

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CONSTANCE SARLO,

Petitioner,

vs.

NO: 13 WC 20497  
16 IWCC 727

ABM INDUSTRIES, INC. d/b/a AIR SERV CORPORATION,

Respondent.

ORDER

This matter came before Commissioner Michael J. Brennan pursuant to each party's "19(f) Motion to Correct Clerical Error in Decision;" Petitioner having filed such Motion on November 17, 2016 and Respondent having filed such Motion on November 18, 2016;

And the parties, having appeared by their respective counsel and having advised the Commission as to the nature of the deficiency that each has alleged in the Commission's Decision and Opinion on Review, as was entered on the 9<sup>th</sup> day of November, 2016.

And the Commission, after considering the nature of the arguments presented by each party, believes that the parties have misapprehended the requirements of Section 19(f) of the Act;

Section 19(f) provides in pertinent part:

[T]he Arbitrator or the Commission may on his or its own motion, or on the motion of either party, correct any clerical error or errors in computation within 15 days after the date of receipt of any award by such Arbitrator or any decision on review of the Commission and shall have the power to recall the original award on arbitration or decision on review, and issue in lieu thereof such corrected award or decision. 820 ILCS 305/19(f).

Neither the Petitioner nor the Respondent has alleged a clerical error in the computation of the award or in the amount due and owing the Petitioner. Absent such an allegation, the Commission believes that the respective "19(f) Motion to Correct Clerical Error in Decision," that was filed by each party is factually and legally insufficient;

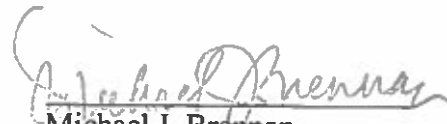
Petitioner has questioned the sufficiency of the Commission's Decision relative to the potential computation of a credit, due Respondent and against Petitioner. And, Respondent has questioned the amount of the bond it is required to post to challenge the Commission's Decision and Opinion on Review, as was entered on the 9<sup>th</sup> day of November 2016;

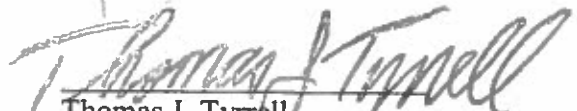
The Commission believes that the language of the Commission's Decision and Opinion on Review, as was entered on the 9<sup>th</sup> day of November 2016, is sufficiently clear and that no clerical error has been made;

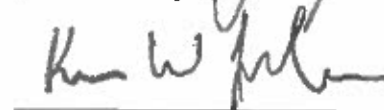
And it being the finding of the Commission that the "19(f) Motion to Correct Clerical Error in Decision" as was filed by each of the parties is deficient and should be denied;

IT IS HEREBY ORDERED that the "19(f) Motion to Correct Clerical Error in Decision" as was filed by each of the parties be and it is hereby Denied.

DATED: **JAN 6 - 2017**  
MJB/tdm  
r: 12-9-16  
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Michael J. Brennan

  
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Thomas J. Tyrrell

  
\_\_\_\_\_  
Kevin Lamborn

07WC 54479  
14 IWCC 0879  
Page 1

STATE OF ILLINOIS     )  
                                  )  
COUNTY OF DUPAGE    )

BEFORE THE ILLINOIS WORKERS'  
COMPENSATION COMMISSION

Eunice Esparza,  
                                  Petitioner,

vs.

NO. 07WC 54479  
14 IWCC 0879

Costco Wholesale,  
                                  Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

Motion to recall pursuant to Section 19(f) of the Act, having been filed by the Petitioner finds that a clerical error exists in its Decision and Opinion dated October 8, 2014 in the above captioned.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated October 8, 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 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:     **JAN 18 2017**

  
\_\_\_\_\_  
Kevin W. Lamborn



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF DUPAGE )

<input type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EUNICE ESPARZA,

Petitioner,

vs.

NO: 07 WC 54479  
14 IWCC0879

COSTCO WHOLESALE,

Respondent.

CORRECTED 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 medical expenses, permanent partial disability and the two-physician rule as found in Section 8(a) of the Act 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 only to the extent that it vacates the charges payable to Dr. Daniel Newman and his practice group, the Illinois Bone and Joint Institute. The Commission finds the services he rendered were outside the two physician rule as set forth in Section 8(a) of the Act.

Arbitrator Doherty, in explaining how she came to find Dr. Newman came within the referral chain of Dr. Rahid Khan, acknowledged that she relied on Petitioner's testimony of being generally referred to another orthopedic. The Commission finds this reliance on Petitioner's testimony was made erroneously as she had sustained Respondent's timely-made objection to Petitioner testifying about anything Dr. Khan might have said or any referral Dr. Khan might have made. At the time she sustained Respondent's objection, Arbitrator Doherty indicated that she would take notice of any such referral found in the record. Within the Decision of the Arbitrator, Arbitrator Doherty wrote that no corresponding record was presented. In reviewing Dr. Khan's records, the Commission found no record of Dr. Khan referring Petitioner



to anyone outside his own practice group at Advanced Health Medical Group. The closest thing the Commission can find in Dr. Khan's records to a referral is a statement within the April 30, 2008, discharge note in which it was indicated that Petitioner may require future medical care. The Commission does not find that statement be a referral.

Upon reviewing the record and comparing it against Petitioner's testimony, the Commission comes to question Petitioner's veracity. In explaining why she discontinued treating with Dr. Khan, Petitioner testified that Dr. Khan had retired sometime after seeing her on October 22, 2010. She presented no evidence of seeing Dr. Khan anytime after October 22, 2008. Also noted is no reference being made of Dr. Khan's retirement when Petitioner presented to Dr. Newman on January 6, 2011. Dr. Newman's record from that visit indicates Petitioner informed him that, in August 2010, Dr. Khan recommended that she obtain a second opinion. The Commission finds notable three things about this history. First, she did not explain to Dr. Newman the reason for her presenting to him was due to the retirement of Dr. Khan. Second, the Commission finds no evidence of Petitioner seeing Dr. Khan in August 2010. Third, Dr. Newman did not specify that Dr. Khan referred Petitioner to him, only that she was subsequently referred to his office. Dr. Newman did not identify who made the referral. To the Commission, it appears Petitioner simply never returned to Dr. Khan after October 22, 2008.

The circumstances as to how Petitioner specifically came to be seen by Dr. Newman were addressed during the arbitration proceedings. Again, the Commission questions Petitioner's veracity. Again, Petitioner, on direct examination, testified simply that Dr. Khan made a referral. On cross-examination, Petitioner acknowledged believing, at one point, she alleged Respondent's workers' compensation carrier referred her to Dr. Newman. She then acknowledged receiving a letter that instructed her to see Dr. Newman. When asked if the letter came from her attorney, Petitioner indicated, "That I do not know." She proceeded to state that she thought it came from Respondent's attorney. On redirect examination, Petitioner acknowledged the referral to Dr. Newman came from "basically like a doctor finders [sic] service called Illinois Physician Network." The Commission takes notice that the as-testified-to letter that directed Petitioner to Dr. Newman was not admitted into evidence, that no referral from the Illinois Physician Network was entered into evidence and, most significantly, that Petitioner failed to identify who referred her to Dr. Newman when she completed his new patient intake form on January 6, 2011. Petitioner's testimony implies that she does not know how she came to be seen by Dr. Newman.

The Commission is not convinced that Petitioner came to be seen by Dr. Newman by way of either an explicit or implicit referral from Dr. Khan. Petitioner presented no evidence, other than her own testimony, to support this claim. Dr. Newman's noting that Petitioner had been referred to him is insufficient to establish that it was Dr. Khan who made the referral, particularly in light of Petitioner's testimony that she was referred to him by the Illinois Physician Network.

IT IS THEREFORE ORDERED BY THE COMMISSION that the awarding of medical benefits attributable to Dr. Newman and his practice group, the Illinois Bone and Joint Institute, and any medical practitioner Dr. Newman referred Petitioner to under Sections 8 and 8.2 of the Act is vacated.





IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$315.82 per week for a period of 32-3/7 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 \$284.27 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 10% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$17,670.55 for medical expenses under §8(a) 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.

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.

**JAN 18 2017**

DATED:  
KWL/mav  
O: 08/18/14  
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Kevin W. Lamborn

  
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Thomas J. Tyrrell

  
\_\_\_\_\_  
Michael J. Brennan



ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**14IWCC0879**

Case# 07WC054479

**ESPARZA, EUNICE**

Employee/Petitioner

**COSTCO WHOLESALE**

Employer/Respondent

On 8/30/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% 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:

0347 MARSZALEK AND MARSZALEK  
STEVEN GLOBIS  
221 N LASALLE ST SUITE 400  
CHICAGO, IL 60601

0210 GANAN & SHAPIRO PC  
MICHELLE L LaFAYETTE  
210 W ILLINOIS ST  
CHICAGO, IL 60654

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF DUPAGE )

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**14IWCC0879**

Case # 07WC 54479

Consolidated cases:

**Eunice Esparza**  
Employee/Petitioner

v.

**Costco Wholesale**  
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 **July 11, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A.  Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B.  Was there an employee-employer relationship?
- C.  Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D.  What was the date of the accident?
- E.  Was timely notice of the accident given to Respondent?
- F.  Is Petitioner's current condition of ill-being causally related to the injury?
- G.  What were Petitioner's earnings?
- H.  What was Petitioner's age at the time of the accident?
- I.  What was Petitioner's marital status at the time of the accident?
- J.  Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K.  What temporary benefits are in dispute?  
 TPD       Maintenance       TTD
- L.  What is the nature and extent of the injury?
- M.  Should penalties or fees be imposed upon Respondent?
- N.  Is Respondent due any credit?
- O. xx Other **choice of providers**

# 14IWCC0879

## FINDINGS

On 9/12/2007, 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 \$24,636.56; the average weekly wage was \$473.78.

On the date of accident, Petitioner was 45 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 \$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

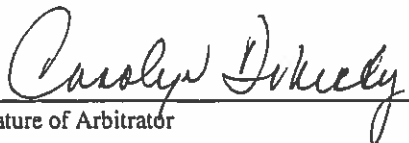
Respondent shall pay Petitioner temporary total disability of \$315.82 per week for 32-3/7 weeks commencing 11/30/07 through 4/30/08 and again on 5/20/11 through 8/1/11 pursuant to Section 8(b) of the Act.

Respondent shall pay to 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, if any. SEE DECISION

Respondent shall pay Petitioner permanent partial disability benefits of \$284.27/week for 50 weeks, because the injuries sustained caused the 10% loss of use of the person as a whole pursuant to 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

8/29/13  
\_\_\_\_\_  
Date

AUG 30 2013

14IWCC0879

FINDINGS OF FACT

At trial, the parties stipulated that Petitioner sustained a work related accident on 9/12/07 and that proper notice was provided. ARB EX 1. Petitioner testified that she began working as an optician for Respondent in August 2007. Petitioner's duties included lifting and unloading boxes of delivered eye ware and data entry 4 to 5 hours per day. On 9/12/07, Petitioner was unpacking delivered boxes. Petitioner testified that she while opening a cabinet with her right hand, her right hand and wrist were jerked by the falling wooden cabinet drawer. She felt immediate pain and numbness in her right wrist and right shoulder. Petitioner is left hand dominant.

Petitioner testified that she was sent to Elmhurst Hospital by "Donna" in HR at Respondent. Petitioner testified that her first visit to Elmhurst Hospital was on 9/24/07 and explained that despite immediate symptoms of pain in the right wrist and shoulder numbness she did not have treatment between the accident on 9/12/07 and 9/24/07 due to the death of her father. The Elmhurst Hospital records of 9/24/07 document a consistent history of accident on 9/12/07 when Petitioner twisted her arm from the weight of the falling drawer off its bracket. Petitioner noted injury to her "right forearm." Complaints of ulnar pain and numbness were noted along with pain in the right wrist and numbness of the 4<sup>th</sup> and 5<sup>th</sup> fingers on the right hand. Right wrist x-rays were negative. Petitioner was released to return to work with a diagnosis of tendinitis of the right wrist and forearm and restrictions of no lifting over 5 pounds, no right handed work, no repetitive movement and the use of a wrist splint. PX 1. Petitioner was referred to Dr. Couri, a specialist, on 9/25/07. PX 1.

On 10/25/07, Petitioner saw Dr. Couri for a "physiatric consult." PX 2. Dr. Couri noted a consistent history of accident "about 1 month ago" and the development of a tingling on the dorsum of the right wrist and tingling going into the 4<sup>th</sup> and 5<sup>th</sup> fingers. He noted her visit to Elmhurst Hospital, the negative wrist x-ray, the splint and the referral to him for care. Dr. Couri noted that Petitioner was unable to make the initial appointment so her first visit with him was on 10/25/07. He noted, "the patient states that over the month, her symptoms have gotten about 97% better using the wrist splint. The only activity that is bad for her is carrying the bay or turning the key in the car ignition. She still feels a "clicking" in her wrist. She will awaken with tingling in her fingers. She denies having any weakness. When she gets the pain, it is a sharp pain which she rates at a 5 out of 10. She denies having any neck or arm pain." PX 2. Petitioner testified that she told Dr. Couri that she had acute right wrist pain and shoulder numbness but that Dr. Couri said he would treat the wrist first. Petitioner was shown the record indicating her denial of arm pain and testified that this notation was incorrect.

Dr. Couri performed an examination of Petitioner's right wrist, fingers and elbow noting a good range of motion with decreased pinprick sensation in the ulnar dorsum of her right hand, medial 4<sup>th</sup> finger and in the right medial dorsal forearm. He diagnosed "occasional wrist pain that seems to be due more so [sic] some instability at this time. Originally it probably was a tendinitis. It appears that the patient has an ulnar neuritis of unclear etiology. It is coming from the level of the elbow and is causing her to still have some of the tingling sensation that she is having." PX 2. Dr. Couri recommended occupational therapy to build up strength in the right forearm, wrist and finger flexors and extensors which "seem to have become weak as she has been using the splint more frequently." He also ordered an EMG "of her right upper extremity to further assess the ulnar neuritis." Petitioner was kept on full duty work but was told to "discontinue use of the cock-up wrist splint except for when she is carrying the baby."

Petitioner testified that her employment with Respondent was terminated after 90 days in November 2007. Petitioner testified she was terminated for making two typing mistakes while in a splint. RX 2 is a "termination/resignation" form provided by Respondent documenting that Petitioner's termination on 11/15/07 for "two serious misconduct violations regarding HIPPA acknowledgement. HIPPA acknowledgement is required by Federal law." RX 2. The form was not signed by Petitioner despite a place for employee signature. At trial, Petitioner did not agree she was fired for non-compliance with HIPPA procedures but agreed that she was fired during the HIPPA counseling meeting.

The initial occupational therapy evaluation of 11/21/07 pursuant to Dr. Couri's orders indicates that Petitioner showed increased parathesias of the ring and small fingers with lateral neck bending and that she demonstrated "parathesias and weakness throughout the RUE" right upper extremity. It was noted that Petitioner was scheduled for an EMG to rule out ulnar neuropathy at the elbow. Petitioner's symptoms were decreased in the clinic with neck and upper extremity stretching and postural corrections at the two OT visits on 11/21/07 and 11/23/07. PX 2, PX 3. Dr. Couri's office note of 12/11/07 indicates that the EMG was authorized but that Petitioner did not have the EMG done in his office. PX 2. Petitioner did not return to Dr. Couri.

Petitioner chose to treat next with Advanced Health Medicine Group on 11/30/07. This is Petitioner's *first choice of providers* as Petitioner testified that she chose this physician group on her own and without referral. At the first visit on 11/30/07, Petitioner complained of the same symptoms described above as well as pain in her right shoulder and "numbness behind her back and right upper shoulder..." occurring at the time of her injury. Dr. Khan examined her upper extremities and cervical spine noting tenderness to palpation of the cervical spine and right posterior shoulder along with "decreased sensation on the ulnar aspect of the right forearm extending to the digit four and five including complete loss of sensation with a marked sensation in the entire digit five, palmer aspect of the hand quarter, and a three-quarter of the ulnar aspect of the digit four." PX 4. Dr. Khan's initial diagnosis was "neurological deficits in sensation in the left upper extremity requiring EMG/NCV. Likely etiology includes cervical strain/sprain with disc herniation at C6-C7 or ulnar compression at the elbow." Dr. Khan ordered an MRI of the cervical spine and right wrist as well as the EMG. Petitioner was given medication and sent to PT. As of 11/30/07 Petitioner was taken off work. PX 4.

Petitioner testified and the records reflect that Dr. Khan sent her for a consult with Dr. Kaye. On 12/7/07, Dr. Kaye also noted complaints of cervical and right shoulder pain following this accident along with the right wrist and finger complaints. Following an exam, Dr. Kaye diagnosed a right wrist strain, right elbow and shoulder strain, right cervical strain, cannot exclude ulnar nerve injury and cannot exclude co-existing cervical radicular injury. Dr. Kaye performed the EMG which showed a "stretch type injury to the right ulnar nerve. Most likely it can represent a mild cervical C8 nerve root stretch, ... the F wave is prolonged on the side of the injury, and is in support of such conclusion." He further commented that "although the right ulnar nerve conduction study was normal, a positive Tinel's at the right wrist would support a mild ulnar nerve stretch/compression at the wrist that is in recovery stage currently." Petitioner continued with chiropractic care thereafter with Dr. Hara at Advanced. PX 4.

On 1/10/08, following the shoulder MRI, Petitioner saw Dr. Malhas at Advanced for an orthopedic follow up. Dr. Malhas noted that Petitioner had a musculo-ligamentous injury in her right shoulder and that the MRI showed superior labral lesion and supraspinatus tendinopathy and AC arthrosis. PX 4, PX 5. Petitioner was given an injection with some immediate relief. PX 4. Petitioner continued with chiro care

under Dr. Hara through April 2008. On 3/7/08, Dr. Khan noted that Petitioner's strength and sensation was improving and that her fingers weren't so numb. He noted that the EMG/NCV was positive for mild C8 and ulnar findings. The MRI of the cervical spine was largely negative and the right shoulder MRI showed inflammation. PX 4, PX 5. Petitioner was returned to restricted duty work with no lifting over 5 pounds on this date and PT was cut to two days per week with a follow up in 4 weeks. PX 4.

On 4/2/08, Dr. Khan noted that Petitioner sustained a double-crush syndrome to the ulnar distribution- C7 overlay on the right with decreased strength in the 4<sup>th</sup> and 5<sup>th</sup> right fingers based on the positive EMG/NCV. PT twice per week was continued as was light duty work. On 4/25/08, Dr. Kaye agreed with Dr. Khan's assessment noting also possible median nerve involvement and right shoulder tendinopathy and SLAP lesion possibly contributing to the weakness. He recommended acupuncture and electrical stimulation for the ongoing C8 nerve distribution weakness. On 4/30/08, Dr. Khan released Petitioner at MMI for right ulnar nerve distribution neuropathy and right shoulder musculature injury of chronic inflammation strain/sprain. Petitioner was released to work with a maximum lifting restriction of 20 pounds and no overhead work. Exacerbations would require more treatment according to Dr. Khan. Dr. Kahn authored a narrative report not connected to actual treatment, which was dated October 22, 2008. Dr. Kahn indicated the MRI study demonstrated a SLAP lesion necessitating surgical intervention, which Petitioner declined to have at that time. He clearly stated that at the time of Petitioner's discharge she would need surgery in the future and that it was not a "question of whether she needs surgery, but when." PX 4. He otherwise indicated a functional capacity evaluation was needed to assess her work capacity, but that she was under significant limitations due to her shoulder pain and right hand pain. He further stated that "once again, I do believe the patient's injuries as outlined above including the findings on MRI, although significant, do not result in lifelong disability and *can be treated effectively.*" *Emphasis added.* PX 4.

Petitioner testified that returned to work thereafter but had problems with accuracy due to continued problems with her two right digits. Petitioner worked as a cashier.

At Respondent's request, Petitioner attended a Section 12 exam with Dr. Romeo on 4/21/09- one year after Petitioner's release at MMI by Dr. Khan. RX 1. Dr. Romeo noted that he was performed an exam relative to Petitioner's right shoulder. He noted Petitioner's history of injury and complaints including those to her right wrist, arm and shoulder. He noted that the EMG revealed an ulnar neuritis and a questionable C8 radiculopathy. He noted the normal cervical spine MRI and the shoulder MRI noting some tendinitis of the supraspinatus tendon and a suspected SLAP lesion and AC joint arthritis which was also seen on the x-rays he performed. Petitioner's main complaints were that of numbness and heaviness of the right upper extremity. Exam was normal.

Dr. Romeo noted a diagnosis of right upper extremity strain and that "based upon the history provided by the patient, there is no surgical intervention that is recommended in regards to her right shoulder. There is nothing surgically that can improve the heaviness and numbness she feels throughout the right upper extremity." Based on the history provided, Dr. Romeo agreed that Petitioner's right upper extremity strain was related to the accident on 9/12/07 and that Dr. Khan's treatment was appropriate and necessary to treat that condition. However, he stated that her shoulder exam was essentially benign and that "it is not relevant to her numbness and heaviness that she feels in regard to her right upper extremity. He felt that the right shoulder MRI findings "are not clinically relevant" and are not consistent with the mechanism of



injury. He does not recommend or agree with any surgical recommendations and determined that Petitioner was capable of working without restriction. He found Petitioner at MMI. RX 1.

PX 6 contains records from a chiropractor Dr. Brownlee dated 11/12/09 and 1/27/10. Petitioner testified that she originally saw Dr. Brownlee for a job interview but then ultimately received chiropractic treatment from Dr. Brownlee. This treatment is reflected in the vague handwritten records at PX 6. Petitioner testified that she did not see Dr. Brownlee initially for treatment but rather for a job interview. However, Dr. Brownlee did an exam upon Petitioner's complaints of radiating arm pain and numbness and numbness in her fingers. Dr. Brownlee's records of 11/12/09 note that Petitioner was advised her care could not be "processed" as it was a work comp claim. PX 6. The record of 1/27/10 refers to Petitioner as Lionessa Lunes AKA Eunice Esparza.

Petitioner testified that she did not have any treatment for her complaints until September 2010 when she returned to Dr. Khan. In September 2010 Dr. Khan sent Petitioner to Premier PT for her continued right shoulder complaints. PX 7. Petitioner had another right shoulder MRI on 9/28/10 which showed a mild amount of partial thickness tearing tendinosis involving the supraspinatus tendon and mild tendinosis and possible small amount of partial thickness tearing to the subscapularis tendon as well. No full thickness tear to the rotator cuff is identified. Hypertrophic changes were noted along the AC joint. PX 8. Petitioner testified that her last visit to Dr. Khan was on 10/22/10 but no corresponding record was presented. Petitioner testified that Dr. Khan was retiring so he referred Petitioner for follow up care to another orthopedic. Again, no corresponding referral record was presented.

Petitioner next chose Dr. Newman as her treating orthopedic in place of Dr. Khan. She testified that she was not referred to Dr. Newman but found him through "physicians network." At the first visit on 1/6/11, Dr. Newman noted Petitioner's 2007 work injury and subsequent complaints to her right upper extremity. HE further noted her prior PT and testing ordered by Dr. Khan and that the therapy was being performed by a chiropractor. He noted that the "treatments were abruptly discontinued when it was discovered that they were not being paid. Ms. Esparza was essentially not treated until August 2010, when she went back to Dr. Khan who suggested that she get another opinion, and she was subsequently referred to this office." PX 9. He decided on conservative treatment for Petitioner's continued complaints of numbness and weakness of the right arm which he found "directly related to the incident that occurred at work in September 2007. She has not been symptom-free since that date. I believe she has a tardy ulnar palsy at the right elbow and evidence of a right shoulder impingement syndrome." Dr. Newman ordered an EMG to rule out a right cervical radiculopathy versus a right upper extremity mononeuropathy. PX 9.

The EMG of 3/15/11 showed a possible C5 radiculopathy in the right upper extremity and no ulnar palsy. A subsequent MRI of the cervical spine was normal. Based on her complaints of pain in the shoulder and heaviness in the right upper extremity with paresthesias into the 4<sup>th</sup> and 5<sup>th</sup> digits, Dr. Newman diagnosed that Petitioner's problems were likely emanating from the shoulder and not the cervical spine. He recommended surgery in April 2011 and on 5/20/11, he performed arthroscopy, acromioplasty, resection of the distal clavical and mini open repair of the rotator cuff. The post-op diagnosis was rotator cuff tear, impingement and degenerative arthritis of the right shoulder. Dr. Newman noted a full-thickness tear of the rotator cuff which was "quiet extensive." PX 9.

Petitioner was taken off work as of May 18, 2011. As of 6/21/11 Dr. Newman noted that Petitioner's "previous radiating pain in the right upper extremity, including the tingling and numbness in the right

hand, have subsided since the surgery.” After a course of post surgical PT, Dr. Newman released Petitioner to work in August 2011. Thereafter, Petitioner was sent by Dr. Newman to a urologist Dr. Chernoff at Swedish Covenant Hospital due to medication related problems. Petitioner treated through April 2012 with Dr. Chernoff. PX 12., PX 31. Petitioner testified that her last visit with Dr. Newman was on January 10, 2013 when she received “shots” in her right shoulder.

Petitioner testified that she currently does not take medication but experiences numbness in her right shoulder and small and ring fingers on the right hand. Petitioner performs exercises to control any pain and numbness. Petitioner did not experience these problems before this accident.

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 condition of ill being in her right shoulder, arm and hand is related to the accident of September 12, 2007. The Arbitrator notes that Petitioner complained initially of right wrist pain and numbness in her fingers following the “tug” injury she sustained when she pulled out a drawer which fell off a bracket at work on 9/12/07. Petitioner’s complaints to her right upper extremity have persisted since the date of the accident. Prior to this accident she had no symptoms in her right upper extremity.

The Arbitrator notes that the Petitioner has consistently attributed her right upper extremity symptoms to the accident at work. She was initially seen at Elmhurst Memorial Hospital Occupational Health Service on September 24, 2007. She gave a history of her right arm being twisted from the weight of a drawer. She complained of pain in her right forearm and numbness and tingling in the fingers of her right hand. Dr. Couri took a history on October 25, 2007, indicating, “The patient states about one month ago, she was pulling out a drawer full of files with her right hand at work and the drawer fell out. She states that the files probably weighed about 20 pounds. She developed tingling on the dorsum of the right wrist and tingling going down into her fourth and fifth fingers“. Dr. Couri recommended occupational therapy to build up strength in the right forearm, wrist and finger flexors and extensors which “seem to have become weak as she has been using the splint more frequently.” He also ordered an EMG “of her right upper extremity to further assess the ulnar neuritis.” He diagnosed ulnar neuritis of an unclear ideology probably coming from the level of the elbow. PX 2. The initial occupational therapy evaluation of 11/21/07 pursuant to Dr. Couri’s orders indicates that Petitioner showed increased parathesias of the ring and small fingers with lateral neck bending and that she demonstrated “parathesias and weakness throughout the RUE” right upper extremity. PX 3.

Petitioner was next seen by her first choice of providers, Dr. Khan and the doctors at Advanced Health Medical Group including Drs. Kaye and Hara. Dr. Kahn diagnosed right ulnar nerve distribution neuropathy and right shoulder muscular injury-chronic inflammation strain/sprain. The doctor commented, “The patient’s signs and symptoms are consistent with a history of the injury at Costco with mechanism of the action of the door hitting her as described by the patient initially. As such all treatment should be performed on an industrial basis.” PX 4. Dr. Khan also determined in April 2008 that Petitioner was a surgical candidate for her shoulder diagnosis but stated that Petitioner did not want

surgery at that time. In October 2008, Dr. Khan reiterated that surgery was not a question of whether but of when.

PX 6 contains records from a chiropractor Dr. Brownlee dated 11/12/09 and 1/27/10. Petitioner testified that she originally saw Dr. Brownlee for a job interview but then ultimately received chiropractic treatment from Dr. Brownlee. Dr. Brownlee is Petitioner's second choice of provider. Dr. Brownlee did an exam upon Petitioner's complaints of radiating arm pain and numbness and numbness in her fingers.

On January 6, 2011, Petitioner sought treatment with Dr. Daniel Newman at the Illinois Bone & Joint Institute. Dr. Newman recorded a history that Petitioner was injured at work in September 2007. He noted that Petitioner was opening a file drawer when the drawer fell off its track, twisting her wrist and yanked her entire right extremity. The doctor then stated, "In my opinion, the complaints of Ms. Esparza presents today are directly related to the incident that occurred at work in September of 2007. She has not been symptom free since that date. I believe she has ulnar nerve palsy at the right elbow and evidence of right shoulder impingement syndrome." Ultimately Dr. Newman performed surgery on petitioner's right shoulder on May 18, 2011 with a postoperative diagnosis of rotator cuff tear impingement and degenerative arthritis of the right shoulder. PX 9.

The Arbitrator further notes that Dr. Romeo agreed that Petitioner's care and treatment from Dr. Khan for what Dr. Romeo diagnosed as an upper extremity strain was reasonable, necessary and causally related to the work accident. However, he disagreed with the need for surgery.

Based upon all of the above, the Arbitrator concludes that Petitioner's right shoulder and arm injuries are related to the accident of September 12, 2007. Although the initial recorded complaints are of numbness in the right arm and hand with pain in the wrist, the Petitioner testified to minimal use of the right shoulder and arm after the accident while wearing a splint. By November 30, 2007, it is well documented she was complaining of right shoulder pain which she consistently attributed to the accident at work. Furthermore, the accident at work is the sole explanation in evidence for the condition of ill being of the right shoulder. There is no evidence she had any right shoulder problems before September 12, 2007. The Arbitrator further notes that Petitioner's primary treating orthopedic surgeons, Dr. Khan and Dr. Newman, each opined that her right shoulder injury was related to the accident at work. In finding causal connection for Petitioner's shoulder condition and the treatment received for that condition, the Arbitrator places greater weight on the opinions of the treating physicians in light of the record as a whole.

**O. Did Petitioner exceed her allowable choice of providers? 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?**

Respondent disputed liability for Petitioner's medical expenses in part based upon a causal connection dispute. Having found for the Petitioner regarding the disputed issue of causal connection, The Arbitrator finds Respondent is to pay Petitioner's reasonable and necessary medical expenses incurred in connection with the care and treatment of her causally related conditions.

Respondent asserts that Petitioner has exceeded her allowable choice of 2 physicians under Section 8(a), thus negating Respondent's payment of any bills emanating from the treatment provided by Dr. Newman

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and any of his referred treatment. Respondent asserts that Dr. Newman was a third provider as Drs. Khan and associates were first choice followed by the second choice of Dr. Brownlee.

The Arbitrator agrees that Drs. Khan and associates were Petitioner's first choice and that Dr. Brownlee was her second choice. However, the Arbitrator finds that Dr. Newman rightfully belongs in the chain of providers emanating from the first choice, Dr. Khan. Petitioner testified that Dr. Khan was retiring when she saw him in September 2010 so he referred her for follow up care to another orthopedic. Again, no corresponding referral record was presented and despite reference by both parties at trial to a specific referral from Dr. Khan to a Dr. Goldflies, the Arbitrator could not locate that record. Left with Petitioner's testimony that she was generally referred to find another orthopedic, the Arbitrator finds that Petitioner remained within her allowable choices when she found Dr. Newman through the use of "Physician's Network." On January 6, 2011, Dr. Newman noted, "Ms. Esparza was essentially not treated until August 2010, when she went back to Dr. Khan who suggested that she get another opinion, and she was subsequently referred to this office." PX 9.

Accordingly, based on the findings of causal connection and on the issue of choice of providers, the Arbitrator further finds that Respondent is to pay to Petitioner the reasonable and necessary medical expenses incurred in connection with her causally related conditions pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid, if any.

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

The Arbitrator finds that Petitioner was temporarily and totally disabled for 32-3/7 weeks from November 30, 2007 through April 30, 2008 and from May 20, 2011 through August 1, 2011. The Arbitrator finds that Petitioner was authorized off work during these periods where her condition was not stabilized and treatment for the causally related conditions continued. PX 4, PX 9.

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

Based upon the above, the Arbitrator concludes that Petitioner has sustained an injury to her right shoulder and upper extremity as a result of the accident of September 12, 2007 resulting in surgery performed on May 20, 2011. Petitioner testified that she currently experiences numbness in her right shoulder and small and ring fingers on the right hand. Petitioner performs exercises to control any pain and numbness. She does not take medication and has returned to work. Based on the foregoing, the Arbitrator finds that Petitioner sustained 10% loss of use of the person as a whole pursuant to Section 8(d)(2) for the injuries to her right upper extremity.

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

<input type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS,  
ILLINOIS WORKERS' COMPENSATION COMMISSION,

Petitioner,

vs.

NO: 11 INC 00541  
16IWCC0535

MICHAEL BECKHAM, individually, and as President,  
and LYNDELL S. BECKHAM, individually and as  
Secretary, d/b/a BECKHAM TRANSIT CO.,

Respondent.

CORRECTED DECISION AND OPINION RE: INSURANCE COMPLIANCE

Petitioner filed a Motion to Recall and Correct Clerical Errors in the Commission Decision under Section 19(f) of the Act for the purpose of correcting clerical errors. The motion was filed within the timeframe as provided for under Section 19(f) of the Act and the Commission, therefore, retains jurisdiction to address the motion.

Petitioner finds a clerical error in the Commission's Decision and Opinion concerning this matter, claiming the decision is unclear with respect to the fine(s) imposed upon Respondents. Petitioner expresses uncertainty as to what is the total amount of the fine(s) imposed upon Respondents. The Commission, after reviewing said Decision and Opinion, finds there to be no clerical error in said Decision and Opinion.

The last sentence of the fourth paragraph of the Decision and Opinion states, "Accordingly, the Commission finds Respondent . . . subject to a fine of \$800,000.00 pursuant to

Section 4(a) of the Act and Section 7100.100(b)(1) of the Rules and *an additional fine* of \$40,936.00 for undue personal enrichment for failing to pay \$40,936.00 in workers' compensation insurance premiums." Emphasis added. The phrase "an additional fine" indicates two separate fines are being imposed, one in the amount of \$800,000.00 and another in the amount of \$40,936.00. The Commission does not find the above language indicates that the \$40,936.00 fine is to be included within the \$800,000.00 fine.


The Commission also finds the bifurcated orders found at the bottom of the second page are indicative that two separate fines have been imposed upon Respondents.

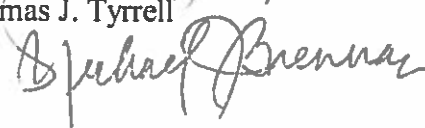
For reasons stated above, the Commission fines the controlling Decision and Opinion contains no clerical error and denies Petitioner's Motion to Recall and Correct Clerical Errors in the Commission Decision under Section 19(f) of the Act.

DATED:  
KWL/mav  
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**JAN 19 2017**

  
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Kevin W. Lamborn

  
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Thomas J. Tyrrell

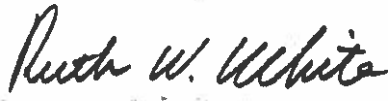
  
\_\_\_\_\_  
Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION

Illinois Workers' Compensation )  
Commission, Insurance Compliance )  
Division, )  
 )  
Petitioner, ) No. 09 INC 6  
 )  
v. )  
 )  
Reuben F. Goodman, Sr., )  
Individually & as Executive Director, )  
Southwest Disability Services )  
 )  
 )  
 )  
Respondent. )

**ORDER**

This matter, after oral request by the Petitioner, The Illinois Workers' Compensation Commission – Insurance Compliance Division, by and through its attorney, the Office of the Illinois Attorney General, is dismissed. The Office of the Attorney General has advised this Commission it no longer seeks to proceed in this matter against Respondents.



\_\_\_\_\_  
Commissioner Ruth White

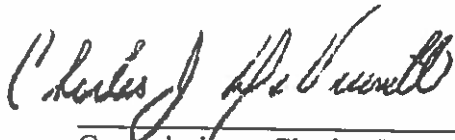
Dated: 1/23/17

**ILLINOIS WORKERS' COMPENSATION COMMISSION**

Illinois Workers' Compensation	)	
Commission, Insurance Compliance	)	
Division,	)	
	)	
Petitioner,	)	No. 14 INC 6
	)	
v.	)	
	)	
Quentin A. Love,	)	
Individually & as President,	)	
Quench Restaurants a/k/a	)	
Love Food Group	)	
	)	
	)	
Respondent.	)	

**ORDER**

This matter, after oral request by the Petitioner, The Illinois Workers' Compensation Commission – Insurance Compliance Division, by and through its attorney, the Office of the Illinois Attorney General, is dismissed. The Office of the Attorney General has advised this Commission it no longer seeks to proceed in this matter against Respondents.



Commissioner Charles DeVriendt

Dated: 1/23/17