, on **January 28, 2015**. 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. [ ] What was the date of the accident?
E. [ ] 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. [ ] 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. [x] 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. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

15IWCC0978

On the date of accident, **October 15, 2013**, 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 $**23,309.00**; the average weekly wage was $**448.25**.

On the date of accident, Petitioner was **29** years of age, ***married*** with **3** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**2,315.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**2,315.00**. Respondent also paid a $2,000 advance toward permanency. RX 2.

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

ORDER

Petitioner claims she was temporarily totally disabled from June 2, 2014 (the claimed layoff date) through January 28, 2015, the date of hearing. For the reasons set forth in the attached decision, the Arbitrator declines to award temporary total disability benefits during this interval.

Respondent shall pay the following reasonable and necessary medical services, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. These are: **Pain Center of IL, $5,551.00; Ashland Med. Spec., $2,132.58; IL Neck & Back, $10,432.00.** The Arbitrator declines to award the claimed $7,625.00 set-up/rental/unusual transportation charges from Advanced Rehab Specialists. With respect to the claimed charges/balances from Alex Orthopedics, Superior Rehab, Edgebrook MRI and EQMD, the Arbitrator awards no amounts beyond those already paid by Respondent, as documented in Respondent's payment ledger. RX 2.

For the reasons set forth in the attached decision, the Arbitrator declines to award the prospective surgery claimed by Petitioner.

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.

Molly C Mason
Signature of Arbitrator

2/13/15
Date

ICArbDec19(b)

FEB 13 2015

Doris Martinez v. Hot Mama's
13 WC 36742

15IWCC0978

Arbitrator's Findings of Fact

Petitioner testified through a Spanish-speaking interpreter.

Petitioner testified she initially worked as a packer for Respondent. Later, she began performing a different job that involved bringing needed items to a production line. She worked the first shift, from 4 AM until 12:30 PM.

Petitioner claims a back injury of October 15, 2013. She testified the injury occurred while she was in the process of bringing a box to the production line. The box contained a 3-foot roll of plastic film. She did not know the weight of the box but testified it was significantly heavier than the 25-pound boxes she used to lift when she worked as a packer. She testified she felt pain in her lower back as she lifted the box off the floor and turned in order to put the box on the line. The accident happened at about 5:00 or 5:30 AM. She tried to continue working but was not able to tolerate the pain. About 25 or 30 minutes after the accident, she told her manager, Freddie Arroyo, about her injury. [Notice is not in dispute. Arb Exh 1.] Arroyo created a written accident report and directed Petitioner to go to a medical facility to get her back checked. Petitioner testified she then took a taxi to the designated facility, the Emergency Room at Alexian Brothers Medical Center. Respondent paid for the taxi.

Petitioner testified she told Emergency Room personnel about the accident. The Emergency Room records reflect that Petitioner experienced a "sudden onset of lower back pain when lifting box at work." The Emergency Room physician, Dr. vonFischer, described Petitioner's past medical history as non-pertinent. He noted that Petitioner denied radicular symptoms. On examination, he noted lower lumbar pain to palpation, primarily in the paravertebral area. He ordered lumbar spine X-rays, which showed no fracture or dislocation, no significant arthritic change and "mild narrowing of the disc space at L4-L5." He also ordered a urine pregnancy test, which was negative. He diagnosed a lumbar strain and prescribed Ibuprofen and Naprosyn. He instructed Petitioner to follow up at the hospital's occupational clinic. He imposed restrictions of no lifting/carrying over 10 pounds, no kneeling or squatting and limited repetitive motion. PX 1.

Petitioner testified she did not return to work after she left the Emergency Room. She remained off work the following day, October 16, 2013. On October 17, 2013, she went to Alexian Brothers Corporate Health Services, where she saw Christopher Serpico [hereafter "Serpico"], a physician's assistant. Serpico wrote to Respondent the same day, noting the following history: "The patient states she was lifting a heavy box and twisted on Monday, 10/15/13." Serpico noted that Petitioner reported some improvement in her back pain and denied radiation of pain into her buttocks or legs.

On initial examination, Serpico noted 5/5 strength, a normal gait, some spasm and tenderness to the lumbar region, normal heel/toe ambulation and negative straight leg raising bilaterally. He diagnosed a lumbar strain. He instructed Petitioner to continue her medication, apply moist heat and perform back exercises. He imposed restrictions of no lifting/carrying/pushing/pulling over 10 pounds, no kneeling, squatting or bending and limited repetitive motion. He instructed Petitioner to return on October 22, 2013. PX 2.

Petitioner testified she returned to light duty after October 17, 2013. The light duty consisted of putting salsa in jars and weighing the jars. The jars varied in weight from six to twelve ounces. Petitioner testified she continued performing this light duty until June 2, 2014, at which point Respondent closed and she was laid off.

Petitioner returned to Alexian Brothers Corporate Health on October 22, 2013 and again saw Serpico. Serpico indicated that Petitioner rated her pain at 4/10 and described her back pain as "slowly getting better." On re-examination, Serpico noted no palpable tenderness, mild tenderness only with sitting, 5/5 strength and negative straight leg raising bilaterally. He released Petitioner to full duty. He instructed Petitioner to continue taking Naproxen and return to the clinic if necessary. PX 2.

Petitioner testified she was still experiencing lower back pain as of October 22, 2013.

On October 25, 2013, Petitioner consulted Peter Snitovsky, M.D., a physician of her own selection. Dr. Snitovsky is affiliated with Alex Orthopaedics. Petitioner testified she decided to see Dr. Snitovsky because, even though she had been released by Alexian Brothers Corporate Health, she was still symptomatic.

Dr. Snitovsky's initial note of October 25, 2013 reflects that Petitioner complained of "low back pain only" secondary to lifting a 40-pound box at work on October 15, 2013. The note also reflects that Petitioner "returned to work on October 23, 2013, full duty, and has increased pain while at work."

On initial examination, Dr. Snitovsky noted a limited range of lumbar spine motion, tenderness into the lumbar spine and paraspinal muscles, intact sensation, +5 strength and the ability to perform straight leg raising to 90 degrees bilaterally with no tension sign noted.

Dr. Snitovsky diagnosed a lumbar sprain and strain. He prescribed physical therapy and various medications, including Meloxicam, Protonix, Tramadol and an analgesic balm. He recommended that Petitioner "continue working on a light duty basis." PX 3.

Petitioner underwent an initial physical therapy evaluation at Alex Orthopaedics on October 29, 2013. The evaluating therapist, Lourdes Ipapo [hereafter "Ipapo"], P.T., noted that Petitioner "felt a sharp pain in the middle of the lower back" when she attempted to lift a box filled with rolls of film on October 15, 2013. Ipapo also noted that Alexian Brothers subsequently imposed light duty, which Respondent was not able to accommodate. Ipapo

indicated that Petitioner "attempted to return to work last Wednesday with no restrictions but still was unable to perform the work demands due to lumbar pain." PX 3.

Petitioner began attending therapy sessions with Ipapo thereafter. On November 1, 2013, Ipapo noted that Petitioner reported "having tightness and pain [in] both legs yesterday, almost same as the lower back." Ipapo indicated that Petitioner attributed these symptoms to working and being "cold the whole time working with back aching." PX 3.

Petitioner testified she began experiencing leg symptoms about a month after the accident.

On November 4, 2013, Ipapo noted that Petitioner complained of increased pain secondary to "working in a cold environment being in a processing plant, saying temperature is almost about 40 degrees – using a jacket at all times." PX 3.

Petitioner continued attending therapy thereafter. On November 18, 2013, Ipapo noted that Petitioner had missed a couple of sessions due to illness and was still experiencing low back pain, worse on the right.

Petitioner testified that Dr. Snitovsky referred her to Dr. Hussain, a pain physician. She first saw Dr. Hussain on December 26, 2013. Dr. Hussain is associated with The Pain Center of Illinois. Dr. Hussain noted a history of a lifting-related lower back injury. He also noted that Petitioner began voicing leg complaints after completing twelve therapy sessions with Dr. Snitovsky. He further indicated that Petitioner reported being six weeks pregnant and had stopped taking medication due to the pregnancy.

On initial examination, Dr. Hussain noted a normal gait, intact sensation and right-sided back pain with positive straight leg raising on the right.

Dr. Hussain diagnosed chronic lumbar lower back pain likely due to facet joint involvement/myofascial syndrome/discogenic disease. He indicated that Petitioner's treatment options were limited due to her pregnancy. He instructed her to continue light duty until she could be re-evaluated. PX 5.

Petitioner testified she suffered a miscarriage in January 2014, secondary to a fall. She denied injuring her back when she fell. It is not clear whether Petitioner sought treatment for the fall and/or miscarriage. No records relating to these events are in evidence.

Petitioner returned to Dr. Hussain on March 20, 2014. The doctor noted the intervening miscarriage. He also noted that Petitioner had been experiencing low back pain since her work accident and was still complaining of primarily right-sided lower back pain radiating into the posterolateral right thigh and right leg. Given the duration of symptoms, he recommended a lumbar spine MRI. He also recommended that Petitioner re-start physical therapy. He dispensed medication and instructed Petitioner to return to him in two weeks. PX 5.

Petitioner underwent the recommended lumbar spine MRI at Edgebrook Radiology on April 4, 2014. Dr. Kuritza, a radiologist, interpreted the MRI as showing a 3-4 mm subligamentous posterior disc herniation at L4-L5 with mildly extruded nucleus pulposus indenting the thecal sac with associated mild stenosis and a 2-3 mm posterior disc protrusion/herniation indenting the ventral and central portion of the thecal sac at L5-S1, without significant stenosis or narrowing. PX 8.

On April 9, 2014, Petitioner underwent an initial physical therapy evaluation at Superior Rehab Center. The evaluating therapist, Margaret Nordstrom, P.T. [hereafter "Nordstrom"] noted a history of the work accident and subsequent care. The therapist also indicated that Petitioner was complaining of constant low back pain with associated right gluteal and hip pain. Nordstrom recommended that Petitioner attend therapy three times per week for a total of twelve visits.

On April 11 and 21, 2014, Nordstrom noted that Petitioner reported some improvement but was still experiencing pain daily. Petitioner did not return to Nordstrom thereafter. On May 16, 2014, Nordstrom discharged Petitioner from therapy "due to frequent no-shows." PX 7.

Petitioner returned to Dr. Hussain on April 14, 2014. The doctor noted that Petitioner was still experiencing lower back pain radiating into her right leg. He reviewed the MRI and interpreted it as showing "a disc herniation with extrusion nucleus pulposus at L4-L5 and L5-S1 with mild spinal stenosis." He re-examined Petitioner, noting no new findings. He started Petitioner on Norco and recommended an epidural injection on the right at L4-L5 and L5-S1. PX 5.

On April 21, 2014, Dr. Snitovsky noted that Petitioner complained of 3/10 right-sided lower back and right leg pain. He also noted that Petitioner was seeing Dr. Hussain for pain management, with that doctor having recommended a total of two injections.

On re-examination, Dr. Snitovsky noted negative straight leg raising and some tenderness in the right leg. He recommended that Petitioner attend therapy and follow up with Dr. Hussain. He directed Petitioner to return to him in two months. PX 3.

On April 28, 2014, Dr. Hussain administered an epidural injection at the right L4-L5 and L4-S1 levels. Following the injection, he directed Petitioner to return to him in two weeks. PX 5. Petitioner testified that this injection helped her pain for about a month.

On May 1, 2014, Petitioner underwent an initial evaluation at a different physical therapy facility, Accelerated Rehabilitation. The evaluating therapist, Kimberly Del Bene, P.T. [hereafter "Del Bene"], noted a history of the work accident and subsequent care. Del Bene indicated that Petitioner reported improvement secondary to the injection but was still

experiencing right-sided lower back pain and intermittent right leg pain. She also indicated that Petitioner was performing restricted duty on a full-time basis. PX 11.

On May 1, 2014, a physician associated with Advanced Rehab Specialists signed a prescription form recommending that Petitioner use a Vascutheram cold/heat therapy device at home for thirteen weeks. The doctor's signature is difficult to read but it may be that of Dr. Hussain. Petitioner testified she used this device and that it helped "in some ways."

Petitioner returned to Dr. Hussain on May 15, 2014. The doctor noted that Petitioner reported some improvement of her lower back and leg pain, secondary to the injection, but was still experiencing "sharp pain radiating from her mid-calf to her heel and plantar mid-foot." He also noted that Petitioner reported her back pain was being aggravated by repetitive bending and twisting on the job. He described his examination findings as unchanged. He recommended a second epidural injection. He refilled Petitioner's Ultram ER, Mobic, Flexeril and Protonix. He released Petitioner to light duty with an additional restriction of no repetitive bending or twisting. PX 5.

Petitioner testified she was laid off on June 2, 2014 secondary to Respondent closing.

On June 3, 2014, Del Bene noted that Petitioner was still experiencing symptoms and was obtaining household help from her mother. Del Bene also noted that Petitioner was "still waiting for approval for the second injection." PX 11. Petitioner testified she never underwent a second injection.

At Respondent's request, Petitioner saw Dr. Jay Levin for purposes of a Section 12 examination on June 5, 2014. Dr. Levin is affiliated with Adult & Pediatric Orthopedics, S.C. In his report of June 5, 2014, Dr. Levin indicated that a nurse case manager, Claudia Maldonado, R.N. "was present throughout the entire evaluation."

In his report, Dr. Levin indicated that Petitioner was pregnant at the time of her October 2013 lifting-related work accident. He also indicated that, according to Petitioner, her right leg symptoms began about two weeks after the accident. He described Petitioner as 15 weeks pregnant as of her January 2014 miscarriage. He noted that Petitioner had undergone one injection to date and reported experiencing 50% improvement following this injection. He indicated that Petitioner had been laid off on Monday, June 2, 2014, along with other workers. He stated that, prior to the layoff, Petitioner was working subject to a 20-pound lifting restriction. He noted that Petitioner was awaiting approval of a second injection.

Dr. Levin noted that Petitioner complained of constant 3/10 right low back pain, occasionally increasing to 6-8/10, and right leg weakness.

On examination, Dr. Levin noted a reciprocal gait, the ability to heel and toe walk, right lumbosacral tenderness and right trochanteric tenderness, pain with forward flexion, negative straight leg raising bilaterally, 5/5 EHL strength bilaterally and intact sensation.

Dr. Levin interpreted the April 4, 2014 MRI film as showing degenerative changes at L4-L5 and L5-S1 with no evidence of disc herniation at either of these levels. He disagreed with the radiologist's finding of herniations at these levels.

Dr. Levin reviewed recent lumbar spine, pelvic and right hip X-rays. He interpreted the lumbar spine films as showing mild degenerative disc changes at L5-S1 and no gross instability on flexion-extension views.

Dr. Levin diagnosed a lumbar myofascial strain from the injury of October 15, 2013. He described the mechanism of that injury as a "competent cause for development of acute lumbar myofascial strain." Referencing the ODG guidelines, he indicated that the proper treatment for such a strain would be ten physical therapy visits plus active, self-directed home therapy. He opined that epidural injections were not necessary, based on the lack of evidence of radiculopathy "in concert with the MRI." He further opined that Petitioner would have been capable of resuming full duty within 7 to 10 days of the accident. He stated he would provide an MMI impairment rating upon request. RX 1.

On June 9, 2014, Del Bene recorded the following:

> "Pt states she is feeling pretty good today. Pt states she will be starting a new job and HR department is aware of her current restrictions and they are willing to work with her. Patient rates her current pain as 4/10. Pt states she did try to lift her 15-month-old from the bed and she was able to do so without pain. Pt was also able to carry her."

PX 11.

Petitioner also saw Dr. Hussain on June 9, 2014, with the doctor indicating his findings were unchanged and he was still awaiting authorization of the recommended second injection. The doctor continued the previous work restriction, including the additional restriction of no repetitive bending or twisting. PX 5.

On June 11, 2014, Del Bene noted that Petitioner failed to appear for a scheduled appointment. PX 11.

A bill in PX 3 reflects that Petitioner returned to Dr. Snitovsky on June 16, 2014. The doctor's note of that date is not in evidence. [According to Dr. Levin, who referenced the note in his September 29, 2014 report, Dr. Snitovsky diagnosed a "new condition," i.e., a right sacroiliac joint problem, when he saw Petitioner on June 16, 2014.] RX 1.

On July 7, 2014, Del Bene discharged Petitioner from therapy, noting that Petitioner had attended therapy only once since the last re-evaluation and was not responding to telephone calls. PX 11.

A bill in PX 10 reflects that Petitioner returned to The Pain Center of Illinois on July 18, 2014. No treatment note of that date is in evidence. [According to Dr. Levin, who referenced the note in his September 29, 2014 report, Dr. Hussain described his examination as "unchanged" when he saw Petitioner on July 18, 2014.]

On August 5, 2014, Petitioner saw Dr. Neckrysh, a neurosurgeon affiliated with the University of Illinois Hospital. Petitioner testified Dr. Hussain referred her to Dr. Neckrysh.

At the hearing, Petitioner denied ever seeing a "Dr. Murtaza" but Dr. Neckrysh's initial note reflects this doctor referred Petitioner to him. In fact, Dr. Neckrysh sent his treatment note of August 5, 2014 to Dr. Murtaza at the Metropolitan Institute for Pain.

In his August 5, 2014 note, Dr. Neckrysh indicated Petitioner complained of bilateral buttock pain, worse on the right, and pain traveling down her right leg in the L5 dermatomal distribution, secondary to a work accident. He also indicated that, "surprisingly," Petitioner described her back pain as her primary symptom and her right leg pain as her secondary symptom.

Dr. Neckrysh interpreted the MRI as showing a herniation at L4-L5 superimposed on chronic degenerative changes of facet arthropathy and some modic changes in the L4-L5 endplates. He also noted "bilateral lateral recess stenosis, worse on the right than the left."

Dr. Neckrysh indicated he spent some time with Petitioner attempting to understand the kind of pain she was experiencing. He concluded that the pain was likely not mechanical but rather "an equivalent of radicular pain with buttock pain, which is not uncommon for L5 radiculopathy." He addressed Petitioner's treatment needs as follows:

> "Before we submit this young lady of 30 years of age to a fusion operation of the lumbar spine, I would really like to give her a chance with a simple decompression at the L4-L5 level, aiming at decompression of the nerve roots with preservation of the midline tension band and facet joints. I do believe that this will greatly help her with the leg pain and with what she calls back pain. If not, there is very low morbidity of actually bringing her back to the operating room and performing a formal fusion operation at the L4-L5 level if this is still clinically necessary after the simple decompression."

Dr. Neckrysh noted that Petitioner consented to undergo the recommended decompression. PX 4.

On September 29, 2014, Dr. Levin issued a second report, after reviewing additional records from Drs. Snitovsky, Hussain and Neckrysh. Dr. Levin stated that none of these three physicians commented on the initial assessment performed at Alexian Brothers Corporate Health. Dr. Levin also indicated that, based on the most recent records, it appeared Dr. Snitovsky was now treating a "different anatomical part," namely the right sacroiliac joint.

Dr. Levin indicated he disagreed with Dr. Neckrysh's surgical recommendation. Based on the Alexian Brothers Corporate Health records, he opined that the accident resulted in a lumbar strain which "had resolved [by October 22, 2013] such that [Petitioner] could perform ll job functions and all of her regular job duties and she was discharged from care at that facility." He stressed that the provider at Alexian Brothers noted no radicular complaints and that Dr. Snitovsky, at least initially, noted complaints referable only to the back. He viewed Dr. Neckrysh as recommending surgery based on a complaint of buttock pain which the doctor equated with radicular pain. He reiterated that the work accident resulted only in a lumbar strain that did not require surgical intervention. RX 1.

Petitioner testified she wants to undergo the surgery that Dr. Neckrysh recommended. She underwent therapy at different times. The therapy consisted of exercises, walking and lying on an "electric machine." The therapy helped in the sense that it relaxed her muscles but it did not eliminate her pain. Her low back still hurts. Her right leg is weaker than it used to be and it hurts at times. When her right leg hurts, she feels pain running from the top of the leg to the sole of her foot. Almost all activities, including cleaning her house and playing with her children, are painful. She has not worked in any capacity since June 2014. She has participated in some job interviews since then but is still subject to a 10-pound lifting restriction.

Petitioner testified she did not injure her back or undergo any significant back treatment prior to her work accident. She has not reinjured her back since the accident.

Under cross-examination, Petitioner testified the Alexian Brothers records are probably correct if they reflect a last visit of October 23, 2013. She provided Dr. Levin with a history of the accident and told him about her complaints.

On redirect, Petitioner testified she saw Dr. Levin once, in June 2014. She was at Dr. Levin's office for a long time.

No other witnesses testified at the hearing.

Arbitrator's Credibility Assessment

Petitioner's testimony concerning her claimed accident was detailed and corroborated by the treatment records. The Arbitrator finds this testimony credible. Also credible was

Petitioner's testimony that she began performing a lighter job, filling jars with salsa, not long after being discharged to full duty by Alexian Brothers Corporate Health on October 22, 2013.

Petitioner was less than credible, however, with respect to some of the events that followed her June 2, 2014 layoff. Petitioner claims temporary total disability benefits beginning on June 2, 2014. Arb Exh 1. She denied working in any capacity after that date but the therapy records from early June 2014 strongly suggest she quickly secured other light duty employment, albeit employment that may not have lasted for long. PX 11. Petitioner also denied seeing Dr. Murtaza prior to seeing Dr. Neckrysh in early August 2014 but Dr. Neckrysh's note calls that denial into question.

Petitioner did not offer into evidence the most recent treatment records from Drs. Snitovsky and Hussain. The Arbitrator notes that Petitioner was discharged from physical therapy, based on poor attendance, prior to the creation of these records.

Arbitrator's Conclusions of Law

Did Petitioner sustain an accident on October 15, 2013 arising out of and in the course of her employment by Respondent?

The Arbitrator finds in Petitioner's favor on the issue of accident. Petitioner's accident-related testimony was detailed, credible and uncontradicted. Petitioner testified she was performing a work-related task, i.e., moving a box containing plastic film, during her shift when she felt the onset of lower back pain. Petitioner also testified she notified her supervisor of this accident within a very short time. Notice is not in dispute. Arb Exh 1. Petitioner further testified that she went to a medical provider of Respondent's selection, via a taxi that Respondent paid for. The Arbitrator has no reason to question this testimony. A form in PX 1, entitled "Occupational Health Authorization for Treatment or Examination," reflects that Respondent's sanitation supervisor, Gregory Sanders, authorized Petitioner's initial care at Alexian Brothers on October 15, 2013.

Petitioner established she sustained an accident on October 15, 2013 arising out of and in the course of her employment.

Did Petitioner establish a causal connection between her October 15, 2013 work accident and her claimed current condition of ill-being?

The Arbitrator finds that the accident of October 15, 2013 was a cause of Petitioner's claimed current lumbar spine condition of ill-being. The Arbitrator views that condition as a persistent lumbar strain with some disc involvement and a radicular component that resulted in the need for restrictions. The Arbitrator views the work activities that Petitioner performed for Respondent after October 23, 2013, apparently in a cold environment, as also contributing to her current condition. There is no evidence suggesting Petitioner had any back problems prior to the October 15, 2013 accident. Petitioner acknowledged falling in January 2014 but credibly

denied any worsening of her back problems secondary to this fall. Respondent maintains Petitioner did not have radicular complaints until after she fell but Dr. Hussain noted leg complaints in December 2013.

The Arbitrator further finds that Petitioner established causation as to the need for the conservative care (including the April 28, 2014 injection) she underwent through June 11, 2014, the date on which Del Bene noted Petitioner failed to appear. The Arbitrator finds that Petitioner failed to establish causation as to the need for the second injection that Dr. Hussain recommended in May and June of 2014. It is not possible for the Arbitrator to determine whether this injection was again recommended when Petitioner last went to The Pain Center on July 18, 2014 because Petitioner did not offer the note of that date into evidence. Petitioner was discharged from therapy due to non-compliance ten days before that visit. The Arbitrator further finds that Petitioner failed to establish causation as to the need for the surgical decompression, and possible subsequent fusion, that Dr. Neckrysh recommended in early August 2014. There is no indication that Dr. Neckrysh reviewed earlier treatment records (other than the MRI) and his recommendation appears to be at odds with Petitioner's reported statement that it was her back, and not her leg, that was problematic. The Arbitrator views Petitioner as reaching maximum medical improvement as of June 11, 2014.

Is Petitioner entitled to medical expenses?

Petitioner claims a number of outstanding medical expenses, all of which are listed on the Request for Hearing form. The Arbitrator notes that some of the claimed expenses, including those from Edgebrook Open MRI and Superior Rehab, along with certain of the charges from Alex Orthopaedics and EQMD, Inc., have been paid by Respondent, presumably at the fee schedule rate. See the payment ledger in RX 2. Petitioner raised no objection to this ledger. [The ledger also reflects payments to Alaris, Respondent's nurse case managers.] The Arbitrator awards no additional amounts, beyond those already paid, to Edgebrook Open MRI (PX 8), Superior Rehab (PX 7), Alex Orthopaedics (PX 3) and EQMD, Inc. (PX 9).

Based on the foregoing causation analysis, and having reviewed the submitted bills, the Arbitrator awards the following medical expenses, subject to the fee schedule:

The Pain Center of Illinois (Dr. Hussain) (PX 5, 10) 12/26/13 – 6/9/14 [The Arbitrator declines to award an additional charge of $150.00 for services rendered on July 18, 2014 because no treatment records bearing that date are in evidence.]	$	5,551.00
Illinois Neck and Back Institute 4/28/14, facility charges relating to injection (PX 10)	$	10,432.00
Ashland Medical Specialists 4/28/14, anesthesia relating to injection (PX 10)	$	2,132.58

In the Arbitrator's view, it was reasonable for Dr. Hussain to see whether an injection would be beneficial. Petitioner testified she experienced some improvement following the injection. Respondent's examiner, Dr. Levin, did not view the injection as reasonable, citing the lack of evidence of radiculopathy on his own examination, but Dr. Hussain documented leg pain in December 2013, March 2014 and April 2014.

The Arbitrator declines to award the claimed $7,625.00 bill from Advanced Rehabilitation Specialists (PX 6). This bill relates to the rental of a Vascutherm cold/heat home therapy unit. The rental charge is quite high at $1,400/week. It appears Dr. Hussain prescribed this unit on May 1, 2014 but the prescription is never mentioned in the doctor's notes. Petitioner testified the unit helped "in some ways" but her testimony on this point was half-hearted at best.

Is Petitioner entitled to temporary total disability benefits?

Petitioner claims she was temporarily totally disabled from June 2, 2014 (the date Respondent closed and laid her off) through January 28, 2015 (the date of hearing). Arb Exh 1.

The Arbitrator declines to award the claimed temporary total disability benefits. The therapy notes strongly suggest Petitioner began engaging in alternate light duty for a different employer in early June 2014, after Respondent closed its doors. The Arbitrator has also found that Petitioner reached maximum medical improvement on June 11, 2014, based on the therapy note of that date and her failure to offer Dr. Snitovsky's note of June 16, 2014 and Dr. Hussain's note of July 18, 2014 into evidence. Also see the Arbitrator's findings as to prospective care, below.

Is Petitioner entitled to prospective care?

Petitioner seeks prospective care in the form of the decompression and possible fusion that Dr. Neckrysh recommended in early August 2014. The Arbitrator has previously found that Petitioner failed to establish causation as to the need for this care. The Arbitrator notes that neither of Petitioner's other treating physicians, Drs. Snitovsky and Hussain, viewed Petitioner as a surgical candidate. The last Dr. Snitovsky note in evidence, i.e., the note of April 21, 2014, reflects that Petitioner rated her pain level at 3/10 and that straight leg raising was negative. Petitioner returned to Dr. Snitovsky on June 16, 2014, but did not offer the note of that date into evidence. Respondent's examiner, Dr. Levin, indicated he reviewed the June 16, 2014 note and that it documented treatment of a "new" condition, an SI joint problem. Petitioner returned to Dr. Hussain on July 18, 2014 but also failed to offer that note into evidence.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Luis Cuadrado,

Petitioner,

vs. NO: 11 WC 45776

F.H. Paschen, S.N. Nielsen, and Associates, LLC.,

15IWCC0979

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, extent of temporary total disability, extent of temporary partial disability, nature and extent of permanent disability, medical expenses and §8(d)1 wage differential 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.

The Commission modifies the Arbitrator's Decision finding that Petitioner failed to prove a causal relationship existed between the April 21, 2011 accident and the condition of ill-being for his knees. The Commission notes that Petitioner did not mention his knees at Advocate Christ Medical Center emergency room on April 21, 2011. On April 25, 2011, Petitioner saw his primary care physician Dr. Chavarria, who noted the following history, "The patient is a 43 year old male who presents with back pain. Symptoms are located in the right upper back. He states that he was at work at the bottom of a 35 foot tunnel cementing. He suddenly heard "look out" and he bent forward and covered himself and felt a body, a fellow worker, fall on top of him. He was struck on the top of his back and on the right scapular area and the person bounced off him. He did not have any LOC. He called for help and waited for assistance to get the other person

out of the tunnel." Dr. Chavarria noted the emergency room visit and further noted, "He still is complaining of upper back pain extending to the right scapular area. He is also complaining of neck pain. He states that his knees are hurting also most of the time worse in the morning. The knees make a crackling sound on both knees." Petitioner was also feeling tightness in the forehead area and he had occasional blurring of vision. He complained of some chest pain when he breathed, coughed or moved his arms. He also complained of low back pain with movement and the pain did not radiate to either leg. The Commission finds that Petitioner's mention of his knees on this date was part of a litany of complaints he had. Petitioner then did not treat for his knees and treated only for his neck and back. There was no mention of Petitioner's knees to Advanced Occupational Medicine Specialists noted in the records until June 17, 2011 to Dr. Manalac. In his Progress Note of that date, Dr. Manalac noted Petitioner reported his neck was feeling mildly better and his back was unchanged. Petitioner complained of tightness in his low back and he still had numbness and tingling in his legs. Dr. Manalac noted Petitioner, "States his left knee has been very painful lately."

Petitioner then did not treat for his knees until he saw Dr. Bowen on September 7, 2011. On that date, Dr. Bowen noted the following history: "The patient is a 53-year old male with bilateral knee pain. He works in concrete construction. He states he hurt his knees on 4/21/11 working in a shaft. An employee slipped on a ladder and fell directly on the patient's back. It caused him to fall forward and land on his knees. He has knee pain and back pain since the accident, popping and cracking in his knees, pain in the center of his kneecap. He has trouble with pain, walking. He has had swelling. He saw a physician through work comp and was told to ice his knees." The Commission notes that there was no mention of hurting his knees on April 21, 2011 in the emergency room records or of having knee pain since that day or icing the knees in the medical records of Advanced Occupational Medicine Specialists. Petitioner treated with Dr. Bowen through October 31, 2011 and was referred to Dr. Ellen Casey for evaluation and consideration of other potential treatments. Petitioner did not see Dr. Casey and did not see another doctor for his knees until he saw Dr. Prodromos on April 30, 2012. Dr. Prodromos opined causal connection for Petitioner's condition of ill-being for his knees, but he did not review the medical records prior to Petitioner seeing him. §12 Dr. Raab did review the medical records and opined no causal connection. The Commission finds the opinions of §12 Dr. Raab more persuasive than those of Dr. Prodromos. The Commission also notes that Petitioner testified that he did not work on his hands and knees after April 21, 2011. However, the surveillance video from November 18, 2011 clearly shows Petitioner on his hands and knees performing cement finishing work.

Based on the finding of no causal connection for Petitioner's condition of ill-being for his knees, the Commission vacates the award of temporary total disability benefits from June 19, 2012 through September 29, 2012 and temporary partial disability benefits from September 30, 2012 through April 12, 2013. The Commission finds that Petitioner was temporarily totally disabled from April 22, 2011 through November 18, 2011, a period of 30-1/7 weeks. The Commission further vacates the award of §8(d)1 wage differential as it was based on Petitioner's condition of ill-being for his knees, that the reason Petitioner was prevented from pursuing his

usual and customary line of employment was his inability to bend and kneel due to the condition of his knees, which is not causally connected to his April 21, 2011 accident. The Commission awards 5% man as a whole for Petitioner's cervical condition and 5% man as a whole for his lumbar condition. The Commission affirms the Arbitrator's award of the medical bills from April 21, 2011 through November 18, 2011 for the following providers: City of Chicago Fire Department, Advocate Christ Medical Center, Advocate Medical Group (Dr. Chavarria), Advanced Occupational Medicine Specialists, Athletico, Northwestern Orthopedic Institute, Preferred Open MRI and Advantage Imaging, LLC. The Commission affirms the Arbitrator's denial of the following medical expenses: Gold Coast Wellness, Dr. Prodromos, Oak Lawn Radiology, Morton Grove Medical Imaging, Dr. Salehi, Illinois Orthopedic Network, Metro Anesthesia Consultants, Advanced Physical Therapy, Thera Tech Equipment, IWP and ATI. The Commission affirms all else.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's award of TTD benefits from June 19, 2012 through September 29, 2012 and temporary partial disability benefits from September 30, 2012 through April 12, 2013 and the award of §8(d)1 wage differential are hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $907.00 per week for a period of 30-1/7 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 pay to Petitioner the sum of $669.64 per week for a period of 50 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the permanent disability of the person as a whole to the extent of 10%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the medical expenses from April 21, 2011 through November 18, 2011 for the following providers: City of Chicago Fire Department, Advocate Christ Medical Center, Advocate Medical Group (Dr. Chavarria), Advanced Occupational Medicine Specialists, Athletico, Northwestern Orthopedic Institute, Preferred Open MRI and Advantage Imaging, LLC under §8(a) of the Act, subject to the Medical Fee Schedule under §8.2 of the Act. Respondent shall have §8(j) credit of $455.90 for medical expenses paid by the group health carrier.

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 Commission notes that Respondent paid $19,954.00 in TTD benefits and $15,118.07 for payment of medical expenses.

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 $41,000.00. 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: DEC 23 2015
MB/maw
o10/29/15
43

Mario Basurto

Stephen J. Mathis

David S. Kane

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CUADRADO, LUIS
Employee/Petitioner

Case# **11WC045776**

15IWCC0979

F H PASCHEN, S N NIELSEN AND ASSCOIATES LLC
Employer/Respondent

On 2/23/2015, 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 0.06% 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:

4595 WHITESIDE & GOLDBERG LTD
JASON M WHITESIDE
155 N MICHIGAN AVE SUITE 540
CHICAGO, IL 60601

1120 BRADY CONNOLLY & MASUDA PC
NICOLE WIZA
10 S LASALLE ST SUITE 900
CHICAGO, IL 60603

15IWCC0979

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

Luis Cuadrado
Employee/Petitioner

v.

F.H. Paschen, S.N. Nielsen, and Associates, LLC.
Employer/Respondent

Case # 11 WC 45776

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 **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **July 2, 2014 and July 14, 2014**. 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: Choice of physicians under Section 8(a) of the Act

15IWCC0979

FINDINGS

On **April 21, 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 **$70,746.00**; the average weekly wage was **$1,360.50**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **0** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$19,954.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$15,118.07** for other benefits, for a total credit of **$35,072.07**.

Respondent is entitled to a credit of **$455.90** under Section 8(j) of the Act.

ORDER

Temporary Total Disability Benefits

Respondent shall pay Petitioner is TTD benefits of **$907.00**/week from April 22, 2011 through November 18, 2011 and from June 19, 2012 through September 29, 2012.

Respondent shall be given a credit of $**19,954.00** for temporary total disability benefits that have been paid.

Temporary Partial Disability Benefits

Respondent shall pay Petitioner TPD benefits of **$737.33**/week from September 30, 2012 through April 12, 2013.

Medical benefits

Respondent shall pay reasonable and necessary medical services, pursuant to Section 8(a) and subject to Section 8.2 of the Act, to the following providers: City of Chicago Fire Department, Advocate Christ Medical Center, Advocate Medical Group - Dr. Chavarria, Advanced Occupational Medicine Specialists, Athletico, Northwestern Orthopedic Institute, Preferred Open MRI, Advantage Imaging, LLC - - all from the date of accident, April 21, 2011, through November 18, 2011.

Permanent Disability Benefits Pursuant to Section 8(d)1

Respondent shall pay a wage differential award of **$613.67**/week from April 13, 2013 through November 9, 2013, and a wage differential award of **$604.53**/week from November 10, 2013 and continuing for the duration of his disability.

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

February 20, 2015
Date

FEB 23 2015

15IWCC0979

RIDER TO ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Luis Cuadrado v. F.H. Paschen, S.N. Nielsen and Associates, LLC
11 WC 45776

Findings of Fact

The petitioner worked as a journeyman cement finisher for the respondent prior to and including April 21, 2011. (Transcript of trial proceedings, Pg.12, hereafter T. 12) On that date, the petitioner also worked as a cement finisher through his business, Solid Concrete, LLC, which was incorporated in the State of Illinois on April 4, 2011. (T. 66, RX 10)

On April 21, 2011, the petitioner was working as a cement finisher for the respondent on a project at the Water Reclamation Plant on 130th Street. (T. 12) The petitioner testified that he was working at the bottom of an approximately 45-foot-deep shaft when he heard someone yell, "look out," and a co-worker, Mr. Jeff Andrews, fell down the shaft. (T. 12-14) The petitioner testified that when Mr. Andrews fell, the petitioner ducked and bent over at a 90-degree angle. The petitioner testified that he subsequently hit the ground and his elbows and knees were on the ground. (T. 14) The petitioner testified that after the impact, he had pain on the right side of his back, his knees were hurting, and his neck was hurting. (T. 14) The petitioner assisted Mr. Andrews and climbed up the ladder to the opening of the shaft. (T. 14) Mr. Andrews was flown out for medical treatment. (T. 15, 52-53)

The "Hx PRESENT" section of the April 21, 2011 Chicago Fire Department report states:

Subject	Description/Details
COMPLAINT	**NECK PAIN: BACK PAIN: HEADACHE:**
CAUSE	**FALL**: DISTANCE: STANDING , LANDING SURFACE: GROUND/ EARTH , LANDED ON: UNKNOWN
SYMPTOMS	**DENIES BLURRY VISION: NAUSEA:**

◊ ***NOTE:*** PT FOUND CAOX3, AMBULATORY ON SCENE C/O LOW AND MID BACK PAIN AND HEADACHE. PT WAS STANDING AT THE BOTTOM OF A TUNNEL, HAD COWORKER FALL FROM APPROX 30 FEET THAT LANDED ON HIS SHOULDER. PT WAS THROWN TO THE GROUND, POSSIBLE LOC. PT DENIES BLURRY VISION, DENIES NAUSEA/VOMITING. PT DENIES ANY OTHER PAI (sic) OR INJURY. VITALS AS

NOTED. BB/CC, ALS CARE INITIATED; PT TRANSPORTED TRAUMA BYPASS ON DIRECTION OF 456 TO CHRIST. CARE RELEASED TO ER NURSE ON STAFF. PT UNABLE TO SIGN DUE TO DISTRESS. WITNESSED BY ER NURSE ON STAFF. (PX 2, Pg. 2)

The hospital chart note from Christ Hospital indicates that the petitioner had suffered blunt trauma on the work site when a co-worker fell "from 40 ft. onto [him]", and landed on the petitioner's back and shoulder. (PX 3, Pgs. 8,16) An examination was conducted of the neck, chest, abdomen, bilateral upper extremities, and bilateral lower extremities, as well as neurological exam. (PX 3, Pgs. 16-17) The lower extremities showed no gross deformities, abrasions, lacerations, or ecchymosis. There was no appreciable bony tenderness or stepoffs. Normal ranges of motion of the hip, knee, and ankle were present for both the left and right lower extremities. (PX 3, Pgs. 16-17) Examination of the petitioner's back did reveal subjective pain complaints, increased with movement. (PX 3, Pg. 17) The petitioner had soreness in the lower back with no neurological deficits. (PX 3, Pg. 17) CTs of the cervical, thoracic, and lumbar spines were all ordered. (PX 3, Pg. 17) All CT scans came back negative. (PX 3, Pg. 17) The petitioner was cleared clinically. (PX 3, Pg. 17) There were ongoing complaints of soreness in the lower back with no neurological deficits. (PX 3, Pg. 17) There was no mention made of bilateral knee complaints. The petitioner was discharged home that same day. (PX 3, Pg. 17) The discharge diagnosis was back strain. (PX 3, Pg. 24) The petitioner was to take Tylenol or Advil for pain. (PX 3, Pg. 24) The petitioner was allowed to return to work. (PX 3, Pg. 24) The petitioner was to follow up with his primary care physician as needed. (PX 3, Pg. 24)

On April 25, 2011, which was four days after the accident, the petitioner saw his primary care physician, Dr. Chavarria, for back pain. (PX 4, Pg. 4) The petitioner had seen this physician for other medical conditions, including cholesterol, for which he has been on medication for about the last two years. (PX 4, Pg. 4; T. 56-57) The medical note of April 25, 2011, states that petitioner presented with back pain. (PX 4, Pg. 4) The petitioner's symptoms were located in the right upper back extending to the right scapular area. (PX 4, Pg. 4) The petitioner also had neck pain complaints. (PX 4, Pg. 4) The petitioner stated that "his knees are hurting also most of the time worse in the morning" and that they "make a crackling sound on both knees." (PX 4, Pg. 4) The only diagnosis provided by Dr. Chavarria was neck pain. (PX 4, Pg. 5) Dr. Chavarria prescribed the petitioner Norco. (PX 4, Pg. 5) The Petitioner was taken off work at that time for two weeks. (PX 4, Pg. 5) Physical therapy was considered. (PX 4, Pg. 5)

The petitioner continued to follow up with Dr. Chavarria on April 26, 2011, April 28, 2011, and May 13, 2011. The petitioner returned to Dr. Chavarria solely with neck complaints on those dates of treatment. (PX 4, Pgs. 7-9; T. 58) Chart notes for these three dates make no mention of any knee complaints.

On April 28, 2011, at the behest of the respondent, the petitioner saw a treating orthopedic physician at Advanced Occupational Medicine Specialists. At the April 28, 2011 appointment, the petitioner made complaints of pain in the right side of his upper and lower

back, as well as in his neck. (PX 5, Pg. 6) The petitioner was diagnosed with neck sprain, thoracic strain, lumbago, and lumbar radiculopathy. (PX 5, Pg. 7) Light-duty work was prescribed, as well as physical therapy. (PX 5, Pg. 7)

As of May 13, 2011, the petitioner agreed to proceed with his treatment at Advanced Occupational Medicine Specialists. (PX 4, Pg. 9)

On May 14, 2011, a follow-up examination was conducted at Advanced Occupational Medicine Specialists. (PX 5, Pg. 15). The petitioner had been undergoing physical therapy at that location for the neck and spine only. The petitioner's complaints at that visit were with regard to his neck and spine. (PX 5, Pg. 15)

The petitioner chose to change his physical therapy treatment to Athletico, a location located closer to his home. Physical therapy treatment was provided to the petitioner at that location from May 19, 2011, through June 10, 2011. (PX 6)

A follow-up visit at Advanced Occupational Medicine Specialists occurred on June 17, 2011. The petitioner stated his left knee had been very painful lately. (PX 5, Pg. 39) The petitioner also complained of tightness in the low back. (PX 5, Pg. 39) MRIs of the neck and lumbar spine were ordered at that time. (PX 5, Pg. 39) Physical therapy was placed on hold. (PX 5, Pg. 39) Work restrictions were continued.

On August 4, 2011, the petitioner underwent a lumbar spine MRI. (PX 5, Pgs. 48-49) Findings showed diffuse lumbar spondylosis with multi-level disc desiccation, L5-S1 mild diffuse underlying generalized disc bulge with a superimposed broad-based central disc protrusion and disc bulges at all levels from L1-2 through L4-5 with varying degrees of central canal and neural foraminal stenosis. (PX 5, Pg. 49) A cervical spine MRI was also carried out on August 4, 2011. (PX 7, Pg. 4) Findings of the cervical spine MRI showed diffuse cervical spondylosis with mild multi-level disc desiccation and minimal spondylolisthesis at C3-4 and C4-5. At C2-3, there was a small broad-based left paracentral disc osteophyte complex. At C3-4, there was a broad-based right paracentral/central disc protrusion. At C4-5, there was a small broad-based right paracentral foraminal disc osteophyte complex. At C5-6 through C7-T1, there were diffuse central disc osteophyte complexes.

Of his own accord, the petitioner chose to transfer his treatment to Northwestern Orthopedic Institute. The petitioner was referred to this location by an individual named Dave Stole. (PX8, Pg. 8) The petitioner was not referred here by any physician at Advanced Occupational Medical Specialists or by his primary care physician. (PX 8, Pg. 8; T. 63-64)

Dr. Bowen of Northwestern Orthopedic Institute conducted an initial evaluation of the petitioner's knees. (PX 8, Pg. 24) The petitioner reported to Dr. Bowen that he had had ongoing knee pain since the April 21, 2011 accident, like popping and cracking in his knees, as well as pain in the center of his kneecap. (PX 8, Pg. 24) The petitioner reported that his right knee pain was worse than the left knee pain. On physical examination, Dr. Bowen found that there was no significant atrophy, asymmetry, or swelling of the knees. (PX 8, Pg. 24) There was mild plus patellofemoral crepitus bilaterally, right greater than left. (PX 8, Pg. 24) There was some joint line tenderness along the medial joint line, and meniscal rotation tests were mildly positive. (PX 8, Pg. 24) Dr. Bowen ordered MRIs of the petitioner's knees. (PX 8, Pg. 24)

On September 14, 2011, Dr. Bowen ordered the petitioner off work. (PX 8, Pg. 56)

On September 19, 2011, the petitioner underwent an MRI of his right knee. The MRI was found to be normal. (PX 8, Pg. 62) MR images of the left knee were also obtained. Cartilage over the femoral condyle and tibial plateau were found to be normal. The femoral surface of the patella was considered normal. There was no evidence of chondromalacia or cartilage erosion. There was no evidence of subchondral cysts or erosions. The quadriceps/patella tendon complex was normal. There was evidence of a small knee joint effusion. The radiologist's conclusion was intrasubstance tear of the posterior horn of the medial meniscus with knee joint effusion. (PX 8, Pg. 63)

On September 21, 2011, Dr. Nolden at Northwestern Orthopedic Institute first provided treatment to the petitioner for his spine-related issues. The petitioner underwent a physical examination. Diagnostic tests were reviewed. Dr. Nolden diagnosed the petitioner with mild lumbar spondylosis and probable myofascial back pain. (PX 8, Pg. 23) Dr. Nolden noted that the petitioner was morbidly obese. Dr. Nolden further indicated that the petitioner's gait was non-antalgic and non-ataxic. According to Dr. Nolden, there was nothing of concern in his physical examination or the radiographic studies. All he recommended was continuing physical therapy. (PX 8, Pg. 23)

On September 28, 2011, the petitioner attended a follow-up appointment with Dr. Bowen for his knees. (PX 8, Pg. 16). In Dr. Bowen's opinion, the right knee MRI was normal and the left knee MRI showed an intrameniscal signal with no definitive break at the surface and, therefore, was technically a meniscus tear. (PX 8, Pg. 16) According to Dr. Bowen, the petitioner required only rehabilitation. (PX 8, Pg. 16)

On September 29, 2011, the petitioner sought treatment at Gold Coast Wellness. (PX 10, Pg. 5) The petitioner testified that he chose Gold Coast Wellness based on referral of a friend. (T. 23) The petitioner characterized the treatment he received from this provider as physical therapy. (T. 23) On cross-examination, the petitioner testified that he treated at Gold Coast Wellness because he knew the owner.

The medical records from Gold Coast Wellness indicate that the petitioner received extensive chiropractic treatment. (PX 10, Pgs. 11, 16, 18, 22, 24, 37, 46, 50) The case history document dated September 19, 2011 specifically states that the petitioner has never previously received chiropractic treatment, that he was advised of both of the risks and benefits of such treatment and that he consented to such regimen. (PX 10, Pg. 32)

The petitioner received temporary total disability benefits from April 21, 2011 through September 29, 2011, with one week missing, June 16, 2011 through June 24, 2011. (RX 1) As of September 29, 2011, temporary total disability benefits were terminated as the petitioner had not provided the claims representative with any valid, updated off-work slips. (T. 118-119) Further benefits were not paid as the respondent had evidence that petitioner was working full duty.

The petitioner followed up with Dr. Bowen for the bilateral knees on October 31, 2011. (PX 8, Pg. 14) The petitioner reported to Dr. Bowen that his knees had worsened. On physical exam, the petitioner knee exhibited no swelling or tenderness and no effusion. There was very slight evidence of patellofemoral crepitation. There was no joint line tenderness. Meniscal

rotation tests were negative. His range of motion was full and symmetrical and he was neurovascularly intact. Dr. Bowen diagnosed mechanical knee pain without any obvious evidence for intraarticular meniscal pathology. Dr. Bowen referred the petitioner to Dr. Ellen Casey for evaluation and consideration of other potential treatments. (PX 8, Pg. 14)

The petitioner followed up with Dr. Nolden for his back condition on November 14, 2011. (PX 8, Pg. 11) Dr. Nolden indicated that he received no reports of any physical therapy that the petitioner had been undergoing. (PX 8, Pg. 11) The petitioner estimated a 7/10 pain level, which was greater more than Dr. Nolden had expected at that point in time. (PX 8, Pg. 11) The plan was for petitioner to continue with work restrictions and physical therapy for one more month and then for him to return to work. (PX 8, Pg. 11)

The petitioner continued with his treatment at Gold Coast Wellness through December 15, 2011. There are no off-work notes included in the records of that provider. Aside from the treatment at Gold Coast Wellness, the petitioner did not see another physician from November 14, 2011 until April 30, 2012.

Up to and including this five-month period, the petitioner continued to work as a concrete mason through his corporation, Solid Concrete, LLC. (T. 99-101) The company performed concrete work and did various types of jobs, including but not limited to laying foundations and putting in garage floors and driveways. (T. 67-68)

Further evidence of the work conducted by the petitioner through his corporation is shown in the bank records received by subpoena request from Citibank. (RX 9, RX 9a, RX 9b) According to the bank account maintained for Solid Concrete, LLC, the corporation received $21,940.00 in three installments for a job done at the Mini Cooper dealership located at 1111 West Diversey. (RX 9a) The company was paid a total of $9,000.00 in four installments for work done at 10055 South Winchester, a residence belonging to Richard Janicki. The corporation received a total of $3,800.00 in two installments for work done in July 2011 at 3404 Aberdeen and 3406 Aberdeen, paid by Magdalena Wrobel. For another job, the petitioner was paid $2,600.00 on November 7, 2011 for work done at 3256 Wilson Road, which was the residence of Stacee Philos.

The surveillance evidence obtained on November 18, 2011, and documented both in the surveillance reports, as well as in the actual footage, shows that on that date, the petitioner was able to use a jackhammer to break up old concrete that he would replace. (RX 5, RX 7) More importantly, the petitioner was able to perform concrete-laying duties that included troweling the concrete while down on his hands and knees. The petitioner was on his knees for extended periods of time, he was getting up and down, he was squatting, he was bending and he was lifting. (RX 5)

Further information from the bank account for Solid Concrete, LLC, shows that the company was paid $400.00 on November 23, 2011, for concrete work done at 1509 Elm Road. Also, on December 28, 2011, a payment was received in the amount of $1,050.00 for a job done at 5260 Homan. In March 2012, a total payment of $2,200.00 was received for garage floor work done for Edward Melia. On March 29, 2012, $100.00 was paid for work done at 6745 Calumet. Payment was made in March 2012 that totaled $8,600.00 paid in two installments for work done at 4401 Western Avenue for Triple A Building Corporation. (RX 9a)

On April 30, 2012, which was approximately five months after he stopped seeing treating for his knees with Dr. Bowen at Northwestern Orthopedic Institute, and after he had continued to work as a cement mason, the petitioner went to see Dr. Prodromos. (PX 11, Pg. 4) The petitioner testified that Dr. Odisho of Gold Coast Wellness referred him to Dr. Prodromos. (T. 25) The medical records, received pursuant to subpoena request from Dr. Prodromos, indicate on the patient registration form that the petitioner was referred to Dr. Prodromos by his attorney, Jerry Beckerman. (PX 11, Pg. 2)

At the initial exam by Dr. Prodromos, the petitioner's left knee exhibited severe patellofemoral crepitus, Grade III/IV. (PX 11, Pg. 4) The right knee exhibited mild patellofemoral crepitus, Grade I/IV. Both knees had medial joint line tenderness. Dr. Prodromos diagnosed articular cartilage injury of the left knee. According to Dr. Prodromos, the left knee condition was "undoubtedly post-traumatic and not degenerative because of the asymmetry between the two knees." An additional MRI of the left knee was ordered at that time. (PX 11, Pg. 4)

On May 4, 2012, a 3T MRI of the left knee was obtained. (PX 11, Pg. 5) Findings from this test revealed patellar focal 5 mm full thickness cartilage defect, femoral trochlear groove chondromalacia, medial compartment diffuse cartilage thinning, and tricompartmental osteoarthritis. (PX 11, Pg .5)

The petitioner followed up with Dr. Prodromos on May 7, 2012, to review the MRI test. (PX 11, Pg. 13) According to Dr. Prodromos, the MRI "clearly showed a torn medial meniscus, as well as a chondral defect 5 mm on the patella." (PX 11, Pg. 13) Dr. Prodromos diagnosed the petitioner with a medial meniscal tear, which accounted for his exquisite medial pain, and patellar articular cartilage defect, which accounted for his patellofemoral crepitus. (PX 11, Pg. 13) Dr. Prodromos ordered the petitioner to undergo a meniscectomy and possible microfracture of the patella. (PX 11, Pg. 13)

Even while the petitioner continued to treat with Dr. Prodromos, he continued to work on concrete jobs with his company. The bank account information for Solid Concrete continued to show deposits for jobs done in the first half of 2012. For instance, the petitioner was paid in three installments a total of $10,700.00 for work done in March and/or April 2012 for the Curves location downtown. On May 3, 2012, $1,500.00 was earned for work done at 249 East 143rd in Dolton. On May 7, 2012, Davinci Designs paid $1,900.00 for work done at 11330 Parnell. In May and/or June 2012, approximately $30,700.00 was paid in two installments for work done at Pav-Tech Sealcoating Corporation. In June and July 2012, Solid Concrete did work on a parking lot driveway, for which they were paid, in five installments, a total of $32,407.00.

As the petitioner continued to work, he also went to treat with Dr. Salehi on June 8, 2012. Dr. Salehi diagnosed the petitioner with cervical spondylosis and lumbosacral spondylosis. (PX 13, Pg. 6) According to Dr. Salehi, the petitioner's diagnoses were exacerbated by the work injury and he recommended pain management. (PX 13, Pg. 6)

On June 19, 2012, the petitioner underwent surgery by Dr. Prodromos. (PX 11, Pgs. 14-15) Pre-operative diagnoses were left knee torn medial meniscus and chondromalacia of the patellofemoral joint. The post-operative diagnosis was chondromalacia of the patellofemoral joint. The operative report indicates that no tear was found of the medial meniscus. (PX 11, Pg.

14) The patella had some partial thickness tearing but no full thickness articular cartilage defects. The trochlea had 2 square cm of full thickness articular cartilage loss and the medial femoral condyle had 1 cm^2 of full thickness articular cartilage loss.

The petitioner continued to follow up with Dr. Prodromos through September 2012. (PX 11, Pg. 18) On September 5 2012, Dr. Prodromos placed the petitioner at light duty. (PX 11, Pg. 18) By August 5, 2012, the petitioner began working part time at Cabela's. (T. 35) The petitioner testified that he was walking through the store when he happened to start talking to the manager about guns and he was offered a job. (T. 36) The petitioner also continued to work for Solid Concrete, LLC. Surveillance footage was obtained of the petitioner working at a project at the Helen C. Pierce School located at 1423 West Bryn Mawr from September 24, 2012, through September 28, 2012. (RX 5, RX 7) The petitioner was seen at that project over a three-day period not only doing supervisory-type tasks, but also preparing concrete, using a wheelbarrow, a generator, and a hammer. Moreover, the petitioner also was seen at a second job site on these days overseeing the job and also performing physical tasks, like using a jackhammer to break up old concrete. (RX 5, RX 7)

In October 2012, the petitioner continued to follow up with Dr. Prodromos. The petitioner also underwent a course of physical therapy at that time. On February 25, 2013, Dr. Prodromos ordered the petitioner to undergo a Functional Capacity Evaluation ("FCE"). An FCE was conducted on April 9, 2013. The FCE findings demonstrated the petitioner's functional capabilities at a medium physical demand level. (PX 16, Pg. 2) Dr. Prodromos discharged the petitioner on April 12, 2013, with permanent restrictions per the FCE.

Dr. Prodromos provided his testimony by way of an evidence deposition taken on July 1, 2013. (PX 17) Dr. Prodromos testified that his diagnosis of petitioner's bilateral knees, rendered on April 30, 2012, was that of severe patellofemoral crepitus grade three out of four, and right knee one out of four. (PX 17, Pg. 8) According to Dr. Prodromos, the left knee cartilage damage was undoubtedly post-traumatic and not degenerative because, in his opinion, chondromalacia of the patella that is degenerative is always symmetric. (PX 17, Pg. 9) Dr. Prodromos testified that he did, in fact, believe the petitioner to have evidence of both a full thickness articular cartilage defect on the patella and a left meniscal tear from his reading the May 7, 2012 MRI. (PX 17, Pg. 10) Dr. Prodromos' operative report revealed that the patella had some partial thickness tearing but no full thickness articular cartilage defects and no tear of the medical meniscus. (PX 11, Pg. 14) Dr. Prodromos opined that not only was the petitioner's physical condition at the time he examined him one year after the date of injury causally related to the injury, but also the subsequent treatment and surgery were causally related. Dr. Prodromos also opined the petitioner required permanent restrictions as set forth in the April 9, 2013 FCE.

Dr. Raab, the respondent's Section 12 physician, authored 3 reports. Such reports are dated February 13, 2013, April 17, 2013, and May 1, 2013. (RX 3, Dep. Exhibits 1-4) Dr. Raab testified by way of evidence deposition on September 9, 2013 in regard to these reports. (RX 3) Dr. Raab disagreed with the causation opinion of Dr. Prodromos that the left knee was causally related to the work accident due to a lack of asymmetry. According to Dr. Raab, there is no basis upon which to rely that a lack of symmetry of clinical findings proves that some trauma occurred to one knee versus the other. (PX 3, Pg. 28) As Dr. Raab testified, bilateral body parts are not necessarily the same. He testified that he has had many patients with degenerative knee

conditions in which one knee warrants a total knee replacement and the other knee is in pretty good shape. (RX 3, Pg. 28)

In connection with Dr. Raab's initial report of February 13, 2013, he did not opine that the petitioner's condition referenced in the medical records was causally related to the initial accident. (RX 3 Pg. 30) Further, he did not believe that any ongoing medical treatment was causally related to a work injury. (RX 3, Pgs. 29-30) Dr. Raab relied on the video surveillance to opine that based on what the petitioner was physically doing, no restrictions were necessary. (RX 3, Pg. 30) After Dr. Raab examined the petitioner on April 17, 2013, and in connection with his previous review of all of the treatment records and surveillance from the date of injury through his exam date, he diagnosed a fairly unremarkable right knee and early degenerative arthritis of the left knee post-surgery. (RX 3, Pgs. 36-37) Overall, even though Dr. Raab deemed the FCE to be valid and recommended that the petitioner might require restrictions and treatment post-surgery, based on his complete review of the medical and surveillance prepared prior to exam by Dr. Prodromos, Dr. Raab could not causally relate the need for any ongoing treatment or physical restrictions to the initial injury. (RX 3, Pgs. 38-39)

On August 27, 2013, the respondent had the petitioner examined by Dr. Mash at M&M Orthopedics regarding his spine condition. (RX 2) Dr. Mash reviewed medical treatment records of petitioner's care from the date of injury onward as well as the surveillance footage from November 18, 2011 through September 28, 2012. (RX 2) Dr. Mash opined that the petitioner sustained a temporary exacerbation of the cervical and lumbar spine condition as a result of the work accident that was resolved as of November 2011. (RX 2) No additional medical treatment was ordered or necessary and he placed the petitioner at MMI for his spine condition. (RX 2)

The petitioner obtained an employability study by Mr. Ed Pagella at Vocomotive to assess his job at Cabela's. Mr. Pagella testified in this matter by way of deposition on June 13, 2014. (PX 18) Mr. Pagella opined that the petitioner's position of a retail sales clerk in a firearms department at Cabela's was a very suitable occupation for the petitioner. (PX 18, Pgs. 16-17) According to Mr. Pagella, the petitioner's job search (PX 19) showed evidence that the petitioner was motivated to find work. (PX 18, Pgs. 17-18) Mr. Pagella also opined that the petitioner found a position that suited his interests as well as his transferable skills. (PX 18, Pg. 18) Mr. Pagella believed the petitioner could become a manager of a retail gun shop department making an average of $17.38 per hour. (PX 18, Pgs. 20-21) Mr. Pagella was not aware that the petitioner had his own business when he prepared his report.

The respondent retained vocational counselor Julie Bose in order to assess the vocational report of Mr. Pagella. (RX 4) Ms. Bose prepared a report and testified by way of deposition on June 24, 2014. In Ms. Bose's opinion, the petitioner was capable of finding more lucrative employment using his transferrable skills either as a concrete estimator or, with some re-training, in the role of a building inspector or truck driver. (RX 4, Pgs. 21-22) Ms. Bose testified that the petitioner's list of thirteen attempts at finding a job constituted an inadequate job search. (RX 4, Pg. 27) Further, Ms. Bose categorized the petitioner's current job as underemployment, as he has greater potential than an entry-level retail job. Rather, with the petitioner's past educational and work history as well as his experience and transferrable skills as a business owner, she opined that it would be realistic and within the petitioner's abilities to gain employment earning

between $50,000.00 and $51,700.00 per year if his current restrictions were causally related to the work injury. (RX 4, Pgs. 23-34)

Conclusions of Law

In support of his decision with regard to issue (F) "Is Petitioner's current condition of ill-being causally related to the injury?," the arbitrator concludes:

The arbitrator incorporates and adopts the above-referenced findings of fact as pertinent.

The parties stipulated at hearing that the petitioner sustained an accident that arose out of and in the course of his employment with the respondent on April 21, 2011. The respondent argues that petitioner's injury to his left knee was not related to the accident on April 21, 2011 and that no causal connection exists. This is in direct conflict with the petitioner's treating physician, Dr. Prodromos, who opined that the April 21, 2011 accident caused the need for the surgery to the petitioner's left knee.

In this case, the petitioner began his medical treatment with emergency room care at Advocate Christ Hospital on the date of the accident. The petitioner followed up with his primary care physician, as instructed, and immediately made complaints of pain in both knees. (PX 4) Four days after the accident, April 25, 2011, Dr. Chavarria, the petitioner's primary care physician, recorded the following: "... his knees are hurting also most of the time worse in the morning. His knees make a crackling sound on both knees." (PX 4, Pg. 4)

The respondent requested that the petitioner seek medical care at Advanced Occupational Medicine Specialists. The petitioner followed the respondent's request. However, the petitioner testified that he was having difficulty with his knees and told the physicians at Advanced Occupational Medicine Specialists, but they only focused on his back and did not listen to his complaints of knee pain. (T. 20) On June 17, 2011, the petitioner complained that his left knee had been very painful lately.

The petitioner subsequently sought medical care for his knees from his own physician, Dr. Bowen, at Northwestern Orthopedic Institute. The petitioner last saw Dr. Bowen on October 31, 2011, at which time he recommended rehabilitation for his knees and referred him to Dr. Ellen Casey. There is no evidence that the petitioner followed up with Dr. Casey or that he subsequently participated in a formal physical rehabilitation, per Dr. Bowen's recommendation.

On April 30, 2012, which was approximately five months after he stopped treating for his knees with Dr. Bowen at Northwestern Orthopedic Institute, and after he had continued to work as a cement mason, the petitioner went to see Dr. Prodromos. The petitioner ultimately underwent an arthroscopic procedure of the left knee that consisted of a microfracture of trochlea and a microfracture of medial femoral condyle. (PX 14) Dr. Prodromos, the petitioner's treating surgeon and physician, indicated that his pre-operative diagnosis was a torn medial meniscus and chondromalacia of the patellofemoral joint. (PX 17, Pg. 11) The post-operative diagnosis was

chondromalacia of the patellofemoral joint and medial femoral condyle. Dr. Prodromos described the microfracture surgery as essentially making a vascular access channel into bone marrow that allows potential cells to form a clot in the area where the cartilage defect is present. (PX 17, Pg. 16)

From the initial appointment with the petitioner, Dr. Prodromos was of the impression that the petitioner's left knee symptoms were a direct result of the April 21, 2011 accident. Dr. Prodromos has over 25 years of experience as a board-certified orthopedic surgeon, and devotes 45% of his practice to the treatment of knee injuries/surgical intervention. (PX 17, Pg. 6, Dep. Exhibit 1) Based upon his experience and the physical examination of the petitioner, Dr. Prodromos opined that the petitioner sustained a post-traumatic injury and not a degenerative condition. (PX 17, Pg. 9) Dr. Prodromos explained that chondromalacia of the patella is often congenital, but in those cases it is always symmetric. (PX 17, Pg. 9) The petitioner's crepitation, which is a clinical sign of damage to the articular cartilage, was markedly greater on the left than on the right, and this is only seen when it comes as a result of trauma. (PX 17, Pg. 9)

To rebut the testimony of Dr. Prodromos, the respondent offered the testimony of Dr. Raab, who performed a Section 12 examination on behalf of the respondent. (RX 3) Dr. Raab is a board-certified orthopedic surgeon for over 10 years and performs at least 250 knee surgeries of the ~ 500 surgeries he performs per year. (RX 3, Pg. 6) Dr. Raab concurred with the treatment administered by Dr. Prodromos, including the need for the surgical intervention. (RX 3, Pg. 29) However, on direct examination, Dr. Raab testified: "I believe that the patient, if he injured his knees [on April 21, 2011], would definitely complain of something, you know, either just a complaint, you know, my knee hurts or something either the day of or one week after." (Bracketed words added) (RX 3, Pg. 25) Clearly Dr. Raab did not have the benefit of reviewing the medical records from the petitioner's treating physician, Dr. Chavarria. During Dr. Raab's deposition, he did review the notes from Dr. Chavarria, which show that the petitioner made complaints of knee pain on April 25, 2011. (RX 3, Pgs. 50-51)

According to Dr. Raab, there is no basis upon which to rely that a lack of symmetry of clinical findings proves that some trauma occurred to one knee versus the other. (PX 3, Pg. 28) As Dr. Raab testified, bilateral body parts are not necessarily the same. He testified that he has had many patients with degenerative knee conditions in which one knee warrants a total knee replacement and the other knee is in pretty good shape. (RX 3, Pg. 28) Dr. Raab relied on the video surveillance to opine that based on the activities the petitioner was performing, no restrictions were necessary. (RX 3, Pg. 30) Overall, even though Dr. Raab deemed the FCE to be valid and recommended that the petitioner might require restrictions and treatment post-surgery, based on his complete review of the medical and surveillance prepared prior to exam by Dr. Prodromos, Dr. Raab could not causally relate the need for any ongoing treatment or physical restrictions to the initial injury. (RX 3, Pgs. 38-39)

On cross-examination, the petitioner presented Dr. Raab with Dr. Chavarria's April 25, 2011 entry: "his knees are hurting also most of the time worse in the morning" and that they "make a crackling sound on both knees." Dr. Raab would not state that this was indicative of a knee injury. (RX 3, Pg. 53) Dr. Raab explained that there are two types of knee cartilage: meniscal and articular. Dr. Raab did concur that the "crackling" sound the petitioner experienced

four days after the accident was indicative of articular cartilage damage, which is the reason the petitioner underwent surgery with Dr. Prodromos. (RX 3, Pg. 50)

Dr. Raab appeared to contradict himself on this point. Dr. Raab indicated that knee complaints should have been evident within a few days or one week post-accident. Dr. Raab pointed out that the April 25, 2011 statement in Dr. Chavarria's record was vague and that he could not ascertain the chronicity of his knee pain from such statement. Dr. Raab would not causally connect the accident to the need for the left knee surgery when Dr. Chavarria's medical records were presented to him.

Dr. Raab testified on redirect examination that the petitioner is a mason and laborer who is 6'1" in height and 330 pounds in weight and that he would expect his knee to be cracking and making noise. Because he is morbidly obese, Dr. Raab continued, he has some risk factors for problems in his knee. (RX 3, Pg. 56)

However, the arbitrator notes there is no evidence that the petitioner experienced pain or crackling in his knees prior to April 25, 2011. There is no evidence that the petitioner received treatment for either knee prior to April 21, 2011.

The arbitrator notes that extensive video surveillance was taken of the petitioner from November 18, 2011 through May 1, 2013. The surveillance shows the petitioner performing various construction tasks, such as lifting, carrying, measuring with a tape, and general work over the course of 134 hours of surveillance. The surveillance videos show one day, November 18, 2011, when the petitioner was kneeling and performing some sort of concrete-laying work. The rest of the surveillance footage does not show the petitioner kneeling, bending or squatting. (PX 5, PX 6) Dr. Raab attested to this fact. (RX 3, Pgs. 44-47)

Dr. Prodromos testified that if the damage to the petitioner's knee had been pre-existing, he would have been unable to work as a cement mason prior to the accident. (PX 17, Pgs. 25-26)

Dr. Prodromos did not view the surveillance video.

Dr. Prodromos discussed the petitioner's ability to kneel and squat in the time period from the date of the accident to the June 19, 2012 date of surgery and indicated that people with the petitioner's knee pathology should never kneel and squat. (PX 17, Pg. 39) However, kneeling, squatting and daily living would not cause the asymmetry that was evident in the petitioner. (PX 17, Pg. 41) After the injury of April 21, 2011, the petitioner could have performed kneeling and squatting, but it would have been uncomfortable and could have aggravated the left knee condition. (PX 17, Pg. 41) Dr. Prodromos also testified to the following: "But I don't think that it's plausible to think that he came out of the accident without that problem and then had activities of daily living in that span of time caused it de novo." (PX 17, Pg. 41)

By working at Solid Concrete, the petitioner was doing more than just carrying out the activities of daily living. Yet, there is no evidence that the petitioner sustained an intervening

accident while working for Solid Concrete. The petitioner testified that when he worked at Solid Concrete, he did not need to work a full, 8-hour day.

The arbitrator finds that neither the petitioner's lack of treatment for his knees for 5 months nor the work he performed at Solid Concrete broke the chain of causation.

An accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Sisbro v. Indus. Comm'n, 797 N.E.2d 665, 278 Ill. Dec 70 (2003) citing Rock Road Construction v. Indus. Comm'n, 227 N.E.2d 65 (1967)

Based upon a the preponderance of the evidence and the law, the arbitrator finds that the petitioner's current conditions of ill-being of his knees, his neck and his low back are causally related to the April 21, 2011 work-related accident.

In support of his decision with regard to issue (O) "Choice of physicians under Section 8(a) of the Act," the arbitrator concludes:

The arbitrator incorporates and adopts the above-referenced findings of fact and conclusions of law as pertinent.

The Act states: "the employer's liability to pay for such medical services selected by the employee shall be limited to:

(1) all first aid and emergency treatment; plus
(2) all medical, surgical and hospital services provided by the physician, surgeon or hospital initially chosen by the employee or by any other physician, consultant, expert, institution or other provider of services recommended by said initial service provider or any subsequent provider of medical services in the chain of referrals from said initial service provider; plus
(3) all medical, surgical and hospital services provided by any second physician, surgeon or hospital subsequently chosen by the employee or by any other physician, consultant, expert, institution or other provider of services recommended by said second service provider or any subsequent provider of medical services in the chain of referrals from said second service provider. Thereafter, the employer shall select and pay for all necessary medical, surgical and hospital treatment and the employee may not select a provider of medical services at the employer's expense unless the employer agrees to such selection." 820 ILCS 305 8(a).

In this case, the petitioner sought emergent treatment at Christ Hospital. Christ Hospital released him to return to work and did not order any additional treatment or provide any specific referrals at that point, other than for petitioner to follow up with his primary care physician.

The petitioner then saw his primary care physician, Dr. Chavarria, which would be his first choice of physicians.

The petitioner testified that the respondent called him and sent him for treatment with physicians at Advanced Occupational Medical Specialists. Since the respondent sent him to this provider, the arbitrator finds that this was not one of petitioner's choices.

Subsequently, of his own accord, the petitioner sought treatment from the physicians at Northwestern Orthopedic Institute. This was the petitioner's second choice of physicians. The petitioner treated with Dr. Nolden for his back and Dr. Bowen for his knees. The petitioner treated with this provider from September 7, 2011 through November 14, 2011. At the last exam for his knees, on October 31, 2011, Dr. Bowen referred the petitioner to Dr. Ellen Casey. In fact, as of that day, other than his referral to Dr. Casey and a recommendation of rehabilitation, Dr. Bowen did not prescribe any further treatment. There is no evidence to indicate that the petitioner sought treatment with Dr. Casey or participated in rehabilitation for his knees. The petitioner's last visit to Dr. Nolden for his spine/neck took place on November 14, 2011. At that time, Dr. Nolden ordered a follow-up appointment, but the petitioner never followed up with him.

While he treated at Northwestern Orthopedic Institute, the petitioner simultaneously treated at Gold Coast Wellness. Even though petitioner claimed at trial that this treatment was for "physical therapy," the records clearly show that this institution is not a physical therapy provider. Rather, as the treatment records show, the petitioner actually received mostly chiropractic care at this provider. Dr. Odisho ("Dr. 'O' ") examined and treated the petitioner, referred him for an EMG and referred him to Dr. Salehi. The petitioner testified on direct examination that a friend referred him to this provider, but on cross-examination, testified that he knew the owner and was not referred there by his doctor. None of the medical records substantiate that the treatment the petitioner received at Gold Coast Wellness was physical therapy as ordered by Drs. Bowen and/or Nolden. In fact, the records of Gold Coast Wellness were never provided to Drs. Bowen and Nolden. Not only were no records from Gold Coast Wellness included in the petitioner's subpoena response from Northwestern Orthopedic Institute (PX 8), but also the November 14, 2011 note of Dr. Nolden confirms that no reports from a physical therapist were provided to him for review in connection with an ongoing treatment plan. (PX 8, Pg. 11) Moreover, the records themselves clearly refer to chiropractic treatment that was discussed and rendered to the petitioner with his consent. (PX 10, Pg. 32)

The petitioner testified that subsequently "Dr. 'O' " at Gold Coast Wellness referred him to Dr. Prodromos. The petitioner's testimony is not clear as to when this referral was provided. There is no referral documentation in the Gold Coast Wellness records. More importantly, the "Patient Registration" section of the subpoenaed records of Dr. Prodromos clearly states that the referral for treatment was from the petitioner's then attorney, Jerry Beckerman.

The arbitrator finds that the petitioner's testimony with regard to his referral to Dr. Prodromos by Dr. Odisho to lack credibility.

The arbitrator finds that the petitioner exceeded his choice of physicians under the Act. Therefore, the arbitrator does not award the treatment rendered to the petitioner by Gold Coast Wellness and Dr. Prodromos.

In support of his decision with regard to issue (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?," the arbitrator concludes:

The arbitrator incorporates and adopts the above-referenced findings of fact and conclusions of law as pertinent.

Given the arbitrator's findings of fact and conclusions of law with regard to issues (F) causation and (O) Choice of physicians under Section 8(a) of the Act, the arbitrator finds that the respondent shall pay, pursuant to Section 8(a) and subject to Section 8.2 of the Act, for the reasonable, necessary and related medical services rendered to the petitioner by the following providers: City of Chicago Fire Department, Advocate Christ Medical Center, Advocate Medical Group - Dr. Chavarria, Advanced Occupational Medicine Specialists, Athletico, Northwestern Orthopedic Institute, Preferred Open MRI and Advantage Imaging, LLC, from the date of accident, April 21, 2011 through November 18, 2011.

The arbitrator does not award payment for medical treatment rendered by the following providers: Gold Coast Wellness, Oak Lawn Radiology, Morton Grove Medical Imaging, Dr. Sean Salehi, Dr. Chadwick Prodromos, Illinois Orthopedic Network, Metro Anesthesia Consultants, Advanced Physical Therapy, Thera Tech Equipment, Inc., IWP, ATI.

In support of his decision with regard to issue (K) "What temporary benefits are in dispute? TTD and TPD," the arbitrator concludes:

The arbitrator incorporates and adopts the above-referenced findings of fact and conclusions of law as pertinent.

On April 21, 2011, the emergency room physicians at Advocate Christ Hospital ordered the petitioner to stay off work. (PX 3, Pg. 12) The petitioner followed up with his primary care physician, Dr. Chavarria, who also placed him off work for two weeks. (PX4, Pg. 5) The petitioner was then instructed to treat with Advanced Occupational Medicine Specialists on April 28, 2011, who indicated the petitioner could return to light-duty work. (PX 5, Pg. 7)

The respondent did not have light-duty work available, as the position of a cement mason is a heavy-duty position. The petitioner was also kept at a light-duty status through his treatment with Dr. Nolden, and was not returned to work and light-duty restrictions were not removed.

On September 14, 2011, Dr. Bowen issued a Work Note in which he indicated that the petitioner was unable to work due to injury or surgery. (PX 8, Pg. 56) The petitioner last treated

with Dr. Bowen on October 31, 2011. There is no evidence in PX 8 that Dr. Bowen ever lifted this "no work" restriction.

The petitioner testified that he started Solid Concrete on April 4, 2011. Solid Concrete is a company through which the petitioner performed side jobs that were outside the scope of his employment with the respondent. The petitioner testified that the respondent did not have a prohibition on the petitioner working after hours or on weekends through Solid Concrete. Local 502 did not prohibit the petitioner from performing this type of work. Local 502 actually supplied the petitioner with members from Local 502 to work for the petitioner on these jobs. However, there is no evidence that the respondent was aware that the petitioner had concurrent employment.

The petitioner testified that his role in Solid Concrete was to perform bids, size up different jobs, make sure that his employees had material, make sure the concrete arrived on time and that his employees were performing their tasks. (T. 32) The petitioner further testified that he would perform some of the finishing work for Solid Concrete, but found out that he was a bad business owner and lost a lot of money through Solid Concrete. At the time of arbitration, the petitioner continued, he did a little bit of work, but did not do any work on his hands and/or knees, which is primarily the finishing work of concrete. (T. 33)

Nonetheless, the surveillance evidence obtained on November 18, 2011, and documented both in the surveillance reports as well as on the CD, show that on that date, the petitioner was able to use a jackhammer to break up old concrete that he would replace. (RX 5, RX 7) More importantly, the petitioner was able to perform concrete-laying duties that included troweling the concrete while down on his hands and knees. The surveillance disc shows that the petitioner was able to do this for an extended period of time. The petitioner was clearly shown violating his no work restriction imposed by Dr. Bowen. Even Dr. Prodromos testified that the petitioner should not have been kneeling or squatting.

The respondent paid the petitioner temporary total disability benefits from the date of injury, April 22, 2011 through September 29, 2011, with the exception of one week, from June 16, 2011 through June 24, 2011. (RX 1) Doctors Raab and Mash opined that the petitioner reached maximum medical improvement as of November 18, 2011.

With regard to the week of June 16, 2011 through June 24, 2011, the respondent argues that after the petitioner's June 17, 2011 visit to Advanced Occupational Medicine Specialists, the petitioner was advised to return for another visit, but did not do so. Yet, the records indicate that after June 17, 2011, the petitioner was having trouble fitting into the MRI that had been ordered, and so an open MRI was arranged. The petitioner still was still under light-duty restrictions during the week of June 16, 2011 through June 24, 2011.

As for the period from September 30, 2011 through November 18, 2011, the respondent argues that the petitioner was working during that time since he admitted to starting Solid Concrete on April 4, 2011, and is not entitled to temporary total disability benefits for those 7-1/7 weeks. (T. 102) Yet, Dr. Bowen took the petitioner completely off work on September 14, 2011.

The financial records of Solid Concrete show that the firm did perform work in July 2011, and performed another job on November 7, 2011 for which the petitioner was paid $2,600.00. (RX 9, RX 9a, RX 9b) Notwithstanding these jobs, the earliest date on which the surveillance video was taken was November 18, 2011. The video from this date clearly shows that the petitioner violated Dr. Bowen's no work restriction. Therefore, the arbitrator finds that TTD benefits for this period should be cut off on November 18, 2011.

At the time of hearing, the respondent produced as a witness Victoria Martin, who is an insurance adjustor with Sedgwick, but used to work for Gallagher Bassett as an insurance adjustor. Ms. Martin indicated that she was assigned the petitioner's case while working for Gallagher Bassett and that she terminated the petitioner's benefits on or around September 29, 2011, because she did not receive off-work slips from the petitioner's treating physicians. Ms. Martin indicated that she had a difficult time obtaining office notes from the physicians, but did not indicate what steps were taken to secure those office notes.

In order to recover temporary total disability benefits, a claimant must prove by a preponderance of the evidence, that the injuries arose out of, and in the course of, his employment and that the claimant had a resultant incapacity to work. Pemble v. Indus. Comm'n, 536 N.E.2d 1349 (1989) The claimant must prove not only that he did not work but that he was unable to work. Gallentine v. Indus. Comm'n, 559 N.E.2d 526 (1990)

As the arbitrator has found that the petitioner's current condition of ill-being of his knees, his neck and his low back are causally related to the April 21, 2011 accident, he finds that the petitioner is entitled to additional TTD benefits as well as TPD benefits on and after the petitioner underwent the June 19, 2012 microfracture surgery to his left knee.

On April 30, 2012, the petitioner began treating with Dr. Prodromos. Dr. Prodromos performed surgery on the petitioner's left knee on June 19, 2012.

On August 5, 2012, the petitioner began working at Cabela's.

On April 12, 2013, Dr. Prodromos discharged the petitioner and released him to permanent restrictions per the FCE.

The petitioner testified that on August 5, 2012, he started at Cabela's, as a part-time, seasonal employee and earned $10.00/hour. There was no testimony as to the number of hours per week that the petitioner worked from August 5, 2012 through September 29, 2012.

The earliest payroll record offered into evidence begins on September 30, 2012. (PX 20)

The arbitrator cannot speculate as to the TPD rate from August 5, 2012 through September 29, 2012.

The TPD language in Section 8(a) of the Act that was in effect on the date of accident is as follows:

"When the employee is working light duty on a part time basis or full time basis and earns less than he or she would be earning if employed in the full capacity of the job or jobs, then the employee shall be entitled to temporary partial disability benefits. Temporary partial disability benefits shall be equal to two-thirds of the difference between the average amount that the employee would be able to earn in the full performance of his or her duties in the occupation in which he or she was engaged at the time of accident and the net amount which he or she is earning in the modified job provided to the employee by the employer or in any other job that the employee is working."

There are 27-6/7 weeks from September 30, 2012 through April 12, 2013. Then, the total of the net amounts earned over this period (the arbitrator pro-rated the net earnings for the last two-week period) is $7,089.88. Then, the average of the net amounts earned per week for 27.857143 weeks is $254.51. The TPD rate comes to $737.33 per week [= $1360.50 - $254.51 x 2/3].

The arbitrator finds that the petitioner is entitled to TTD benefits from April 22, 2011 through November 18, 2011 and from June 19, 2012 through September 29, 2012. The arbitrator further finds that the petitioner is entitled to TPD benefits from September 30, 2012 through April 12, 2013. (PX 17, Pg. 23)

In support of his decision with regard to issue (L) "What is the nature and extent of the injury?," the arbitrator concludes:

The arbitrator incorporates and adopts the above-referenced findings of fact and conclusions of law as pertinent.

The petitioner is seeking a wage differential under Section 8(d)(1) of the Act. In order to be entitled to a wage differential under Section 8(d)(1) of the Act, the petitioner must prove: (1) partial incapacity which prevents him from pursuing his "usual and customary line of employment," and (2) an impairment of earnings. Gallianetti v. Indus. Comm'n, 315 Ill.App.3d 721, 730, 734 N.E.2d 482, 248 Ill. Dec. 554 (3d Dist. 2000) The Illinois Supreme Court has mandated that once a claimant has presented sufficient evidence to demonstrate a loss of earning capacity, an award under Section 8(d)(1) is to be given and not a percentage of the person-as-a-whole. Id. at 728.

It is undisputed that the petitioner is not able to return to work as a cement mason with Local 502. Dr. Prodromos indicated that the petitioner was to return to work with permanent restrictions per the FCE and was to avoid bending and kneeling. After Dr. Prodromos reviewed the job description (PX 17, Dep. Exhibit 4), he opined that the petitioner was unable to return to work as a cement mason with Local 502. (PX 17, Pg. 26). Dr. Raab also indicated that the petitioner was unable to return to work as a cement mason through Local 502 and concurred that the FCE was valid. Dr. Raab also concurred with the restrictions set forth in the FCE. (RX 3, Pgs. 38, 40). Both vocational counselors, Edward Pagella and Julie Bose, concurred that the petitioner is not capable of working as a cement mason at Local 502.

The petitioner sought the opinion of Edward Pagella to address Petitioner's job capabilities. During his deposition, Mr. Pagella indicated that he has been President of Health Connections of Illinois since 1989 and has over 23 years experience testifying in court for the Federal Government in the determination of the employability of individuals who have a wide variety of physical and/or mental limitations. (PX 18, Pg. 5) Mr. Pagella also performs vocational assessments, employability studies, ergonomic assessments and Labor Market Surveys in order to determine employability and earning capacity of individuals. He also finds alternative employment for individuals.

Mr. Pagella interviewed the petitioner and then reviewed the FCE, Dr. Prodromos' notes and the job description for a cement mason with Local 502. Mr. Pagella opined that due to the fact that the petitioner would have to perform heavy work throughout the course of the workday and that he would have to be on his knees anywhere from six to eight hours per day, he would not be able to return to work as a cement mason in Local 502.

Mr. Pagella took a detailed employment history from the petitioner that included his previous duty in the U.S. Marine Corp from 1989 through 1993 and his position of line manager at American Licorice. As far as transferable skills as it applies to the petitioner's job at Cabela's, The petitioner learned about various weaponry in the Marines and was able to use those skills to obtain the position of a retail sales clerk in the firearms department of Cabela's, which, in Mr. Pagella's professional opinion, is very suitable occupation for him due to the fact that he utilizes the skills he has obtained throughout the years. (PX 18, Pg. 16) The petitioner's goal is to work in management again. The petitioner had been a production line leader at American Licorice. (PX 18, Pg. 16) The petitioner informed Mr. Pagella that he was going to be taking various courses through Cabela's in order to achieve the position of manager. (PX 18, Pg. 16)

Mr. Pagella noted that the petitioner had completed a job search log, which indicates that he was out looking for work. (PX 18, Pg. 17) There are only a handful of contacts recorded in the job search log. Yet, Mr. Pagella noted that the petitioner was not provided with a rehabilitation counselor, and 9 times out of 10, when claimants are not instructed on how to go about actually completing employer contact sheets, job sheets and job logs, they do not know how to do it. (PX 18, Pg. 35) Mr. Pagella found it quite commendable that the petitioner was able to find a position of employment for which he was suitable for without the assistance of a vocational counselor. (PX 18, Pg. 37)

It was also Mr. Pagella's opinion that the petitioner's employment with Cabela's was "awesome" in that he has the opportunity to earn approximately $17.00 to $18.00 per hour as a manager. (PX 18, Pg. 40) This was a viable occupation for the petitioner, especially since he has a background as a cement mason. (PX 18, Pg. 40)

Mr. Pagella found the petitioner to be a motivated individual. He testified to the following: "I mean, he went out there. He looked for work. He documented it on his own, and he was very capable of knowing what his own skills were, his skills that he obtained with the Marines, what his interests were in working with various types of firearms and felt that he was capable of instructing others on the appropriateness of various types of firearms and went out and got the job at Cabela's. And his goal is to be the manager of that department and that he was

working towards that goal." (PX 18, Pgs. 18-19) The petitioner has worked toward that goal by taking over 80 classes while in the department. (PX 18, Pg. 20)

The respondent offered the opinion of Julie Bose, who testified via evidence deposition as well. (RX 4) Julie Bose is a vocational rehabilitation counselor and owner of MedVoc Rehabilitation. She has been working as a vocational counselor for 31 years. When she and Mr. Pagella both worked Grzesik & Associates, Ms. Bose supervised Mr. Pagella. (RX 4, Pgs. 5-7) The respondent retained Julie Bose to perform a Labor Market Survey and not for vocational placement services. (RX 4, Pg. 12) The Labor Market Survey is a snapshot of the market at the time the survey is conducted. Ms. Bose surveyed 15 employers; seven employers indicated that they were hiring and eight indicated that they were not hiring. (RX 4, Pg. 19) Ms. Bose also felt that the petitioner could use his knowledge to become a concrete estimator, or with some re-training, a building inspector or truck driver. (RX 4, Pg. 21)

Ms. Bose felt that the petitioner's job with Cabela's was "underemployment" for him and that he had greater potential for wage increase. (RX 4, Pg. 27) Ms. Bose opined that the position at Cabela's was commensurate with his interest in weapons and with his work restrictions. She commended Petitioner for finding work, but thought the petitioner could have taken more time and done a better job search by using his transferable skills or considering retraining in order to find a better job. (RX 4, Pgs. 26-27)

Ms. Bose never met the petitioner. (RX 4, Pg. 30) Ms. Bose did not review the FCE or Dr. Prodromos' records because she was aware of the petitioner's restrictions since it was in Mr. Pagella's report. (RX 4, Pgs. 29-30) Ms. Bose testified that the respondent did not ask her to assist the petitioner in obtaining BFCA training or to sign the petitioner up for such classes. With regard to the whether or not the petitioner would qualify for a commercial drivers' license, Mr. Bose agreed that the petitioner would need to attend classes and work in a restricted capacity as a commercial driver given his limitation with climbing stairs, so that such a position would be hypothetical at that point. (RX 4, Pg. 33) The results of the Labor Market Survey demonstrate that Ms. Bose contacted 30 employers and 19 responded. Of the 19 who responded, 12 could not accommodate the petitioner's restrictions. (RX 4, Pg 42) Of the 7 that remained, only two positions paid more than the amount the petitioner was earning at Cabela's. (RX 4, Pg. 44)

Ms. Bose agreed that the position at Cabela's utilized the petitioner's transferable skills in sales and in weapons training. (RX 4, Pg. 34) Ms. Bose agreed that the petitioner should not quit his current job as that job at Cabela's. (RX 4, Pg. 45)

The petitioner has clearly demonstrated a loss of his ability to return to work as a cement mason with Local 502.

Based upon the opinions of Edward Pagella and Julie Bose, the arbitrator finds that the petitioner has found suitable employment at Cabela's. Such job is within his permanent restrictions and utilizes his transferable skills. No evidence was presented to show that the petitioner can *actually* earn more money in another position of employment. Ms. Bose did conduct a Labor Market Survey. Yet, the respondent did not offer the petitioner a vocational rehabilitation plan, vocational rehabilitation counseling, re-training or job placement.

The petitioner did not provide evidence of the amount he would currently be earning in the full performance of his job with the respondent.

On April 12, 2013, Dr. Prodromos discharged the petitioner and released him to permanent restrictions per the FCE.

The petitioner earned $10.00 per hour from August 5, 2012 through November 24, 2012. On November 25, 2012, the petitioner received a pay raise to $11.00/hour and began working full-time, or forty hours per week. (PX 20) The petitioner then received a pay raise on November 10, 2013, to $11.33/hour for a forty-hour week. (PX 20)

Therefore, the arbitrator finds that from April 13, 2013 through November 9, 2013, the petitioner is entitled to a wage differential award of $613.67/week [= $1,360.50 - $440.00 x 2/3] and from November 10, 2013 and continuing for the duration of his disability, the petitioner is entitled to a wage differential award of $604.53/week [= $1,360.50 - $453.20 x 2/3].

In support of his decision with regard to issue (M) "Should penalties or fees be imposed on the Respondent?," the arbitrator concludes:

Section 16 of the Act authorizes the Commission to award attorney fees where the employer has been guilty of unreasonable or vexatious delay, intentional underpayment of compensation benefits, or has engaged in frivolous defenses that do not present a real controversy. 820 ILCS 305/16; McMahon v. Indus. Comm'n, 183 Ill.2d 499 (1998). Under Section 19(k), there must be unreasonable and vexatious delay of payment or intentional underpayment of compensation. 820 ILCS 305/19(k). Under Section 19(l), an employee must show evidence of a written demand for payment of benefits. 820 ILCS 305/(l). Whether the employer's conduct justifies the imposition of penalties is to be considered in terms of reasonableness and is a factual question for the Commission. McKay Plating Co. v. Indus. Comm'n, 91 Ill.2d 198, 209 (1982).

In the instant case, the arbitrator finds no evidence of unreasonable or vexatious actions on the part of the employer. The employer admits that to some extent a compensable injury was sustained and assumes liability for medical benefits for treatment through November 18, 2011 to the extent medical was not already paid pursuant to RX1. The employee offered no evidence to substantiate a written request for benefits that was vexatiously or unreasonably denied. Furthermore, there is no evidence to indicate the respondent acted in bad faith or without valid bases on denying any payment of benefits. In fact, the unrebutted testimony of the claims representative, Vicki Martin, provided at trial, supports that TTD was stopped when the petitioner did not provide off work slips to substantiate ongoing TTD benefits. Also, subsequent to the initial point of stopping benefits, the employer learned the petitioner was working and likewise advised the petitioner's counsel that no further benefits would be provided.

There are no actions on behalf of the employer that warrant application of penalties under any section of the Act.

In support of his decision with regard to issue (N) "Is Respondent due any credit?," the arbitrator concludes:

The arbitrator finds that the respondent shall be given credit for benefits paid to date as follows: $19,954.00 for temporary total disability benefits, $15,118.07 for medical benefits paid to date, and $455.90 pursuant to Section 8(j) of the Act. There was nothing submitted at trial to rebut the credit owed to the respondent and the arbitrator awards the credit accordingly.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☒ Affirm and adopt	☐ 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

BRUCE PITTMAN,

Petitioner,

15IWCC0980

vs.

NO: 11 IWCC 1168
10 WC 005220

KROESCHELL, INC.,

Respondent.

DECISION AND OPINION UNDER 19(b) ON REMAND

This matter is again before the Commission pursuant to a December 5, 2014, Order of the Appellate Court of Illinois for the First District. The court held that the Commission's determination that Petitioner's need for surgery was not causally related to his employment is contrary to both law and the manifest weight of the evidence where the Commission did not consider whether Petitioner's work accident accelerated his condition of ill-being and where the Commission's findings of fact were unsupported by the record. The court subsequently vacated the Commission's November 23, 2011, Decision and Opinion under 19(b) and remanded the matter to the Commission for it to consider whether Petitioner's condition was accelerated by his work accident.

The Commission, in reviewing Petitioner's medical records, particularly those from his treatment at Fox Valley Orthopedic Institute, appreciates the history contained within those records that detail the degenerative nature of the osteoarthritis found bilaterally in Petitioner's knees. The history indicated, other than an apparent acute injury to his left knee that necessitated a partial medial menisectomy, Petitioner's problems with his knees, bilaterally, began in late 2005. Sometime prior to his April 11, 2006, examination of his knees by a Dr. Taylor, Petitioner had been told that he was a candidate for a total knee replacement of his right knee due to osteoarthritis. Petitioner indicated that he was trying to postpone the surgery for as long as possible. To that end, Petitioner engaged in various conservative treatment measures.

The lengths Petitioner went to avoid surgery included multiple rounds of injections of Supartz, cortisone and Euflexxa as well as physical therapy and weight loss. The physical effects of these efforts, per Petitioner's treatment records, was temporary relief of the pain brought on by the osteoarthritis. The practical effects were that Petitioner's knees did not cause him to miss work for several years and also avoid knee replacement surgery. Petitioner's efforts were eventually upset after he sustained injuries to his knees on January 25, 2010.

On January 25, 2010, Petitioner fell onto his knees after tripping over the exposed tongue of a trailer. The fall elicited pain in his knee, but he finished his shift and went home. The following day, on January 26, 2010, he was seen by his treating physician, Dr. Petrucci. Dr. Petrucci diagnosed Petitioner as having an acute right knee injury and bilateral osteoarthritis and both took him off work and ordered him to undergo MRIs of his knees. After this appointment, Petitioner began using a cane to aid with ambulation. Dr. Petrucci subsequently endorsed its use if Petitioner thought it was helpful.

Petitioner returned to Dr. Petrucci on February 1, 2010, and was given revised diagnoses of a posterior cruciate ligament tear and a strain/tear of an unspecified quadriceps. He was also provided with a prescription for four to six weeks of physical therapy and work slip that continued him off work through February 15, 2010. Petitioner did not participate in the prescribed physical therapy but opted to continue his treatment with Dr. Chudik, a board certified orthopedic physician that specializes in knees and shoulders.

Petitioner first saw Dr. Chudik on February 8, 2010, and submitted to a physical examination and radiographic imaging of his knees by Dr. Chudik. The results of the examination and imaging elicited diagnoses of an exacerbation of the osteoarthritis, an acute posterior cruciate ligament tear and a grade II medial cruciate ligament tear in the right knee and an exacerbation of the osteoarthritis in the left knee. Dr. Chudik provided Petitioner with an intraarticular injection of lidocaine into the right knee, prescribed physical therapy and continued him on off-work status. In his notes that recounted this visit, Dr. Chudik provided an opinion in which he found the problems he had diagnosed Petitioner stemmed from Petitioner's January 25, 2010, fall.

Dr. Chudik was seen again by Petitioner on March 8, 2010, and, as of that day, Petitioner had undergone eleven physical therapy sessions but still provided Dr. Chudik with continued complaints of bilateral knee pain and continued dysfunction of the right knee. Dr. Chudik's diagnoses remained unchanged, but he now recommended a medial unloader brace for Petitioner's left knee, an MRI of the right knee and a total knee arthroplasty of the right knee. The total knee arthroplasty was performed by Dr. Chudik on May 25, 2010.

Dr. Chudik testified as to the necessity of the total knee arthroplasty he performed upon Petitioner. He noted Petitioner attempted to treat his knees conservatively through injections and physical therapy but found the January 25, 2010, fall, and the resulting injuries, clearly accelerated the need for surgery. He explained that such incidents can push persons with a borderline need for surgery to where it was required.

Dr. Kornblatt, an orthopedic physician, examined Petitioner pursuant to Section 12 of the Act and concluded that the surgery performed upon Petitioner by Dr. Chudik was not necessitated by Petitioner's January 25, 2010, fall. He later testified that his examination of Petitioner provoked complaints of bilateral knee pain, and the x-ray he took of Petitioner's knees revealed advanced osteoarthritis bilaterally. He testified further to not believing that Petitioner had sustained a posterior cruciate ligament tear as, if Petitioner had done so, he wouldn't have signed out from work denying that he had injured himself. Dr. Kornblatt dismissed the MRIs of Petitioner's knees that were taken, believing them to be not relevant, and then provided conflicting testimony of whether he even viewed them. He first testified that he was unsure of whether he viewed the MRIs but then testified to not believing that they showed anything more than an acute inflammatory process.

Notice is taken of Petitioner's explanation for not reporting his injury when he left work on January 25, 2010. He testified that he didn't think the fall was serious enough to report. Given Petitioner's long history of knee pain, the Commission defers to Petitioner's self-assessment as to extent of his injury and does not hold it against him for underestimating the damage his right knee sustained in the fall.

The Commission also takes note of Dr. Kornblatt initially testifying to being uncertain as to whether he reviewed Petitioner's MRIs but then testifying that those MRIs revealed an acute inflammatory process consistent with osteoarthritis. The Commission is not convinced Dr. Kornblatt viewed Petitioner's MRIs. It is found telling that he made no comment concerning the condition of Petitioner's posterior cruciate ligament despite being aware of Petitioner having a diagnosis of a posterior cruciate ligament tear but then concluded Petitioner could not have sustained a posterior cruciate ligament tear solely based upon his understanding Petitioner's January 25, 2010, fall, not based on anything he might have seen on any MRI. The Commission finds Dr. Kornblatt's opinions in this matter to be of little value.

The Commission finds Petitioner sustained two distinct injuries, an exacerbation of the bilateral osteoarthritis in his knees and tears to both his posterior cruciate ligament and his medial cruciate ligament, as result of his workplace accident. The Commission recognizes the accident changed Petitioner's treatment trajectory for the worse. After the accident, Petitioner was unable to work or to hold the pain in his knees at bay through injections and physical therapy. The Commission, therefore, adopts the opinion of Dr. Chudik that Petitioner's January 25, 2010, fall accelerated the need for the May 25, 2010, total knee arthroplasty to his right knee and the exacerbation of the osteoarthritis in his left knee.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 26, 2010, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired

without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

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: DEC 23 2015
KWL/mav
O: 09/01/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt	☐ 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

LEOLA HARRELL,
Petitioner,

15IWCC0981

vs.

NO: 02 WC 66915

CITY OF CHICAGO,
Respondent.

DECISION AND OPINION ON REVIEW ON REMAND

This matter is again before the Commission pursuant to the February 27, 2015, Order of the Illinois Court of Appeals for the First District. The court found the February 15, 2013, Decision and Opinion of the Commission violated the law-of-the-case doctrine in affirming and adopting the May 11, 2012, 19(b) Decision of the Arbitrator as said decision relied on a medical opinion concerning causal connection that was disavowed in the June 30, 2004, 19(b) Decision of the Arbitrator, a decision that was upheld by both the Commission and the Circuit Court of Cook County. In so finding, the court directed the Commission to exclude the reports, testimony and opinions of Dr. Walsh, the same opinions the Commission relied upon in deciding its February 15, 2013, Decision and Opinion, and reconsider all issues presented at the second 19(b) hearing, including additional TTD benefits and medical benefits, whether Petitioner has reached MMI and whether Petitioner is entitled to the vocational rehabilitation that had been previously ordered by the Commission.

The relationship between Petitioner's claimed current condition of ill-being and her employment is the first issue addressed in the May 11, 2012, 19(b) Decision of Arbitrator authored by Arbitrator Kelmanson. Petitioner's claimed current condition of ill-being concerns her musculoskeletal and myofascial pains as well as bilateral carpal tunnel syndrome. Arbitrator Kelmanson found the law-of-the-case doctrine precluded reconsidering any causal relationship between Petitioner's musculoskeletal and myofascial pains but did find Petitioner was at maximum medical improvement with respect to these pains effective September 1, 2004.

With respect to the claimed relationship of Petitioner's claimed carpal tunnel syndrome to her employment, Arbitrator Kelmanson found this claimed injury could not be litigated as it arose out of a separate and different matter than as what was described in Petitioner's Application for Adjustment of Claim. The Commission addresses Arbitrator Kelmanson's findings separately.

Arbitrator Kelmanson found Petitioner, having underwent "two sets of MRI studies, physical therapy, pain management in the form of various medications and trigger point injections, and having consulted with a neurologist, a rheumatologist and an orthopedic surgeon,

to have achieved maximum medical improvement as of September 1, 2004, and accordingly terminated Petitioner's temporary total disability benefits effective that day. No explanation was offered by Arbitrator Kelmanson as to how she arrived at that maximum medical improvement achieved on the day. "Among the factors to be considered in determining whether a claimant has reached maximum medical improvement include a release to return to work, with restrictions or otherwise, . . . medical testimony or evidence concerning claimant's injury . . . and whether the injury has stabilized." *Freeman United Coal Mining Company v. Industrial Commission*, 318 Ill. App. 3d 170, 178, 741 N.E.2d 1144, 251 Ill. Dec. 966 (5th Dist. 2000). In the instant matter, Petitioner was initially released to resume working but in a capacity that precluded her returning to work as a custodian for Respondent but was subsequently deemed to be, alternatively, permanently disabled by Dr. Anichini, Petitioner's treating physician, or unable to work to at the then-present time by Dr. Cronin, a physician who examined Petitioner on two occasions. In reviewing the treatment records of Petitioner's primary care physician, Dr. Catherine Anichini, there is support to find Petitioner is at maximum medical improvement and not entitled to further TTD or medical benefits.

Dr. Anichini, over the course of several years, specifically from 2004 through 2007, repeatedly released Petitioner to resume working with the caveat that the work be light duty and did not include heavy lifting or bending. Petitioner testified that Respondent did not offer a position that satisfied Dr. Anichini's restrictions and also to participating in job programs that, ultimately, failed to lead to her obtaining employment. Petitioner was recorded as looking for a sedentary job by Dr. Anichini, on November 29, 2005, and again on May 30, 2006. Dr. Anchini, on September 14, 2006, recorded that Petitioner went to McCormick Place to apply for a cashier position but did not actually apply for the position because the distance to where the application needed to be made was too far for her to walk to. On January 17, 2007, Dr. Anichini wrote a letter to Petitioner's attorney in which she expressed the opinion that Petitioner had become permanently disabled, noting that Petitioner's condition had stagnated and also that Petitioner has become more deconditioned. The Commission finds there no support for Dr. Anichini's position within her own records.

As noted immediately above, Dr. Anichini, over the course of almost three years, repeatedly released Petitioner to resume working albeit in a light duty capacity. Repeatedly mentioned in the same notes that found Petitioner capable of working in a light duty capacity were comments that Petitioner's condition remained the same. If Petitioner's condition has stagnated as Dr. Anichini opines, it has stagnated to a degree that would allow Petitioner to work but not in a capacity greater than light duty per Petitioner's treatment records.

Just as there is no evidence within Dr. Anichini's treatment records of Petitioner's condition settling to a degree that left her permanently disabled, there is also no evidence in those same records of Petitioner being so deconditioned to render her permanently disabled. Two instances are found in Dr. Anichini's treatment notes that imply Petitioner has become deconditioned. On March 3, 2006, Dr. Anichini wrote "deconditioning" under assessment/plan. Her treatment note, however, did not indicate what prompted that assessment. The only reference that could be found related to any activity that would evidence deconditioning was her note of Petitioner trying to pace herself with work around the house. Absent more, there is nothing in the comment that indicates as to what activities evidenced Petitioner's deconditioning. The clearest example of Petitioner being deconditioned is Petitioner's attempt to apply for the cashier position at McCormick Place and being unable to walk to where she needed to go to in order to apply for the position. That was recorded by Dr. Anichiri on September 14, 2006. The treatment records only reveal Dr. Anichini commenting on Petitioner being deconditioned were made in letters to

Petitioner's attorney on March 17, 2006, and December 19, 2006, respectively, and in two letters addressed to "To Whom It May Concern" dated September 1, 2004, and July 16, 2006, respectively. The Commission finds two complaints of fatigue over the course of treatment are not indicative of deconditioning.

Dr. Anichini's assessment of Petitioner being permanently disabled as of January 17, 2007, is also in conflict with her assessment of Petitioner's abilities as of July 17, 2007, on September 13, 2007. On both dates, Dr. Anichini found Petitioner was able to "resume working if there is light duty available – no heavy lifting or bending."

The Commission views Dr. Anichini's December 13, 2006, treatment note with suspicion. The first entry, after a note that Petitioner presented for a follow-up evaluation, is the phrase "permanent disability." Next to that phrase is "concrete." Below the word "concrete" is written, "address it him[;] send it to her[.]" It was approximately one month later, on January 17, 2007, that Dr. Anichini authored the letter to Petitioner's attorney in which she expressed her opinion that Petitioner was permanently disabled. The Commission views this letter as an attempt to satisfy the request of a patient, one that was not necessarily supported by the treatment records.

Dr. Cronin examined Petitioner on May 17, 2008, and again on May, 22, 2010, and, after both examinations, found that Petitioner was unable to work at that time. Petitioner appears not have not been seen again by Dr. Cronin, Dr. Anichini or any other physician, as shown by the medical records tendered into evidence, that would indicate Petitioner's ability to work has been reassessed since May 22, 2010. The Commission finds Petitioner has demonstrated that she is not working but has not proved that, at least since May 22, 2010, that she was unable to work due to her musculoskeletal and myofascial pains, particularly in light of Dr. Anichini's last two "To Whom It May Concern" letters that indicated that Petitioner was able to resume working.

Applying *Freeman United Coal Company*, Petitioner (1) was returned to work by her treating physician and (2) has medical records, including letters from Dr. Anichini that repeatedly indicate that Petitioner's condition remains the same and another letter that indicates Petitioner's condition has stagnated, implying that Petitioner's condition has stabilized. The Commission interprets maximum medical improvement to mean that Petitioner's condition has improved as much as can be reasonably achieved, not that Petitioner is free of the symptoms brought on by her workplace accident. The Commission finds it appropriate to find January 7, 2007, to the date by which Petitioner achieved maximum medical improvement. January 7, 2007, culminated years of findings by Dr. Anichini of Petitioner's condition remaining the same and of Dr. Anichini's acknowledgement that Petitioner's condition has stagnated. As noted above, Petitioner's ability to work is deemed to be at a light duty capacity with restrictions only against heavy lifting and bending.

Petitioner's work restrictions are presumed to preclude Petitioner from resuming her career as a custodian for Respondent. Petitioner testified that Respondent never offered her a position that would satisfy the imposed work restrictions. As a result, the Commission, in its Decision and Opinion on Review issued on April 28, 2006, found Petitioner entitled to vocational rehabilitation and ordered Respondent to provide for a vocational assessment and services as deemed necessary and/or provide Petitioner with work commiserate with her restrictions. It now addresses whether that awarding of vocational rehabilitation remains appropriate. "Generally, a claimant has been deemed entitled to rehabilitation where he sustained an injury which caused a reduction in earning power and there is evidence rehabilitation will

increase his earning capacity." *National Tea Company v. Industrial Commission,* 97 Ill.2d 424, 432, 454 N.E.2d 672, 73 Ill. Dec. 575 (1983).

Petitioner experienced a diminution of earning power that persists to the present day. The Commission, however, finds, to an extent, this diminution of earning power is self-induced. Petitioner provided only testimony of having looked for work over eighteen days in January 2004 and three treatment notes from Dr. Anichini that document her looking for employment once in 2005 and twice in 2006 following her being released to work in a light duty capacty. *National Tea*, in determining the appropriateness of having Petitioner undergo vocational rehabilitation, allows for consideration of motivation of the injured worker to partake in such a program. *National Tea*, 97 Ill.2d at 433. In the present matter, the Commission believes it has a reasonable belief that Petitioner would not fully participate in vocational rehabilitation given the lack of effort Petitioner has demonstrated to find employment as she demonstrated no effort to find employment over the past several years and only made three attempts to secure the same over the past decade.

As noted on the onset this Decision, Arbitrator Kelmanson also ruled on the compensability of Petitioner's bilateral carpal tunnel syndrome and found that Petitioner's claim for compensation for her bilateral carpal tunnel syndrome could not be litigated as it arose out of a separate and different matter than as what was described in Petitioner's Application for Adjustment of Claim. Petitioner's Application for Adjustment of Status of Claim, filed with the Commission on December 30, 2002, identified the affected body parts injured on December 11, 2002, as her back, legs, arms and neck. While said Application did not list either wrists or hands as being injured, the Commission, for the purposes of this Decision, will find that the arms end at the wrist. The Commission, nonetheless, finds Petitioner failed to prove that her diagnosed carpal tunnel syndrome either arose out of and in the course of her employment or is causally related to her December 11, 2002, accident.

In support of her claim that her bilateral carpal tunnel syndrome was the direct result of her December 11, 2002, accident, Petitioner relies on the testimony of Dr. Cronin. Dr. Cronin testified that Petitioner had no problem with her carpal tunnels prior to the accident and also noted Petitioner related to Dr. Anichini, on March 3, 2003, of pain in her arms as well in other parts of her body. Dr. Cronin's testimony is not persuasive.

Dr. Cronin's temporal theory, based upon his own testimony, is flawed and implies that he did not have an accurate sense of Petitioner's physical history. He asserted that Petitioner had no symptoms of carpal tunnel syndrome prior to her accident but then stated that he believed Petitioner's carpal tunnel "was aggravated and accelerated by the smashing into this door and falling down the steps." Per Dr. Cronin, Petitioner's carpal tunnel syndrome was not present prior to her falling down the stairs but, nevertheless, the accident "aggravated and accelerated" the carpal tunnel syndrome that he, only moments earlier, testified wasn't present.

Another concern with Dr. Cronin's position is that it fails to consider any other possible causes for Petitioner's carpal tunnel syndrome. The Commission would appreciate a discussion concerning possible comorbities and then an explanation as to why those comorbities could be ruled out to as the reason for Petitioner's condition, particularly given, per Dr. Anichini's treatment records, the length of time that passed between the accident and Dr. Anichini's diagnosis of bilateral carpal tunnel syndrome. Taken to an extreme, Dr. Cronin's position would allow any condition Petitioner developed subsequent to her accident, no matter how tangential to the accident it is, to be considered causally related to the accident.

Dr. Cronin's citation of Dr. Anichini's March 3, 2003, note forces the Commission to make a distinction. Three paragraphs above, the Commission, for the purposes of addressing Petitioner's Application for Adjustment of Claim, did not hold it against the drafter of said Application for failing to distinguish between arms, hands and wrists. The Commission, however, holds physicians to a higher standard when addressing parts of the body and expects a physician to distinguish between adjacent body parts, as Dr. Anchini did in her treatment note of March 18, 2003. In that note, she recorded Petitioner complaining of a burning sensation that radiated from her spine into her arms. Dr. Anchini, however, explicitly noted that the burning sensation spared Petitioner's wrists.

The Commission presumes Dr. Cronin chose Dr. Anchini's March 3, 2003, note because it was the earliest note that referenced Petitioner's arms. A thorough review of Dr. Anchini's treatment notes reveals Petitioner also complained of tingling or burning sensations or sometimes both in her arms during almost successive visits between March 2003 and October 2003 and again once in January 2004. Dr. Anichini did not make mention of any complaints involving Petitioner's wrists, hands or fingers, save once, until 2007. The one treatment note that mentions Petitioner's hands does so in reference to Petitioner making complaints of pain involving all of her joints. The Commission finds Dr. Cronin citing a single complaint of arm pain in a treatment record written in 2003 and causally relating it to a diagnosis made in 2007 to be too tenuous to accept.

Petitioner also relies on Dr. Anichini to causally relate her symptoms of carpal tunnel syndrome to her January 11, 2002, accident. And, similar to Dr. Cronin, Dr. Anichini cites Petitioner having these symptoms only after the accident as evidence that it was caused by the accident. Her explanation as to why the carpal tunnel syndrome wasn't addressed sooner was because it had been overlooked. The Commission notes that Dr. Anichini was Petitioner's treating physician and, as such, had ample opportunities to receive complaints of carpal tunnel syndrome symptoms from Petitioner and elicit evidence of the condition through physical examinations. Dr. Anichini's records indicate that no complaints were made or any objective findings elicited that would have caused her to suspect carpal tunnel syndrome in Petitioner's wrists.

Dr. Anichini was not the subject of an evidence deposition and was, therefore, not subjected to direct and cross-examination. Nevertheless, her records prove a window into her credibility. On July 17, 2007, Dr. Anichini wrote, "Lawyer wants to know what other tests can be done." Below that comment, she wrote "NCV/EMG?" The Commission finds nothing in Dr. Anichini's treatment records suggested this test be performed. Despite this, in a letter to Petitioner's attorney, she wrote that, in reviewing Petitioner's records, "it was noted that the neurologist she saw in April 2003 had suggested the possibility of doing an EMG/nerve conduction velocity studies in the future, [sic] if she did not improve." The neurologist Dr. Anichini was referring to in that letter was a Dr. Wojcik. On April 18, 2003, he had examined Petitioner and "discussed the possibility of performing an EMG/nerve conduction velocity study, but because she is improving with physical therapy, I did not believe, at this time, that this study works add more information." In her letter justifying the NCV/EMG testing based on an April 2003 record, Dr. Anichini omitted that portion of the letter than deemed that test to be unnecessary due to Petitioner's improved condition. The Commission submits Petitioner continued to improve to such an extent that test was never conducted or even suggested for more than four years and, then, was done so only at the suggestion of Petitioner's attorney.

Dr. Anichini, on October 25, 2007, again wrote Petitioner's attorney to inform that the NCV/EMG tests she had Petitioner undergo was suggestive of bilateral carpal tunnel syndrome. She went onto write, "Given the work that [Petitioner] used to do at her job, lifting heavy objects, recurrent hand motions during repeated mopping and sweeping, it is medically probable that the carpal tunnel syndrome developed as a result of those activities." In explaining why Petitioner's left wrist was worse than her right wrist, Dr. Anichini surmised that this "could be accounted for by the fact that during [Petitioner's] fall she was holding a heavy garbage bag in her left hand . . . ." The Commission recalls Petitioner testified, "I pull [sic] [the garbage bag] down the stairs." The Commission is left without an explanation as to how Petitioner falling down stairs while either pulling or lifting a bag in 2002 would produce symptoms almost five years later.

On December 13, 2007, another letter was sent to Petitioner's attorney by Dr. Anichini. In this letter, Dr. Anichini attempts to more fully relate Petitioner's carpal tunnel complaints to her January 11, 2002, accident, noting, that Petitioner "has always complained of pain, numbness and weakness/fatigueability [sic] in her arms and hands since the accident." She continues on, explaining that the symptoms of carpal tunnel syndrome had been "overlooked in the past because those symptoms were taken in the context of the other pains and discomfort she was experiencing." Dr. Anichini also indicated that, "Given that these symptoms began after the accident, it would seem obvious that the carpal tunnel syndrome is the result of her accident at work." Lastly, Dr. Anichini finds "carpal tunnel is just one component of [Petitioner's] pain syndrome." The Commission finds this letter, like those written before it, to be grounded in her desire to assist Petitioner with her workers' compensation claim than to provide an accurate medical history that is supported by medical records.

The comments Dr. Anichini expressed in her December 13, 2007, letter are not supported by her own treatment records, records going back to early 2003. Petitioner, as shown in the treatment records, had not "always" complained of the symptoms involving her hands and wrists attributed to her by Dr. Anichini. Before 2007, Petitioner ceased complaining about her arms in February 2005 and only once, prior the NCV/NCS testing, complained about her hand. That instance, again, documented Petitioner's more global complaints of worsening joint pain and then identifying, in parenthesis, knees, hands, elbows and shoulders. The most prominent examples of Dr. Anichini's exaggerated claim of Petitioner "always" complained about her hands and wrists is found in the repeated "To Whom It May Concern" letters she authored. Dr. Anichini, in those letters, addressed only of neck and back pain in those letters after June 18, 2003. On June 18, 2003, the date of the first such letter, leg pain, in addition to neck and back pain was referenced. Only one record, written prior to 2007, identifies any condition consistent with carpal tunnel syndrome, and that record is a Duty Status Exam form Dr. Anichini completed on July 25, 2003. In the form, she listed dysesthesias as one of the diagnoses. The diagnosis of dysesthesias, however, cannot be reconciled with the examination Dr. Anichini performed upon Petitioner that day. Dr. Anichini did document tingling to Petitioner's arms on May 23, 2008, and burning without attributing to any particular body part on June 18, 2003. On neither date did Dr. Anichini indicate that these symptoms involved Petitioner's wrists or hands. A presumption will not be made that Dr. Anichini meant to include Petitioner's wrists or hands in those treatment notes, especially when she specifically excluded them when she diagnosed Petitioner's symptoms involving his arms in her March 18, 2003, treatment note. The Commission finds that, contrary to Dr. Anichini's assertion, Petitioner did not "always" complain of symptoms involving her arms nor wrists nor hands over the course of treating with Dr. Anichini.

Similarly, the Commission is not convinced, as asserted by Dr. Anichini, that Petitioner's carpal tunnel symptoms were overlooked or, as Dr. Anichini conflictingly stated, because those

symptoms were taken in the context of the other pains and discomfort. Either the symptoms were overlooked or they were identified but attributed to another condition. It is doubtful that the symptoms were both overlooked but still believed to be the result of something other than carpal tunnel syndrome. Of the two possibilities, the Commission finds the former more likely to have occurred than the latter as there was no mention of any carpal tunnel syndrome symptoms found in Dr. Anichini's treatment notes. The Commission, nevertheless, doubts that any such symptoms were overlooked give the number of examinations Dr. Anichini took of Petitioner over the years. The Commission finds the most likely explanation for the dearth of records documenting Petitioner's carpal tunnel complaints is because none were made.

The Commission also notes Dr. Anichini made the same temporal argument that Dr. Cronin did, that being, Petitioner's carpal tunnel syndrome must be causally related to her 2002 accident because she hadn't been diagnosed with it prior to the accident. This position, without explanation, again, eliminates any other possible reason Petitioner might have developed carpal tunnel syndrome subsequent to her accident. Once more, the Commission expresses its wish that an attempt was made to explain the impact, if any, of any comorbities had upon Petitioner's developing bilateral carpal tunnel syndrome.

The Commission again notes Dr. Anichini, in her December 13, 2007, letter to Petitioner's attorney, stated that "carpal tunnel is just one component of [Petitioner's] pain syndrome." It might have been better stated that pain is just one component of carpal tunnel syndrome, and the Commission finds Dr. Anichini's treatment records did not make mention any other symptom(s) commonly associated with carpal tunnel syndrome. The Commission also finds in those same records that Petitioner's first complaint of pain and weakness in Petitioner's hands was recorded on December 13, 2007, almost five months after Dr. Anichini suggested to Petitioner's attorney, in her July 17, 2007, letter that Petitioner undergo an EMG/nerve conduction study. The Commission is not convinced, as is Dr. Anichini, that any interrelationship between Petitioner's accident and her carpal tunnel syndrome exists.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $356.72 per week for a period of 140-4/7 weeks, commencing May 8, 2004, through January 17, 2007, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner attained maximum medical improvement with respect to her musculoskeletal and myofascial pains effective September 1, 2004.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner failed to prove that her bilateral carpal tunnel syndrome arose out of and in the course of her employment.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner medical expenses under §8(a) of the Act through January 17, 2007.

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.

15IWCC0981

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for a determination of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980), but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $50,300.00. 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: DEC 2 3 2015
KWL/mav
O: 09/01/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Dominick Pileggi,

Petitioner,

vs. No. 13 WC 02711

Cicero Fire Department,

15IWCC0982

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the parties herein and proper notice given, the Commission, after considering the issues of temporary disability and permanent disability, 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.

~~IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the~~ Arbitrator filed June 1, 2015, is hereby affirmed and adopted.

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.

No bond is required for removal of this cause to the Circuit Court. 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: DEC 2 4 2015
o-12/03/2015
SM/sk
44

Stephen Mathis

Mario Basurto

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PILEGGI, DOMINICK
Employee/Petitioner

Case# **13WC002711**

13WC002581
13WC002582

CICERO FIRE DEPARTMENT
Employer/Respondent

15IWCC0982

On 6/1/2015, 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:

1747 SEIDMAN MARGULIS & FAIRMAN LLP
RYAN A MARGULIS
500 E LAKE COOK RD SUITE 350
DEERFIELD, IL 60015

4217 DEL GALDO LAW GROUP LLP
GEORGE S SPATARO
1441 S HARLEM AVE
BERWYN, IL 60402

15IWCC0982

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Dominick Pileggi
Employee/Petitioner

v.

Cicero Fire Department
Employer/Respondent

Case # **13 WC 02711**

Consolidated cases: **13 WC 02581**
13 WC 02582

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **March 27, 2014**. 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. [ ] 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. [ ] 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. [X] 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] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [X] TTD
L. [X] 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 _____

15IWCC0982

FINDINGS

On **September 28, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$80,000.00**; the average weekly wage was **$1,538.46.**

On the date of accident, Petitioner was **43** years of age, ***married*** with **0** dependent children.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0.**

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

ORDER

Claim for compensation denied. Petitioner failed to prove a causal connection between the accidental injuries of September 28, 2011 and his current condition of ill-being regarding his right hip.

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

MAY 29, 2015
Date

JUN 1 - 2015

FINDINGS OF FACT

This matter was tried with two consolidated cases (Case No. 13 WC 2581, D/L: 3/14/2010, right hip and Case No. 13 WC 2582, D/L: 7/27/2012, right elbow).

Petitioner was employed by Respondent as a firefighter since 2004 or 2005.

On September 28, 2011, Petitioner was involved in a training exercise and noticed that his right hip hurt. Petitioner had right hip pain before, due to the accidental injuries of March 14, 2010. The September 28 incident was reported to Lt. George Gonzalez and an Employee's Report of Injury was filled out. The report says that the injury was from a previous injury and Petitioner pulled his right leg hip flexer (sic). (PetEx. 7) Petitioner sought no medical care as a result of this injury. He took Ibuprofen and hoped that his hip would get better. He continued to work full duty as a firefighter.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The unrebutted testimony of Petitioner and the Report of Injury establish the Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on September 28, 2011.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The unrebutted testimony of Petitioner and the Report of Injury establish that Petitioner gave Respondent timely notice of the accident.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that there is no causal connection between the accidental injuries of September 28, 2011 and Petitioner's condition of ill-being regarding his right hip based first upon the Arbitrator's findings on this issue in Case No. 13 WC 2581 and because Petitioner sought no medical care and had no lost time as a result of this incident.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Based upon the Arbitrator's finding regarding causal connection above and the fact that Petitioner sought no medical care regarding this injury, the claim for medical bills is denied.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Based upon the Arbitrator's finding regarding causal connection above and the fact that Petitioner continued to work at full duty as a firefighter after the accident, the claim for TTD is denied.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

As the Arbitrator has found that there is no causal connection between the injury of September 28, 2011 and Petitioner's current condition of ill-being regarding his right hip, the Arbitrator needs not decide this issue.

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Dominick Pileggi,

Petitioner,

vs. No. 13 WC 02582

15IWCC0983

Cicero Fire Department,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the parties herein and proper notice given, the Commission, after considering the issues of temporary disability and permanent disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 1, 2015, is hereby affirmed and adopted.

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.

15IWCC0983

No bond is required for removal of this cause to the Circuit Court. 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: DEC 2 4 2015
o-12/03/2015
SM/sk
44

Stephen Mathis

Mario Basurto

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PILEGGI, DOMINICK
Employee/Petitioner

Case# **13WC002582**

13WC002581
13WC002711

CICERO FIRE DEPARTMENT
Employer/Respondent

15IWCC0983

On 6/1/2015, 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:

1747 SEIDMAN MARGULIS & FAIRMAN LLP
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500 E LAKE COOK RD SUITE 350
DEERFIELD, IL 60015

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15IWCC0983

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Dominick Pileggi
Employee/Petitioner

v.

Cicero Fire Department
Employer/Respondent

Case # **13 WC 02582**

Consolidated cases: **13 WC 02581**
13 WC 02711

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **March 27, 2014**. 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. [X] 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. [X] 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 [X] TTD
L. [X] 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 **July 27, 2012**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**80,000.00**; the average weekly wage was $**1,538.46.**

On the date of accident, Petitioner was **44** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**. The agreement of the Parties is that no TTD benefits are due as a result of this accident because Petitioner received full salary for his lost time.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act. The agreement of the Parties was that Respondent would be entitled to a §8(j) credit for any related bills paid by its group carrier and would be responsible to protect Petitioner pursuant to §8(j).

ORDER

Claim for compensation denied. Petitioner failed to prove that he sustained any permanent partial disability as a result of the accidental injuries of July 27, 2012.

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

May 29, 2015
Date

JUN 1 - 2015

FINDINGS OF FACT

This case was tried with two consolidated cases involving the same parties (Case No. 13 WC 2581, D/L: March 14, 2010, right hip injury and Case No. 13 WC 2711, D/L: September 28, 2011, right hip injury).

Petitioner was employed by Respondent as a firefighter since 2004 or 2005.

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on July 27, 2012. Petitioner was engaged in removing trees from a roadway when a fellow firefighter tripped and Petitioner yanked him up fast to prevent him from falling. He noticed that his right elbow was swollen. Petitioner did not seek immediate medical care.

The first medical care was at Rush Oak Park Hospital on August 1, 2012. Petitioner presented with complaints of right elbow pain, neck pain and right hip pain. The elbow pain was from an injury at work 5 days ago. The hip pain was from an injury at work 2 years ago. The history regarding the elbow injury was that the patient grabbed a falling person and jerked his elbow pulling him back up. He had pain and swelling since then. The physical exam of the elbow revealed swelling, redness and non-pitting edema, with some tenderness. There was normal range of motion. The elbow x-ray showed no acute fracture, a possible bone spur or old chip fracture and possible bursitis or soft tissue swelling. Voltarin, Skelaxin and Cipro were prescribed. Petitioner was released with a diagnosis of right elbow bursitis and instructed to use ice, rest and no lifting. (PetEx. 1)

Follow-up care was at U.S. HealthWorks from August 6, 2012 through September 8, 2012. The diagnosis on August 6, 2012 was: 1.) Right elbow strain/sprain; 2.) Right elbow olecranon bursitis; and 3.) Right elbow pain. Petitioner was restricted from lifting more than 10 pounds and Ibuprofen was prescribed. There was no anticipated permanent disability. Petitioner had additional treatment at U.S. HealthWorks on August 13, August 20, August 28 and September 8, 2012. Petitioner received a steroid injection on August 20, 2012. Apparently a right elbow MRI was done, but the report was not in the records. Petitioner was released from care on September 8, 2012 with it being noted that the right elbow pain had resolved. He was released to return to work at full duty, PRN. The diagnosis was Right olecranon bursitis, right elbow strain and right elbow pain-resolved. Dr. Khanna noted that no permanent disability was anticipated. (PetEx. 2)

Petitioner testified that he was off work from August 1, 2012 through September 8, 2012. He was paid for this lost time at full salary.

Petitioner testified that his right elbow was O.K.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. The Conclusions of Law regarding medical expenses and TTD are not necessary, given the Parties' agreement regarding these issues set forth above.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY AND ISSUE (L) WHAT IS THE NATURE AND EXTENT OF PETITIONER"S INJURIES,THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner has failed to prove a causal connection between the injury of July 27, 2012 and any condition of ill-being regarding his right arm. Petitioner testified that his right elbow was O.K. Dr. Khanna released Petitioner from care with all conditions resolved as of September 8, 2012. Petitioner returned to full duty work as a firefighter thereafter and was able to perform his job until he was taken off work regarding his right hip in December of 2012. Dr. Khanna anticipated no permanent partial disability as of September 8, 2012 and there is no evidence of further medical care. Therefore, based upon Petitioner's testimony and the medical records, there is no condition of ill-being regarding the right elbow.

As there is no condition of ill-being, there is no causal connection. Therefore, the five factors required to be considered for an award of PPD pursuant to §8.1b of the Act need not be analyzed.

Accordingly, the claim for compensation is denied.

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Dominick Pileggi,

Petitioner,

vs.

No. 13 WC 02581

15IWCC0984

Cicero Fire Department,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the parties herein and proper notice given, the Commission, after considering the issues of temporary disability and permanent disability, 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.

Petitioner seeks loss of trade benefits under section 8(d)2 of the Act, asserting that his permanent restrictions of no lifting over 50 pounds, no climbing and no deep crouching preclude him from returning to his occupation as a firefighter. The Commission agrees with the Arbitrator that loss of trade benefits are not appropriate in the instant case. Although Petitioner's treating surgeon, Dr. Lopez, testified that Petitioner would have a difficult time performing the typical job duties of a firefighter, Dr. Lopez thought Petitioner might still be able to work as a firefighter if his fire chief assigned "more office, more sedentary type things." Petitioner testified that he did not seek any such position with Respondent because he does not have the education or the training to work in the office at the fire department. Rather, Petitioner has chosen to work on his internet business. On these facts, the Commission believes the appropriate permanency award is 50 percent loss of use of the right leg.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 1, 2015, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $1,025.64 per week for a period of 24 4/7 weeks, from December 10, 2012, through May 30, 2013, 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 pay to Petitioner the sum of $664.72 per week for a period of 107.5 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 50 percent loss of use of the right leg.

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.

No bond is required for removal of this cause to the Circuit Court. 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.

Stephen J. Mathis

DEC 2 4 2015

DATED:
o-12/03/2015
SM/sk
44

Stephen Mathis

Mario Basurto

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PILEGGI, DOMINICK
Employee/Petitioner

Case# **13WC002581**

13WC002582
13WC002711

CICERO FIRE DEPARTMENT
Employer/Respondent

15IWCC0984

On 6/1/2015, 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:

1747 SEIDMAN MARGULIS & FAIRMAN LLP
RYAN A MARGULIS
500 LAKE COOK RD SUITE 350
DEERFIELD, IL 60015

4217 DEL GALDO LAW GROUP LLP
GEORGE S SPATARO
1441 S HARLEM AVE
BERWYN, IL 60402

15IWCC0984

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Dominick Pileggi
Employee/Petitioner

v.

Cicero Fire Department
Employer/Respondent

Case # **13 WC 02581**

Consolidated cases: **13 WC 02582**
13 WC 02711

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **March 27, 2014**. 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. [ ] 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. [ ] 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. [x] 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 [x] TTD
L. [x] 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 **March 14, 2010**, 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 $**80,000.00**; the average weekly wage was $**1,538.46.**

On the date of accident, Petitioner was **41** 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 through its insured group health plan.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0.**

Respondent is entitled to a credit of under Section 8(j) of the Act as it set forth below.

ORDER

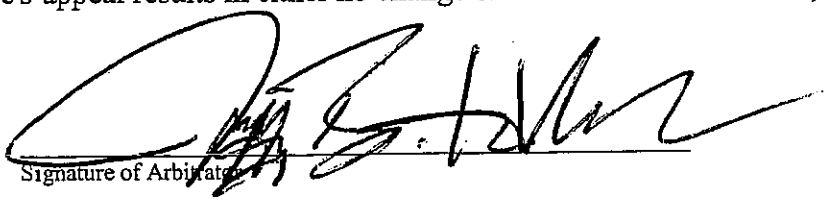
Respondent shall pay Petitioner temporary total disability benefits of **$1,025.64/week** for **24-4/7 weeks**, commencing **12/10/2012** through **5/30/2013** as provided in §8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$664.72/week** for **96.75** weeks, because the injuries sustained caused the **45% loss of use of the right leg** as provided in §8(e) of the Act.

Respondent shall pay Petitioner all compensation that has accrued from 5/30/2013 through 3/27/2014, and shall pay the remainder of the award, if any, in weekly benefits.

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

May 29, 2015
Date

JUN 1 - 2015

FINDINGS OF FACT

Petitioner was employed by Respondent as a firefighter since 2004 or 2005. Before March 14, 2010, Petitioner had no problems with his right hip. He had never had any injuries to his right hip and had not received any medical care for his right hip. He was able to work at full duty as a firefighter. Petitioner is a weightlifter.

On March 14, 2010, Petitioner was engaged in fighting a structure fire, kneeling and manning a firehose. Petitioner testified that the water pressure in the hose increased and he was thrown back, flipping over and landing on his right shoulder and right side. He noticed a burning sensation in his right hip. He presented to the Engine and advised Chief Opalecky that he injured his right hip. He was ordered to the hospital, taken by Cicero Fire Department ambulance.

The ambulance report says that the patient was standing in mud and he tweaked his right quad when his foot got caught. (ResEx. 1) The history at Oak Park Hospital was that the patient's right leg got stuck in hose and something popped in right thigh when he pulled his right leg out. The physical exam revealed the right thigh had some tenderness and depression on the medial side of the right thigh. Triage notes state the patient had right knee/right quad pain. He was using a water hose and got his right leg stuck in the mud. When he tried to pull his right leg out of the mud,"heard quad pop." The discharge diagnosis was acute muscle strain, right thigh. No x-rays were taken. He was given a script for Motrin and Skelaxin and advised to be off work until March 17, 2010.

Petitioner testified that he continued to work full duty as a firefighter thereafter. He always had right hip pain. He thought that it would heal over time.

On Cross-Examination, Petitioner denied injuring his hip weight lifting. He disputed the history of pulling his quad when his foot got caught in mud.

Respondent has rules about prompt reporting of accidents or injuries. Respondent's Exhibit 2 was a WC Employee Injury Report completed by Petitioner on February 3, 2013 regarding the right hip injuries of 3-14-10 and 9-28-11.

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on September 28, 2011 when Petitioner felt pain in his right hip during a training exercise. He advised Lt. Gonzalez of the hip pain and that it was from a previous injury where he went to the ER. An Injury Report was completed. It mentions that Petitioner injured his right hip flexer (sic). (PetEx. 7) Petitioner did not seek medical care immediately. He took Ibuprofen and hoped that his hip would get better. This incident is the subject of Case No. 13 WC 2711.

Petitioner injured his right elbow while working on July 27, 2012. They were removing trees from a roadway when a fellow firefighter tripped. Petitioner jerked his arm trying to prevent the other firefighter from falling and felt pain in his right elbow. This injury is the subject of Case No. 13 WC 2711. Petitioner received care at Rush Oak Park Hospital and U.S. HealthWorks for his right elbow and his right hip.

When seen at Rush Oak Park on August 1, 2012, the primary focus was on the right elbow, although Petitioner did say that he had neck and hip pain for several weeks from a work injury (left neck pain and right hip pain from previous work related injuries). The physical exam regarding the right hip showed normal range of motion, normal strength, no tenderness, no bony tenderness and no swelling. No x-ray of the hip was done. Petitioner was given medication for his right elbow bursitis condition. (PetEx. 1)

Petitioner had care at U.S. HealthWorks for the elbow from August 6, 2012 through September 8, 2012. There is no mention of the right hip at this time. (PetEx. 2)

Petitioner then received treatment at U.S. HealthWorks for his right hip from November 12, 2012 through November 15, 2012. The history on November 12 was of right hip pain over the past 2 years; "was fighting a fire and was knocked backwards while in a kneeling position, pain was a 5/10. Pain persists today and is worse when working out 9/10. He has seen a chiropractor and would like to solve this problem while continuing regular work." X-rays showed DJD in both hips, right worse than left. The assessment was Right Hip Pain, R/O Right Hip Acetabular Labral tear. Petitioner could continue to work full duty and an MRI of the right hip was ordered. Petitioner was instructed to ice the hip three times a day. The MRI was reviewed in detail with the patient, but the report is not contained in the records. It was noted that he was a long time steroid user. Dr. Khanna thought that the right hip degenerative changes were not work related and discharged the patient from care. Dr. Khanna charted a phone conversation with Marshall Opalecky where the doctor explained the patient's symptoms and MRI findings. Opalecky said that Petitioner had injured his right leg on 3/14/2010 and was seen in the ER, but then worked his regular job without complaints since then. The final diagnosis was Right Hip Pain and Right Hip Osteoarthritis, not work related. Respondent paid the bill for this treatment in November of 2012. (PetEx. 2)

Petitioner then sought medical treatment with Dr. Eugene Lopez at Midwest Sports Medicine. The first visit was December 10, 2012. The history, per the patient, was: sustained an injury at work two years ago while putting a fire out. "I was kneeling down getting the hose ready. The water pressure caused me to fall on my back and flipped me over onto my right side. I had immediate pain and was brought to the Loyola ER. Since then, my right hip has been getting worse with pain." The physical exam revealed limited range of motion of the right hip and decreased strength because of pain. Right hip tests were normal. The left hip exam was benign. X-rays showed osteoarthritis of the right hip. The impression was: "work-related right hip osteoarthritis with significant aggravation of pre-existing asymptomatic problem". Dr. Lopez offered right hip resurfacing versus minimally invasive THA. Petitioner was taken off work and a steroid injection was given. PT was ordered. Petitioner was seen again on December 31, 2012 and surgery was scheduled. (PetEx. 3 & 6)

Dr. Lopez performed surgery on January 15, 2013. The procedure was: "Right Birmingham hip resurfacing arthroplasty". The post operative diagnosis was: "right hip end-stage osteoarthritis". The indications were: "44 year old weightlifter with painful arthritis, failing attempts at conservative care, now for elective hip resurfacing." (PetEx. 3 & 5)

Petitioner had follow-up care with Dr. Lopez, including physical therapy, through May 30, 2013. He was released from care with permanent work restrictions of no lower body lifting over 50 pounds, no climbing or deep crouching. Petitioner would have to periodically follow up, as expected for a post op hip resurfacing patient. Dr. Lopez' bills were paid by Respondent's group carrier, Blue Cross.

Petitioner did not return back to work at Respondent after the surgery. He notices that he can't move as well as he used to regarding his right hip. He takes Ibuprofen about one time per week. He has trouble with stairs and dancing. Petitioner did not receive PETA benefits and did not receive TTD for his lost time during the treatment by Dr. Lopez. He used sick days and vacation days for his lost time. His banked time ended in June of 2013. Petitioner has chosen to work in his internet business.

Petitioner is seeking TTD for the time period of December 10, 2012 through May 30, 2013, only. He is not seeking a wage loss award under §8(d) 1.

Dr. Lopez testified via evidence deposition. He is a Board Certified Orthopedic Surgeon and he is board certified in sports medicine. He concentrates on the knee, hip and shoulder. Dr. Lopez provided a causal connection opinion: "...that this accident that occurred wherever significantly aggravated what I believed to be a pre-existing problem and significantly worsened whatever was there. It caused significant worsening of the symptoms which eventually led to the deterioration and eventual treatment that I provided for this treatment." (PetEx. 6 at p.11) Dr. Lopez did not provide the basis of his opinion on Cross-Examination. On Re-Direct, he was able to say that the history given by the patient and the medical examination forms the basis of his opinion. (PetEx. 6)

Respondent did not present any witnesses.

CONCLUSIONS OF LAW

The Arbitrator adopts the Findings of Fact set forth above in support of the Conclusions of Law set forth herein.

At trial, Respondent's attorney noted that he had a Motion to Dismiss, based upon the Statute of Limitations pending. The Motion is not well taken because the Application for Adjustment of Claim was filed within the limitations period and the Amended Application (changing the accident date from March 4, 2010 to March 14, 2010) involves the same described accident and, therefore relates back to the original, timely filed, Application. Lake State Engineering Co. v. Industrial Commission, 31 Ill.2d 440 (1964) Further, Respondent paid the U.S. Health Works and Midwest Sports Medicine bills for right hip treatment incurred in 2012, thus extending the limitations period to 2014, making the Amended Application timely filed. Legris v. Industrial Commission, 323 Ill.App.3d 789 (2001)

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Based upon the Petitioner's credible testimony and the Record as a whole, The Arbitrator finds that Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on March 14, 2010, operating a hose while fighting a structural fire as set forth above. Respondent did not provide rebuttal witnesses to Petitioners testimony and Dr. Khanna's notation about the telephone conversation with Opalecky on the progress note of 11/15/12 persuades the Arbitrator that the accident occurred and Respondent was aware of it.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner gave Respondent timely notice of the accident. Petitioner's unrebutted testimony was that the accident occurred in the presence of Chief Gregory and Lt. Macudas. Further, Petitioner reported the accident to Chief Opalecky and he was ordered to go to the hospital. He was taken to the hospital by Cicero Fire Department EMS. Respondent knew about the accident on the day that it occurred.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner has proved that his condition of ill-being regarding his right hip (i.e.: end-stage osteoarthritis of the right hip, previously asymptomatic and significantly aggravated by the accident of March 14, 2010, leading to the Birmingham Resurfacing procedure done by Dr. Lopez on January 15, 2013) is causally related to the injury.

Petitioner testified that he had no prior injuries or medical treatment to the right hip. There was no proof of any prior problems and the only subsequent injury shown was the training incident of September 28, 2011 for which Petitioner sought no treatment.

Dr. Lopez testified in support of causal connection, based upon an aggravation of the asymptomatic OA condition. Dr. Khanna charted that he did not think that the right hip OA condition was work related. Respondent did not submit a causal connection opinion. Dr. Lopez' testimony was troubling, in that he deflected and resisted answering straightforward questions that were posed on Cross. Lawyers ask the questions and the witnesses are to answer them. In any event, Dr. Lopez' testimony was not such that the Arbitrator will disregard his opinion on causation, even though there was a long gap in treatment.

Petitioner's testimony was credible and the Arbitrator is persuaded that Petitioner injured his right hip on March 14, 2010 as he described and that Petitioner continued to stoically work as a firefighter and not seek medical care until the aggravated condition became so bad that he sought medical care from U.S. Health Works and Dr. Lopez.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The medical care for Petitioner's right hip from U.S. Health Works and Dr. Lopez and the related services is found to be causally related to the injury and reasonable and necessary to cure or relieve the effects of the injury. The Parties agreed that the bills had been paid by Respondent's group carrier and that Respondent was entitled to a §8(j) credit for the same. Respondent will also be responsible for protecting Petitioner, in accordance with §8(j).

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Based upon the Arbitrator's findings relative to Accident and Causation above, Petitioner is entitled to TTD from December 10, 2012 through May 30, 2013, a period of 24-4/7 weeks.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

As a result of the injury of March 14, 2010, Petitioner underwent the Birmingham Resurfacing procedure performed by Dr. Lopez. Dr. Lopez' testimony regarding the procedure persuades the Arbitrator that the Birmingham procedure is less complicated and involves less surgical trauma than the usual THA procedure. Petitioner had a good recovery with appropriate lost time. He was not released to return to work as a firefighter. Dr. Lopez' restrictions are reasonable and do appear to remove Petitioner from a life safety type position. Petitioner was 41 years old at the time of accident and he will likely live with the effects of the injury for a long time. Petitioner's subjective complaints are believable and do not appear exaggerated.

Given the above, The Arbitrator finds that Petitioner sustained a 45% loss of use of his right leg, pursuant to §8(e) of the Act, as a result of the accidental injuries.

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jorge Arceo,

Petitioner,

vs. No. 13 WC 33962

MRK Industries, Inc.,

15IWCC0985

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and prospective medical care, and being advised of the facts and law, reverses the Decision of the Arbitrator for the reasons stated below. Because Petitioner's claim is compensable, the Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation, medical benefits or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327 (1980).

The parties dispute the cause of Petitioner's right inguinal hernia. Respondent has accepted liability for the abdominal/epigastric hernia.

Petitioner, a general laborer, testified via a Spanish interpreter that on May 31, 2013, he felt something "snap" in his stomach while he was stacking heavy boxes and preventing them from falling. Petitioner developed a "ball" on his abdomen between the sternum and the navel, and felt a great deal of pain. When asked if that was the only place he felt pain, Petitioner responded: "No, I felt pain in my entire body." When asked to clarify, Petitioner indicated the area from the sternum to the waist.

Petitioner further testified that on June 4, 2013, he sought emergency treatment at Advocate Condell Medical Center (Condell). The medical records from Condell show that on June 4, 2013, Petitioner complained of pain and a bulge in his mid abdomen, giving a history consistent with his testimony. Petitioner denied any other injuries or urinary symptoms. On physical examination, the attending physician noted an abdominal hernia. Petitioner's inguinal area was not examined. A CT scan of the abdomen and pelvis showed a small fat-containing umbilical hernia. Petitioner was discharged and instructed to follow up with Dr. Laurence Gibson the following day.

The medical records from Dr. Gibson, a surgeon, show that on June 5, 2013, he diagnosed an epigastric hernia and recommended surgery. The note does not mention any complaints relative to the inguinal area. On June 21, 2013, Dr. Gibson performed a repair of an incarcerated epigastric hernia. On July 2, 2013, Petitioner followed up, complaining of unspecified pain. Dr. Gibson instructed Petitioner to slowly increase his activity. On July 9, 2013, Petitioner's chief complaint was right groin pain. Dr. Gibson diagnosed a right inguinal hernia and recommended surgery as soon as Petitioner recovered from the epigastric hernia repair. On July 31, 2013, Petitioner followed up, complaining of severe pain in the right groin. The epigastric repair was well healed. Dr. Gibson continued to recommend a repair of the right inguinal hernia.

On August 27, 2013, Dr. Stephen Boghossian, a general surgeon, examined Petitioner at Respondent's request. Dr. Boghossian testified via evidence deposition that Petitioner reported developing pain in the substernal area as a result of the work accident. Petitioner denied having a groin examination in the emergency room. Dr. Boghossian asked Petitioner when he first noticed the pain in the groin and why he did not ask a doctor to examine his groin. Petitioner responded: "I only had pain here; but I thought when I had this pain repaired this pain would go away [indicating]." On physical examination, Dr. Boghossian noted a reducible right inguinal hernia and a smaller reducible left inguinal hernia.

Dr. Boghossian did not think the inguinal hernias were causally connected to the work accident, explaining: "[The patient] never complained in any of the notes I reviewed. I never saw a complaint of groin pain for *** a couple of weeks at least. He saw a few physicians and filled out forms and filled out why I was here and what is hurting me; and in the nurse's notes and the doctor's exam *** no one examined his groin. *** [H]e didn't complain of any groin problems." Dr. Boghossian further testified that it would be highly unlikely for the mechanism of injury to cause a ventral hernia and bilateral inguinal hernias at the same time, explaining: "The sheer amount of force it would take to do that is atypical for this type of an accident." Dr. Boghossian expected Petitioner to complain of groin pain had he sustained an inguinal hernia as a result of the work accident. Dr. Boghossian noted the CT scan report did not mention an inguinal hernia or evidence of an inflammatory response in the inguinal area, although the scan covered the inguinal area. Dr. Boghossian observed: "[S]omeone who just tore his abdominal wall and his groins should have inflammation there when you CAT scan him a few days after the event; and there was nothing on the CAT scan that makes it more likely than not to me." Dr.

Boghossian therefore maintained it is unlikely that Petitioner's inguinal hernias are related to the work accident. Dr. Boghossian further noted that it is not uncommon for an inguinal hernia to be asymptomatic, becoming symptomatic without any type of incident. Dr. Boghossian did not think the work accident aggravated a preexisting inguinal hernia because Petitioner did not contemporaneously complain of inguinal pain.

Petitioner introduced into evidence a letter from Dr. Gibson dated October 3, 2014, stating that Dr. Gibson did not discover the right inguinal hernia until July 9, 2013. Dr. Gibson further stated: "There is no way to know for certain if this was indeed an injury sustained at work."

Petitioner testified that he first noticed pain in the right groin area when he stopped taking pain medication after the surgery. Petitioner denied previously having pain in the right inguinal area or injuring the inguinal area after May 31, 2013.

The Arbitrator found that Petitioner proved his right inguinal hernia is causally connected to the undisputed work accident on May 31, 2013. The Commission disagrees that Petitioner proved causal connection. Petitioner offered no medical opinion in support of causal connection, as Dr. Gibson stated there is no way to know whether the right inguinal hernia is work-related. Dr. Gibson further stated that he did not discover the right inguinal hernia until July 9, 2013. There are no documented complaints or abnormal findings in the medical records relative to the inguinal area until July 9, 2013. The only competent evidence on the issue of causal connection is the credible testimony of Dr. Boghossian. The Commission adopts the opinion of Dr. Boghossian that Petitioner did not sustain or aggravate an inguinal hernia as a result of the work accident on May 31, 2013, and reverses the Arbitrator's decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 5, 2015, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

No bond is required for removal of this cause to the Circuit Court. 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: DEC 2 4 2015
o-12/03/2015
SM/sk
44

Stephen J. Mathis

Mario Basurto

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b)/8(a) ARBITRATOR DECISION

ARCEO, JORGE
Employee/Petitioner

Case# **13WC033962**

15IWCC0985

MRK INDUSTRIES INC
Employer/Respondent

On 5/5/2015, 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:

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LISLE, IL 60532

15IWCC0985

STATE OF ILLINOIS)
)SS.
COUNTY OF Lake)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8a

Jorge Arceo
Employee/Petitioner

v.

MRK Industries, Inc.
Employer/Respondent

Case # **13** WC **33962**

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 **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Waukegan**, on **March 24, 2015**. 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. [x] 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. [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 _____

FINDINGS

On the date of accident, **5/30/13**, 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 $**14,809.16**; the average weekly wage was $**284.63**.

On the date of accident, Petitioner was **50** years of age, ***single*** with **1** dependent children.

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

Respondent shall be given a credit of $**4,350.77** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

Respondent shall authorize and pay for the right inguinal surgery and its attendant care as recommended by Dr. Gibson pursuant to Sections 8 and 8.2 of 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, relating to the epigastric hernia condition.

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.

Carolyn J. Moody
Signature of Arbitrator

5/4/15
Date

ICArbDec19(b)

MAY 5 - 2015

FINDINGS OF FACT

Petitioner sustained two hernias. Respondent does not dispute accident or causal connection for Petitioner's epigastral hernia. All TTD and medical benefits for the epigastral hernia have been paid. ARB EX 1. No request for permanency findings on the first hernia was made by either party at trial with the parties reserving that issue for a later trial. ARB EX 1. At trial, Respondent disputed causal connection for Petitioner's inguinal hernia only. Petitioner requested a finding of causal connection for his inguinal hernia as well as prospective medical treatment under Section 8(a) in connection with the inguinal hernia.

Petitioner testified at trial through an interpreter. At trial, it was agreed by the parties that on May 31 2013 Petitioner worked as a general laborer for Respondent. It was further agreed that on that date Petitioner was at work lifting boxes with 3 co-workers. Petitioner testified that while lifting the boxes, the weight of the boxes shifted such that he had to heavily exert himself to keep the boxes from falling. He testified that his arms were around face level while he was lifting. He immediately felt a snap in his stomach region and developed a ball in his stomach with immediate pain in the stomach area. Petitioner described the area as the top portion of his stomach just below the sternum and on top of the belly button. Petitioner testified that he felt pain in his entire stomach area from below the sternum to the waist area and that he could see the ball in his stomach region. Petitioner testified that he did not have a hernia or pain in his region prior to the accident.

Petitioner testified that he first sought medical care for the condition on his own on June 4, 2013 at Condell emergency room. PX 2. A June 4, 2013 CT scan of the abdomen and pelvis indicated no evidence of acute inflammation involving the abdomen or pelvis. The final report addendum reads, "further review of the images demonstrate a small fat-containing ventral hernia midline upper abdomen with neck measuring approximately 1.8 cm." PX 2, RX 2. The ER records do not reflect a genital or inguinal examination at the ER and no complaints of groin pain were made in addition to the upper abdominal pain. Petitioner was referred to Dr. Gibson for treatment and his first visit with Dr. Gibson was on June 5, 2013. Dr. Gibson noted that Petitioner was referred by Condell for "epigastric hernia". RX 3. Again, no complaints of groin pain were made at this visit to Dr. Gibson and no groin or genital area examination was performed. Petitioner was treated for the epigastric hernia with surgical repair and mesh placement performed by Dr. Gibson on June 21, 2013. PX 1. Petitioner was taken off work. PX 1.

Petitioner followed up with Dr. Gibson on July 2 and July 9, 2013. At the office visit of July 9, 2013, Petitioner told Dr. Gibson that he continued to have pain but now the pain was in the groin area on the right. Dr. Gibson's records indicate Petitioner's complaints of "right groin pain." PX 1. Petitioner testified that the first time he noticed pain in his groin area was when he stopped taking the pain medication about 2 weeks after the first surgery. Petitioner testified that he did not have any pain in the groin area prior to the May 31, 2013 accident and that he did not sustain any other accident or injury between May 31, 2013 and July 9, 2013. During that time period following the first surgery, Petitioner testified that he was unable to lift and that he did not try to lift. Petitioner was off work between the first surgery and July 9, 2013.

On July 9, 2013, Dr. Gibson diagnosed a right inguinal hernia and ordered a repair surgery "as soon as pt recovered from last surgery most likely in two weeks or so." PX 1. Petitioner saw Dr. Gibson for follow up again on July 31, 2013 when he continued to complain of right groin pain. Dr. Gibson's assessment reads, "epigastric hernia well healed but complains of severe pain in the right groin. RIH is palpable but reducible and non incarcerated. Patient does not feel he can work." The plan was to "await insurance approval for RIH repair." PX 1. Petitioner was continued off work on July 9, 2013.

Petitioner testified that his groin pain has not diminished. He has not had any medical treatment for the groin pain since his last visit with Dr. Gibson in July 2013. Petitioner testified that he currently works as a spray gun painter in a metal parts factory. As such he does some lifting of paint gallons weighing up to 4 pounds. He is only able to lift one gallon at a time. Petitioner sprays hanging pieces of metal using a spray gun and is not required to climb ladders or lift the metal parts. He testified that he takes Norco or Vicodin for pain which is not prescribed to Petitioner. Rather, Petitioner takes his wife's pain medication prescribed to her for her cancer condition. Petitioner testified that he currently feels pain in his groin area on a daily basis.

With regard to the first hernia, Petitioner testified that the area is healed and that he has only a small ball in the surgical area which causes him minimal pain an estimated twice per week. Petitioner has not had any medical treatment for his first hernia since his last follow up visit with Dr. Gibson for the first hernia on July 9, 2013.

Dr. Gibson authored a letter dated 10/3/14 wherein he stated that at Petitioner's last follow up visit for the first hernia on July 9, 2013, "a right inguinal hernia was discovered" and that he recommended a right inguinal hernia repair which had not yet been performed. He further wrote, "Mr. Arceo believes this is a work related injury. Hernias are often caused by lifting, pushing, or pulling heavy objects. There is no way to know for certain if this was indeed an injury sustained at work." PX 1.

Petitioner attended a Section 12 exam with Dr. Boghossian at Respondent's request on 9/17/13. Dr. Boghassian gave his evidence deposition on April 24, 2014. RX 1. He testified that he reviewed Petitioner's medical records and examined Petitioner with an interpreter present. RX 1, p. 7. At his deposition, Dr. Boghossian testified that he is a board certified general surgeon. Petitioner told him that he was hurt at work lifting boxes and that he was seen at the ER on June 4, 2013. Dr. Boghossian noted that Petitioner complained of substernal pain at the ER and that Petitioner was diagnosed with a ventral hernia. Dr. Boghossian asked Petitioner if a groin exam was performed at the ER and Petitioner advised that no groin exam was performed. RX 1, p. 9.

Dr. Boghossian testified that he reviewed Dr. Gibson's records of June 5, 2013 and that the records did not contain complaints of groin area pain. Dr. Boghossian asked Petitioner if he had pain in his groin area at the time of the accident and Petitioner explained that he did not complain of his groin pain or have it examined by an ER physician or by Dr. Gibson stating "I only had pain here; but I thought when I had this pain repaired this pain would go away (indicating.)" RX 1, p. 11. Dr. Boghossian testified "I understand distracting pain, and I understood where he was coming from, but I did question him like, you know, it probably would have been nice to have someone examine you." RX 1, p. 11. On exam of Petitioner's genital and groin area, he noted

that Petitioner had "a reducible right inguinal hernia and a smaller but also reducible left inguinal hernia." RX 1, p. 12. In his report, Dr. Boghossian explained that "The examinee explains to me that he did not complain of the groin pain because of his distracting pain in the epigastrium and that seemed to be the area of focus by the doctors, and thus he did not complain about his groin pain and he assumed it would go away after the hernia surgery for the ventral hernia. Alas, this did not work out, and now he is complaining of this pain, and the question is really when did the groin hernias begin?" RX 1, ex 2. On cross-examination, Dr. Boghossian testified that Petitioner's first mention of right inguinal hernia pain in the medical records was on July 9, 2013 and that he was unclear whether Petitioner had the inguinal pain from the time of the accident. He testified "when I asked him about it he just said I thought it would go away after the surgery. And when it didn't go away then I realized something was wrong down there." RX 1, p. 20.

Following his exam and review of the medical records, Dr. Boghossian diagnosed a well-healed laproscopic repair of a ventral hernia and bilateral reducible inguinal hernias. RX 1, p. 13. The ventral hernia was located mid upper abdomen between the sternum and the umbilicus. RX 1, p. 13. He determined Petitioner was at MMI for the ventral hernia and that he did not require any work restrictions for that hernia nor did he have any impairment per the AMA guidelines resulting from the first hernia. Again, the Arbitrator notes here that permanency resulting from the first hernia was not made at trial but such request was reserved for a later trial.

With regard to his opinion on causal connection between the May 31, 2013 accident and the inguinal hernias, Dr. Boghossian opined, "I didn't feel that the hernias in the groin were directly related to his work incident. … He never complained in any of the notes I reviewed. I never saw a complaint of groin pain for… a couple of weeks at least. He saw a few physicians and filled out forms and filled out why I was here and what is hurting me; and in the nurse's notes and the doctor's exam …no one examined his groin. … Also, besides the fact that because pain is not … the only limiting factor here because there is such a thing as distracting pain. And if you break your arm, you have a lot of pain, you may not know that you have a laceration somewhere else. But he -- its very unusual for an injury like this to cause both a complete disruption of a ventral hernia as well as bilateral inguinal hernias all at the same time. That's pretty unusual, pretty highly unlikely." When asked why, Dr. Boghossian testified "the sheer amount of force it would take to do that is atypical for this type of accident." Finally, he stated that he would have expected Petitioner to complain of pain in the inguinal area if he had sustained a hernia in that area on the date of the accident. RX 1, pp.15-16.

Dr. Boghossian further testified that inguinal hernias can be asymptomatic and can become symptomatic without any incident. RX 1, p. 17. In further opining that the inguinal hernias were not causally related, Dr. Boghossian noted that the June 4, 2013 abdominal and pelvic CT scan did not show evidence of an inflammatory response "like he had just torn it." RX 1, p. 23. The CT covered the groin area and no inguinal adenopathy was shown on CT. RX 1, p. 24. Finally, on cross, Dr. Boghossian testified that Petitioner's inguinal hernias could be "indirectly" related in that the pre-existing hernias were worsened by the traumatic event such that they were "ready to go." RX 1, p. 25. However, he maintained his opinion that he did not think any pre-existing hernias were aggravated by this accident in that he thought "… he would have complained of pain." RX 1, p. 26.

CONCLUSIONS OF LAW

The above findings of fact are incorporated into the following conclusions of law.

F. Is Petitioner's current condition of ill-being being the inguinal hernia causally related to the injury of May 31, 2013? K. Is Petitioner entitled to prospective medical care?

Petitioner testified that he did not experience abdominal or groin pain prior to May 31, 2013. On that date it is uncontested that he sustained a work related accident while lifting boxes. Petitioner testified that he immediately saw a bulge and felt pain in his upper abdominal area between the sternum and belly button. At the ER, Petitioner complained of pain only in the upper abdominal area and was diagnosed with a ventral hernia. Only the ventral hernia was confirmed by the CT scan performed of Petitioner's abdominal and pelvic areas. The Arbitrator notes that Petitioner's inguinal hernias were neither noted nor diagnosed at the ER or by Dr. Gibson. Petitioner did not complain to the ER or to Dr. Gibson of groin pain during his initial and urgent treatment of the ventral hernia.

Petitioner testified at trial that he first felt pain in the groin area about two weeks after his surgery which took place on June 21, 2013. He testified that he felt the groin pain after he stopped taking the pain medication following the first surgery. Petitioner's first complaint of right groin pain to Dr. Gibson was around this same two week time frame specifically on July 9, 2013 when the right inguinal hernia was diagnosed and Dr. Gibson recommended surgery.

The Arbitrator finds that the failure to report immediate pain or symptoms in the groin area does not mandate a finding of no causal connection for the right inguinal hernia. In so finding, the Arbitrator places greater weight on the facts that Petitioner did not suffer any groin pain prior to the accident of May 31, 2013, did not perform lifting or sustain any accident or injury after his surgery while off work, and complained of right groin pain a short time after his accident and surgery during the recovery period. The Arbitrator finds that Dr. Boghossian's opinion on causal connection is outweighed by these facts and that Petitioner's right inguinal hernia and need for surgery are causally related to his accident of May 31, 2013.

Accordingly, the Arbitrator finds that Petitioner's current condition of ill-being in the form of his right inguinal hernia is causally related to the accident of May 31, 2013 and that Respondent shall authorize and pay for the surgery recommended by Dr. Gibson and its attendant care pursuant to Sections 8 and 8.2 of the Act.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Petra Estala,

Petitioner,

vs.

NO. 12 WC008809

Slipmate Inc.,

Respondent.

15IWCC0986

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, medical expenses, causal connection, notice, permanent disability, and temporary disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 5, 2015 is hereby affirmed and adopted.

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.

15IWCC0986

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $60,000.00. 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: DEC 2 4 2015
SJM/sj
o-10/29/15
44

Stephen J. Mathis

Mario Basurto

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ESTALA, PETRA
Employee/Petitioner

Case# **12WC008809**

15IWCC0986

SLIPMATE INC
Employer/Respondent

On 1/5/2015, 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 0.13% 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:

4484 MARK SILVERMAN LAW OFFICE
225 W WASHINGTON ST
SUITE 2200
CHICAGO, IL 60606

2837 LAW OFFICES JOSEPH MARCINIAK
BRENT HALBILEB
TWO N LASALLE ST SUITE 2510
CHICAGO, IL 60602

15IWCC0986

STATE OF ILLINOIS)
)SS.
COUNTY OF Du Page)

☐ 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

Petra Estala
Employee/Petitioner

v.

Slipmate, Inc.
Employer/Respondent

Case # 12 WC 8809

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 **Brian Cronin**, Arbitrator of the Commission, in the city of **Wheaton**, on **April 4, 2014**. 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 **8-1-2011**, 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 $**24,128.00**; the average weekly wage was $**464.00**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **0** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent is entitled to a credit of $**147,681.88** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $**309.33**/week for **15-1/7** weeks, commencing **8-2-2011** through **11-15-2011**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from **8-2-2011** through **11-15-2011**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay Petitioner permanent partial disability benefits of $**278.40**/week for **200** weeks, because the injuries sustained caused the **40%** loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay all reasonable and necessary medical bills that are related to the August 1, 2011 accidental injury to Petitioner's lumbar spine at L4-S1, in accordance with the Court's holding in Tower Automotive v. Illinois Workers' Comp. Comm'n, 943 N.E.2d 153, 347 Ill. Dec. 863 (1st Dist. 2011). Respondent shall be given a credit of $**147,681.88** for medical benefits that have been paid, as provided in Section 8(j) of the Act.

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

January 1, 2015
Date

ICArbDec p. 2

JAN 5 – 2015

ADDENDUM

FINDINGS OF FACT:

Petitioner testified that she was employed by Respondent from 1989 until August 1, 2011. Petitioner alleges her injuries were caused by repetitive trauma and the Application for Adjustment of Claim lists August 1, 2011, Petitioner's last day worked, as the accident date.

Petitioner described her work for Respondent over the last ten years as consisting of lifting items to check them before packing them into boxes for shipping or loading onto a cart, which she pushed to or from her work table.

Petitioner testified she worked 40 hours per week, eight hours per day, standing all day, with one fifteen-minute break and a thirty-minute break for lunch. Petitioner denied that she was given a second fifteen-minute break in the afternoons, except when it was very hot.

Petitioner further testified that she also spent some time sanding and applying tape to parts. Petitioner picked up most items for packing from the floor to place on the carts. Petitioner testified to having to bend, lift, and pull the parts from a cart about a foot above floor level and place them on the table in front of her before getting packaged with other parts. Petitioner testified to working on some Saturdays, and also to carrying fifteen pounds of work home with her about six times in 20 years. Petitioner testified that the job duties she described were the same for at least the last ten years of her employment.

Petitioner recalled that a typical work day would entail packing pieces into ten pound bags and then packing the ten-pound bags into forty-pound boxes. Petitioner would then lift each box to weigh on a scale before removing the box from the scale to load onto a cart to be taken for shipping. Petitioner would place between 13 and 20 boxes on each cart before the cart was moved. Sometimes another employee would push away the cart once Petitioner had filled it with boxes.

Petitioner recalled other kinds of jobs where she loaded and pushed the cart. On jobs with metal airplane toilet bowls, Petitioner loaded the parts onto the carts and pushed the cart to an oven where a treatment was applied. The toilet bowls weighed fifteen to eighteen pounds each. Petitioner testified she would place approximately twenty bowls onto each cart. Petitioner testified that the carts were extremely heavy; the wheels on the carts sometimes stuck and were hard to push. Petitioner's one-way trip pushing a loaded cart took her eight minutes. After she delivered the loaded cart, Petitioner returned to her work table and began loading another cart.

Petitioner testified that she was in charge of packing prepared food to ship to hospitals, which took about one hour per day. Petitioner packed multiple wooden boxes weighing fifteen to twenty pounds that were removed by another employee.

Petitioner also testified to lifting and packing heavy blades weighing up to sixty-five pounds apiece. Petitioner testified she would perform this job two to three times per month. Petitioner stated that this task required that she lift three or four of these large blades as well as a greater number of smaller blades. Petitioner recalled other jobs lifting pistons, plaques, and plates weighing forty to forty five pounds apiece.

The Arbitrator has reviewed photographs that were admitted as Petitioner's Exhibit 6a-d, which showed the carts, and types of metal plates and parts with which Petitioner worked. Respondent also introduced photos that showed Petitioner's work table and the carts. Respondent's Exhibit 5.

Respondent's witness Elio Martinez testified that he was Petitioner's direct supervisor. He supervised eight people including Petitioner. He described Petitioner's job as inspecting and packing and confirmed that her job

duties had been the same for the last ten years of Petitioner's employment. Martinez testified Petitioner would lift each part from her table to a pallet, or from her table to a cart. The cart would be about three to four feet from the table. Martinez further testified that Petitioner would have to bend over to reach parts on the bottom rack of a cart that was only a foot and a half above the floor, and that Petitioner would then have to push the cart to a spray booth area.

Martinez also testified that the airplane toilet bowls that Petitioner packed weighed only seven to eight pounds each, but acknowledged Petitioner would have loaded twenty bowls onto each cart before moving the cart. Martinez testified that for each bowl, Petitioner would take it off the oven cart, put it on her table, dust it, sand the inside, pick it up again and place it back on the cart. Martinez testified that this process was repeated three times for each part and estimated that it would take one to two hours to complete each cart.

Martinez testified that Petitioner would not usually be required to push loaded carts, but he admitted he saw Petitioner pushing carts by herself.

Martinez testified that the heaviest box Petitioner would be required to load for shipping was fifty pounds. He further testified that the heavy blades that Petitioner was sometimes required to lift also weighed also weighed fifty pounds each. Martinez stated that for anything weighing over forty or fifty pounds, Petitioner would need help. Martinez did not testify that Petitioner got help lifting things forty to fifty pounds or more. Instead, Martinez admitted he had seen Petitioner lifting something heavy herself, and would tell her to get some help.

On cross-examination, Martinez told Petitioner's counsel that the average weight of an item that Petitioner would have lifted at work was thirty pounds. He further testified that Petitioner's job is not a physically easy job, and that it's a medium-duty job.

On re-direct examination, Martinez reduced the average weight that Petitioner would have lifted at work to twenty pounds.

Regarding her physical condition, Petitioner admitted that she had pre-existing back pain dating back to 2000.

The medical records indicate that Petitioner's family doctor, Dr. Panitch, noted back pain in November 2000. She had an MRI of her lower back in October 2002. That MRI was positive for L4-5 disc bulging and spinal stenosis. She was placed on work restrictions related to her back condition in February 2003. She had a fall in the winter of 2007 and was treated for back pain and had physical therapy in 2007.

In October 2009, Petitioner complained to Dr. Panitch of back pain and numbness and heaviness in her legs and pain in radiating down the right leg. She was prescribed physical therapy at that time.

Petitioner was again seen by Dr. Panitch in September 2010. She complained of back pain. Dr. Panitch noted that the pain radiated down petitioner's right leg and medication and physical therapy has proved unsuccessful. Dr. Panitch referred the Petitioner to Dr. Xie, a pain specialist.

On September 11, 2010, Petitioner first saw Dr. Xie. She gave a history of having had lower back pain and lower extremity pain for many years, but stated that over the last 7 to 8 months, the pain had progressively worsened and had become constant. Petitioner rated her subjective pain that day as 10 out of 10. She stated that standing, walking, bending, lifting and even lying down increased the pain. Dr. Xie's impression was that Petitioner had chronic lower back pain and lower extremity radicular pain, lumbosacral degenerative disc disease, spinal stenosis and facet arthropathy. Dr. Xie ordered the Petitioner undergo an MRI of the lumbar spine.

At the time of this initial visit, Petitioner also told Dr. Xie that she worked full time in a factory and that her job required repeated lifting of objects weighing sixty to seventy pounds at least seven to eight per day. Petitioner's Exhibit 4.

The MRI of October 6, 2010 revealed diffuse lumbosacral spondylosis with degenerative disk disease, septal bulging disc from L1-4, mild stenosis at L2-3 and L 3-4, grade 1 degenerative spondylolisthesis at L4 on L5, and other degenerative findings.

Following the MRI, the petitioner underwent injections with Dr. Xie. Those injections were delayed because petitioner had to return to Mexico first because her mother died. She then underwent injections on November 22, 2010, followed by a bilateral L2-5 medial branch nerve block on December 9, 2010 and then again on January 22, 2011.

According to Dr. Panitch's office note dated May 21, 2011, Petitioner did not think the injections were helping. Petitioner's Exhibit 3.

On June 11, 2011, Petitioner saw Dr. Panitch again to "follow up on labs." At that time, Dr. Panitch noted that Petitioner "feels overall OK." He also referred her to Dr. Laich, a neurosurgeon who is affiliated with the Chicago Back Institute. Petitioner's Exhibit 3.

Petitioner testified that in the last two weeks of June 2011, her back pain worsened and she started noticing swelling around her spine when she was packing and pushing carts at work. She noticed her pain would increase by 1:00 p.m. and was worse when carrying boxes. Petitioner testified that she told her supervisor Martinez about her back pain, and also Katrina and Anna in the office on June 21, 2011.

On July 1, 2011, Petitioner had a lumbar CT scan, which was reviewed by a back surgeon Dr. Laich on July 8, 2011. Respondent's Exhibit 2. On July 8, 2011, Dr. Laich recommended that Petitioner undergo back surgery, which he scheduled for August 9, 2011. Respondent's Exhibit 2. Petitioner testified that she kept working at her same job after surgery was recommended, until August 1, 2011, because she was afraid she would lose her job.

On August 9, 2011, Petitioner underwent an L4-L5 and L5-S1 anterior decompression and fusion surgery. Respondent's Exhibit 1. On October 4, 2011 Petitioner underwent a left L4-L5 laminectomy, bilateral L4-L5 foraminotomies, bilateral L4-L5 decompression, and L4-L5 arthrodesis. Dr. Laich performed the surgeries.

Petitioner was examined by Dr. Jeffrey Coe on July 14, 2012. Petitioner's Exhibit 1. Respondent and Petitioner both waived hearsay objections to the reports of Dr. Coe and Respondent's Section 12 physician, Dr. Jay Levin. Dr. Coe reviewed Petitioner's treatment records and performed a physical examination.

Dr. Coe opined that Petitioner suffered repetitive strain injuries to her lower back in her work as an inspector at Slipmate, Inc. (including the requirement of moving material weighing 50 to 70 pounds). The repetitive strain injuries were a factor in aggravating degenerative disc disease and degenerative arthritis in Ms. Estala's lumbar spine and caused both acute and chronic lumbar discogenic, facetogenic and myofascial pain with left lumbar radiculopathy symptoms." Petitioner's Exhibit 1.

Respondent also had Petitioner examined by Dr. Jay Levin on March 27, 2013. Dr. Levin also reviewed Petitioner's medical records and Petitioner's lumbar spine images. Dr. Levin prepared a first report dated April 25, 2013. Dr. Levin disagreed with Dr. Coe and opined: "Based on the job video that I have reviewed there is no relationship between her low back condition and any repetitive activities she performs at work. Her back

complaints are part of the aging process including genetic factors in her family. The job video that I reviewed has activities less than activities of daily living." Respondent's Exhibit 1.

In his report, Dr. Levin says the job video shows [a person] using a brush in her right hand and holding the cassette devise device with her left arm. She also is seen opening a can of alcohol and using this alcohol followed by using an air hose to clean the cassette. She follows this by continuing to wipe down the cassette and then placing it in the plastic bag. She then packs it into a box and places it on a pallet." Respondent's Exhibit 1.

Dr. Levin concludes that "Evidence based medicine does not support her video job description on a chronic basis as a causative basis for her need for surgical intervention." Respondent's Exhibit 1.

Respondent did not submit the video viewed by Dr. Levin into evidence. Dr. Levin's office did not provide the video or job description in its March 4, 2014 response to Petitioner's subpoena that request "correspondence, photographs, videotapes and recordings of any kind relied on in formulating any opinions by Dr. Jay Levin." Petitioner's Exhibit 2.

CONCLUSIONS OF LAW:

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

"An employee's injury is compensable under the Act only if it arises out of and in the course of his employment. 'In the course of' employment refers to the time, place and circumstances under which the accident occurred. 'For an injury to 'arise out of' the employment its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury.' Additionally, an injury arises out of the employment if the claimant was exposed to a risk of harm beyond that to which the general public is exposed." City of Springfield v. Ill. Workers' Comp. Comm'n, 388 Ill. App. 3d 297, 313-314 (4th Dist. 2009) (internal citations omitted).

Based upon the preponderance of the evidence, including Petitioner's testimony along with that of Respondent's witness, Elio Martinez, the Arbitrator finds that Petitioner's job did pose a risk from lifting and pushing weights greater than that to which the general public is exposed. Although Petitioner had a long-standing history of back pain complaints and conservative treatment, she was able to work her same job without restrictions until the last day of her employment, August 1, 2011.

"A claimant is not required to prove that employment was the sole or principle cause, but only that the employment was a causative factor." Palos Elec. Co. v. Industrial Comm'n, 314 Ill. App. 3d 920, 926 (1st Dist. 2000).

Petitioner testified that she noticed swelling around her spine after lifting and pushing at work in the second half of June, 2011, and that her pain became worse at this time. Shortly afterwards, on July 8, 2011, back surgery was first prescribed for Petitioner. Respondent's Exhibit 2.

The Arbitrator concludes that Dr. Levin's opinion is not persuasive in this instance because he relied on a video that was never offered into evidence. Moreover, based on Dr Levin's description of what was depicted in the

video, it did not show any of the lifting or pushing that Petitioner testified were part of her job duties, as confirmed by Respondent's witness, Elio Martinez. Dr. Levin's opinion that Petitioner's work required "less than activities of daily living" (Respondent's Exhibit 1) is not consistent with Petitioner's testimony or that of Respondent's witness, Elio Martinez.

The Arbitrator relies on the opinion of Dr. Coe that Petitioner "suffered repetitive strain injuries to her lower back in her work as an inspector at Slipmate, Inc. (including the requirement of moving material weighing 50 to 70 pounds)." Although the average weight lifted by Petitioner was said to be only 30 pounds by Martinez, Martinez also testified that Petitioner would load packages up to 50 pounds, and push carts with 20 metal toilet bowls weighing 7-8 pounds each (140-160 pounds). Dr. Coe's opinion is based on a more accurate description of Petitioner's job duties than Dr. Levin's opinion.

"[T]he date of an accidental injury in a repetitive-trauma compensation case is the date on which the injury 'manifests itself.' 'Manifests itself' means the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." Peoria County Belwood Nursing Home v. Industrial Com., 115 Ill. 2d 524, 531 (1987).

"Where the relationship of the repetitive-trauma injury to the employment is acknowledged by respondent as well as the fact claimant continued to perform his duties until the day prior to the surgery required to correct the condition, the Industrial Commission could reasonably determine the last day claimant worked was the date of accident." Palos Elec. Co. v. Industrial Comm'n, 314 Ill. App. 3d 920, 930 (1st Dist. 2000). The date of accident is a question of fact for the Commission to determine. Id.

Petitioner asserts an August 1, 2011 date of accident in her Application for Adjustment of Claim. Petitioner worked at full duty until that date, her last day. Her back surgery was a week later on August 9. Respondent's Exhibit 2.

The Arbitrator finds that Petitioner did sustain a repetitive trauma accident arising out of and in the course of her employment for Respondent on August 1, 2011.

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

Petitioner testified that in the last two weeks of June 2011, her back pain worsened and she started to notice swelling around her spine after lifting. Petitioner testified that on June 21, 2011, she told her supervisor Elio Martinez that her back hurt very badly. Petitioner testified that she told Martinez that she was going to have back surgery because of the weight from lifting everything. Petitioner also testified in the last two weeks of June, 2011, she told Katrina, who works in the office, and Anna, in the shipping department, that she had to have surgery because of lifting the heavy stuff.

Petitioner's immediate supervisor Elio Martinez testified for Respondent. He admitted that in June 2011 Petitioner did "say something" to him that her back hurt, but he didn't recall when. Martinez denied that Petitioner told him that her back hurt from working. Martinez said he told Petitioner to modify her working because of her back and to ask someone for help. Martinez also testified that at no time prior to June 2011 did Petitioner tell him that it was her work that caused the pain

Martinez identified "Katrina" as "inside the office" and "Anna" as "like an assistant." Neither Katrina nor Anna testified. Respondent's attorney asked Petitioner if she ever turned in paperwork that her back pain was work related, to which Petitioner answered "No. I only was telling them." Petitioner testified that she

submitted no paperwork in conjunction with this accident, as she is unable to read or speak in English and that her highest level of education was third grade.

Section 6(c) of the Act provides that "Notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident."

The Arbitrator finds that Petitioner did give timely and sufficient notice as required by the Act and finds her testimony to credible.

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

In Illinois, "employers take their employees as they find them. 'When workers' physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment.' Thus, even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor." Sisbro, Inc. v. Indus. Comm'n (Rodriguez), 207 Ill. 2d 193, 205 (2003) (internal citations omitted).

"In cases relying on the repetitive-trauma concept, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability." City of Springfield v. Ill. Workers' Comp. Comm'n, 388 Ill. App. 3d 297, 315 (4th Dist. 2009) (internal citations omitted).

Dr. Coe opined that Petitioner suffered repetitive strain injuries to her lower back in her work as an inspector at Slipmate, Inc. (including the requirement of moving material weighing 50 to 70 pounds). The repetitive strain injuries were a factor in aggravating degenerative disc disease and degenerative arthritis in Ms. Estala's lumbar spine and caused both acute and chronic lumbar discogenic, facetogenic and myofascial pain with left lumbar radiculopathy symptoms." Petitioner's Exhibit 1.

Respondent also had Petitioner examined by Dr. Jay Levin on March 27, 2013. Dr. Levin also reviewed Petitioner's medical records and Petitioner's lumbar spine images. Dr. Levin prepared a first report dated April 25, 2013. Dr. Levin disagreed with Dr. Coe and opined: "Based on the job video that I have reviewed there is no relationship between her low back condition and any repetitive activities she performs at work. Her back complaints are part of the aging process including genetic factors in her family. The job video that I reviewed has activities less than activities of daily living." Respondent's Exhibit 1.

In his report, Dr. Levin says the job video shows [a person] using a brush in her right hand and holding the cassette devise device with her left arm. She also is seen opening a can of alcohol and using this alcohol followed by using an air hose to clean the cassette. She follows this by continuing to wipe down the cassette and then placing it in the plastic bag. She then packs it into a box and places it on a pallet." Respondent's Exhibit 1.

Dr. Levin concludes that "Evidence based medicine does not support her video job description on a chronic basis as a causative basis for her need for surgical intervention." Respondent's Exhibit 1.

Respondent did not submit the video viewed by Dr. Levin into evidence. Dr. Levin's office did not provide the video or job description in its March 4, 2014 response to Petitioner's subpoena that requested "correspondence, photographs, videotapes and recordings of any kind relied on in formulating any opinions by Dr. Jay Levin." Petitioner's Exhibit 2.

The Arbitrator finds that Dr. Coe's opinion is more persuasive because his understanding of Petitioner's job duties is consistent with the testimony of Petitioner and Martinez.

"Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being." Sisbro, Inc. v. Indus. Comm'n (Rodriguez), 207 Ill. 2d 193, 205 (2003).

The Arbitrator finds that Petitioner's current condition of ill-being of her lumbar spine is causally related to the repetitive activities that she performed at work and that manifested itself on August 1, 2011.

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?

The parties placed this issue in dispute. Arbitrator's Exhibit 1. Petitioner claims that Respondent is liable for the unpaid medical bills of Dr. Panitch, Dr. Xie, Dr. Laich and embedded providers related to the two back surgeries and therapy. Arbitrator's Exhibit 1. Yet, Petitioner did not offer into evidence any medical bills by these doctors or providers.

The Arbitrator finds that Petitioner's repetitive lifting and pushing of materials as part of her job duties for Respondent was a causative factor in Petitioner's need for surgery and the subsequent revision surgery.

Respondent subsidized payments by Petitioner for her group health insurance plan through Blue Cross/Blue Shield of Illinois, and it was stipulated that this health insurer paid all of Petitioner's medical bills related to her two surgeries and associated services admitted as Petitioner's Exhibit 5.

"Section 8(a) of the Act entitles a claimant to compensation for all necessary first aid, medical and surgical services and all necessary medical, surgical and hospital services 'thereafter incurred' that are reasonably required to cure or relieve the effects of injury. 820 ILCS 305/8(a)." City of Springfield v. Ill. Workers' Comp. Comm'n, 388 Ill. App. 3d 297, 317 (4th Dist. 2009).

Respondent shall pay all reasonable and necessary medical bills for the care and treatment of Petitioner that was required to cure or relieve the effects of August 1, 2011 accidental injury to her lumbar spine at L4-S1, in accordance with the Court's holding in Tower Automotive v. Illinois Workers' Comp. Comm'n, 943 N.E.2d 153, 347 Ill. Dec. 863 (1st Dist. 2011).

Respondent shall be entitled to a credit for the medical bills paid by Blue Cross/Blue Shield of Illinois in the amount of $147,681.88 for Petitioner's reasonable and necessary medical care, as identified in Petitioner's Exhibit 5, and pursuant to Section 8(j) of the Act.

K. What temporary benefits are in dispute?

Petitioner last worked for Respondent on August 1, 2011. She has never returned to work. Petitioner initially underwent surgery on August 9, 2011, which consisted of an L4-S1 anterior decompression and fusion. On August 12, 2011, Dr. Kekti Modi prescribed five days per week of physical therapy for Petitioner, and use of a walker. Petitioner's Exhibit 4. On August 22 Petitioner appeared at the emergency room for Swedish Covenant Hospital complaining of severe back pain. Petitioner's Exhibit 4. September returned to the Emergency Room again September 12 for the same reason. Petitioner's Exhibit 4. On September 13, 2011, Dr. Laich concluded

that Petitioner required a second back surgery. Respondent's Exhibit 2. On October 4, 2011 Petitioner had a bilateral L4-L5 laminoforaminotomy with in situ fusion. Petitioner's Exhibit 4.

Dr. Levin's report recounts that on November 23, 2011 Dr. Laich concluded that Petitioner "is to remain off work for a minimum of six months due to recuperation post-surgery for bilateral L4-L5 laminoforaminotomy." Respondent's Exhibit 1. Respondent's witness Elio Martinez admitted that Respondent never offered Petitioner any lighter duty work after her last day, August 1, 2011.

Based on the preponderance of the evidence, the Arbitrator finds that Petitioner was totally and temporarily disabled for the period after she last worked, August 2, 2011, through and including November 15, 2011, when she stopped actively treating with her back surgeon Dr. Laich. Therefore Respondent shall pay Petitioner temporary total disability benefits of $309.33/week for 15-1/7 weeks.

L. What is the nature and extent of the injury?

On August 9, 2011, Petitioner underwent an L4-L5 and L5-S1 anterior decompression and fusion surgery. Respondent's Exhibit 1. On October 4, 2011 Petitioner underwent a left L4-L5 laminectomy, bilateral L4-L5 foraminotomies, bilateral L4-L5 decompression, and L4-L5 arthrodesis. Respondent's Exhibit 1.

According to Dr. Levin's report, on November 23, 2011, Dr. Laich imposed the following restrictions upon Petitioner:

> "She should avoid heights, situations requiring balance, fast moving machinery, ladders. She should avoid repetitive/continuous bending or twisting of neck, low back. She should avoid high impact, high exertion activity. She should avoid heavy pushing/pulling and situations where other safety is dependent on this person's quick/agile response. She should avoid exposure to low frequency vibrations such as a truck or heavy machinery operator. She is to remain off work for a minimum of six months due to recuperation postsurgery for bilateral L4-L5 laminoforaminotomy." Respondent's Exhibit 1.

Petitioner has never gone back to work and was awarded Social Security Disability benefits after her second surgery. She testified that she speaks Spanish only, and has a third-grade education. Her only other employment besides respondent was at a Chinese restaurant before she started working for Respondent. As of the hearing date of April 4, 2014, Petitioner said her back pain has gotten slightly better since her surgery. However, she testified that her left leg is numb, she cannot walk very well, cannot wear shoes with heels and cannot bend down to tie her shoes. Furthermore, she testified that it is very hard for her to go up and down stairs.

Based on the preponderance of the evidence, the Arbitrator finds that Petitioner has suffered a loss of use, person as a whole, of 40% thereof, as provided in Section 8(d)2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

☒ 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

Giavonna Lindsey,

Petitioner,

vs. NO. 12WC 6019

David Sewell d/b/a Twisters Elite,

Respondent.

15IWCC0987

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, medical expenses, causal connection, notice, permanent disability, and temporary disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 6, 2015 is hereby affirmed and adopted.

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.

15IWCC0987

Bond for 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: DEC 2 4 2015
SJM/sj
o-12/3/2015
44

Stephen J. Mathis

Mario Basurto

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

LINDSEY, GIAVONNA
Employee/Petitioner

Case# **12WC006019**

15IWCC0987

DAVID SEWELL D/B/A TWISTERS ELITE
Employer/Respondent

On 1/6/2015, 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 0.11% 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:

1836 RAYMOND M SIMARD PC
221 N LASALLE ST
SUITE 1410
CHICAGO, IL 60601

2965 KEEFE CAMPBELL BIERY & ASSOC
SHAWN R BIERY
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

15IWCC0987

STATE OF ILLINOIS)
)SS.
COUNTY OF Lake)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Giavonna Lindsey
Employee/Petitioner

v.

David Sewell d/b/a Twisters Elite
Employer/Respondent

Case # **12** WC **6019**

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 **George Andros**, Arbitrator of the Commission, in the city of **Waukegan, IL**, on **Nov. 24, 2014**. 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. [ ] 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. [ ] 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. [x] 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] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
L. [x] 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 **September 25, 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 $**26,000.00**; the average weekly wage was $**500.00**.

On the date of accident, Petitioner was **24** years of age, ***single*** with **0** children under 18.

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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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 $333.33/week for 6 weeks, commencing November 7, 2011 through December 18, 2011, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $ 0 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of $38,009.91, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $300.00/week for 137.5 weeks, because the injuries sustained caused the 27.5% disability as provided in Section 8(d)2 of the Act.

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.

#01 George T. Andros
Signature of Arbitrator

January 3rd, 2013
Date

JAN 6 - 2015

STATEMENT OF FACTS

GIAVONNA LINDSEY V. DAVID SEWELL D/B/A TWISTERS ELITE 12WC 06019

On September 25, 2011 Petitioner was an instructor at Respondent's training facility for competitive cheerleaders and tumblers. Petitioner testified that on that date she was demonstrating a move called a "forward flip" which involves bending over rapidly when she experienced a sharp pain in her low back which radiated down her left leg. She had difficulty straightening her spine.

Petitioner testified that she immediately told Paulette, her supervisor, that she hurt her back while demonstrating a forward flip. Paulette asked her to try to finish her shift.

Petitioner testified that she injured her low back in June 2008 while teaching a cheerleading class. She went to Good Shepherd Hospital on June 18, 2008 complaining of a left sided low back pain radiating to her left knee. Petitioner denied any numbness. After examination and x-ray, the emergency room physician prescribed muscle relaxers and pain pills. (PX1) Petitioner testified that she did not fill the prescriptions and that everything returned to "normal" after three days. Petitioner testified that she had no medical attention to her low back between June 18, 2008 and September 25, 2011. The records of her family physician, Dr. Luis Planas, were received into evidence and do not contain any low back related complaints during that time period. (PX3)

Petitioner testified that she had recently graduated from nursing school. She was studying for the Board exams required for licensure as a nurse at the time of her accident. Any delay in taking the exam would result in forfeiture of a $200.00 fee and a delay of at least 45 days in licensure. Consequently, she delayed medical care until she could no longer tolerate the left-sided radiating pain and numbness. Self care and monitoring by a nurse in training is logical. Her reasoning underscores credibility.

On October 13, 2011 Dr. Planas recorded complaints of constant shooting pains down left leg and lower back pain which "starting (illegible) bending over several days ago." Petitioner had a left positive straight leg raising test at 30 degrees. Dr. Planas prescribed a Medrol Dose Pak. (PX3).

Petitioner testified that her pain and numbness continued to progress which prompted her to go to the emergency room at Good Shepherd Hospital on October 25, 2011. Petitioner testified that she gave a history of the onset of symptoms following the forward flip to all of the medical personnel. The triage nurse, Sunny Campbell, took the first history at 11:21 a.m. and noted "low back injury 3 weeks ago while teaching cheerleading" (PX2 at metered page 17 of 46).

A second nurse, Erika Russell, noted 8 minutes later at 11:29 a.m. that Petitioner "has a recurring back injury from cheerleading and was bending over and has pain in the lower back." (PX2 at metered page 10 of 46). Finally, at 12:25 p.m., Dr. Giacomin noted that Petitioner's symptoms started greater than a week ago after she " bent over to pick something up". (PX2 at metered page 7 of 46). Petitioner complained of a radiating left lower back pain with numbness that extended to the lateral side of her left foot. Dr. Giacomin ordered intravenous pain and anti-inflammant medication.

Petitioner testified that Dr. Planas referred her to McHenry County Orthopedics. On October 27, 2011, Dr. Patel noted a history of radiating low back pain which began approximately four weeks ago "when she leaned forward." (PX7) Dr. Patel examined Petitioner and ordered an MRI evaluation of the lumbar spine. The MRI performed November 2, 2011 at CDI Lake-in-the-Hills found a large left paracentral disc extrusion compressing the left S-1 nerve root which was enlarged. The disc protrusion also abutted the left S2 nerve root resulting in minimal central canal stenosis. (PX8) Dr. Basran reviewed the MRI and recommended immediate surgery. Petitioner testified that she called Dr. Planas who made arrangements for her to be seen by Dr. Antonio Yuk, a neurosurgeon.

Dr. Yuk examined Petitioner on November 3, 2011 and recorded a history of "low back pain after teaching gymnastics a month ago." (PX Group 4, Vol. 1) Dr. Yuk diagnosed a "significant S1 radiculopathy from L5-S1 disk herniation." Dr. Yuk performed a left L5-S1 microdiskectomy on November 7, 2011 at Centegra Northern Illinois Medical Center (PX5). Petitioner saw Dr. Yuk in follow-up who ordered physical therapy at Accelerated Physical Therapy. At discharge from physical therapy on June 8, 2012, Petitioner had only 75% of a normal range of lumbar flexion and extension. The therapist noted that the limited dorsiflexion in the left foot limited Petitioner's ability to stand and week for a full shift. (PX Group 4 Vol. 2)

Petitioner testified that she currently works as a nurse at Lutheran General Hospital. She spends 75% of her time on her feet while she works shifts ranging from 8 to 16 hours in length. She notices constant low back pain which is exacerbated by strenuous activity such as moving patients. Petitioner attended a Section 12 exam with Dr. Kern Singh who had her complete a questionnaire prior to the examination. Petitioner testified that she indicated that the following activities listed on the questionnaire continue to exacerbate her pain: standing, climbing, stairs, walking, bending forward and riding in a car. The pain wakens her at night. The low back pain radiates to her left foot which is constantly numb on the lateral side. Petitioner also complained of tightness in her left calf which prevents full dorsiflexion of the left foot. Consequently, she walks on the ball of her left foot as her left heel does not strike the floor. Petitioner also complained of atrophy in her left calf.

The Arbitrator viewed the calves of Petitioner from three angles and from distances of 5 to 15 feet. The Arbitrator observed an asymmetry in the size of Petitioner's calf muscles. The asymmetry was exceptionally obvious which included most angles and from just below knee to just above the ankle. Strikingly. Each view showed the different features of said atrophy to the extent of withering in part. The Arbitrator is nothing short of shocked to read Dr. Singh commentary regarding this condition ever so observable to a lay person at distance in the weak lighting in a courtroom hallway masked in backlight from a a window.

Petitioner testified that she was authorized off work by Dr. Yuk from November 8, 2011, the day after surgery, through December 18, 2011. Petitioner began part-time work in a mortgage office on December 19, 2011.

Petitioner testified that her mother's group insurance carrier paid a portion of her medical bills. Respondent offered no evidence of entitlement to any credit pursuant to section 8(j) of the Act. Petitioner offered the following bills which, with the exception of PX11, were adjusted to the fee schedule:

PX11	Luis Planas, MD	$ 113.00 ($35.00)
PX12	Good Shepherd Hospital	$ 1,502.52
PX13	Antonio Yuk, MD	$ 9,915.00
PX14	Centegra Northern Illinois Medical Center	$ 273.98
PX15	Centegra Northern Illinois Medical Center	$ 6,740.13
PX16	Center for Diagnostic Imaging	$ 1,282.86
PX17	McHenry County Orthopedics	$ 168.80
PX18	Accelerated Rehabilitation	$ 15,809.55
PX19	Anesthesia Associates	$ 1,511.92
PX20	Tri-County Emergency Physicians	$ 258.34
PX21	Moraine County ER Physicians	$ 258.34
PX22	McHenry County Radiologists	$ 43.00
PX23	Lake County Pathology	$ 132.47
	Total:	$ 38,009.91

Dr. Antonio Yuk, a board certified neurosurgeon, testified that the forward flip move being demonstrated by Petitioner had the potential of injuring her back. (PX9 at p. 7). At the initial exam of November 7, 2011 he found straight leg raising to 30 degrees, weakness of the left foot plantar flexion, an absent left ankle jerk and a sensory examination consistent with an S1 nerve root impairment. (PX9 at p. 8). Dr. Yuk testified that the sudden flexion of the back caused the disk herniation leading to a significant S1 radiculopathy that required surgical treatment.

Dr. Yuk opined that the herniated disc which he visualized during surgery was relatively acute or new because of its size and the absence of tenacious fibrous material encasing the disk. (PX9 at p. 11). The Arbitrator adopts his opinions in total in the Award.

Dr. Kern Singh, a board certified orthopedic surgeon, examined Petitioner pursuant to section 12 of the Act on August 19, 2013. The examination revealed a normal neurological examination with full strength and no neurological deficits. (RX1 at p. 10). Dr. Singh found no evidence of symptom magnification. (RX1 at p. 12).

Prior to the examination, Dr. Singh reviewed the records of Dr. Planas, Good Shepherd Hospital, Dr. Patel, Dr. Yuk and of Concentra Hospital. Dr. Singh opined that there was no causal connection between the herniated disc at L5-S1 and the alleged accident of September 25, 2011 because of the history of bending over to pick up something recorded by Dr. Giacomin was a discrepancy from the cheerleading history provided to him by Petitioner. (RX1 at p. 12).

On cross-examination, Dr. Singh stated that the forward whip (or flip) described by Petitioner would be a plausible cause for a herniated disc and if he were shown that such caused the onset of symptoms his opinion on causal connection would change. (RX at p. 14-15). Dr. Singh further testified that he has not seen any indication that Petitioner received any care to the low back in the records of Dr. Planas which date back to April 21, 2009. (RX1 at p. 16). Dr. Singh relied upon Dr. Giacomin's note at 12:25 p.m. on November 3, 2011 to base his opinion that Petitioner's symptoms started when she bent over to pick up something off the floor. (RX1 at p. 17).

Dr. Singh testified that he performs five to six section 12 examinations per week and that it is his practice to send a "quick report" on the date of examination. Dr. Singh authenticated his signature on the quick report (PX Group 10, Ex. F) which he sent to Respondent's representative on August 19, 2013. (RX1 at p. 24). Dr. Singh acknowledged that he stated on the quick report that a causal connection existed between the accident and the condition of ill-being. Dr. Singh testified that Petitioner did not complain to him of numbness at the time of examination (RX1 at p. 19) but he agreed that she did complain of numbness in the questionnaire provided prior to the examination. (RX1 at p. 21) His report made no comments about her gait and he did not test the heel/toe gait because she had full strength which by definition means normal heel/toe gait (RX1 at p. 23). He did not assess her lumbar range of motion. (RX1 at p. 23)

In this particular case the Arbitrator does not find the opinions of Dr. Singh to be persuasive. Morever, the Arbitrator finds Dr. Singh's lack of findings regarding the atrophy to show lack of credibility, a designation this Arbitrator rarely uses in Awards regarding physicians' expressing medical opinions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
GIAVONNA LINDSEY V. DAVID SEWELL D/B/A TWISTERS ELITE 12WC 06019

C. IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING THE QUESTION OF WHETHER AN ACCIDENT OCCURRED WHICH AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS THE FOLLOWING FACTS AND MAKES THE FOLLOWING FINDINGS:

The Arbitrator has reviewed the documentary evidence and has carefully considered the testimony of Petitioner which the Arbitrator finds to be credible. Her explanation regarding her prior care, her athletic endeavors, the mechanics of the accident, her seemingly dedication to her training of young athletes and perseverance to conclude her licensure for nursing resulting in a delay in treatment are all adopted. Those variables were presented logically, articulately and subject to very insightful cross examination withstood by the Petitioner. She answers all inquiry quickly and forthright in her explanation.

Petitioner testified that she experienced an acute and radiating low back pain while demonstrating a "forward flip" maneuver. Petitioner, while hunched over in pain, reported this accident immediately to Paulette, her supervisor, and Joe, a co-worker. Respondent presented no witnesses to rebut Petitioner's testimony.

The medical records support a finding of accident. The histories obtained by Dr. Planas (PX3), nurses Campbell and Russell (PX2), Drs. Patel and Basran (PX7) and Dr. Yuk (PX Group 4) all reference an acute onset of symptoms while "bending over and/or coaching cheerleaders." The history recorded by Dr. Giacomin (PX2) is inconsistent with the history obtained by nurses Campbell and Russell an hour earlier at the same hospital and those obtained by the four physicians listed above.

The Arbitrator finds as a matter of fact and law that Petitioner sustained an accidental injury arising out of and in the course of her employment by Respondent on September 25, 2011.

E. IN SUPPORT OF THE ARBITRATOR'S DECISION ON THE ISSUE OF WHETHER PETITIONER GAVE TIMELY NOTICE OF AN ACCIDENT TO RESPONDENT, THE ARBITRATOR MAKES THE FOLLOWING RULING:

Respondent did not offer any rebuttal evidence to Petitioner's testimony that she reported her accident immediately to Paulette, her supervisor. The Arbitrator finds that as a matter of fact and law that Petitioner gave timely notice of her accident to Respondent.

F. IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING THE QUESTION OF WHETHER PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE ACCIDENT, THE ARBITRATOR FINDS THE FOLLOWING FACTS AND MAKES THE FOLLOWING RULINGS:

Petitioner testified that her symptoms from a low back injury on June 18 resolved in three days. There is no evidence of any medical care to the low back between that date and the date of accident in this matter. Dr. Yuk testified that the herniated disk which he visualized in surgery was not encased in fibrous tissue and appeared to be relatively of recent and acute origin. (PX9 at p. 11)

The Arbitrator finds that the testimony of Dr. Yuk on the issue of causal connection is more persuasive than that of Dr. Singh who based his opinion of no causal connection entirely on the isolated history obtained by Dr. Giacomin. Dr. Singh also never explained the discrepancy between his deposition testimony on the issue of causal connection and the opposite conclusion on causal connection stated on his quick report. (PX10 Exh. F) Dr. Singh agreed that the forward flip was a plausible mechanism of injury and that his opinion on causal connection would change (again) if that were determined to be the mechanism of injury.

The Arbitrator finds that as a matter of fact and law that a causal connection exists between the accident of September 25, 2011 and the present condition of ill-being of Petitioner.

J. IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO THE QUESTION OF WHETHER RESPONDENT IS LIABLE FOR ANY REASONABLE AND NECESSARY MEDICAL SERVICES RECEIVED BY PETITIONER, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner seeks payment of thirteen medical bills which were received an evidence over Respondent's general objection as to liability. The bills total $38,009.91 and were received into evidence as Exhibits 12 through 23.

Dr. Yuk testified that the medical treatment he rendered was reasonable and necessary to relieve the effects of the accident. (PX9 at p. 18) Dr. Singh agreed that the care rendered to Petitioner was reasonable (RX1 at p. 12)

The Arbitrator finds as a matter of fact and law that Petitioner incurred $38,009.91 (PX12 through 23) in reasonable and necessary medical, hospital and surgical expenses.

K. IN SUPPORT OF THE ARBITRATOR'S FINDING RELATING TO WHAT TEMPORARY TOTAL DISABILITY BENEFITS ARE IN DISPUTE, THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The Arbitrator finds as a matter of fact and law that the Petitioner was temporarily totally disabled for a period of 6 weeks, that being November 8, 2011 through December 18, 2011.

Dr. Yuk testified that Petitioner was unable to work during that period of time. Petitioner testified that she found sedentary work beginning on December 19, 2011.

L. IN SUPPORT OF THE ARBITRATOR'S FINDING ON THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR MAKES THE FOLLOWING FINDINGS:

The accident in this matter occurred on September 25, 2011 and the Arbitrator has considered the five factors enumerated in section 8.1 b of the Act in determining permanent partial disability.

(i) the reported level of impairment pursuant to section 8.1 of the Act
Neither party submitted an impairment rating pursuant to the AMA Guidelines.

(ii) the occupation of the injured employee.
Petitioner was working as a cheerleading coach at the time of the accident but was scheduled to take the licensing examination to become a nurse. Petitioner was employed as a nurse at the time of arbitration. She testified that she works shifts of 16, 12 or 8 hours and spends 75% of that time on her feet. She must lift patients and move equipment. The Arbitrator finds that Petitioner has a strenuous occupation.

(iii)the age of the employee at the time of the injury.
Petitioner was 24 years old at the time of her injury. In Sandra Axtell vs. Baxter 14 IWCC 543, the Commission reduced an award of permanent partial disability finding "Petitioner was 58 years of age at the time of the injury and so has to work with her disability for a relatively short period of time". In this matter, Petitioner was 24 years of age at the time of the injury. She has a work life expectancy of over 40 years before full retirement.

(iv) the employee's future earning capacity
Petitioner is currently working full time as a nurse at Lutheran General Hospital. There is no evidence as to her current earnings.

(v)Evidence of disability corroborated by treating medical records.

Petitioner complained at arbitration of a decreased lumbar range of motion, low back pain radiating to her left leg which is exacerbated by activity, numbness in the L5-S1 distribution on the lateral side of her left foot, tightness in her left calf and heel so that her left foot does not fully dorsiflex when she ambulates. She walks on the ball of her left foot and that her left heel does not strike the floor. She also complained of atrophy in the left calf.

The treating records corroborate her subjective complaints. Dr. Yuk noted a tight left heel core on April 16, 2012 when he last examined Petitioner. Her left ankle was tight which did not allow her heel to strike the floor. (PX9 at p. 16). Dr. Yuk noted complaints of numbness in the left foot. Upon discharge from physical therapy on June 8, 2012, the therapist noted an early left heel rise upon ambulation. The dorsiflexion of the ankles was assessed as -7 degrees left, 5 degrees right. Lumbar flexion and extension were found to be at only 75% of the normal range of motion. The therapist noted that the range of motion deficits on examination of the left ankle correlated to the range of motion deficits seen on ambulation.

Although the therapist found that progress had been made in gaining dorsiflexion of the left ankle and achieving a normal heel toe gait, the therapy goals were not achieved. The therapist concluded that the limited left foot dorsiflexion limited Petitioner's ability to stand and walk for a full shift. The Petitioner's complaints of atrophy in the left calf were consistent with the Arbitrator's observation of an asymmetry in the calf muscles of Petitioner.

Based upon the nature of the injury sustained, the strenuous nature of Petitioner's current occupation, her age, her long work life expectancy, the objective findings & correlation to the records and the credible subjective complaints, the Arbitrator finds as a matter of fact and law that Petitioner has sustained a 27.5% loss of use of the person-as-a-whole pursuant to section 8(d)2 of the Act.

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 Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Karen K. Izydorski,

Petitioner,

vs. No. 09 WC 26088

School District 111,

Respondent.

15IWCC0988

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the parties herein and proper notice given, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary disability, permanent disability, penalties and attorney fees, and being advised of the facts and law, reverses the Decision of the Arbitrator for the reasons stated below.

On June 22, 2009, Petitioner filed an application for adjustment of claim alleging that on December 11, 2008, she sustained accidental injuries to her arms, legs and back when she slipped and fell. Petitioner testified that she worked for Respondent part-time as a "noon-hour supervisor" at an elementary school. Her job duties included assisting students during lunchtime and recess. She also performed clerical duties. On December 11, 2008, Petitioner was injured when she fell on snow and ice in the school parking lot as she was returning to school from CPR training. Petitioner explained the CPR class was held in the nearby administration building. Respondent required her to take the class. Petitioner was walking with a fellow noon-hour supervisor, Melinda Augustyniak, when she fell. Petitioner maintained the route she took, across the parking lot, from the administration building to the school building was the only route available. The parking lot was used by the school staff and the students' parents.

Melinda Augustyniak testified that Respondent required her and Petitioner to go to the administration building to take a CPR class. Petitioner fell in the parking lot while the two of them were returning from the CPR class. The parking lot was used by Respondent's employees and individuals who came to pick up children. Ms. Augustyniak echoed Petitioner's testimony that the only way to get from the administration building to the school building was through the parking lot. However, on cross-examination Ms. Augustyniak admitted that when she and Petitioner walked from the administration building back to the school building, they took the sidewalk that ran parallel to the street before cutting across the parking lot.

Principal Charles Roza testified that he was unsure whether the CPR class was required. Regardless, noon-hour supervisors took the CPR class on company time, as it was of benefit to Respondent. After completing the class, noon-hour supervisors were to return to the school building and punch out for the day. Petitioner was on her way to punch out for the day when the accident occurred.

The Arbitrator found Petitioner's claim compensable. Respondent contends the accident is not compensable because it did not arise out of Petitioner's employment, as there is no requisite nexus between the employment and the fall. Respondent argues the appellate court decision in Wal-Mart Stores, Inc. v. Industrial Comm'n, 326 Ill. App. 3d 438 (2001) is controlling. Petitioner, on the other hand, relies on Suter v. Workers' Compensation Comm'n, 2013 IL App (4th) 130049WC, and favorable cases cited therein. Both Wal-Mart and Suter involved a fall on ice in a parking lot.

In Wal-Mart, the appellate court held the fall did not arise out of the claimant's employment, explaining:

> "[T]he entire Wal-Mart parking lot was available for use by both patrons and employees alike. [The claimant] did not park her own car in the lot that night. Although [the claimant's roommate] was waiting for [the claimant] in the section of the lot in which employees were asked to park, [the roommate] was not an employee, and there was no evidence that anyone, including [the claimant], asked her to park there. [The claimant's] fall resulted from a hazard to which she and the general public were equally exposed; thus, her injury did not arise out of her employment.
>
> [The claimant] cites Hiram Walker & Sons, Inc. v. Industrial Comm'n, 41 Ill. 2d 429, 430-31 (1968), and American Electric Cordsets v. Industrial Comm'n, 198 Ill. App. 3d 87, 91 (1990), for the proposition that the Act 'covers parking lot accidents caused in part by ice or other slippery substances on the lot.' However, both of these cases are distinguishable. There was no evidence in Hiram Walker that the parking lot in question was available for regular use by the general public, and the court in American Electric Cordsets specifically found a lack of evidence to support the employer's argument that the lot was regularly used by the general

> public. See American Electric Cordsets, 198 Ill. App. 3d at 91. Thus, the employees and the general public in those cases were not exposed to the same hazards. Here, both employees and patrons had equal access to the entire lot.
>
> *** Both [the claimant] and every member of the general public were free to park anywhere in the lot. [The claimant's] employment at Wal-Mart did not place her in any special position *vis-a-vis* the general public in that lot." Wal-Mart, 326 Ill. App. 3d at 444-45.

Compare Mores-Harvey v. Industrial Comm'n, 345 Ill. App. 3d 1034, 1042 (2004) ("[C]laimant parked her car before the start of her shift in an area designated by employer for employee parking. Although the general public was free to park anywhere in the lot, claimant's choices were restricted. Therefore, claimant's exposure to risk was necessarily greater than that of the general public. ¶ We disagree with employer's contention that the presence of snow and ice in the entire lot compels the conclusion that claimant did not face any risks to a greater extent than other persons. By restricting where claimant could park her vehicle, the employer exercised control over its employees' actions. In this way, the employee faced risks to a greater extent than the general public").

Suter, like Mores-Harvey, is distinguishable from Wal-Mart. In Suter, the appellate court found the claimant's injuries arose out of her employment, where she slipped and fell on ice in the employer-furnished parking lot as she exited her car and closed the car door. The claimant was assigned a specific parking space in one of the lots available for employee parking. Neither the parking lot, nor the parking spot, was available to the general public.

The appellate court has never modified its analysis in Wal-Mart. The facts of the instant case are very similar to those in Wal-Mart. Petitioner slipped and fell on ice while walking through Respondent's parking lot. The parking lot was used by Respondent's employees and members of the general public. Although Petitioner testified she had to cross the parking lot to get from the administration building to the school building, the evidence shows she could have used a sidewalk. Indeed, Ms. Augustyniak testified she and Petitioner took the sidewalk before cutting across the parking lot. Respondent played no role in Petitioner's choice of what route to take. Accordingly, the Commission finds that Petitioner failed to prove her injuries arose out of her employment, and denies the claim.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 17, 2015, is hereby reversed and Petitioner's claim is denied.

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

15IWCC0988

No bond is required for removal of this cause to the Circuit Court. 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: DEC 2 4 2015
o-12/03/2015
SM/sk
44

Stephen J. Mathis

Mario Basurto

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

IZYDORSKI, KAREN
Employee/Petitioner

Case# **09WC026088**

15IWCC0988

SCHOOL DISTRICT 111
Employer/Respondent

On 2/17/2015, 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:

5383 SCHIFF GORMAN LLC
RYAN T McNULTY
ONE E WACKER DR SUITE 2850
CHICAGO, IL 60601

1120 BRADY CONNOLLY & MASUDA PC
PETER J STAVROPOULOS
10 S LASALLE ST SUITE 900
CHICAGO, IL 60603

STATE OF ILLINOIS)SS.

COUNTY OF Cook)

15IWCC0988

☐ 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

Karen Izydorski
Employee/Petitioner

v.

School District 111
Employer/Respondent

Case # **09** WC **26088**

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 L. Simpson**, Arbitrator of the Commission, in the city of **Chicago**, on **December 16, 2014**. 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 _____

15IWCC0988

FINDINGS

On **December 11, 2008**, 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 $**12,448.80**; the average weekly wage was $**267.16**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **2** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**10,953.56** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**10,953.56**.

ORDER

Petitioner is found to have suffered a permanent injury pursuant to Section 8(d)2 of the Act. For the foregoing reasons, Respondent shall pay Petitioner permanent partial disability benefits of **$267.16/week** for **60** weeks, because the injuries sustained caused the **12%** loss of use of man as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$267.16 / week** for **34.40** weeks because the Petitioner suffered a permanent injury pursuant to Section 8(e) (12) to her **left leg** in the amount of **8%** and to her **right leg** in the amount of **8%**weeks, as provided in the Act.

Respondent shall pay the Petitioner temporary total disability benefits of **$267.16/** per week for **94** weeks, commencing August 23, 2010 through February 5, 2013, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical expenses of $19,505.00, as provided in Section 8(a) of the Act. Respondent is required to reimburse Petitioner and the appropriate health insurance company for these charges.

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.

Richard K. Simpson
Signature of Arbitrator

Feb 13, 2015
Date

FEB 17 2015

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Karen Izydorski,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 09 WC 26088**
	)	
School District #111,	)	
	)	
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on December 11, 2008, 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. They agree that the Petitioner gave the Respondent notice of the accident which is the subject matter of the dispute within the time limits stated in the Act. They further agree that in the year preceding the injuries, the Petitioner earned $12,448.80.

At issue in this hearing is as follows: (1) Did the Petitioner sustain accidental injuries or was she last exposed to an occupational disease that arose out of and in the course of employment; (2) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure; (3) Is the Petitioner's average weekly $312.90 or $267(4) Is the Respondent liable for the unpaid medical bills contained in Petitioner's Exhibits 5 and 7; (5) Is Petitioner entitled to TTD from August 31, 2010 through February 5, 2013; (6) What is the nature and extent of the injury;(7) is the Petitioner entitled to penalties and attorney's fees; and (8) Is Respondent entitled to credit for payment of all benefits.

STATEMENT OF FACTS

The Petitioner is 48 years old, married and the mother of two children. She lives in Burbank, Illinois and is currently unemployed. Prior to unemployment, Petitioner worked as a Noon Hour Supervisor for the Respondent. Her employment with Respondent began in 1998 or 1999. Petitioner's job duties with Respondent included helping teachers with students during lunch and recess and assisting with administrative tasks like photocopying, taking down bulletin boards, collecting trash and preparing awards for the end of the year. Petitioner's job duties required her to be on her feet and active most of the day. Her job duties also required her to carry and transport various objects throughout the day.

From December 2007 through December 2008, Petitioner worked between 30 and 35 hours a week during the school year. Petitioner did not work during the summer. The school year was 9 months long and consisted of 36 work weeks. Petitioner was paid a rate of $10.49 an hour. From December 2007 through 2008 there were 9 other Noon Hour Supervisors employed by Respondent. The Principal at Respondent's school, Mr. Charles Roza, described Petitioner as a hard worker who did a good job at the school.

Petitioner was injured on December 11, 2008 while working for Respondent. On that date, Petitioner and Melinda Augustyniak another lunch hour supervisor testified that they were required to undergo CPR training by Respondent. Mr. Roza testified that he did not recall if they were required to attend or it was offered to them however, he agreed that they both attended the class. Mr. Roza agreed that having Petitioner complete the CPR training was a benefit to Respondent as it made Respondent's school safer. The CPR training was in Respondent's administration building. Petitioner was injured when she slipped and fell in the parking lot between the administration building and school building while walking through the parking lot after CPR training. It was a very hard fall. Petitioner was walking back to the school to punch out for the day.

Ms. Augustyniak, was walking with Petitioner when she fell. Ms. Augustyniak tried to help Petitioner up from the ground after Petitioner fell but Petitioner did not attempt to get up because she was in too much pain. Eventually, Ms. Augustyniak was able to help Petitioner up from the ground and into the school. According to Ms. Augustyniak they were walking and talking one minute and the next minute Petitioner was on the ground.

According to the Petitioner and Ms. Augustyniak they were required to travel through the school parking lot from the school to the administration building for CPR training. There was no alternative route for Petitioner to take from the school to the administration building and vice versa; her only option was to walk through the parking lot. Petitioner was required to walk through the parking lot despite the presence of snow and ice on the ground of the parking lot. Petitioner did not make any stops when walking between the administration building and the school. The parking lot between the school and administration building is only used by staff and parents of students at Respondent's school.

When Petitioner fell, her feet slipped out from underneath her and she fell forward. Her knees, elbows and wrists hit the ground. Petitioner was on the ground for about 5 minutes before she was able to get up. She felt pain in her wrists, elbows and knees while on the ground. When Petitioner did get up, she felt pain in her elbows, wrists, knees and low back. Once Petitioner was up, she went into the school and reported her fall to Principal Charles Roza.

Petitioner never injured her knees, wrists or elbows prior to her December 11, 2008 fall. More than 10 years before the fall, Petitioner hurt her back when she slipped and fell at Burger King. After her fall at Burger King in the 1990s, Petitioner treated with orthopedic surgeon Dr. Richard Lim for approximately 6 months. The treatment consisted primarily of physical therapy and did not include any surgical recommendation. Petitioner had not treated for back pain or a back injury for at least 8 years before her December 11, 2008 fall. Petitioner had not experienced back pain for at least 8 years before her December 11, 2008 fall.

Petitioner continued to experience pain in her elbows, wrists, knees and back on the evening of the fall. Shortly after the fall, she began to experience pain radiating to her right leg. Petitioner returned to work the next day and worked through pain. Petitioner called her primary care doctor – Dr. David Olmstead – shortly after the fall. Petitioner was scheduled to see Dr. Olmstead's partner – Dr. Chan – on December 15, 2008. Petitioner did not treat with Dr. Olmstead's practice group for back pain before her fall. On December 15, 2008, Petitioner presented to Dr. Chan with complaints of knee, wrist, elbow and back pain. Dr. Chan prescribed pain medication and suggested that petitioner use a cane. (PX6)

On December 19, 2008, Petitioner presented to Dr. Olmstead with complaints of knee and low back pain. (PX 6)

Petitioner's fall occurred shortly before Christmas break. Petitioner returned to work after Christmas break in January 2009. Petitioner testified that she worked through the pain in her knees and back. It was more difficult for Petitioner to perform her job duties because of pain and she began missing work because of pain. Eventually in March 2009, Petitioner took a leave of absence from her employ with Respondent. Petitioner took a leave of absence because of her back pain and to help care for an ill family member. Petitioner did not offer any evidence that her doctors had taken her off of work due to the continued pain at this time. Petitioner never experienced back pain at work prior to falling in December 2008. Petitioner's leave of absence lasted the duration of the 2008-2009 school year. Petitioner did not provide any testimony or evidence as to if or when the family illness situation was resolved and she was off of work, under doctors orders due to the pain from the fall.

On April 16, 2009, Petitioner saw orthopedic surgeon Dr. Kathleen Weber from Midwest Orthopedics at Rush at the request of Respondent for an examination pursuant to Section 12 of the Act. (PX.10) Dr. Weber opined that Petitioner's knee and back pain was related to her December 11, 2008 fall. (PX.8 and 10) Dr. Weber diagnosed Petitioner with knee pain consistent with degenerative joint disease; low back pain with L5-S1 degenerative disk disease and bilateral SI pain with pelvic obliquity. (PX.10). Dr. Weber opined that Petitioner was not at MMI and recommended further treatment for Petitioner's knee and back pain. (PX.8 and 10) Petitioner told Dr. Weber that she had taken a leave of absence due to a family illness. (PX 10)

On May 13, 2009, Petitioner presented to Dr. Olmstead with continued complaints of knee and low back pain. (PX.6)

On June 27, 2009, Petitioner returned to Dr. Olmstead with continuing complaints of low back pain. (PX.6) Dr. Olmstead eventually referred Petitioner to orthopedic surgeon Dr. Richard Lim.

Petitioner did not return to work with Respondent in August 2009; she attempted to but could not manage because of her back and knee pain. (PX.2) Petitioner stated that she was in so much pain that she was not able to sit or stand for prolonged periods of time. Petitioner began treating with Dr. Lim on August 21, 2009. (PX.2) Dr. Lim noted persistent back pain, right sided anterior thigh pain and numbness, bilateral knee and elbow pain. (PX.2) Dr. Lim noted

that Petitioner had right sided radiculopathy and recommended physical therapy and an MRI of her lumbar spine. (PX.1 at p. 12, PX.2)

Petitioner underwent a vertical MRI on August 31, 2009. (PX.2) Dr. Lim explained that vertical MRIs are not as accurate as traditional MRIs and the August 31, 2009 vertical MRI was limited due to Petitioner's body habitus. (PX.1 at p. 41-41 and PX.2)

Dr. Lim took Petitioner off work at the start of the 2009 school year due to back pain. (PX.2) Respondent began paying Petitioner TTD benefits at the start of the 2009 school year. Petitioner continued to treat for back pain during the fall of 2009. Petitioner's treatment included physical therapy, which did not provide the desired relief.

Dr. Lim recommended that Petitioner undergo injections in her back for the radiculopathy she was experiencing in her right leg. (PX.1 at p. 13 and PX.2) Petitioner received 3 injections from November 2009 through March 2010. (PX.2) The injections provided Petitioner temporary relief of her radiating symptoms.

Petitioner eventually began treating with Dr. Lim's partner – Dr. G. Branovacki – for her knee pain. On December 3, 2009, Petitioner saw Dr. Branovacki for the knee pain she had been experiencing since her fall. (PX2) Dr. Branovacki noted that radiographs of Petitioner's knees showed mild arthritic changes with medial joint space narrowing. (PX.2) Dr. Branovacki noted that Petitioner likely had arthritis in her knees prior to her fall, but Petitioner's knees were asymptomatic for arthritis prior to her fall. (PX.2) Dr. Branovacki indicated that Petitioner's fall "exacerbated a previous condition leading to clinical need for treatment." (PX.2) Dr. Branovacki provided Petitioner with cortisone shots in her knees. (PX.2)

Petitioner was still off work in the winter of 2009 due to knee pain, back pain and the pain radiating to her right leg.

On December 23, 2009, Petitioner was again seen by orthopedic surgeon Dr. Kathleen Weber for a second examination pursuant to Section 12 of the Act, at the request of Respondent. (PX.10) Dr. Weber diagnosed Petitioner with degenerative joint disease in her knees and lower back pain with degenerative disc disease at L5-S1 and facet arthrosis at L4-5 and L5-S1. (PX.10) Dr. Weber once again opined that Petitioner's knee and back pain were related to her fall, she opined that Petitioner needed further treatment and that Petitioner was not at MMI. (PX.10)

Petitioner did not return to work after her second examination by Dr. Weber. Respondent continued to pay Petitioner TTD benefits after she saw Dr. Weber. Dr. Lim continued to provide Petitioner with off work notes. (PX.2) Petitioner did not return to work during the 2009-2010 school year. She was still treating with Dr. Lim for back pain in 2010.

On April 29, 2010, Dr. Branovacki provided Petitioner with another cortisone injection in her knees. (PX2)

On May 26, 2010, Respondent required Petitioner to undergo a third evaluation pursuant to Section 12 of the Act. This time Respondent selected a different doctor, neurosurgeon Dr.

Andrew Zelby to perform the evaluation. Petitioner's husband – Thomas Izydorski – went to the evaluation with Petitioner. Dr. Zelby opined that Petitioner was at MMI for her back injuries and further opined that she was at MMI within 12 weeks of her fall, by March 2, 2009. (RX.1) Dr. Zelby's opinion placed Petitioner at MMI for more than 6 weeks before her first evaluation with Dr. Weber in April 2009. (PX.8 and PX.10) Dr. Zelby opined that Petitioner did not have right sided radiculopathy or any other type of radiculopathy. (RX.1) Petitioner continued to be paid TTD until Respondent required her to undergo the third evaluation pursuant to Section 12 of the Act.

Dr. Zelby testified by way of evidence deposition that Petitioner suffered a soft tissue lumber sprain and that every single patient reaches MMI from a lumbar sprain in a period of 8 to 12 weeks. (RX.3 a p. 32) Dr. Zelby's opinion does not take into consideration the severity or grade of the sprain; rather, he opined that every single patient reaches MMI from lumber sprains within 12 weeks – no exceptions noted. (RX.3 at p. 32)

After the third Section 12 examination, in addition to stopping Petitioner's TTD benefits, Respondent stopped paying her medical bills as well. Petitioner's medical bills began to be paid through her husband's health insurance. Petitioner handles the health insurance matters for her family. According to the Petitioner, the Petitioner's husband's health insurer is seeking full reimbursement for the medical bills paid on behalf of Petitioner. Petitioner stated that she continued to experience pain after Dr. Zelby's examination.

Petitioner followed up with Dr. Lim on June 22, 2010. (PX.1 at p. 15 and PX.2) Dr. Lim disagreed with Dr. Zelby's opinions, particularly Dr. Zelby's opinion that Petitioner does not have right sided radiculopathy. (PX.1 at p. 15 and PX.2) Dr. Lim noted objective radicular type symptoms including foraminal narrowing and a positive straight leg raise. (PX.1 at p. 15 and PX.2) Dr. Lim recommended a second MRI and an EMG and continued to keep Petitioner off work. (PX.1 at p. 15 and PX.2)

Petitioner underwent an EMG study on June 25, 2010. (PX.2) The EMG revealed right L5-S1 nerve root radiculopathy. (PX.1 at p. 16 and PX.2) Petitioner underwent an MRI on August 23, 2010 that revealed a right sided disc bulge at L5-S1. (PX.1 at p. 16 and PX.2) Dr. Lim opined that this is the source of Petitioner's radiculopathy. (PX.1 at 16-17)

Petitioner did not return to work at the start of the 2010 school year due to pain in her knees and back. Dr. Lim provided Petitioner with an off work note. Dr. Lim did not allow Petitioner to return to work with Respondent during the 2010-2011 school year or the 2011-2012 school year due to Petitioner's continued knee and back pain. In apparent reliance on the opinions of Dr. Zelby, Respondent did not pay Petitioner TTD or medical benefits during this time period.

Petitioner followed up with Dr. Lim on November 16, 2010, at which time Petitioner and Dr. Lim discussed the prospects of decompression and fusion surgery. (PX.1 at p. 18 and PX.2) Petitioner did not want to proceed with surgery. (PX.1 at p. 18) Dr. Lim instructed Petitioner to follow up with him on an "as needed basis' because she did not wish to undergo surgical intervention on her back. (PX.1 at p. 18-19)

Petitioner did not treat with Dr. Lim or any other provider from November 2010 through December 2011. Petitioner stated that she could not afford to treat with any provider during this time and Petitioner did not have available health insurance. Petitioner's medical bills were sent to a debt collection company. Petitioner still had knee and back pain when she was not treating during this time period. Petitioner returned to Dr. Lim in December 2011 and continued to treat with him through the summer of 2012. (PX.1 at p. 19)

Petitioner's knee and back pain began to ease up during the summer of 2012. In July 2012, Dr. Lim released Petitioner back to work in a sedentary position. Dr. Lim provided Petitioner with a sedentary work status note which she gave to Respondent in August 2012. Dr. Lim also recommended that Petitioner undergo pain management treatment for her back. Petitioner did not undergo pain management because she could not afford the treatment.

Petitioner did not return to work at the start of the 2012 school year because Respondent did not have any sedentary work available for Petitioner. Respondent's Principal, Mr. Charles Roza, acknowledged that Petitioner gave him a note from Dr. Lim in August 2012 indicating that she could return to sedentary work. He testified that he understood sedentary work to mean sitting only, no standing or walking. Petitioner eventually returned to work in January 2013. Upon her return, Petitioner was told she had to sit in a high-top – barstool-like – chair to take IDs from young students to scan into the computer for their meals. The high-top chair did not have arm supports or adequate back support. The stool was not sturdy. Working from the high-top chair required Petitioner to bend down to take the cards from the young students – ranging from Kindergarten through sixth grade – and then twist her body to scan the cards. Many of the children giving Petitioner the IDs were shorter than the actual high-top chair itself, thus forcing Petitioner to bend down below waist level while seated. Mr. Roza testified that if she had requested a different chair or stool one would have been provided for her. The stool that Petitioner complained about at the hearing has in fact been changed, but the change of seating did not have anything to do with this case.

Upon her return, Petitioner was originally asked to work for 40 minutes in the morning, leave the school, and then return in the afternoon for an additional 40 minutes of work. Petitioner was no longer performing administrative duties for the school upon her return to work. Respondent only offered Petitioner 2 hours or work a day when she returned to work in January 2013. Upon her return, Petitioner's hours were reduced from 30-35 hours a week to approximately 11 hours a week. Petitioner testified that all of the other 9 employees of Respondent with the title "Noon Hour Supervisor" received more working hours than Petitioner when she returned. Petitioner made less money when she returned to work in 2013 compared to what she was making before her injury.

Mr. Roza testified that between the time of Petitioner's injury and her return to work changes had been made with respect to the position of Noon Hour Supervisor. The Superintendent of the School District had been fired for spending too much money. The new Superintendent has made budget cuts and changes. One of the jobs affected by the change is the Noon Hour Supervisor positions. Noon Hour Supervisor's cannot work more than 600 hours per year. 30 to 35 hour work weeks are no longer feasible or available. 20 hour work weeks would yield 720 hours per year which is too many hours, 20 hours per week is now the maximum.

Additionally, breakfast has been added as a meal and noon hour supervisors are required to cover those meals as well. Due to the limit in hours, they are asked to leave after breakfast then return to the school for the lunch hour. Petitioner testified that she did not want to go in for breakfast, leave and return. Consequently she is getting only 11 hours per week.

Petitioner worked through the duration of the 2012-2013 school year. Petitioner started off working when the 2013-2014 school year began, but said that she quit because she could no longer work through the pain and had a disagreement with Principal Charles Roza. Standing and pushing a garbage can caused Petitioner pain when she was working for Respondent in 2013.

Petitioner continued to treat with Dr. Branovacki for knee pain through December 2013. (PX.2) Petitioner received 5 injections in her knees in December 2013. (PX.2)

Petitioner said she is less active and less mobile after her fall in December 2011 than she was before her fall. She was not able to walk without pain, which prevented her from walking distances. Prior to her fall, Petitioner was able to walk with her family on vacation at Disney World but required the assistance of a scooter to ambulate on vacation there after her fall. Petitioner also has less energy after her fall. Petitioner claims that her pain and limitations prevented her from getting on the floor to play with her toddler, an activity she used to enjoy before the fall, and that her pain and limitation limit her ability to exercise. Petitioner testified that she gained over 70 pounds after her fall due to decreased energy, mobility and activity.

Since Petitioner's fall, she requires assistance from her husband to get up from the love seat in their home; she sleeps with a heating pad at night. Petitioner did not need assistance getting up from the love seat or need a heating pad to sleep prior to her fall. Petitioner also has problems with positioning of her knee in relation to the center console of her van. When her knee bumps the console it is painful. Petitioner did not have this problem before her fall. Since her fall, Petitioner's husband has to drop Petitioner off at the front door of stores because she cannot walk from the parking lot without pain.

Currently, Petitioner still experiences pain in her knees, back and continues to have radiating pain into her right leg. Petitioner continues to be less active today than she was prior to the fall.

Dr. Kathleen Weber testified by way of evidence deposition. (PX.8) Dr. Weber testified that Petitioner's back and knee complaints at the time of her April and December 2009 examinations were caused by Petitioner's fall on December 11, 2008. (PX.8 at p. 7-10) Dr. Weber testified that Petitioner was not at MMI for her knee and back as of her IME on December 23, 2009. (PX.8 at p. 9) Dr. Weber testified that she was never asked to opine as to any work restrictions for Petitioner. (PX.8 at p. 13) Finally, similar to Dr. Lim, Dr. Weber testified that she disagrees with Dr. Zelby's opinions. (PX.8 at p. 10-11)

Dr. Lim testified by way of evidence deposition as well. (PX.1) He explained that the August 31, 2009 vertical MRI may not have shown compression like the August 13, 2010 MRI showed compression because the vertical MRI offered a limited view. (PX.1 at 41-42)

Dr. Lim testified that Petitioner's back pain and radiating pain was caused by her fall on December 11, 2008. (PX.1 at p. 23) Specifically, Dr. Lim testified that Petitioner's EMG result showing right-sided L5-S1 nerve root radiculopathy and the L5-S1 right side disc bulge were caused by Petitioner's fall. (PX.1 at p. 15, 23) Dr. Lim explained that Petitioner's present condition is not related to her previous back pain he treated Petitioner for after her fall at Burger King in the 1990s. (PX.1 at p. 37-38) Her current condition is a different and separate matter. (PX.1 at p. 37-38) Despite Petitioner still having back pain and radiating symptoms as of July 20, 2012, Dr. Lim opined that Petitioner was at MMI from an orthopedic standpoint. (PX.1 at p. 40) Dr. Lim further testified that Petitioner's back pain is probably going to be a permanent condition, one she will have to live with the rest of her life. (PX.1 at p. 22)

Dr. Lim testified that he disagrees with the opinions Dr. Zelby offered about Petitioner's condition following Dr. Zelby's examination of Petitioner. (PX.1 at p. 15) Specifically, Dr. Lim disagreed with Dr. Zelby's opinion that Petitioner did not have radiculopathy. (PX.1 at p. 15) Dr. Lim disagrees with Dr. Zelby because Dr. Lim noted clear radicular symptoms, severe L5-S1 disc space collapse resulting from foraminal narrowing and objective signs consistent with radiculopathy including a positive straight leg raise. (PX.1 at p. 15) Further, Petitioner's EMG was positive for right-sided L5-S1 nerve root radiculopathy and her MRI showed a right-sided L5-S1 disc bulge. (PX.1 at p.15-17)

CONCLUSIONS OF LAW

The burden is upon the party seeking an award to prove by a preponderance of the credible evidence the elements of his claim. *Peoria County Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987). This includes the nature and extent of the petitioner's injury.

The burden is on the party seeking the award to prove by a preponderance of credible evidence the elements of the claim, particularly the prerequisites that the injury complained of arose out of and in the course of the employment. *Hannibal, Inc. v. Industrial Commission,* 38 Ill.2d 473, 231 N.E.2d 409, 410 (1967)

An injury arises out of one's employment if it has its' origin in a risk that is connected to or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Technical Tape Corp. vs IndustrialCommission,* 58 Ill. 2d 226, 317 N.E.2d 515 (1974) "Arising out of" is primarily concerned with the causal connection to the employment. The majority of cases look for facts that establish or demonstrate an increased risk to which the employee is subjected to by the situation as compared to the risk that the general public is exposed to.

Longstanding Illinois law mandates a claimant must show that the injury is due to a cause connected to the employment to establish it arose out of employment. *Elliot v. Industrial Commission*, 153 Ill. App. 3d 238, 242 (1987). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected

with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission*, 44 Ill. 2d 214 (1969).

Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

The arbitrator finds that when Petitioner slipped and fell while required to walk through Respondent's parking lot on December 11, 2008, Petitioner suffered an injury that arose out of and in the course of Petitioner's employment by Respondent.

In order for an injury to be compensable under the Act, the injury must "arise out of" and "in the course of" the employment. The phrase "in the course of" refers to the time, place and circumstances under which the accident occurred. The fact that an injury arose in the course of the employment is not sufficient to impose liability; to be compensable, the injury must also "arise out of" the employment. For an injury to "arise out of" the employment its origin must be in some risk connected with, or incidental to, the employment as to create a causal connection between the employment and the accidental injury. Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts she was instructed to perform by her employer, acts which she had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to her assigned duties. A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling her duties. If an employee is exposed to a risk common to the general public to a greater degree than other persons, the accidental injury is also said to arise out of her employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.2d 52, 57-59 (1989).

Given this legal framework, the Arbitrator finds that Petitioner's injury is compensable for the following reasons. First, it is undisputed that Petitioner's injury arouse "in the course of" her employment with Respondent. Respondent's own witness, Principal Charles Roza, testified that Petitioner was on the clock walking back to the school from a CPR class Respondent either required Petitioner to take or offered to the Noon Hour Supervisors at the time of her fall. This testimony was corroborated by Petitioner and Melinda Augustyniak, an employee of Respondent. Both testified that Petitioner was required to take the CPR class by Respondent and that Petitioner was on the clock at the time of her fall.

Second, Petitioner's injury did "arise out of" her employment with Respondent as her injury was the result of a risk directly connected to her employment sufficient to create a causal connection between her employment and injury. The only route provided by the Respondent required Petitioner to walk from the school through the parking lot to the administration building to take the CPR class. Petitioner was required to do this despite the presence of snow and ice on the ground of the parking lot. The parking lot was the same parking lot that staff and the parents of students parked in during school and when picking children up from school. As mentioned, typically an injury arises out of one's employment if at the time of the occurrence the employee was performing acts she was instructed to perform by her employer. *Howell Tractor & Equipment Co. v. Industrial Comm'n*, 78 Ill.2d 567, 573 (1980).

Third, the risk Petitioner was exposed to when required to walk through the snow and ice covered parking lot was a risk incidental to her employment as she was required to walk through the parking lot to fulfill her duties for Respondent. *Orsini v. Industrial Comm'n*, 117 Ill.2d 38, 45 (1987). Mr. Roza agreed that whether required or voluntary, Petitioner's attendance at the CPR class benefited the school and made it safer for the students.

Finally, although Petitioner was injured in a parking lot, she was not exposed to a risk common to the general public. The evidence establishes that the parking lot in question is not open to or used by the general public. The parking lot is used only by Respondent's employees and parents of students at Respondent's school. There was no evidence presented that the lot was used by the general public.

For these reasons, the Arbitrator finds that on December 11, 2008, Petitioner sustained an injury that arose out of and in the course of her employment by Respondent.

Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to her December 11, 2008 injury. In reaching her decision, the Arbitrator is primarily guided by the testimony of Petitioner and Thomas Izydorski, the treatment records of Dr. Branovacki and the testimony and records of Dr. Lim and Dr. Weber. The Arbitrator does not find the opinions of Dr. Zelby to be credible.

While Petitioner openly acknowledged that she injured her back before her December 11, 2008 fall, it is undisputed that she did not treat for back pain or have complaints of back pain for at least 8 years prior to her fall in 2008. Prior to December 11, 2008, Petitioner was able to play on the floor with her children, work for Respondent without issue, walk long distances, stand for long periods, get up from the seated position without assistance, drive in her van without knee pain and fall asleep without the assistance of a heating pad on her back. Since her fall, Petitioner has not been able to play on the floor with her child, work for Respondent without being overcome by pain, walk long distances, stand for long periods, get up unassisted from the seated position, drive in her van without knee pain and sleep without a heating pad. Petitioner has been dealing with these problems since December 11, 2008 and continues to deal with these problems today. Respondent has not offered any credible evidence to refute that Petitioner has been constantly living with these problems since her fall. While Respondent may have suggested that Petitioner is exaggerating her symptoms, on cross-examination Dr. Lim testified that he did not note any signs of symptom magnification in Petitioner. (PX.1 at p. 38-39)

Respondent's first Section 12 examiner, Dr. Weber, testified that as of April 16 and December 23, 2009, Petitioner was suffering from degenerative joint disease in her knees, symptomatic as a direct result of Petitioner's fall in December 2008. (PX.8 and PX.10) On December 3, 2009, Dr. Branovacki indicated in his records that Petitioner had an underlying, asymptomatic condition in her knees that became symptomatic as a direct result of her fall in December 2008. (PX.2) Dr. Branovacki continued to treat Petitioner through December 31,

2013 for her knee pain. (PX.2) Respondent has offered absolutely zero evidence to refute that Petitioner's current knee pain is attributable to her December 2008 fall. Dr. Zelby's non-reliable opinions do not even discuss Petitioner's knees. Either Respondent did not ask Dr. Zelby for an opinion as to Petitioner's knee pain after the two previous Dr. Weber examinations or Dr. Zelby failed to evaluate and report on the condition of Petitioner's knees or Respondent found a causative nexus between Petitioner's knee pain and her fall.

Dr. Weber testified that as of April 16 and December 23, 2009, Petitioner was suffering from back pain as a direct result of Petitioner's fall in December 2008. (PX.8 and PX.10) Dr. Lim testified that Petitioner's back pain and right-sided radiculopathy is causally related to her fall. (PX.1 at p. 10-11 and p. 23) Dr. Lim's opinion is supported by his clinical findings, including objective findings on straight leg raise, an MRI showing a bulging disc at L5-S1 and an EMG positive for right sided L5-S1 nerve root radiculopathy. (PX.1 at p. 15-17) Dr. Lim also testified that Petitioner positive response, albeit a short lived positive response – to epidural injections in her back bolters his opinion that the radiculopathy stems from the L5-S1 nerve root. (PX.1 at p. 15-17) Dr. Lim, the medical professional most familiar with Petitioner and her treatment, testified that Petitioner's current back pain has reached MMI from an orthopedic standpoint and is "probably going to be permanent." (PX.1 at p. 22 and p. 40) Accordingly, the Arbitrator finds that Petitioner's current condition is causally related to her December 11, 2008 injury.

The Arbitrator does not find Dr. Zelby to be credible. The Arbitrator notes too many inconsistencies in Dr. Zelby's findings and opinions. Dr. Zelby is the only doctor who claims that Petitioner's straight leg raise test was negative. (RX.1) Standing alone this may not seem significant, but Dr. Zelby is also the only witness who claims that Petitioner wanted to undergo surgery to her back. (RX.1, RX.2 and RX.3) The testimony of Dr. Lim and Petitioner overwhelmingly suggests that Petitioner never wanted to undergo surgery to her back. (RX.1 at p. 5, Dr. Zelby: "While Ms. Izydorski may be interested in proceeding with surgery, she does not have a surgically correctable problem and no surgery should be pursued.) Dr. Zelby further calls into question his credibility by testifying that all patients reach MMI from lumbar strains within 12 weeks. (RX.3 at p. 32) It is common knowledge that medicine is not a one size fits all approach.

The evidence demonstrates that there were findings of compression on Petitioner's August 13, 2010 lumbar spine MRI but no findings of compression on her August 31, 2009 lumbar spine vertical MRI. This distinction does not disturb the Arbitrator's findings as Dr. Lim clearly explained that the vertical MRI in 2009 offered a limited, less reliable view of Petitioner's spine. (PX.1 at p. 41-42)

Additionally, Dr. Zelby claimed Petitioner was at MMI by March 2, 2009. RX.1. This is almost 6 weeks before Petitioner first saw Dr. Weber for an IME, who found that Petitioner was not yet at MMI. (PX.8 and PX.10) Dr. Weber was in a better position to opine on this issue since she actually saw and examined the Petitioner at the time she formed her opinion of the Petitioner's condition. Importantly, Dr. Lim and Dr. Weber both disagree with Dr. Zelby and both are in a position to give more accurate opinions than Dr. Zelby.

For these reasons, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to her December 11, 2008 injury.

What were Petitioner's earnings?

The Arbitrator finds that the Petitioner's average weekly wage at the time of her December 11, 2008 injury was $267.16. The Arbitrator bases her decision on Respondent's Exhibit 5, which is a printout of Petitioner's earnings for the year prior to her injury. RX.5. The payroll sheet shows that Petitioner grossed $10,686.51 in the year leading up to her injury. The payroll sheet shows that she worked 40 weeks in the year before her injury, which produces an average weekly wage of $267.16.

An average weekly wage of $267.16 produces a PPD rate of $160.30 and a TTD rate of $178.10. Paragraph 6 of the Request for Hearing Form shows a stipulation by the parties that Petitioner had 2 dependent children at the time of her injury. Accordingly, Petitioner's PPD and TTD rate fall below the minimum allowable rate for an injured Petitioner with 2 dependents. For accidents occurring on or after July 15, 2008, the minimum PPD and TTD rate for a Petitioner with 2 dependents is $268.67. This produces a figure higher than Petitioner's average weekly wage. Pursuant to Section 8(b) of the Act, Petitioner's average weekly wage will be used for her PPD and TTD rate, which produces a PPD and TTD rate of $267.16.

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?

The Arbitrator finds that the medical services provided to the Petitioner were reasonable and necessary. The Arbitrator further finds that Respondent has not paid all appropriate charges for all reasonable and necessary medical charges.

As outlined in Section F, *supra*, for the same reasons the Arbitrator finds that Petitioner current condition of ill-being is causally related to her injury, the Arbitrator finds that Petitioner's treatment was reasonable and necessary. Dr. Lim opined that Petitioner's treatment was reasonable and necessary. (PX.1 at p. 23) Dr. Lim also opined that his treatment of Petitioner was necessitated by her December 2008 fall. (PX.1 at p. 23)

On this issue, Respondent offered the opinion of Dr. Zelby who opined that Petitioner does not require surgery on her spine and that her "treatment with epidural steroid injections was neither reasonable nor necessary for her object of condition, and irrespective of cause." (RX 1) As mentioned, Petitioner did not wish to proceed with surgical intervention proposed by Dr. Lim. This was confirmed by Dr. Lim's testimony. (PX.1 at p. 18) The Arbitrator is not persuaded by Dr. Zelby's opinion, because it was not credible, that Petitioner's back injections were unnecessary. Dr. Lim recommended the injections for Petitioner's symptoms of radiculopathy. (PX.1 at p. 13) Petitioner's response to the injections was positive, as she did experience temporary relief of her radiating symptoms following the injection. (PX.1 at p. 14)

It should also be noted that Respondent's first Section 12 examiner, Dr. Weber, opined that Petitioner responded appropriately to the injections in her back from Dr. Lim and recommended additional injections from Dr. Lim. (PX.10 (12.23.09 IME Report)).

Dr. Weber also opined that Petitioner necessitated injections into her knee when she examined Petitioner in April 2009. (PX.10) Petitioner received her first knee injections from Dr. Branovacki on December 3, 2009. (PX.2) When Dr. Weber examined Petitioner in December 2009; she recommended additional injections in Petitioner's knees. (PX.10) Petitioner continued to receive the recommended injections from Dr. Branovacki through December 31, 2013. (PX.2) The Arbitrator finds that this treatment, along with Petitioner's back treatment, was reasonable and necessary.

The Arbitrator finds that Respondent has not paid for all reasonable and necessary medical services. Petitioner's Exhibit 5 shows that prior to her IME with Dr. Zelby in May 2010, Petitioner's treatment with Dr. Lim and Dr. Branovacki and Midwest Orthopaedic Consultants, SC, was paid in part by Respondent and paid in part by Petitioner's husband's health insurance. To the extent that any of Petitioner's treatment with Midwest Orthopaedic Consultants, SC was paid by Petitioner's husband's health insurance from December 11, 2008 through May 26, 2010, Respondent is required to pay Petitioner the amount of the group health carriers right of reimbursement. The evidence shows that Petitioner's husband's health insurance carrier is actively pursuing reimbursement of these payments.

The Arbitrator finds that Respondent did not pay for any of Petitioner's treatment with Dr. Lim and Dr. Branovacki and Midwest Orthopaedic Consultants, SC, following Dr. Zelby's IME in May 2010. Based on Petitioner's Exhibit 5, from June 22, 2010 through December 31, 2013, Petitioner incurred charges in the amount of $19,505.00 with Midwest Orthopaedic Consultants, SC. (PX.5) Of these charges, $15,345.00 are for knee treatment from Dr. Branovacki and $4,160.00 are for back treatment from Dr. Lim. (PX.5) These bills were satisfied by Petitioner personally and through her husband's health insurance, who is seeking reimbursement. Accordingly, Respondent is required to reimburse Petitioner and the appropriate health insurance company for these charges.

What temporary benefits are in dispute? TPD and TTD

The Arbitrator finds that Petitioner is entitled to 94 weeks of TTD benefits and 18 weeks of TPD benefits.

Petitioner's Exhibit 2 contains notes from Dr. Lim keeping Petitioner off work for the entirety of the 2010-2011 school year and the 2011-2012 school year. (PX.2) The school year is 36 weeks, entitling Petitioner to 72 weeks of TTD. Petitioner did not work during this period and was not paid TTD. Dr. Lim allowed Petitioner to return to sedentary work on July 20, 2012. (PX.2) Respondent did not accommodate Petitioner's restricted duty until February 5, 2013. This was established by the testimony of Petitioner and Respondent's principal, Charles Roza. Accordingly, Petitioner is entitled to an additional 22 weeks of TTD from the start of the school

year in 2012 until February 5, 2013. This brings the total TTD owed to 94 weeks. Respondent is ordered to pay 94 weeks of TTD at the rate of $267.16, which totals $25,111.16.

Respondent presented evidence that the position of Noon Hour Supervisor changed during the Petitioner's absence and that when she returned to work their hours were shorter. This change had nothing to do with the Petitioner's condition. Petitioner declined to work the breakfast shift, she did not want to go to the school, work for an hour or so then leave and return. That was her choice. Respondent is not required to make up the difference in her work hours and pay the Petitioner TPD because her hours are now less than they were when she was first employed.

What is the nature and extent of the injury?

Dr. Lim testified that Petitioner reached MMI for her back injury as of July 20, 2012. (PX.1 at p. 40) Dr. Lim testified that Petitioner suffers from right-sided L5-S1 nerve root radiculopathy stemming from a right-sided disc bulge at L5-S1, and he relates these issues to her fall. (PX.1 at p. 16-17, 23) Dr. Lim testified that the back pain Petitioner's experiences from these conditions is "probably going to be permanent." (PX.1 at p. 22) Accordingly, the Arbitrator finds that Petitioner's PPD for her back equates to 18% man as a whole.

Dr. Branovacki causally related Petitioner's knee condition to her fall when he treated Petitioner of December 3, 2009. (PX.2) This opinion was corroborated by Dr. Weber on 2 occasions. (PX.10) Petitioner continued to receive injections in her knees through December 31, 2013. Accordingly, the Arbitrator finds that Petitioner's PPD for her knees equates to 8% of a leg for each leg.

Should penalties or fees be imposed upon Respondent?

The Arbitrator finds penalties and fees should not be imposed upon Respondent. Petitioner's Petition for Penalties and Fees (PX.11), alleges that Respondent's refusal to pay for medical bills and TTD benefits after Dr. Zelby's IME on May 26, 2010 presented an unreasonable and vexatious delay of payment. The Respondent refused to pay these benefits by claiming reliance on Dr. Zelby's opinions. Although their reliance on Dr. Zelby's opinion has been determined to be misplaced by this Arbitrator it does not amount to a frivolous defense by Respondent, as the Petitioner alleges. It is not unusual for doctors to disagree on the condition of an individual, or the proper course of treatment, that is why many people get a second opinion. The Respondent is entitled to a second opinion just as much as the Petitioner is. The two Section 12 examiners that Respondent chose had differing opinions and they chose to follow the opinion that was more favorable to them.

Petitioner's Petitioner for attorney's fees and penalties is denied.

Is Respondent due any credit?

The Arbitrator finds that Respondent is entitled to a credit in the amount of TTD that has already been paid.

ORDER OF THE ARBITRATOR

Petitioner is found to have suffered a permanent injury pursuant to Section 8(d)2 of the Act. For the foregoing reasons, Respondent shall pay Petitioner permanent partial disability benefits of **$267.16/week** for **60** weeks, because the injuries sustained caused the **12%** loss of use of man as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$267.16 / week** for **34.40** weeks because the Petitioner suffered a permanent injury pursuant to Section 8(e) (12) to her **left leg** in the amount of **8%** and to her **right leg** in the amount of **8%**weeks, as provided in the Act.

Respondent shall pay the Petitioner temporary total disability benefits of **$267.16/** per week for **94** weeks as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical expenses of $19,505.00, as provided in Section 8(a) of the Act. Respondent is required to reimburse Petitioner and the appropriate health insurance company for these charges.

Richard L. Simpson — Signature of Arbitrator

Feb 13, 2015 — Date

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Randy R. Quilling,

Petitioner,

vs.

NO. 09WC034165

County of Lake,

15IWCC0989

Respondent.

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 permanent disability and accrual date 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 20, 2015 Respondent is hereby affirmed and adopted.

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.

No bond is required for removal of this cause to the Circuit Court. 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: DEC 2 4 2015
SJM/sj
o-11/19/2015
44

Stephen J. Mathis

Mario Basurto

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

QUILLING, RANDY R
Employee/Petitioner

Case# **09WC034165**
12WC037505

COUNTY OF LAKE
Employer/Respondent

15IWCC0989

On 2/20/2015, 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 0.06% 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:

0152 LINN CAMPE & RIZZO LTD
CRAIG M LINN
215 N MARTIN L KING JR AVE
WAUKEGAN, IL 60085

0286 SMITH AMUNDSEN LLC
LES JOHNSON ESQ
150 N MICHIGAN AVE SUITE 3300
CHICAGO, IL 60601

STATE OF ILLINOIS)
)SS.
COUNTY OF Lake

15IWCC0989

☐ 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

Randy R. Quilling
Employee/Petitioner

v.

County of Lake
Employer/Respondent

Case # **09** WC **34165**

Consolidated cases: **12WC37505**

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 **George Andros**, Arbitrator of the Commission, in the city of **Waukegan**, on **December 1, 2014**. 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. X 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 (SEE ATTACHED RIDER)

On **July 2, 2009**, 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 $**66,578.20**; the average weekly wage was $**1,280.35**.

On the date of accident, Petitioner was **42** years of age, married with **2** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**90,110.33** for TTD, for a total credit of $**90,110.33**.

Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $853.57 for 105 4/7 weeks, from July 2, 2009 through April 3, 2011, July 18, 2011 through September 6, 2011, January 10, 2012 through January 29, 2012 and May 21, 2013 through June 16, 2013, as provided in Section 8(b) of the Act. The Respondent shall be given credit of $90,110.33 for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits of $664.72 per week for a further period of 250 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained to Petitioner's right shoulder have caused the impairment of and have incapacitated the Petitioner from pursuing his usual and customary employment, pursuant to the terms of 8(d)2 of the Act, to the extent of 50% thereof.

Respondent shall also pay Petitioner permanent partial disability benefits of $664.72 for a further period of 104.35 weeks, as provided in Section 8(e) of the Act, because the injuries sustained have caused a 25% loss of use of the Petitioner's left leg (53.75 weeks) and a 20% loss of use of the Petitioner's right arm (50.6 weeks).

The medical bills contained in Petitioner's Group Exhibit 1, by stipulation of the parties, are not in dispute.

Respondent shall pay to Petitioner reasonable and necessary medical expenses of $2,912.99 (See Petitioner's Group Exhibit 1), as provided in Section 8(a) of the Act, subject to the fee schedule of Section 8.2 of the Act.

Respondent shall pay the Petitioner compensation that has accrued from July 2, 2009 through the present, and shall pay the remainder of the award in weekly payments.

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.

#01 George J. Andros
Signature of Arbitrator

Date 2-17-2015

FEB 20 2015

RANDY R. QUILLING VS. COUNTY OF LAKE – 09WC34165

The Arbitrator notes that this matter was consolidated for hearing with case #12WC37505 which involves an injury of August 30, 2012. The August 30, 2012 injury is the subject matter of a separate Arbitration Decision issued in case #12WC37505.

The parties stipulated that on July 2, 2009, the Petitioner sustained accidental injuries which arose out of and in the course of his employment with Respondent; the parties further stipulated that the Petitioner's current condition of ill-being is causally related to the Petitioner's July 2, 2009 work injury, which is the subject matter of this decision rendered in #09WC34165.

The Petitioner, a 42 year old right-hand dominant high school graduate, began his employment with the Respondent as a sworn correctional officer in 1992. He performed his duties as a correctional officer up until the undisputed work injury to his right shoulder which occurred on July 2, 2009. The duties of a corrections officer, as performed by the petitioner, involved constant contact with jail inmates, including but not limited to inmate control and transportation. It was a physical job which involved maintaining control of inmates in the Lake County jail, as well as transporting inmates. The petitioner's chosen profession of a corrections officer was also mentally challenging and rewarding, inasmuch as he had to be on the ready to meet and deal with whatever situation should arise while working with the jail inmates. The Petitioner took great pride and satisfaction in his chosen profession. The Petitioner never wanted a clerical desk job.

The Petitioner began his chosen occupation as a corrections officer at the age of 25 in 1992 and, but for the undisputed July 2, 2009 work injury, he had hoped to continue to work as a corrections officer for the Respondent at least up until the age of 62. The Petitioner had held various positions of responsibility while working as a corrections officer for the Respondent, including command officer and field training officer. He was a member of the Corrections Officers Union and was subject to the bargaining agreement wage rate for County of Lake Corrections Officers (See PX 19).

It is undisputed that on July 2, 2009 the Petitioner injured his right shoulder, his dominant arm, when a jail inmate he was transporting for dialysis treatment slipped and fell while being removed from the transport van. The Petitioner, in an effort to break the inmate's fall, grabbed the falling inmate and felt a pop and pain in his right shoulder.

The Petitioner was referred by his supervisor, Sergeant Kinville, to Lake Forest Hospital Occupational Health on July 2, 2009 (See PX 1); Lake Forest Hospital Occupational Health in turn referred the Petitioner to the care and treatment of an orthopedic specialist, Dr. Edward Logue.

The Petitioner came under the care of Dr. Edward Logue on July 6, 2009 (See PX 2). Dr. Logue performed 3 corrective surgeries on the Petitioner's injured right shoulder:

1. Hawthorn Surgery Center – August 25, 2009

   Post-Operative Diagnosis:

   Right rotator cuff and superior labrum anterior-posterior tear and biceps tendon tear and anterior labral tear
   (See PX 3);

2. Hawthorn Surgery Center – March 9, 2010

   Post-Operative Diagnosis:

   Recurrent right shoulder superior labrum anterior and posterior and rotator cuff tears
   (See PX 4);

3. Lake Forest Hospital – December 29, 2010

   Post-Operative Diagnosis:

   Recurrent right shoulder rotator cuff tear with glenoid labral tear.
   (See PX 5).

While performing leg lunges on December 5, 2011, while at work conditioning prescribed for the Petitioner's injured right shoulder by Dr. Logue, the Petitioner injured his left knee. Dr. Logue examined the Petitioner's injured left knee on December 14, 2011 (See December 14, 2011 Logue office note contained in PX 2); an MRI was prescribed and the following corrective surgery for the Petitioner's injured left knee performed:

Hawthorn Surgery Center – January 10, 2012

Post-Operative Diagnosis:

Left knee medial and lateral meniscal tears
(See January 4, 2012 Logue office note contained in PX 2 and Hawthorn Surgery Center records – PX 6).

The Petitioner developed cubital tunnel syndrome of the right elbow as a result of wearing a sling due to the immobilization required subsequent to his right shoulder surgeries; to help alleviate the numbness and pain in the Petitioner's right forearm and hand due to the diagnosed cubital tunnel syndrome, Dr. Logue prescribed corrective right elbow surgery (See January 14, 2013 Logue office note contained in PX 2).

The Respondent obtained a section 12 exam by Dr. Gregory Nicholson of Midwest Orthopedics at Rush, on April 10, 2013, before they would approve the corrective right elbow surgery. Dr. Nicholson, in his April 10, 2013 medical report (See April 10, 2013 and April 19, 2013 medical reports of Dr. Nicholson - PX 11), opined that both the cubital tunnel syndrome and prescribed corrective surgery were related to the Petitioner's work injury. The following corrective surgery was performed by Dr. Logue on the Petitioner's injured right elbow at the Hawthorn Surgery Center on May 21, 2013:

Post-Operative Diagnosis:

Right ulnar neuropathy, cubital tunnel syndrome procedure performed: right ulnar nerve anterior transposition (See PX 7).

Dr. Logue prescribed a functional capacity evaluation for the Petitioner's injured right shoulder which was performed on March 21, 2012 at OccuCare Systems and Solutions (See PX 13). Dr. Logue placed the following permanent work restrictions on the Petitioner on April 4, 2012 (See PX 8):

1. No inmate contact;
2. No carrying more than 20 pounds;
3. No lifting more than 30 pounds to shoulder;
4. No pushing or pulling more than 20 pounds;
5. No repetitive lifting.

In April, 2012 the Petitioner was advised by his supervisor, Kevin Lyons, that the Respondent would no longer be able to keep the Petitioner employed as a sworn corrections officer because of his permanent work restrictions. Supervisor Lyons further advised the Petitioner that the Respondent is going to attempt to find him a civilian job that would fit within his permanent work restrictions.

The Petitioner, on July 31, 2012, received a letter from supervisor Lyons (See PX 14) advising that due to his permanent restrictions he was being offered the position of a "jail receptionist/clerk". The Petitioner was being offered the job as a new hire, which included a 1 year probationary term; the Petitioner would no longer be a member of or have the benefits of the collective bargaining agreement between Corrections Officers Union and Respondent.

The Petitioner testified that he spoke with Supervisor Lyons in response to the aforementioned letter and was advised that he could no longer be employed as a corrections officer and that the job offer as a receptionist/clerk was a take it or leave it proposition. The Petitioner started his new job as a jail receptionist/clerk on August 14, 2012; it is a desk job which involves answering telephones and doing clerical work.

The Arbitrator finds this corrections officer was an employee of the County of Lake for about 20 years at the time he was offered a "take it or leave it" position as a receptionist/clerk. His salary continuation based upon his career, professional position in the criminal justice system as a corrections officer subject to a collective bargaining agreement while now assigned to the job of receptionist/clerk performing non professional duties during the pendency of the workers compensation case invokes the analysis of precedential appellate court cases below. This is so given the issue of the nature and extent of the injury in the context of 8(d)2 of the Act.

The Petitioner testified that while the Respondent continues to pay him close to the hourly rate he would have made had he been able to continue his chosen occupation as a sworn corrections officer, his continuing to be paid at that hourly rate is not guaranteed or protected by the Corrections Officers Union Agreement with the Respondent, inasmuch as the Petitioner is no longer a member of the Corrections Officers Union (See PX 14).

The customary rate of pay for jail receptionists, and for the other jail receptionists the petitioner works with, is presently between $13.07 per hour and $18.11 per hour (See PX 19). The guaranteed rate of pay for the Petitioner, pursuant to the bargaining agreement between the Respondent and the Corrections Officers Union, had the Petitioner been able to continue his job with the Respondent as a corrections officer and a member of the Corrections Officers Union, would have been $35.45 per hour (See PX 19).

The Petitioner testified as to the continued complaints he has referable to his injured left knee, which include stiffness, swelling and difficulty with motions such as kneeling. The Petitioner further testified as to continued complaints he has referable to his right elbow, forearm and hand, which include radiating pain which goes from his elbow through his forearm into his right hand, as well as a constant numbness and tingling.

The Petitioner testified, that as to his injured right shoulder, he continues to experience popping, grinding, loss of strength, loss of motion, as well as a constant pain which increases with activity. The Petitioner has difficulty sleeping due to right shoulder pain; he has been prescribed Zolpidem which he takes on an almost nightly basis in order to help him sleep through the pain; for pain during the day he continues to be prescribed Tramadol.

Dr. Logue in his November 13, 2013 medical report (See PX 10), noted the Petitioner's continued weakness, limited motion and chronic pain referable to his injured right shoulder. Dr. Logue is also of the opinion Petitioner may need additional treatment to his right shoulder in the future, including physical therapy, steroid injections and/or surgery, including a total shoulder artrhoplasty.

Dr. Gregory Nicholson, the Respondent's section 12 physician, is of the opinion that his objective findings, based upon his clinical examination of the Petitioner, support the Petitioner's subjective complaints of pain, weakness and limitation of motion referable to his injured right shoulder. Further, additional corrective surgery for the Petitioner's injured right shoulder may be warranted (See April 10 & 19, 2013 medical reports of Dr. Nicholson contained in PX 11).

The case presents in part the dispute over the significance of the professional officer with 20 years on the job prior to the new job assignment now being paid at his 'old" wage after the officer was placed by the Respondent in a receptionist position for that same Respondent.

From the Petitioner's view, he did what he was told while accepting the job offer thus maintaining his employee status with his career employer. His employment was maintained albeit at a job described above, with some very negative consequences in his viewpoint.

From the Respondent view, it asserts that the receptionist job, offered orally then by letter was a bona fide job offer for what is an established position with the County, i.e. it is not a "sham job" to use the words in Appellate Court language in discussing job tenders or job availability. Moreover, by inference the Respondent position is that they can pay the job taker anything they want to pay- despite the written evidence from the Respondent at bar shows the Receptionist/clerk job pays much less wage scale than what the worker is actually being paid, i.e.at being currently paid at his old professional wage scale despite his not doing his old job nor can he do his old job. That may certainly be true. Nevertheless, the Court in Reliance Elevator v. Industrial Commission 309 Ill. App 3rd, 983 (1999) in analyzing job offers goes to a second of a three part analysis. The second part of the Court's analysis/question is: is the rate of compensation (wages) far higher than was economically justified? The Arbitrator makes a finding of fact in the affirmative- that based upon the Respondent's own job information the wages the Petitioner is paid for being a receptionist is far higher than economically justified.

Based upon the above, the nature and extent of the injury falls into a category for his inability to perform his prior line of employment rather than limiting said permanent disability to an allocation for the shoulder injury et cetera.

Given the evidence including the testimony regarding officers duties coupled with his limitations, he has no duty to job search other counties et cetera for correctional officer positions that may accommodate his restrictions. Additionally, Rule 7110 had no role in the case at bar.

The Arbitrator finds as a matter of law the Petitioner is entitled to have and receive from Respondent the sum of $664.72 for a further period of 250 weeks, as provided in Section 8(d)2 of the Act, as amended, because the injury to Petitioner's right shoulder has caused the impairment of and has incapacitated the Petitioner from pursuing his usual and customary employment, pursuant to the terms of 8(d)2 of the Act, to the extent of 50% thereof.

The Arbitrator finds as a matter of law, the Petitioner is also entitled to have and receive from Respondent the sum of $664.72 per week for a further period of 104.35 weeks, as provided in Section 8(e) of the Act, because the injury sustained to the Petitioner's left knee caused a 25% loss of use of the left leg (53.75 weeks) and the injury sustained to the Petitioner's right elbow and arm caused a 20% loss of use of the right arm (50.6 weeks). The evidence shows that both menisci were the subject of surgery.

The conclusions of law are based upon the totality of the evidence. The Petitioner was extremely articulate in presentation plus subject to insightful cross examination. The Arbitrator finds and adopts upon the Petitioner's credible testimony regarding his current symptoms and activities along with his inability to pursue his usual and customary employment as a corrections officer.

The Arbitrator further adopts the records and medical reports of Dr. Edward J. Logue (PX 2, PX 8 and PX 10), the surgical records of the Hawthorn Place Surgical Center (PX 3, PX 4, PX 6 and PX 7), the surgical records of Lake Forest Hospital (PX 5), the medical reports of Respondent's evaluating physician, Dr. Gregory Nicholson (PX 11), Respondent's letter to Petitioner regarding jail receptionist/clerk job offer (PX 14) and the County of Lake wage rate documentation regarding corrections officers and jail receptionists (PX 19).

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

☒ 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

Sarah Duncan,
Petitioner,

15IWCC0990

vs.

NO: 11 WC 46469
12 WC 26837

Bob White Apartments,
Respondent.

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 accident 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 7, 2015, is hereby affirmed and adopted.

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: DEC 23 2015
O12/2/15
RWW/rm
046

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0990

DUNCAN, SARAH
Employee/Petitioner

Case# **11WC046469**

12WC026837

BOB WHITE APARTMENTS
Employer/Respondent

On 1/7/2015, 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 0.11% 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:

0047 McCARTHY ROWDEN & BAKER
JOHN CANNON ESQ
243 S WATER ST
DECATUR, IL 62523

0180 EVANS & DIXON LLC
MARILYN C PHILLIPS ESQ
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

15IWCC0990

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Sarah Duncan
Employee/Petitioner

v.

Bob White Apartments
Employer/Respondent

Case # 11 WC 46469

Consolidated cases: 12 WC 26837

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **11/7/14**. 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. [ ] What was the date of the accident?
E. [ ] 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. [ ] 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. [x] 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] What temporary benefits are in dispute?
   [ ] TPD [x] Maintenance [x] TTD
L. [x] 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 **9/7/10**, 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 not*** 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**2,367.00**; the average weekly wage was $**147.94**.

On the date of accident, Petitioner was **50** years of age, **married** with **1** dependent child.

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

Respondent shall be given a credit of $**9,171.66** for TTD, $ **0** for TPD, $ **0** for maintenance, and $ **0** for other benefits, for a total credit of $**9,171.66**.

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

ORDER

Petitioner failed to prove she sustained an accident on September 7, 2010 that arose out of her employment with Respondent. Petitioner's claim is denied and no benefits are awarded.

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.

Nancy Lindsey
Signature of Arbitrator

January 5, 2015
Date

JAN 7 - 2015

SARAH DUNCAN B. BOB WHITE APTS., 11 WC 46469; 12 WC 26837

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner has two claims on file against Respondent. Both allege an accident date of September 7, 2010 and injuries to the left ankle but were filed by different attorneys. (AX 2, 3) Petitioner's former attorney filed a Petition for Attorney's Fees which has been continued generally pending final disposition of the case. (AX 4) These cases were consolidated for hearing with the parties requesting one decision for both cases. (AX 7) Several witnesses testified at the hearing, including: Petitioner; Larry Hodge; Leroy P. Dawson; JoAn Kuder; and Jennifer Dunbar, Respondent's representative during the proceeding. The Arbitrator finds:

The Arbitrator finds:

Bob White Apartments is independent elderly housing that consists of a set of duplexes divided as apartments. It was Petitioner's job, along with co-workers, to clean the apartments after a tenant had vacated the apartment.

At the time of her alleged accident Petitioner had been working for Respondent approximately four to five months as a housekeeper. Petitioner testified that on September 7, 2010 she was at Apartment 302 in the Bob White Apartment complex when she fell descending a flight of stairs and broke her ankle.

According to the ambulance report, Petitioner tripped while going down the stairs and landed on the concrete floor hitting her chin. (PX 2) According to the hospital emergency room record, Petitioner fell on her buttocks and then twisted her ankle falling forward. (PX 3 - 5) At the hospital she gave a history of falling down a flight of eight carpeted stairs. She complained of left ankle pain and obvious deformity was noted. X-rays of the left foot revealed: a bunion at the first metatarsal with hallux valgus and minimal osteoarthritis of the metatarsophalangeal joint due to old healed fractures; deformity of the second metatarsophalangeal joint due to old, healed fractures; slight deformity of the third metatarsophalangeal joint due to osteoarthritis; no acute fracture or dislocation; a 4.8 cm calcaneal spur; and, soft tissue swelling around the left foot. (PX 3)

Petitioner was transferred by ambulance to Crossroads Community Hospital for further treatment. (PX 2) At Crossroads left ankle pain, swelling and deformity were noted. Dr. Jeffrey McIntosh performed a left ankle closed reduction of the dislocation, and an open reduction and internal fixation of the tri-malleolar fracture. (PX 4,5)

Petitioner followed up with Dr. McIntosh post-operatively. On September 14, 2010, he found excellent position of the fracture fragments and of the ankle, and estimated she would be off work from three to four months. He reported that Petitioner sustained a fracture dislocation of her left ankle and underwent an open reduction and internal fixation of the fracture dislocation. On October 21, 2010, he asked Petitioner to start weight-bearing with her walker or crutches. On November 11, 2010, he prescribed therapy focusing on range of motion and strengthening, as well as modalities to decrease her swelling. (PX 5)

Petitioner underwent a physical therapy evaluation at Salem Township Hospital on November 15, 2010. The therapist reported that she was being seen for therapy due to swelling. Her history indicated that Petitioner had missed or tripped on the last step when descending a flight of stairs, and nine weeks ago underwent an open reduction and internal fixation. He noted a decrease in range of motion and slight pain; subjectively she could stand, walk, and go up and down steps pain free; and, her pain level was 4/10. (PX 7)

The therapist found moderate left ankle swelling; tenderness of the left Achilles tendon, ankle joint and talofibular area; a bunion; negative Tinel's; and, painful range of motion. He observed "discoloration of the whole ankle and foot when dangled for more than 4 min. whole ankle and foot turns purple and the tips of the toes become ice cold. Pt. stated that it had been that way after the surgery." (PX 7).

The therapist concluded that Petitioner's pain and swelling prevented her from walking, standing, and going up and down stairs without an assistive device. He determined that she would benefit from therapy to increase her strength, and flexibility, and to decrease her pain and swelling. She followed up with therapy at that facility through January 5, 2012. (PX 7).

On December 2, 2010, Dr. McIntosh found Petitioner was making slow but steady progress in therapy, regaining motion and strength. She had swelling and said that her walker boot was too painful. She continued in an air cast and in therapy, and was asked to return in three weeks. (PX 5).

On January 6, 2011, Dr. McIntosh noted discoloration and swelling disproportionate to her injury, and suspected she was developing signs and symptoms of reflex sympathetic dystrophy. He spoke with Dr. Nemani and then recommended a referral to Dr. Eaton or Dr. Templer for evaluation and possible sympathetic blocks. He asked Petitioner to return in six weeks. (PX 5).

Petitioner's physical therapy was transferred to Synergy Therapeutic Group, where on January 26, 2011, she complained of 10/10 pain, tenderness, swelling, and decreased range of motion, strength and function. She followed up there through February 28, 2011. (PX 8)

On February 10, 2011, Petitioner saw Dr. Kosierkiewicz, a neurologist, at the request of Dr. McIntosh. She complained of very limited range of motion in her left ankle and of numbness, tingling and exacerbated sensation over the left foot and ankle bilaterally. On physical examination Dr. Kosierkiewicz found diminished range of motion in the left ankle, equal reflexes, diminished sensation on the dorsal aspect of the left foot and ankle, and difficulty weight bearing on the left foot. Dr. Kosierkiewicz's impression was history of ankle fracture with paresthesia but no allodynia. He recommended nerve conduction studies to evaluate the possibility of neuropathy.
(PX 9)

When Petitioner returned to Dr. McIntosh on February 17, 2011, she described her experience with Dr. Kosierkiewicz as "less than optimal." She claimed that Dr. Kosierkiewicz was not sure why she was there. Petitioner had continued with the Synergy Group, and began complaining of back pain as well as foot pain. Dr. McIntosh suggested referring Petitioner to a physician in St. Louis for more aggressive ankle treatment, and opined her symptoms were secondary to reflex sympathetic dystrophy. He told her to use her walker as needed because she complained of fatigue and increased pain when using a cane. He prescribed pain medicine and asked her to follow up in three weeks. (PX 5)

Petitioner next saw Dr. McIntosh on April 7, 2011. She complained of pain with motion and was walking with a cane and a lace up ankle brace. A tens unit was prescribed, and the doctor stated that he had referred Petitioner to another neurologist who was going to see her in May. He noted that a late March appointment had been available but was not at a convenient time for Petitioner. (PX 5)

On May 4, 2011, Petitioner was evaluated by Dr. Lori Guyton. She told the doctor she was going down stairs when her right foot went out from under and she "went down." Her left toe caught as she flipped face down to the bottom of the stairs. Petitioner complained to Dr. Guyton of reduced motion, pain, burning, and numbness in her foot and ankle. She said that she occasionally wore a brace. On physical examination the doctor found reduced sensation, motion and strength. She noted some edema of the left mid-calf, around the ankle and at the dorsal part of the foot. The foot was somewhat pink. Dr. Guyton thought the most likely reason for her presentation was reflex sympathetic dystrophy. She prescribed additional medications, an EMG, and exercise. (PX 10)

On May 19, 2011, Dr. McIntosh found that Petitioner's orthopedic treatment was concluded as her bones were healed, noted she was seeing Dr. Guyton, and asked her to follow up as needed. He noted she was using a lace-up ankle brace and a cane. On May 26, 2011, he confirmed Petitioner was unable to return to work. (PX 5)

An EMG/NC study performed on June 21, 2011 by Dr. Guyton revealed evidence of peripheral neuropathy resulting in non-conduction of the left tibial motor nerve and mild denervation in the left 4-5 distribution. On August 1, 2011, Petitioner complained to Dr. Guyton of pain, swelling and numbness. She recommended use of a medicinal cream. She provided a note dated August 3, 2011 allowing Petitioner to remain off work. She scheduled Petitioner for a follow up appointment on January 3, 2012. (PX 10)

Dr. Schmidt, an orthopedic foot/ankle specialist evaluated Petitioner at Respondent's request on October 13, 2011. She told him she was descending stairs into a basement and fell. She was not sure why she fell. She fell forward and severely twisted her left ankle. When she came to rest at the bottom of the stairs, she noted a deformity in her left ankle. (RX 1, Resp. Depo. Ex. 2)

Petitioner complained to Dr. Schmidt of burning, swelling, redness, decreased motion, and numbness of her ankle. She said she walked with a cane and experienced a constant deep bone ache. She said she was limited in her ability to stand, walk, carry, bend, push, pull, climb, squat, and kneel. (RX 1, Resp. Depo. Ex. 2)

On physical examination, Dr. Schmidt noted mild swelling of the left ankle, but no temperature change between her left and right ankles. Her standing alignment was neutral and her pulses palpable. Petitioner's gait was markedly antalgic and she could not single or double limb heel rise. He did not believe her complaints of generalized tenderness were consistent with true allodynia. He did, however, noted tenderness on both the medial and lateral sides of her ankle, as well as anteriorly. The point of maximum tenderness was along the tarsal tunnel. She had pain with deep palpation in that area and a mildly provocative Tinel's sign. She lacked similar pain over the superficial, deep peroneal nerve or sural nerve. Petitioner also reported generalized numbness throughout her forefoot area. X-rays revealed the fracture had healed in anatomical alignment. There were marked hallux valgus and hammertoe deformities with arthritic changes in the forefoot. (RX 1, Resp. Depo. Ex. 2)

Dr. Schmidt diagnosed ankle pain post open reduction and internal fixation of bimalleolar ankle fracture. He noted that although Petitioner complained of tenderness in the tarsal tunnel area, her EMG/NC study was consistent with neuropathy, but not with tarsal tunnel. He found she did not have reflex sympathetic dystrophy and explained there was no significant difference in color or temperature, but only a mild increase in circumference with some swelling as is sometimes seen with ankle fractures. RX 1, Resp. Depo. Ex. 2)

Dr. Schmidt also explained that Petitioner's clinical and radiographic findings were not consistent with a painful course of problems after an ankle fracture. The fracture had healed in anatomic alignment with no evidence of hardware loosening or fracture. Dr. Schmidt reported that Petitioner demonstrated significant resistance to attempting range of motion. He found no weakness. Her pain was in a stocking distribution mostly over the tarsal tunnel, but not in a true clinical picture of tarsal tunnel syndrome. (RX 1, Resp. Depo. Ex. 2)

Dr. Schmidt could not explain Petitioner's complaints of generalized pain. He found that although her treatment to date had been reasonable and necessary to try and ascertain and cure her complaints of pain, she required no more specific treatment and was capable of returning to work without restriction. (RX 1, Resp. Depo. Ex. 2)

Petitioner signed her Application for Adjustment of Claim in case number 11 WC 46469 on November 30, 2011. (AX 2)

December 21, 2011, Petitioner returned to Dr. Guyton with complaints of swelling and burning pain. Dr. Guyton diagnosed RSD, prescribed compression hose and allowed Petitioner to remain off work. Petitioner called the doctor on January 6, 2012 to complain the hose were too tight, and Dr. Guyton suggested trying knee highs. (PX 10)

Petitioner attempted to return to work, January 17, 2012, but left after a few hours. She then went to Salem Township Hospital where she was given an ace wrap, and allowed to remain off work until following up with her doctor. (PX 11) Petitioner telephoned Dr. Guyton's office January 17, 2012 to report that she had tried to return to work but only lasted till 10:30 and then went to a clinic where they took her off work until she saw Dr. Guyton. She complained that she could not wear the hose. On January 20, 2012, Dr. Guyton called Petitioner and recommended trying to use the bandage again. (PX 10)

Petitioner returned to Dr. Guyton February 20, 2012. The ace bandage was no help and her foot and leg were swollen. She could not use the hose. Dr. Guyton allowed Petitioner to remain off work and Petitioner was to see another specialist. (PX 10)

On February 24, 2012 Dr. Schmidt issued an addendum report after being provided with additional records to review. In his report he opined that after having reviewed additional records from Salem Township Hospital and Dr. Guyton, his opinions as stated in his earlier report remained unchanged. He felt Petitioner showed no signed of reflex sympathetic dystrophy. (RX 1, Res. Ex. 3)

March 14, 2012 Petitioner returned to Dr. McIntosh. He thought there was a chance she was allergic to the metal in her leg and suggested hardware removal. On April 30, 3012, Dr. McIntosh removed the hardware from Petitioner's left ankle. On May 24, 2012, he allowed her to remain off work pending

treatment with another physician for RSD. June 7, 2012 Dr. McIntosh noted she had a little less pain, and was planning to refer her to a specialist in Effingham for RSD. (PX 5)

Dr. Schmidt was deposed on April 13, 2012. He testified consistent with his earlier written report. (RX 1) Dr. Schmidt is a board certified orthopedic surgeon specializing in foot and ankle problems. Dr. Schmidt explained that reflex symptathetic dystrophy (RSD) and complex regional pain syndrome (CRPS) are essentially the same thing and involve pain out of keeping with what would be seen in the normal situation. The diagnosis requires several clinical findings such as allodynia (quite extreme cutaneous pain -- ie. painful skin), trophic changes (such as doughy skin), swelling, stiffness, coolness/clamminess to touch), and osteopenia. Petitioner did not have all of those findings as she lacked any allodynia, the typic trophic changes, and coolness and clamminess to the skin. (RX 1, pp. 8-10) Dr. Schmidt acknowledged reviewing photographs of Petitioner's feet but they did not change his opinion. She had also undergone an EMG/NCS which was negative. He felt Petitioner was at maximum medical improvement from her ankle fracture dislocation and that her ongoing pain complaints were not unusual as soreness and swelling frequently accompany such an injury for up to a year after the accident. He did not feel her soreness or swelling, however, should preclude her from using her foot/ankle and participating in activities. (RX 1, pp. 10-11)

On cross-examination Dr. Schmidt was asked about the photographs of Petitioner's feet and ankles. He did that think her feet were that swollen when he examined her. The degree of swelling and discoloration shown on the photos would not, to him, necessarily indicative of RSC or CRPS. (RX 1, p. 16) Dr. Schmidt also disagreed that there are lots of variation in signs and symptoms of RSD among patients. It's a highly identifiable condition. (RX 1, pp. 16-17) He further acknowledged that restricted motion, swelling, and burning pain (as Petitioner noted she had in her initial questionnaire with the doctor) can be associated with RSD. (RX 1, p. 20) He also testified that the records were inconsistent regarding the presence of allodynia and that sometimes it was present; sometimes, not. (Id.)

Petitioner saw Dr. Ghalambor on July 3, 2012 with complaints of swelling and burning pain in her left foot and ankle. He diagnosed complex regional pain syndrome or RSD. On July 24, 2012, Dr. Ghalambor administered a left-sided lumbar sympathetic block. He indicated that if the injection did not help he had nothing else to offer. He suggested a trial of a spinal cord stimulator, but Petitioner was not interested in that treatment. (PX 12)

Petitioner signed her Application for Adjustment of Claim in case number 12 WC 26837 on July 20, 2012. (AX 3)

August 23, 2012, Dr. McIntosh noted Petitioner's ankle was painful and swollen. He did not think he had much more to offer, did not release her to return to work and asked her to follow up as needed. (PX 5)

Petitioner saw a vocational consultant, Bob Hammond, at the request of her attorney on November 21, 2012. He determined she was unemployable. (PX 15) Petitioner met with another vocational specialist, Karen Kane Thaler of S & H Medical Management Services, on February 20, 2013. Ms. Thaler performed a labor market study and identified a number of jobs which she believed Petitioner could perform. (RX 2)

At the hearing Petitioner testified that on the date of accident, she, along with co-worker Jody Kuder, entered Apartment 302 to inspect the interior to determine the amount of cleaning that would be

required for the next tenant moved in. Petitioner testified that on the date of accident, Apartment 302 was vacant and locked to the general public. Petitioner testified this was the first time she had been inside this apartment and had to use a key provided to her by Respondent to enter the premises.

Petitioner testified that after an initial walk through the upstairs interior, she began to walk down the flight of stairs leading to the basement. Petitioner testified the basement was not considered living quarters and was used mainly as storage. Petitioner testified that she walked down the stairs with her right hand on the railing and her head turned to the right looking over her shoulder talking to Jody Kuder about the status of the basement.

Petitioner testified that as she reached the fourth of fifth step down, she lost her balance and fell onto her buttocks and forward. Petitioner testified that as she fell forward her left foot became lodged in the open riser space between two stairs and she heard her ankle "snap". Petitioner testified that she ultimately landed face first into a square of carpet at the bottom of the stairwell on the basement floor. Photos of a fully carpeted stairway were admitted as Pet. Ex. 22, but Petitioner testified those photos did not depict the stairs where she fell.

Ms. Kuder testified that she had been employed by Respondent as a homemaker for about six years. She was in the kitchen and had started down to the basement, having come around the door to the landing. As Ms. Kuder got to the top of the landing Petitioner fell. Ms. Kuder testified that Petitioner was not rushing or carrying anything. She agreed that Petitioner was about halfway down the steps when she fell back, and then pitched forward. Ms. Kuder recalled that when Petitioner first started to fall she saw Petitioner grab the railing with her right arm and then she pitched forward and slipped about 3-4 steps. Ms. Kuder recalled the incident because it was "so traumatic." Ms. Kuder had been in Apartment 302 as recently as two days before the arbitration hearing and was sure the steps there were fully carpeted, while the steps in another Apartment, 300, were only carpeted on one side. Ms. Kuder identified the stairs depicted in Pet. Ex. 22 as those where Petitioner fell.

Larry Hodge testified that he owns CMC, a company which provides building maintenance for Respondent. At Respondent's request he visited Apartment 302 a few days after the alleged accident in order to inspect the steps where Petitioner fell. Mr. Hodge testified that he thought the steps there were partly carpeted. He recalled that the railing was on the right as one looked up from the bottom of the stairs. He admitted that he found nothing obviously wrong with the stairway and recommended no repairs or changes. He testified that Pet. Ex. 22 did not show the steps he inspected but admitted that although he had been in both Apartments 300 and 302 multiple times, he could not recall what the steps in Apartment 300 looked like.

Jennifer Dunbar testified that she has been Respondent's property manager for almost 10 years, visits the tenants quite often, and is familiar with the stairways in Apartments 300 and 302. She testified that she took the photos of the steps shown in Pet. Ex. 22 and that those pictures showed the fully carpeted stairs in Apartment 302. She remembered that Apartment 300 had carpet on one side and paint on the other because she "always thought [it] was weird."

Leroy Dawson, an architect, admitted he had never seen the stairway where Petitioner fell. He testified that based upon a description of the steps given to him by Mr. Hodge, he determined that the steps were out of code in part because there was a deviation between the height of the first step and the subsequent steps. He admitted that the height of the risers for the next steps was the same, and that Petitioner told him that when she fell she had been on about step four or five, where the riser height was uniform.

Petitioner testified that she is no longer treating. She complained of constant pain, swelling, tingling and burning in her ankle. She sleeps in a recliner with three pillows under her foot. She must sit and elevate her foot every three hours or so for at least an hour.

Petitioner submitted a job search log for the periods between December 14, 2012 and December 27, 2012 listing six employer contacts; and, January 15 to February 12, 2014 listing 24 employer contacts. She applied for work as a cashier, a housekeeper, a teller, a desk clerk, and a cook/waitress, (PX 16) and testified that she applied for jobs which she thought would fit her restrictions.

Petitioner testified that her present activities include cooking, picking her daughter up after school, and driving a car. She shops for groceries and at Wal-Mart. She performs housework including dusting, sorting laundry, folding laundry, and washing dishes. She attends her daughter's home volleyball games.

The Arbitrator concludes:

1. Issue (C) Accident:

Petitioner failed to prove that her accident of September 7, 2010 arose out of her employment.

In reaching her decision the Arbitrator has considered the Appellate Court's findings denying the compensability of the petitioner's fall on a stairway in **Baldwin v. Illinois Workers' Compensation Commission**, 409 Ill. App. 3d 472; 949 N.E.2d 1151; 2011 Ill. App. Lexis 420; 351 Ill Dec. 56. The Court explained that petitioner therein bore the burden of proving her injury arose out of her employment. It explained risks to employees fall into three groups: (1) risks distinctly associated with the employment; (2) risks personal to the employee, such as idiopathic falls; and, (3) neutral risks with no particular employment or personal characteristics.

In **Baldwin**, the claimant testified to no defect with or substance on the stairs, and to no personal physical problems. She did not know what caused her to fall: her fall was unexplained. According to **Baldwin**, for an injury caused by an unexplained fall to arise out of the employment the claimant must present evidence supporting a reasonable inference that the fall stemmed from a risk related to the employment, not an injury resulting from a neutral risk to which the general public is equally exposed. The Court specifically stated that the act of walking up a staircase does not expose an employee to a risk greater than that faced by the general public. The **Baldwin** Court found the petitioner failed to prove her injury arose out of her employment because she presented no evidence to either establish the cause of her fall or that she was exposed to a risk greater than that faced by the general public.

The Commission has followed this reasoning in subsequent cases. In **Williams v. County of Coles**, 13 IWCC 1022, 2013 Ill. Work. Comp. LEXIS 1175, the Commission found that petitioner failed to prove she sustained an accident arising out of and in the course of her employment. In **Williams** the claimant was holding her purse when she fell while ascending steps, but presented no direct evidence explaining the cause of her fall. She did not know why she fell, but thought she tripped on something. The steps were not wet, there was no gravel on them, and the weather was clear. She did not prove that varying heights of steps made them defective. The fact she was ascending steps at the time of her injury did not prove she was exposed to a greater risk than the general public.

In **Frohlich v. Village of Lyons**, 12 IWCC 1455, 2012 Ill. Work. Comp. LEXIS 1549, the Commission found the petitioner therein failed to prove she sustained an accident arising out of and in the course of her employment. The petitioner was ascending stairs and fell near the top step before the landing. The petitioner admitted the condition of the stairs did not cause her fall. There was no defect on the staircase, no debris or water on the stairs, adequate lighting, and a railing. The petitioner was not hurrying or carrying anything. Her job did not require to go up and down stairs repeatedly. The Commission agreed with the Arbitrator's determination that this risk was one to which members of the general public are exposed on a regular basis: traversing stairs as they carry on a conversation with another individual. The Commission found she was not exposed to an increased risk due to her employment.

The Arbitrator finds the evidence herein fails to establish that Petitioner's fall arose out of her employment with Respondent. Petitioner failed to prove a substance on or a defect in the stairs caused her to fall. There was no evidence of any debris or water on the steps to cause the fall. There was no evidence that the carpet on the steps, full or partial, caused Petitioner to fall. The height of the risers where Petitioner fell was uniform, the light was on, and she was holding onto a hand rail. Petitioner identified no personal physical idiopathic conditions which caused her fall. Petitioner did not know why she fell; the cause of her fall was unexplained.

It appears that Petitioner was simply descending a stairway. There is no evidence that her employment enhanced her risk of injury from falling on the stairs. There was no defect in the stairs. There was no debris on the stairs. She was not rushing. She was not carrying anything. Petitioner failed to present evidence supporting a reasonable inference that her fall stemmed from a risk related to her employment and not from a neutral risk to which the general public is equally exposed when descending a stairway.

Petitioner failed to prove by a preponderance of the credible evidence that she sustained an accidental injury arising out of her employment by Respondent. It is unnecessary for the Arbitrator to address the other issues presented at trial. This claim is denied. No benefits are awarded.

****

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

☒ 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

Gail D. Tasco,
Petitioner,

15IWCC0991

vs.

NO: 12 WC 24904

Illinois Veterans Home,
Respondent.

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 accident, medical expenses, permanent disability, temporary disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 24, 2015, is hereby affirmed and adopted.

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.

DATED: DEC 23 2015
O12/2/15
RWW/rm
046

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0991

TASCO, GAIL D
Employee/Petitioner

Case# **12WC024904**

ILLINOIS VETERANS HOME
Employer/Respondent

On 3/24/2015, 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:

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

0499 CMS RISK MANAGEMENT
801 S SEVENTH ST 8M
PO BOX 19208
SPRINGFIELD, IL 62794-9208

5002 ASSISTANT ATTORNEY GENERAL
JOSEPH BLEWITT
500 S SECOND ST
SPRINGFIELD, IL 62706

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

MAR 24 2015

RONALD A.RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC0991

STATE OF ILLINOIS)
)SS.
COUNTY OF ADAMS)

☐ 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

GAIL D. TASCO,
Employee/Petitioner

v.

ILLINOIS VETERANS HOME,
Employer/Respondent

Case # 12 WC 24904

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 **Maureen Pulia**, Arbitrator of the Commission, in the city of **Quincy**, on **3/4/15**. 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 _____

15IWCC0991

FINDINGS

On **7/5/11**, 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 not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

In the year preceding the injury, Petitioner earned $**41,616.40**; the average weekly wage was $**800.31**.

On the date of accident, Petitioner was **42** years of age, ***single*** with **no** 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 $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**00.00**.

Respondent is entitled to a credit of $**9,467.29** under Section 8(j) of the Act.

ORDER

Petitioner had failed to prove by a preponderance of the credible evidence that she sustained an accidental injury to her right hand due to repetitive work activities, that arose out of and in the course of her employment by respondent on 7/5/11. Petitioner's claim for compensation is denied.

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

3/19/15
Date

MAR 24 2015

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 42 year old support service worker in dietary, alleges she sustained an accidental injury to her right hand due to repetitive work activities that arose out of and in the course of her employment and manifested itself on 7/5/11. Petitioner was a VNAC (veterans nursing assistant certified) when she started working for respondent.

Petitioner began working for respondent on 1/3/05. She began working in the dietary department in December of 2006 on the tray line. She worked on the tray line from 2006 through 2009. She then returned to work as a VNAC. In 2011 she returned to work in the dietary department as a janitor - all around float.

From 2006 through 2009 petitioner worked the three positions of the tray line. The tray line was broken into three sections (T1, T2, and T3). When working the T1 position petitioner would check temperatures of hot and cold foods, get food from kitchen to tray line, and place food on trays. When working the T2 position petitioner poured soup into small containers and put on trays. When working the T3 position, petitioner would gather the condiments (ketchup, mustard, butter), put fruit on the trays, and get pitchers of water. She would also dump the trays when they came back from the units. Petitioner testified that employees in dietary would rotate between T1, T2 and T3 every 30 days.

Petitioner testified that in 2011 she worked as a janitor -all around float. What this meant was that petitioner would fill in where needed if other employees called in sick. When petitioner arrived at work she would get her duties for that day from her supervisor. Petitioner testified that all the jobs varied. In this position petitioner's job could change as many as three times a day. She would go wherever she was needed. Her duties varied from day to day and within a day. Areas she would switch between included the pots and pan room and tray line area. She testified that she worked in the pots and pan room a lot. She testified that in June and July of 2011 she was in the pots and pan room 50% of the time.

On 7/5/11 petitioner was working as a janitor - all around float in the pot and pans room. In that room petitioner cleaned out the pots and pans after the food was cooked, washed them, and then placed them in the sanitizer. After they were sanitized she would put the pots back on the rack. Petitioner would hold the pot or pan in her left hand and scrub it with her right hand using a scouring pad. The actual number of pots and pans she would clean depended on what shift she was working and how many pots and pans were used. While cleaning pots petitioner noticed a burning sensation in her right hand.

Petitioner testified that this burning sensation began sometime in 2011, but she did not know when. She testified that she selected 7/5/11 as the accident date because Workers' Compensation needed an injury date.

She testified that the date she selected was a random date that she made up. She did not recall when her problems actually started, but claims she did report her problems with her right hand to her supervisor.

On 7/18/11 petitioner presented to Dr. Jacobs at Quincy Medical Group (QMG). She complained of pain and numbness in her right hand and wrist for the past couple weeks. She reported that she was concerned about a change in jobs at work. She denied any injury or precipitating event. Petitioner was examined and assessed with hand pain, trigger deformity of the 4th finger (ring finger). X-rays were taken of the right hand. A bone fragment was noted in the soft tissue adjacent to the base of the proximal phalanx, right 4th digit, that was likely a secondary ossification center. An old un-united fracture could not be ruled out. She was taken off work 7/17/11 and 7/18/11 and released to light duty work on 7/19/11. She was referred for an orthopedic evaluation.

On 7/19/11 petitioner presented to Certified Nurse Practitioner (CNP) Bruns. She complained of a catching sensation in her right 4th finger with flexion. She also complained of numbness and tingling in the 1st, 2nd, 3rd, and 4th fingers, especially at night. She stated that these symptoms started when she began scrubbing pots and pans for several hours on end. Petitioner was told to continue using her splint at night. An EMG was ordered. She was released to full duty work.

On 8/30/11 petitioner underwent an EMG/NCS of the upper extremity. The impression was right upper extremity NCS within normal limits.

On 9/9/11 petitioner returned to Bruns. She reported that she was no longer experiencing any numbness or tingling, but still had some catching again in the right 4th finger and some burning sensation through the palm of the right hand. She reported that her finger was better after the steroid, but was again giving her trouble. Petitioner was assessed with a trigger finger, right 4th finger. Bruns performed another injection into her trigger finger. Petitioner was released from care.

On 12/27/11 petitioner returned to Bruns. She stated that she was no longer experiencing any catching. She reported increased discomfort in her right hand over the last several days. She stated that she was doing a repetitive job at work. She reported that she works in dietary and takes 2 metal trays, bangs them together over a trash can, and places them on a rack. She stated that she does this 4-500 times a day, and his has caused her pain through the palm of the right hand with occasional shooting pain to the elbow. She was assessed with right hand pain. Petitioner was given naproxen and prescribed occupational therapy. Petitioner was continued on full duty work.

On 1/25/12 petitioner returned to Bruns. She continued to complain of discomfort in her right hand. She stated that she did not undergo any therapy. Bruns assessed right hand pain. Occupational therapy was

prescribed again. Petitioner was referred to Dr. Philpott. Bruns believed her pain was coming from overuse. Petitioner began a course of physical therapy at Advanced Physical Therapy on 3/20/12. She was discharged on 5/9/12 due to noncompliance.

On 4/23/12 petitioner presented to Dr. William Holt with bilateral hand pain, possible carpal tunnel syndrome. Symptoms were mostly right handed. She complained of pain in both hands when she does strenuous activity. She also complained of numbness in both hands, and her right arm. She stated that her right hand hurts constantly and randomly, or 4 times a day. She stated that she underwent occupational therapy. Dr. Holt examined petitioner and was of the opinion that she did not have carpal tunnel syndrome. He could not account for her problems. He knew of no physical process that would make her arm go numb randomly for 5 minutes at a time several times a day in a nonanatomic fashion. He thought she might have some arthritis and would benefit from Aleve. Although petitioner attributed her problems to work, Dr. Holt could not find anything really wrong with her. He released petitioner from his care.

On 5/6/12 petitioner presented to Dr. Burton. She complained of right hand pain and numbness. She reported a long history of right hand numbness. Dr. Burton assessed carpal tunnel syndrome and trigger finger of the right ring finger. He recommended an endoscopic carpal tunnel release on the right and right trigger finger release of the ring finger.

On 6/5/12 petitioner underwent an endoscopic carpal tunnel release and trigger finger release on the right ring finger. This procedure was performed by Dr. Burton. Her post-operative diagnosis was right carpal tunnel syndrome and trigger fingering of the ring finger. Petitioner followed-up with Dr. Burton. On 6/15/12 Dr. Burton noted that petitioner was moving her fingers well, and had a little stiffness around the carpal tunnel incision. He released her to full duty work and released her on an as needed basis.

On 9/24/12 petitioner returned to Dr. Burton. She reported stiffness in the long finger. She also reported problems with her right shoulder following a motor vehicle accident during the winter. Dr. Burton diagnosed early trigger finger and tendinitis of the sheath of the long finger of the right hand. He injected the trigger sheath of the long finger of the right hand. He released her from his care. However, petitioner continued to follow-up with Dr. Burton for her unrelated shoulder problems.

Prior to her alleged accident on 7/5/11 petitioner had a history of high blood pressure and smoking. On 8/9/06 she presented with complaints of right elbow pain for which she was given an injection of Depo-Medrol and Xylocaine at the lateral epicondyle. She continued with right elbow pain into 2007.

Petitioner testified that post-operatively she improved and returned to her regular duty janitorial float position with respondent. In November of 2014, she took an unrelated leave of absence following a motor vehicle accident where she injured her low back.

Currently petitioner notices stiffness in her right hand and runs it under hot water to loosen it up. She testified that at times her trigger finger locks up and twitches. She reported spasms in her hand and locking up in her trigger finger when she washes dishes, does her hair, and writes. Sometimes she feels burning and numbness. She testified that before she began the janitorial job she would put salad into bowls and trays. While she did this her hand would lock up.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

As a general rule, repetitive trauma cases are compensable as accidental injuries under the Illinois Worker's Compensation Act. In Peoria County Belwood Nursing Home v. Industrial Commission (1987) 115 111.2d 524, 106 Ill.Dec 235, 505 N.E.2d 1026, the Supreme Court held that "the purpose behind the Workers' Compensation Act is best serviced by allowing compensation in a case ... where an injury has been shown to be caused by the performance of the claimant's job and has developed gradually over a period of time, without requiring complete dysfunction.." However, it is imperative that the claimant place into evidence specific and detailed information concerning the petitioner's work activities, including the frequency, duration, manner of performing, etc. It is also equally important that the medical experts have a detailed and accurate understanding of the petitioner's work activities.

Since petitioner is claiming an injury to right hand and right 4th finger due to repetitive work activities, in Illinois, recovery under the Workers' Compensation Act is allowed, even though the injury is not traceable to a specific traumatic event, where the performance of the employee's work involves constant or repetitive activity that *gradually* causes deterioration of or injury to a body part, assuming it can be medically established that the origin of the injury was the repetitive stressful activity. In any particular case, there could be more than one date on which the injury "manifested itself". These dates could be based on one or more of the following, depending on the facts of the case:

1. The date the petitioner first seeks medical attention for the condition;
2. The date the petitioner is first informed by a physician that the condition is work related;
3. The date the petitioner is first unable to work as a result of the condition;
4. The date when the symptoms became more acute at work;

5. The date that the petitioner first noticed the symptoms of the condition.

Petitioner testified that the accident date of 7/5/11 was a date she randomly selected because she needed a date for her workers' compensation claim. This was not the date she first sought medical attention for the condition, not the date she was first informed by a physician that the condition was work-related, not the date she was first unable to work as a result of the condition, not the date when the symptoms became more acute at work, and not a date she first noticed the symptoms of the condition.

Petitioner testified that her jobs for respondent were varied and could change up to three times a day. She testified to working on the three positions of the tray line in dietary from 2006-2009. In 2011 she worked as a janitor-all around float. What this meant was that she would fill in where ever needed if other employees called in sick. Her job assignments would be given each morning and may change throughout the day. She testified that her job duties were varied. She testified that she would switch between the tray line and the pots and pan room.

She testified that she was in the pots and pan room a lot. She believed she was there 50% of the time in June and July of 2011. In that room petitioner cleaned out the pots and pans after the food was cooked, washed them, and then placed them in the sanitizer. After they were sanitized she would put the pots back on the rack. Petitioner would hold the pot or pan in her left hand and scrub it with her right hand using a scouring pad. The actual number of pots and pans she would clean depended on what shift she was working and how many pots and pans were used. Although petitioner testified that her right hand would burn when she scoured the pots and pans, she did not provide any testimony as to how many pots and pans she would clean a day, and actually how many days, or parts thereof, she worked in the pots and pan room in June and July 2011. Petitioner testified that the burning sensation in her right hand began in 2011, but did not know when.

In addition to placing into evidence specific and detailed information concerning the her work activities, including the frequency, duration, manner of performing, etc., which the arbitrator finds petitioner failed to do, it is also equally important that the medical experts have a detailed and accurate understanding of the petitioner's work activities when claiming repetitive trauma injuries. In the case at bar, the arbitrator finds petitioner did not provide a detailed and accurate history of her work activities to any of her healthcare providers. Although she reported to Dr. Jacobs and Bruns that she believed her injuries were related to her repetitive work activities, there is nothing in the credible medical record to support a finding that she provided either of them with a detailed and accurate history of her work activities for respondent.

On 9/9/11, just two months after her alleged injury, petitioner reported that she no longer had any numbness or tingling. Then on 12/27/11 she reported that she was no longer experiencing any catching. That same day she reported discomfort in her right hand with an onset of several days before. She attributed this problem to an entirely different job duty. She related it to working in dietary and banging 2 metal trays together over a trash can, and placing them on a rack 4-500 times a day. The arbitrator finds this frequency not very detailed, and this job was entirely different from the job she claimed caused her injuries.

When petitioner presented to Dr. Holt on 4/23/12, he was of the opinion that petitioner did not have carpal tunnel syndrome and he could not account for her problems. Although petitioner attributed her problems with her right hand and 4th right finger to work, Dr. Holt could not find anything really wrong with her and released her from his care. The arbitrator notes that petitioner did not provide any detailed history of her work activities to Dr. Holt and he noted that her EMG/NCS was normal.

Additionally, with respect to her right ring finger complaints, an x-ray of the right hand showed a bone fragment in the soft tissue adjacent to the base of the proximal phalanx of the right 4th digit, likely a secondary ossification center. It was also noted that an old un-united fracture could not be ruled out. These findings were not identified as being related to petitioner's work duties by any healthcare provider.

Petitioner then presented to Dr. Burton. The credible records support a finding that she did not provide him with a detailed and accurate history of her work activities. Absent any objective evidence of carpal tunnel syndrome, Dr. Burton performed an endoscopic carpal tunnel release and trigger finger release on the right ring finger. Dr. Burton never opined that petitioner's problems were related to her work activities.

Prior to 7/5/11 petitioner had a history of high blood pressure and a history of smoking.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner had failed to prove by a preponderance of the credible evidence that she sustained an accidental injury to her right hand due to repetitive work activities, that arose out of and in the course of her employment by respondent on 7/5/11. Petitioner reported that her duties were varied and could change up to 3 times a day. The arbitrator also finds it significant that none of petitioner's healthcare providers had an accurate history of her work activities, including the duration and frequency. The arbitrator also finds it significant that with respect to the alleged injury on 7/5/11 she attributed it to working in the pots and pans room. However, by 9/9/11 she was no longer experiencing any numbness or tingling, and on 12/27/11 she stated that she

was no longer experiencing any catching. On that date she related the increased discomfort in her right hand, that she had been experiencing for several days, to a job she was doing in dietary that involved banging 2 metal trays together over a trash can, and placing them on the rack. Her frequency of this activity ranged from 4 to 500.

The arbitrator finds the complaints petitioner was alleging were related to her right hand on 7/5/11 had resolved by 9/9/11 and 12/27/11, and the new complaints she was experiencing on 12/27/11 were related to an entirely different job.

The arbitrator also finds it significant that despite undergoing a right carpal tunnel release, the medical records contain no objective evidence to support a finding that petitioner even had right carpal tunnel syndrome. The arbitrator also questions whether or not petitioner's trigger right ring finger is causally related to any work injury given the preexisting findings on her right hand x-rays of a bone fragment in the soft tissue adjacent to the base of the proximal phalanx of the right 4th digit, that might be related to an old un-united fracture.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?
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?
L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

Having found the petitioner has failed to prove by a preponderance of the credible evidence that she sustained an injury to her right hand due to repetitive work activities that arose out of and in the course of her employment on 7/5/11, the arbitrator finds these remaining issues moot.

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

Alfrieda Gray Vaughn,
Petitioner,

vs.

Wallace Cat Fish Corner and Illinois State Treasurer as Ex Officio of the Injured Workers' Benefit Fund,
Respondent.

15IWCC0992

NO: 11 WC 13159

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 whether the award of medical expenses should have been paid to Petitioner rather than to the medical providers directly 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 25, 2014, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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.

15IWCC0992

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $17,000.00. 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: DEC 30 2015
O12/16/15
RWW/rm
046

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0992

VAUGHN, ALFRIEDA GRAY
Employee/Petitioner

Case# 11WC013159

WALLACE CAT FISH CORNER AND DAN RUTHERFORD STATE TREASURER AS EX OFFICIO OF THE INJURED WORKERS' BENEFIT FUND
Employer/Respondent

On 11/25/2014, 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.

0206 GAINES & GAINES
P O BOX 6345
EVANSTON, IL 60202

0000 WALLACE CATFISH CORNER
2800 W MADISON ST
CHICAGO, IL 60612

5199 ASSISTANT ATTORNEY GENERAL
MELISSA HUNTERHAUSER
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

15IWCC0992

STATE OF ILLINOIS)
)SS.
COUNTY OF **COOK**)

- [x] 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

Alfrieda Gray Vaughn
Employee/Petitioner

v.

Case # **11** WC **13159**

Consolidated cases: _____

Wallace Cat Fish Corner and Dan Rutherford, State Treasurer as Ex Officio Custodian of the Injured Workers' Benefit Fund
Employer/Respondent

An *Application for Adjustment of Claim* was filed in ther matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Carlson**, Arbitrator of the Commission, in the city of **Chicago**, on **October 9, 2014**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to ther document.

DISPUTED ISSUES

A. [x] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [x] 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. [x] What was Petitioner's age at the time of the accident?
I. [x] What was Petitioner's marital status at the time of the accident?
J. [x] 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] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] TTD
L. [x] 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. [x] Other **Whether notice of hearing to the respondent employer was properly served; Does the respondent employer have Workers' Compensation Insurance?**

FINDINGS

On **January 27, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On that date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On that date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of ther 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 $**unknown amount**; the average weekly wage was $**256.00**.

On the date of accident, Petitioner was **51** years of age, ***married*** with **0** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $ **0** for TTD, $ **0** for TPD, $ **0** for maintenance, and $ **0** for other benefits, for a total credit of $ **0**.

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

ORDER

Medical benefits

Respondent shall pay reasonable and necessary medical services provided by Cook County Hospital and Stroger Outpatient pursuant to the fee schedule directly to the providers, as provided in Section 8(a) of the Act.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $220.00/week for 10 weeks, commencing 01-28-11 through 04-07-11, as provided in Section 8(b) of the Act.

Permanent Partial Disability: Schedule injury (For injuries before 9/1/11)

Respondent shall pay Petitioner permanent partial disability benefits of $220.00/week for 66.8 weeks, because the injuries sustained caused the 40% loss of the right foot, as provided in Section 8(e) of the Act.

Injured Workers' Benefit Fund

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in the matter. The Treasurer was represented by the Illinois Attorney General. The award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of the Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of the Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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

STATEMENT OF INTEREST RATE If the Commission reviews the 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 the award, interest shall not accrue.

Signature of Arbitrator

11.24.14
Date

NOV 25 2014

15IWCC0992

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATOR'S DECISION

ALFRIEDA GRAY VAUGHN,

Petitioner,

v. 11 WC 13159

WALLACE CATFISH CORNER AND THE

INJURED WORKERS' BENEFIT FUND,

Respondents.

Findings of Fact

This case was heard by the Honorable Kurt Carlson, Arbitrator of the Workers' Compensation Commission, on October 9, 2014 in Chicago, Illinois. Petitioner was represented by counsel. Respondent-Employer did not appear at the hearing. Respondent Illinois State Treasurer as Ex-Officio Custodian of the Injured Workers' Benefit Fund (hereinafter "IWBF") was represented by the Attorney General's Office. After hearing the proofs and reviewing all of the evidence presented, the Arbitrator hereby makes findings on all of the disputed issues.

Petitioner notified the Respondent-Employer via certified mail of all proceedings before the Commission, including the hearing date indicated above. (Px 5 & 6) They refused said mail and did not appear. This entity had no workers' compensation coverage on the date of accident. (Px1 & 4)

Petitioner, with a stated age of 51 years old at the time of the injury, married with no children under eighteen, was working as a cashier and food preparer at Wallace Catfish Corner, a restaurant, on or about January 27, 2011 when she slipped on water and/or grease as she walked from the register to punch out at the time clock, falling on the floor and breaking her right distal tibia. She worked at Wallace earning $8 per hour, 32 hours a week, four days a week. She was paid cash every two weeks. The business uses machines, ovens, deep fryers, stoves and other equipment typical of restaurants.

Petitioner had never injured this part of her body before the date of accident, nor did she injure it again after the date of accident. She immediately noticed that her right leg was painful and contorted at the ankle. Petitioner was immediately assisted by a man named Percel, who remarked that the member

appeared broken. She tried to stand but could not do so. While still on the floor, Wallace, the owner, appeared and asked Petitioner if she wished for him to call an ambulance. Petitioner declined, instead taking a ride from her daughter to Stroger Hospital's emergency room.

At the hospital later that evening, the aforementioned accident was noted. An x-ray study revealed an 'oblique fracture through the lateral malleolus that appears to involve the distal tibiofibular syndesmosis" with moderate displacement of fracture fragment. (Px 2, p. 47) A subsequent such study performed a few days later revealed, in addition to the foregoing, "widening of the ankle mortis indicating likely ligamentous disruption medially," noting that said finding "was not clearly present on the prior study." (p. 37) On February 8, after splinting, using a walker, remaining non-weight bearing and resting, significant edema was noted. Surgery at Provident Hospital was recommended. (p.30) After pre-operative testing at Stroger (pp.10-29), surgery described as an open reduction with internal fixation of the right lateral malleolus and placement of syndesmotic screw was performed at Provident Hospital. The operative report revealed, among other things, the use of lag screws from anterior to posterior, a posterolateral plate, three screws proximally and one screw distally. When a fluoroscopy revealed medial widening of the syndesmosis, an incision was made anteromedially down to the bone, tissue was removed, and a periarticular clamp was used to reduce said widening. Then a screw was placed outside the plate and across four cordices, or from lateral to medial. (Px3, p. 8)

As of March 3, Petitioner continued to use a seated walker for ambulation. (Px2, p. 9) Operative staples were removed and a cast was applied on March 10th. (p.6) Petitioner began walking and weight bearing on March 19. On April 7th she was prescribed a Cam boot, ordered to begin exercises and to return to the clinic in four weeks. (p. 3) She testified to resuming work as of April 16 at Wallace, although Stroger first found her capable of returning to work on May 26, 2011. (p.2)

Petitioner was paid no benefits from Respondent-Employer for medical care and/or lost time from work. Her husband's health insurance paid a total of $7,992.03 to Provident Hospital for said surgery. She identified an unpaid balance due of $10,788.06 to Provident Hospital. In addition, $1,939.85 is owed to Stroger Hospital in connection with her care at that facility. (Px2, pp. 51 through 63) It is noted that, although Petitioner's subpoena to the Cook County Hospital system requested billing with cpt coding [Px2, p. 50], not all such billing codes were provided.)

Petitioner currently works in a deli. She finds it necessary to sit often, taking more than her regular breaks during the course of the work day so as to better control her right leg symptoms. She feels pain primarily in the area of the internal fixation. Standing and walking one city block elicits pain, as does changes in the weather. She walks with a limp. Walking up stairs is particularly bad. Although Petitioner avoids pain pills, she soaks in Epsom salts and hot water three times a week, wraps the ankle, tries to stay off the leg as much as possible, and generally tries to keep the leg warm. It is her understanding that the necessity for hardware removal is possible.

Conclusions of Law

Was the Respondent-Employer Wallace Catfish Corner operating under and subject to the Illinois Workers' Compensation Act?

The Arbitrator incorporates by reference the above Findings of Fact herein. Based on this credible evidence, the Arbitrator finds that the Respondent-Employer Wallace Catfish Corner was operating under and subject to the automatic coverage provisions of Sec. 3 of the Illinois Workers' Compensation Act.

Was there an employer-employee relationship between Petitioner and Respondent-Employer Wallace Catfish Corner?

The Arbitrator incorporates by reference the above Findings of Fact herein and the above Conclusions. Petitioner's credible testimony as to her duties, regular hours of employment and pay was not rebutted in any way by Respondent-Employer. Based on the above, the Arbitrator finds that it is more likely than not that an employer-employee relationship existed on January 27, 2011.

Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent-Employer Wallace Catfish Corner?

The Arbitrator incorporates by reference the above Findings of Fact and Conclusions herein. Petitioner's credible, unrebutted testimony, supported by the treating records, result in this Arbitrator's finding that it is more likely than not that Petitioner sustained an accident within the meaning of the Act. The accident occurred while slipping on grease as she was walking away from one of her work stations at a time when she was still performing her duties and/or engaging in an activity incidental to her employment.

What was the date of the accident?

The Arbitrator incorporates by reference the above Findings of Fact and Conclusions herein. Petitioner's credible, unrebutted testimony, supported by the treating records, result in this Arbitrator finding that it is more likely than not that Petitioner sustained, on or about the claimed date, an accident within the meaning of the Act. Recall the emergency room records taking a history of the accident occurring about an hour before Petitioner's arrival.

Was timely notice of the accident given to Respondent-Employer Wallace Catfish Corner?

The Arbitrator incorporates by reference the above Findings of Fact and Conclusions herein. Petitioner's credible, unrebutted testimony results in this Arbitrator finding it more likely than not that Petitioner gave timely notice of the accident to Respondent-Employer, Wallace Catfish Corner. Recall the owner's asking Petitioner whether she would like him to call an ambulance while she was still on the floor, unable to arise, shortly after breaking her leg.

Is Petitioner's current condition of ill-being causally related to the injury?

A chain of events which demonstrates a previous condition of good health, an accident and a subsequent injury resulting in a disability may be sufficient circumstantial evidence to prove a causal

nexus or connection between the accident and the employee's injury. International Harvester v. IWCC, 93 Ill. 2d 59, 422 N.E.2d 908. Such is the case here.

The Arbitrator incorporates by reference the above Findings of Fact and Conclusions herein. Petitioner's credible, unrebutted testimony results in this Arbitrator finding it more likely that not that Petitioner's current condition of ill-being is causally related to the injury.

Petitioner testified that she did not have any injury to her leg other than on this date. The Arbitrator finds that Petitioner's testimony and the medical records establish that Petitioner's injury to her leg occurred due to a slip and fall at work. Following such accident, her symptoms persisted. Nor did Respondent-Employer appear before the Commission to rebut this claim.

What were Petitioner's earnings?

The Arbitrator incorporates by reference the above Findings of Fact and Conclusions herein. Petitioner's credible, unrebutted testimony results in this Arbitrator finding it more likely than not that Petitioner's earnings were as claimed. Petitioner was very specific as to her hours and days worked, as well as her rate of pay, despite the fact that she was paid cash.

What was Petitioner's age at the time of the accident?

Based upon the evidence presented, the Arbitrator determines that at the time of the accident, Petitioner was 51 years old. Therefore, the Arbitrator finds that Petitioner was 51 years old on the date of accident.

What was the Petitioner's marital status at the time of the accident?

Based upon the evidence presented the Arbitrator determined that at the time of the accident, Petitioner was married and had no children. Therefore, the Arbitrator finds that Petitioner was married with no children at the time of the accident.

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?

The Arbitrator incorporates by reference the above Findings of Fact and Conclusions herein. Petitioner's credible, unrebutted testimony results in this Arbitrator finding it more likely than not that the medical services provided to the Petitioner were reasonable and necessary to relieve her of the effects of the injury. She was unable to walk with or bear weight on the injured member immediately following this injury. The treating doctors found an inadequate healing process after initial care. Thereafter, the operative procedure was prescribed and performed. The Arbitrator awards Petitioner the following, pursuant to Section 8(a) and subject to Section 8.2 of the Act: $7,992.03 for out of pocket partial payment of surgery at Provident Hospital; $10,788.06 for the balance of unpaid costs incurred at Provident Hospital for said surgery; and $1,939.85 for care rendered at John H. Stroger, Jr. Hospital.

What temporary benefits are in dispute (TTD)?

The Arbitrator incorporates by reference the above Findings of Fact and Conclusions herein. Petitioner's credible, unrebutted testimony results in this Arbitrator finding it more likely than not that the

Petitioner was temporarily totally disabled for the claimed period. Petitioner had a fracture to a weight-bearing bone that required reduction with instrumentation. Her ability to walk with the affected member was impossible, then significantly compromised until April of 2011. She returned to work as soon the character of the injury permitted.

The Arbitrator finds, based on the foregoing, that Petitioner was temporarily totally disabled pursuant to Section 8(b) of the Act from January 28, 2011 through April 15, 2011, or eleven weeks, by a preponderance of the evidence.

What is the Nature and Extent of the injury?

The Arbitrator incorporates by reference the above Findings of Fact and Conclusions herein. Petitioner's credible, unrebutted testimony and the nature of the injury supports this Arbitrator's finding that Petitioner sustained a 40% loss of use of the right leg, pursuant to Section 8(e) of the Act. The fractured distal tibia is a large, weight-bearing bone. Proper reduction of the displaced bone fragment required instrumentation which is intended to remain permanently in Petitioner's body, yet may require revision. In addition, a ligament, which is connective tissue that holds together the distal tibia and fibula, was found to be disrupted. Symptoms experienced at this time, three and one-half years after the accident, significantly affect Petitioner's activities of daily living and ability to perform her duties of employment. Said symptoms require ongoing conservative care.

Should Penalties and Fees be imposed upon Respondent-Employer?

Petitioner presented no petition for penalties and fees.

Is Respondent-Employer due any credit?

Petitioner testified that she received no compensation at any time in connection with this accident. This evidenced is unrebutted. The Arbitrator finds that there is no credit due Respondent-Employer.

Arb. Kurt Carlson

11.24.14

date

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☒ 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

Charles Joyner,
Petitioner,

15IWCC0993

vs.

NO: 10 WC 21877

Illinois Youth Center Harrisburg,
Respondent.

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 medical expenses, permanent disability, temporary disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 2, 2015, is hereby affirmed and adopted.

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.

DATED: DEC 30 2015
O12/2/15
RWW/rm
046

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0993

JOYNER, CHARLES Case# **10WC021877**
Employee/Petitioner

ILLINOIS YOUTH CENTER HARRISBURG
Employer/Respondent

On 2/5/2015, 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 0.06% 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:

0536 RON D COFFEL & ASSOC
502 W PUBLIC SQUARE
PO BOX 366
BENTON, IL 62812

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
AARON L WRIGHT
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

1350 CENTRAL MANAGEMENT SYSTEMS
WORKERS' COMP CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

FEB 5 - 2015

GERALD A. RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC0993

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

☐ 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

Charles Joyner
Employee/Petitioner

v.

Illinois Youth Center, Harrisburg
Employer/Respondent

Case # 10 WC 021877

Consolidated cases: N/A

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 **Lindsay**, Arbitrator of the Commission, in the city of **Herrin**, on **December 5, 2014**. 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 **02/16/10**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**86,885.76**; the average weekly wage was $**1,670.88**.

On the date of accident, Petitioner was **49** 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.

Petitioner was temporarily totally disabled from 4/6/10 through 7/29/10, a period of 16 3/7 weeks.

Respondent shall be given a credit of $**17,027.45** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**17,027.45**.

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

ORDER

Petitioner failed to prove that his current condition of ill-being in his left knee was causally connected to his accident of February 16, 2010 or that the surgeries he underwent were reasonable or necessary as a result of the February 16, 2010 accident. Petitioner's claim for compensation is denied and no benefits are awarded.

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

February 1, 2015
Date

FEB 5 - 2015

CHARLES JOYNER V. ILLINOIS YOUTH CENTER, HARRISBURG,
10-WC-021877

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Arbitrator finds:

In 2005, Petitioner injured his left leg in a motor vehicle accident when he fell asleep in his car coming home from work. On 7/26/05, Petitioner underwent surgery with Dr. Gabel of Tri State Orthopedics of Evansville, for a Grade II open left tibia fib fracture. Dr. Gabel performed surgery consisting of irrigation and debridement of a grade II open wound, left tibia, with loose primary closure, open locked IM nailing of the left tibia with infuse bone grafting along with a full thickness left elbow laceration repair. (PX 10)

On February 16, 2010 Petitioner completed an "Employee's Notice of Injury" form. In it he reported an accident on that same date occurring on the staff parking lot. Petitioner wrote, "I slipped and fell on snow and ice falling on left knee and buttocks and right hand." Petitioner claimed injuries to his right hand, left knee and buttocks, and soreness from the fall." Derrick Armstrong was identified as a witness. (PX 5)

Petitioner was examined at 7:10 p.m. on February 16, 2010 at Respondent's medical facility. Petitioner reported injuring himself in the parking lot when he slipped on ice and fell on his left knee and butt. He complained of pain in his hips and knees[1]. On exam Petitioner had full range of motion of his left knee and right hand/wrist. No bruising or swelling of his hand, knee or hip was noted. Petitioner complained of soreness and stiffness in his left knee and hips. Petitioner was advised to follow up with his family doctor if necessary. (RX 1)

On March 8, 2010 Petitioner presented to Dr. Partridge reporting that he had left work on February 16th after falling on ice in the parking lot. Dr. Partridge noted that Petitioner laid there for awhile and a friend came and drug him off the ice. He ended up getting on all fours. Petitioner went home and missed work on February 16, 17, and 18 and, again, on March 4th and 7th. Petitioner also advised the doctor he had been in a motor vehicle accident and had a compound fracture that was operated on in July of 2005. Dr. Partridge noted, "Has had trouble with knee before but hurts like crazy now." On physical examination, Dr. Partridge detected possible instability but no locking. He ordered x-rays at Ferrell Hospital. The doctor's diagnosis was a left knee contusion with possible internal derangement. He wanted him to go see Dr. Stievers. "Cover with Medrol Dosepak." The doctor noted he would "cover" him for the days he missed and wanted to see him back in three on workers' compensation. (PX 6)

Dr. Partridge also issued an "Addendum" on March 8, 2010 noting Petitioner was to have seen him in December but the appointment had to be cancelled by the doctor. Petitioner was not fasting, he had gained 12 pounds and they needed to get to the bottom of what was going on with him. Various lab tests to be done were noted. Petitioner was also undergoing marital discord as his wife had left him the month before. Petitioner was depressed but it was agreed to further

[1] Based on the full report, this Arbitrator believes the reference to "right knee" is wrong and that the examiner meant the right hand. This would be consistent with the exam findings.

discuss that when he returns on "private." The doctor was going to cover the Medrol Dosepak on workers' compensation. (PX 6)

Left knee x-rays were performed on March 8, 2010 and read as showing: acute non displaced fracture involving the head of the fibula; an old healed fracture involving the femur distally as well as the fibular diaphysis proximally partially being included in the field of view; ORIF at the level of the tibia partially included on the exam; and moderate osteoarthritic changes with multiple ossified intra condylar loose bodies. (PX 6)

In a script dated March 11, 2010 Dr. Partridge released Petitioner to return to work without restrictions. (PX 6)

Petitioner returned to see Dr. Partridge on April 5, 2010. The doctor's notes state, "Not gained nor lost. Can't hardly do anything because of the severe pain and instability of the knee." Dr. Partridge commented that Petitioner's x-rays showed a nondisplaced fracture of the fibula and the old ORIF. " Dr. Stievers couldn't see him so he got an appointment with Dr. Miller but he wanted to cancel it and see Dr. Goris who he had had "words with". Petitioner reported his pain was so bad he could hardly walk, his knee was swelling, and he was "working at sacrifice." Dr. Partridge noted Petitioner had some crepitus and ballottable effusion in the left knee. The diagnosis was internal derangement and he was was taken off work due to the steps at work. (PX 6)

Petitioner returned to see Dr. Partridge on April 13, 2010 awaiting approval from workers' compensation to see Dr. Goris. Dr. Partridge wrote, "He is off work, therefore he is out doing more. Got in poison ivy again. Wants something for it. Itches like crazy, mostly in the arms." Petitioner had lost 3 lbs. and was down to 334. The diagnosis was significant rhus dermatitis. He was given Decadron 6, a Medrol Dosepak, Topicort, and Vistaril for itching. (PX 6)

On April 27, 2010, Petitioner came under the care of orthopedic surgeon Dr. James Goris, of Orthopedic Associates Evansville, Indiana for complaints of constant left knee pain and right hand symptoms. As part of the examination, Petitioner completed a history form in which he provided a description as to the accident: "I fell on ice in parking lot falling on left knee, right hand, and buttocks." He acknowledged a previous fractured bone in his left knee. Petitioner's complaints included tingling, swelling, and popping made worse by standing and walking and occurring day and night and while working or active. (PX 7)

When seen by the doctor he reported hand pain "like something is crawling on [his] hand" and tenderness "more under the knee cap." He denied any numbness or tingling. Petitioner reported he was involved in a motor vehicle accident in 2005 and had had some degree of knee discomfort from that. More recently he had fallen at work on February 16, 2010, causing increased pain in his knee and hand "after landing on the knee and hand." Petitioner reported his hand symptoms were mainly when at rest or at night. He knee pain was constant and sharp and worse with activity. Petitioner denied any treatment to date. (PX 7)

On physical exam of the left knee, Dr. Goris found moderate patellofemoral crepitation, some discomfort with patellar grinding, medical joint line tenderness, and mild laxity with valgus

stress. There was no evidence of atrophy or deformity. No effusion was present. X-rays of the left knee showed the previous tibia fracture with intermedullary rod placement, previous femoral condyle fracture, healed with displacement, and tricompartmental arthritis. Dr. Goris injected the left knee. With respect to Petitioner's right hand, there was no swelling, deformity or atrophy. Petitioner had full range of motion without pain. Tinel's was negative. The hand x-ray was normal. Strength was good. He was nontender throughout. (PX 7)

Dr. Goris noted that Petitioner's previous injury in the motor vehicle accident was "substantial" and he more than likely "has just inflamed the arthritic changes in the knee with the fall." They discussed trying conservative treatment first and removing the rod in the knee should eventual total knee replacement for the arthritic changes become necessary. It was hoped the injection would appease the inflammation and discomfort. Dr. Goris' working diagnosis was a right hand contusion and left knee osteoarthritis. Petitioner was given the injection, fitted with a double lock knee brace, and given work restrictions. (PX 7)

Petitioner returned to see Dr. Partridge on May 5, 2010 reporting on his recent visit with Dr. Goris. Petitioner advised he was to return to see Dr. Goris on the 18th at which time they would talk about a knee replacement although Petitioner was reluctant to do so given his young age. Petitioner was in a knee brace and he continues with some ballottable effusion. "Otherwise as before." He had lost 7 lbs. They discussed his A1C. The doctor's assessment was DM type II "out of control"; "MO" with edema; history of gout; status post fracture and osteoarthritis of the left knee. He kept Petitioner off work. (PX 6)

Petitioner returned to see Dr. Goris on May 18, 2010. He still had the same complaints about his hand and tenderness under the knee cap, the knee; however, the knee was the bigger issue. Petitioner reported popping in his knee and trouble sleeping. Petitioner noticed no difference in his level of pain and even thought the brace made things worse at times. On exam there was no evidence of atrophy or deformity in Petitioner's knee. No effusion was present. Alignment was varus. He had moderate patellofemoral crepitation and patellar grinding caused some discomfort. Petitioner's work restrictions remained unchanged and an MRI was ordered. (PX 7)

On May 20, 2010 Petitioner underwent a left knee MRI at Deaconess Hospital which showed the following: 1) vertically oriented fracture through the medial femoral condyle with mild distraction. Very little associated edema or fluid was present, if any (these findings were noted to be presumably chronic); associated metallic hardware involving the proximal tibia; 2) a horizontal tear of the posterior horn of the medial meniscus; 3) a nonvisualized ACL with very little increased signal along its course and a question as to whether it might be a chronic ACL tear; 4) premature features of tricompartmental arthritis with diffuse articular cartilage loss; and 5) asymmetric focus of marrow edema involving the medial tibial plateau. (PX 7)

On May 25, 2010 Petitioner returned to see Dr. Goris and they reviewed the MRI. Petitioner reported no dramatic change in his symptoms since his last visit. Petitioner's knee exam remained unchanged. Dr. Goris' diagnosis was a tear of the medial cartilage or meniscus of the knee and osteoarthritis. Dr. Goris recommended an arthroscopic procedure with a medial meniscectomy due to Petitioner's substantial limitations. He felt a total knee replacement would be the last option. Dr. Goris explained to Petitioner that the arthroscopy for the medial meniscus

might not completely relieve the documented arthritic changes. Petitioner was advised that pending surgery he could use the extremity for activities of daily living as was comfortable as it was unlikely doing so would cause any structural damage or accelerate any degenerative process. Petitioner's work restrictions remained in effect. No hand complaints were noted. (PX 7)

Petitioner signed his Application for Adjustment of Claim in this matter on June 4, 2010. In response to the question, "How did the accident occur?," Petitioner alleged "During course of employment." (AX 2)

On June 6, 2010, Dr. Goris performed arthroscopic surgery on Petitioner's left knee and found a large horizontal flap tear of the posterior horn of the medial meniscus, full thickness cartilage tear and a previous step off fracture was noted of the femur medial side, but was not in the weight bearing portion of the articulating joint surface. Dr. Goris also removed the rod and screw from the previous surgery in 2005. (PX 7)

Petitioner followed up post-operatively on June 24, 2010. (PX 7) As of July 15, 2010 Petitioner was pleased with his current level of function. He was walking without any assistive devices. With regard to the medial meniscus injury Dr. Goris noted that Petitioner would most likely have some trouble in the future with post-traumatic arthritic changes. Petitioner felt his symptoms were tolerable at that time so no further treatment was recommended. Petitioner was kept off work until July 29, 2010. He was told to continue with exercises as return if needed. (PX 7)

On July 30, 2010, Petitioner voluntarily retired from his employment with Respondent as a shift supervisor.

Petitioner returned to see Dr. Goris on September 21, 2010 reporting some increased soreness about the [left] knee, increased over the last month." Some small effusion was noted along with moderate patellofemoral crepitation and medial joint line tenderness. Petitioner was diagnosed with osteoarthritis and given options of living with it, oral anti-inflammatories, injections, or a replacement. As the medications had not relieved all of Petitioner's symptoms, a second injection was decided upon. (PX 7)

Petitioner again saw Dr. Goris on October 19, 2010 reporting that the injection had helped for 4-5 days. He had also been seen through the hospital and found to have blood clots in his legs and lungs. Due to the blood clots bracing was not recommended and Petitioner was advised to continue with his pain medications and focus on treatment for the blood clots. Petitioner was given a slip indicating he needed no work restrictions. (PX 7)

Thereafter Petitioner did not return to see Dr. Goris until February 1, 2011. At that time Petitioner reported continuing pain in his "knee joint." Petitioner was doing what he needed to do as far as activity but was in pain every time he took a step. At church he could only stand for one song before needing to sit down. His blood clots were under control. Petitioner's exam showed moderate patellofemoral crepitation and medial joint line tenderness. While given the option of living with the condition Petitioner elected to proceed with a total knee replacement. (PX 7)

Petitioner was seen by Dr. Winkleman on July 18, 2011 for knee pain. He gave a history of a work injury eighteen months earlier when he fell. He explained that he had undergone surgery with Dr. Goris and had brief improvement but his symptoms returned. He reported worsening pain. Dr. Winkleman referred him to Dr. Williams.

At the request of Respondent, Petitioner underwent an examination with Dr. Richard Lehman on August 9, 2011. A written report followed. Dr. Lehman was of the opinion Petitioner's left knee condition was not due to his work accident. (RX 2)

Petitioner followed up with Dr. Goris on November 21, 2011, approximately ten months since his last visit. Petitioner reported he couldn't climb, his symptoms were worsening, and he was still having pain and swelling. His knee exam was essentially unchanged. There was a small amount of effusion. The decision to proceed with a replacement was noted. (PX 7) Pre-operative testing was scheduled for December 7 and 13, of 2011. Surgery was to be done on the 19th. (PX 7)

On December 20, 2011 Petitioner came under the care of orthopedic surgeon, Dr. Joseph Williams of Bone and Joint Institute of St. Louis. The initial history indicated Petitioner had a 2005 car wreck but was more recently injured in a parking lot fall at work with Respondent. With regard to the car accident he reported falling asleep at the wheel while coming home from work and running into a semi-truck. He fractured his left tibia and femur. Petitioner's symptoms included sharp, aching, and throbbing knee pain along with stiffness, difficulty bearing weight, and difficulty ambulating. There was no report of radiation. Petitioner reported a pulmonary embolism seven months earlier after his last left knee surgery and the need to be on Coumadin since then. "He claimed workman's compensation back in February, 2010, when he fell and injured his left knee. He is not here today for workman's compensation." On exam Petitioner had a 10 degree flexion contracture with flexion to 125 degrees. His gait was guarded. Radiographic findings revealed severe deformity of the medial and lateral femoral condyles with old callus formation of the distal femur fracture. The diagnosis was degenerative joint disease of the left knee. In light of his significant deformity of his femur a total knee replacement was recommended. (PX 9)

Petitioner was hospitalized from December 20, 2011 through December 24, 2011 for his left knee. According to the History and Physical Petitioner was to have undergone surgery the day before in Evansville but it was out of network and would not have been covered by his insurance. "He showed up today wanting to have something done for the pain in his left knee....." During the surgery, he found severe osteoarthritis of the left knee. Petitioner underwent surgery on December 22, 2011 (PX 11, Dep. Ex. 5) Petitioner was discharged on the 24th having undergone a left total knee replacement. (PX 9)

Petitioner underwent a physical therapy evaluation beginning in January of 2012. He reported having had "several injuries" to his knees over the years. Therapy was discontinued on March 30, 2012 as the therapist spoke with Petitioner the day before and he was "doing well, riding [a] bike, and walking at home." (PX 8)

There are no records of post-operative visits with Dr. Williams.

On September 4, 2013 Petitioner returned to Dr. James Goris. He complained of diffuse pain around the knee, minimal swelling, popping, and limited ambulation. He denied any numbness, tingling, catching, or radiation of pain. Petitioner gave an onset for the symptoms of "Approximately March 2013." He could recall no inciting etiological event. He had some difficulty getting up from sitting positions. Dr. Goris said he could return to daily activities as tolerated as it was unlikely any structural damage or acceleration of a degenerative process would follow. (PX 7)

The deposition of Dr. Richard Lehman was taken on January 16, 2014. (RX 3) Dr. Lehman is board certified in orthopedic surgery and sub-boarded in sports medicine. He has been the team physician for three national hockey league teams and does consultations for a large number of NFL football players and major league baseball players as well as performing contract work for Nike to take care of track and field Olympic athletes. Less than one percent of his practice is spent on independent medical examinations. (RX 3, pp. 4-5)

Dr. Lehman testified as to the following causation opinions in his deposition: 1) the bone marrow contusion on Petitioner's left knee MRI could be a traumatic event but was most likely degenerative; 2) Petitioner's parking lot fall did not cause or aggravate Petitioner's meniscus tear because Petitioner had no twisting or rotational force during the fall when he slipped on the ice; 3) it didn't matter how Petitioner fell as to the mechanism of the injury because the swelling he had, if any, was degenerative and not traumatic; 4) the intemedullary rod placement was located 1.5 cm from the ankle joint and had no involvement with the articulating surface of the left knee joint; 4) the previous step off fracture undiagnosed by Dr. Gabel was not located in the weight bearing portion of the left knee joint; 5) the medical necessity of the need for the TKA was to relieve the symptoms, including the pain from Petitioner's osteoarthritic knee condition; 6) Petitioner's given Mr. Joyner's weight of 335 lbs, the accident may have aggravated the degenerative condition but it did not aggravate or alter his joint mechanics; and 7) there was potentially an acute undisplaced fibula fracture, but only to the extent it involved a contusion. In sum, Dr. Lehman was of the opinion that the need for surgery was related to end stage osteoarthritis of Petitioner's left knee joint which was directly related to the motor vehicle accident in year 2005 and he required a total knee replacement before he had the fall injury at work on February 16, 2010. According to Dr. Lehman, the traumatic injury of the fall on ice in the parking lot was not a factor in the need for the knee replacement or meniscal surgery.

On cross-examination, Dr. Lehman admitted that his testimony as to causation was based upon the premise that the Petitioner had no twisting or rotational force injury during his fall, and that the swelling of his left knee joint after the injury was degenerative rather than traumatic.

The deposition of Dr. James Goris was taken on March 13, 2014. (PX 11) Dr. Goris is affiliated with Orthopedic Associates in Evansville Indiana. Dr. Goris testified Petitioner came under his care on April 27, 2010 for an injury that occurred during a fall on ice in the parking lot at work. Petitioner said the injury increased his left knee pain, and that he also injured his right hand and buttocks during the fall. At the outset, Dr. Goris noted that the Petitioner had a motor vehicle accident in year 2005 and had undergone surgery by Dr. Gabel at Tri State Orthopedics 7/26/05 for a tibia fracture. He testified the location of the fracture was not in the internal articulation of the left knee joint, but was in the tibia well below the knee joint about halfway between the knee and the ankle. An intermedullary rod placement was inserted by Dr. Gabel

which he said served no purpose after the tibia fracture healed. Dr. Goris testified that the surgery in 2005 did not in any way involve the internal mechanics of the articulating portions of the left knee joint. Dr. Goris ordered a left knee MRI, performed at Deaconnes Hospital, which showed post-traumatic changes of the left distal femur, a horizontal tear of the posterior horn of the medial meniscus, and bone marrow edema of the medial tibial condyle. Goris diagnosed him with a previous undetected step off fracture of the femur, which did not appear to be on the weight bearing portion, and a horizontal tear of the posterior horn of the medical meniscus, a retained intemedullary rod from prior surgery, possible ACL tear, and tri-compartmental arthritis not confined specifically to the medial compartment.

During the arthroscopic procedure performed on June 16, 2010 Dr. Goris visualized Petitioner's left knee joint and found a large flap tear of the posterior horn in the medical meniscus compartment, small areas of a full thickness cartilage loss on the femur, which he trimmed and shaved. He also detected a previous fracture with a step off joint surface, but noted "fortunately this did not appear to be on the weight bearing portion" of the femur. The ACL was intact and the lateral compartment was relatively well maintained. He removed the proximal rod and screw. As of that date Dr. Goris did not believe Petitioner's symptoms warranted a knee replacement. However, Petitioner's knee condition was such that he would need one at some point in time. (PX 11, pp. 15-16)

Post-operatively, Dr. Goris recommended a total knee replacement which was ultimately performed by Dr. James Williams, of St Louis Bone and Joint Clinic, St. Louis Missouri.

Dr. Goris explained that the medical femoral condyle fracture was undiagnosed in the 2005 injury, but was relatively stable, and despite not being treated in 2005 by Dr. Gabel, the medial joint surface appeared better than expected. He further explained because the medical femoral condyle fracture was not in the weight bearing surface, the fracture did not cause the horizontal tear of the medical meniscus. At the time of his arthroscopy he thought Petitioner might eventually require a TKA in the future but did not think he had sufficient symptoms to warrant a TKA at the time of his arthroscopic procedure on 6/16/10. Dr. Goris said he removed the intermedullary rod and screw because he thought Petitioner would eventually require a TKA.

Dr. Goris testified that Petitioner needed the TKA because of the meniscectomy and not getting adequate relief from it. (PX 11, p. 30)

Dr. Goris was asked about Petitioner's history of injury and whether it would have involved some aspect of twisting. Dr. Goris replied, "There may or may not be." (PX 11, p. 8) The doctor was shown a claims examiner's report from a nurse case worker (PX 11, Pet. Ex. 7) and asked whether those impressions were consistent with his "experience as to the mechanism." Dr. Goris replied, "Yes. This document states that the mechanism was possible twisting injury as he did fall and landed on his coccyx, low back, etc." (PX 11, p. 8)

Dr. Goris believed that Petitioner's fall likely aggravated Petitioner's underlying knee condition and caused it to be more symptomatic. (PX 11, p. 23, 27) He also believed Petitioner's functional ability began to change with the fall. (PX 11, p. 24) He could not clearly state that Petitioner's fall caused the acute non-displaced fracture of the head of the tibula and he could not state whether Petitioner's meniscus was torn by the fall unless he had a twisting mechanism with

the fall (PX 11, pp. 25-26) He didn't believe Petitioner's fall aggravated Petitioner's arthritic knee condition -- only some symptoms. The condition of the knee was not altered by the fall but the symptoms became aggravated based upon Petitioner's ability to function well before. (PX 11, pp. 29 30)

Other than surgical report from 2005 that Dr. Goris reviewed at the deposition, Dr. Goris had not been provided with any prior medical records pertaining to Petitioner.

Two witnesses testified at Petitioner's arbitration hearing -- Petitioner and Kurt Sutton, a shift supervisor.

Petitioner, age 49, testified that he was employed as a shift supervisor for Respondent. Illinois. On 2/16/10, he slipped and fell on ice and ruts in the parking lot of the facility. He injured his right hand, left knee and buttocks. Petitioner described the mechanism of injury at the hearing. He said he did the splits. His left knee was extended behind him and he fell on his right side. He complained of sudden onset of pain in his left knee, buttocks, and right hand. He was first treated by his family doctor, Elliott Partidge and thereafter referred to Dr. James Goris, of Orthopedic Associates, Evansville, Indiana.

Petitioner testified that he took personal days off work on 2/17/10, 2/18/10, 3/04/10 and 3/7/10.

Petitioner testified that prior to the fall on 2/16/10, the weather conditions including about six (6) inches of snow and there were temperature variations the week of 2/12/10 to 2/16/10, with daytime temperatures above freezing and nighttime temperatures below freezing from 2/12/10 to 2/15/10. He testified these temperature variations resulted in snow melting and water run off around a curb nearing the handicapped parking spot where he was parked. An accumulation of ice developed in an area of the parking lot near the curb from water run off by day which froze over on the night shift he worked on 2/16/10.

In support of his testimony, he offered the following Exhibits: PX 1 Aerial View of the IYC parking lot; PX 2 Photo of the parking lot depicting the area where he was parked, a slope condition, and water run off to an accumulation where he fell, which are marked and indicated by an "X" in black ink by Petitioner on the photo; PX 3, Photo of the parking lot depicting a closer view, unmarked; PX 4 US Government Weather Station Information for Temperature Changes from 2/12/10 to 2/16/10 showing temperature variations above and below freezing 2/12/10 to 2/15/10 and temperatures below freezing both day and night the evening of his shift before his fall; and, PX 5, the Accident Report indicating Petitioner slipped and fell on snow and ice falling on his left knee, buttocks and right hand in the parking lot while leaving the facility after his midnight work shift was completed.

Petitioner testified that he fell on an accumulation of ice which froze over the evening of his shift and tire ruts that froze over from 6-8 inches in width at the location of the parking lot near where he parked his vehicle the night of 2/15/10. The accident report completed 2/16/10, the day of injury, stated Petitioner "slipped on snow and ice falling on the left knee and buttocks and the right hand."

Petitioner testified there was six (6) inches of snow the week before his injury, and the temperature changes between 2/12/10 and 2/16/10 resulted in snow melting and an accumulation of ice in the area where he fell. The accumulations of snow and ice, with the temperature variations freezing and thawing, caused ruts which had frozen. Petitioner testified the ruts or ridges caused surface variations, on the ice, that were two (2) inches in variation where people have "drove thru and and where it (the lot) froze back." He testified the ridges were probably about 6 to 8 inches apart and about 2 inches in height at the area where he slipped and fell.

Petitioner testified that parking was designated by IYC in the parking lot, and that he was not permitted to park elsewhere. Petitioner also indicated that the IYC facility maintains and controls the parking lot and has a snow plow which the facility uses to maintain the parking lot for employees and visitors of the complex.

Petitioner acknowledged his motor vehicle accident in 2005 and his surgery thereafter. Petitioner testified that after his surgery in July of 2005 he was released on December 11, 2005 to return to work to his regular duties for Respondent and he continued to work without restrictions until he was injured on February 16, 2010 in the parking lot fall. Petitioner testified that he used a cane for a couple weeks and was then able to work without any restrictions. He said he continued to have some occasional swelling but this didn't prevent him from working.

Petitioner conceded that he had a handicapped sticker following his 2005 surgery, that he had occasional swelling, and limitations on running fast, but nothing that prevented him from performing his usual and customary duties as a correctional officer before the work injury in the parking lot on February 16, 2010. After he returned to work on December 11, 2005 without restrictions he required no further medical care. He said he was observed to walk with a slight limp; however, it was not a factor in preventing him from working. He occasionally took over-the-counter Ibuprofen. Petitioner testified that after the car wreck in 2005, he enjoyed his usual hobbies of deer hunting, which involved climbing deer stands, and running his beagle dogs. He said he worked his usual duties until he had the fall in the parking lot. He said "I worked every day." Functionally, after the 2005 wreck, he said he could do "about anything he wanted." Before the February 16, 2010 injury, he enjoyed his hobbies of rabbit hunting, running his beagle dogs, and he could walk for long distances.

Petitioner testified regarding his treatment with Dr. Goris, including his knee surgery. Petitioner testified that post-operatively, Dr. Goris recommended a total knee replacement which was ultimately performed by Dr. James Williams, of St Louis Bone and Joint Clinic, St. Louis Missouri.

Petitioner testified that since his 2010 injury his hobbies of hunting have been impaired, he can't climb a tree while deer hunting, and he uses an ATV when running his dogs. Walking distances, like shopping at a Wal Mart store, wears him out. Regarding his symptoms, he said he has swelling "pretty well" every day in his left knee. He complained his left leg swells so big he can't wear his rubber boots. His lower left leg is sore. He retired from employment on July 29, 2010.

Respondent presented shift supervisor Kurt Sutton. Mr. Sutton testified that he was not personally aware of the conditions of the parking lot on the day Petitioner fell. Mr. Sutton

testified that he was unaware of the amount of snow that accumulated on the parking lot in the 4 days before Petitioner's fall. Mr. Sutton further testified that he was not involved in the maintenance of the parking lot as shift supervisor. He said the state maintains the parking lot, and has a snowplow which the state uses to plow the snow of the parking lot. He said Respondent owns and maintains the parking lot where Petitioner fell on February 16, 2010.

Considerable testimony was presented on the question of whether Respondent's parking lot was open to the general public. Mr. Sutton testified that the parking lot was open to the general public because visitors were permitted on the premises. Visitors and the general public could park in the same handicapped parking area where Petitioner had parked in the lot. On cross-examination, he stated that visitors were only permitted on the parking lot during visiting hours and they could park anywhere in the parking lot not designated for employees. Mr. Sutton said that visiting hours for the prison were for the period of 8:00 a.m. to 3:00 p.m. Visitors were not permitted to be on the grounds other than employees during the evening or the period when Joyner worked, 9:40 p.m. until 6:30 a.m. Respondent used to police the parking lot and have a patrol unit to monitor the lot. Visitors were not allowed to leave their vehicles in the parking lot overnight. Mr. Sutton said there were specific areas designated for parking for the warden, or administrative staff or employee of the month. Mr. Sutton also testified within the parking lot, there were "certain spots that were designated that are employee only" parking. Other than food vendors, visitors, business contractors, and those on prison related tours of the facility, he could not think of any other members of the general public that would park in the parking lot. He said there were no specific rules against the public parking on the lot after visiting hours. The state did not want the general public to park there but, if they did, there was nothing they could do about it.

Mr. Sutton was unaware of how Petitioner fell, or what caused him to fall.

Respondent introduced its workers' compensation log for this claim into evidence. (RX 1) Included in it is a "Case Report" dated March 15, 2010 prepared by Tammy Roberts, a claims examiner. In it the following is noted:

> Received file for nurse case management.
> ~~Per ICC interview, Mr. Joyner reports that main concern~~ is left knee. It is swollen and sore to touch. He walks with a limp. Does have low back and both hip pain but improving. Also has pain in right wrist. Seen by Dr. Partridge on 3-8-10. Referred to Dr. Stivers. Returns to Dr. Partridge on 3-29-10.
>
> Mr. Joyner was walking to his car and slipped on ice and fell, injured both hips, right hand, buttocks, and right knee. CMS provider letter sent to Dr. Partridge to obtain current diagnosis and reason for the referral.
>
> Possible twisting injury as he did fall and landed on the coccyx, low back could also be involved for a fall involving both hips and the buttocks. ....." (RX 1)

The Arbitrator concludes:

1. Issue (C) Accident.

Petitioner sustained an accident on February 16, 2010 that arose out of and in the course of Petitioner's employment with Respondent.

The mechanism of injury was described by Petitioner is unrebutted and well documented in the accident report completed the morning of his injury. It is also well documented in the histories to the medical providers.

There was a great deal of testimony offered on whether the parking lot was open to the general public such that the parking lot exception applied. However, Petitioner's testimony regarding the fall on accumulation of ice and frozen ruts presents a hazardous condition, Respondent owns and maintains the parking lot, and it requires the employees to park there. Petitioner was parked in the area designated for employees.

In Williams v. City of Rockford, 11 W.C. 12083, 14 I.W.C.C., 2014 WL 3974930 , the Commission was presented with the distinction on accident as between a fall on ice in the parking lot under control of the employer versus a fall on the parking lot open to the general public. As stated thereon, "The Appellate Court noted there were two exceptions to the general premises rule that holds off premises injuries are not compensable." The Williams case, explained: "the first exception applies where the employee has sustained injuries in the parking lot provide by or under the control of the employer." "The second exception applies when the employees presence at this place where the accident occurred was required in the performance of his duties and the employee is exposed to a risk common to the general public to a greater degree than other persons." The rational for the rule, is that an employer provided parking lot is an extension of the employer's premises. The Williams case noted, "for the first exception to apply," the Petitioner must show that the injury occurred in the parking lot provided by and under the control of the employer and that the injury was caused by a hazardous condition present on the surface of the parking lot." Id. The Appellate Court has found the "parking lot exception" as the well established rule in parking lot premises fall cases. Suter v. Illinois Workers Compensation Commission, 376 Ill.Dec. 261, 998 N.E.2d 971 (4th Dist. 2013) The leading case is Mores-Harvey v. Industrial Commission, 345 Ill. App. 3d, 281 Ill. Dec. 791 (3rd Dist. 2004)

The overwhelming evidence presented in this case, shows that the parking lot was "provided by and under the control" of Respondent. There is no dispute that Respondent owned the lot, and maintain the lot with its own snow removal equipment. It is unrebutted that Petitioner is required by Respondent to park in the parking lot. While visitors are permitted to park there, Mr. Sutton testified there were certain areas of the parking lot designated for "employee parking only." There were also other areas of the lot specifically designated for the administrative staff. Visitors were not allowed to park overnight during the shift the Petitioner worked in the parking lot nor was the general public. The distinction as to whether the parking lot was open to the general public is not controlling under the parking lot exception. The accumulation of snow and ice from the water from melted snow and frozen over ridges presented

a hazardous condition of the parking lot, which caused Petitioner to slip and fall while exiting the main premises to the parking lot to go to his vehicle. Petitioner sustained an accidental injury which arose out of and in the course of employment.

2. Issue (F) Causal Connection.

Petitioner failed to prove his current condition of ill-being in his left knee is causally connected to his accident of February 16, 2010. Petitioner failed to prove that the surgeries he underwent with Dr. Goris and Dr. Williams were causally related to his work accident.

The Arbitrator finds Petitioner's credibility questionable. First, Petitioner went to see Dr. Partridge on April 5, 2010 claiming he could hardly do anything because of his severe knee pain and instability. Due to having to climb stairs at work and given his severe knee complaints, the doctor took him off work. Petitioner then returned to see the doctor on April 13, 2010 for extensive poison ivy as a result of being off work and "out doing more." The Arbitrator finds it difficult to believe that if Petitioner's knee was indeed as painful and unstable as he claimed to the doctor a week earlier that he could, nevertheless, get out and about outside and contact poison ivy.

Second, the Arbitrator believes Petitioner has downplayed the condition of his knee before his accident. Dr. Goris, Petitioner's own treating physician, described Petitioner's prior knee conditions as "substantial." While Petitioner acknowledged some difficulties with his right knee before the February 16, 2010 accident he tried to minimize them. Yet, he had a handicapped parking sticker and walked with a gait/limp. None of Petitioner's medical records pre-dating his February 16, 2010 accident were submitted by Petitioner as part of his case. They might have corroborated his testimony of minimal difficulties. Their absence suggests they possibly might not have.

Additionally, Petitioner's testimony regarding his limitations since his surgeries seems very inconsistent with what the therapist noted when Petitioner telephoned him and discharge himself from therapy stating he was doing well, riding a bike, and walking. Despite his complaints at trial he has not followed up with any doctors since that time other than one visit with Dr. Goris in early 2013. Interestingly, at that time he gave an onset date of March 2013 for his ongoing complaints.

Finally, the Arbitrator believes Petitioner may have sustained more than just two accidents (2005 and Feb. 16, 2010). This is based upon Petitioner's history to the physical therapist who initially examined him after his total knee replacement. Petitioner reported having had "several" injuries to his knees over the years. According to the dictionary, "several" suggests "being more than two." Petitioner provided no clarification for this during his testimony.

Significant to the Arbitrator's causation determination is the mechanism of injury. The Arbitrator does not believe Petitioner sustained a twisting injury to his left knee when he fell. She bases this on the histories provided to Respondent and the various treaters and examining physician, Dr. Lehman. Petitioner never mentioned twisting his left knee. The "twisting" aspect of the case was not mentioned until it was brought up by Petitioner's attorney during Dr. Lehman's deposition. Petitioner himself didn't really mention twisting his knee when testifying.

His attorney had to specifically ask him about it. Petitioner provided his description of the accident and never once mentioned twisting his knee. While Petitioner's attorney contended during the depositions of the doctors that Petitioner may have twisted his knee during the fall, he relied upon an isolated claim report from a case manager. The Arbitrator believes Petitioner's counsel has taken the reference to "twisting" out of context. Nowhere in that report does it state Petitioner twisted his left knee. To the contrary, the reference to a twisting injury seems to be in relationship to a possible low back injury.

Absent that reference to a "twisting injury" there is no other evidence, except Petitioner's arbitration testimony, to suggest he twisted his knee during his fall. That testimony was absolutely necessary given the testimony of the two expert physicians. Given credibility concerns, and without objective corroboration, the Arbitrator is not persuaded that he really twisted his knee when he fell. Additionally, she notes the nurse's examination contemporaneous to the fall (RX 1). Petitioner mentioned no twisting injury and there was no evidence of any swelling.

With regard to the arthroscopic surgery Petitioner underwent and whether it was causally related to the accident of February 16, 2010 the Arbitrator finds the opinions of Dr. Lehman more persuasive than those of Dr. Goris. Dr. Lehman's qualifications and credentials are significant. Furthermore, his testimony and explanations as to why he didn't believe Petitioner's knee condition was caused or aggravated by the accident were very sound.

As for the total knee replacement, the Arbitrator again concludes that Petitioner failed to prove it was causally connected to or necessitated by the work accident of February 16, 2010. No testimony was presented from orthopedic surgeon Dr. James Williams as to causation connection. Indeed, no records from Dr. Williams were submitted post-surgery. Between the opinions of Dr. Goris and Dr. Lehman, the Arbitrator finds Dr. Lehman's opinions more persuasive -- again based upon qualifications and sound reasoning. The Arbitrator also notes that Petitioner was released by Dr. Goris to return to work on July 29, 2010 post-arthroscopy. Thereafter, Petitioner didn't seek any further medical treatment for approximately three months. Petitioner had retired on July 30, 2010 so he never really returned to work for Respondent. When Petitioner did return to see Dr. Goris in September he reported some increased soreness "over the last month." There was also some swelling in Petitioner's knee. He received an injection and didn't return to see the doctor for another five months. At that next visit in February of 2011 Petitioner didn't provide a history suggestive of ongoing problems after the previous surgery. Rather, it was activities of daily living -- such as standing during a church service -- that were problematic. It was at that time Dr. Goris recommended the total knee replacement. Dr. Goris testified that the surgery is usually performed when one's symptoms become too much. In this case, that occurred approximately seven months after Petitioner had been released to return as needed.

Petitioner also failed to prove any causal connection between his work accident and any ongoing complaints in his right hand or low back. It appears that Petitioner sustained a right hand contusion as a result of his fall that has resolved. Petitioner had little, if any, treatment for his low back. Petitioner has had no further treatment for his hand for several years.

Petitioner's claim for compensation is denied. All remaining issues are moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Randy R. Quilling,

Petitioner,

vs.

NO. 12WC037505

15IWCC0994

County of Lake,

Respondent.

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 permanent disability and accrual date 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 20, 2015 is hereby affirmed and adopted.

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.

15IWCC0994

No bond is required for removal of this cause to the Circuit Court. 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: DEC 3 0 2015
SJM/sj
o-11/19/2015
44

Stephen J. Mathis

David L. Gore

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

QUILLING, RANDY R
Employee/Petitioner

Case# **12WC037505**

09WC034165

COUNTY OF LAKE
Employer/Respondent

15IWCC0994

On 2/20/2015, 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 0.06% 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:

0152 LINN CAMPE & RIZZO LTD
CRAIG M LINN
215 N MARTIN L KING JR AVE
WAUKEGAN, IL 60085

0286 SMITH AMUNDSEN LLC
LES JOHNSON ESQ
150 N MICHIGAN AVE SUITE 3300
CHICAGO, IL 60601

15IWCC0994

STATE OF ILLINOIS)
)SS.
COUNTY OF Lake)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Randy R. Quilling
Employee/Petitioner

v.

County of Lake
Employer/Respondent

Case # **12** WC **37505**

Consolidated cases: **09WC34165**

The only disputed issue is the nature and extent of the injury. 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 **George Andros**, Arbitrator of the Commission, in the city of **Waukegan**, on **December 1, 2014**. By stipulation, the parties agree:

On the date of accident, **August 30, 2012**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained 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 $**66,578.20**, and the average weekly wage was $**1,280.35**.

At the time of injury, Petitioner was **45** years of age, ***married*** with **2** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent (by stipulation the parties agree that Respondent is liable for the medical bills contained in PX Group 2, subject to the fee schedule of 8.2 of the Act).

After reviewing all of the evidence presented, the Arbitrator hereby makes findings and conclusions:

FINDINGS:

On the Petitioner's Motion, this matter was consolidated for hearing with case #09WC34165, concerning the June 2, 2009 accident sustained by the Petitioner; case #09WC34165 is the subject matter of a separate decision issued by the Arbitrator in that case.

The Petitioner stipulated that in case #12WC37505 that he sustained no compensable lost time as a result of the August 30, 2012 work accident and that the nature and extent of any injuries relative to the August 30, 2012 work accident were not in dispute.

The parties further stipulated that the Respondent is liable for the unpaid medical expenses contained in PX Group 2, subject to the fee schedule of 8.2 of the Act.

CONCLUSIONS OF LAW:

Based upon the Petitioner's testimony at trial and the Petitioner's stipulations in case #12WC37505, the Arbitrator finds that the Petitioner failed to establish that he is entitled to temporary total disability or permanent partial disability benefits as a result of the August 30, 2012 accident. The Arbitrator finds that the August 30, 2012 work accident to the Petitioner's right shoulder was a temporary aggravation of the pre-existing condition of the Petitioner's right shoulder caused by the July 2, 2009 work accident (See Arbitrator's Decision issued in #09WC34165).

ORDER

Compensation for permanent partial disability and temporary total disability resulting from the Petitioner's August 30, 2012 work injury is denied.

Respondent shall pay to Petitioner reasonable and necessary medical expenses of $676.00 (See PX Group 2) as provided in Section 8(a) of the Act, subject to the fee schedule of 8.2 of the Act.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected 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.

#01 George J. Andros
Signature of Arbitrator

Date 2-17-2015

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN CARSON,

Petitioner,

15IWCC0995

vs. NO: 14 WC 35128

DYNEGY MIDWEST GENERATION,

Respondent.

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 the nature and extent of Petitioner permanent disability, 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.

Findings of Fact and Conclusions of Law

1. Petitioner worked as a "shift tech welder" for Respondent for eight years. The job entailed extensive use of hand and power tools. Respondent stipulated to accident and causal connection. The only issue before the Arbitrator, and now before the Commission, is the nature and extent of Petitioner's permanent disability.

2. Dr. Novotny performed right carpal tunnel release surgery on October 20, 2014 and left carpal tunnel release surgery on December 1, 2014. Petitioner returned to full duty work at his previous occupation on January 26, 2015.

3. Petitioner testified his hands are much better than before the surgeries. He does not notice dropping tools and things like he used to. He felt his hands were not 100% and has still has a little bit of numbness in the fingers and definitely doesn't have the grip in either hand that he used to.

4. On cross examination, Petitioner testified he last saw Dr. Novotny on January 22, 2015 and has not sought treatment from anyone since. Dr. Novotny instructed him to come back if he had any ongoing problems. He was currently working full duty in his previous job with no loss of income. He has occasional overtime, but "not too much."

5. Dr. Novotny testified by deposition. He testified that when he last saw Petitioner on January 22, 2015, Petitioner said he was doing very well. He did not expect Petitioner to have "any residual problems, other than patients who have chronic carpal tunnel syndrome may not get their complete grip strength back." In the operation, Dr. Novotny noted an hourglass shape of the right median nerve, which would indicate compression. He assumed that condition had been going on for more than a year. He did not recall such a condition of the left median nerve. He noted that the longer the duration of the compression the more difficulty a patent would have getting their normal grip strength.

6. On cross examination, Dr. Novotny testified he believed he was successful in treating Petitioner's bilateral carpal tunnel syndrome.

7. Regarding the statutory factors in assessing permanent partial disability awards, the Arbitrator noted that no AMA impairment rating was submitted and therefore the factor was waived. The Arbitrator also noted Petitioner's job as a welder was hand intensive, which had a positive impact on his claim. However, the Arbitrator also noted that Petitioner was 60 years of age at the time of the manifestation of his bilateral carpal tunnel syndrome, which had a negative impact on his claim because he would not have to work with the disability for an extended period of time. Finally, because Petitioner returned to work in his previous job he suffered no impairment of earning potential.

8. Based on his analysis, the Arbitrator awarded Petitioner 15% loss of the right hand and 10% of the left hand. He based the higher right-hand award on the fact that Petitioner was right handed he had reduced strength in the right hand, and Dr. Novotny noted the nerve compression which indicated a chronic condition.

The Commission notes that because the manifestation date is September 18, 2014, the new provisions regarding repetitive trauma awards for hands under Section 8(e)9 apply. Regarding the right hand the Arbitrator awarded what is basically the statutory maximum for repetitive trauma carpal tunnel syndrome, absent extraordinary circumstances. resulting from injuries sustained after June 28, 2011.

Here, the Commission finds the maximum award would not appear to be appropriate based on the statutory factors. While Petitioner's occupation does require the intense use of his hands, Petitioner was able to return to work at his previous job; he has not suffered any loss of potential income; and based on his age, he will not have much time working with the disability. Petitioner was able to return to full duty work less than two months after his second surgery, he testified to relatively minor current impairment, and Dr. Novotny testified he expected no residual impairment except perhaps for some reduced grip strength. The Commission agreed with the Arbitrator that the permanent partial disability award for the right hand should be higher than the left because of the chronic compression in the right wrist Dr. Novotny found.

Based on the entire record before the Commission, and our analysis of the statutory factors in assessing permanent partial disability awards, the Commission finds that an award of 12.5% loss of the use of the right hand and 8% loss of the use of the left hand is appropriate. Accordingly, the Commission modifies the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $677.91 per week for a period of 38.95 weeks, as provided in §8(e)9 of the Act, for the reason that the injuries sustained caused the loss of the use of 12.5% of the right hand and loss of the use of 8% of the left hand.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $28,500.00. The party commencing the proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

DATED: DEC 3 1 2015

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

RWW/dw
O-12/16/15
46

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0995

CARSON, JOHN Case# **14WC035128**
Employee/Petitioner

DYNEGY MIDWEST GENERATION
Employer/Respondent

On 5/27/2015, 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:

1727 LAW OFFICES OF MARK N LEE LTD
KEVIN MORRISSON
1101 S SECOND ST
SPRINGFIELD, IL 62704

0299 KEEFE & DePAULI PC
NEIL A GIFFHORN
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

15IWCC0995

STATE OF ILLINOIS)
)SS.
COUNTY OF **Peoria**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

John Carson
Employee/Petitioner

v.

Dynegy Midwest Generation
Employer/Respondent

Case # **14** WC **35128**

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. 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 **McCarthy**, Arbitrator of the Commission, in the city of **Peoria**, on **April 16, 2015**. By stipulation, the parties agree:

On the date of accident, **September 18, 2014**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained 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 $**58,752.20**, and the average weekly wage was $**1,129.85**.

At the time of injury, Petitioner was **60** years of age, ***married*** with **0** dependent children.

Respondent stipulated to pay the reasonable, necessary, and causally related medical bills pursuant to the Medical Fee Schedule as set forth in the Act and is entitled to a credit for all amounts paid by Respondent's Group Health Carried as allowed under §8(j). Respondent will further hold Petitioner harmless for amounts paid by their Group Health Carrier.

The Parties stipulated that TTD was not an issue as Petitioner received lost time benefits that satisfied Respondent's liability for those amounts.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $**677.91**/week for a further period of 47.5 weeks, as provided in Section **8(e)9** of the Act, because the injuries sustained caused **15% loss of use of the right hand and 10% Loss of use of the Left hand.**

Respondent shall pay Petitioner compensation that has accrued from **1/22/15** through **4/16/15**, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected 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.

D. Dylan McCarthy
Signature of Arbitrator

May 19, 2015
Date

MAY 27 2015

15IWCC0995

The Arbitrator makes the following Findings of Fact on all disputed issues:

Petitioner worked for Respondent for approximately eight years as a shift technician/welder. This job entailed opening and closing valves, general maintenance, and the use of pneumatic and standard hand tools, including wrenches. He stated at trial that approximately 60% to 70% of his day was spent using his hands.

Beginning in 2014, Petitioner noticed numbness in his hands and he frequently dropped tools. He sought medical treatment from Dr. Novotny for his hand complaints on August 9, 2014. Dr. Novotny ordered EMG tests that were performed on September 10, 2014, and revealed bilateral carpal tunnel syndrome. After confirming the test results, Dr. Novotny performed a right carpal tunnel release on October 20, 2014 along with physical therapy, followed by a left carpal tunnel release on December 1, 2014 which was also followed by physical therapy. Dr. Novotny performed a non-occupational left knee surgery at the same time as the left carpal tunnel release. Petitioner was released to full duty work and placed at maximum medical improvement on January 22, 2015. No medical treatment has been sought by Petitioner for his hands since that office visit with Dr. Novotny.

Petitioner testified that he returned to his regular job on January 25, 2015, and continued to work full duty through the date of trial. He receives the same rate of pay and works overtime as available. He testified that at the time of trial his hand symptoms were improved and he was no longer dropping tools. While he had full use of his hands, he stated that he had reduced grip strength, especially when climbing ladders and using some hand tools. He also stated that when driving his personal car outside of work for more than an hour he developed some numbness and complained of difficulties with opening jars.

The deposition of Dr. Novotny was taken on March 19, 2015. In the deposition Dr. Novotny testified that post surgery on the right carpal tunnel he noted that Petitioner had very thick skin and subcutaneous tissues with some hyperemic changes to the median nerve and a slight hourglass compression deformity, but this was not noted in the left hand. Dr. Novotony testified that these findings were indicative that the person suffered chronic carpal tunnel due to a person doing a lot of work with their hands. Dr. Novotny did not anticipate any residual problems but that Petitioner may not get their complete grip strength back and that it was not unusual for patient to have some residual numbness.

Based upon the foregoing, the Arbitrator finds:

The Petitioner is right hand dominate and had findings of chronic carpal tunnel in his right hand, and his continued complaints of loss of strength and numbness in both hands when driving and using hand tools and ladders at work.

The case must be analyzed using the five factors set forth in Section 8.1 (b) of the Act.

15IWCC0995

Neither party submitted an AMA impairment rating, so that factor is deemed waived.

Petitioner is a welder. His job is hand intensive, and the parties agree that it contributed to the development of his bilateral carpal tunnel syndrome. Accordingly, his occupation which he continues to perform has a positive impact on his claim for PPD benefits.

On the date of his injury, the Petitioner was 60 years old. This has a negative impact on his claim, as he will not have to work with his disability for an extended period of time.

He is performing his regular job with no restrictions. Accordingly, there is no showing of an impaired future earning capacity.

With respect to his dominant hand, Dr. Novotny testified that he found the right median nerve to be hyperemic and having an hourglass appearance in surgery. (PX 2 at 10) he said that the appearance suggested that the nerve compression was chronic in nature, which could cause the Petitioner to be unable to regain his full grip strength. (Id at 11,14) When he last examined the Petitioner on January 22, 2015, he noted the Petitioner did not have a full grip on the right. (Id at 24) Dr. Strecker, who examined the Petitioner at the Respondent's request on March 6, 2015, also found the grip and key pinch strength less in the right hand than in the left. (RX 1)

Based upon the above factors, the Arbitrator awards the Petitioner 15 % loss of use of his right hand, and 10 % loss of use of the left.

As stipulated by the parties, Respondent shall hold Petitioner harmless for amounts paid by Respondent's group health carrier, but shall receive credit for all payments made by the group health carrier under §8(j) of the Act. Respondent shall pay the reasonable, necessary, and causally related medical bills pursuant to the Fee Schedule as set forth in the Act minus credits allowed under §8(j)

After crediting Respondent for payments of short term disability and salary continuation, no TTD benefits are due and owing, but by Respondent's stipulation there shall be no claim of overpayment of temporary benefits.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

☒ 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

Lawrence Cameron,
Petitioner,

vs.

NO: 12WC 41432
12WC 41437

Caterpillar, Inc.,
Respondent,

15IWCC0996

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 accident, temporary total disability, permanent partial disability, causal connection, medical, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 26, 2015, is hereby affirmed and adopted.

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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: DEC 3 1 2015
MB/jrc
o11515
43

Mario Basurto

Stephen Mathis

DISSENT

I respectfully dissent from the majority decision and would reverse the Arbitrator's decision in its entirety. Petitioner testified that his job required him to assemble differential gears to be installed into trucks and machines. Petitioner described the assembly process as follows: 1) pull a smaller gear, weighing 10-15 pounds, out of a box 24-32 times a night, 2) take the gear and flip it over and put in press with hands, hold 2 buttons at the top and a foot press at the bottom to press the gear into the bearing assembly, 3) take the gear assembly out of the press, and flip onto post by hand, 4) put nut into the gear assembly and tighten with a torque wrench, 5) flip the assembly gear on table and repeat process three more times for each unit.

Petitioner testified that once all four sets are done a T-bar is put in and attached to the lifting device. The lifting device places the unit in a larger housing on the rollover. Once rolled over, Petitioner put in pins with a hammer gun. Petitioner then would flip the housing unit, which weighs 75-85 pounds, over by hand, put pins in and flip back. Petitioner would then put 22-24 bolts on a small unit and 28-30 bolts on a larger unit using an impact gun. Petitioner testified that the impact gun would torque at the end of the process twisting his elbows.

Petitioner stated that once complete, he would lift the unit on to a rack with a lifting device. Petitioner testified that when he did this his left arm is fully extended and his right arm controls the unit. Petitioner testified to assembling 24 to 32 small gears which were inserted into 6 to 8 larger gears per shift. Petitioner testified that the numerous tools he used in a typical day included mini hammers, used to put the bolts into the larger units, and rundown air guns, which were used to run down bolts quickly. Petitioner stated that these particular tools were vibratory tools weighing 5 to 10 pounds. Petitioner testified that he worked 7 hours and 20 minutes in a typical day and would use his hands/arms in a lifting, pushing, pulling or gripping fashion for 5 to 6 hours per day for the assembly process.

Ms. Ashton Moretti testified on behalf of Petitioner pursuant to subpoena. Ms. Moretti worked for Respondent for 9 years and worked in the gear assembly department with Petitioner performing the same job duties for approximately 6 months. Moretti's testimony corroborated petitioner's description of the job duties of an assembler and the amount of time assemblers would spend performing such activities with both hands/arms. Furthermore, Moretti agreed, as did Petitioner, that the Essential Job Functions & Requirements Job Analysis introduced into evidence by Respondent generally described the assembler's job duties but was missing some elements of the job such as "pushing, pulling, strenuous stuff; lifting the heavier bearings."

Mr. Aaron McPheeters testified on behalf of Respondent. Mr. McPheeters testified that he has been employed by Respondent for seven years and his job title was Manufacturing Engineer for the Lower Power Train. McPheeters testified that he thought the Essential Job Functions & Requirements Job Analysis accurately depicted Petitioner's job duties although he never observed petitioner performing the job duties or performed the job duties himself. McPheeters agreed that assemblers would perform their job duties for approximately 7 hours and 20 minutes per day and that Petitioner used a wrench and two air power tools every day up to half the time they were working. McPheeters testified that it was feasible that an assembler could lift, carry, push, or pull approximately 6 hours per day.

The overwhelming evidence presented at hearing supports a finding of accident. Petitioner's testimony regarding the nature of the job and the job duties was corroborated by coworker, Moretti, as well as Respondent's witness, McPheeters. The only "discrepancy", which

the Arbitrator took issue with, was the number of gears assemblers completed per shift. Petitioner and Moretti testified to completing 6-8 per shift while McPheeters testified to 2-3 being completed per shift. However, what must be noted is that McPheeters testified to transitioning into the gear assembly station in late 2012 and Respondent provided no other evidence to support McPheeters' contention that only 2-3 gears were being assembled per shift. Notwithstanding, McPheeters corroborated Petitioner and Moretti's description that Petitioner would lift carry, push and pull with his arms for 6 hours per shift while performing his assembly duties.

Additionally, the overwhelming medical evidence supports a finding of causal connection to Petitioner's condition of ill being. Petitioner provided a consistent history of accident and description of his job duties to Dr. Greating, his treating surgeon, and Dr. Coe, Petitioner's IME. Dr. Greating noted that Petitioner's job duties included lifting parts (weighing up to 16 pounds) out of boxes with each arm, placing the parts in a press, pulling the press down with both arms, flipping the parts over and tightening nuts on such parts with air-driven impact guns. Dr. Greating also noted that Petitioner experienced exposure to vibration using an air driven impact wrench. Dr. Greating opined that Petitioner's work activities caused, contributed to, or aggravated his bilateral cubital tunnel syndrome "significantly."

Further, Dr. Coe opined to a reasonable degree of medical certainty that Petitioner's cubital tunnel syndrome was causally related to his job duties with Respondent. Dr. Coe had all of the information of Petitioner's job duties, the treating medical records, Respondent's ergonomic evaluation, Respondent's medical records, Dr. Ellis' (Respondent's IME) report, and Petitioner's description of his job duties. Dr. Coe stated that "repetitive flexion and extension at the elbow is a mechanical force that can irritate, pull, push and torque the ulnar nerves as they pass over the medial epicondyle in the elbow." Dr. Coe opined that that the job duties that Petitioner performed are the type of activities that are recognized in his field of occupational medicine as being factors causing nerve entrapments in the upper extremities.

Dr. Ellis, Respondent's IME, opined that petitioner's conditions were not worked related, as she believed that cubital tunnel syndrome has never been linked to occupational activities other than prolonged handheld vibratory tool use. Dr. Ellis stated that she has never seen cubital tunnel syndrome, which was occupational in nature except from the constant use of jackhammers. Dr. Ellis, however, did not have an accurate understanding of Petitioner's job duties. Dr. Ellis admitted that she did not know which tools Petitioner used at work, the duration of use of such tools, nor the vibration or kickback of said tools. Dr. Ellis never referenced assembly activities in her report, did not know which hand Petitioner used the impact wrenches or air guns in, never referenced Petitioner's elbow movements or the amount of gripping necessary or mentioned the specific tools used or the weight of the parts used in the assembly process. In sum, in contrast to the Arbitrator's contention, Dr.Ellis seemingly had less information to form the basis of an opinion than petitioner's treating surgeon or IME. The Arbitrator's reliance on Dr. Ellis' opinion in finding against causal connection is misplaced.

The overwhelming evidence in the record in conjunction with the medical opinions of Dr. Greating and Dr. Coe supports a finding of accident and causal connection between the assembly duties and Petitioner's cubital tunnel conditions. Accordingly, I would reverse the decision of the Arbitrator and remand the matter for a determination of benefits.

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

LAWRENCE, CAMERON
Employee/Petitioner

Case# **12WC041437**
12WC041432

CATERPILLAR INC
Employer/Respondent

15IWCC0996

On 5/26/2015, 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
PHILIP BARECK
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

2994 CATERPILLAR INC
MARK FLANNERY
100 N E ADAMS ST
PEORIA, IL 61629-4340

15IWCC0996

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ 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

CAMERON LAWRENCE,
Employee/Petitioner

v.

CATERPILLAR, INC.,
Employer/Respondent

Case # **12** WC **41437**

Consolidated cases: **12 WC 41432**

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 **Maureen Pulia**, Arbitrator of the Commission, in the city of **Springfield**, on **4/14/15**. 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 **11/1/12 and 11/5/12**, Respondent *was* operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On these dates, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

In the year preceding the injury, Petitioner earned $**32,049.92**; the average weekly wage was $**617.21**.

On the date of accident, Petitioner was **37** years of age, ***married*** with **4** 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 $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**14,375.59** for other benefits, for a total credit of $**14,375.59**.

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

ORDER

Petitioner has failed to prove by a preponderance of the credible evidence that he sustained accidental injuries to his bilateral elbows that arose out of and in the course of his employment by respondent and manifested itself on 11/1/12 and 11/5/12. Petitioner's claim for compensation is denied.

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

5/15/15
Date

MAY 26 2015

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 37 year old assembly and test specialist, alleges he sustained an accidental injury to his bilateral upper extremities due to repetitive work activities that arose out of and in the course of his employment by respondent and manifested itself on 11/1/12 (12 WC 41437) and 11/5/12 (12 WC 41432). Petitioner claimed an injury to his left upper extremity on 11/1/12 and to his right upper extremity on 11/5/12. Petitioner is right hand dominant. Petitioner began working for respondent on 8/8/11.

Prior to the incident on 11/1/12 petitioner reported no problems with his bilateral arms other than periodic tightness for about a week earlier that went away. He testified that the tightness was present when he got out of bed.

Petitioner described his job as putting together differential gears. Petitioner assembles spider gears in the center of differential gears. Petitioner uses both hands to assemble gears. He described the process as follows: 1) pull a smaller gear, weighing 10-15 pounds, out of a box 24-32 times per night, 2) take gear and flip over and put in press with hands, holds 2 buttons at top and foot press at bottom to press gear into bearing assembly, 3) take gear assembly out of press, and flip onto post by hand, 4) put nut into the gear assembly, and tighten with a torque wrench, 5) flip assembly gear on table and repeat process three more times for each unit.

Once all four sets are done a T-bar is put in and attached to the lifting device. The lifting device places the unit in a larger housing on the rollover. Once rolled over petitioner put in pins with hammer gun. Flip housing unit, which weighs 75-85 pounds, over by hand. Put pins in and flip back. Put 22-24 bolts on smaller unit, and 28-30 bolts in on larger unit using impact gun. Petitioner testified that the impact gun would torque at the end of the process twisting his elbows.

Once complete, lift unit onto rack with lifting device. Petitioner testified that when he does this his left arm is fully extended and his right arm is used to control the unit. Petitioner completes 6-8 units a shift.

Torque tools petitioner used included a mini hammer, and a vibratory tool weighing 5-10 pounds, to put 28-32 bolts in the larger unit. Petitioner also uses a rundown air gun, weighing 5-10 pounds, to run bolts down quickly. He holds the wrench with one hand and runs the bolts down with the other hand.

On 11/1/12 while petitioner was picking up smaller gears out of the box he started getting pain in his left wrist. When the pain did not go away, petitioner went to Caterpillar medical department. He completed a Caterpillar Employee Incident Report. He reported that while in his area removing a spider gear from a box on the floor, he felt a pain in his left wrist which continued. He described his pain level as dull, but sharper with pressure, and tingling. That same day, nurse Collins completed the Initial Licensed Health Care Professional

Incident/Injury Form. She noted "was pulling spider gears out of box on floor. Was leaning over box lifting out here when felt sudden pain left wrist. Rates pain 1/10 at present, states pain increased to 5/10 when lifting, also with tingling left lateral wrist from wrist to little finger." Petitioner was given Aleve and a soft wrist support, as well as Biofreeze. Petitioner was given a return to work note that allowed him to return to regular duty work with cautious lifting.

On 11/4/12 petitioner returned to respondent's medical for follow-up of his left wrist injury. He stated that his wrist did not bother him at home over the weekend. However, when he got to work and started moving parts, his wrist started aching. He rated his pain as 3/10. He also reported throbbing. He stated that the pain starts in his left wrist and radiates up his forearm.

On 11/5/12, while picking up a smaller spider gear weighing 10 pounds, petitioner started feeling pain in his right wrist. He testified that the pain went all the way up his right arm. He testified that it was worse than the pain on the left. He reported the incident to his supervisor and again presented to respondent's medical department.

On 11/5/12 petitioner followed up again at respondent's medical for his left wrist pain. He rated his pain as a 3/10. He described his pain as being in the lateral aspect of the left wrist. He also reported shooting pain into the left forearm. Petitioner was given Aleve. Petitioner complained of some tingling in the lateral aspect of his right hand in the little finger at "x's".

On 11/5/12 an ergonomic evaluation was performed. Under "Employee Statement: What Happened?" It stated "pulling spider gears out of the box and my left wrist started to hurt. I gave it about an hour to see if it was temporary and then notified my supervisor and went to medical." The tasks were identified as "retrieve parts in the parts bin. Bin is 54 inches from floor to top of bin. Carry part about 15 feet; placed part on table." The force was identified as "parts weights range from 10 to 16 pounds". Frequency was identified as "lift and carry four pieces to the table per shift."

On 11/5/12 petitioner completed a second to Caterpillar Employee Incident Report. He reported that he was picking up spider gears out of the box on the floor on 11/5/12 when his right wrist started hurting. He noted that the pain began intensifying and he notified his supervisor. He described his pain in his right wrist as sharp and throbbing, to dull pain.

That same day nurse Collins completed an Initial Licensed Health Care Professional Incident/Injury Form. She identified the date of injury as 11/5/12. She wrote "employee presents complaining of pain in the right wrist. States had shooting pain in right wrist radiating through forearm, happened 4 to 5 times. Now states

throbbing pain lateral aspect wrist that radiates to medial wrist with use. States was picking up parts weighing approximately 10 pounds. States was using both hands to lift due to recent injury to left wrist and per supervisor's request." At the bottom of the page was a note that stated that on 11/7/12 petitioner's ergonomics were reviewed with respect to his diagnosis of left wrist pain, and the injury was found to be non-occupational, and petitioner's claim was denied by Jamie S.

On 11/6/12 petitioner again returned to respondent's medical complaining of pain while picking up a part last Wednesday. He reported that the pain was on the outside of his left wrist. He also reported shooting and constant pain. He stated that ibuprofen and Aleve have not helped. He gave a history of being off the weekend and when he began working again, that triggered his pain. An examination revealed good active range of motion and passive range of motion, a negative Tinel's sign, negative Phelan sign, and positive Finkelstein on the left. Petitioner testified that his left wrist pain was improving. The etiology was unknown. An ergonomic report was requested, as well as an investigation. Petitioner was released to return to regular duty work with caution.

On 11/8/12 Jamie Schimmelpfenning, Workers' Compensation Claims Adjuster for respondent, drafted a letter to petitioner advising him that his claims regarding his left and right wrist had been denied under Workers' Compensation. She noted that it was determined that there was nothing to indicate that petitioner's pain arose out of and in the scope of his employment.

On 11/12/12 petitioner was given a release to return to work regular duty with caution. This return to work note was signed by nurse Collins. On 11/13/12 petitioner was returned to regular duty work by nurse Collins.

On 11/20/12 petitioner presented to Family Healthcare Center complaining of pain in his wrists that started hurting at work three weeks ago. He was seen by Hannah Doyle, PA-C. He reported that the right wrist was worse than the left wrist. He described his pain as burning, and radiating up the posterior arm, and associated with numbness/tingling. He rated his pain at a 5/10, and worsening. He gave a history of being an assembler for respondent and was forced to twist, grip, and hold an impact tool down for approximately 1 minute. He reported that he was unable to finish working due to the pain at times, and sometimes waits 5 to 10 minutes before restarting work. He also gave a history of waking up during the night and experiencing numbness in the third to fifth digits up the medial aspect of his arms. He reported that the medical team at his job told him to do heat treatments, wear wrist braces 24 hours a day, and take ibuprofen around the clock, but this had not worked. Petitioner gave a history of smoking since the age of 18, one pack per day. Following an examination, petitioner was assessed with numbness of fingers in both hands. He was told that his clinical

history and physical examination of both indicate carpal tunnel and cubital tunnel syndrome. An EMG/NCS was ordered. Petitioner was prescribed a Medrol Dosepak to see if it would help reduce inflammation. He was advised to continue wearing his wrist braces. Petitioner was given a return to work note that listed no repetitive movements of his hands, including twisting, gripping, and using air tools. He was also restricted from lifting more than 5 pounds at a time.

On 11/30/12 petitioner returned to the Family Healthcare Center. He was seen by Hannah Doyle, PA-C. Petitioner reported stabbing, burning, and aching pain in his bilateral wrists and around his elbows for the past month. He rated his pain at a 10/10, and worsening. Petitioner reported that the pain interferes with his activities of daily living and sleep. He reported that the pain began while he was working as an assembler for respondent. Petitioner reported his pain was constant and varying from a 2–10/10, with it being worst when he rests after performing any range of motion. Petitioner reported that he gave the work restrictions to his boss, and was told that they were unable to accommodate the restrictions. Petitioner has not worked since 11/20/12. Doyle filled out short-term disability paperwork for petitioner. Petitioner was prescribed Vicodin for his pain. Hannah Doyle completed an Application For Disability Benefits for petitioner.

On 12/5/12 petitioner underwent an EMG/NCS performed at Shelby Memorial Hospital. Petitioner reported numbness and tingling in both upper extremities, going on for a couple of months. He described the pain as affecting the ring and the little finger with numbness, tingling, and sometimes shooting up to the upper arm and shoulder. The results of the tests showed bilateral moderately severe cubital tunnel syndrome, more so on the left side, with no evidence of superimposed significant carpal tunnel syndrome, cervical radiculopathy, plexopathy, or disease at the muscle level.

On 12/10/12 petitioner followed up with Doyle PA-C following his EMG/NCS. Petitioner rated his pain at an 8/10, and somewhat improved. Doyle noted that the EMG/NCS performed 12/5/12 showed bilateral moderately severe cubital tunnel syndrome, worse on the left side, with no evidence of superimposed significant carpal tunnel syndrome, cervical radiculopathy, plexopathy, or disease at the muscle level. Petitioner requested a referral to Dr. Greatting. Doyle referred petitioner to Dr. Greatting.

On 1/3/13 petitioner presented to Dr. Mark Greatting, an orthopedic surgeon, at Springfield Clinic, for evaluation of his bilateral arm complaints. Petitioner complained of bilateral hand pain, numbness and tingling which developed over time. He stated that he was employed as an assembler with Caterpillar for about a year and a half, and worked in an area where they manufactured differential gears. Petitioner reported that he last worked on 11/20/12, due to restrictions that he was given. He gave a history of lifting parts out of boxes on the floors, that weighed as much as 16 pounds. He reported that he worked with multiple parts per night. He stated

that he would grab one of these with each arm, put them in a press, and then pull the press down with both arms. He would then have to flip the parts over and tighten the nuts on the parts with air driven impact guns. Once they were assembled he would have to push and hold them to sit them correctly in another piece of equipment. He would do this twice for each unit. He would then have to flip the housing unit over and set it down. These weighed as much as 75 pounds, sometimes they were smaller. He reported that the symptoms began in his arms about 15 months after starting work for respondent. The left side began bothering him first, followed by the right. He complained of numbness and tingling which began in his forearm and radiated down to the small finger. It occasionally involved his right finger. Although petitioner gave a history of chronic neck and shoulder complaints, he had no complaints of neck or shoulder pain at this visit. Petitioner reported a feeling of weakness in his hands. He stated that he wore wrist splints without any help. He also reported that no conservative treatment to date had helped. Petitioner described his work activities as involving a lot of repetitive flexion, extension activities with his elbows, as well as his wrists and hands. Dr. Greatting noted that from petitioner's description of his work activities there was a fair amount of forceful repetitive gripping, pushing, pulling activities, as well as some degree of exposure to vibration using the air driven impact wrenches. Following an examination Dr. Greatting assessed cubital tunnel syndrome. He was of the opinion that petitioner's work activities caused, contributed to, or aggravated his symptoms significantly. He recommended a surgical release of his ulnar nerves at the elbows.

On 3/12/13 petitioner underwent petitioner underwent a release of the ulnar nerve of the right elbow performed by Dr. Greatting. Petitioner followed up postoperatively with Dr. Greatting. On 3/26/13 petitioner reported that the numbness distally was improved. He stated that he still gets a feeling of some cold sensation in the ring and small fingers. He reported increased pain in his posterior elbow and forearm area over the past few days. Petitioner was instructed to slowly increases activities with the right arm as tolerated.

On 4/3/13 petitioner underwent a release of the ulnar nerve of the left elbow. This procedure was performed by Dr. Greatting. Petitioner followed up postoperatively with Dr. Greatting. On 4/17/13 petitioner reported that he felt his numbness had improved. He had good motion of his left elbow, forearm, wrist and hand. He also had good strength distally in the ulnar nerve distribution. With respect to the right arm he was complaining of some persistent pain on the posteromedial elbow area and pain radiating down the forearm with some numbness and tingling in the ring and small fingers. He felt like the numbness and tingling was more frequent than it was prior to surgery. He stated that it was not constant, but bothered him a lot at night. An examination revealed a positive Tinel's sign over the petitioner's right ulnar nerve. Dr. Greatting prescribed gabapentin for the right arm. He continued petitioner on light duty work restrictions.

On 4/25/13 petitioner underwent a Section 12 examination performed by Dr. Ramsey Ellis, at the request of the respondent. Dr. Ellis reviewed the them Employee Incident Report dated 11/1/12; Incident Report dated 11/5/12; ergonomic evaluation on 11/5/12; and various medical records detailed in his report. Petitioner reported that he uses an impact wrench 4 to 5 times a shift in concert with other activities such as heavy lifting and manipulation of tools and parts. Petitioner reported significant relief after his left cubital tunnel release. He stated that he still has significant symptoms in the right forearm and hand, but no longer has any significant wrist pain. Dr. Ellis performed a physical examination. Dr. Ellis was of the opinion that petitioner's cubital tunnel syndrome on the left is not related to the incident of 11/1/12. He was of the opinion that he could find no evidence of prolonged use of handheld vibratory tools or highly repetitive flexion and extension activities coupled with forceful grasping which would be related to the development of cubital tunnel syndrome. He was of the opinion that petitioner's cubital tunnel syndrome on the left and right was idiopathic in nature. He did not believe petitioner had occupational exposure to prolonged use of handheld vibratory tools which might be related to the development of cubital tunnel syndrome. Dr. Ellis was of the opinion that petitioner has not yet recovered fully from his recent treatment, and may require some limited occupational hand therapy to treat hyperesthesia of the right elbow scar. He did not believe any of this treatment was related to an occupational accident. Dr. Ellis was of the opinion that petitioner could return to his regular duty job without restrictions.

On 5/16/13 petitioner followed up with Dr. Greatting. He reported that his left arm was doing great. He had good motion, and good strength in the ulnar nerve distribution. He reported that the numbness and tingling in his left arm had basically resolved. With respect to his right arm, he reported some persistent problems. He complained of burning pain in his forearm down to the ring and small fingers of his right hand. He reported weakness in his hand. He reported that the gabapentin had helped with respect to his numbness, but not the burning sensation. Dr. Greatting released petitioner without restrictions or limitations on the left side, and no lifting more than 5 pounds, and no repetitive elbow flexion/extension on the right. He ordered a repeat EMG/NCS of the right arm.

On 6/6/13 petitioner underwent a repeat EMG/NCV on the right upper extremity. The impression was an abnormal EMG/NCS of the right upper extremity suggestive of mild residual right cubital tunnel syndrome. Petitioner followed up with Dr. Greatting the same day. He noted a markedly positive Tinel's sign over petitioner's right cubital tunnel, and a positive elbow flexion test. He was of the opinion that petitioner may have some mild subluxation of the ulnar nerve out of the cubital tunnel. Dr. Greatting did not believe petitioner could return to previous normal activities with the way his right elbow currently was. Dr. Greatting recommended an interior submuscular transposition of the right ulnar nerve.

On 7/19/13 petitioner underwent an anterior submuscular transposition of the right ulnar nerve. This procedure was performed by Dr. Greatting. The postoperative diagnosis was recurrent right cubital tunnel. Petitioner followed-up postoperatively with Dr. Greatting.

On 7/23/13 the evidence deposition of Dr. Ramsey Ellis, board-certified in plastic surgery, was taken on behalf of the respondent. Dr. Ellis opined that petitioner's bilateral cubital tunnel was unrelated to his work duties. He was of the opinion that there has never really been a successful linkage of cubital tunnel syndrome to occupational activities. He stated there is one weak link that does exist but that is related to prolonged handheld vibratory tool use. Dr. Ellis was of the opinion that the type of activities that would be causative to cubital tunnel include an assembly line type environment with repetitive elbow flexion and extension, over 90°, constantly.

On cross-examination, Dr. Ellis testified that he read the letter from respondent before he examined petitioner and relied at least in part on this information in formulating his opinions. Dr. Ellis also stated that he had a letter dated 3/8/13 from respondent's attorney Mark Flannery, outlining the history in the case and referencing medical records, and requesting him to address causation issues and other issues respondent had in this case. Dr. Ellis testified that when he rendered his report on 4/30/13 he had not seen the operative reports. Dr. Ellis testified that in determining causation for ulnar neuropathy or cubital tunnel syndrome that it is important to know the positioning of the elbows while performing the job duties, the force or pressure exerted with the elbows flexed when performing the job duties, whether or not there is vibration in the degree of vibration involved with airguns, air tools, etc. when the employee is performing the job duties, and the degree of exposure. Dr. Ellis testified that he did not know what tools petitioner use at work, or what airguns he used at work. He also testified that he did not have a video depicting petitioner's job duties, or pictures of petitioner performing any of his job duties. Dr. Ellis testified that he did have some pictures of some gears and a box, but not nuts or pins. Dr. Ellis also did not know how many hours a day petitioner used any sort of airguns or air tools. Dr. Ellis testified that he did not know how heavy the air power tool was, but believed that was not particularly relevant. Dr. Ellis did not know which hand petitioner held the impact wrench or airgun in, but again did not feel that this was relevant. Dr. Ellis testified that petitioner never described the elbow movements he used when using the impact wrenches or airguns in his report, and never mentioned how much gripping was involved in petitioner's use of the impact wrenches. Dr. Ellis did not know the size of the parts petitioner worked with, or their weights. Dr. Ellis was of the opinion that petitioner never described to him any work duties that would be sufficient to be a causative factor of cubital tunnel syndrome. Dr. Ellis did not know how much time petitioner spent pushing, pulling, lifting, or gripping with his arms during the 15 months leading up

to his alleged accidents. Dr. Ellis was of the impression that petitioner worked using his hands all day, but what percentage of time he spent in each of those positions, he did not know. He did not believe petitioner worked in an environment at a high pace, with high repetition and high vibration. Dr. Ellis opined that according to literature, unless there are vibratory forces involved like airguns, air tools, or jackhammers, there is no association between cubital tunnel and work duties. Dr. Ellis was of the opinion that when petitioner pulled the part out of the box on 11/1/12 this was the first manifestation for the symptoms of the ulnar nerve problem. Dr. Ellis opined that petitioner did not perform a repetitive job for Caterpillar leading up to his ulnar nerve problems. Dr. Ellis was of the opinion that although petitioner's initial manifestation of his ulnar nerve problem occurred at work that does not mean it was caused, aggravated, or exacerbated by work.

On redirect examination Dr. Ellis testified that his understanding was that petitioner moved about four pieces from a box to a table and then performed work on those pieces four times per shift.

On 7/31/13 petitioner followed-up with Dr. Greatting. He reported that his numbness was improved, but not resolved. Dr. Greatting gave petitioner light duty restrictions, and prescribed physical therapy. Petitioner reported some pain in his left elbow, where he had had an ulnar nerve release.

Petitioner underwent 11 sessions of physical therapy from 8/13/13 through 9/4/13. As of 9/4/13 petitioner continued to demonstrate significant progress, however he still had irritability with weight bearing and strengthening exercises. On 9/5/13 petitioner returned to Dr. Greatting. He still had some tenderness and sensitivity in the area of the incision. He had good motion of the right elbow, forearm, wrist, and hand. He had good strength distally and in his ulnar nerve distribution. He was continued in physical therapy to work on strengthening/work conditioning.

Petitioner continued in physical therapy through 10/7/13. Therapist Ring was of the opinion that petitioner was ready to return to work based on his progress. On 10/9/13 petitioner last followed up with Dr. Greatting. He reported that the right arm was doing much better. Petitioner had good motion of his elbows, forearms, wrists, and hands. He also demonstrated good strength in his ulnar nerve distribution bilaterally. Petitioner noted that the numbness had resolved. Dr. Greatting released petitioner to work without restrictions on 10/13/13.

On 11/13/13 petitioner underwent a Section 12 examination performed by Dr. Jeffrey Coe, at the request of his attorney. Dr. Coe also reviewed medical records including reports from his treating physicians. Petitioner gave a history of working for Caterpillar assembling gears for more than two years. He reported that this job involved repeatedly pulling spider gears out of boxes on the floor of the work area. He also reported

that his work involved reaching down, gripping and pulling up. He stated that the upper arm movements require significant force and were performed up to 30 times per shift. He stated that he was also required to manipulate and maneuver the gears and boxes to permit lifting. Petitioner stated that the gears weighed 10 to 15 pounds. Petitioner denied a history of diabetes mellitus, thyroid disease, collagen of vascular diseases. He also denied any hand intensive home activities, or any significant injuries to his upper extremities prior to the work activities at Caterpillar. Petitioner complained of pain at the elbow scar sites with forceful gripping or throwing movement. He also reported some popping and tightness of both elbows with repeated flexion and extension. Petitioner complained of occasional numbness and tingling extending into the fourth and fifth fingers of each hand with pressure at the elbow scar sites, and occasional bilateral wrist discomfort.

Following an examination, and a QuickDASH questionnaire, with a score of 13, which equates to mild difficulty, Dr. Coe was of the opinion that petitioner suffered repetitive strain injuries to both upper extremities in his work as an assembler at Caterpillar. He noted that petitioner had slight limitations of some activities. He was of the opinion that the repetitive strain injuries were a factor causing the development of bilateral cubital tunnel syndrome. He noted that petitioner's recovery from left ulnar nerve surgery was uncomplicated, but his recovery from the right ulnar nerve surgery was complicated by the development of postoperative scarring about the ulnar nerve, and ulnar nerve instability with residual symptoms of right ulnar neuropathy at the elbow. Petitioner ultimately underwent a repeat right ulnar nerve surgery. Dr. Coe noted that petitioner's Tinel's signs were equivocal with residual ulnar nerve scar irritability. He further noted that petitioner's sensation remained decreased in the distribution of the right ulnar nerve and there was mild atrophy of the right upper arm. Dr. Coe opined that there was a causal relationship between the repetitive upper extremity strain injuries suffered by petitioner at work on 11/1/12, and 11/5/12, and his current bilateral upper extremity symptoms and state of impairment. He further opined that petitioner's bilateral upper extremity repetitive strain injuries suffered at work for Caterpillar caused a permanent partial disability to both of petitioner's arms. He was of the opinion that petitioner had reached maximum medical improvement with regard to his bilateral upper extremity repetitive strain injuries and associated surgeries. He was of the opinion that petitioner could return to work full duty without restrictions.

In addition to his examination Dr. Coe performed an impairment rating. His final impairment rating based on the right cubital tunnel syndrome was 1% of the right upper extremity. His final impairment rating based on the left cubital tunnel syndrome was 1% of the left upper extremity.

On 6/27/14 Dr. Ellis drafted a letter to respondent's attorney Mark Flannery, after reviewing additional records regarding petitioner. In this letter Dr. Ellis responded to specific questions outlined to him by Mr.

Flannery in his letter dated 6/10/14. Dr. Ellis was of the opinion that petitioner had idiopathic cubital tunnel syndrome, completely unrelated to his work. He based this opinion on the fact that petitioner had no exposure to handheld vibratory tools which would be related to his development of cubital tunnel syndrome. He also reviewed the Essential Job Functions and Requirements for Product Group: Lower Power Train, Job Title: Assembly and Test Specialist – Differential Gear Assembly. Based on his review of these documents Dr. Ellis' opinions regarding petitioner's cubital tunnel syndrome remained unchanged. He noted that the job description did not document the prolonged use of any handheld vibratory tools which could be implicated in the development of cubital tunnel syndrome.

On 7/14/14 the evidence deposition of Dr. Coe, board-certified an occupational medicine, was taken on behalf of petitioner. Dr. Coe was of the opinion that from a medical standpoint or physiological standpoint repetitive flexion and extension at the elbow is a mechanical force that can irritate, pull, push, and torque the ulnar nerve as they pass over the medial epicondyle in the elbow.

On cross-examination Dr. Coe was of the opinion that generally speaking petitioner had no deficits in the user function of his arms. Dr. Coe was of the opinion that petitioner would need to pick the parts out of the box, put them on the table, and then manipulate them by flipping them over when they were on the table, and then work on them with tools. Dr. Coe testified that he did not gain an understanding as to the amount or extent of elbow flexion and extension that was involved in his job duties. Dr. Coe testified that he did have some photographs of the worksite, and the treating physician's description of the activities. Dr. Coe was of the opinion that repeated flexion and extension at the elbow is a risk factor for ulnar nerve injury and ulnar nerve inflammation, but he has not seen where it is identified what degrees of motion is required. He was of the opinion that the greater the range of motion, the greater the risk to the ulnar nerve. Dr. Coe testified that petitioner also talked about power tools and hand tools, but he did not know how often petitioner used these tools, or how much they weighed, or the degree of force or vibration.

Respondent offered into evidence the Essential Job Functions and Requirements for the Lower Power Train Product Group, and Job Title of Assembly and Test Specialist – Differential Gear Assembly. This job description identified standing as the only physical demands performed more than 25% of the time. All other physical demands were identified as being performed occasionally, less than 25% of the time, or not applicable. Five pictures were identified within the job description. Picture 1depicted an employee using a foot actuated press to press a retainer into a bearing. The bearing weight was identified as 5 pounds, the retainer weight was identified as 1-1/2 half pounds, and the frequency with which this was performed was eight times a shift. Picture 2 depicted the employee assembling 4 spider gears onto a spider differential. The spider gear was

identified as weighing 15.4 pounds, the bearing and retainer weighed 6.5 pounds, the spider differential weighed 18.99 pounds, and the table height was 34 inches from the floor. Picture 2a showed the employee assembling the spider gear plus a bearing and retainer. It was identified that the total weight to perform this job was 21.9 pounds. Picture 2b identified a 70NM clicker branch that is used during assembly. This requires 26 pounds of pull force. The tool itself weighs 5 pounds. It was noted that the operator's arms are extended during this task at approximately 37 inches from the floor. Picture 2c depicted a spider gear assembly and spider differential. Picture 2d identified 4 spider gear assemblies added to the differential. Picture 2e identified a completed assembly that is lifted with a lifting device overhead. Picture 3 identified the location of the parts received. Picture 3a indicated that the bearings in retainers are stored in a stationary parts cart. Picture 4 identified the flange 1/2 assembly. Picture 4a shows the flange 1/2 delivered to the line. Picture 4b depicted the employee using the lifting device to move the part from the delivery point to the rollover. Picture 4c depicted the automatic part rollover, activated by a single pushbutton. The rollover sits at 36 inches from the floor. Picture 4d shows a 3 pound and 6 pound airpower torque tools that are used to secure the part into the rollover. Picture 4e shows the employee using a GCI arm to torque 14 bolts. The GCI arm requires 21 pounds of upward force, 14 pounds of downward force, and 6 pounds of push/pull force. There were three Picture 5s, with no description. This job description was completed by Molly Major on 6/9/14.

Petitioner testified that the job description completed by Molly Major was accurate for the most part, but left some things out and downplayed other things. He testified that the amount of time he uses his arms was downplayed based on the everything he does with his arms during the assembly process. He claims it was frequent, not occasional.

Petitioner testified that the job description left out the process of getting the bearings, weighing 10-25 pounds, out of the cabinet and putting them in oven. He testified that he pulls them out after they are heated up and then flips the unit onto the housing. Petitioner testified that installing bearings is strenuous work.

Ashton Moretti, lower power train gear assembler, and co-worker of petitioner, was called as a witness on behalf of petitioner. Moretti is also a prior client of petitioner's attorney. Petitioner worked right next to petitioner for 6 months doing the same job. She testified that they assemble 24-32 smaller gears, and 6-8 larger gears a day. This assembly requires pushing, pulling, tugging, and lifting constantly. She testified that her hands are used 5-6 hours a day lifting, gripping, pulling and pushing. She also testified that she used a torque wrench, press and lifting devices daily. She stated that the bearing press requires her to hold it with both hands and requires a lot of force. She reviewed the job description and was of the opinion that it was pretty accurate. She was of the opinion that it did not include the pushing, pulling, and lifting of heavier bearings. Moretti was

of the opinion that she spent over 50%, not 25% of her day lifting, carrying, pushing, and pulling with both hands and arms during the work day.

Moretti testified that she flipped the smaller gears 2 times per bearing set, or 48-70 times a shift. She testified that the gears are manually loaded into the cart and weigh 10-20 pounds for each box of 8. Moretti testified that the housings are put on top of spider gears that were assembled. The unit is then flipped on its side on the table, and the large ring gear is placed on top of it. The assembler then lines up all the holes and drills through both pieces to make sure the hole are properly aligned. After the holes are drilled the bolts are placed in with nuts and washers using a run down gun and wrench gun. The unit is then placed back on roll over table, and 10-40 bolts are placed in using an overhead torque gun that was heavy to pull down. She testified that when the torque gun is used it jerks back when it is done. She stated that this job is performed with arms fully extended. She also testified that her arms are fully extended when she flips the parts. She noted that when positioning the housing the arms are bent as it is pulled towards her. When everything is together she takes the unit to the rollover using a hoist. The rollover is flipped using a hoist. While in the rollover 4 additional bolts are put in using a gun, weighing 5-10 pounds. While using the gun, her elbow was at 90 degrees.

Aron McPheeters, manufacturing engineer for lower power train, was called as a witness on behalf of respondent. His duties include writing processes for building components in the lower power train area. On a daily basis he is on the floor checking out all the areas he is responsible for. In 2012 he transitioned into the spider area. He testified that he was familiar with petitioner's job station and the tasks associated with that job station. He stated that he observed petitioner performing the job on at least a weekly basis, but did not observe petitioner doing his entire job. McPheeters testified that he participated in the creation of the job description, and that it is accurate. He testified that there is occasional pushing and pulling of the GCI arm hold torque tool. He was of the opinion that the GCI arm holds the tool in place so there is no reaction in the person. He stated that it generates so much force it cannot be used by hand. He stated that it is a zero balance arm and a button is used to turn it on. He testified that the arm does not vibrate when the tool is used.

McPheeters testified that the spider gears weigh 15 pounds and are in a tub 15 feet away. He stated that 4 spider gears are used for each unit and they are assembled by hand. He testified that a lifting device is used to put it in the differential housing unit. He stated that roll housing on the work bench is done manually, one per spider gear. He testified that the bearings weigh 5 pounds each and come from a cart 5-6 feet from assembly stations. He testified that they are assembled by hand.

On cross examination McPheeters testified that he was not sure if the process which he outlined on 6/9/14 was the same as it was in 2012. He was not sure if the assembly process in 2012 was the same as in 2014, but

was not aware of any changes. McPheeters was of the opinion that only 2-3 differential gears were built a day in 2012. He stated that he would be surprised to learn that there were 6-8 units made a day in 2012. McPheeters did not know how many hours a day petitioner used his arms in a forceful manner. He testified that petitioner could have lifted, carried, pushed/pulled up to 6 hours a day. McPheeters testified that the tools petitioner used daily included a clicker wrench, and 2 separate air power torque tools, possibly up to 50% of the time.

Between 11/21/12 and 10/12/13 petitioner did not receive any temporary total disability benefits. Instead he received short term disability benefits. Petitioner testified that Public Aid paid $193.35 of his bills, with the remaining balances paid by respondent's group.

Currently, petitioner still gets pain in his right forearm occasionally and when the weather changes. He stated that with respect to his left arm, it is better, and he only gets a short lived twinge once in awhile. Petitioner testified that his arms are not as strong as they used to be. When his arms really hurt he takes Gabapentin.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

As a general rule, repetitive trauma cases are compensable as accidental injuries under the Illinois Worker's Compensation Act. In Peoria County Belwood Nursing Home v. Industrial Commission (1987) 115 111.2d 524, 106 Ill.Dec 235, 505 N.E.2d 1026, the Supreme Court held that "the purpose behind the Workers' Compensation Act is best serviced by allowing compensation in a case ... where an injury has been shown to be caused by the performance of the claimant's job and has developed gradually over a period of time, without requiring complete dysfunction.." However, it is imperative that the claimant place into evidence specific and detailed information concerning the petitioner's work activities, including the frequency, duration, manner of performing, etc. It is also equally important that the medical experts have a detailed and accurate understanding of the petitioner's work activities.

Since petitioner is claiming an injuries to his bilateral upper extremities, in Illinois, recovery under the Workers' Compensation Act is allowed, even though the injury is not traceable to a specific traumatic event, where the performance of the employee's work involves constant or repetitive activity that *gradually* causes deterioration of or injury to a body part, assuming it can be medically established that the origin of the injury was the repetitive stressful activity. In any particular case, there could be more than one date on which the injury "manifested itself". These dates could be based on one or more of the following, depending on the facts of the case:

1. The date the petitioner first seeks medical attention for the condition;
2. The date the petitioner is first informed by a physician that the condition is work related;
3. The date the petitioner is first unable to work as a result of the condition;
4. The date when the symptoms became more acute at work;
5. The date that the petitioner first noticed the symptoms of the condition.

Petitioner is alleging accidents that arose out of and in the course of his employment by respondent on 11/1/12 and 11/5/12. On 11/1/12 petitioner presented to respondent's medical with left wrist complaints when he lifted a spider gear out of the box on a floor. Petitioner described the pain as 5/10 when lifting. He also reported tingling in his left lateral wrist from his wrist to his little finger. Petitioner did not make any mention any problems with his left elbow. At trial, petitioner denied any prior problems with his bilateral arms other than periodic tightness for about a week prior to the alleged accident that went away. He testified that this periodic tightness was only present when he got out of bed, not while he was working. He did not identify where this tightness was.

On 11/4/12 petitioner followed-up for his left wrist pain at respondent's medical. He reported that over the weekend his wrist did not bother him, but it began to hurt again when he got to work and started moving parts. He stated that the pain radiated into his forearm from his left wrist.

On 11/5/12 petitioner returned to respondent's medical for his left wrist pain. He described the pain as being in the lateral aspect of the left wrist, shooting into the left forearm. He also complained of some tingling in the lateral aspect of the right hand in the little finger at "x's". He completed an accident report stating that on 11/5/12 he was picking spider gears out of the box on the floor and his right wrist started hurting him. He made no complaints of any right elbow pain. On 11/6/12 he complained of pain on the outside of his left wrist, and shooting and constant pain. On 11/20/12 he reported that his right wrist was worse than his left wrist. He described the pain as burning, and radiating up the posterior arm, associated with numbness/tingling.

On 11/30/12 petitioner told PA Doyle that he had stabbing, burning, and aching pain in his bilateral wrists and around his elbows for the past month. An EMG/NCV performed 12/5/12 showed moderately severe bilateral cubital tunnel, worse on left.

Based on the above, as well as the credible records the arbitrator finds the manifestation dates of 11/1/12, and 11/5/12 were the first days petitioner sought treatment for his alleged conditions.

In addition to proving a manifestation date, the petitioner must place into evidence specific and detailed information concerning his work activities, including the frequency, duration, manner of performing, etc. It is also equally important that the medical experts have a detailed and accurate understanding of the petitioner's work activities.

In the case at bar, petitioner told PA Doyle on 11/20/12 that he was an assembler for respondent and was forced to twist, grip, and hold impact tool down for approximately 1 minute. He also gave Dr. Greatting a history of bilateral hand pain, numbness and tingling which developed over time. The arbitrator finds this history is inaccurate, given the fact that the pain in petitioner's wrists on 11/1/12 and 11/5/12 was sudden and directly associated with the activity of lifting spider gears out of a box on the floor.

Petitioner gave Dr. Greatting a history of lifting parts out of boxes on the floors, that weighed as much as 16 pounds. He reported that he worked with multiple parts per night. He would grab one of these with each arm, and put them in a press. He would pull the press down with both arms. He would then have to flip the parts over and tighten nuts on the parts with air driven impact guns. Once they were assembled he would have to push and hold them to sit them correctly in another piece of equipment. He would do this twice for each unit. He would then have to flip the housing unit over and set it down. The housing units weighed as much as 75 pounds, sometimes they were smaller. Petitioner described his work activities as involving a lot of repetitive flexion and extension activities with his elbows, as well as his wrists and hands. Dr. Greatting noted that from petitioner's description of his work activities there was a fair amount of forceful repetitive gripping, pushing, pulling activities, as well as some degree of exposure to vibration using the air driven impact wrenches. However, based solely on this history petitioner provided to Dr. Greating, the arbitrator finds Dr. Greatting did not have a detailed and accurate understanding of the petitioner's work activities, given the fact that he did not know the frequency, duration, or manner in which petitioner performed these duties. For this reason, the arbitrator gives lesser weight to the opinions of Dr. Greatting.

On 4/25/13 petitioner underwent a Section 12 examination performed by Dr. Ramsey Ellis, at the request of the respondent. Dr. Ellis reviewed the them Employee Incident Report dated 11/1/12; Incident Report dated 11/5/12; ergonomic evaluation on 11/5/12; and various medical records detailed in his report. Petitioner reported that he uses an impact wrench 4 to 5 times a shift in concert with other activities such as heavy lifting and manipulation of tools and parts. Dr. Ellis was of the opinion that he could find no evidence of prolonged use of handheld vibratory tools or highly repetitive flexion and extension activities coupled with forceful grasping which would be related to the development of cubital tunnel syndrome. He was of the opinion that petitioner's cubital tunnel syndrome was idiopathic in nature. Dr. Ellis was also the opinion that petitioner's

cubital tunnel syndrome on the right was idiopathic in nature. He did not believe petitioner had occupational exposure to prolonged use of handheld vibratory tools which might be related to the development of cubital tunnel syndrome. Dr. Ellis was of the opinion that the type of activities that would be causative to cubital tunnel include an assembly line type environment with repetitive elbow flexion and extension, over 90 degrees constantly.

Dr. Ellis opined that in determining causation for ulnar neuropathy or cubital tunnel syndrome that it is important to know the positioning of the elbows while performing the job duties, the force or pressure exerted with the elbows flexed when performing the job duties, whether or not there is vibration in the degree of vibration involved with airguns, air tools, etc. when the employee is performing the job duties, and the degree of exposure. Petitioner did not provide Dr. Ellis with any of this information. Dr. Ellis testified that he did not know what tools petitioner used at work, or what airguns he used at work. Dr. Ellis also did not know how many hours a day petitioner used any sort of air guns or air tools, how heavy the air power tool was, which hand petitioner held the impact wrench or airgun in, the elbow movements petitioner used when using the impact wrenches or air guns, how much gripping was involved in petitioner's use of the impact wrenches, the size of the parts petitioner worked with, or their weights. Dr. Ellis was of the opinion that petitioner never described to him any work duties that would be sufficient to be a causative factor of cubital tunnel syndrome. He did not know how much time petitioner spent pushing, pulling, lifting, or gripping with his arms during the 15 months leading up to his alleged accidents. Although Dr. Ellis was of the impression that petitioner worked using his hands all day, he did not know what percentage of time he spent in each of those positions. He did not believe petitioner worked in an environment at a high pace, with high repetition and high vibration. Dr. Ellis opined that petitioner did not perform a repetitive job for Caterpillar leading up to his ulnar nerve problems.

Following his examination of petitioner Dr. Ellis reviewed the Essential Job Functions and Requirements for Product Group: Lower Power Train, Job Title: Assembly and Test Specialist-Differential Gear Assembly which showed all other physical demands other than standing, as being performed less than 25% of the time. Based on this job description Dr. Ellis' opinions remained unchanged. He specifically noted that the job description did not document the prolonged use of any hand held vibratory tools which could be implicated in the development of cubital tunnel. Given that Dr. Ellis not only received a job history from petitioner during his examination, but also reviewed petitioner's job description, the arbitrator gives greater weight to the opinions of Dr. Ellis.

Dr. Coe also examined petitioner at the request of the respondent. Petitioner gave a history of working for Caterpillar assembling gears for more than two years. He reported that this job involved repeatedly pulling

spider gears out of boxes on the floor of the work area. He also reported that his work involved reaching down, gripping and pulling up. He stated that the upper arm movements require significant force and were performed up to 30 times per shift. He stated that he was also required to manipulate and maneuver the gears and boxes to permit lifting. Petitioner stated that the gears weighed 10 to 15 pounds.

Dr. Coe was of the opinion that petitioner would need to pick the parts out of the box, put them on the table, and then manipulate them flipping them over when they were on the table, and then work on them with tools. Dr. Coe testified that he did not gain an understanding as to the amount or extent of elbow flexion and extension that was involved in petitioner's job duties. Dr. Coe was of the opinion that repeated flexion and extension at the elbow is a risk factor for ulnar nerve injury and ulnar nerve inflammation, but he has not seen where it is identified what degrees of motion is required. He was of the opinion that the greater the range of motion, the greater the risk to the ulnar nerve. Dr. Coe testified that petitioner also talked about power tools and hand tools, but he did not know how often petitioner used these tools, or how much they weighed, or the degree of force or vibration. Dr.Coe did not review petitioner's job description. Based on this, the arbitrator finds Dr. Coe did not have a detailed and accurate understanding of petitioner's work duties. Given the fact that Dr. Coe did not have a detailed and accurate understanding of petitioner's work duties the arbitrator gives less weight to his opinions.

In addition to the opinions rendered by Dr. Greatting, Dr. Ellis and Dr. Coe, the testimony of petitioner, Moretti and McPheeters was offered into evidence. Based on the totality of this testimony, the arbitrator finds a discrepancy in the total number of units assembled each day. Additionally, the arbitrator finds a discrepancy in how petitioner used impact tools and the frequency in which he used them, as well as the degree of force needed to use them or the vibration associated with them. Additionally, there is differing testimony as to the flexion and extension associated with petitioner's work activities. Given that petitioner is claiming a cubital tunnel injury, the arbitrator finds this information significant. It is not enough to provide evidence as that things are lifted, twisted, pushed or pulled, and an impact tool is used. The frequency, duration, and manner in which the elbows are used for each activity is required, and was not provided.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has failed to proved by a preponderance of the credible evidence that he sustained accidental injuries to his bilateral upper extremities that arose out of and in the course of his employment by respondent and manifested itself on 11/1/12 and 11/5/12.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?
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. IS PETITIONER ENTITLED TO PROSPECTIVE MEDICAL CARE?

Having found the petitioner has failed to prove by a preponderance of the credible evidence that he sustained accidental injuries to his bilateral upper extremities that arose out of and in the course of his employment by respondent and manifested itself on 11/1/12 and 11/5/12, the arbitrator finds the remaining issues moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

☒ 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

Raffinee Pedraza,
Petitioner,

vs.

NO: 11WC 45341

15IWCC0997

Fox Developmental Center,
Respondent,

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, permanent partial disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 9, 2014, is hereby affirmed and adopted.

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.

DATED: DEC 3 1 2015
o121615
CJD/jrc
049

Charles J. DeVriendt

Joshua D. Luskin

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PEDRAZA, RAFFINEE
Employee/Petitioner

Case# **11WC045341**

FOX DEVELOPMENTAL CENTR
Employer/Respondent

15IWCC0997

On 12/9/2014, 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:

0139 CORNFIELD & FELDMAN
JIM M VAINIKOS
25 E WASHINGTON ST SUITE 1400
CHICAGO, IL 60602

5116 ASSISTANT ATTORNEY GENERAL
MEGAN MURPHY
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

1745 CMS - RISK MANAGEMENT
801 S SEVENTH ST 6M
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

DEC 9 = 2014

RONALD A. RIOPELLE, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF LaSalle)

☐ 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

Raffinee Pedraza
Employee/Petitioner

v.

Fox Developmental Center
Employer/Respondent

Case # 11 WC 45341

Consolidated cases: _____

15IWCC0997

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 **Gerald Granada**, Arbitrator of the Commission, in the city of **Ottowa**, on **November 24, 2014**. 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 _____

15IWCC0997

FINDINGS

On **10/24/2011**, 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 $**34,056.00**; the average weekly wage was $**654.92**.

On the date of accident, Petitioner was **26** years of age, ***single*** with **2** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**00** for TTD, $**00** for TPD, $**00** for maintenance, and $**00** for other benefits, for a total credit of $**00**.

Respondent is entitled to a credit of $**00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $**436.61**/week for **1 4/7** weeks, commencing **October 27, 2011** through **November 7, 2011**, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $**340.00**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**392.95**/week for **2.15** weeks, because the injuries sustained caused the **1%** loss of the **right leg**, as provided in Section 8(e) of the Act.

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

12/5/14
Date

DEC 9 - 2014

15IWCC0997

FINDINGS OF FACT

Petitioner testified that in October of 2011, she was employed as a Mental Health Technician II for Fox Developmental Center. On October 24, 2011, she was transporting two individuals in wheelchairs from the third floor to the basement. The elevator that was normally used was out of order, so Petitioner had to use the elevator at the opposite end of the floor. She was pushing one person in a wheelchair while pulling another at the same time. She estimated that each individual weighed at least 100 pounds. Petitioner testified that she was trained by supervisors to push the front wheelchair with her right hand and to pull the rear wheelchair by its tray with the left hand. She explained that her body was twisted in an awkward position while performing her job duty.As she was walking, she felt a tingling sensation in her right knee. She stopped, rubbed her knee, and continued. Petitioner admitted on cross examination that she did not hit her knee on anything, trip over anything, or twist her knee. Her knee simply started to ache while she was walking. Once she had a chance to sit down, she felt a constant throbbing pain.

Petitioner testified that she finished her shift, and her knee was aching by the end of her shift. She took Tylenol and returned to work the next day. As she was still in pain, she notified her supervisor of the incident and filled out a workers' compensation packet, including a Notice of Injury form explaining what happened. Petitioner testified that the workers' compensation coordinator told her that her claim was denied because she did not provide a good enough description of her accident, so she filled out a second Notice of Injury form three days later.

Petitioner first saw Dr. Settcase on October 27, 2011. (Px 1) Petitioner explained to Dr. Settecase what happened at work on October 24. (Px 1) He diagnosed her with a knee sprain and ordered an x-ray of her right knee. (Px 1) He prescribed her medication and advised her to use ice, stretching, and an ace wrap while walking. (Px 1) He recommended that she work with the restriction of no pushing or pulling for 10 days. (Px 1) Petitioner followed up with Dr. Settecase on November 3, 2011. (Px 1) At that time, he had reviewed her x-ray and his diagnosis remained knee sprain. (Px 1) He advised her to continue with NSAIDs, rest, ice, and elevation. (Px 1) He recommended that she return to work full duty as of November 8, 2011. (Px 1) November 3, 2011 is the last date Petitioner treated for her right knee.

On the first Notice of Injury form that Petitioner filled out on October 25, 2011, she explained how the injury occurred as, "not sure. Was perfectly fine and while transporting I started having pain in my rt. knee." (Rx 1) On the second Notice of Injury form that Petitioner filled out on October 28, 2011, she explained that she was transporting individuals and while doing that, got a pain in her right knee. (Rx 2) She elaborated that during transporting she pushes one individual and pulls another at the same time. (Rx 2)

Petitioner testified that she used a Medicaid card to pay her medical bills. She has never had a prior injury to her right knee. Even to this day, Petitioner credibly testified that she notices achiness and pain in her right knee during certain activities. Although she previously used an elliptical exercise machine, she no longer can without pain. She avoids squatting and kneeling. She wears flat shoes and notices achiness in her right knee after driving long distances.

15IWCC0997

CONCLUSIONS OF LAW

1. The Arbitrator finds that the Petitioner sustained an accident that arose out of her employment on October 24, 2011. This finding is based on both the Petitioner's testimony and the medical evidence. The Arbitrator notes that the Petitioner was attempting to push one wheel chair containing an individual weighing at least 100 pounds with one hand, while pulling another wheelchair containing another individual weighing at least 100 pounds, and walking in an awkward position with her body turned to one side, when she felt the pain in her knee. All these factors increased the Petitioner's risk of injury, which ultimately resulted in Petitioner's accident.

2. Based on the Arbitrator's findings regarding the issue of accident, the Arbitrator further finds that the Petitioner has met her burden of proof regarding the issue of causation. Petitioner's medical records clearly show that she was diagnosed with a knee sprain following her initial medical visit following the October 24, 2011 accident. There was no evidence to the contrary.

3. The Arbitrator having found for Petitioner for accident, also orders the Respondent to pay the medical bills of Advocate Medical Group of $340.00. This is based on the Arbitrator's finding that Petitioner's medical care to her right knee was causally related to the work injury of October 24, 2011.

4. Based on the findings above, the Arbitrator further finds that the Petitioner is entitled to TTD from October 27, 2011 through November 7, 2011. This finding is based on the medical records indicating Petitioner was taken off work for this time period.

5. Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. In applying these factors to this case, the Arbitrator notes: (i) there is no reported level of impairment; (ii) Petitioner is a Medical Health Tech II and returned to that position after her release from medical care without restrictions – a factor that the Arbitrator gives considerable weight; (iii) Petitioner was 26 years old at the time of the injury – a relatively young age and a factor to which the Arbitrator give some weight; (iv) there was no evidence that the injury impacted Petitioner's earning capacity – another factor to which the Arbitrator gives great weight; and (v) there was some evidence of disability corroborated by the treating medical records, showing the Petitioner sustained a sprain to her knee, from which she had conservative treatment and full duty release – a factor that the Arbitrator gives very considerable weight in light of Petitioner's testimony regarding her residual complaints of throbbing, achiness and occasional tingling. Based on all these factors, the Arbitrator concludes that the Petitioner sustained 1% loss of use of her right leg as a result of her October 4, 2011 accident.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Enrique Gutierrez,
Petitioner,
vs.

NO: 13WC 3565

Dynamic Manufacturing, Inc.,
Respondent,

15IWCC0998

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, incurred medical, prospective medical, temporary total disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 10, 2014, is hereby affirmed and adopted.

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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: DEC 3 1 2015
o121515
CJD/jrc
049

Charles J. DeVriendt

Joshua D. Luskin

Ruth W. White

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

GUTIERREZ, ENRIQUE
Employee/Petitioner

Case# **13WC003565**

DYNAMIC MANUFACTURING INC
Employer/Respondent

15IWCC0998

On 11/10/2014, 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 0.06% 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:

2135 FIORENTINO LAW OFFICES
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CHICAGO, IL 60602

2837 LAW OFFICES JOSEPH A MARCINIAK
ROBERT P SABETTO
2 N LASALLE ST SUITE 2510
CHICAGO, IL 60602

15IWCC0998

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ENRIQUE GUTIERREZ,
Employee/Petitioner

v.

DYNAMIC MANUFACTURING, INC.
Employer/Respondent

Case # 13 WC 03565

Consolidated cases: N/A

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 **Ketki Steffen**, Arbitrator of the Commission, in the city of **Chicago**, on **September 10, 2014.** 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. [x] 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. [x] 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. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On the date of accident, **January 17, 2013**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**15,769.88**; the average weekly wage was $**328.54**.

On the date of accident, Petitioner was **53** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**903.57** for TTD **paid from February 1, 2013 through February 25, 2013**, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

Petitioner sustained an accidental injury that occurred in the course and arose out of his employment with Respondent on January 17, 2013. Petitioner's work-related injury reached Maximum Medical Improvement on February 25, 2013. Respondent paid all reasonable, necessary, and causally related medical bills and lost time.

Petitioner failed to prove that his current condition is causally related to the work accident on January 17, 2013. Petitioner is not entitled to an award of medical treatment or temporary total disability.

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.

Ketki Steffen
Signature of Arbitrator

11/7/14
Date

ICArbDec19(b)

NOV 10 2014

PROCEDURAL HISTORY

This matter was presented for a hearing pursuant to Sec. 19(b) of the Act before Arbitrator Ketki Steffen on September 10, 2014. Both parties were represented by counsel and have entered into several stipulations that are contained as Arbitrator's Exhibit No. 1 ("AX1") for the trial record.

FACTUAL HISTORY

Petitioner, Enrique Guteirrez, was 53 years old at the time of a work accident on January 17, 2013. He was working for Respondent, Dynamic Manufacturing, Inc., an automobile transmission manufacturer. Petitioner had worked as a laborer for the Respondent for about a year. Petitioner's job duties consisted of assembling and cleaning transmissions.

Petitioner testified with the assistance of a Spanish interpreter. On the date of the accident, he was removing dirt from a transmission using a hand tool ("grinder") *RX1, 2.* The grinder consists of a handle with a detachable metallic brush at the end of it. Petitioner is right hand dominant. According to him, the grinder slipped to the side as he was holding it and he struck his hand on the metal transmission case. He was wearing gloves at the time. Petitioner identified the top of his right hand between his index finger and his thumb as the location where he struck his hand and developed a wound. He described the location as red and swollen after the accident occurred.

Petitioner immediately reported the accident to his supervisor, Jose Velasco, who took him to the office where someone put ice and a small bandage over the wound. Per company policy Petitioner was evaluated by an off-site nurse through a company called "MedCor." An interpretation service was used. Petitioner did not remember whether he spoke to a nurse over the phone, but he recalled a female in the office interviewing him about what happened. He returned to work that day and did not seek medical attention.

Omayra Calzada , an employee of Respondent's Environmental Health & Safety Department testified that she handled Petitioner's accident report. Petitioner reported to her that he was cleaning

a transmission with a grinder when his hand slipped. She testified that she had observed the wound, which was red but there was no cut or bleeding. A report outlining the incident was created. *RX4.* The report indicates that Petitioner denied an open wound. *RX4.* Calzada also interviewed Petitioner and her report reflects that Petitioner was "grinding a case when the hand tool slipped causing pain on his right thumb." *RX3, Section 1.* Petitioner worked the next day, a Friday, until about 2:00 p.m. Calzada advised Petitioner against wearing gloves and gave him an antibiotic to be used over the weekend.

On Monday, January 21, 2013 Respondent sent Petitioner for medical attention at Concentra. *PXC, RX7.* Concentra's reports indicate that Petitioner was cleaning a part that slipped and he struck the back of his hand on a piece of metal. The records document edema and an abrasion 1.5 centimeters long over the right hand between the thumb and index finger. Dr. Christopher Childs prescribed an antibacterial ointment and ice, and released Petitioner to work with limited use of his right hand. On February 18, 2013, x-rays ruled out a fracture. Dr. Osama Thalji's, who had examined the Petitioner, indicated that Petitioner had suffered a hand contusion and abrasion.

Respondent accommodated Petitioner's work restrictions until February 1, 2013 when Petitioner was laid off. Petitioner continued to treat at Concentra, and Dr. Stanley Simon treated him for cellulitis that developed. *PXC, RX7.* The notes of February 11, 2013 document that Petitioner showed no sign of erythema, ecchymosis, swelling, or infection. He had full range of motion of his hand and full grip strength. Dr. Simon released Petitioner to full duty and discharged him from care on February 25, 2013. The Parties stipulated that Respondent paid the medical bills of Concentra and Temporary Total Disability from February 1, 2013 through February 25, 2013.

On March 27, 2013 Petitioner consulted orthopedic surgeon Dr. Paul Papierski and complained of right thumb, index finger, wrist, and shoulder pain. He reviewed the medical records from Concentra, performed a physical exam of the patient and ordered x-rays and an MRI of the right

hand. Dr. Papierski opined that Petitioner Gutierrez suffered a blunt traumatic strike on the back of the hand near the first and second digits. He rendered the following diagnosis related to the accident: (a) secondary osteoarthritis at the thumb carpometacarpal joint; (b) aggravation of primary osteoarthritis at the thumb carpometacarpal joint; and (c) DeQuervain's / radial styloid tenosynovitis. He opined that the osteoarthritis will continue to worsen without surgical intervention.

Dr. Papierski documented a history of a "direct blow" to the right hand with an open wound that became infected. *PXB*. He also noted an injury nine months before; which he later attributed to a possible dictation error. *PXB, PXE, page 14, 60.* He found no sign of infection at the time of his exam. X-rays showed degenerative changes at the thumb metacarpal and distal radioulnar joints. The doctor opined that petitioner aggravated pre-existing arthritis and suggested medication, injections, and possibly surgery. *PXB.*

On September 6, 2013, the Petitioner returned to Dr. Papierski and complained that his condition has remained the same. PXE Dr. Papeirski testified that based on Petitioner's work duties and ongoing complaints, he would not have returned Petitioner to normal work duties. He would have released him to restricted work. PXB

During his evidence deposition, Dr. Papierski further clarified that he understood the mechanism of injury to involve only the thumb and index finger. *PXE, page 11.* He differentiated between an "abrasion" and a "blunt, traumatic strike or hit...to the hand." *PXE, page 53-54.* He had only a few records of treatment at Concentra, and he agreed that the Concentra doctors did not diagnose anything other than an abrasion. He opined that Petitioner developed two conditions as a result of this work accident: deQuervains, which he opined is traumatic, and aggravation of pre-existing osteoarthritis. *PXE, page 59.* He based this on petitioner's lack of complaints before the accident and the mechanism of injury itself. Dr. Papierski specifically disconnected Petitioner's wrist condition (ulnar variation) and need for any surgery for that from the work accident. *PXE, page 59.*

He also conceded that Petitioner had nothing wrong with his shoulder despite his complaints of pain. *PXE, page 60.*

On cross exam, Dr. Papierski stated that he did not know the specifics about Petitioner's job with Respondent, his work activities, use of tools, or force with which he injured his thumb. *PXE, page 57, 61-62.* He disagreed that the superficial abrasion documented in the Concentra records tends to refute his causation opinion, though he did concede that the osteoarthritis aggravation may have been only temporary and that merely bumping the hand against a metal part would be a lot less likely to cause the conditions Petitioner has. *PXE, page 63.* He agreed that there is no way to measure whether a condition is degenerative or traumatic, and that he can only go by what Petitioner tells him. *PXE, page 71-72.* He conceded that he never rendered an opinion on Petitioner's work capabilities before his deposition. *PXE, page 74.*

On July 11, 2013, Petitioner underwent a Section 12 examination with Dr. Paul Lamberti. *RX8.* Petitioner reported that he was cleaning a transmission part that slipped and hit the base of his right thumb, sustaining a "bad abrasion" that eventually healed. *RX8, page 2.* Petitioner complained that his right wrist numbness had developed two to three months after the accident along with sensory problems in his wrist, elbow, and thumb. *RX8, page 2.* Dr. Lamberti reviewed radiology films and noted that they showed "very prominent" osteoarthritis of the distal radioulnarm, ulnar, and radial joints; a "severe" impaction type problem; a "very high" radial inclination suggestive of a previous fracture or a developmental/congenital abnormality; and mild arthritis and thinning of the scaphotrapezoidal joint in the right thumb. *RX8, page 4-5.*

Dr. Lamberti's impression of Petitioner's work-related condition was a superficial abrasion of the dorso-radial aspect of the right hand that resulted in some scarring and loss of pigment but had healed and reached MMI by the time Petitioner was discharged from Concentra on February 25,

2013. *RX8, page 5, 6.* Dr. Lamberti specifically disconnected Petitioner's wrist, elbow, and thumb complaints and conditions from the work accident. *RX8, page 5, 6, 7.*

Dr. Prasant Atluri also performed a Section 12 examination on April 17, 2014. In his evidence deposition, Dr. Atluri testified that he understood the mechanism of injury to be that Petitioner was using a hand tool that started to slip to the side and he struck his hand on the transmission he was cleaning. *RX9, page 13.* Petitioner sustained soft tissue lacerations, scarring, and residual sensory changes and pain in the triangular area of his right hand over the web space between the thumb and the index finger to the wrist. *RX9, page 25-27.* He found no evidence of deQuervain's syndrome, and he specifically disconnected Petitioner's wrist arthritis based on the mechanism of injury. *RX9, page 37.* He called it "implausible" that petitioner had no symptoms before based on severe degenerative findings on x-rays that would take longer than the accident date to develop. *RX9, page 40.* He testified that petitioner will feel pain, but it will not be bad enough to keep him from working full duty. *RX9, page 28-29.* He opined that Petitioner reached MMI and does not need any further treatment. *RX9, page 28.*

Analysis/Findings

In support of the Arbitrator's Decision relating to Issue (F), is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator makes the following conclusions:

The Arbitrator finds that Petitioner's claimed condition of ill-being as to his hand was causally related to the injury sustained on January 17, 2013 through February 25, 2013 when he was released from care and was placed at maximum medical improvement. The Arbitrator finds that Petitioner sustained a contusion/abrasion as a result of his work accident. The Arbitrator finds that the Petitioner's current complaints of osteoarthritis including issues relating to his hand, wrist, elbow and shoulder are not causally connected to his work accident.

The Arbitrator's finding is based on a evaluation of the witness testimony, the modus of the injury causing a small abrasion and redness and a review of the medical records supported by the persuasive opinions of the Dr. Lamberti and Dr. Atluri. The Arbitrator finds the opinion of Dr. Papierski to be less credible because he bases his opinion largely on Petitioner's self reported symptoms and because the mechanism and nature of the accident (a small abrasion/contusion) are wholly inconsistent with diagnosis (osteoarthritis and DeQuervain's/radial styloid tenosynovitis) and recommended surgery.

Initially, witness testimony, including Petitioner's initial claims and description of the method of injury shows that Petitioner only suffered a contusion/abrasion with redness. Petitioner testified that he injured his hand as he was using a grinder on an auto transmission and his hand slipped causing him to hit the back of his hand against the metal. He was wearing gloves. Omayra Calzada, an employee of Respondent's Environmental Health & Safety Department, saw the Petitioner after his accident and prepared a report. She testified that she had observed the wound, which was red but there was no cut or bleeding. *RX4.* Petitioner denied an open wound. *RX4* Petitioner worked the next day, a Friday, until about 2:00 p.m. Calzada advised Petitioner against wearing gloves and gave him an antibiotic to be used over the weekend.

The records from Concentra support that the accident and injuries were a simple contusion/abrasion. Petitioner was sent to Concentra for medical attention on Monday, January 21, 2013. *PXC, RX7* Concentra's reports are consistent with the account of the accident that Petitioner was cleaning a part, his hand slipped and the back of the hand struck a piece of metal. The records document edema and a small abrasion (1.5 centimeters) over the right hand between the thumb and index finger. Dr. Christopher Childs prescribed an antibacterial ointment and ice, and released Petitioner to work with limited use of his right hand. On February 18, 2013, x-rays ruled out a fracture. Dr. Osama Thalji's notes that Petitioner had suffered a hand contusion and abrasion.

Respondent accommodated Petitioner's work restrictions until February 1, 2013 when Petitioner was laid off. Petitioner continued to treat at Concentra, and Dr. Stanley Simon treated him for cellulitis that developed. *PXC, RX7.* The notes of February 11, 2013 document that Petitioner showed no sign of erythema, ecchymosis, swelling, or infection. He had full range of motion of his hand and full grip strength. Dr. Simon released Petitioner to full duty and discharged him from care on February 25, 2013. The Parties stipulated that Respondent paid the medical bills of Concentra and Temporary Total Disability from February 1, 2013 through February 25, 2013.

Petitioner and other witness testimony as well as the mechanism of the injury support the findings and diagnosis from Dr. Simon that Petitioner had regained his full range of motion and had healed from his work accident. This finding is also backed by the opinions of Respondent's two IME physicians, Dr. Lamberti and Dr. Atluri. The Arbitrator finds their opinions to be more persuasive then the opinion of Dr. Papierski.

The July 11, 2013 Section 12 examination by Dr. Paul Lamberti was thorough and included physical examination of the Petitioner along with relevant medical records. *RX8.* Petitioner reported his accident and stated that he sustaining a "bad abrasion" that eventually healed. *RX8, page 2.* Dr. Lamberti noted that Petitioner complained that his right wrist numbness had developed two to three months after the accident along with sensory problems in his wrist, elbow, and thumb. *RX8, page 2.* Dr. Lamberti reviewed radiology films and noted that they showed "very prominent" osteoarthritis of the distal radioulnarm, ulnar, and radial joints; a "severe" impaction type problem; a "very high" radial inclination suggestive of a previous fracture or a developmental/congenital abnormality; and mild arthritis and thinning of the scaphotrapezoidal joint in the right thumb. *RX8, page 4-5.* Dr. Lamberti's opinion is persuasive because the photograph and the Concentra reports all support his finding that Petitioner's suffered a superficial abrasion of the dorso-radial that left some scarring and loss of pigment but had healed and reached MMI by the time Petitioner was discharged from Concentra on

February 25, 2013. *RX8, page 5, 6.* Dr. Lamberti's opinion is supported by the findings from Concentra's medical staff that the Petitioner had recovered the full range of motion.

Additionally, Dr. Prasant Atluri's Section 12 examination of April 17, 2014, supports the findings and opinions of Dr. Lamberti that Petitioner's arthritic condition is unrelated to his work accident. Dr. Atluri also disconnects the wrist, elbow, and thumb complaints from the work accident because he the medical tests found no evidence of deQuervain's syndrome *RX8, page 5, 6, 7.* His opinion is well explained and supported by tests as well as other testimonial evidence. His explained that the Petitioner's wrist arthritis is incompatible with the mechanism of injury. *RX9, page 37.* The Arbitrator finds that the testimony and evidence produced at trial supports his opinion. His explanation that it is "implausible" that petitioner had no symptoms before based on severe degenerative findings on x-rays that would take longer than the accident date to develop is logical and well grounded. *RX9, page 40.* He testified that petitioner will feel pain, but it will not be bad enough to keep him from working full duty. *RX9, page 28-29.* He opined that Petitioner reached MMI and does not need any further treatment. *RX9, page 28.* The Arbitrator is persuaded by his opinion.

The Arbitrator recognizes that the Petitioner's treating orthopedic surgeon, Dr. Papierski, has given a contrary opinion. The Arbitrator has assigned lesser weight to his testimony. Dr. Papierski has opined that Petitioner Gutierrez suffered a blunt traumatic strike on the back of the hand near the first and second digits. He diagnosed Petitioner with:

(a) secondary osteoarthritis at the thumb carpometacarpal joint;
(b) aggravation of primary osteoarthritis at the thumb carpometacarpal joint; and
(c) DeQuervain's / radial styloid tenosynovitis.

He opined that the work accident, a direct blow to the radial side of the hand, caused DeQuervain's tenosynovitis and caused and/or aggravated the osteoarthritis at the thumb carpometacarpal joint. He indicated that the osteoarthritis will continue to worsen without surgical

intervention. He recommended conservative treatment consisting of the use of a thumb support, anti-inflammatory medication, a corticosteroid injection and surgical treatment, which would include the following: (a) arthrodesis, (b) implant arthroplasty **or** (c) resection arthroplasty for the thumb carpometacarpal arthritis **and** surgical release for the DeQuervain's syndrome. Dr. Papierski further testified that he would only have returned the Petitioner to restricted work duty. PXB

The testimony of Dr. Papierski is less credible than the opinions of Dr. Lamberti and Dr Atluri. Dr. Papierski's opinion is based on a great part on Petitioner's claim that he has no prior pain from his arthritis. The severe degenerative findings on x-rays make Petitioner's claim improbable. *RX9, page 40.* The Concentra records and exams based on findings a few days after the accident do not support Dr. Papierski's opinion. Concentra documents that Petitioner had regained his full range of motion. The mechanism of the injury and the photograph showing a surface level redness contradict Dr. Papierski's opinion. Additionally, the passage of time between the accident, the MMI release from Concentra and the examinations and findings by Dr. Papierski also cast a shadow on the weight and validity of his opinion.

Dr. Papierski, during his deposition, specifically disconnected Petitioner's wrist condition (ulnar variation) and need for any surgery for that from the work accident. *PXE, page 59.* He also conceded that Petitioner had nothing wrong with his shoulder despite his complaints of pain. *PXE, page 60.* On cross exam, Dr. Papierski admitted that he knew little about Petitioner's job with Respondent, work activities, use of tools, or force with which he injured his thumb. *PXE, page 57, 61-62.* He disagreed that the superficial abrasion documented in the Concentra records tends to refute his causation opinion, though he did concede that the osteoarthritis aggravation may have been only temporary and that merely bumping the hand against a metal part would be a lot less likely to cause the conditions Petitioner has. *PXE, page 63.* He agreed that there is no way to measure whether a condition is degenerative or traumatic, and that he can only go by what Petitioner tells him.

PXE, page 71-72. He conceded that he never rendered an opinion on Petitioner's work capabilities before his deposition. *PXE, page 74.*

Therefore, the Arbitrator finds that the Petitioner's current condition of ill-being is not related to his work accident and that he has reached MMI from his work accident.

Kelli Steffen
Signature of Arbitrator

11/7/14
Date

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

James Ryder,
Petitioner,

vs. NO: 12WC 17190

15IWCC0999

Chicago Heights Installation,
Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of accident 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 3, 2014, is hereby affirmed and adopted.

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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: DEC 3 1 2015
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CJD/jrc
049

Charles J. DeVriendt

Joshua D. Luskin

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RYDER, JAMES
Employee/Petitioner

Case# **12WC017190**

CHICAGO HEIGHTS INSTALLATION
Employer/Respondent

15IWCC0999

On 12/3/2014, 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:

4678 PARENTE & NOREM PC
PARAG P BHOSALE
221 N LASALLE ST SUITE 2700
CHICAGO, IL 60601

1408 HEYL ROYSTER VOELKER & ALLEN
DANA HUGHES
120 W STATE ST 2ND FL
ROCKFORD, IL 61105

15IWCC0999

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JAMES RYDER
Employee/Petitioner

v.

CHICAGO HEIGHTS INSTALLATION
Employer/Respondent

Case # **12** WC **017190**

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 L. Simpson**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **October 30, 2014**. 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. [ ] 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. [ ] 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. [x] 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] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
L. [ ] What is the nature and extent of the injury?
M. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [x] Other **Prospective medical treatment**

FINDINGS

On **February 10, 2012**, 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 not*** sustain an accident that arose out of and in the course of employment.

In the year preceding the injury, Petitioner earned $**72,800.00**; the average weekly wage was $**1,400.00**.

On the date of accident, Petitioner was **53** years of age, ***single*** with **1** dependent children.

Respondent shall be given a credit of $**64,793.92** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**64,793.92**.

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

ORDER

The Petitioner has failed to prove that he sustained an accident that arose out of and in the course of his employment with the Respondent, Chicago Heights Installation. Benefits pursuant to the Act are denied.

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.

Deborah L. Simpson
Signature of Arbitrator

Dec. 3, 2014
Date

DEC 3 - 2014

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

James V. Ryder,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 12 WC 17190**
	)	
Chicago Heights Installation,	)	
	)	
Respondent.	)	**15IWCC0999**
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on February 10, 2012, 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. They agree that in the year preceding the injuries, the Petitioner earned $72,800.00, and that his average weekly wage was $1,400.00.

At issue in this hearing is as follows: (1) Did the Petitioner sustain accidental injuries or was he last exposed to an occupational disease that arose out of and in the course of employment; (2) Did the Petitioner give the Respondent notice of the accident within the time limits stated in the Act; (3) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure; (4) Is the Respondent liable for the unpaid medical bills to Vertical Plus MRI in the amount of $1864.00; (5) Is Petitioner entitled to TTD from February 10, 2012 through October 30, 2014; and (6) Is the Petitioner entitled to prospective medical treatment pursuant to Section 8(a) of the Act.

STATEMENT OF FACTS

The Petitioner is 54 years old, has two sons ages seventeen and twenty-two. He testified that he has worked in the furniture installation business for approximately 25 years. On February 10, 2012, he was working for Respondent, Chicago Heights Installation, of which he and Mike Saulters were the sole owners. Sarah Hernandez was the office manager. The Petitioner described their business as follows: "We received office furniture in the warehouse. We trucked it. We loaded it. We brought it to the jobsite. We unboxed it. We installed it, brought the garbage (boxes) back to the warehouse/office." According to the Petitioner, during a typical day, he would get to work around 8:00 a.m., work away from the office/warehouse for six-seven hours, and then head back to the office/warehouse to prepare for the next day. He also went to potential job sites to give quotes for various jobs. He described the work as heavy. The Respondent had approximately ten employees excluding himself.

The Petitioner and Mike Saulters have known each other in excess of 40 years. In 2012 they owned multiple businesses together, including VSR Corporation (hereinafter "VSR") through which they owned and operated a bar called The View in Cedar Lake, Indiana and rental properties, one of which was in Schererville, Indiana. The Petitioner testified that in addition to leasing them, they flipped these properties. He testified further that Chicago Heights Installation and VSR Corporation are separate entities.

On February 10, 2012, he and Mr. Saulters worked on remodeling an office in Cedar Lake (Indiana.) He later admitted they were installing an office in the bar owned by VSR in order to try to sell the bar.

After Petitioner and his partner left the bar, the two traveled to one of the homes owned by VSR, in order to pick up a trailer containing Petitioner's snowmobiles which had been stored there. At the hearing, Petitioner claimed the two were also at this house in Schererville, Indiana to assess an issue with the roof, some cabinets, and screen doors. Petitioner claims that he and Mr. Saulters were bidding the work for VSR Corporation on behalf of Chicago Heights Installation. Petitioner claims that Chicago Heights Installation came in as the best bid, and so its employees later performed the described work on the Schererville home. The nature of Respondent's business as described by Petitioner himself did not include the type of construction work Petitioner described was needed at his investment property in Schererville. Petitioner did not introduce any documentation of this business transaction.

On the way back to Respondent's business, when the Petitioner and Saulters were approximately 100 yards from Chicago Heights Installation they were "t-boned" by another vehicle. The collision impacted the driver's side rear end of the work truck and the attached trailer. Mr. Saulters was driving their vehicle. According to the Petitioner, he was in the passenger seat, turned toward Mr. Saulters leaning against the window and window divider, his head hit the window and the divider between the front and back windows and he injured his head, neck, shoulder and elbow from the impact. The Petitioner experienced pain following the impact, but he refused to leave the scene in an ambulance or go to the hospital for medical attention. Petitioner testified that he wanted to get the vehicles off the street. He did, however, get out of the work truck he was traveling in, and assess the damage to the vehicle and trailer. He then drove to a nearby hardware store to purchase a part to repair the trailer hitch so that he and Mr. Saulters could take the trailer and snowmobiles to the warehouse at Chicago Heights Installation as originally intended.

According to the Petitioner, he did not have any problems with his neck or shoulder for two years prior to the date of the accident and had not had any medical treatment for those body parts within that time period either. Two weeks after the accident, when he continued to have pain in his neck and upper extremities, the Petitioner sought treatment with Dr. Weber whom he found in the phone book. According to the Petitioner he did not seek treatment for two weeks following the accident because he thought the pain would go away.

Dr. Weber prescribed physical therapy for neck and arm pain, which the Petitioner attended at Fitness Pointe. His neck continued to bother him, so he saw Dr. Sweeney whom he had seen ten years prior for back problems. Although the Petitioner expressly denied any treatment in the two years prior to this alleged injury, Respondent's Exhibit No. 5, an April 15,

2010, x-ray of cervical spine, suggests a history of cervical spine problems. The x-ray was prescribed and performed due to complaints of neck pain following an April 2010 automobile accident. The report showed degenerative changes in the Petitioner's cervical spine. (RX 5.) The Petitioner's first visit with Dr. Sweeney was on May 9, 2012. At that visit, Dr. Sweeney recommended cervical fusion.

In April of 2012, two months after the accident and before he had seen the orthopedic surgeon, Dr. Sweeney, the Petitioner sold all of his business assets to his then-office manager, Sarah Hernandez. The business is now known as C.H.I.C. Installation and Restoration. He testified that when he is able to earn the money, he will be able to buy the business back from Ms. Hernandez. The Petitioner testified that surgery had already been contemplated at the time of the sale, but the first mention of surgery actually came one month later according to the medical records Petitioner submitted in evidence. (PX 2.) The parties stipulated that the Petitioner made $72,800.00 in wages the year prior to the accident. (ArbX 1.) Petitioner claims he received a regular paycheck from Chicago Heights Installation, but on cross examination he admitted that he is not making a wage loss claim in his civil matter pending against the driver who struck him and Mr. Saulters with his vehicle.

Dr. Sweeney performed anterior cervical fusion and discectomy on June 24, 2012. (PX 1 & 2) Since the surgery, the Petitioner has continued to make complaints of neck pain with limitations in his activities. He has not returned to work, though he claims that he attempted to do so on at least one occasion in 2013.

Dr. Sweeney has recommended a foraminotomy to address "residual foraminal stenosis" in the Petitioner's cervical spine. Although they do not agree to a treatment plan, or the status of the Petitioner's recovery from the surgery, two board-certified orthopedic spine specialists disagree with Dr. Sweeney's recommendation. Dr. Kern Singh, who saw the Petitioner at his request, believes that the prior fusion did not heal which resulted in a pseudoarthrosis and requires a tear-down with new anterior cervical discectomy and fusion. (PX 3.) Dr. Avi Bernstein, who examined Petitioner at Respondent's request, opined that the Petitioner's cervical spine does not contain sufficient foraminal stenosis to clinically indicate a foraminotomy, nor will Petitioner benefit at all from such a procedure given his prior course of treatment and clinical presentation. Dr. Bernstein opined that the prior fusion is healed. (RX 4, 7, 8, 9, 10, 11.) Petitioner wants to undergo the less complicated surgery recommended by Dr. Sweeny.

Petitioner claims he has been unable to work following the accident. He stated he has "stopped in there" on a couple of occasions and attempted to return to work "a few months back" before the trial when Dr. Sweeney released him. He later stated that he had not tried to return to work. Dr. Sweeney testified that he kept Petitioner off work following his May 9, 2012, visit, but his records do not contain work restrictions. (PX 1 & 2.).

Petitioner testified that driving and lifting cause excruciating pain in his neck. He has been unable to ride a motorcycle, even though he loved motorcycles. Surveillance footage of the Petitioner on various occasions following the accident shows him driving, taking out garbage, lifting a large bag of potting soil, opening and closing the tailgate on his truck, running various errands, riding in a Chicago Heights Installation van, and going to Chicago Heights Installation

and TTS Granite, Inc. which are located in the same warehouse park. (RX 1, 2, 3) The Petitioner contends that his son is depicted on the film riding Petitioner's motorcycle, even though the Petitioner's son owns his own motorcycles. The Petitioner appears to have performed all activities on surveillance in an unrestricted manner while showing no visible signs of favoring his neck or being in pain. The Petitioner was noted at trial to participate while in no apparent distress.

The Arbitrator questions the Petitioner's credibility given his testimony throughout the record. Initially, the Arbitrator notes that the nature of Respondent's business is office furniture installation and not roofing or home remodeling, so the Arbitrator finds the Petitioner's testimony to be not credible with respect to the nature of Petitioner's activities immediately preceding the accident. Petitioner's ownership interests in both businesses (VSR and Chicago Heights Installation) contribute to the suspicious tone of his testimony. Especially when he testified that Respondent must prepare estimates and bid for jobs from VSR. Secondly, the Arbitrator questions the veracity of Petitioner's testimony regarding the surveillance activities, particularly the motorcycling and his clear, ongoing association with C.H.I.C. Installation and Restoration as depicted in the video. Petitioner's explanations changed as he testified and were simply not credible.

CONCLUSIONS OF LAW

The burden is upon the party seeking an award to prove by a preponderance of the credible evidence the elements of his claim. *Peoria County Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987).

The burden is on the party seeking the award to prove by a preponderance of credible evidence the elements of the claim, particularly the prerequisites that the injury complained of arose out of and in the course of the employment. *Hannibal, Inc. v. Industrial Commission,* 38 Ill.2d 473, 231 N.E.2d 409, 410 (1967)

An injury arises out of one's employment if it has its' origin in a risk that is connected to or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Technical Tape Corp. vs IndustrialCommission,* 58 Ill. 2d 226, 317 N.E.2d 515 (1974)

It is not enough Petitioner is working when accidental injuries are realized; Petitioner must show the injury was due to some cause connected with employment. *Board of Trustees of the University of Illinois v. Industrial Commission,* 44 Ill.2d 207.

The "in the course of" element refers to the time, place and circumstances of the activity that resulted in injury. The element is satisfied if the Petitioner was injured in a place where he might reasonably be expected to be while performing his job duties for Respondent. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013-14 (1st Dist. 2011).

In support of the Arbitrator's decision with regard to whether Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent, the Arbitrator makes the following conclusions of law:

The Petitioner failed to prove that he suffered accidental injuries that arose out of and in the course of his employment with Respondent, Chicago Heights Installation, on February 10, 2012. An injury "arises out of" the employment if it originates from a risk connected with, or incidental to, the employee's job, and involves a causal connection between the employment and the accidental injury. *Tinley Park Hotel and Convention Center v. Industrial Comm'n*, 356 Ill. App. 3d 833, 839 (1st Dist. 2005).

A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his job duties or requirements. An injury may also "arise out of" employment if it occurred as a result of risk to which the Petitioner was exposed to a greater degree than that of the general public.

The Petitioner was the owner of the Respondent business/employer. According to the Petitioner the Respondent was a business that delivered and installed business furniture. The Petitioner described their business as follows: "We received office furniture in the warehouse. We trucked it. We loaded it. We brought it to the jobsite. We unboxed it. We installed it, brought the garbage (boxes) back to the warehouse/office." The Arbitrator finds that the Petitioner was at the bar in Cedar Lake for purposes unrelated to the business of the Respondent, Chicago Heights Installation. Specifically, Petitioner was remodeling the bar he owned with Mr. Saulters through their other corporation, VSR. According to the Petitioner, Chicago Heights Installation and VSR Corporation are separate entities. Petitioner was involved in a motor vehicle collision while on his way to Respondent's place of work after performing work for his other business, VSR Corporation. He was not performing an activity incidental to his employment with Chicago Heights Installation. No testimony was given to suggest that the location of the accident was particularly dangerous either. The Petitioner failed to prove that his employment exposed him to a risk greater than that which the general public is exposed.

The Arbitrator does not find that Petitioner and his partner were at the Schererville home on Chicago Heights Installation business, given the nature of Respondent's business as described by Petitioner himself. Petitioner claimed the two were also at this house in Schererville, Indiana to assess an issue with the roof, some cabinets, and screen doors. This explanation does not include the type of construction work Petitioner described as being conducted by the Respondent. Furthermore, it is not believable that VSR would require Chicago Heights Installation to bid work at their homes given that Petitioner owned both businesses. Petitioner did not introduce any documentation of this unusual business transaction. Accordingly, the Arbitrator finds that Petitioner and Mr. Saulters were at the Schererville house for purposes unrelated to the business of Chicago Heights Installation, namely retrieving snowmobiles to store in their warehouse owned by Chicago Heights Installation.

Therefore the "arising out of" element has not been satisfied.

The Petitioner has not satisfied the "in the course of" element of accident either. The "in the course of" element refers to the time, place and circumstances of the activity that resulted in injury. The element is satisfied if the Petitioner was injured in a place where he might reasonably be expected to be while performing his job duties for Respondent. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013-14 (1st Dist. 2011). Petitioner was injured while conducting the business of his other business, VSR Corporation, not that of the Respondent Chicago Heights Installation. While the Petitioner was a co-owner of both businesses at the time of the accident, the Arbitrator finds Petitioner's conduct unreasonable in light of his testimony regarding his typical workday for Respondent. The Petitioner has tried to disguise his trip to his bar in Cedar Lake and his house in Schererville as "jobs" for Chicago Heights Installation, but given the circumstances surrounding the accident and the nature of the Petitioner's businesses, the Arbitrator finds the Petitioner not credible with respect to his characterization of his pre-accident activities on February 10, 2012. The Arbitrator finds that the Petitioner's accidental injuries did not occur in the course of his employment.

Did the Petitioner give the respondent notice of the accident within the time limits stated in the Act? Is the Petitioner's current condition of ill-being causally connected to this injury or exposure? Is the Respondent liable for the unpaid medical bills to Vertical Plus MRI in the amount of $1864.00? Is Petitioner entitled to TTD from February 10, 2012 through October 30, 2014? Is the Petitioner entitled to prospective medical treatment pursuant to Section 8(a) of the Act?

Petitioner has failed to prove a compensable accident; therefore the remaining issues are moot.

ORDER OF THE ARBITRATOR

As the Petitioner failed to prove that he sustained accidental injuries that arose out of and in the course of his employment, all requests for compensation are denied.

Richard L. Simpson
Signature of Arbitrator

Dec. 3, 2014
Date

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☒ 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

Quinn Warren,

Petitioner,

vs.

NO: 12WC 23793

15IWCC1000

State of Illinois/ IYC St. Charles,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, medical, prospective medical, permanent partial disability 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 14, 2015 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

DATED: DEC 3 1 2015
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DLG/mw
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David L. Gore

Mario Basurto

Stephen Mathis

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

WARREN, QUINN
Employee/Petitioner

Case# **12WC023793**

15IWCC1000

ST OF IL/IYC ST CHARLES
Employer/Respondent

On 4/14/2015, 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:

0969 THOMAS C RICH PC
MICHELLE M RICH
#6 EXECUTIVE DR SUITE 3
FAIRVIEW HTS, IL 62208

5204 ASSISTANT ATTORNEY GENERAL
CHRISTOPHER FLETCHER
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

1350 CENTRAL MANAGEMENT SYSTEMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

APR 14 2015

RONALD A. RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC1000

STATE OF ILLINOIS)
)SS.
COUNTY OF Du Page)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Quinn Warren
Employee/Petitioner

v.

State of Illinois/IYC St. Charles
Employer/Respondent

Case # 12 WC 23793

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 **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Elgin**, on **March 10, 2015**. 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. [x] 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. [x] 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. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On the date of accident, **May 1, 2012**, 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 $**69,432.48**; the average weekly wage was $**1,335.24**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **2** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**. SEE DECISION

Respondent is entitled to a credit of $**10,823.21** under Section 8(j) of the Act.

ORDER

Respondent is ordered to pay Petitioner's reasonable, necessary and causally related medical expenses incurred pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid, if any.

Respondent shall authorize and pay for Petitioner's recommended fusion surgery and his prerequisite medical weigh loss care pursuant to Sections 8 and 8.2 of the Act. SEE DECISION

Respondent shall pay Petitioner TTD benefits of $890.16/week for a period of 7 weeks commencing 9/1/14 through 10/19/14. Respondent shall have credit for any amounts already paid for this ordered period, if any. SEE DECISIOI

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.

Carolyn Doherty
Signature of Arbitrator

4/10/15
Date

ICArbDec19(b)

APR 14 2015

FINDINGS OF FACT

Petitioner, a 46 year old youth facility guard, testified that on May 1, 2012, he was at work monitoring the youth in the facility. Accident is not at issue. ARB EX 1. The parties stipulated that on 5/1/12 Petitioner was involved in an altercation at the facility while trying to restrain a youth. Petitioner was kicked in the stomach and fell back against a wall. He testified that he felt immediate pain in his middle and low back. Petitioner worked 2 more hours in order to finish his shift. Thereafter, Petitioner completed an accident report with his supervisor and was sent to the nurse where he received aspirin. On the day of the accident, Petitioner weighed 360 pounds. He currently remains at that weight. Petitioner testified that he was always able to function at work and perform his work duties without problem at that weight.

Petitioner then presented to his primary care physician, Dr. Malcolm Franklin, on May 3, 2012, with complaints of back pain. (PX3, Dr. Franklin, 5/3/12). The following history was taken:

> 45 [year old] gentleman here with complaints of back pain x 2 days. He was trying to restrain an inmate at a correctional facility and was kicked in the abdomen and thrown to the ground. Now with low back pain, radiating to his buttocks, muscle spasms. No bowel or bladder [symptoms]. No fevers, chills. No CP, SOB, EL edema. [He] has some pain in the thoracic region. Pain is worse when unsupported. Here for workman's comp evaluation. Pain is 8-9/10 in severity. (PX3, DuPage Medical Group, 5/3/12).

Petitioner was given a prescription for Naproxen, Robaxin, and advised to return as needed. *Id.*

Several days later, on May 7, 2012, Petitioner returned to Dr. Franklin, who recommended x-rays of his lumbar spine. Upon review, he noted that the x-rays demonstrated loss of disc height and vacuum disc phenomenon at L5-S1 compatible with degenerative disc disease, as well as loss of disc height at L3-4. (PX3, DuPage Medical Group, 5/7/12). At that point, an MRI of Petitioner's lumbar spine was recommended. *Id.*

Petitioner returned to Dr. Franklin on May 16, 2012, who noted the following:

> 45 [year old] gentleman here to [follow up] on workman's compensation for back pain. He injured his back at work when he was kicked in the abdomen and struck his back against the wall. He was kicked by an aggressive inmate at a correctional facility as he and fellow correctional officers were attempting to restrain the inmate. He has subsequently had diffuse low back pain and some mid back pain. He has a history of moderate to severe DDD [degenerative disc disease] of the lumbar spine. Has had some radiation of pain into his hips and proximal posterior thighs. No loss of bowel or bladder function. Has been using NSAIDs and muscle relaxants with some relief; however, symptoms return when the mediations wear off and he has been sedated by the muscle relaxant. Pain is worse with prolonged sitting, standing, change of positions. (PX3, DuPage Medical Group, 5/16/12).

Dr. Franklin's recommendation was for a referral to an orthopedic spine specialist for further evaluation, as well as continued medication. *Id.* Petitioner was also kept off work at that time.

Petitioner continued to follow up with Dr: Franklin, who prescribed physical therapy, as well as medication, and continued to keep Petitioner off work. (PX3).

On July 10, 2012, Dr. Franklin reviewed an MRI of Petitioner's lumbar spine, which indicated the following:

> Moderate to severe degenerative disk disease at L5-S1 associated with disk bulge and broad-based disc protrusion resulting in mild compression over the exiting right S1 nerve root and abutting the left S1 nerve root. No central canal stenosis, but there is moderate-to-severe bilateral neural foraminal stenosis, as well as mid focal central and right foraminal disk protrusions at L4-5 resulting in mid bilateral neural foraminal stenosis. *Id.*

On July 25, 2012, Petitioner presented to Dr. Nicholas Mataragas, another physician at the DuPage Medical Group, upon referral from Dr. Franklin. Dr. Mataragas took the following history from Petitioner:

> Quinn M. Warren is a 45 year old male, who complains of mid/low back pain with BLE radiating leg pain since 5/1/12. He works as a security guard at a juvenile correctional facility. He says [he] was kicked in the stomach, by an inmate, pushing him backwards hitting his back on a wall. He immediately felt sharp, stabbing, burning pain in the middle of his shoulder blades which ran down into his lower back. He also has pain that runs down the back of his right leg into the foot. He denies weakness with stair climbing or walking. He says walking/car rides and bending are his worst positions. Sitting seems to give him relief. He followed up with his PCP [primary care physician] who issued pain meds and ordered an MRI of his back. Of note: DDD/disc herniations at L4-S1. Epidural lipomatosis resulting in central stenosis. He says [he] was told [he] has "disc disease" prior to the accident. He was treated with medication only. (PX4, DuPage Medical Group, 7/25/12).

Dr. Mataragas' impression was a herniated disc in Petitioner's lumbar spine, as well as lumbar radiculopathy and degenerative disc disease. *Id.* Physical therapy was prescribed. *Id.* It was recommended that Petitioner follow up with Dr. Mataragas after he had completed physical therapy and had been treated with pain management. *Id.*

Petitioner continued to follow up with Dr. Franklin, who noted on August 30, 2012 that Petitioner continued to be symptomatic and had recently begun physical therapy. He stated: "he is likely going to have ESI [epidural steroid injection] therapy following physical therapy." (PX3, DuPage Medical Group, 8/30/12).

In November of 2012 and into 2013, it was noted that Petitioner had completed physical therapy, and needed approval to see an orthopedic spine specialist for evaluation. (PX3, DuPage Medical Group, 11/30/12, 1/29/13, 2/28/13).

On March 1, 2013, Petitioner was seen by Dr. Ronjon Paul upon referral from Dr. Mataragas. (PX4, DuPage Medical Group, 3/1/13). Dr. Paul's office took the following history:

> Quinn M. Warren is a 45 year old male, who complains of continued LBP [low back pain] and right buttock pain. He denies saddle anesthesia or incontinence. He had seen Dr. Mataragas last year and LESIs and PT ordered. He says he has not been able to lose any weight because he can

only lay down because of his pain. He just got approval for LESIs but needs to come back for evaluation and an order. He wants to see Dr. Paul. He has not worked. He works as a correctional office[r] in a youth detention center. He gets increased back spasm with walking. He said he looked into a Lap band surgery but it was required that he work with a dietician for 18 months first. (PX4, DuPage Medical Group, 3/1/13).

On physical examination, it was noted that Petitioner walked with an antalgic gait, and had pain with forward flexion and extension of his lumbar spine. *Id.* Recommendation for Petitioner was as follows:

Dr. Paul spoke to the patient today about his DDD and HNP but also his obesity and need for weight loss. He is neurologically intact on exam. Even if we would recommend surgery we would not proceed unless it was on an emergency basis because of the severe increase in morbidity and mortality of doing surgery with someone his size. We recommend LESIs and need for weight loss. (PX2, DuPage Medical Group, 3/1/13).

Dr. Paul also noted "he is a candidate for injections and physical therapy. He is not a surgical candidate until he has had significant weight loss. He wanted a referral for bariatric surgery. We will comply with this request." *Id.*

On March 18, 2013, Petitioner presented for a lumbar epidural steroid injection with Dr. Sayeed. The following history was taken:

Quinn M. Warren is a 45 year old male, who complains of low back pain radiating to bilateral lower extremities, left greater than right. He has had this pain since May 1, 2012 when he was injured at work. He is a juvenile justice specialist who was wrestling with an inmate on 5/1/2012. He was kicked in the stomach and pushed into a brick wall. His low back pain began immediately with lower extremity pain starting a few days later. (PX4, DuPage Medical Group, 3/18/13).

Dr. Sayeed's impression was:

Low back pain radiating to bilateral lower extremities left greater than right following work injury 5/1/2012. Patient has tried PT and NSAIDS with no relief. Lumbar MRI shows diffuse disc bulge at L5-S1 with a left paracentral/foraminal disc protrusion is noted resulting in moderate left-sided neural foraminal narrowing. Moderate bilateral facet arthropathy is noted. Mild to moderate spinal canal stenosis is noted secondary to epidural lipomatosis. Discussed LESI #1 with left bias today and patient wishes to proceed." (PX4, DuPage Medical Group, 3/18/13).

Petitioner was advised to follow up for reevaluation and possible repeat injection. *Id.*

On March 22, 2013, Petitioner returned to Dr. Franklin and reported only minimal improvement following the initial lumbar epidural steroid injection he received. (PX3, DuPage Medical Group, 3/22/13). It was also noted that Petitioner was awaiting approval to see an orthopedic spine specialist. *Id.* Petitioner was advised to follow up as needed, or in 1-2 months. *Id.*

Petitioner was also evaluated by Ms. Edith Pignotti for nutritional counseling beginning on April 16, 2013. It was noted that Petitioner was "planning to have back surgery for spinal fusion, needs improved BG

control before surgery; surgeon will not do surgery until BG is controlled." (PX3, DuPage Medical Group, 4/16/13). It was also noted that Petitioner "would benefit from more frequent SMBG to see effect of meals, meds, physical activity on BG," and that Petitioner's level of motivation to make dietary changes was a nine (9) on a scale of one (1) to ten (10), and his level of confidence in achieving his goal was a four (4). *Id.* Petitioner was counseled on healthy eating habits, motoring his blood sugar, being active, and taking his medication. *Id.*

On October 25, 2013, Petitioner presented for a second epidural steroid injection into his lumbar spine, which had recently been approved by Respondent. (PX4, DuPage Medical Group, 10/25/13). It was noted that Petitioner did not follow up sooner following the first steroid injection as his employer had not approved the second injection. *Id.* Petitioner reported that he had improvement in the burning pain throughout his low back following the first injection, but continued to have intermittent stabbing pain. *Id.*

On November 13, 2013, Petitioner returned to Dr. Paul's office for reevaluation. It was noted that Petitioner was still suffering from low back pain following the second lumbar epidural steroid injection, and the recommendation for Petitioner was as follows: "Plan was developed with Dr. Paul. I had a long discussion with patient regarding his condition and his significant increased risk with surgery with a BMI of 54. Patient expressed understanding. Patient will be sent for evaluation with Dr. Singh for surgical options." (PX4, DuPage Medical Group, 11/13/13).

Petitioner presented to Dr. Singh by way of referral from Dr. Paul on December 11, 2013. (PX6, Dr. Singh, 12/11/13). At that time, Dr. Singh took the following history:

> We had the pleasure of seeing Mr. Warren in our office today. As you know, he sustained a work injury on 05/02/2012 while working on 05/02/2012 while working as a juvenile specialist at the Department of Juvenile Justice—St. Charles. He reports while trying to apprehend an inmate he was kicked in the stomach, pushing him back into a wall, reporting immediate lower back soreness and pain across the back into the buttock. He was able to finish his shift. He followed up with his primary care physician the next day or two. He reports mild backache in the past, however never treated.
>
> The patient comes into the office reporting that his back is getting worse. He describes his symptoms as constant, sharp, throbbing, and burning across the lower back. He rates his back pain today an 8/10. He also reports having bilateral lower extremity pain, numbness and tingling; however, he has found this to improve after epidural injections with a pain service at DuPage Medical. He was sent to Dr. Ronjon Paul over the last month at the spine center. He was offered physical therapy for 12 weeks. He found this to help very little with his pain. He is taking naproxen and Tylenol as needed for breakthrough pain. He is finding little relief with these medications. He finds that all positions seem to aggravate his pain. He reports minimal relief of pain with sitting or lying flat. He comes in today as a second opinion to discuss treatment for his symptoms. (PX6, Dr. Singh, 12/11/13).

Dr. Singh also reviewed the MRI performed on July 10, 2012 at DuPage Medical Group, and indicated that it showed "L5-S1 decreased disk signal and height and L5-S1 with bilateral foraminal stenosis." *Id.* Dr. Singh's initial diagnoses were degenerative disk disease at L5-S1 and a lumbar muscular strain. *Id.* He recommended an MRI of the lumbar spine without gadolinium and advised Petitioner to follow up once the results of that study were obtained. *Id.* Dr. Singh also kept Petitioner off work. *Id.*

On February 12, 2014, Petitioner returned to Dr. Singh following a repeat MRI. (PX6, Dr. Singh, 2/12/14). At that time, Petitioner reported continued and persistent symptoms of low back pain and increased spasms, which Petitioner reported to be at a nine (9) out of ten (10) in severity. *Id.* Dr. Singh also reviewed the results of the repeat MRI, and indicated that it showed: "central HNP at L5-S1 and decreased disk height from L5-S1 with bilateral foraminal stenosis and moderate stenosis from L5-S1." (PX6, Dr. Singh, 2/12/14). After review of the MRI, Dr. Singh's diagnoses were herniated nucleus pulposus at L5-S1, degenerative disk disease at L5-S1, and moderate stenosis at L5-S1. *Id.* Dr. Singh's recommendations were as follows: "At this time, I have recommended the patient attempt diet and exercise for weight reduction to reduce any increased risks during surgery. After weight reduction, I would then recommend an L5-S1 laminectomy and transforaminal lumbar interbody fusion." *Id.* Dr. Singh also kept Petitioner off work.

Petitioner continued to follow up with Dr. Franklin, who noted on February 27, 2014 that Petitioner had been experiencing sharp pain in his low back, as well as spasms, and that Petitioner was ambulating with the use of a cane. (PX3, DuPage Medical Group, 2/27/14).

On March 26, 2014, Petitioner returned to Dr. Franklin, who gave the following assessment after Petitioner reported that he continued to experience sharp pain in his low back: "Lumbago in patient with history of DDD with moderate to severe disease at L5-S1 region. Completed 4-6 weeks of physical therapy. Has had his first ESI but only minimal improvement. Now s/p ESI #2. Now recommended to have surgical correction with Midwest Orthopedics—but he needs to have bariatric surgery prior as he is too risky a candidate for spine surgery at present due to his morbid obesity. He has been seeing the dietician and is going to see the bariatric surgeon." (PX3, DuPage Medical Group, 3/26/14). Dr. Franklin also continued to keep Petitioner off work. *Id.*

Petitioner continued to follow up with Dr. Franklin through October of 2014, who continued to note pain and discomfort in Petitioner's low back. (PX3, DuPage Medical Group, 3/26/14, 6/30/14, 7/30/14, 10/22/14).

Dr. Singh also testified by way of deposition, and this transcript was admitted into evidence as Petitioner's Exhibit 8. Dr. Singh testified that he is board certified orthopedic spine surgeon who performs approximately 400-500 surgeries per year and who has devoted his practice exclusively to treating patients with spinal disorders. (PX8, Deposition of Dr. Singh, p. 5). He also testified that he is an associate professor in the Department of Orthopedic Surgery at Rush University Medical Center. *Id.* at 5. Dr. Singh testified that ninety (90) percent of his practice is devoted to patient care, approximately five (5) percent involves medical/legal work, and the other five (5) percent involves academic research. *Id.*

Dr. Singh testified that he saw Petitioner on referral from Dr. Ronjon Paul at the DuPage Medical Group. After taking a history from Petitioner, performing a physical exam, and reviewing the MRI discs, Dr. Singh testified that he diagnosed Petitioner with degenerative disc disease at L5-S1, with a central disc herniation at L5-S1 which was causing stenosis at that level. *Id.* at 7. He also confirmed that it was his opinion within a reasonable degree of certainty that Petitioner's condition was caused by the May 1, 2012 work-related injury. *Id.* at 8. Dr. Singh confirmed that he has recommended a lumbar laminectomy and fusion at L5-S1 for Petitioner. He was asked "what's standing in the way of that?" and he responded, "Unfortunately, Mr. Warren is five foot eight, 360 pounds. His size and body habitus." He was asked why he "... would have a patient lose weight or be reluctant to operate on somebody of this size" and he responded

> The intraoperative challenges, particularly imaging. That means obtaining a satisfactory x-ray to localize the space would be challenging, particularly at L5-S1, which is the deepest part of the spine, it's in the pelvis. So anatomically visualizing and confirming the appropriate level would be a challenge at best. Also, in addition, there are other complications that can increase with a patient's obesity, infection rates go up significantly, potential cardiovascular problems can arise from anesthesia in patients who are obese. All of those make it very challenging and potentially unsafe for the patient. *Id.* at 9.

Dr. Singh was then asked the following:

> Q: Do you have an opinion as to whether this gentleman is a candidate for either, A, a weight loss program, or, B, bariatric surgery?
> A: I do.
> Q: What would that be, sir?
> A: I believe that he requires weight reduction counseling. And if he cannot accomplish those goals, then I think that he should be seen by a bariatric specialist to determine if he would be a candidate for bariatric surgery. *Id.* at 9-10.

Dr. Singh specifically indicated that he would recommend a referral Petitioner to Dr. Jonathan Myers, a bariatric surgeon at Rush University who has assisted him with anterior lumbar spine procedures in the past. *Id.* at 10. He opined that the need for this referral and recommended treatment was causally related to the May 1, 2012 work injury. Specifically, he testified assuming Petitioner was obese at the time of the accident, "the injury resulted in an aggravation of a preexisting condition, to render it symptomatic, necessitating his recommendation for surgery and ultimately his referral to Dr. Myers for bariatric treatment in order to expedite and improve his chances from recovery for his spine surgery." *Id.* at 20-21. Dr. Singh also opined that Petitioner is not currently capable of returning to work, and would not be capable of doing so until after undergoing surgery. *Id.* at 10. Dr. Singh also confirmed that he had no records to suggest that Petitioner had any low back symptoms, complaints, or treatment before the May 1, 2012 injury. *Id.* at 20.

On cross exam, Dr. Singh testified that he saw Petitioner on 2 occasions. After reviewing the updated MRI he ordered in January 2014 and the prior MRI from July 2012, Dr. Singh testified that the July 2012 MRI was "reflective of the disc height loss. I believe the patient's main pathology is his disc height loss and his foraminal narrowing, that's his main problem that he's suffering from." PX 8, p. 14. Dr. Singh agreed that this pathology was present in Petitioner prior to the first MRI of July 2012 MRI and prior to the accident of May 2012. PX 8, p. 14. Dr. Singh did not know if Petitioner exercised or what activities he performed in his daily routine. PX 8, p. 15,19. Dr. Singh diagnosed Petitioner as morbidly obese and testified that he discussed a weight loss program with Petitioner. He further testified that Petitioner advised that he would participate in a weight loss program because he wanted the back surgery. PX 8, p. 15. In discussing the January 2014 MRI, Dr. Singh testified that he agreed it showed both chronic and acute findings. He further testified that the January 2014 MRI showed disc height loss and disc signal loss as well as a disc herniation that's superimposed and calcific in nature. Dr. Singh testified, "I believe the disc herniation is superimposed upon the chronic changes. I believe it's an acute finding. I believe it was present in the 2012 MRI. I believe the calcifications represent a chronic process along with an acute entity, the disc herniation, that occurred along this disc degeneration." PX 8, pp. 17-18.

Respondent had Petitioner examined pursuant to Section 12 by Dr. Michael Kornblatt. Dr. Kornblatt authored a report dated April 10, 2014. RX 2. Dr. Kornblatt also testified by way of deposition, and this transcript was admitted into evidence as Respondent's Exhibit 1. (RX1). Dr. Kornblatt testified that he performs approximately ten (10) independent medical examinations per week, and virtually all of the exams performed, or ninety-eight percent (98%), are performed at the request of employers, insurance companies, defense attorneys and third party administrators. (RX1, Deposition of Dr. Kornblatt, p. 26).

Dr. Kornblatt testified that Petitioner's movements on exam were very slow but that when the exam was concluded Petitioner "easily transitioned from a prone position to a seated position and then standing." RX 1, p. 12-13. Dr. Kornblatt testified consistently with his report that he diagnosed Petitioner with chronic lumbar degenerative disk disease at L5-S1, mechanical low back pain, morbid obesity, deconditioning, and kinesiophobia, which he described as a "fear of movement." *Id.* at 13. He classified Petitioner as morbidly obese, inactive and in a poor general state of health. He acknowledged that the diagnosis of kinesiophobia was not given by any other physician in the medical records he reviewed. *Id.* at 31-32. Dr. Kornblatt also testified that the findings on Petitioner's July 10, 2012 and January 9, 2014 MRIs were chronic and that there was no "major change" in the scans. RX 1, p. 14. From this, he concluded that Petitioner's condition had not changed in between MRI scans and that his physical examination and subjective complaints were not supported by the MRI findings. RX 1, p. 15. He opined that Petitioner's complaints were consistent with degenerative disc disease, deconditioned state and morbid obesity. RX 1, p. 15. He did not find that these conditions were related to the May 1, 2012 accident based on his experience. RX 1, p. 16. Dr. Kornblatt was of the opinion that Petitioner sustained a "typical lumbosacral strain or contusion" as a result of the May 1, 2012 assault, which "can result in a temporary exacerbation of preexisting degenerative disk disease." *Id.* at 18. He did not believe Petitioner needed surgery at any time and that Petitioner had reached MMI. RX 1, pp. 18-21. Finally, he testified that weight loss would benefit Petitioner and that he would need "medical help with a medical physician" to lose weight. RX 1, p. 19.

On cross exam, Dr. Kornblatt testified that this temporary exacerbation would last no more than twelve (12) weeks. *Id.* at 31. On cross-examination, the following exchange took place:

Q: So if I get this right, it's your opinion, within a reasonable degree of medical certainty, that any treatment given to this gentleman after 12 weeks, that is, after his condition had resolved, would have been unrelated to his work accident?

A: I believe that, yeah. *Id.* at 31-32.

With regard to Petitioner's weight both before and following the May 1, 2012 accident, the following exchange took place on cross-examination:

Q: Well, we've already established and you've already testified, sir, and I appreciate this greatly, under oath that this gentleman was likely morbidly obese before the accident, and if, in fact, he was morbidly obese before the accident, then this accident [happens] and he has back pain, is it just a coincidence that he still has back pain now?

A: There's many reasons for back pain.

...

Q: Okay. Is the accident one of those reasons?

A: No, the accident—when he presented to me, his back pain was unrelated to a strain and contusion that happened two years prior.

Q: Why does he have back pain, sir?
A: Because he's inactive, he has degenerative disk disease and obesity.
Q: And he had all those things before the accident, correct?
A: I have no idea. *Id.* at 36.

Dr. Kornblatt also testified that Petitioner's current condition was not related to the May 1, 2012 injury despite acknowledging that Petitioner was not working within any restrictions at the time of his injury on May 1, 2012, and testified that he had "no idea" if Petitioner missed any time from work prior to May 1, 2012 due to low back symptoms. *Id.* at 28-29. He also testified that he assumed Petitioner was obese prior to May 1, 2012. *Id.* at 29. Dr. Kornblatt opined that following three to four weeks of restricted duty, Petitioner could return to work full duty with no restrictions. (RX2, IME report of Dr. Kornblatt, p. 6).

At the time of trial, Petitioner testified that his current weight is 360 pounds, which he indicated has been consistent since 2004. (T.12). This testimony is also supported by the medical records introduced into evidence at trial. (PX3). Petitioner also testified consistently with the medical records that he consulted with a dietician for approximately six (6) months and made every attempt to lose weight under this weight loss program. (T. 17-18; 28, 29).

Petitioner also testified that since May 1, 2012, his level of function and activity has changed dramatically. (T.13). Specifically, he testified: "well, I am not able to walk long distances without pain erupting in my back. Physical---lifting, lifting heavy objects, I can't lift heavy objects." (T.13). On cross-examination, the following exchange took place:

Q: Before you were injured, so let's say from January to April of 2012, let's say the beginning of 2012, before you were injured what was your activity level, Mr. Warren?
A: I was able to do full-duty work, break up fights, intervene in fights, run around with my daughter.
Q: How old is your daughter?
A: Seven. She was five then. I could lift my daughter up. Not anymore.
Q: So it's your testimony that you were able to lift your daughter before May 1st?
A: Yes. (T.23-24).

...

Q: And so given the condition you testified to you don't exercise now currently, correct?
A: No, it's too painful.
Q: Before May 1st, 2012 did you exercise?
A: I was able to do a whole lot more, yes.
Q: That wasn't my question. Did you exercise?
A: Walking, yes.
Q: How often did you walk?
A: Every day.
Q: As exercise or just in your work?
A: In my work and I could walk my daughter around. I have a dog. I could walk my dog all over the place, yes. (T.24-25).

Petitioner indicated that his low back pain has not improved since May 1, 2012, and he wishes to undergo the treatment recommended for him by Dr. Singh. (T.13).

Additionally, Petitioner candidly acknowledged that he sustained several minor injuries to his low back, most recently in 2004, but had not received any treatment for low back pain since that time. (T.13-14). He confirmed that prior to May 1, 2012, he was not under the care of any physician for any symptoms in his lumbar spine, was not taking any medication for same, and that surgery has never been recommended for his low back prior to May 1, 2012. (T. 29-30). Petitioner testified that contrary to the report and deposition testimony of Dr. Kornblatt, he has never suffered from a fear of exercise or movement. (T.29). Petitioner testified that he gave the dietician his best effort.

Petitioner also testified that on May 1, 2012, he was working full duty with no restrictions. Petitioner testified that he was off work per his treating physicians from May 2012 through his return to temporary duty in October 2014. At trial, Petitioner further testified that he planned to return to full duty as of April 7, 2015 as his TTD was terminated by Respondent. However, Dr. Singh testified at the deposition of February 5, 2015 that until Petitioner has the recommended surgery he is not "capable of performing his job at work." PX 8, p. 10. ARB EX 1 indicates the period of disputed TTD commencing 9/1/14 through 10/19/14 when he returned to light duty. All prior TTD has been paid by Respondent.

CONCLUSIONS OF LAW

The above findings of fact are incorporated into the following conclusions of law.

1. Causal Connection (Issue "F"):

The Arbitrator finds that Petitioner has met his burden with regard to causation, and that Petitioner's current condition of ill-being in his low back as well as the need for the recommended fusion and prerequisite weight loss medical care are causally related to the undisputed May 1, 2012 work injury.

In this case, Petitioner testified credibly and without rebuttal that prior to May 1, 2012, he had a degenerative condition in his back, that he was working full duty with no restrictions, and that he was able to function on a daily basis both at work and at home without significant symptoms. At trial, Petitioner candidly acknowledged that he had been involved in several altercations, namely in 2000 and 2004, which resulted in some injuries to his lumbar spine, but unequivocally testified that he received minimal treatment for same and that surgery was never recommended for him prior to May 1, 2012. (T. 29-30). However, since May 1, 2012, Petitioner testified to immediate and continued symptoms and treatment and that he is unable to perform his full every day activities. Petitioner's medical records support this testimony. (PX3, PX4, PX5, PX6).

In finding causal connection, the Arbitrator also relies on the credible opinion of Dr. Singh who opined that "the injury resulted in an aggravation of a preexisting condition, to render it symptomatic, necessitating his recommendation for surgery and ultimately his referral to Dr. Myers for bariatric treatment in order to expedite and improve his chances from recovery for his spine surgery." The Arbitrator places greater weight on the opinion of Dr. Singh over that of Dr. Kornblatt based on the objective findings on Petitioner's MRI scans, Petitioner's lack of any significant pre-existing symptoms or treatment to his lumbar spine and Petitioner's credible testimony regarding his continued symptoms as supported by the treating medical records.

Based upon the foregoing, the Arbitrator finds that Petitioner's condition of ill-being in his low back is causally related to the May 1, 2012 accident and that all recommended treatment including the fusion surgery and the prerequisite weight loss medical care are also causally related to the accident and injury of May 1, 2012.

2. Medical Expenses (Issue "J")/Prospective Medical care (Issue "K")

With regard to the issue of medical expenses, based upon the findings on the issue of causal connection, the Arbitrator further finds that Respondent shall pay the reasonable and necessary medical expenses incurred by Petitioner in the care and treatment of the causally related injuries pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

With regard to the issue of prospective medical care under Section 8(a), based upon the findings on the issue of causal connection, the Arbitrator finds that Respondent shall authorize and pay for the recommended fusion surgery pursuant to Sections 8 and 8.2 of the Act. The Arbitrator further finds that Petitioner must undergo the prerequisite medical weight loss care prescribed by Dr. Singh in order to accomplish the prescribed fusion surgery. Specifically, the Arbitrator notes that Dr. Singh recommended traditional attempts at weight loss first followed by a potential bariatric surgery all under the medical supervision of Dr. Myers. Accordingly, Respondent shall authorize and pay for Petitioner's prerequisite medical weight loss care as required by Dr. Singh pursuant to Sections 8 and 8.2 of the Act.

3. Temporary total disability benefits (Issue "L")

Based on the findings on the issue of causal connection, the Arbitrator further finds that Petitioner is entitled to the only disputed period of unpaid TTD at trial which commences 9/1/14 through 10/19/14, a period of 7 weeks. ARB EX 1. Petitioner testified that Respondent has since accommodated light duty work for Petitioner for a period of several months, which began on October 20, 2014.

The parties stipulated that Respondent had paid Petitioner temporary total disability benefits in the amount of $62,331.68 but that amount did not cover the disputed period and that accordingly no credit is owed Respondent for the amounts paid. To the extent Respondent has paid any amounts extending into the 7 week period awarded here, Respondent shall receive credit for amounts paid.

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

Sharon Filipsik,

Petitioner

vs. NO: 14WC 29401

15IWCC1001

Mariano's Fresh Market,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, medical, prospective medical, wage rate 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 9, 2015 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $800.00. 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: DEC 3 1 2015
o12315
DLG/mw
045

David L. Gore

Mario Basurto

Stephen Mathis

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

FILIPSIK, SHARON
Employee/Petitioner

Case# **14WC029401**

15IWCC1001

MARIANO'S FRESH MARKET
Employer/Respondent

On 3/9/2015, 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:

0500 LAW OFFICES OF CURTIS S BURKE
218 N JEFFERSON ST
SUITE 401
CHICAGO, IL 60661

2337 INMAN & FITZGIBBONS
JUDY NASH
33 N DEARBORN ST SUITE 1825
CHICAGO, IL 60602

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

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

19(b) ARBITRATION DECISION

SHARON FILIPSIK
Employee/Petitioner

Case #14 WC 29401

v.

15IWCC1001

MARIANO'S FRESH MARKET
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 Februarry 19, 2015. 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. ☐ Should penalties or fees be imposed upon the respondent?

M. ☐ Is the respondent due any credit?

N. ☐ Prospective medical care?

FINDINGS

- On June 30, 2014, the respondent was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship existed between the petitioner and respondent.
- On this date, the petitioner sustained injuries that arose out of and in the course of employment.
- Timely notice of this accident was given to the respondent.
- In the year preceding the injury, the petitioner's average weekly wage with the respondent was $262.69.
- At the time of injury, the petitioner was 65 years of age, single with no children under 18.
- The parties agreed that the respondent paid $6,471.36 in temporary total disability benefits.

ORDER:

- The respondent shall pay the petitioner temporary total disability benefits of ~~$220.00/week for 32-3/7 weeks ($7,134.29) from July 8, 2014, through February 19,~~ 2015, which is the period of temporary total disability for which compensation is payable. Deducting the $6,471.36 paid by the respondent, the petitioner is entitled to $662.93.
- The medical care rendered the petitioner for her cervical, thoracic and lumbar spine was reasonable and necessary and is awarded. The respondent shall pay the medical bills in accordance with the Act, the medical fee schedule or any prior adjustments or negotiated rate. 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 shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier.
- The petitioner is entitled to have from the respondent the reasonable and necessary cost for a L4-5 decompressive laminectomy, discectomy and posterior spinal fusion with

instrumentation and a posterior cervical fusion with instrumentation and decompressive laminectomies.

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

Robert E. Williams

Signature of Arbitrator

March 9, 2015

Date

MAR 9 - 2015

FINDINGS OF FACTS:

On June 30, 2014, the petitioner, a deli laborer, sustained injuries when a display-counter door fell on her. She sought medical treatment at Sinai Health System with her primary care physician, Dr. Ananta Pandit, on July 8, 2014, and reported something heavy falling on her back around her neck and thoracic region about two to three weeks earlier. She complained of minimal neck pain and a back ache. She reported right hip pain starting a week or so earlier causing walking difficulty and radiating pain into her groin and leg. The doctor noted that her neck pain had been minimal and that she started having right hip pain for a week or so to the point that she has difficulty walking. X-rays of her pelvis and right hip on July 9th were normal. The petitioner's complaints on July 15th were neck, back and leg pain and leg burning that began a month earlier. A lumbar MRI on July 20th demonstrated multilevel degenerative joint disease most pronounced at L4-L5 where a right-sided disc protrusion, a posterior element hypertrophy and a partial disc extension into the right neural foramen causes stenosis. The petitioner reported back, neck and right leg pain on July 22nd. The assessment was lumbar disc prolapse with compression radiculopathy. Cervical and thoracic MRIs on July 27th demonstrated mild cervical spondylosis with mild disc desiccation, osteophytes, central canal stenosis from C3/4 through C7-T1 and multilevel neuroforaminal narrowing, and mild thoracic spine degenerative changes without significant canal stenosis or neuroforaminal narrowing. On July 31st, the assessment was degenerative joint disease of the cervical spine, spondylolysis of the cervical region and lumbar disc prolapse with compression radiculopathy.

On August 8th, Dr. Howard An of Midwest Orthopaedics at Rush evaluated the petitioner for complaints of significant low back pain, pain down her right leg and numbness and tingling of her hands particularly on the right. Dr. An's impression was an aggravation of a pre-existing cervical and lumbar spondylolysis with stenosis. The petitioner began physical therapy in August 2014. On September 5th, Dr. An recommended a L4-5 decompressive laminectomy, discectomy and posterior spinal fusion with instrumentation and at a later date, a posterior cervical fusion with instrumentation and decompressive laminectomies.

On October 29, 2014, the petitioner was evaluated at the respondent's request by Dr. Carl Graf of Illinois Spine Institute, who opined that the petitioner's cervical and lumbar spine conditions were not related to her work injury.

The petitioner received medical care prior to her injury on June 30, 2014, at Mercy Hospital and Medical Center for their assessment of low back and thoracic strain and for complaints of numbness and tingling in her hands.

FINDING REGARDING THE AMOUNT OF WAGES:

In the year preceding the injury, the petitioner earned $13,659.88 annually from the respondent and $2,167.60 annually from concurrent employment with the White Sox. Pursuant to Section 10 of the Act, the earnings from concurrent employment are treated as earned from the respondent. Therefore, the earnings from the respondent were $15,827.48 and the petitioner's average weekly wage was $304.37.

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

The medical care rendered the petitioner for her cervical, thoracic and lumbar spine was reasonable and necessary and is awarded.

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 her current condition of ill-being with her cervical, thoracic and lumbar spine is causally related to the work injury. The petitioner's pre-existing cervical and lumbar conditions were aggravated by her work injury resulting in consistent and continuous neck, lumbar and leg pain. The petitioner's initial report of the date of injury occurring around the middle of June 2014 is inexplicable and problematic. However, accident was not disputed and the nature and type of her injury reported by the petitioner have been consistent and continuous. The preponderance of the evidence supports the petitioner's claim and outweighs the opinions of Dr. Graf.

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

The petitioner has been off of work pursuant to her doctor's direction since July 8, 2014. The petitioner is entitled to temporary total disability benefits of $220.00/week for 32-3/7 weeks, from July 8, 2014, through February 19, 2015, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner.

FINDING REGARDING PROSPECTIVE MEDICAL:

The petitioner proved that a L4-5 decompressive laminectomy, discectomy and posterior spinal fusion and a posterior cervical fusion with instrumentation and decompressive laminectomies recommended by Dr. An are reasonable medical care necessary to relieve the effects of the work injury. The petitioner is entitled to have from the respondent the reasonable and necessary cost for a L4-5 decompressive laminectomy,

discectomy and posterior spinal fusion with instrumentation and a posterior cervical fusion with instrumentation and decompressive laminectomies.

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

Valerie Knight-Collins,

Petitioner

vs. NO: 13WC 25118

15IWCC1002

State of Illinois Dept. of Human Services,

Respondent.

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, medical, notice, permanent partial disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 30, 2015, is hereby affirmed and adopted.

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.

DATED: DEC 3 1 2015
o1232015
DLG/mw
045

David L. Gore

Mario Basurto

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KNIGHT-COLLINS, VALERIE
Employee/Petitioner

Case# **13WC025118**

10WC031305

ST OF IL DEPT OF HUMAN SERVICES
Employer/Respondent

15IWCC1002

On 4/30/2015, 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:

0062 TEPLITZ & BELL
JOEL M BELL
221 N LASALLE ST SUITE 1900
CHICAGO, IL 60601

5132 ASSISTANT ATTORNEY GENERAL
STACEY LASKIN
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

1745 CMS RISK MANAGEMENT
801 S SEVENTH ST 8M
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

APR 30 2015

RONALD A.RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC1002

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Valerie Knight-Collins
Employee/Petitioner

v.

State of Illinois Dept. of Human Services
Employer/Respondent

Case # 13 WC 025118

Consolidated cases: 10WC031305

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 **Kurt Carlson**, Arbitrator of the Commission, in the city of **Chicago**, on **March 12, 2015**. 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. [ ] 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. [ ] 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. [x] 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. [x] 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 **July 19, 2014**, 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 not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was not*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**63,687.00**; the average weekly wage was $**1224.75**.

On the date of accident, Petitioner was **51** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

Because Petitioner failed to prove that she sustained an accident in the workplace, benefits are denied.

Because Petitioner failed to prove that she provided the employer with notice of a compensable work accident, benefits are denied.

Because Petitioner failed to prove that her current condition is causally related to a compensable work accident which occurred on July 19, 2013, benefits are denied.

Because Petitioner failed to prove that she received any reasonably related medical treatment, benefits are denied.

Because Petitioner failed to prove that she sustained any permanent partial disability related to this claim, benefits are denied.

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

04-29-15
Date

15IWCC1002

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

VALERIE KNIGHT-COLLINS,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	13 WC 025118
	)	Chicago
STATE OF ILLINOIS	)	
DEPARTMENT OF HUMAN SERVICES	)	
	)	
Employer/Respondent.	)	

ARBITRATOR'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. FINDINGS OF FACT

Petitioner filed an application for adjustment of claim with the Illinois Workers' Compensation Commission. On March 12, 2015, the parties appeared at a hearing in Chicago, Illinois, before Arbitrator Kurt Carlson.

Joel Bell of Teplitz & Bell appeared on behalf of Petitioner. Assistant Attorney General Stacey Laskin of the Illinois Attorney General's office appeared on behalf of the Illinois Department of Human Services.

Prior to presentation of testimony, over Respondent's objection, Petitioner's attorney amended the application for adjustment of claim to reflect that the claim was filed pursuant to the Illinois Occupational Disease Act rather than the Illinois Workers' Compensation Act.

The Petitioner was 51 years old on July 19, 2013. On that date, she was employed at the Illinois Department of Human Services as a human services caseworker.

Petitioner admitted that she has a history of asthma and that she is a long-time smoker. Petitioner also presented testimony and medical records dating from April 10, 2010, to August 31, 2010, related to a claim for an alleged respiratory accident in the workplace on April 10,

2010. *(See* Px 2). These medical records establish that Petitioner has a history of chronic asthma, sinusitis, and allergies and that Petitioner's treating doctors have advised her many times to quit smoking. (Px 2). The records also establish that Petitioner's medication regime for these conditions included multiple inhalers and Prednisone. *Id.* Petitioner testified at trial that she continues to smoke at this time.

Petitioner testified that on and around July 19, 2013, her office environment was not clean and that another employee complained that she spotted mouse droppings on her desk. Petitioner testified that the other employee used a spray cleaner on the other employee's desk which caused Petitioner to have an immediate and severe allergic reaction and "psychological damage." Petitioner testified that she reported the incident to her supervisor immediately, and that the other employee was arguing with Petitioner, claiming that she did not do anything to hurt Petitioner on purpose. Petitioner did not present reports or testimony from her supervisor or any witnesses to corroborate these assertions. Petitioner testified that she visited her primary care provider a few days after the incident to seek treatment. Petitioner testified that, as a result of the July 19, 2013, work accident, she was prescribed an EPI pen and was placed on Prednisone for the first time, directly contradicting her medical records. On cross-examination, Petitioner admitted that she had taken Prednisone in the past.

Petitioner submitted only one treatment record associated with this claim, from Advocate Medical Group, dated July 25, 2013, six days after the alleged accident. (Px 4-5). Petitioner presented for "work related injury and paper work completion." *Id.* She stated that, on the previous Friday, "a coworker sprayed aerosols (all purpose cleaner) in non ventilated area. which caused an allergic reaction, SOB, wheezing, nausea/vomiting and rash" [*sic.*]. *Id.* Petitioner informed her doctor that she asked her coworker to stop but that the coworker continued

spraying the cleaner. *Id.* Petitioner also reported a rash on her arms, legs, and chest. *Id.* She reported that this rash was dark but only on her hands and thighs. *Id.* Petitioner stated that she "had no albuterol at work" with her but that she went to the pharmacy and took Benadryl, which helped. *Id.* Petitioner stated that she previously had a reaction in 2010 at which time she was rushed to the hospital and "may have gotten Epi pen." *Id.* Petitioner was diagnosed with an allergic reaction to aerosols and was given prescriptions for albuterol, an epi pen, and triamcinolone. *Id.* Petitioner was advised to keep her epi pen and albuterol with her at all times. *Id.*

Petitioner testified that she had a heart attack two weeks after the alleged July 19, 2013, work accident, though she did not provide any medical evidence indicating that this incident was related to the alleged work accident. Petitioner testified that she was under a lot of stress at the time. The medical records contain only an August 3, 2013, note from Advocate Medical Group, which states that Petitioner was admitted to Holycross Hospital for angina and was found to have a reversible defect at the apex on stress. (Px 4-5). The note further states that Petitioner planned to undergo a PCI on the following Monday. *Id.* Petitioner did not submit medical records or bills from Holycross Hospital into the record.

Petitioner testified that after the alleged July 19, 2013, work accident and her heart attack, she transferred to another work location on Wabash Street. Petitioner stated that she was having difficulty with employees and that she was constantly exposed to aerosols in the prior office space. Petitioner testified that she continued to smoke during this time period and that she had to leave the building in order to smoke; however, she testified that she "could not get away" from the constant aerosol exposure because she could not leave the work facility. Petitioner testified that when she is exposed to aerosols in places outside of work, such as the grocery store or

department stores, she does not have symptoms because she can leave. Petitioner testified that she only ever has to use her epi pen at work.

Petitioner admitted that she continues to work full duty for the state as a human services caseworker, despite her asthma, diagnosed aerosol injury, and heart attack. Petitioner testified that after her heart attack, her doctors advised that she quit smoking. Petitioner presented no evidence of medical treatment related to the alleged July 19, 2013, accident dated after July 25, 2013.

II. CONCLUSIONS OF LAW

As an initial matter the Arbitrator notes Petitioner has the burden of proving all of her case by a preponderance of the evidence. *Chicago Rotoprint v. Industrial Comm'n, 157 Ill.App.3d 996, 1000* (1987). Liability cannot rest upon imagination, speculation or conjecture. *See United Airlines v. Comm'n*, 991 N.E.2d 458, 463 (2013).

The Illinois Workers' Compensation Occupational Diseases Act defines an occupational disease as a "disease arising out of an in the course of employment or which has become aggravated and rendered disabling as a result of the exposure of the employment." 820 ILCS 310. Specifically, the Act provides that, "Such aggravation shall arise out of a risk peculiar to or increased by the employment and not common to the general public." *Id.*

"A disease shall be deemed to arise out of employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease." 820 ILCS 310. The Act further provides that the disease "need not to have been foreseen or expected but after its contraction it must appear to have had its origin or aggravation in a risk connected with the employment and to have flowed from that source as a rational consequence." *Id.*

The Arbitrator finds that Petitioner failed to prove that any risk associated with employment as a human services caseworker caused any disease arising out of and in the course of employment or aggravated and rendered disabling any condition as a result of exposure of the employment. *See* 820 ILCS 310. The Arbitrator further finds, specifically, that Petitioner failed to prove accident, notice, causal connection, reasonably related medical treatment, and permanency.

C, E. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? Was timely notice of the accident given to Respondent?

The Arbitrator finds that Petitioner failed to meet her burden of proof with regard to a compensable accident or exposure and notice of a compensable accident or exposure to the employer.

Petitioner filed an application for adjustment of claim alleging that she sustained a work accident on July 19, 2013. However, the preponderance of the evidence does not support Petitioner's claim that she sustained a work accident on this date. Although Petitioner testified to a dramatic event which occurred in the workplace on July 19, 2013, she was unable to produce any corroborating incident reports, witnesses, or medical records to support her claims. The Arbitrator notes that medical records, particularly from the alleged date of accident, contradict Petitioner's testimony. The Arbitrator further notes that Petitioner first testified that her physicians did not ask her to stop smoking and then admitted that many doctors had advised her to do so on many occasions. The Arbitrator listened to Petitioner's testimony regarding the events which occurred and considered her testimony, but in light of the fact that her statements to her doctors for the purpose of seeking medical treatment directly conflict her testimony, the Arbitrator is unable to find Petitioner's uncorroborated testimony credible.

The July 25, 2013, medical treatment record from Advocate Medical Group indicates that Petitioner sought treatment for an allergic reaction which occurred at work at least several days earlier. (Px 4-5). Petitioner did not provide any testimony about developing a rash at work, but her primary complaint at the time of her medical evaluation was of a rash covering most of her body. *Id.* Further, the medical record does not establish that Petitioner was diagnosed with a new aerosol allergy following the alleged work accident, let alone that events which occurred in the workplace caused the allergy. *See id.* The medical record contains a preliminary section detailing Petitioner's medical history. (Px 4-5). That section contains noted allergies of erythromycin, iron, and aerosol sprays. *Id.* The documented diagnostic problem list mentions a history of allergic rhinitis. *Id.* Petitioner specifically informed her doctor that she did not have medication to treat her reaction with her at work, indicating that she was aware of which medication was necessary to treat the reaction (Albuterol). *Id.* Petitioner also references a prior incident in 2010 after which she was rushed to the hospital, which is not consistent with the history Petitioner provided associated with the alleged April 10, 2010, work accident. *Id.* Following the April 10, 2010, accident, Petitioner attended a previously scheduled doctor's appointment later the same day of the accident and was not rushed to the hospital. (Px 2). The July 2013 medical record contains no indication that Petitioner's allergy was in any way caused by her work duties or time spent in her workplace. (Px 4-5).

The Arbitrator further considered Petitioner's Exhibit 4, a handwritten document, which was admitted into the record over Respondent's hearsay objection. Petitioner asserts that the document indicates that Petitioner, in her role as a human services caseworker, had job requirements which included exposure dust, fumes, gases, and other respiratory irritants between two and four hours per day. *See* Px 4. Petitioner asserts that the person who completed the form

indicated this by marking this task with a "C" to indicate that the job required this task to be performed between two and four hours per day. *See id.* Respondent asserts that the person who completed the form indicated that the job never requires exposure to dust, fumes, gases, and other respiratory irritants by marking this space with a "G" to indicate that the task is never required. *See id.* Petitioner presented no additional evidence as to why her work as a human services caseworker would require exposure to respiratory irritants. The Arbitrator finds that the marking is ambiguous and does not give any weight to this document.

With regard to notice, the Arbitrator notes that the employer did not receive notice that Petitioner was filing a claim under the Illinois Occupational Diseases Act rather than the Illinois Workers' Compensation Act until the day of trial when Petitioner's attorney moved to amend the application for adjustment of claim.

Accordingly, the Arbitrator finds that Petitioner failed to meet her burden of proof with regard to the issues of accident and notice to the employer.

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

As an initial matter, the Arbitrator notes that based on the earlier findings that Petitioner failed to prove an accident or notice to the employer, the issue of whether Petitioner's current condition of ill-being is causally related to the injury is moot.

However, putting aside the initial issues of accident and notice, the Arbitrator further finds that no qualified medical provider has opined that Petitioner's diagnosed aerosol allergy is related to Petitioner's work duties or exposure in the workplace. Although Petitioner testified that she believes that her allergy and the medications prescribed for her allergy are related to the alleged work accident, Petitioner is a lay person and is not qualified to provide opinions

regarding medical causation. Accordingly, the Arbitrator gives no weight to Petitioner's testimony regarding medical causation.

The Arbitrator further notes that Petitioner testified to a serious and unrelated medical event, a heart attack, which occurred approximately two weeks after the work incident, which could effectively be viewed as a superseding incident. Despite this superseding incident, Petitioner testified that she continues to work full-time without restrictions in the same position. Petitioner testified that she continues to smoke cigarettes and that she continues to have asthma, which she treats with prescription medications. Although Petitioner testified that she did not receive an epi pen before July 25, 2013, the medical record includes a note that Petitioner may have previously received an epi pen in 2010. (Px 4-5). As noted above, the Arbitrator does not find Petitioner's testimony fully credible based on discrepancies in the record. There is no medical opinion in the record linking the prescription of the epi pen to any work accident. Accordingly, the Arbitrator declines to find that Petitioner's current condition of ill-being is causally related to the alleged July 19, 2013, work 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?

Again, the Arbitrator notes that this issue is rendered moot by earlier findings that Petitioner failed to meet her burden of proof with regard to the issues of accident and notice to the employer. The Arbitrator also notes that Petitioner failed to present any credible medical evidence linking any medical treatment received to a work injury which allegedly occurred on July 19, 2013. Accordingly, the Arbitrator does not award any medical bills on this claim.

L. What is the nature and extent of the injury?

As noted above, Petitioner failed to prove accident, notice to the employer, causal connection of her current condition to the alleged accident, or that she underwent any reasonably related medical treatment as a result of an alleged July 19, 2013, work accident. Accordingly, by extension, the Arbitrator cannot award any permanent partial disability benefits related to this claim.

Arbitrator Kurt Carlson

04-29-15
Date

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

Valerie Knight-Collins,

Petitioner

vs. NO: 10WC 31305

15IWCC1003

State of Illinois Dept. of Human Services,

Respondent.

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, medical, notice, permanent partial disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 30, 2015, is hereby affirmed and adopted.

~~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.

DATED: DEC 3 1 2015
o12315
DLG/mw
045

David L. Gore

Mario Basurto

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KNIGHT-COLLINS, VALERIE
Employee/Petitioner

Case# **10WC031305**
13WC025118

ST OF IL DEPT OF HUMAN SERVICES
Employer/Respondent

15IWCC1003

On 4/30/2015, 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:

0062 TEPLITZ & BELL
JOEL M BELL
221 N LASALLE ST SUITE 1900
CHICAGO, IL 60601

5132 ASSISTANT ATTORNEY GENERAL
STACEY LASKIN
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

1745 CMS RISK MANAGEMENT
801 S SEVENTH ST 8M
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy pursuant to 820 ILCS 305/14

APR 30 2015

RONALD A. RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC1003

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

Valerie Knight-Collins
Employee/Petitioner

v.

State of Illinois Dept. of Human Services
Employer/Respondent

Case # **10** WC **031305**

Consolidated cases: **13WC35118**

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 **Kurt Carlson**, Arbitrator of the Commission, in the city of **Chicago**, on **March 12, 2015**. 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 **April 10, 2010**, 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 not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was not*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**51,086.88**; the average weekly wage was $**982.44**.

On the date of accident, Petitioner was **47** years of age, ***single*** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

Because Petitioner failed to prove that she sustained an accident that arose out of and in the course of employment, benefits are denied.

Because Petitioner failed to prove that she provided the employer with timely notice of an April 24, 2010, work accident, benefits are denied.

Because Petitioner failed to prove that she sustained any permanent partial disability associated with a valid accident in the workplace on April 24, 2010, benefits are denied.

Because Petitioner failed to prove that she received any medical treatment reasonably related to an alleged April 24, 2010, work accident, benefits are denied.

Because Petitioner failed to prove that she sustained any permanent partial disability related to this claim, benefits are denied.

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

4-29-15
Date

APR 30 2015

15IWCC1003

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

VALERIE KNIGHT-COLLINS,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	10 WC 031305
	)	Chicago
STATE OF ILLINOIS	)	
DEPARTMENT OF HUMAN SERVICES	)	
	)	
Employer/Respondent.	)	

ARBITRATOR'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. FINDINGS OF FACT

Petitioner filed an application for adjustment of claim with the Illinois Workers' Compensation Commission. On March 12, 2015, the parties appeared at a hearing in Chicago, Illinois, before Arbitrator Kurt Carlson.

Joel Bell of Teplitz & Bell appeared on behalf of Petitioner. Assistant Attorney General Stacey Laskin of the Illinois Attorney General's office appeared on behalf of the Illinois Department of Human Services.

Prior to presentation of testimony, Petitioner's attorney amended the accident date on the request for hearing form to reflect an accident date of April 10, 2010. Petitioner's attorney also stated that the application for adjustment of claim reflected that he filed pursuant to the Illinois Occupational Disease Act rather than the Illinois Workers' Compensation Act.

The Petitioner was 47 years old on April 10, 2010. On that date, she was employed at the Illinois Department of Human Services as a human services caseworker.

Petitioner admitted that she has a history of asthma and that she is a long-time smoker.

Petitioner testified that, on and around April 10, 2010, she worked at the Woodlawn Family Community Resource Center, located at 915 E. 63rd Street in Chicago. Petitioner testified that she worked in a big open room containing approximately 30 cubicles. Petitioner testified that on and around April 10, 2010, there was an infestation of gnats in the building. Petitioner testified that she believed that the State had not provided any extermination and that, as a result, employees brought their own pesticides to work to spray the gnats. She testified that an employee sitting behind her sprayed "insecticide" on April 10, 2010, and that she immediately experienced shortness of breath, itching eyes, and vomiting. She testified that she then asked the employee behind her what she was doing and was informed that the employee had sprayed insecticide. She reported the incident immediately to her supervisor, and she testified that her supervisor "looked at her crazy" but said she could leave work if she was sick. Petitioner testified that she visited her primary care provider the same day.

On April 10, 2010, Petitioner presented to Advocate Medical Group at 3:45 p.m. complaining primarily of a left breast nodule painful to touch. (Petitioner's Exhibit (*hereinafter* "Px") 2). She also complained of "having allergies, having runny itchy and burning sensation in her nose. States she has been constantly sneezing." *Id.* Petitioner further complained that her sinuses had been running for greater than a week. *Id.* Her primary care provider noted that Petitioner continued to smoke and was urged to quit. *Id.* The record contains no mention of an incident at work or any episode of vomiting which allegedly occurred earlier in the same day. *Id.* Noted active problems included asthma, esophageal reflux, hypothyroidism, nicotine dependence, and sinusitis. *Id.* Current medications were noted to include Prednisone, ProAir HFA Aerosol Solution, Flovent HFA, Loratadine, and Amitriptyline. *Id.* Examination revealed redness in the right ear drum as well as nasal congestion and congestion but no nose bleed sites.

Id. Diagnoses included sinusitis, mastodynia, and nicotine dependence. *Id.* Petitioner was advised to see a breast specialist and to quit smoking. *Id.*

Petitioner testified that her asthma became progressively worse over a period of time after sitting in the "direct line of fire" of this alleged chronic insecticide spraying at work. Petitioner testified that she asked to move but that management would not let her do so. However, she moved to another desk on her own.

Petitioner testified that, on May 28, 2010, she went to the doctor due to her work-related symptoms. The medical records actually reflect that Petitioner returned to Advocate Medical Group on that date complaining of a cough for the past week. (Px 2). Petitioner did not mention any work-related symptoms or issues. *Id.* Petitioner was diagnosed with chronic asthma and was advised to take and use medications as prescribed. She was prescribed Albuterol, Amoxicillin, and ProAir HFA. *Id.*

Petitioner was next seen at Advocate Medical Group on June 5, 2010, complaining of coughing, nausea, and feeling tired. (Px 2). Petitioner was diagnosed with asthma and nicotine dependence and was provided with a green asthma education booklet. *Id.* The record states, "SHRUGS TO INDICATE THAT SHE'S NOT READY TO QUIT SMOKING—I TOLD HER OF SEVERAL ILLNESSES IT CAUSES INCLUDING CANCERS, CAD, AND COPD. I ADVISED HER TO QUIT" (formatted as in the medical record). *Id.* Petitioner's physician recommended environmental control measures, smoking cessation, patient education, a metered dose inhaler, and exposure to triggers. *Id.* New prescriptions ordered included Prednisone and Advair HFA. *Id.*

Petitioner returned to Advocate Medical Group on July 6, 2010, for evaluation of her asthma. (Px 2). On this date, Petitioner complained of "frequent asthma attacks triggered by

sprays at work—s/s worse p arriving at work—coworker sprays Lysol and Off which triggers cough." *Id.* Petitioner was diagnosed with asthma and hypothyroidism (she complained of hot flashes as well). *Id.*

A July 23, 2010, handwritten medical record from Advocate Medical Group indicates that Petitioner was seen by a breast specialist. (Px 2). The specialist noted that Petitioner had a history of tobacco use and smoking. *Id.* The specialist discussed a diagnosis of possible shingles with Petitioner and recommended a dermatology consult. *Id.*

A July 23, 2010, typed medical record from Dr. Abraham Saper indicates that Petitioner was referred to Dr. Saper by a Dr. John Kelsey for a consult of breast irritation and pain. (Px 2). Past medical history was noted to include hypothyroid, asthma, esophageal reflux, and migraines. *Id.* Petitioner admitted to using tobacco. *Id.* Current medications were noted to include Prednisone, ProAir, Flovent, loratidine, and amitriptyline. *Id.* Petitioner denied shortness of breath, nausea, and vomiting. *Id.* No abnormalities were noted with regard to a respiratory examination. *Id.* Petitioner was diagnosed with left breast pain. *Id.*

On August 31, 2010, Petitioner returned to Advocate Medical Group and complained that her neck had been swollen for a week. (Px 2). She stated that she had a sore throat and had been gargling alcohol. *Id.* Petitioner was advised to stop gargling alcohol and was diagnosed with pharyngitis. *Id.* New prescriptions ordered included Amoxicillin and Naproxen. *Id.*

The record contains no medical treatment between August 31, 2010, and July 25, 2013. (*See* Px 2, Px 5, and Px 6). Petitioner asserts that medical records dated from July 25, 2013, to present are associated with another workers' compensation claim with an alleged accident date of July 19, 2013.

Petitioner testified that she was sick throughout the summer of 2010 and that she filed an EEOC claim against her employer related to this illness. Petitioner produced no independent proof of such filing or the outcome of her claim. Petitioner also testified that the employer provided her with a clean air machine but that it did not work well.

Petitioner testified that she moved to a different office on June 16, 2011. She described the work area as similar to the one she left behind with an open area and multiple desks. Petitioner testified that she made her administrators aware of her chronic asthma condition. Petitioner did not provide any testimony with regard to any permanent symptoms related to the April 10, 2010, work accident.

II. CONCLUSIONS OF LAW

As an initial matter the Arbitrator notes Petitioner has the burden of proving all of her case by a preponderance of the evidence. *Chicago Rotoprint v. Industrial Comm'n, 157 Ill.App.3d 996, 1000* (1987). Liability cannot rest upon imagination, speculation or conjecture. *See United Airlines v. Comm'n*, 991 N.E.2d 458, 463 (2013).

The Illinois Workers' Compensation Occupational Diseases Act defines an occupational disease as a "disease arising out of an in the course of employment or which has become aggravated and rendered disabling as a result of the exposure of the employment." 820 ILCS 310. Specifically, the Act provides that, "Such aggravation shall arise out of a risk peculiar to or increased by the employment and not common to the general public." *Id.*

"A disease shall be deemed to arise out of employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease." 820 ILCS 310. The Act further provides that the disease "need not to have been foreseen or expected but after its

contraction it must appear to have had its origin or aggravation in a risk connected with the employment and to have flowed from that source as a rational consequence." *Id.*

The Arbitrator finds that Petitioner failed to prove that any risk associated with employment as a human services caseworker caused any disease arising out of and in the course of employment or aggravated and rendered disabling any condition as a result of exposure of the employment. *See* 820 ILCS 310. The Arbitrator further finds, specifically, that Petitioner failed to prove accident, accident date, notice, causal connection, reasonably related medical treatment, and permanency.

C, D, E. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? What was the date of the accident? Was timely notice of the accident given to Respondent?

Petitioner filed an application for adjustment of claim alleging that she sustained a work accident or exposure on April 10, 2010. However, the preponderance of the evidence does not support Petitioner's claim that she sustained a work accident or exposure on this date. Although Petitioner testified to a dramatic event which occurred in the workplace on April 10, 2010, she was unable to produce any corroborating incident reports, witnesses, or medical records to support her claims. The Arbitrator notes that medical records, particularly from the alleged date of accident, contradict Petitioner's testimony. The Arbitrator further notes that Petitioner first testified that her physicians did not ask her to stop smoking and then admitted that many doctors had advised her to do so on many occasions. The Arbitrator listened to Petitioner's testimony regarding the events which occurred and considered her testimony, but in light of the fact that her statements to her doctors for the purpose of seeking medical treatment directly conflict her testimony, the Arbitrator is unable to find Petitioner's uncorroborated testimony credible for the purposes of establishing accident, accident date, or notice of a compensable accident.

The April 10, 2010, medical treatment record from Advocate Medical Group indicates that Petitioner sought treatment for left breast pain and sinus symptoms which she had been experiencing for several days prior to April 10, 2010. (Px 2). The record contains no mention of any work incident or severe reaction with vomiting which allegedly occurred earlier the same day. *See id.*

The medical records contain no mention of any issues at work until July 25, 2010, at which time Petitioner complained only that her chronic asthma symptoms were worse at work because her coworkers were using various sprays. (Px 2). The Arbitrator does not find that these passing mentions of worsened symptoms at work or use of sprays in her office, three months after the alleged work accident, is sufficient to establish Petitioner's credibility nor prove her claim.

The Arbitrator also considered Petitioner's Exhibit 3, part of a letter sent to "Medical Provider" from a "Denise Myles" of the Illinois Department of Human Services Illinois Workers' Compensation Program. The letter states that a claim with an accident date of May 27, 2010, had been approved by the State and contains only form language specifying where bills should be sent. *Id.* The document has either been cut off or is missing a second page. *Id.* The Arbitrator is unable to give any significant weight to this document for the purposes of establishing accident, an accident date of April 10, 2010, or notice of a compensable accident to the employer.

The Arbitrator further considered Petitioner's Exhibit 4, a handwritten document, which was admitted into the record over Respondent's hearsay objection. Petitioner asserts that the document indicates that Petitioner, in her role as a human services caseworker, had job requirements which included exposure to dust, fumes, gases, and other respiratory irritants

between two and four hours per day. *See* Px 4. Petitioner asserts that the person who completed the form indicated this by marking this task with a "C" to indicate that the job required this task to be performed between two and four hours per day. *See id.* Respondent asserts that the person who completed the form indicated that the job never requires exposure to dust, fumes, gases, and other respiratory irritants by marking this space with a "G" to indicate that the task is never required. *See id.* Petitioner presented no additional evidence as to why her work as a human services caseworker would require exposure to respiratory irritants. The Arbitrator finds that the marking is ambiguous and does not give any weight to this document.

Accordingly, the Arbitrator finds that Petitioner failed to meet her burden of proof with regard to the issues of accident, accident date, and notice of a compensable accident.

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

As an initial matter, the Arbitrator notes that based on the earlier finding that Petitioner failed to prove an accident, accident date, or notice to the employer, the issue of whether Petitioner's current condition of ill-being is causally related to the injury is moot. Moreover, the Arbitrator finds that the preponderance of the evidence establishes that Petitioner has not sought care for any symptoms even allegedly related to this injury since August 31, 2010, almost five years prior to the hearing date. Although the Petitioner asserts that she believes she was sick during the summer of 2010 due to exposure in the workplace, Petitioner is a lay person and is not qualified to provide opinions regarding medical causation. Accordingly, the Arbitrator gives no weight to Petitioner's testimony regarding medical causation. After considering all of the evidence of record, the Arbitrator would find that any alleged conditions of ill-being are not causally related to the alleged April 10, 2010, work 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?

Again, the Arbitrator notes that this issue is rendered moot by earlier findings that Petitioner failed to meet her burden of proof with regard to the issues of accident, accident date, and notice to the employer. The Arbitrator also notes that Petitioner failed to present any credible medical evidence linking any medical treatment received to a work injury or exposure which allegedly occurred on April 10, 2010. Accordingly, the Arbitrator would not award any medical bills on this claim.

L. What is the nature and extent of the injury?

As noted above, Petitioner failed to prove accident, accident date, notice to the employer, causal connection of her current condition to the alleged accident, or that she underwent any reasonably related medical treatment as a result of an alleged April 10, 2010, work accident or exposure. Accordingly, by extension, the Arbitrator cannot award any permanent partial disability benefits related to this claim.

Arbitrator Kurt Carlson

04-29-15
Date

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

Kenneth McCarns,

Petitioner,

vs. NO: 14WC 26281

15IWCC1004

Maritime Delivery Services,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, medical, prospective medical, 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 23, 2015, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $70,700.00. 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: DEC 3 1 2015
o1232015
DLG/mw
045

David L. Gore

Mario Basurto

Stephen Mathis

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

McCARNS, KENNETH
Employee/Petitioner

Case# **14WC026281**

15IWCC1004

MARITIME DELIVERY SERVICES
Employer/Respondent

On 3/23/2015, 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 0.14% 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:

1315 DWORKIN & MACIARIELLO
ANTHONY IVONE
134 N LASALLE ST SUITE 1515
CHICAGO, IL 60602

0507 RUSIN & MACIOROWSKI LTD
DAVID KALIMUTHU
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

15IWCC1004

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Kenneth McCarns
Employee/Petitioner

Case # 14 WC 26281

v.

Consolidated cases: D/N/A

Maritime Delivery Services
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 Molly C. Mason, Arbitrator of the Commission, in the city of Chicago, on 2/27/15. 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. ☒ 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 _____

FINDINGS

On the date of accident, 6-25-14, 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 $5,662.02; the average weekly wage was $943.67.

Petitioner was temporarily totally disabled from July 10, 2014 (the day Dr. Hooten took him off work) through February 27, 2015 (the day of the hearing), representing 33 2/7 weeks at a weekly rate of $629.10.

On the date of accident, Petitioner was 55 years of age, married, with 0 children under 18.

Respondent has in part paid reasonable and necessary charges for reasonable and necessary medical services. RX 6.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00.

Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits in the amount of $629.10 per week from July 10, 2014 through February 27, 2015, a period of 33 2/7 weeks, pursuant to Section 8(b) of the Act.

Respondent shall pay Petitioner the following related, reasonable and necessary medical/expenses, subject to the fee schedule: 1) Advocate Medical Group, 6/25/14, $517.00, assuming this bill remains unpaid (the bill in PX 7 reflects a $0 balance after collection agency turnovers); 2) South Holland Medical Center, $14,589.00, with Respondent receiving credit for any payments it made toward this amount, as reflected in RX 6; 3) River North Pain Management, 9/9/14 and 9/23/14, $7,685.00; 4) Advantage MRI, 8/6/14 and 8/7/14, $5,657.65; 5) Advanced Ambulatory, 12/10/14 (right knee surgery), $17,672.00; and 6) Painless Anesthesia, 12/10/14 (right knee surgery), $2,750.00. Respondent shall also pay Petitioner prescription expenses totaling $904.38 from EQMD, Inc.

Respondent shall authorize and pay for prospective back-related care in the form of a visit to Dr. Dixon. Petitioner is not entitled to additional knee-related care, for the reasons set forth in the attached decision.

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 *Petition for Review* is filed within 30 days after receipt of this decision, and a review is perfected 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 of 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.

Molly C Mason
Signature of Arbitrator

March 23, 2015
Date

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MAR 23 2015

Kenneth McCarns v. Maritime Delivery Services
14 WC 26281

Arbitrator's Findings of Fact

Petitioner testified he has worked as a truck driver for 30 years. In 2005, he began working with Respondent as an owner-operator, driving his own truck. He provided his own workers' compensation insurance during this time. He became an employee, driving a Respondent-owned semi, in May 2014, after his truck broke down.

There is no dispute that Petitioner was involved in an accident while working for Respondent on June 25, 2014. Arb Exh 1. Petitioner denied being involved in any collisions during the 30 years he drove a truck before the accident.

Petitioner testified he was in good health before the accident. He did not have any left eye problems, headaches or pain in his knees, left wrist or low back.

Petitioner testified he was driving his assigned 18-wheel semi and hauling a 40,000-pound load of nuts and bolts on June 25, 2014. The accident occurred a little after 12:00 AM, at which point he was in the right lane on eastbound I-80, driving about 55 MPH. It was raining. A blue SUV was in front of him. He suddenly noticed a third vehicle, a small car, moving from the left lane across the center lane and into the right lane. This vehicle was traveling about 70 to 80 MPH. It almost hit the SUV. The driver of the SUV hit his brakes and began to fishtail. The small car went all the way over to the right shoulder, spun out and began traveling left. By this time, Petitioner had moved to the center lane. As the small car began traveling left, it struck the right front passenger side of Petitioner's semi. The impact caused Petitioner's right front tire to blow out. Petitioner lost control of the semi, drove through a concrete barrier and went down into a "ravine" that had water in it. Petitioner later clarified that the back end of the trailer remained in contact with the shoulder while the cab went down into the ravine, landing on the driver side.

Petitioner testified his head hit the driver side windshield at impact. Petitioner identified PX 5C as a photograph he took of the damaged semi a couple of days after the accident. PX 5C shows cracks and a large hole in the driver side windshield.

Petitioner testified he was wearing his seatbelt at the time of the accident. After he got the seatbelt off, he managed to exit the passenger side of the cab. He testified he was very shaken up. If there had been more water in the ditch or ravine where the cab landed, he "could have drowned." He was also concerned about having damaged the semi. He made his way up to the shoulder and realized that the driver of the small car had taken his keys and left the scene.

Petitioner testified he sat on the concrete barrier while waiting for help to arrive. The vision in his left eye was blurry. When paramedics came to the scene, he told them he did not

want to go to the hospital. He said this because he was "real nervous" and was not sure he was hurt. He also believed it was his job to stay with the vehicle. The paramedics suspected he had internal injuries and convinced him to get in the ambulance. They applied a neck brace and transported Petitioner to the Emergency Room at Advocate South Suburban Hospital.

The EMS run sheet reflects that the paramedics found Petitioner "outside truck," with Petitioner reporting that another car hit his truck, causing the truck to "jackknife into ditch," with the cab landing on the driver side. The paramedics noted "extensive damage" to the second vehicle. The run sheet reflects that Petitioner denied any injury and denied losing consciousness but had blood in or near his left eye [the writing is difficult to read]. The paramedics also noted that Petitioner did not want to go to the Emergency Room and had to be persuaded to do so.

The Emergency Room records reflect an arrival time of 1:16 AM on June 25, 2014. They also reflect that the reason for Petitioner's visit was a "major motor vehicle crash." One note reflects that Petitioner's clothing was wet. Another note, written at 1:21 AM, reflects a blood pressure reading of 179/91.

The Emergency Room physician described the accident and aftermath as follows: "Pt drives a semi. Was hit by another car that lost control, semi was jackknifed in ditch. Pt arrives via EMS & longboard & c collar." The physician described Petitioner's presentation as follows: "Pt without pain, without c/o, just 'shook up' he says. Denies LOC, did hit head he thinks. + seatbelt." Later in the same note, the physician indicated that Petitioner "does not know if he hit his head but denies any loss of consciousness. Denies any other complaints at this time, denies any pain anywhere." The physician described Petitioner's past medical history as negative.

On forehead examination, Emergency Room personnel noted a small abrasion and contusion measuring about 1.5 centimeters. Later, an Emergency Room nurse noted that Petitioner complained of left-sided chest pain, rated 3-4/10. The accompanying note describes Petitioner as "reluctant to report the pain" and "anxious s/p mvc [motor vehicle collision]." The nurse alerted the physician to this complaint. The physician then ordered an EKG, which was abnormal.

During his Emergency Room stay, Petitioner also underwent a tetanus booster shot and various radiographic studies, including chest X-rays and CT scans of his cervical spine and brain. The chest X-rays showed no gross infiltrates. The cervical spine CT scan showed mild multi-level degenerative changes and an artifact through the levels of C5, C6, C7 and T1 "without findings to suggest definitive fracture or acute subluxation." The brain CT scan was unremarkable.

When Petitioner was discharged from the Emergency Room, he was instructed to follow up with his family physician, Dr. Jackson, within one day. The discharge diagnosis was "motor vehicle collision." No prescriptions were provided. PX 1. RX 2.

Petitioner testified his wife drove him home from the hospital.

Petitioner testified that Respondent's safety representative, Wayne Hibler, came to his house a day or two after the accident and drove him to the lot where the damaged truck was parked, so as to allow Petitioner to retrieve his personal belongings. Petitioner testified he did not find any of his belongings inside the truck. While Hibler met with an insurance representative, Petitioner took three photographs of the truck. PX 5A-5C. Petitioner described the truck as "totaled." Petitioner testified that PX 5A shows the right passenger side tire that the small car struck. He testified that PX 5B shows the damage to the driver side of the truck and a large exterior mirror that was broken and hanging down. As noted earlier, he testified that PX 5C shows lines, cracks and a hole in the driver side windshield.

Petitioner testified that Hibler drove him back to Respondent's terminal, at which point he got in his own vehicle and drove home. He testified the terminal is not far from his house.

Petitioner testified he did not return to work following the accident because he was in too much pain. He stayed home, rested and tried to get better. Hibler called him on the day of the accident and told him to rest. A day or two after the accident, Respondent's terminal manager, Nicole [Xanders] called him on his cell phone and told him to get better. Hibler called him again later to set up the visit to the lot where the truck was parked. Nicole also called a second time, initially offering him the chance to drive a co-worker's truck while the co-worker was on vacation and then offering him a dispatch position. He told Nicole he would have to think about it. Nicole told him to take as much time as he needed. He "went by what [Respondent] told [him] to do." He was not familiar with accident reporting because he had never before been involved in an accident.

Petitioner acknowledged he waited until July 10, 2014 to seek treatment. He testified he waited because he thought his pain would go away and he "didn't want to create a bill," since his health coverage had not yet gone into effect. Petitioner denied being involved in any other accidents between the June 25, 2014 accident and July 10, 2014.

On July 10, 2014, Petitioner saw Dale Hooten, D.C. at AMCI – South Holland Medical Center. Petitioner testified a friend referred him to this facility. Dr. Hooten noted that Petitioner complained of injuries to his head, low back, left wrist and both knees (right worse than left) following a work-related motor vehicle accident of June 25, 2014. Dr. Hooten also noted that Petitioner "reported throbbing headaches over his left eye with tenderness to the touch and occasional blurry vision in the left eye."

Dr. Hooten described the mechanism of injury as follows:

> "Mr. McCarns was on duty as the restrained driver of a semi truck that was struck by another vehicle that had lost control while traveling on the highway, causing his truck to strike the concrete side rails and flipping his can [sic] onto the driver

side. He was thrown about in his seat, striking his head and left wrist on the interior of the vehicle, sustaining the above injuries."

Dr. Hooten noted that Petitioner's job at Respondent required him to drive "upwards of 300 miles" and that Petitioner had not returned to work since the accident. He also noted that Petitioner denied any previous accidents.

Dr. Hooten described Petitioner as walking with a limp.

On left wrist examination, Dr. Hooten noted localized swelling and possible cyst formation. On bilateral knee examination, he noted tenderness along the joint line, a full but painful range of motion and negative stress testing.

Dr. Hooten diagnosed a lumbar strain, a wrist sprain, knee sprains and a concussion with no loss of consciousness. He found all of these diagnoses to be causally related to the accident. He took Petitioner off work and recommended therapy. PX 2.

Petitioner returned to AMCI on July 14, 2014 and saw Dr. Foreman. Dr. Foreman noted that Petitioner complained of headaches, broken blood vessels and visual floaters in his eye, pain with left wrist usage, a "giving out" sensation in the right knee and popping in both knees with bending, right more than left. He indicated that Petitioner "has to drive a semi truck long distances" and felt unable to work.

On examination, Dr. Foreman noted an antalgic gait in the right leg, a scleral hemorrhage in the left eye, right knee pain and crepitus with flexion, medial knee tenderness and swelling with posterior laxity and medial laxity in the left knee.

Dr. Foreman reviewed the previous CT scan and chest X-ray results.

Dr. Foreman reached the same diagnoses as Dr. Hooten. He attributed these conditions to the accident. He recommended a wrist orthosis, a knee orthosis and a cane. He ordered X-rays of the left wrist, lumbar spine and both knees. He prescribed therapy, home exercises and medication. He instructed Petitioner to remain off work.

Petitioner testified that Dr. Foreman faxed "everything" to Respondent.

On July 16, 2014, Respondent's terminal manager, Nicole Xanders, sent Petitioner a letter indicating he had been terminated due to job abandonment effective July 10, 2014. RX 4.

After attending several therapy sessions, Petitioner returned to Dr. Foreman on August 4, 2014. Dr. Foreman described Petitioner's headaches and eye floaters as improved. He indicated that Petitioner was finding the left wrist brace useful. He noted that Petitioner was

still experiencing "giving way" and popping in his right knee. He described Petitioner's lower back as unchanged. He noted that Petitioner had been terminated.

On re-examination, Dr. Foreman noted an antalgic gait, resolution of the left eye scleral hemorrhage, lumbar midline pain with flexion at 45 and bilateral straight leg raising, wrist pain with extension, right knee pain and crepitus with flexion and left knee medial laxity and pain with flexion. He described McMurray's as positive.

Dr. Foreman ordered MRI scans of the lumbar spine and both knees. He instructed Petitioner to continue therapy and stay off work. PX 2.

On August 6, 2014, Petitioner filed an Application for Adjustment of Claim alleging left eye and back injuries stemming from an accident of June 25, 2014. Petitioner acknowledged signing this Application on July 9, 2014 but testified he did not read it.

Petitioner underwent the recommended lumbar spine MRI on August 6, 2014. This MRI showed no fractures or significant subluxations, a 2-3 mm broad-based subligamentous posterior disc protrusion/herniation at L3-L4, indenting the thecal sac without significant stenosis, a 3-4 mm broad-based subligamentous posterior disc herniation with a mildly extruded nucleus pulposus at L4-L5 indenting the thecal sac with mild generalized stenosis and a 3-4 mm posterior disc herniation at L5-S1 with a mildly extruded nucleus pulposus elevating the posterior longitudinal ligament and indenting the ventral surface of the thecal sac with mild stenosis. PX 6.

Petitioner underwent the knee MRI scans the following day, August 7, 2014. The left knee MRI showed attenuation and irregularity of the anterior cruciate ligament, giving rise to suspicion of a partial if not full tear, subtle blunting of the apical free edge of the midbody of the medial meniscus, "probably a free edge tear," a subtle horizontal irregularity involving the midbody of the lateral meniscus, "representing a tear in this area," a small joint effusion and subchondral bone marrow edema , "possibly posttraumatic bone bruising." PX 6.

The right knee MRI showed irregularity of the anterior cruciate ligament, suspicious for a tear, truncation and irregularity of the posterior horn of the medial meniscus, representing a tear, and a joint effusion. PX 6.

On August 8, 2014, Dr. Foreman reviewed the MRI reports and recommended that Petitioner see Dr. Bilko, an orthopedic surgeon, for a knee consultation as soon as possible. PX 2.

Petitioner first saw Dr. Bilko on August 14, 2014. The doctor noted that Petitioner "injured both knees as his vehicle got flipped over" in a work-related motor vehicle accident of June 25, 2014. He also noted that Petitioner complained of pain and weakness in both knees, worse in the right knee.

On right knee examination, Dr. Bilko noted a mild effusion, medial joint line tenderness and stability to varus/valgus testing. On left knee examination, he noted a trace effusion, no point tenderness on the joint lines and stability to varus/valgus testing.

Dr. Bilko opined that the knee MRI findings stemmed from the accident. He felt that the ACL tear was small and did not require repair. He recommended bilateral arthroscopic medial meniscectomies. He recommended that Petitioner remain off work and continue therapy pending scheduling of the surgeries. PX 2.

Petitioner continued attending therapy thereafter. On September 2, 2014, he returned to Dr. Foreman and indicated his headaches had improved but his right knee and low back were essentially the same. He told Dr. Foreman he wanted to undergo the knee surgery that Dr. Bilko recommended. The doctor recommended he stay off work, follow up with Dr. Bilko and try to wean off pain medication. PX 2.

On September 9, 2014, Petitioner saw Dr. Vargas at Dr. Foreman's referral. Dr. Vargas is affiliated with River North Pain Management Consultants. Dr. Vargas recorded a history of the motor vehicle accident. He indicated that the truck Petitioner was driving "hit a cement barrier and came to a stop into a ravine, tilted on the driver's side." He also indicated that Petitioner was "thrown back and forth" within the cab, hitting his body against the frame, his knees against the dashboard and his left wrist against the steering wheel. He also noted that Petitioner "received several facial bruises and a left eye bruise" as well as a sudden "pop" to his lower back followed by onset of significant low back and radicular pain.

Dr. Vargas described Petitioner as walking with an obvious limp favoring his right lower extremity and having difficulty climbing onto the examination table.

Dr. Vargas indicated he reviewed the lumbar spine MRI.

Dr. Vargas recommended a series of bilateral L4-L5 and L5-S1 transforaminal epidural steroid injections. He linked Petitioner's symptoms to the accident.

On September 23, 2014, Dr. Vargas administered bilateral L4-L5 and L5-S1 transforaminal epidural steroid injections and selective nerve root blocks at the Peterson Surgery Center. PX 3.

At Respondent's request, Petitioner underwent a Section 12 examination by Dr. Mercier, an orthopedic surgeon, on September 25, 2014.

Dr. Mercier's account of the motor vehicle accident is consistent with Petitioner's testimony. The doctor indicated that Petitioner "crashed through a concrete barrier and overturned into water ravine."

Dr. Mercier described Petitioner as a "poor historian" as to what went on in the Emergency Room. According to the doctor, Petitioner reported undergoing treatment there for a head laceration, both knees, his left wrist and his lower back. He also indicated that Petitioner reported seeing his primary care physician, "Dr. Vares," a few days after the accident and later seeing Dr. Foreman. [The Arbitrator notes that no records from a "Dr. Vares" are in evidence.]

Dr. Mercier indicated that Petitioner denied any previous and subsequent injuries to his lower back, knees, left wrist and head.

According to Dr. Mercier, Petitioner complained of constant low back pain, left wrist pain, pain, popping and locking in both knees, a head injury and occasional headaches, blurry vision and watery eyes.

On left wrist examination, Dr. Mercier noted a small moveable mass that Petitioner described as painful to touch.

On left elbow examination, Dr. Mercier noted medial epicondylar pain and a full range of motion.

On lumbar spine examination, Dr. Mercier noted "pain even to the lightest touch over the entire lumbosacral spine area." He indicated this pain increased with gentle axial shoulder compression and trunk rotation. He stated that, "even with the lightest touch, [Petitioner] demonstrates pain behaviors of groaning and shaking."

On lower extremity examination, Dr. Mercier noted intact sensation, weakness of the quadriceps, ankle toe flexors and extensors and EHL on both sides, negative straight leg raising bilaterally in the sitting position and a complaint of pain with straight leg raising in the supine position at 10 to 15 degrees.

On bilateral knee examination, Dr. Mercier noted medial and lateral joint line pain, negative Lachman testing and mild subpatellar crepitation of the right knee.

Dr. Mercier diagnosed the following: "head contusion by history – resolved."

Based on the Emergency Room records, Dr. Mercier opined that no significant structural injury to Petitioner occurred as a result of the June 25, 2014 accident. He noted those records do not document any injury to the low back, left wrist or either knee. He opined that an acute ACL or medial meniscus tear, an acute disc herniation or an injury sufficient to cause an acute cyst formation at the wrist "is not a benign event and would, at a minimum, result in immediate well-localized pain in the areas affected." He described the pathology demonstrated on the subsequent MRIs as "pre-existing and degenerative in nature and not related to" the accident.

Dr. Mercier further opined that, "except for a short period of conservative medical care for his mild head injury, all subsequent medical care, testing, lost time from work, work restrictions and disability for problems in other areas of his body were not related" to the accident. Based on the available information, he opined that Petitioner should have resumed full duty and reached maximum medical improvement within one to three weeks after the accident.

Dr. Mercier described Petitioner as "willing to falsify information regarding his medical history," indicating Petitioner told him he received care at the Emergency Room for symptomatic problems in his knees, left wrist and low back.

Dr. Bilko issued a narrative report on November 4, 2014. The Arbitrator sustained Respondent's hearsay objection to the admission of this report. The report was marked as a rejected exhibit. PX 4.

Petitioner returned to Dr. Bilko on December 4, 2014 for a pre-operative consultation. The doctor noted that Petitioner reported some improvement but was still complaining of bilateral knee weakness, worse on the right. On examination, the doctor noted no effusion, tenderness over the medial joint line and stability to valgus/varus testing. He recommended that Petitioner adhere to the surgical schedule and stay off work. PX 2.

On December 10, 2014, Dr. Bilko performed a right knee arthroscopy, medial and lateral meniscectomy and chondroplasty. In his operative report, he noted a large amount of frayed and torn tissue in the posterior portion of the medial meniscus, a tear with detachment of the articular surface of the medial aspect of the lateral femoral condyle and fraying along the anterior inner rim of the lateral meniscus. PX 2.

On December 22, 2014, Petitioner began a course of post-operative therapy at Dr. Bilko's recommendation. PX 2.

Petitioner returned to Dr. Bilko on December 30, 2014 and reported improvement in his right knee. Petitioner complained of persistent low back pain and indicated he wanted a second opinion concerning his back. Petitioner also indicated he did not feel capable of returning to work "due to difficulty driving." Dr. Bilko prescribed additional therapy and gave Petitioner a lumbar spine referral. He instructed Petitioner to stay off work and advance his exercises. PX 2.

On January 2, 2015, Petitioner saw Dr. Agrawal at Dr. Bilko's referral. Dr. Agrawal noted that Petitioner complained of persistent intermittent low back pain secondary to a truck accident of June 25, 2014. She indicated that Petitioner was deriving some relief from Hydrocodone and therapy. On examination, she noted pain in the lumbar region on straight leg raising "without radicular findings." After reviewing the MRI, she recommended a trial of bilateral L4 and L5 transforaminal epidural injections. She indicated Petitioner wanted to

proceed with these injections "under sedation." She directed Petitioner to return on January 22, 2015. PX 2.

Petitioner continued attending therapy thereafter. PX 2.

Petitioner returned to Dr. Bilko on January 16, 2015. The doctor noted improvement of the right knee and persistent symptoms in the left knee. He indicated Petitioner "would like to continue strengthening his right knee before considering surgery to the left knee." He recommended that Petitioner continue therapy and stay off work until the next evaluation in three weeks. PX 2.

Petitioner did not attend a scheduled therapy session on February 6, 2015 due to weather conditions.

Petitioner returned to Dr. Bilko on February 13, 2015. The doctor noted that Petitioner was scheduled to see a pain specialist the following week but was "unsure about proceeding with injections." He also noted that Petitioner's "knee symptoms have greatly improved." He discharged Petitioner from care and instructed him to remain off work "until cleared by Dr. Agrawal." PX 2.

On February 19, 2015, eight days before the hearing, Petitioner returned to Dr. Agrawal. The doctor described Petitioner's low back pain as unchanged and worse with sitting. She indicated Petitioner was taking Hydrocodone once a day and wanted a second opinion from a pain specialist.

On examination, Dr. Agrawal noted pain with extension over 15 degrees and pain but no radicular findings with straight leg raising. She referred Petitioner to Dr. Dixon for a second opinion concerning treatment options and recommended Petitioner try to wean off medications as able and stay off work until re-evaluation on March 17, 2015.

Petitioner testified he has not worked since the accident. He feels unable to work. He has not received any lost time benefits. He feels sad about the accident. He would undergo additional care if it were awarded.

Under cross-examination, Petitioner testified he drove a truck for Transit International and Multi Modal before being leased on by Respondent in March 2004. He has worked as a truck driver for 30 years. He was not involved in any accidents before the accident of June 25, 2014. He does not participate in sports and has no hobbies. He was honest with the paramedics who arrived at the scene of the accident. He was shaken up at that point. His left eye was "blurry" but he did not know whether he was hurt. He told the paramedics he did not want to go to the Emergency Room. He was honest with Emergency Room personnel. He was "kind of out of it" at the Emergency Room. He could not recall whether he denied pain there but he knows he was in pain when he arrived home from the hospital.

Nicole Xanders testified on behalf of Respondent. Xanders testified she has worked for Respondent for seven years. She started out handling billing and accounting and then transitioned into dispatching. She has been the terminal manager for the last three years. She oversees dispatch, hires and fires drivers and completes paperwork.

Xanders testified Petitioner became associated with Respondent in 2008. At that time, Petitioner was an owner-operator.

Xanders testified she believes she learned of Petitioner's accident from a safety employee who told her Petitioner had been struck on the highway, with the other driver leaving the scene afterward.

Xanders testified she called Petitioner via his cell phone on June 27, 2014. Petitioner identified himself. She told him Respondent could keep him busy in its office or, if he felt comfortable, he could drive another driver's truck while that driver was out. Petitioner asked if he could think about it and get back to her, indicating he was "sore." Petitioner did not call her back. Petitioner did not report any injuries that would have prevented him from driving. Merritt Harrison, Respondent's general manager, also telephoned Petitioner.

Xanders testified she sent Petitioner a letter on July 16, 2014, indicating he had been terminated due to job abandonment. This letter reads as follows:

> "I am writing to advise you that we consider your job abandoned and have processed your termination from MDS effective July 10, 2014.
>
> I called you on June 27, 2014 to advise that we had work for you in the office while we waited on disposition of the tractor and that we had a driver scheduled for vacation and needed you to drive that tractor. You declined and said you would think about it. You never called back.
>
> Merritt Henderson called you on July 10, 2014 and asked you when you would return to work. You advised you were going to see a doctor that day. As of that day you had not reported any injury to MDS that would prevent you from working."

RX 4.

Under cross-examination, Xanders testified that Respondent never made a written offer of light duty. Petitioner drove his own truck for Respondent between 2008 and May 2014. Between May 2014 and the accident, Petitioner drove a truck owned by Respondent. She

never saw the truck after the accident and does not know whether it was reparable. Her boss, Merritt Harrison, contacted Petitioner on July 10, 2014. Petitioner told him he was going to a doctor. Petitioner did not tell her he went to a doctor but she is aware he went to the Emergency Room. It is customary to terminate an employee if the employee does not let anyone know what he is doing.

Arbitrator's Credibility Assessment

The duration of Petitioner's association with Respondent weighs in Petitioner's favor, credibility-wise.

Petitioner's account of the mechanics of the accident was detailed and convincing. No one contradicted Petitioner's testimony that his right front tire blew out, causing the semi he was operating to veer off I-80 and go downward, with the cab twisting and landing on the driver's side in a water-filled ditch or ravine. The EMS run sheet, which documents blood in or near Petitioner's left eye, supports Petitioner's testimony of hitting the windshield with sufficient force to break the glass.

Respondent's examiner, Dr. Mercier, described Petitioner as untrustworthy and prone to exaggeration. This is not at all how Petitioner came across at the hearing. Rather, he came across as still stunned he was involved in a major collision and unable to remember everything that happened in the hours following this collision.

Overall, the Arbitrator found Petitioner credible.

Arbitrator's Conclusions of Law

Did Petitioner establish a causal connection between the undisputed work accident of June 25, 2014 and his various claimed conditions of ill-being?

The Arbitrator finds that Petitioner established causation as to head, left wrist, low back and bilateral knee conditions of ill-being. The Arbitrator further finds that Petitioner established causation as to the need for the back injection he underwent on September 23, 2014 and the right knee surgery he underwent on December 10, 2014.

In so finding, the Arbitrator relies in part on Petitioner's credible denial of any pre- and post- accident injuries or problems involving the enumerated body parts. While the Emergency Room records do not reflect complaints of wrist, back or knee pain, Respondent's terminal manager acknowledged that Petitioner told her he was "sore" when she talked with him two days after the accident. The Arbitrator also relies in part on the objective MRI findings and the fact that both Dr. Bilko and Respondent's examiner, Dr. Mercier, noted medial joint line tenderness on knee examination.

The Arbitrator also assigns weight to the circumstances of the accident. No one disputed Petitioner's testimony concerning the size of the semi, the weight of the load, the precipitating tire blowout and the fact that the cab went down into a ravine, turning on its side in the process, with the rear of the trailer remaining up on the road. Nor did anyone question the accuracy of the photographs of the truck or Petitioner's statement that the truck was "totaled." The Arbitrator finds it very plausible that the accident could have caused Petitioner to move around inside the cab, despite his seatbelt usage. While the Emergency Room records do not reflect complaints of left wrist, back or knee pain, they do reflect that Petitioner was involved in a "major motor vehicle accident," that he sustained a head contusion/abrasion, that he was "reluctant to complain" about chest pain, that he was "anxious" about the accident and that, at discharge, he was instructed to seek follow-up care.

The Arbitrator views Petitioner as a hard-working individual whose shock at having landed in a water-filled ditch and concern about having "totaled" a Respondent-owned semi only a few weeks after converting to employee status likely affected the reliability of his Emergency Room reporting. The Arbitrator attributes the post-Emergency Room delay in care to Petitioner thinking he was merely "sore" and relying, ultimately to his detriment, on Hibler's and Xander's entreaties to "rest up."

The Arbitrator finds Dr. Mercier's causation-related opinions unpersuasive. Dr. Mercier conceded that the accident was of sufficient magnitude to cause a head injury that would have required treatment and some time off yet insisted the accident could not have caused injuries to other body parts. Dr. Mercier's theory that the pathology shown on MRI pre-existed the accident is not well-explained. There is no evidence indicating that Dr. Mercier ever reviewed Dr. Bilko's operative report.

What is Petitioner's average weekly wage?

Petitioner claims total earnings of $6,449.97 and an average weekly wage of $1,025.43 while Respondent claims an average weekly wage of $921.42. Arb Exh 1.

Petitioner did not testify to his earnings or work schedule, other than to say he became a Respondent employee on May 12, 2014. Nor did he offer any wage-related documentary evidence.

Respondent offered into evidence a "Detail Earnings Register" reflecting it paid Petitioner the following amounts on May 23 and 30, 2014 and June 6, 13, 20 and 27, 2014: $892.05, $1,001.84, $742.64, $1,195.83, $363.46 and $1,476.00. The document describes these amounts as "regular pay." They total $5,662.02. The document also reflects that Petitioner received another check in the amount of $787.95 after the accident, on July 3, 2014. RX 5. It may well be that this check represents earnings for the last week Petitioner worked before the accident but no one testified to this.

RX 5 does not show any hourly rate or how many hours Petitioner worked per week. Petitioner did not object to RX 5.

The only thing that is clear is that Petitioner worked between May 12 and the accident of June 25, 2014, was paid on a weekly basis (with the first check dated May 23) and received six checks totaling $5,662.02 before the accident. Using the second method of calculation set forth in Section 10, the Arbitrator arrives at an average weekly wage of $943.67 by dividing the pre-accident regular earnings of $5,662.02 by six weeks. This average weekly wage gives rise to a temporary total disability rate of $629.10.

Is Petitioner entitled to temporary total disability benefits?

Petitioner claims he was temporarily totally disabled from June 26, 2014 (the day after the accident) through the hearing of February 27, 2015. Arb Exh 1. Respondent disputes this claim, based on its causation defense and on its alleged offer of light duty.

The Arbitrator finds that Petitioner was temporarily totally disabled from July 10, 2014 (the first day Petitioner was taken off work) through the hearing of February 27, 2015, a period of 33 2/7 weeks. The Arbitrator views Petitioner's causally related conditions of ill-being as unstable during this period.

The Arbitrator declines to award temporary total disability benefits from June 26, 2014 through July 9, 2014, as requested by Petitioner. While the Emergency Room physician directed Petitioner to seek follow-up care, there is no evidence indicating he imposed work restrictions.

The Arbitrator views Xander's June 27, 2014 offer of office work irrelevant since, as of July 10, 2014, Petitioner was taken off work altogether and there is no evidence indicating any treating physician subsequently found Petitioner capable of light duty. The Arbitrator is not persuaded by Dr. Mercier's opinion that Petitioner could have resumed full semi driving duty within one to three weeks of the accident.

Is Petitioner entitled to reasonable and necessary medical expenses?

Petitioner claims bills from various medical providers totaling $49,775.03. PX 7. Respondent disputes this claim, based on liability, and also asserts it paid certain medical expenses per the print-out in RX 6.

The first bill that Petitioner claims is an Advocate Medical Group bill in the amount of $517.00 stemming from physician services provided at the Emergency Room on the day of the accident. The Arbitrator, having found in Petitioner's favor on the issue of causation, views Respondent as liable for these services but notes that the bill in evidence (PX 7) reflects a $0 balance after "collection agency turnovers." If the bill remains unpaid, and was not written off, Respondent shall pay it, subject to the fee schedule.

Petitioner also claims bills from South Holland Medical Center totaling $14,589.00 relating to treatment provided or overseen by Drs. Hooten, Foreman and Bilko. The Arbitrator has already found in Petitioner's favor on the issue of causation. The Arbitrator views the treatment rendered by Drs. Hooten, Foreman and Bilko as related, reasonable and necessary. It appears, based on the payment print-out, that Respondent paid some of the charges from South Holland Medical Center. RX 6. The Arbitrator awards Petitioner the bills from South Holland Medical Center with Respondent receiving credit for any payments it made toward those bills.

Petitioner also claims a bill in the amount of $7,685.00 from River North Pain Management for back-related evaluation and injection provided by Dr. Vargas on September 9 and 23, 2014. RX 6 shows that Respondent paid $0 toward this bill. The Arbitrator, having previously found that Petitioner established causation as to the need for this treatment, awards Petitioner this bill, subject to the fee schedule.

Petitioner also claims prescription expenses from EQMD, Inc. totaling $904.38 relating to medication prescribed by Dr. Foreman on October 1, 2014. The Arbitrator, having found in Petitioner's favor on the issue of causation, finds it reasonable and necessary for Dr. Foreman to have prescribed medication based on Petitioner's complaints. Respondent's print-out reflects various payments to EQMD but the Arbitrator is not able to determine whether those payments relate to the medication prescribed on October 1, 2014. The Arbitrator awards Petitioner $904.38 in prescription expenses from EQMD, Inc. with Respondent receiving credit for any payments it may have made toward those expenses.

Petitioner also claims Advantage MRI bills totaling $5,657.65 relating to the MRI scans Petitioner underwent on August 6 and 7, 2014. The Arbitrator, having found in Petitioner's favor on the issue of causation, finds these scans reasonable and necessary, based on Petitioner's back and bilateral knee complaints. RX 6 does not reflect any payments to Advantage MRI. The Arbitrator awards the $5,657.65 Advantage MRI bill, subject to the fee schedule.

Petitioner also claims itemized bills from Advanced Ambulatory ($17,672.00) and Painless Anesthesia ($2,750.00) relating to the right knee surgery performed by Dr. Bilko on December 10, 2014. RX 6 does not reflect any payments to Advanced Ambulatory or Painless Anesthesia. The Arbitrator, having previously found that Petitioner established causation as to the need for this surgery, awards these expenses, subject to the fee schedule.

Is Petitioner entitled to prospective care?

Petitioner testified he would be willing to undergo additional care if it were awarded.

The Arbitrator declines to award any knee-related prospective care. Dr. Bilko, the surgeon who operated on Petitioner's right knee, discharged Petitioner from care from a knee

perspective on February 13, 2015, while simultaneously recommending Petitioner follow up with Dr. Agrawal. Dr. Agrawal had previously prescribed a series of back injections. Dr. Agrawal's last note, dated about a week before the hearing, reflects Petitioner was scheduled to see a pain specialist, Dr. Dixon, to discuss back treatment options. An earlier note authored by Dr. Bilko reflects Petitioner was "unsure" about undergoing more injections.

The Arbitrator awards prospective care in the form of a visit to Dr. Dixon to determine whether Petitioner requires any additional care for his back.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ronald Hinde,

Petitioner,

15IWCC1005

vs.

NO: 08WC5382

Hot Shot Delivery System,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of medical expenses, permanent disability, temporary disability, penalties, fees 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 13, 2015, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $42,900.00. 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: DEC 3 1 2015
o12/15/15
RWW/rm
046

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

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

15IWCC1005

HINDE, RONALD
Employee/Petitioner

Case# **08WC005382**

HOTSHOT DELIVERY SYSTEMS
Employer/Respondent

On 3/13/2015, 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:

4037 CHRISTINE M ORY PC
511 W WESLEY ST
WHEATON, IL 60187

1120 BRADY CONNOLLY & MASUDA PC
NICOLE RUSSO WEISBRODT
10 S LASALLE ST SUITE 900
CHICAGO, IL 60603

15IWCC1005

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook/DuPage)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

RONALD HINDE
Employee/Petitioner

v.

HOTSHOT DELIVERY SYSTEMS
Employer/Respondent

Case # **08** WC **5382**

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 **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago** on **04/09/14, 05/12/14, 07/08/14, 08/14/14** and in **Wheaton** on **09/12/14**. 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. x 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. x 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. x What temporary benefits are in dispute?
☐ TPD ☐ Maintenance x TTD

M. x Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. Other ___

FINDINGS

On the date of accident, **11/14/2007**, 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 **$40,680.12**; the average weekly wage was $**782.31**.

On the date of accident, Petitioner was **46** years of age, *single* with **3** dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**137,053.82** for TTD, $ for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**137,053.82**.

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

ORDER

RESpondent pay Petitioner temporary total disability benefits of **$521.54**/week for **344** weeks, commencing **January 11, 2008** through **August 14, 2014**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **$137,053.82** for temporary total disability benefits that have been paid.

Respondent shall pay for reasonable and necessary medical services in the amount of **$491.13,** pursuant to Section 8(a) and subject to Section 8.2 of the Act

Respondent shall pay the cost of the prospective medical and surgical services, pursuant to Section 8(a) and subject to Section 8.2 of the Act, that Dr. Tyler Koski prescribed on October 9, 2012.

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

March 13, 2015
Date

ICArbDec19(b)

MAR 13 2015

15IWCC1005

STATE OF ILLINOIS)
)
COUNTY OF DU PAGE)

ILLINOIS WORKERS' COMPENSATION COMMISSION

19(b) ARBITRATION DECISION ADDENDUM

RONALD HINDE	)	
	)	
v.	)	No. 08 WC 05382
	)	
HOTSHOT DELIVERY SYSTEMS	)	

INTRODUCTION

An earlier proceeding under Section 19(b) was heard by Arbitrator Erbacci. As respondent had accepted responsibility for petitioner's right shoulder condition, the issue before Arbitrator Erbacci was whether petitioner had injured his neck as a result of the work accident of November 14, 2007. Arbitrator Erbacci determined petitioner sustained herniated discs at the C4-C5, C5-C6, and C6-C7 as a result of the work accident and awarded temporary total disability and prospective medical care. With regard to prospective medical care, Arbitrator Erbacci wrote the following:

> "The findings and conclusions of the Arbitrator relating to the issue of causal relation are adopted and incorporated herein. The evidence supports a finding that the Petitioner needs additional treatment for his cervical condition which the Arbitrator has found to be causally related to the work accident of November 14, 2007. Therefore, the Arbitrator awards the cost of the prospective medical treatment for the Petitioner's cervical spine as prescribed by Dr. Zygmunt of Elmhurst Hospital Pain Clinic, including evaluation by a spine surgeon as recommended by Dr. Zygmunt."

As petitioner had not yet seen a spine surgeon at the time of the initial hearing, there was no award for surgery, only for an evaluation. Arbitrator Erbacci specifically wrote that even though Dr. Avi Bernstein did not believe petitioner's cervical condition was caused by the work accident, the doctor acknowledged that petitioner had a central herniated disc. Arbitrator Erbacci also awarded penalties.

The Commission affirmed Arbitrator Erbacci's award on all issues except for the award of penalties.

Respondent paid for all treatment and temporary total disability until November 17, 2013. Respondent now disputes the need for the cervical surgery prescribed by Dr. Tyler Koski of Northwestern Memorial Hospital, as well as petitioner's entitlement to ongoing temporary total disability benefits and other medical treatment, based upon the opinions of Dr. Steven Mather and Dr. Nikhil Verma.

FINDINGS OF FACTS

Petitioner testified that since the last arbitration hearing, he has been under the care of Dr. Christine Kassa of the Elmhurst Pain Center. (PX 2a, PX 2b, PX 2c) Petitioner has participated in a home exercise program. He has received trigger point injections, cervical epidural steroid injections, pain management medication, and other medication. The prescribed medication has included Norco, OxyContin, Ambien and Xanax. The steroid injections brought him some relief up until he could no longer have injections due to petitioner's newly diagnosed diabetic condition.

Thereafter, Dr. Kassa referred petitioner to Dr. Thomas Brown, a neurosurgeon. Unfortunately, Dr. Brown had retired, so petitioner was unable to see him. Therefore, Dr. Kassa referred petitioner to Dr. Sean Salehi, whom he saw on March 27, 2012. Dr. Salehi took a history, reviewed the August 18, 2011 MRI of the cervical spine, and examined petitioner. (PX 3) In the Impressions & Recommendations section of his report addressed to Dr. Kassa, Dr. Salehi wrote the following:

> "Problem # 1: CERVICAL SPONDYLOSIS (ICD-721.0)
> Mr. Hinde has neck and bilateral radicular symptoms due to spondylosis. However, given the diffuse but mild nature of the spondylosis and the fact there is no foraminal stenosis, I do not recommend any surgical intervention. He is not pleased with the fact I have no surgical treatment for him hence I am sending him for a second opinion with Dr. Tyler Kosk (sic), Neurosurgery, at Northwestern Hospital. I also discussed with him that he may obtain facet injections from C4-7 by you if has (sic) not had it in the past which may improve his symptoms. He should maintain a diligent home exercise program and quit smoking in order to benefit his overall health. He does not need to return to see me although I would be willing should the need arise." (PX 3)

Dr. Koski saw petitioner on October 30, 2012. The doctor took a history, reviewed the 2008 and 2011 MRIs of the cervical spine, conducted an examination of petitioner. Dr. Koski noted a positive Spurling's sign on the right side with reproduction of the right shoulder pain. (PX 4) In the Assessment section of his Progress Notes, Dr. Koski wrote the following:

> "This is a 51-year-old man with a history 35-year history (sic) of smoking. He was a Workman's Comp case of a right shoulder injury in 2007. The patient is status post rotator cuff repair x 2. The patient has complaints of constant symptoms consistent with cervical spondylosis with right polyradiculopathy mainly related to the shoulder and proximal arm. His cervical MRI is congruent with subaxial spondylosis, worse at C4-5, C5-6, C6-7." (PX 4)

Dr. Koski discussed Mr. Hinde's pathology with him. The doctor noted that petitioner certainly does have degenerative disc disease in his neck. He has C4-5, C5-6, and C6-7, all with small central disc herniations. At C5-6, he has a broad-based disc herniation that does cause what appears to be some foraminal stenosis on the right side. He has a large disc osteophyte complex on the left side that actually is more impressive, but he believes that petitioner has bilateral radiographic compression. Petitioner also has a disc herniation that also causes some lateral narrowing of the spinal canal and some impression upon the neural elements anteriorly at the C4-5 level. (PX 4)

Dr. Koski discussed, with petitioner, surgical intervention. They discussed the long-standing nature of his symptoms. They discussed that some of the pain, particularly the trapezius and pain that radiates into his arm, would seem to be amenable to surgical intervention. Dr. Koski noted that petitioner has seen multiple surgeons in the past and has not been thought to be a good surgical candidate; the duration of his symptoms, the multiple opinions, the nature of the Workman's Comp injury - - all of these seem to raise some red flags in terms of opportunity for maximum recovery. However, Dr. Koski concluded, he does think petitioner has radiographic imaging that could potentially be related to his symptoms and he discussed with petitioner that he is willing to conduct further investigation for potential intervention. (PX 4)

Dr. Koski has recommended a three-level anterior cervical discectomy and fusion. To achieve that, Dr. Koski wrote, "the patient should stop smoking." If the patient "is compliant with 60 days of no smoking and passes a urine test," he will order a repeat MRI and schedule the patient for surgery. Dr. Koski further wrote: "The patient has promised us that he will stop smoking." (PX 4)

Petitioner testified that he has tried to quit smoking and has succeeded to some extent. He was on Wellbutrin and tried to obtain a patch, which he was unable to get due to lack of assistance. He also enrolled in a program through the state at a recommendation of the doctors at the Diabetic Clinic. He had been in the program less than a month at the time of the initial hearing of April 9, 2014. He testified that he is down from two and a half packs a day to about a half a pack a day.

Dr. Koski's chart notes indicate that petitioner must be compliant "with 60 days of no smoking" and petitioner "would need to be completely cigarette-free for a minimum of eight weeks." (PX 4)

Petitioner testified that Dr. Koski told him that he wants petitioner to be smoke for four to six weeks prior to the surgery. (Tr. p. 23)

Petitioner testified on June 12, 2014 that he continues to work on stopping his smoking.

Petitioner testified that since January 2010, his condition has declined in that he has a lot of pain in his neck and shoulder and has constant headaches. He further testified that the diabetes he has developed has made it more difficult for him. (Tr. pp. 16-17)

When petitioner saw Dr. Salehi, Dr. Koski and Dr. Mather, he advised them of all the medication that Elmhurst Pain Clinic had prescribed for him. (Tr. pp. 18, 28) Petitioner testified that he has been compliant with such medications (Tr. p. 18) and sees the doctors at this clinic every three months and sometimes more often if he has a problem. At each appointment, Dr. Kassa conducts a complete examination of petitioner, which includes a pain score study. (Tr. pp. 19-20, PX 2a, PX 2b, PX 2c)

Petitioner continues to operate SRS (Specialize Repair Services), which is the same business he was operating at the time of the 2010 arbitration hearing. He further testified that he is earning a lot less at SRS than he earned when he previously testified. In 2013, petitioner did approximately three to four jobs through SRS with his assistant, Michel Baker, doing the actual physical work. (Tr. pp. 23-25)

Petitioner was originally scheduled to see Dr. Steven Mather at respondent's request in February 2013. On the morning of the scheduled exam, petitioner was extremely ill with the flu. He called the doctor's office to advise him he would not be able to attend the exam because of the illness. The appointment was rescheduled for April 8, 2013. However, at that time he was just been diagnosed with diabetes and the prescribed medication knocked him out. He was sleeping for hours at a time and slept through the April 8, 2013 appointment.

Dr. Mather's examination was re-scheduled for May 20, 2013. (Tr. p. 10) On May 20, 2013, Dr. Mather took a history from petitioner, reviewed the imaging studies, and conducted a physical examination of petitioner. (Tr. pp. 15-23) His examination was negative for radiculopathy (negative Spurling's Maneuver). His reviewed the MRI of May 17, 2008, which he interpreted as showing degenerative changes at C4, C5, C6, C7 and more advanced degeneration at C-5, C6 with some osteophytes. These osteophytes were read as disc protrusions. However, Dr. Mather classified them as hard disc herniations. (RX 4, p. 21) He diagnosed petitioner with status post right shoulder arthroscopy and felt that there was some functional overlay in this case. (Tr. p. 23)

Dr. Mather testified that he disagreed with Dr. Koski's surgical recommendation for petitioner to undergo an anterior cervical discectomy and fusion. Dr. Mather offered the following basis for such opinion:

> "First of all, I didn't find any correlating physical examination findings that were objective. Neither did anybody else. Dr. Koski didn't find any objective physical examination findings. He found a degenerative condition that we all get by the age of fifty-one. And he found subjective weakness of his right biceps. And that, to me, would not indicate a surgical situation. For someone to be an appropriate surgical candidate, you would have to have a positive Spurling's Maneuver to reproduce their radicular pain; you would have to have some objective exam findings, such as a decreased reflex, some atrophy. If you really want to give them the benefit of the doubt, they would have paresthesias, which are a subjective complaint, in the appropriate dermatome. He had none of that. So, to offer a smoker a three-level fusion, in the absence of any of that would not be in the best interests of this patient. (RX 4, pp. 24-25)

Dr. Mather further testified that petitioner did not advise him that he was taking or being prescribed OxyContin. (RX 4, p. 25)

Petitioner did not recall whether or not he told Dr. Mather that he was taking OxyContin. (Tr. pp. 28-29)

Dr. Mather did not believe petitioner should be prescribed ongoing narcotics such as OxyContin and Norco, although he did not review any medical records from Elmhurst Pain Center for treatment after the 2010 arbitration hearing.

Dr. Mather opined that petitioner did not sustain an injury to his neck as a result of the work accident. With the exception of Dr. Salehi's report, Dr. Koski's report and the MRIs of May 18, 2011 and August 18, 2011, Dr. Mather reviewed only the treatment records that preceded the 2010 arbitration hearing that included the report of Dr. Richard Johnston, which was not allowed into evidence at that time. (RX 4, p. 43)

Dr. Mather concluded that petitioner could return to work without restrictions.

Dr. Mather knew Dr. Koski and believed he had a very good reputation within the medical community. (RX 4, p. 42)

After petitioner pre-tried the case before Arbitrator Carlson, he tried to schedule a return visit to Dr. Koski. Dr. Koski's staff member told petitioner that he need not schedule a return visit or undergo another MRI since they had all the necessary information.

On July 31, 2013, at respondent's request and pursuant to Section 12 of the Act, petitioner presented to Dr. Nikhil Verma for an examination of his right shoulder. Dr. Verma took a history, conducted a physical examination, and reviewed imaging studies.

He concluded that petitioner was status post right shoulder SLAP repair. Dr. Verma found no evidence of ongoing right shoulder pathology and found that petitioner's primary complaints appeared to be cervically mediated. With regard to his right shoulder, Dr. Verma declared petitioner to be at MMI and saw no basis for ongoing restrictions. (RX 2)

Petitioner testified that he does not drink alcohol. Yet, on October 8, 2013, a policeman pulled him over for a safety check. Petitioner was driving home from a reunion that night and admitted that he had had a couple of drinks. Petitioner's license was revoked when he was charged with a DUI. Petitioner has been unable to get his license reinstated because he cannot afford the reinstatement fee. Petitioner pleaded guilty only to the charge of reckless driving.

Petitioner has had no intervening accidents.

The records from Elmhurst Pain Clinic reflect petitioner returned to the Pain Center on February 10, 2010 after the original Commission decision was rendered. He received trigger point injections and then epidural injections. In April 2011, petitioner was diagnosed with Type I Diabetes. He originally was prescribed Norco and then OxyContin. The doctors at the Pain Clinic indicated that if conservative treatment did not alleviate petitioner's problem, surgical intervention may be necessary. According to the Pain Clinic records, petitioner's condition continued to deteriorate with no precipitating factors to the point that in November 2011, he was referred to Dr. Thomas Brown for a neurosurgical evaluation. (PX 2a, PX 2b, PX 2c)

Pharmacist Benjamin Link, of Modern Medical, testified on behalf of respondent via deposition. Link was hired by Country Companies to prepare a report relative to the petitioner's prescription medication use. Link's report began with the statement "The IPE (Independent Pharmaceutical Evaluation) is not intended to be utilized in place of a licensed medical practitioner's independent medical examination, opinion, and/or practice." In this case, Modern Medical is the pharmacy benefits manager, which acts as an intermediary between the pharmacy and the insurance company. (RX 8)

It was Link's opinion that Ambien was to be used for up to 35 nights. Link also believed petitioner was being prescribed a high amount of opioids, specifically the Norco and the OxyContin, which should be managed by a pain/addiction specialist. Link did not have the pain scores to evaluate the efficiency of the opioids. Although Link questioned the prescriptions, he agreed that petitioner was compliant with the use of the medication prescribed. Link agreed that one way to wean petitioner off the medication was to provide other treatment, including surgery. Link did not know that petitioner's pain doctor, Dr. Kassa, monitored petitioner's use of the medication. (RX 8)

CONCLUSIONS OF LAW

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

The Commission has already concluded that petitioner's cervical condition was caused by the work accident. The previous award specifically indicated petitioner sustained herniated discs at the C4-C5, C5-C6, and C6-C7 levels. On May 20, 2013, which was five and half years after petitioner's accident, Dr. Mather classified petitioner's condition as hard disc herniations at C4, C5, C6 and C7.

Since the original award, petitioner has tried various injections, home exercise therapy and medication with limited success.

There is no evidence that petitioner sustained an intervening accident.

Dr. Kassa referred petitioner to Dr. Salehi. On March 27, 2012, Dr. Salehi opined that petitioner's condition did not warrant surgery. However, Dr. Salehi suggested that petitioner see Dr. Koski, a neurosurgeon at Northwestern Memorial Hospital. Dr. Koski examined petitioner on October 9, 2012. Dr. Koski reported that the MRIs done in 2008 and 2011 showed some degenerative disc disease and also small disc herniations at C4-5, C5-6 and C6-7, as well as a broad-based disc herniation at C5-6 with some foraminal stenosis on the right side. Dr. Koski agreed that petitioner could undergo an anterior cervical discectomy and fusion only after he is off cigarettes for 60 days.

Petitioner's diagnosis of herniated discs has remained the same since the original hearing on January 15, 2010. Dr. Mather, respondent's examining doctor, did not offer any intervening cause of petitioner's cervical problem. In fact, Dr. Mather agreed with the diagnosis of hard herniated discs at the C4 through C7 level.

Dr. Mather testified that Dr. Koski did not make any positive objective findings. Yet when Dr. Koski examined petitioner on October 9, 2012, he noted a positive Spurling's sign on the right side with reproduction of the right shoulder pain.

Dr. Mather testified that the Spurling's Maneuver is the gold standard for testing for nerve root compression from the cervical spine. Dr. Mather testified that nerve root compression would also be referred to as radiculopathy. (RX 4, p. 19)

The preponderance of the evidence supports a finding that petitioner's herniated discs at the level of C4 through C7 and his ongoing complaints of cervical pain have not changed since the original hearing, have not improved with conservative care and now requires surgery.

Furthermore, as the Commission has already ruled that petitioner sustained herniated discs at the C4 through C7 levels. Therefore the issue of whether petitioner's cervical herniated discs are causally related to the accident is *res judicata*.

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?

Petitioner claims unpaid bills for prescription medication in the amount of $491.13.

Respondent relies on Dr. Mather's opinion that petitioner should be weaned off his medication and rehabilitation, without offer any specific treatment. The majority of Dr. Mather's opinions focused on the cause of the cervical problem, petitioner's smoking and petitioner's use of narcotic prescription medication rather than on whether surgery was necessary to cure petitioner of the already decided herniated disc.

In fact, Dr. Mather was not provided with any of the Elmhurst Pain Center records from after the 2010 arbitration hearing. Therefore, the Arbitrator gives little, if any, weight to Dr. Mather's opinions as they relate to the necessity of the prescriptions.

Respondent also offered the opinion of Pharmacist Benjamin Link, an employee of Modern Medical, to comment on the reasonableness and necessity of the medication. The Arbitrator gives less weight to the opinions of Benjamin Link than he gives to the opinions of Dr. Kassa as Mr. Link agreed that the opinions of the treating physician would supersede his own opinions. Mr. Link agreed that petitioner was compliant with the prescriptions prescribed by the doctors at Elmhurst Pain Clinic.

Elmhurst Pain Clinic prescribed medication for petitioner. Petitioner testified that he advised both Dr. Salehi and Dr. Koski of the medication he was being prescribed. Neither doctor voiced a concern with such medications.

For these reasons, the Arbitrator awards the sum of $491.13 for prescriptions.

K. Is petitioner entitled to prospective medical treatment care?

The issue before this Arbitrator is whether the prescribed surgery by Dr. Tyler Koski is reasonable and necessary to cure petitioner of his cervical injury. Petitioner has received conservative treatment, which included injections, home exercises and pain medication from Elmhurst Pain Center. As early as September 2010, the doctors at Elmhurst Pain Center advised petitioner that if conservative treatment that included cervical epidural injections and pain medication did not alleviate his symptoms, surgical intervention may be required. Unfortunately, the injections did not help and had to be stopped due to the diagnosis of Type I Diabetes.

Thereafter, petitioner was referred to Dr. Brown, who retired and then to Dr. Salehi. Dr. Salehi did not believe surgery would help, but offered to refer petitioner to Dr. Koski of Northwestern Memorial Hospital. Dr. Koski determined that petitioner is a candidate for three-level anterior cervical fusion.

Respondent offered the opinions of Dr. Mather to refute the need for further surgery. Dr. Mather seems to focus on whether or not the neck condition was caused by the work accident and whether or not the petitioner was being prescribed too much pain medication.

The Commission has already ruled that petitioner has cervical herniated discs that were caused by the work accident. Thus, that issue is *res judicata.* No treating doctor voiced a concern with the pain medication petitioner has been prescribed. Dr. Koski, a neurosurgeon at Northwestern Memorial Hospital, has recommended surgery. Since the first hearing, petitioner's condition has not improved with conservative treatment. In fact, it has deteriorated.

The Arbitrator finds the opinions of Dr. Koski and Dr. Kassa to be more persuasive than those of Dr. Mather, Dr. Salehi and Pharmacist Link.

Based on the consistency of petitioner's complaints of pain to his neck, shoulder and upper extremity since January 2010, the failure of conservative modalities to provide anything more than temporary pain relief and the medical records and opinions of Dr. Kassa and Dr. Koski, the Arbitrator finds the need for the three-level fusion surgery to be causally related to the accident of November 14, 2007.

The Arbitrator finds that petitioner is entitled to undergo the three-level, anterior discectomy and fusion surgery that Dr. Koski has prescribed. Such surgery is reasonable, necessary and related to petitioner's November 14, 2007 accident. Therefore, the Arbitrator orders respondent to pay the costs of such surgery, pursuant to Section 8(a) and subject to Section 8.2 of the Act.

L. What temporary benefits are in dispute? TTD

Petitioner had been awarded TTD through the last hearing date of January 10, 2010.

A note authored by Dr. Kassa and dated November 11, 2010 states the following:

> "To Whom It May Concern: Ron Hinde is a patient at The Center for Pain Management at Elmhurst Hospital. He is currently being treated for neck pain that radiates in to his right upper extremity. Ron should remain off of work until further notice while he is undergoing treatment." (PX 1)

Respondent paid TTD benefits until November 17, 2013. TTD benefits were terminated, based on the opinions of Dr. Steven Mather.

Based on the consistency of petitioner's cervical complaints and the opinions of Dr. Kassa, the Arbitrator awards TTD benefits through the hearing date of August 14, 2014.

The Arbitrator makes this finding despite the fact that petitioner missed two examinations scheduled with Dr. Mather.

Section 12 of Act states, in pertinent part, the following:

"If the employee refuses so to submit himself to examination or unnecessarily obstructs the same, his right to compensation payments shall be temporarily suspended until such examination shall have taken place, and no compensation shall be payable under this Act for such period."

Petitioner testified, and the email messages between petitioner's counsel and respondent's counsel confirm, that the reason petitioner missed the two Section 12 examinations was due to his health. The Arbitrator finds that petitioner did not refuse or unnecessarily obstruct to submit to respondent's examinations.

Therefore, the Arbitrator finds that petitioner is entitled to TTD benefits from January 16, 2010 through August 14, 2014. (AX 1) Respondent is entitled to a credit in the amount of $137,053.82 for TTD benefits previously paid, and this amount includes payments from the original award (January 11, 2008 through January 15, 2010) entered by the Commission on September 21, 2010.

M. Should penalties or fees be imposed upon Respondent?

Petitioner failed to appear for two Section 12 examinations by Dr. Mather.

The Arbitrator finds that the imposition of penalties and attorneys' fees in this case is not warranted as respondent relied on the medical opinions of Dr. Mather and Dr. Verma and the testimony from Benjamin Link to contest payment of medical expenses and temporary total disability benefits beyond November 17, 2013. The Arbitrator finds that such reliance was not unreasonable.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☒ 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

David Teafoe,

Petitioner,

15IWCC1006

vs.

NO: 12 WC 1797

Weatherguard Roofing,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, notice 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 27, 2015, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

15IWCC1006

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $5,000.00. 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: DEC 3 1 2015
O12/16/15
RWW/rm
046

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

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

15IWCC1006

TEAFOE, DAVID
Employee/Petitioner

Case# **12WC001797**

WEATHERGUARD ROOFING
Employer/Respondent

On 3/27/2015, 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:

1869 PRESBREY & ASSOC PC
KURT A NIERMANN
821 W GALENA BLVD
AURORA, IL 60506

5074 QUINTAIROS PRIETO WOOD & BOYER
MICHAEL SCULLY
180 N STETSON AVE SUITE E4525
CHICAGO, IL 60601

15IWCC1006

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DAVID TEAFOE
Employee/Petitioner

v.

WEATHERGUARD ROOFING
Employer/Respondent

Case # **12** WC **1797**

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 **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Geneva IL**, on **2/20/15**. 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. [ ] 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. [x] 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. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

15IWCC1006

FINDINGS

On the date of accident, **12/18/11**, 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 $**53,010.36**; the average weekly wage was $**1,019.43**.

On the date of accident, Petitioner was **50** years of age, ***married*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent has paid no benefits and is not entitled to any credit under Section 8(j) or otherwise. ARB EX 1.

ORDER

Respondent shall pay Petitioner the reasonable and necessary medical expenses incurred in the care and treatment of his causally related condition pursuant to Sections 8 and 8.2 of the act.

Respondent shall authorize and pay for the surgery and its attendant care as prescribed by Dr. Atkins for Petitioner's right hand pursuant to Sections 8 and 8.2 of the Act.

Petitioner's request for temporary total disability benefits is denied. SEE DECISION

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.

Carolyn Mundy
Signature of Arbitrator

3/25/15
Date

ICArbDec19(b)

MAR 27 2015

FINDINGS OF FACT

At trial, Petitioner, a 50 year old roofer, alleges a repetitive bilateral repetitive trauma to his hands with a manifestation date of 12/18/11. Petitioner filed his Application on 1/18/12. Petitioner testified that he worked 5 to 6 years for Respondent as a commercial and residential roofer. As such, he used nail guns, tear off shovels and a hammer drill while tearing off and applying shingles approximately 4500 times per day. Petitioner testified that he could do a shingle tear off and re-apply on the same day. The work is labor intensive and required Petitioner to use a pistol grip to hold and apply pressure to the 9 pound air nail gun. Petitioner testified that while using the air gun he applied pressure in his grip of the gun as well as to the base of his thumb while pushing forward to apply the shingles. Petitioner testified that he used a vibrating drill while working on certain jobs and that he applied pressure with both hands and the base of this thumb when holding the drill. Petitioner testified that he usually worked a 5 day week 7 hours per day. He used the equipment 6 of the 7 work hours. In the spring of 2011, Petitioner was promoted to the position of foreman and supervised a crew of eight to ten people.

Petitioner testified that he performed these duties between 2006 and 2011. He testified that he had bilateral hand pain in this period but that his pain would subside at home. Around 2009 the bilateral hand pain no longer subsided. Petitioner testified that he did not seek any treatment for his bilateral hand pain until March 9, 2011 when he saw Dr. Atkins at Fox Valley Orthopedic Institute. RX 3. Dr. Atkins noted that Petitioner was a right hand dominant roofer who reported bilateral pain in both hands. Dr. Atkins noted, "He has had this for years. It has gradually gotten worse to the point where he has difficulty using his hands. It is worse with heavy use. The pain is better at night. He denies any numbness or tingling. There was no particular injury. The right side bothers him more than the left. He takes ibuprofen and finds it helpful." Upon exam and x-ray, Dr. Atkins diagnosed bilateral thumb degenerative joint disease. He advised Petitioner to proceed with non-operative treatment including splints and Tylenol and to return if his symptoms did not improve. RX 3. Possible surgery was recommended if conservative treatment failed. Petitioner did not return and did not seek any medical treatment for his condition until December 14, 2011.

On December 14, 2011, Petitioner chose to see Dr. Kazaglis at Associates in Orthopedic Surgery. RX 2, PX 3. Dr. Kazaglis noted, "Mr. Teafoe is a 45 year old male who presents today as a new patient with a complaint of surgery pain in both thumbs, right greater than left, and both middle fingers, right greater than left. He works as a roofer." Under the heading of "etiology of injury/onset" Dr. Kazaglis noted "years of symptoms. No specific injury." RX 2, PX 3. Petitioner complained of pain in the right and left thumbs, as well as middle finger pain. Dr. Kazaglis noted that Petitioner underwent conservative treatment with Dr. Atkins, that Dr. Atkins recommended surgery and that Petitioner wanted a second opinion on surgery for both thumbs. RX 2, PX 3. Upon exam and x-ray, Dr. Kazaglis diagnosed him with bilateral thumb CMC joint arthritis and narrowing of both thumb joints and DIP joint arthritis in both middle fingers. RX 2, PX 3. Dr. Kazaglis performed injections in both thumbs on 12/14/11 and Petitioner reported significant relief. Dr. Kazaglis indicated that if the injections did not work, Petitioner would require surgical intervention including CMC reconstruction. RX 2, PX 3.

Petitioner testified that his symptoms gradually worsened between March and December 2011 and that his last day of work for Respondent was on December 18, 2011. Petitioner testified that his bilateral hand strength decreased greatly and that his bilateral hand pain worsened to a complete loss of strength. Petitioner testified that up to December 2011 he was a hard and productive worker but by December 2011 he was no longer productive because he would have to stop frequently due to pain and could no longer perform his expected work duties.

Petitioner saw Dr. Kazaglis for follow up appointment on 1/18/12 for "bilateral thumb and middle finger pain." RX 2, PX 3. Again, Dr. Kazaglis noted "no specific injury" under "etiology of injury/onset." Under history Dr. Kazaglis noted "David is a 45 year old male construction and roofer. He reports that his job requires extremely heavy labor. I had seen him one month ago for bilateral thumb carpometacarpal arthrosis and distal interphalangeal joint arthritis in both middle fingers. At that last office visit I injected both carpometacarpal joints and placed him on Daypro. We were going to try conservative measures. He has tried activity modification in the past, but that did not work for him. He says his job involves extremely heavy labor such as ripping shingles off the roof with his hands and with tools. He denies any paresthesias in his thumb, index or middle fingers. He denies any night pain. He reports pain mainly at the base of his thumbs when he twists things, uses them to button and unbutton clothes or doing any type of heavy work with his hands." Again, the diagnosis was bilateral thumb CMC arthrosis and DIP joint arthritis in both middle fingers, which is mild. Dr. Kazaglis offered a CMC joint fusion which would result in lost motion but more predictable pain relief or a ligament reconstruction and tendon interposition to include improved function, decreased pain and approved ability to perform activities of daily living. Petitioner was not interested in a fusion and requested time to think about surgery which was recommended for the right hand first. RX 2, PX 3.

Petitioner did not seek any medical treatment from January 2012 through March 8, 2013. On December 20, 2012, Dr. Atkins wrote a narrative report contained in RX 3 to Petitioner's counsel indicating that he saw Petitioner for one visit on March 9, 2011 and that Petitioner "had complained of pain in both hands that he had for years. There was no particular injury. His pain was worse with heavy use. His pain has gradually gotten worse." Dr. Atkins reiterated his diagnosis of trapeziometacarpal joint arthritis and stated that he did not keep Petitioner off work or impose any restrictions. He further wrote, "this condition is typically degenerative in nature, although it can be posttraumatic. Given that his complaints were on both sides and there was no particular injury, this is most likely degenerative. I would not expect this to be caused by his work, but certainly his work activity as a roofer could aggravate his symptoms." RX 3.

On March 8, 2013, Petitioner returned to Dr. Atkins and again complained of "left and right hand pain for several years. Right worse than left." RX 3. Dr. Atkins noted that Petitioner "used to work as a roofer but has not worked as a roofer recently. He has clicking and popping of his fingers no actual locking. He was seen elsewhere and had cortisone injections for his thumbs. He had only temporary relief of his symptoms and lo lasting relief." Exam and x-rays led to an assessment of trapeziometacarpal joint arthritis right worse than left. He noted that Petitioner wished to have surgery. Dr. Atkins noted that he advised Petitioner that the surgery is not always durable for someone that does very heavy activity but that Petitioner stated he was not

planning on returning to the same type of job. The recommended surgery was right trapeziometacarpal joint arthroplasty. RX 3, PX 2.

Petitioner did not see a doctor for his bilateral thumbs between March 8, 2013, and October 8, 2013.

Petitioner was sent to Dr. Coe at the request of his attorney on October 8, 2013, for an independent medical examination. PX 1. Dr. Coe was of the opinion that Petitioner suffered "repetitive strain injuries to both hands in his work as a commercial roofer for Weatherguard Roofing. The repetitive strain injuries were a factor aggravating preexistent degenerative arthritis at the trapeziometacarpal joints of both thumbs and causing thumb joint breakdown with both acute and chronic bilateral hand pain, stiffness and weakness." He further opined that "there is a causal relationship between the repetitive hand strain injury suffered by Mr. Teafoe at work for Weatherguard Roofing (date of repetitive strain injury: December 18, 2011) and his current bilateral hand/thumb symptoms and state of impairment." He further opined that Petitioner was in need of ongoing treatment for his bilateral thumb basilar joint degenerative arthritis aggravated by repetitive strain at Weatherguard Roofing and that the recommended thumb basilar joint reconstruction surgery was appropriate. PX 1.

Petitioner presented for an IME at the request of Respondent on January 13, 2014 and was examined by Dr. Cohen. RX 1. Dr. Cohen reviewed Petitioner's medical records, and took a history from Petitioner regarding his work at Weatherguard Roofing as a roofer. Petitioner reported working as a roofer for 25 years and that he first noticed thumb pain 5 years prior. Petitioner denied any specific injury and reported the "insidious onset of bilateral hand pain that initially would come and go" and that "his hand pain became more frequent over time." RX 1. Dr. Cohen diagnosed Petitioner with end-stage degenerative bilateral basilar thumb joint arthritis. Dr. Cohen also noted that petitioner had gout, which could be, in part, responsible for the bilateral hand symptoms. Dr. Cohen agreed with the surgical recommendation for Petitioner's thumb condition. Dr. Cohen could not relate Petitioner's condition to his employment with Weatherguard. RX 1. Dr. Cohen stated that he is not aware of any medical studies that show laborers are predisposed to basilar thumb joint arthritis versus other individuals. Further, Dr. Cohen stated "one can certainly have an injury, and this can lead to worsening underlying arthritis. However, in the absence of any injury with the insidious onset as noted above, I do not have any way to specifically relate his basilar thumb joint arthritis or his hand pain to his work activities. Please note that the manifestation of symptoms during a specific activity does not specifically document a cause-and-effect relationship or a change in natural history of the degenerative condition." RX 1.

Petitioner had no medical treatment after the IME with Dr. Cohen for 9 months. Petitioner returned to his family care physician Dr. Liesen in October 2014. He then returned to see Dr. Atkins on October 7, 2014, and was sent to Dr. Liesen to undergo preoperative testing. PX 2. Petitioner had surgery to the left thumb in the form of a left trapeziometacarpal joint arthroplasty with flexor carpi radialis tendon on October 22, 2014. PX 2. Petitioner attended post surgery physical therapy. Dr. Atkins now recommends surgery to the right thumb which Petitioner requested pursuant to Section 8(a) at trial.

At trial, Roger Wahl, owner and president of Weatherguard Roofing, testified that Petitioner was originally employed as a roofer and then promoted to a foreman in spring of 2011. Mr. Wahl testified that as a foreman they are required to complete paperwork, including timesheets for each member of the crew on the job. The crew, as Petitioner testified, could be up to eight individuals. Mr. Wahl testified that if a crew member was injured on the job, the crew would report injuries to the foreman. The foreman on that job is to report the injury to Mr. Wahl. Mr. Wahl testified that petitioner, as a foreman, was aware of the procedure and the policy. Mr. Wahl testified that Weatherguard has about 20 employees, and if anyone was injured, he would have known about it immediately. He would have been made aware if any employee complained of physical issues while on the job.

Petitioner testified he made complaints of hand and thumb pain throughout 2011. Mr. Wahl testified that at no time was he made aware that Petitioner had these complaints in 2011. Mr. Wahl testified that his first notice of Petitioner's repetitive trauma claim was in January 2014. Petitioner testified that he had a conversation with Mr. Wahl on December 18, 2011 about Petitioner's bilateral hand and thumb pain. Mr. Wahl testified that he never had a conversation with Petitioner about pain in his hands or thumbs on December 18, 2011. Mr. Wahl also testified that Petitioner returned to work after December 18, 2011, and worked for a couple weeks throughout the end of the year. He had no conversations with Petitioner from December 18, 2011, until the last time he worked at the end of December 2011. Further, Mr. Wahl testified that he never had any knowledge of Petitioner's bilateral thumb or hand condition between December 18, 2011 and the end of December 2011.

Mr. Wahl testified he saw Petitioner in February 2014 in front of his house shoveling snow. He was using a hand shovel, as well as a scraper to scrape off ice using both hands. They did not have any conversation and that was the last time Mr. Wahl saw Petitioner until the date of the trial.

CONCLUSIONS OF LAW

The foregoing findings of fact are incorporated into the following conclusions of law.

With regard to Issues (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? and (F), is Petitioner's current condition of ill-being causally related to the injury? The Arbitrator finds:

Based on the record in its entirety as summarized above, the Arbitrator finds that Petitioner sustained cumulative trauma to his bilateral thumbs arising out of and in the course of his duties for Respondent which aggravated his pre-existing bilateral degenerative thumb joint disease and manifested on December 18, 2011, Petitioner's last day worked for Respondent. The Arbitrator further finds that Petitioner's bilateral thumb condition is causally related to his injury.

In so finding, the Arbitrator notes that Petitioner's testimony regarding his work duties and the repetitive forceful nature of the hand requirements. Petitioner performed heavy commercial roofing work for Respondent for five years utilizing a variety of tools which involved pistol grip

use and pressure being placed against the basilar joints of each thumb. Petitioner's testimony on these work duties is uncontested. Petitioner credibly testified, and the medical records indicate that Petitioner first noticed thumb pain at least in March 2011 and that he reported the pain and his heavy work duties to Dr. Atkins at that time. The Arbitrator notes that Petitioner utilized the conservative measures prescribed by Dr. Atkins and then returned to his full duty work for the next 8 months during which time his symptoms gradually worsened. Petitioner testified that his bilateral hand strength decreased greatly and that his bilateral hand pain worsened to a complete loss of strength. Petitioner testified that up to December 2011 he was a hard and productive worker but by December 2011 he was no longer productive because he would have to stop frequently due to pain and could no longer perform his expected work duties.

Petitioner's symptoms worsened to the point where he sought a second opinion on 12/14/11 from Dr. Kazaglis. Dr. Kazaglis noted, "Mr. Teafoe is a 45 year old male who presents today as a new patient with a complaint of surgery pain in both thumbs, right greater than left, and both middle fingers, right greater than left. He works as a roofer." Under the heading of "etiology of injury/onset" Dr. Kazaglis noted "years of symptoms. No specific injury." RX 2, PX 3. Upon exam and x-ray, Dr. Kazaglis diagnosed him with bilateral thumb CMC joint arthritis and narrowing of both thumb joints and DIP joint arthritis in both middle fingers. RX 2, PX 3. Dr. Kazaglis performed injections in both thumbs on 12/14/11 and Petitioner reported significant relief. Dr. Kazaglis indicated that if the injections did not work, Petitioner would require surgical intervention including CMC reconstruction. RX 2, PX 3.

Petitioner testified that he stopped working for Respondent on December 18, 2011 due to his thumb symptoms.

Petitioner returned to Dr. Kazaglis on 1/18/12. Dr. Kazaglis noted that petitioner had attempted to continue at work but was not able to carry out full job duties due to the severity of his hand and thumb pain. Dr. Kazaglis noted that petitioner performed extremely heavy labor such as ripping off shingles with his hands and tools. Petitioner reported that he experienced pain at the base of his thumbs when he twisted things and with any of his heavy work with his hands. Dr. Kazaglis also recommended surgery for petitioner, with alternatives of fusing the CMC joint or performing a ligament reconstruction and tendon interposition. He noted that a fusion would provide more predictable pain relief for petitioner but that petitioner would lose range of motion with the procedure. Petitioner was not interested in that option. Petitioner told him that he would consider the options.

On December 20, 2012, Dr. Atkins wrote a narrative report contained in RX 3 to Petitioner's counsel indicating that he saw Petitioner for one visit on March 9, 2011 and that Petitioner "had complained of pain in both hands that he had for years. There was no particular injury. His pain was worse with heavy use. His pain has gradually gotten worse." Dr. Atkins reiterated his diagnosis of trapeziometacarpal joint arthritis and stated that he did not keep Petitioner off work or impose any restrictions. He further wrote, "this condition is typically degenerative in nature, although it can be posttraumatic. Given that his complaints were on both sides and there was no particular injury, this is most likely degenerative. I would not expect this to be caused by his work, but certainly his work activity as a roofer could aggravate his symptoms." RX 3.

Petitioner's examining physician Dr. Coe opined that Petitioner's underlying degenerative arthritis was aggravated by his work duties which resulted in the breakdown of his condition such that he needed surgery. Respondent's examining physician Dr. Cohen could not opine that Petitioner's job duties were a causative factor in the development of his degenerative arthritis or in the aggravation of that condition given the reported "insidious onset." Both physicians agree Petitioner needed surgery on both thumbs.

Respondent denied benefits to Petitioner. Petitioner ultimately obtained surgery to the left hand on 10/22/14 and was recovering from the surgery by the time of the hearing. Petitioner's treatment was paid for by his wife's group insurance.

The Arbitrator's finding of causal connection is based on Petitioner's testimony regarding his job duties, the nature of Petitioner's job duties, and the opinions of Dr. Atkins and Coe who opined that Petitioner's forceful, heavy and repetitive job duties as a roofer could aggravate his underlying degenerative thumb arthritis. Given the testimony and medical opinions, Petitioner has proven a causal relationship between his work activities for respondent and his condition of ill-being in the basilar thumb joints.

With regard to Issue (E), was timely notice of the accident given to Respondent? The Arbitrator finds:

Given the Arbitrator's findings of a manifestation date of December 18, 2011, the Arbitrator further finds that Respondent received timely notice of Petitioner's claim as of January 2012 when the application was filed. The Arbitrator further notes that Mr. Wahl testified that he first became aware of this accident when he received "a certified letter" from Petitioner's counsel about this accident in either December 2011 or January 2012. He further testified on cross exam that he received notice of this claim within the 45 day period under the Act.

With regard to Issue (J), were the medical services provided to Petitioner reasonable and necessary and should respondent pay all appropriate charges for all reasonable and necessary medical services and (K), is Petitioner entitled to any prospective medical care? The Arbitrator finds:

Based on the findings on the issues of accident and causal connection, the Arbitrator further finds that Respondent shall pay Petitioner the reasonable and necessary medical expenses incurred in the care and treatment of his causally related condition pursuant to Sections 8 and 8.2 of the Act. The Arbitrator further finds that Respondent shall authorize and pay for the surgery recommended by Petitioner's treating physician to his right thumb and the attendant surgical care pursuant to Sections 8 and 8.2 of the Act.

With regard to Issue (L), is Petitioner entitled to any temporary total disability benefits? The Arbitrator finds:

The Arbitrator finds the Petitioner is not entitled to any temporary total disability benefits as no medical provider took him off work for any reason during the treatment or at any time over the last 4 years. The arbitrator reviewed all the medical treatment beginning in December 2011. Dr.

Atkins and Dr. Kazaglis never imposed any work restrictions (RX 2 and Rx 3) Petitioner had no medical treatment between December 2011 through March 2013 and no doctor took him off work to substantiate a claim for TTD benefits. Petitioner had an IME with Dr. Coe on October 8, 2013, and Dr. Coe did not take Petitioner off work or put him at any restricted level of work. (Px 1) Further, Petitioner did not return to Dr. Atkins until October 7, 2014 and even after Dr. Atkins performed surgery Petitioner was never restricted from work. Petitioner has failed to provide any off work slips and he could not state at trial if a doctor ever took him off work.

Petitioner has not met his burden for temporary total disability and is not entitled to any temporary total disability benefits associated with this case.