STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kenneth Butts,
Petitioner,

vs.

No: 09 WC 07085
14 IWCC 0921

The American Coal Company,
Respondent.

ORDER

Motion to Recall pursuant to Section 19(f) of the Act was filed by the Respondent on November 26, 2014. The Commission finds that a clerical error exists in its Decision and Opinion on Review dated October 27, 2014, in the above captioned.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated October 27, 2014 is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein.

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

DATED: MAY 6 - 2015

Joshua D. Luskin

jdl/wj
68

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 Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kenneth Butts,
Petitioner,

vs.

No: 09 WC 07085
14 IWCC 0921

The American Coal Company,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of statute of limitations, notice, occupational disability, and permanent disability, and being advised of the facts and law, reverses the July 18, 2013 Decision of the Arbitrator, which is attached hereto and made a part hereof.

Arbitrator Gerald Granada found that Petitioner failed to prove by a preponderance of the evidence that Petitioner suffered from an occupational disease arising out of and in the course of his employment for Respondent. The Arbitrator noted that given Petitioner's testimony regarding his shortness of breath at work due to a cardiac condition, the Respondent's expert's opinions were more persuasive. The Arbitrator further found that Petitioner failed to prove that his current condition of ill-being was casually connected to his coal mine employment and failed to prove timely disablement as required by Sections 1(e) and 1(f) of the Occupational Disease Act. The Arbitrator found the event which caused Petitioner to cease earning wages in coal mine employment was his cardiac condition, not coal workers' pneumoconiosis. As such, the Arbitrator denied Petitioner's claim for benefits.

After considering the entire record, and for the reasons set forth below, the Commission reverses the July 18, 2013 decision of the Arbitrator.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner filed an Application for Adjustment of Claim on February 19, 2009 claiming injury on October 17, 2004 due to inhalation of coal mine dust, fumes and vapors for a period in excess of 41 years causing injury to his lungs and/or heart in the scope and course of his employment with Respondent. (AX2). There is no dispute Petitioner was regularly exposed to coal dust, silica, roof bolting glue fumes and diesel fumes while working for Respondent. (T11).

Petitioner's Testimony

Petitioner testified he worked for Respondent for 41 years as a coal miner with 39 of those years spent underground. During his coal mining career he worked as a laborer, maintenance trainee, mechanic and maintenance supervisor. (T10-11).

Petitioner had no tobacco use history other than smoking 1/3 pack of cigarettes a day for about a 4 year period in his early 20s. Petitioner suffers from high blood pressure and diabetes, but these conditions are controlled with medication and diet respectively. (T28)

Petitioner testified he regularly had to shovel coal around the belt which removed crushed coal from the feeder. The area was very dusty. He testified strenuous work in dusty condition would cause him to cough by the end of his shift. (T24-26). He first began developing chest discomfort in September 2004, but he had experienced shortness of breath at work approximately 10-12 years prior to that time. (T25).

Petitioner testified he regularly worked 10-12 hour days, 6 days a week. (T24). Petitioner's last mining exposure occurred on October 17, 2004, while working at Respondent's Galatia Mine. At that time, Petitioner was 60 years of age. (T11-13). During Petitioner's shift on October 17, 2004, he started to experience chest pains. He completed his shift but went to the hospital the next morning.(T11-13).

Petitioner testified that he was diagnosed with a blood clot and underwent a triple heart bypass on October 20, 2004. An aneurysm on his heart was also diagnosed. (T11-13). Petitioner was off work to recuperate from the heart surgery until March 17, 2005 when he was released by his cardiologist, Dr. Mufti, to return to work. Petitioner testified that he was advised by his doctors to avoid stress and lifting due to fear that the aneurysm would grow. Petitioner testified he resigned his position on April 1, 2005 fearing the aneurysm would increase due to stress and his underground workload at the mine (T35-37, RX7).

Petitioner testified he has not looked for work since resigning in 2005. He testified his breathing problems have worsened since retiring but he does not have shortness of breath if he does not exert himself. Petitioner testified if he walks or exerts himself much he coughs. His breathing problems limit what he is able to do with his grandchildren. Petitioner testified he currently spends his time hunting, working on small engines, fishing, traveling with family and spending time with grandchildren. He walks for his heart health. (T21-22).

Medical Records

Petitioner was seen by cardiologist Dr. Amjad Mufti as a new patient on March 10, 2004. A chest x-ray was ordered since he was a coal miner. The chest x-ray showed the lungs to be clear of active disease. (RX3).

Petitioner was seen by at the Harrisburg emergency room on September 26, 2004 due to chest pain and pressure and he followed up with Dr. Mufti. After chest symptoms at work on October 17, 2004, Petitioner underwent a stress test on October 19, 2004 with positive results; typical of ischemia. (RX3).

Petitioner was seen by Dr. Bernard Fogelson for a consultation on October 20, 2004. At that time, Petitioner's lungs were noted to be clear, and he had good respiratory effort. That day, Dr. Fogelson performed a left heart catheterization and coronary angiography followed by coronary artery bypass grafting times three. An aneurysm on Petitioner's heart was also discovered. Petitioner was scheduled to regularly obtain CT scans and x-rays of the chest in order to monitor the aortic aneurism and also his lungs due to his coal mining work. (RX3).

Dr. Mufti released Petitioner to return to mining on March 17, 2005. It was charted that Petitioner had been called by several supervisors at the mine a few days earlier and that Petitioner was under a lot of stress to return to work and his blood pressure was elevated. (RX3).

Petitioner underwent a CT scan of the chest on May 17, 2005. The radiologist's interpretation included old healed granulatomous disease, as well as several small nodules without definite calcification in the right lower lobe. The radiologist noted the nodules might be non-calcified granulomas, but other etiologies could not be totally excluded. Scarring or subsegmental atelectasis was also noted anteriorly in the right upper lobe. A four centimeter ascending aortic aneurysm was noted, as well. (RX5).

Petitioner was seen by Dr. Mufti on August 25, 2005 in follow up after the abnormal CT scan. Although some sub-centimeter nodules were previously noted in the right lower lobe, they were not identified in a new study on August 24, 2005. The ascending aortic aneurysm was unchanged (RX3, RX5).

Petitioner was seen by Dr. Fogelson on February 20, 2006 for follow-up regarding the aortic aneurysm. A CT scan of that date showed no growth of the aneurysm, but did show some mild scarring in the lungs. It was charted that Petitioner had no dyspnea, cough or wheezing. (RX3).

On June 8, 2007, Petitioner was seen by Dr. William Clap at Methodist Family Practice to re-establish care. At that time, Petitioner complained of a chronic cough that had been ongoing for months. On exam, the lungs revealed no wheezing or rhonchi. A chest x-ray was ordered and interpreted by the radiologist as revealing no acute heart or lung disease. (RX4).

NIOSH records showing negative interpretations by B or A readers of films from 1974, 1983 and 2000 were entered into evidence. (RX6).

Deposition Testimony

Dr. Sanjabi.

Dr. Parviz Sanjabi testified by way of deposition on March 1, 2012. At his attorney's request, Petitioner was examined by Dr. Sanjabi on September 28, 2009. Dr. Sanjabi testified he currently works part-time for the Southern Illinois Respiratory Disease Clinic but previously was the Director of the School of Respiratory Therapy at SIU School of Technical Careers, Medical Director at the Cardiopulmonary Lab at Herrin Hospital and Pulmonary Rehabilitation Program of Southern IL Hospital Services Corporation, an internist with subspecialty in pulmonary disease at the Carbondale Clinic, and Medical Director of the Black Lung Clinic in Herrin, IL for about 30 years. While Dr. Sanjabi is not a certified B-Reader, he testified that he took the B-reader course in the 1970s but elected not to pursue certification because he did not want to devote his practice entirely to reading x-rays as he would have been the only B-reader in his geographic area. (PX1).

Dr. Sanjabi noted Petitioner's long career in the coal mines with significant work underground and further noted that Petitioner's chest exam was normal, except for some surgical scarring. Pulmonary function testing was normal, but a chest x-ray showed coal workers' pneumoconiosis category 1/0. (PX1). Dr. Sanjabi testified that CWP is caused by coal dust retained in the lungs, which causes cells to react defensively, causing damage. The result is the formation of granulomas that prevent the affected tissue from performing normally. Dr. Sanjabi further opined that while there will be an impairment of function at the damage site, it may not be measurable by pulmonary function testing. One can have radiographic CWP and still have normal pulmonary function testing. Dr. Sanjabi stated that the medical treatment records would not change what he observed on x-ray. (PX1)

Dr. Sanjabi testified that with added exposure CWP can progress and, as such, he advises miners with CWP to terminate their exposure to coal dust. Dr. Sanjabi testified that the CWP he found on Petitioner's x-ray would have been present when Petitioner left work with Respondent and he would have recommended that Petitioner cease mining at that time. Based on Petitioner's spirometry and pulmonary function testing, he is still capable of heavy manual labor however. (PX1)

Dr. Wiot.

Dr. Jerome Wiot testified by way of deposition on September 8, 2010. Dr. Wiot has been a board certified radiologist since 1959 and is a certified B-Reader. Dr. Wiot also teaches a B-reader program and helped develop the program. Dr. Wiot testified that he reads some 50-60 chest films a day. He provided a review on behalf of Respondent with a report dated December 4, 2009. Dr. Wiot reviewed the chest x-rays of June 8, 2007, October 3, 2008, and December 12, 2008 and found no evidence of CWP on the films. He also reviewed CT scans dated May 17, 2005, August 24, 2005 and February 20, 2006 and found no evidence of CWP. He did note some granulotamous and bilateral parenchymal liner bands in the bases but stated that they were most likely manifestations of past inflammation rather than evidence of CWP. Dr. Wiot did not note the aortic aneurysm on the CT scans but he testified that the ascending aorta just gets a little dilated as one gets older, but that doesn't mean an aneurysm exists.(RX1).

Dr. Wiot testified that CWP invariably begins in the upper lung fields and progresses to the mid and lower zones. Dr. Wiot noted that Dr. Smith found the upper lung zones clear in Petitioner's films. Dr. Wiot stated that by definition, a person with CWP would have an impairment in the function of his lungs at the site of the scar tissue even if that impairment might not be able to be measured by pulmonary function testing. Dr. Wiot testified that CWP tends not to progress after exposure ceases. (RX1)

Dr. Selby.

Dr. Jeffrey Selby performed a record review at the request of Respondent's counsel on March 26, 2010. He testified by way of deposition on April 24, 2012. He is board certified in internal medicine and pulmonology, is a certified B-reader, and works in a general pulmonary practice with a small percentage of his practice devoted to occupational lung disease. He reviewed the reports of Dr. Sanjabi, Dr. Smith and Dr. Wiot as well as the medical records of Petitioner's treating physicians including chest x-rays taken October 3, 2008 and December 12, 2008. Dr. Selby opined all the x-rays were negative for pneumoconiosis. He also reviewed CT scans of the chest from 2005 and 2006 and found no evidence of CWP. Dr. Selby did testify that he observed some right upper lobe anterior streaky scarring, which he opined was probably a prior pneumonia or some other kind of infection. Dr. Selby's interpretations did not mention the aortic aneurism. Dr. Selby testified that for a proper reading of a chest x-ray for black lung, one must put the date on the film being read and it is of value to review serial x-rays for consistency. (RX2)

Dr. Selby concluded that Petitioner does not suffer from any subjective or objective findings consistent with CWP and opined Petitioner has the respiratory capacity to perform all of his prior coal mining duties. (RX2). Dr. Selby testified in line with Dr. Sanjabi that for a person to have CWP, he must have coal mine dust in the lungs and a tissue reaction that causes scarring or fibrosis. By definition, if someone has CWP, he would have impairment in the function of his lung at the site of the scarring, whether measured by spirometry or not. Dr. Selby confirmed that one can have pulmonary function tests within the range of normal and normal findings on exam but still have radiographically significant CWP. Dr. Selby opined that he would expect someone with category one CWP to have a normal physical exam and possibly no complaints. Dr. Selby testified that if a miner leaves the mine with category one pneumoconiosis and does not have further exposure, in the vast majority of miners, the disease does not progress. Dr. Selby agreed with Dr. Sanjabi that Petitioner was capable of heavy labor. (RX2).

Section 12 Reports

Dr. Henry K. Smith, a board certified radiologist and NIOSH B-Reader, authored reports dated January 6, 2009, February 17, 2010 and May 17, 2010 at Petitioner's request after review of chest x-rays dated December 12, 2008, October 3, 2008 and June 8, 2007, respectively. Dr. Smith read the x-rays as positive for pneumoconiosis, category 1/0 with opacities in the mid and lower lung zones bilaterally. He also authored a report dated February 6, 2013 after review of CT scans taken May 17, 2005, August 24, 2005 and February 20, 2006. Dr. Smith read the CT scans as positive for pneumoconiosis, category 1/0 with opacities in all lung zones (PX2).

Dr. Robert Cohen is a B-Reader board certified in internal medicine, pulmonary disease and critical care. As a B-Reader and at Petitioner's request, on April 28, 2013 he interpreted the chest x-ray of September 28, 2011 as positive for pneumoconiosis, category 1/0 with opacities in all lung zones except the mid left zone. Dr. Cohen also issued a report dated April 7, 2013 stating he interpreted CT scans dated May 17, 2005, August 24, 2005 and February 20, 2006 as showing scattered round opacities between 1.5 and 3 mm in diameter throughout the lung fields. He noted that given appropriate exposures, the opacities were consistent with pneumoconiosis. (PX7).

Dr. Sanjabi, Dr. Wiot and Dr. Selby provided narrative reports consistent with their deposition testimony.

Discussion

Notice / Statute of Limitations

The Arbitrator found that timely notice of the accident was not given to Respondent. No further discussion was made in the decision about the issue of notice.

Unlike the Workers' Compensation Act, the Occupational Disease Act does not provide a definite time for giving notice. It requires that notice be provided to Respondent "as soon as practicable after the date of disablement." 820 ILCS 310/6(c). Section 6(c) also provides that CWP claims must be filed within five years of the date of last exposure or last payment of compensation. Petitioner's last exposure was his last date of work, October 17, 2004. Dr. Smith provided the first positive interpretation for CWP on January 6, 2009 with his review of the December 12, 2008 chest x-ray. Petitioner filed his Claim for Compensation on February 19, 2009. By giving Respondent notice within two months of his diagnosis of CWP, the Commission finds Petitioner filed a timely claim and also provided timely notice to Respondent of his alleged occupational disease and disablement.

Occupational Disease

The Arbitrator made a finding that Petitioner failed to prove by a preponderance of the evidence that he developed an occupational disease arising out of and in the course of his employment. The Arbitrator explained "given Petitioner's testimony regarding his shortness of breath at work due to a cardiac condition, the Arbitrator finds the testimony of the Respondent's experts more persuasive."

The Arbitrator went on to conclude that Petitioner failed to prove by a preponderance of the evidence that his current condition of ill-being was causally connected to his coal mine employment. The Arbitrator explained "again, the Arbitrator notes that the Petitioner's testimony and the medical records show he suffered from a cardiac condition, of which no expert has casually connected to his employment."

While medical records and a petitioner's testimony ordinarily warrant significant consideration when determining causation of a work injury or occupational disease, in this case, the fact that Petitioner suffered from a cardiac condition or experienced shortness of breath has no bearing on the determination of whether Petitioner developed radiographic coal workers' pneumoconiosis that arose out of and in the course of his employment with Respondent. Section

1(d) of the Occupational Disease Act provides that if a miner suffering from pneumoconiosis was employed for 10 years or more in coal mines, there shall be a rebuttable presumption that his or her pneumoconiosis arose out of such employment.

Dr. Sanjabi, Dr. Selby and Dr. Wiot all testified that by definition a person with CWP would have impairment in the function of his lungs at the site of the scar tissue even if that impairment might not be able to be measured by pulmonary function testing. Dr. Selby testified that he would expect someone with simple CWP, category one, to have a normal physical exam and possibly no complaints. They each opined the diagnosis of CWP has no bearing on the documentation of lung function as the diagnosis is dependent on radiographic evidence alone. There is no dispute that Petitioner was regularly exposed to coal dust over his 41 year career in the Respondent's coal mine and that the only cause of CWP is exposure to coal dust. Therefore, the question before the Commission is whether Petitioner had coal workers' pneumoconiosis evidenced on diagnostic films.

Dr. Smith, a board certified radiologist and B-Reader, interpreted Petitioner's chest x-rays of December 12, 2008, June 8, 2007, and October 3, 2008 as all being positive for CWP category 1/0 with opacities in the mid and lower lung zones bilaterally. He further interpreted CT scans of the chest from May 17, 2005, August 24, 2005 and February 20, 2006 as positive for CWP category 1/0 with opacities in all lung zones. Dr. Smith has been a B-Reader since 1987. (PX2).

Dr. Cohen is a board certified pulmonologist, the head of the National Coalition of Black Lung Clinics, and has been a B-Reader for many years. He is a board certified pulmonologist and B-Reader interpreted Petitioner's chest x-ray of September 28, 2011 as positive for CWP in all but the left middle lung zone. He also interpreted CT scans in May 2005, August 2005 and February of 2006 as showing scattered round opacities throughout the lung fields consistent with CWP. (PX7).

Dr. Sanjabi has been practicing internal medicine and pulmonary disease in Southern Illinois since 1975 and is currently working part time at the Southern Illinois Respiratory Disease Clinic. Previously he was the medical director of the Black Lung Clinic in Herrin, Illinois for approximately 30 years. Dr. Sanjabi is not board certified in any specialty and is not a B-Reader. Dr. Sanjabi explained he did not pursue B-Reader certification because he did not want to be the only B-Reader in his geographic area and have that be the focus of his practice. Dr. Sanjabi found Petitioner's chest x-ray to show CWP category 1/0. Dr. Sanjabi failed to note the date of the x-ray he reviewed. (PX1).

Dr. Wiot, a board certified radiologist and B-reader, read Petitioner's chest x-rays of June 2007, October 2008 and December 2008 as negative for CWP. He also interpreted CT scans of May 2005, August 2005 and February 2006 as negative for CWP. Dr. Wiot began teaching the B- Reader program at its inception in 1970 and has been a B-Reader since that time. Dr. Wiot did not recognize the four centimeter ascending aortic aneurism on any imaging reviewed. (RX1).

Dr. Selby, a B-Reader board certified in pulmonology and internal medicine, provided a record review on behalf of Respondent. He has been a B-Reader since 1985. Dr. Selby reviewed chest x-rays from June 2007, October 2008 and December 2008 and opined all were negative for CWP. Dr. Selby also reviewed CT scans of the chest from May 2005, August 2005, and February 2006 and opined all were negative for CWP. Dr Selby's interpretations also fail to mention an aortic aneurism. Dr. Selby did testify that he did note some right upper lobe anterior streaky scarring, but he attributed its presence to a prior pneumonia or infection. (RX2).

Dr. Smith, Dr. Cohen and Dr. Sanjabi all diagnosed coal workers' pneumoconiosis category 1/0. Dr. Selby and Dr. Wiot opined there was no evidence of CWP on x-ray or CT scans. Dr. Selby noted scarring in the right upper lobe on CT scan reports in May 2005, August 2005, and February 2006 but attributed it to a possible prior infection. Dr. Wiot did not see the scarring on any scans. Dr. Selby and Dr. Wiot both opined the upper right lobe is usually where CWP begins. Dr. Wiot and Dr. Selby failed to identify the four centimeter ascending aortic aneurism on any imaging reviewed. Dr. Wiot opined, when questioned about the aneurism, that as a person ages sometimes the aorta gets ectatic but that does not mean there is an aneurysm. This is inconsistent with the abundance of treatment records in evidence regarding Petitioner's aortic aneurysm which affected his ability to continue working for Respondent. (PX1, RX1, RX2).

The Commission finds the opinions of Dr. Smith, Dr. Cohen and Dr. Sanjabi more credible than those of Dr. Selby and Dr. Wiot regarding the presence of radiographic coal workers' pneumoconiosis. As a result, the Commission finds Petitioner has proven by a preponderance of the evidence that he developed an occupational disease arising out of and in the course of his employment.

Disablement

The Arbitrator made a finding that Petitioner failed to prove timely disablement as required by Sections 1(e) and 1(f) of the Occupational Disease Act. He explained, "the event which caused Petitioner to cease earning full wages in coal mine employment was his cardiac condition, not the presence of coal workers' pneumoconiosis."

Section 1(e) of the Act defines disablement as "an impairment or partial impairment, temporary or permanent, in the function of the body or any of the members of the body, or the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom he or she claims compensation, or equal wages in other suitable employment."

Petitioner's last mining exposure was October 17, 2004. Dr. Smith and Dr. Cohen both interpreted 2005 CT scans as being positive for CWP. Dr. Sanjabi opined the CWP he identified on x-ray would have been present when Petitioner left the mines. All experts deposed agreed that CWP causes a reduction in functional lung tissue that may not be measurable on pulmonary function testing but radiology will show the areas damaged. The disease is progressive and the only treatment for CWP is removal from the coal dust exposure by ceasing work in coal mines. Further exposure can advance the disease, endangering Petitioner's health and causing added functional loss.

The Illinois Supreme Court has stated that for purposes of Section 1(e) of the Act, an employee is considered disabled from earning full wages at the work in which he was engaged when last exposed to the hazards of the occupational disease or equal wages in other suitable employment where he can no longer work without endangering his life or health. Freeman United Coal Mining Co. V. Ill. Workers' Comp. Comm'n, 999 N.E.2d 382 (5th Dist. 2013), citing Owens-Corning Fiberglas Corp. v. Industrial Comm'n, 362 N.E.2d 335 (1977). The Appellate Court has indicated in concurring opinion that evidence of CWP is sufficient proof of disablement in a coal miner. Freeman United Coal Mining Co. V. Ill. Workers' Comp. Comm'n, 999 N.E.2d 382 (5th Dist. 2013).

While Petitioner did not return to his mining job after October 17, 2004 out of fear of how exertional activity and stress might affect his aortic aneurysm, the evidence is clear that Petitioner, as a result of the occupational disease coal workers' pneumoconiosis, was unable to engage in the work he had performed for 41 years without further endangering his health and was disabled within the statutory time frame with loss of functional lung tissue as seen on chest x-ray and CT scans. Accordingly, we find that Petitioner met his burden of proving his CWP is causally connected to his employment as a coal miner, and he suffered timely disablement under the Act.

Petitioner's complaints are relevant to the determination of the extent of permanent partial disability suffered on account of the occupational disease. Petitioner testified at hearing the strenuous work he performed for Respondent in dusty conditions underground would cause him to cough by the end of his shift. He first began developing chest discomfort in September 2004, but he had experienced shortness of breath at work approximately 10-12 years prior to that time. Petitioner testified that if he walks or exerts himself much he coughs, and his breathing problems limit what he is able to do with his grandchildren. Petitioner has not looked for other employment since resigning from Respondent in 2005, but Dr. Sanjabi and Dr. Selby opined Petitioner was capable of heavy manual labor from a pulmonary standpoint.

The Commission finds Petitioner to be a credible witness. His long career in Respondent's coal mine caused him to suffer from coal workers' pneumoconiosis category 1/0 with recognizable loss of functional lung tissue on chest x-rays and CT scans. While Petitioner's complaints at trial were limited to occasional shortness of breath with exertion, he is no longer able to work in a mining environment without further risk to his health.

Petitioner claims no medical expenses or temporary total disability benefits. The parties stipulated at hearing that Petitioner's earnings during the year preceding the injury were $72,000.24 and his average weekly wage was $1,384.62. For the foregoing reasons, the Commission finds Petitioner suffered from an occupational disease arising from the hazards of coal mining, that he was disabled within the statutory time frame, and that he was permanently partially disabled to the extent of 7.5% of the person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the July 18, 2013 Decision of the Arbitrator is reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $567.87 per week for a period of 37.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused permanent disability to the extent of 7.5% 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 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 $21,400.00. 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: MAY 6 – 2015

Charles J. DeVriendt

o-08/27/14
drd/adc
68

Ruth W. White

SPECIAL CONCURRING OPINION

This case was scheduled for Oral Arguments on 08/27/2014 before a three member panel of the Commission including members Dan Donohoo, Charles DeVriendt and Ruth White, at which time Oral Arguments were heard. Subsequent to Oral Arguments and prior to the departure of member Dan Donohoo on 2/23/2015, a majority of the panel members had reached agreement as to the results set forth in this decision and opinion, as evidenced by the internal Decision worksheet initialed by the entire three member panel, but no formal written decision was signed and issued while former member Dan Donohoo still held his appointment.

Although I was not a member of the panel in question at the time Oral Arguments were heard, and I did not participate in the agreement reached by the majority in this case, I have reviewed the Decision worksheet showing how the departing member voted in this case, as well as the provisions of the Supreme Court in Zeigler v. Industrial Commission, 51 Ill.2d 342, 281 N.E.2d 342 (1972), which authorizes signature of a Decision by a member of the Commission who did not participate in the Decision. Accordingly, I am signing this Decision in order that it may issue.

Joshua D. Luskin

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

Before the Illinois Workers' Compensation Commission

WILLIAM MULLIGAN,

Petitioner,

vs.

No. 95 WC 15351
95 WC 15352
15 IWCC 295

RAND MCNALLY,

Respondent.

ORDER

The Commission on its own Motion recalls the Decision and Opinion on Remand of the Illinois Workers' Compensation Commission dated April 24, 2015 pursuant to Section 19(f) of the Act due to a clerical error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Remand dated April 24, 2015 is hereby recalled and a Corrected Decision and Opinion on Remand is issued simultaneously. The parties should return their original decision to Commissioner Michael J. Brennan.

Dated: MAY 1 - 2015

Michael J. Brennan

4-29-15
MJB:tdm
052

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)
Permanent Total Disability	☒ PTD
☐ Modify	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WILLIAM MULLIGAN,

Petitioner,

vs.

NO: 95 WC 015351
95 WC 015352
15 IWCC 295

RAND MCNALLY,

Respondent.

CORRECTED DECISION AND OPINION ON REMAND

This matter comes before the Commission pursuant to the Circuit Court's Amended Opinion and Order dated October 27, 2014 (2012 L 51417). The Court affirmed the Commission's October 10, 2012 (12 IWCC 1097) Decision in part, and reversed in part. The Court found that Mr. Mulligan is totally and permanently disabled as of October 10, 1996. The case was remanded to the Commission to determine the amount of credit due to Respondent.

The Commission's decision dated October 10, 1996 (12 IWCC 1097) contains a complete recitation of all facts relative to both accidents. The Commission adopts the findings of facts contained within 12 IWCC 1097 and incorporates them by reference herein. No new facts have been presented to the Commission since the prior decision of October 10, 2012. The Commission is unaware of any unpaid medical expenses.

This matter came before Commissioner Michael J. Brennan on March 27, 2015 and a record of the proceeding was made. All parties were represented by counsel and the Petitioner

personally appeared. Petitioner's attorney requested an Order from the Commission finding his client, William Mulligan, permanently and totally disabled. Respondent stated they have no further evidence to offer relative to the issue of permanent and total disability.

Pursuant to the Order of the Circuit Court, the Commission is obligated to enter a finding that Petitioner is permanently and totally disabled effective October 10, 1996 as a result of his work-related injuries, representing 963-2/7 weeks of disability as of March 27, 2015.

The parties represented to the Commission that certain benefits have been paid and Respondent is entitled to a credit. The hearing is continued to April 29, 2015, at which time the parties will present evidence regarding the credit due to Respondent.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission's Decision, 12 IWCC 1097 (October 10, 2012), is hereby reversed in part, and affirmed in part. This matter is continued to April 29, 2015, at which time evidence of credit due will be presented.

IT IS FURTHER ORDERED BY THE COMMISSION that commencing October 10, 1996, Respondent pay to Petitioner the sum of $712.92 per week for life under Section 8(f) of the Act for the reason that the injuries sustained caused the total permanent disability of Petitioner.

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

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay all reasonable and necessary medical expenses pursuant to Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay Petitioner's out-of-pocket medical expenses of $20,488.18 and travel expenses of $4,143.89.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit under §8(j) of the Act; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

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

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: MAY 1 - 2015

Michael J. Brennan

MJB/tdm
4-9-15
052

Thomas J. Tyrrell

Kevin W. Lamborn

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Mulligan,

Petitioner,

vs.

NO. 95 WC 15352

08IWCC0465

Rand McNally,

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, notice, causation, wage/benefit rate, temporary total disability, medical expenses, nature and extent, penalties and fees, and "evidentiary rulings, etc." 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, but clarifies the Decision as explained below.

The Commission clarifies that the "Findings of Fact" section of the Arbitrator's Decision clearly states that Petitioner sustained accidental injuries on February 23, 1994 while walking through the parking lot at Midway Airport on a business trip. The Arbitrator's finding of no causal connection and denial of benefits was based upon Petitioner's failure to prove that this accident is related to Petitioner's current condition of ill-being. The Commission affirms and adopts the finding that, while Petitioner did sustain accidental injuries arising out of and in the course of employment, Petitioner did not seek any medical care after the accident, did not miss any time from work, and any current condition of ill-being is causally related to Petitioner's second accident on May 31, 1994 which is the subject of 95 WC 15351.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 20, 2006 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.

08IWCC0465

The probable cost of the record to be filed as return to Summons is the sum of $35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: APR 23 2008

James F. DeMunno

Mario Basurto

David L. Gore

SE/
O:3/20/08
52

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE DECISION OF ARBITRATOR

William Mulligan
Employee/Petitioner

v.

Rent McNelly
Employer/Respondent

Case # 95 WC 15352

08IWCC0465

On Sept 20 2006 an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

A copy of this decision is mailed to the following parties:

3 0393 95 WC 15352
LICHTEN, THOMAS R
MONADROCK BLDG
53 W JACKSON BLVD
SUITE 1634
CHICAGO, IL 60604

4 1109 95 WC 15352
GAROFALO, SCHREIBER, HART ET AL
55 W WACKER DR
10TH FLOOR
CHICAGO, IL 60601

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

WILLIAM MULLIGAN
Employee/Petitioner

Case # 95 WC 15352

v.

RAND MCNALLY
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 April 20, 2004, July 27, 2005, and July 31, 2006. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

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

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?

J. Were the medical services that were provided to petitioner reasonable and necessary?

K. What amount of compensation is due for Temporary Total Disability?

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

FINDINGS

- On February 23, 1994, the 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.
- In the year preceding the injury, the petitioner earned $122,200.00; the average weekly wage was $2,350.00.
- At the time of injury, the petitioner was 56 years of age, *married* with no child(ren) under 18.
- Necessary medical services *have not* been provided by the respondent.
- To date, $0.00 has been paid by the respondent on account of this injury.

FINDINGS OF FACTS:

On February 23, 1994, the petitioner injured his right knee, neck and back when he fell while walking through a parking lot at Midway Airport. The petitioner continued on his one-week business trip. On May 31, 1994, the petitioner received emergency medical care at St. Francis Hospital. He reported falling down stairs and hitting the right side of his neck and his right knee. On June 9, 1994, the petitioner sought chiropractic care at Omni Chiropractor for neck pain. He reported injuries to his right knee, neck and back from a fall down stairs on May 31, 1994. The May 31, 1994, incident is the subject matter of claim #95 WC 15351. Both claims were consolidated for hearing; however, separate decisions are given.

FINDING REGARDING WHETHER THE PETITIONER'S ACCIDENT AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH THE RESPONDENT, WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY AND THE NATURE AND EXTENT OF INJURY:

Based upon the testimony and the evidence submitted, the petitioner failed to prove that he sustained an accident on February 23, 1994, arising out of and in the course of his employment with the respondent and that his current condition of ill-being is causally connected to an injury on February 23, 1994. In addition, the incident on

February 23, 1994, is superseded by the incident and resulting injuries on May 31, 1994.

All claims for benefits are denied.

ORDER:

- All claims for 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.

4.92

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of % 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. McCann
Signature of arbitrator

9/19/06
Date

SEP 20 2006

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Mulligan,

Petitioner,

vs.

NO. 95 WC 15351

08IWCC0466

Rand McNally,

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 causation, wage/benefit rate, temporary total disability, medical expenses, nature and extent, penalties and fees, 8(j) credit, and "evidentiary, procedural, & substantive rulings and Motions," and being advised of the facts and law, hereby modifies the Arbitrator's decision as stated below and otherwise affirms and adopts the Arbitrator's decision, which is attached hereto and made a part hereof.

The Commission finds that Petitioner's medical expenses and treatment for carpal tunnel syndrome and cubital tunnel syndrome are also causally connected to the accident on May 31, 1994. As early as June 2, 1994, Petitioner was complaining of numbness/tingling in the right arm and hand and those complaints continued. Eventually, Petitioner began treating for his carpal tunnel symptoms and the October 2003 EMG indicated right-sided carpal tunnel syndrome. Ultimately, as Petitioner testified, it was determined that he did not have carpal tunnel syndrome and, rather, that his arm numbness/tingling, etc. was due to his cervical condition. As such, we find that Petitioner's treatment for carpal and cubital tunnel syndrome were reasonable attempts to determine if the symptoms were being caused by something other than the neck.

The Commission further finds that, based upon a review of the record as a whole, Petitioner has suffered the loss of 50% of Petitioner as a whole and we hereby modify the Arbitrator's 8(d)2 award. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $712.92 per week for a period of 12 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 $384.73 per week for a period of 250 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 50 percent loss of use of Petitioner 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 $75,000.00. The probable cost of the record to be filed as return to Summons is the sum of $35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: APR 23 2008

James F. DeMunno

Mario Basurto

David L. Gore

SE/
O:3/20/08
52

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE DECISION OF ARBITRATOR

William Mulligan
Employee/Petitioner

v.

Rand McNally
Employer/Respondent

Case # 95 WC 15351

08IWCC0466

On Sept 20 2006, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

A copy of this decision is mailed to the following parties:

1 0393 95 WC 15351
LICHTEN, THOMAS R
MONADROCK BLDG
53 W JACKSON BLVD
SUITE 1634
CHICAGO, IL 60604

2 1109 95 WC 15351
GAROFALO, SCHREIBER, HART ET AL
55 W WACKER DR
10TH FLOOR
CHICAGO, IL 60601

08IWCC0466

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

WILLIAM MULLIGAN
Employee/Petitioner

Case # 95 WC 15351

v.

RAND MCNALLY
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 April 20, 2004, July 27, 2005, and July 31, 2006. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

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

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?

J. Were the medical services that were provided to petitioner reasonable and necessary?

K. What amount of compensation is due for Temporary Total Disability?

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

L. Section 8(j) credits?

FINDINGS

- On May 31, 1994, the 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.
- In the year preceding the injury, the petitioner earned $122,200.00; the average weekly wage was $2,350.00.
- At the time of injury, the petitioner was 56 years of age, *married* with no child(ren) under 18.
- Necessary medical services *have not* been provided by the respondent.
- To date, $0.00 has been paid by the respondent on account of this injury.

FINDINGS OF FACTS:

On May 31, 1994, the petitioner received emergency medical care at St. Francis Hospital. He reported falling down stairs and hitting the right side of his neck and his right knee. X-rays of his right knee revealed a prior total knee replacement. X-rays of his cervical spine revealed anterior osteophytes formation at C5, 6 and 7 and degenerative changes at C5 and C6 discs. On June 9, 1994, the petitioner sought chiropractic care at Omni Chiropractor for neck pain. He reported injuries to his right knee, neck and back from a fall down stairs. At his last chiropractic care on March 3, 1995, the petitioner reported headaches for two days, increased numbness in his right upper arm and inconsistent pain in his right neck. On March 15, 1995, the petitioner started treatment at Mercy Medical Center with Dr. Michael Stefancic for neck, shoulder pain and headaches. He reported a fall in May 1994. He also reported that the resulting severe headaches and neck soreness went away, but his headaches were returning. X-rays revealed severe osteoarthritic changes from C5 thru C7. The petitioner was evaluated by Dr. Michael Jerva on April 5, 1995, at which time he reported pain in his occipital and upper cervical region with radiation into his right shoulder, and numbness in his thumb, index and

middle fingers on his right. A CT scan of his cervical spine on May 2, 1995, revealed degenerative changes at C4-5, C5-6, C6-7 disc spaces with severe changes at C5-6 and C6-7. On May 8, 1995, Dr. Jerva encouraged the petitioner to continue his physical therapy program.

On June 26, 1996, the petitioner saw Dr. Sonnenberg and reported some pain over his medial and lateral ligaments. On August 20, 1996, the petitioner saw Dr. Glenn Reinhart for increasing right knee problems. He had a diagnostic arthroscopy on November 12, 1996, the removal of a previous implanted prosthesis on January 10, 1997, and the implantation of a new total knee prosthesis on February 25, 1997.

Linda Egan, a physical therapist, reported on August 26, 1996, that the petitioner had returned to physical therapy at the end of July and reported that he had been swimming most of the summer which he felt helped his neck but that a week prior his headaches had increased. Dr. Leonard Cerullo evaluated the petitioner's cervical spine on May 13, 1998. On October 8, 1998, Dr. Cerullo performed C3 through 7 laminectomies, right C5-6 and C6-7 foraminotomies and a left C4-5 foraminotomy.

On August 21, 2001, the petitioner had a decompressive bilateral L4-5 laminoforaminotomy, right lysis of adhesions, a left discectomy and a removal of an extruded fragment.

The petitioner claimed a prior injury to his right knee, neck, and back on February 23, 1994, when he fell while walking through a parking lot at Midway Airport. The incident is the subject matter of claim #95 WC 15352. Both claims were consolidated for hearing; however, separate decisions are given.

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 proved that he sustained an accident on May 31, 1994, arising out of and in the course of his employment with the respondent. The petitioner slipped on the stairs at respondent's place of business. He received immediate medical care, at which time he reported the same history.

FINDINGS REGARDING WHETHER TIMELY NOTICE WAS GIVEN TO THE RESPONDENT:

The respondent received timely notice of the petitioner's injury.

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

The medical care rendered the petitioner for his cervical care from May 31, 1994, through July 1996, the cervical surgery on October 8, 1998, and the post-operative care was reasonable and necessary. However, the medical expenses, out-of-pocket and mileage expense for the medical care of the petitioner's cervical spine cannot be determined from the evidence submitted. 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 any adjustments, and shall hold the Petitioner harmless for all the medical bills paid by its group health insurance carrier.

FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner proved that his current condition of ill-being with his neck is causally related to the work injury. Although the petitioner reported having cervical problems prior to May 31, 1994, when he sought chiropractic care on June 9, 1994, subsequent to his accident, he reported more numbness in his right arm and fingers and an increase in the frequency of the reoccurrence of neck pain and headaches.

The petitioner failed to prove that his right knee, back, carpal tunnel and cubital tunnel are related to the work injury. The petitioner reported falling and striking the back of his neck and a trauma to his right knee at St. Francis Hospital on May 31, 1994. When he sought chiropractic care on the 9th of June, he reported that both feet went up and his neck hit the stairs. The petitioner did not report that he hyperflexed or twisted his right leg or describe a fall that would have been consistent with a hyperflexion of his right leg. He did not seek any medical care for his knee until June 26, 1996, at which time Dr. Sonnenburg suspected problems with the polyethylene tray and wear debris. The opinion of Dr. Gates in not consistent with the evidence and is conjecture.

FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:

The petitioner is entitled to temporary total disability for a 12-week period after his cervical surgery on October 8, 1998. The respondent shall pay the petitioner temporary total disability benefits of $712.92/week for 12 weeks, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner.

FINDING REGARDING THE NATURE AND EXTENT OF INJURY:

The respondent shall pay the petitioner the sum of $384.73/week for a further period of 175 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of 35% loss of use of the man as a whole.

FINDING REGARDING SECTION 8(J) CREDITS:

Section 8(j) credits cannot be determined from the evidence.

ORDER:

- The respondent shall pay the petitioner Temporary Total Disability benefits of $712.92/week for 12 weeks, which is the period of Temporary Total Disability for which compensation is payable.

- The respondent shall pay the petitioner the sum of $384.73/week for a further period of 175 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of 35% loss of use of the man as a whole.

- The respondent shall pay the petitioner compensation that has accrued from May 31, 1994, through July 31, 2006, 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.

4.92

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of % 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

9/19/06
Date

SEP 20 2006

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

Louis E. Jogmen,
Petitioner,

vs. NO. 11WC10049
15IWCC0218

City of Park Ridge Police Department,
Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Corrected Decision and Opinion on Remand dated April 17, 2015 has been filed by Petitioner herein. Upon consideration of said Petition, the Commission is of the opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Corrected Decision and Opinion on Remand dated April 17, 2015 is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein.

IT IS FURTHER ORDERED BY THE COMMISSION that a Second Corrected Decision and Opinion on Remand shall be issued simultaneously with this Order.

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

DATED: MAY 1 - 2015
SM/sj
44

Stephen J. Mathis

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

Louis E. Jogmen,

Petitioner,

vs.

NO. 11WC 10049
15IWCC0218

City of Park Ridge Police Department,

Respondent.

SECOND CORRECTED DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the circuit court. The circuit court reversed the Commission's decision on the accrual of benefits and remanded the matter to the Commission "for a determination of benefits in accordance with this Opinion and Order" for injuries sustained to Petitioner's left shoulder and left elbow while moving file cabinets for respondent City of Park Ridge. The Commission hereby complies with the order of the circuit court.

The following evidence is pertinent on remand. The evidence adduced at the arbitration hearing shows Petitioner underwent medical treatment that included a course of conservative therapy followed by arthroscopic left shoulder surgery on October 27, 2011. He received TTD benefits from October 27, 2011 through February 5, 2012 related to the left shoulder and returned to full duty.

Petitioner later underwent surgery to his left elbow on July 2, 2012. He received TTD benefits from July 2, 2012 through July 26, 2012. Petitioner returned to modified work at full salary on July 27, 2012. Petitioner was determined by his treating physician, Dr. Vitosky, to be at MMI with respect to both conditions on February 26, 2013, and Petitioner was discharged from care. This was not disputed and hence is the law of the case.

Petitioner is left hand dominant. The arbitrator awarded PPD benefit for the loss of 20% of the Petitioner's left arm pursuant to section 8(e) and the loss of 12% of the person-as-a-whole pursuant to section 8(d)(2) of the Act with respect to the left shoulder injury. She ordered as follows:

> "Respondent shall pay Petitioner permanent partial disability benefits of $664.72/week for 50.6 weeks, because the injuries sustained caused the 20% loss of the left arm as provided in Section 8(e) of the Act.
>
> Respondent shall pay Petitioner permanent partial disability benefits of $664.72/week for 60 weeks, because the injuries sustained caused the 12% loss of the person as a whole, as provided in Section 8 (d) 2 of the Act.
>
> Respondent shall pay Petitioner the permanent partial disability benefits that have accrued from February 26, 2013 through April 16, 2013, and shall pay the remainder of the award, if any, in weekly payments."

The arbitrator found that the date of accrual for both awards was February 26, 2013, that being the date of MMI relating to both injuries as determined by Petitioner's physician, Dr. Visotsky who released Petitioner from treatment on that date. The Commission affirmed and adopted the arbitrator's decision on June 3, 2014.

On judicial review, the circuit court entered an opinion and order on November 13, 2014, finding: "Section 8(e) benefits begin to accrue when TTD benefits terminate, not when a claimant reaches MMI," and "Section 8(d)2 PPD benefits begin to accrue on the same date TTD benefits begin to accrue." The circuit court remanded the matter to the Commission for a determination of benefits in accordance with its opinion and order. No further appeal from the circuit court's ruling was taken.

Pursuant to the circuit court's ruling PPD benefits would begin accruing for the shoulder injury on October 27, 2011, and for the arm injury on July 27, 2012. Thus, the PPD benefits for the shoulder injury would have fully accrued by December 20, 2012, and the PPD benefits for the arm injury would have fully accrued by July 18, 2013. The Commission notes its award of PPD benefits for the shoulder injury would have fully accrued by April 22, 2014, and its award of PPD benefits for the arm injury would have fully accrued by February 17, 2014.

The circuit court referenced two cases in support of its analysis under section 8(e) and relied on the plain language of the statute in its analysis under section 8(d)2. Both of the cited cases, *Lester v. Industrial Commission*, 256 Ill. App. 3d 520 (1st Dist. 1993) and *Greene Welding and Hardware v. Workers' Compensation Comm'n,* 396 Ill. App. 3rd 754 (4th Dist. 2009), involve an amputation which is dramatically different from the injuries sustained in the present case. The full nature and extent of an amputation injury is obvious immediately at the time of occurrence. This is not the case with the arm injury sustained by Petitioner in the present case. Further, the circuit court's plain reading of the statute is contrary to what is universally well established, that "the typical schedule provides that, after the injury has become stabilized and its

permanent effects can be appraised, benefits described in terms of regular weekly benefits for specified numbers of weeks shall be paid." 7 Larson's Workers' Compensation Law §86.02.

Although the Commission may not necessarily agree with the circuit court's analysis we are mandated to follow it. That having been said, this matter is now moot as the period of accrual has been fulfilled under either analysis.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent immediately pay to Petitioner the remaining permanency award, if any.

No bond is required for removal of the 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 the Circuit.

DATED: MAY 1 - 2015
SM/msb
d-3/5/14
44

Stephen J. Mathis

Mario Basurto

David L. Gore