STATE OF ILLINOIS	)	
	) SS	BEFORE THE ILLINOIS WORKERS'
COUNTY OF JEFFERSON	)	COMPENSATION COMMISSION
George Fred Engleby, Petitioner,	)	
	)	No. 09WC 15433
vs.	)	16IWCC0073
Western Express Respondent,	)	

ORDER

Motion to recall pursuant to Section 19(f) of the Act having been filed by the Respondent on February 11, 2016, the Commission having been fully advised in the premises, finds the following:

The Commission finds that said Decision should be recalled for the correction of a clerical/computational error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision and Opinion dated January 28, 2016, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner Charles J. DeVriendt.

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

Charles J. DeVriendt

CJD/jrc
049

DATED: FEB 2 3 2016

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

George Fred Engleby,

Petitioner,

vs.

NO: 09 WC 15433
16 IWCC 0073

Western Express,

Respondent,

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses both incurred and prospective, temporary total disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission finds there is no causal connection between the Petitioner's cervical spine condition and the accident on March 9, 2009.

The Commission does find a causal connection between the accident on March 9, 2009 and Petitioner's left carpal tunnel syndrome.

Petitioner had a prior cervical surgery in May of 2001. This involved the C5-6 disc level. Dr. Kube admitted under cross-examination, by virtue of this fact alone, there is a 20% to 30% of developing adjacent level disc disease at C4-5. He admitted that that could be the reason he is prescribing the surgery in 2012, 3 years after the accident on March 9, 2009. (Petitioner Exhibit 12 Pgs. 37-38)

Dr. Vaught, an orthopedic spine surgeon, treated Petitioner's cervical spine from August 12, 2009 through November 2, 2009. He reviewed a cervical spine MRI performed on July 29, 2009 in which the radiologist interpreted it as showing a mild bulge at C4-5. He felt that the MRI showed no surgical pathology. Dr. Vaught found that Petitioner was at maximum medical improvement for his cervical strain on November 2, 2009. (Respondent Exhibit 2)

Petitioner did not see another doctor regarding his cervical spine until he saw Dr. Morgan, who had been treating him for his left shoulder, on November 4, 2011. Petitioner complained of left arm problems and Dr. Morgan felt that it was the result of the 2001 cervical surgery. Dr. Morgan saw Petitioner again on January 13, 2012 and Petitioner complained of "acute pain" in his cervical spine. (Petitioner Exhibit 1) Dr. Morgan testified in his deposition that "acute" means "recent pain." (Petitioner Exhibit 2 Pg. 51)

Dr. Kube testified that in his opinion Petitioner needs a C4-5 decompression and fusion surgery. However, he did not see Petitioner until April 4, 2012 over 3 years after the accident. Dr. Kube had not read any of Petitioner's prior treating records and based his causation opinion on the Petitioner's history. Dr. Kube, at his deposition was asked to pull up the June 9, 2009 Cervical MRI as well as the 2012 Cervical MRI. Although the radiologist in the 2009 MRI found a mild stenosis compared to the significant stenosis at C4-5 in the 2012 MRI, he felt that the first radiologist was "wrong." (Petitioner Exhibit 12 Pgs. 43-45) Dr. Kube opined that the November 2009 accident made his symptomology worse and led to the current symptomology requiring the surgery. The accident is "at least" a contributing cause. (Petitioner Exhibit 12 Pgs. 27-28)

The Commission finds Dr. Kube's opinion unpersuasive and finds Petitioner's testimony regarding the intervening accident lacking in credibility. First, he sees the Petitioner almost 3 years after the accident. Secondly, he bases his opinion strictly on Petitioner's testimony. Petitioner told Dr. Kube that there was no real change in his neck pain following the car wreck on May 10, 2010. (Petitioner Exhibit 12 Pgs. 6-8) Yet Dr. Morgan saw Petitioner again on January 13, 2012 and Petitioner complained of "acute pain" in his cervical spine. (Petitioner Exhibit 1) Dr. Morgan testifies in his deposition that "acute" means "recent pain." (Petitioner Exhibit 2 Pg. 51) Third, the Doctor admits that he had no idea what the impact was involved in the auto accident. Fourth, he also admitted after reviewing the hospital records following the car wreck that Petitioner was complaining about neck pain. Fifth, he also admitted that after reviewing the hospital records the car wreck was pretty severe and that if someone's face hit the

steering wheel causing facial fractures this would put stress and loading on the cervical spine. (Petitioner Exhibit 12 Pgs. 59-61)

The Commission also finds that per the radiologists' reports, the MRI's of 2009, and 2012 show a significant change in Petitioner cervical spine.

Therefore, the Commission finds that Petitioner has failed to prove a causal connection between his current condition as it pertains to his cervical spine and the accident of March 9, 2009. Respondent is not responsible for any medical bills regarding the Petitioner's cervical spine past the November 2, 2009 date when Dr. Vaught found Petitioner at maximum medical improvement.

Petitioner is entitled to temporary total disability from March 27, 2009 through February 12, 2013 based on the shoulder surgery in2009 and his recovery therefrom.

In his deposition, Dr. Morgan was of the opinion that the Petitioner sustained a double crush syndrome of the left hand as well as carpal tunnel syndrome. Petitioner had no history of left hand symptoms prior to the March 9, 2009 accident. He recommended a release of the left hand. The March 9, 2009 accident aggravated the previous carpal tunnel condition because the symptoms escalated. (Petitioner Exhibit 2 Pg. 30- 32)

Therefore, the Commission finds that the Respondent is responsible for the left carpal tunnel release as proposed by Dr. Morgan. It also finds that Respondent is liable for any temporary total disability that results from said surgery.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $517.29 per week for a period of 198 1/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to the Petitioner for the medical expenses under §8(a) of the Act and 8-2 as they pertain to the left carpal tunnel release performed by Dr. Morgan. Cervical spine surgery as prescribed by Dr. Kube is denied.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $5,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

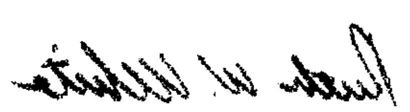
DATED: FEB 2 3 2016

Charles J. DeVriendt

Joshua D. Luskin

Ruth W. White

HSF
O: 12/1/15
049



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

ENGLEBY FRED, GEORGE
Employee/Petitioner

Case# 09WC015433

WESTERN EXPRESS
Employer/Respondent

16IWCC0073

On 3/16/2015, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0536 RON D COFFEL & ASSOC
502 W PUBLIC SQUARE
PO BOX 366
BENTON, IL 62812

0283 JELLIFFE FERRELL & MORRIS
KELLY R PHELPS
108 E WALNUT ST PO BOX 406
HARRISBURG, IL 62946

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

George Fred Engleby
Employee/Petitioner

Case # 09 WC 15433

v.

Consolidated cases: n/a

Western Express
Employer/Respondent

16IWCC0073

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was originally heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on November 8, 2013. The parties waived a full Decision, but this matter was remanded to the Arbitrator for a full Decision. After reviewing all of the evidence that was presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On March 9, 2009, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being in regard to the left shoulder, left hand and neck is causally related to the accident.

In the year preceding the injury, Petitioner earned $40,348.88; the average weekly wage was $775.93.

On the date of accident, Petitioner was 54 years of age, single with 0 dependent child(ren).

Petitioner has not received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $70,330.20 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $70,330.20.

Respondent is entitled to a credit of $27,484.83 under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 22, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of $27,484.83 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall authorize and pay for the medical treatment recommended by Dr. Richard Kobe including, but not limited to, cervical fusion surgery and the medical treatment recommended by Dr. Richard Morgan including, but not limited to, left hand surgery.

Respondent shall pay Petitioner temporary total disability benefits of $517.29 per week for 240 4/7 weeks commencing March 27, 2009, through November 8, 2013, as provided in Section 8(b) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

William R. Gallagher, Arbitrator
ICArbDec19(b)

March 9, 2015
Date

MAR 16 2015

asymptomatic until the accident. Dr. Morgan authorized Petitioner to be off work and ordered MRIs of both the left shoulder and cervical spine. In regard to the right shoulder, Dr. Morgan opined that Petitioner was at MMI and not subject to any restrictions for that condition (Petitioner's Exhibit 1).

At the direction of Respondent, Petitioner was examined by Dr. Mark Austin on March 31, 2009. Petitioner complained of left shoulder and neck pain. On clinical examination, Dr. Austin noted considerable muscular spasm in the left side of the neck. He suspected a re-injury of the C5-C6 fusion rather than a new cervical disc herniation (Petitioner's Exhibit 3).

MRIs of the left shoulder and cervical spine were performed on June 29, 2009. The MRI of the left shoulder revealed possible partial tears of the supraspinatus tendon. The MRI of the cervical spine revealed the prior fusion at C5-C6 and bulging of the C4-C5 disc. Dr. Morgan referred Petitioner to Dr. Kovalsky for the neck prior to treating the shoulder; however, Respondent did not authorize the visit with Dr. Kovalsky (Petitioner's Exhibit 1).

At the direction of Respondent's Nurse Case Manager, Petitioner was examined by Dr. Kevin Vaught, a neurologist, on August 12, 2009. Dr. Vaught evaluated Petitioner's spinal injuries and opined that Petitioner sustained cervical, thoracic and lumbar strains as result of the March, 2009 accident. He recommended physical therapy (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was examined by Dr. Michael Milne, an orthopedic surgeon, on August 27, 2009. Dr. Milne the examined Petitioner primarily in regard to the left shoulder injury. He opined that Petitioner sustained a partial thickness rotator cuff tear as a result of the accident and that the accident aggravated her pre-existing impingement syndrome and AC joint arthrosis (Respondent's Exhibit 4; Deposition Exhibit 2).

Petitioner was seen by Dr. Morgan on September 24, 2009, and Dr. Morgan recommended Petitioner have further physical therapy (Petitioner's Exhibit 1). Petitioner received physical therapy during September and October, 2009, for his left shoulder and neck; however, Petitioner did not experience any significant improvement of his symptoms (Petitioner's Exhibit 6).

Petitioner was again seen by Dr. Vaught on October 5, 2009, and Dr. Vaught opined that neck surgery was not indicated; however, he opined that a lumbar MRI be performed. In regard to Petitioner's left shoulder injury, he deferred the determination of restrictions regarding that injury to the orthopedic surgeon. Dr. Vaught saw Petitioner again on November 4, 2009, and he opined that Petitioner was at MMI in regard to the cervical and thoracic injuries and that Petitioner should be evaluated by a physiatrist (Petitioner's Exhibit 4).

Dr. Morgan continued to treat Petitioner and, on October 22, 2009, he recommended that Petitioner have left shoulder surgery (Petitioner's Exhibit 1). Respondent declined to authorize same.

At Respondent's request, Dr. Milne prepared a supplemental report dated December 10, 2009, wherein he opined that a left acromioplasty and distal clavicle resection were medically reasonable (Respondent's Exhibit 4; Deposition Exhibit 3). Dr. Morgan continued to recommend

that Petitioner have left shoulder surgery; however, Respondent still declined to authorize same (Petitioner's Exhibit 1).

On May 17, 2010, Petitioner was in a motor vehicle accident in which the car he was driving struck a tree going approximately 35 to 45 miles per hour. Petitioner was subsequently treated at St. Louis University (SLU) Hospital for an L5 burst fracture, right rib fracture, right styloid process fractures and a nasal bone fracture. Petitioner did experience some neck pain and was provided with a cervical collar. However, while at SLU Hospital, Petitioner did not receive any additional testing or treatment for his cervical spine. Further, Petitioner did not receive follow-up care from the SLU doctors for the cervical spine (Respondent's Exhibit 1).

Subsequent to the car accident, Dr. Morgan deferred proceeding with left shoulder surgery. On January 12, 2011, Dr. Morgan performed left shoulder surgery which consisted of acromioplasty and distal clavicle resection (Petitioner's Exhibit 1). Following surgery, Petitioner received physical therapy, subacromial injections and work conditioning (Petitioner's Exhibit 8); however, Petitioner testified that the surgery did not believe his neck and left scapular pain.

At Dr. Morgan's direction, a functional capacity evaluation (FCE) was performed on June 13, 2011. The examiner concluded that Petitioner could work at a light physical demand level with no overhead lifting on a frequent or constant basis. The examiner noted Petitioner's job as a truck driver required him to lift heavy tarps and pull on chains and those duties were clearly not within his work restrictions. Further, the examiner noted that Petitioner did not exhibit any symptom magnification and he passed 100% of his validity criteria (Petitioner's Exhibit 8).

Dr. Morgan saw Petitioner on June 14, 2011, and he reviewed the FCE at that time. Dr. Morgan opined that Petitioner had a permanent lifting restriction of 20 to 25 pounds as well as no overhead activities. At that time, Petitioner also complained of bilateral numbness/tingling in both hands so Dr. Morgan ordered nerve conduction studies (Petitioner's Exhibit 1).

Nerve conduction studies were performed on July 13, 2011, which were positive for moderate to severe bilateral carpal tunnel syndrome but negative for cervical radiculopathy. Dr. Morgan saw Petitioner on July 19, 2011, and opined that Petitioner had double crush syndrome on the left side (Petitioner's Exhibit 1).

At the direction of Respondent, Petitioner was examined by Dr. Juan Carrillo, an orthopedic surgeon, on September 1, 2011. In regard to Petitioner's left shoulder condition, Dr. Carrillo opined that this was related to the accident and that Petitioner was not at MMI. He also opined that the carpal tunnel syndrome was not related to the accident because there was no mention of and in the medical records until June, 2011 (Petitioner's Exhibit 10; Deposition Exhibit 1).

Petitioner continued to be treated by Dr. Morgan and, when evaluated by him on January 13, 2012, Petitioner complained of pain in the cervical spine with radiation into the left trapezius and increased numbness in the left hand. On March 5, 2012, Dr. Morgan referred Petitioner to Dr. Richard Kube, a spine surgeon (Petitioner's Exhibit 1).

At the direction of Respondent, Petitioner was examined by Dr. R. Peter Mirkin, an orthopedic surgeon, on March 7, 2012. Dr. Mirkin and opined that Petitioner sustained a cervical strain as a result of the accident which had resolved. He noted that Petitioner had spondylitic disease and a neck fusion that pre-existed the accident. He opined that Petitioner had been at MMI since four to five weeks post accident and that Petitioner could return to work without restrictions (Respondent's Exhibit 5; Deposition Exhibit 2).

Dr. Kube initially saw Petitioner on April 4, 2012. On clinical examination, Dr. Kube noted paresthesia in the left arm in the C6 and C7 dermatomes. He ordered a new MRI and opined that the accident aggravated pre-existing degenerative disease and possibly caused a herniation (Petitioner's Exhibit 11).

An MRI was performed which Dr. Kube read on May 16, 2012. He noted that it revealed spinal stenosis at C4-C5 and C6-C7. He ordered physical therapy and a discogram (Petitioner's Exhibit 11).

Dr. Kube again saw Petitioner on September 26, 2012, and, at that time, Dr. Kube noted that Petitioner was having difficulties getting the discogram performed because it was not a procedure that Dr. Kube performed. He indicated that he wanted to review the FCE that was previously performed (Petitioner's Exhibit 11).

Dr. Kube subsequently reviewed the FCE and, on October 17, 2012, he opined that Petitioner could work light duty on a permanent basis barring any surgery that might improve Petitioner's situation. He ordered nerve conduction studies which were performed on November 6, 2012, which revealed a C-5 radiculopathy on the left side and bilateral carpal tunnel syndrome (Petitioner's Exhibit 11).

At the direction of Respondent, Petitioner was examined by Dr. Mitchell Rotman, an orthopedic surgeon, on January 14, 2013. Dr. Rotman opined that Petitioner's left shoulder condition, including the need for the surgery that was performed by Dr. Morgan, was not related to the accident of March 9, 2009. In regard to the cervical condition, Dr. Rotman opined that this was an acute problem that had an onset sometime between December 9, 2011, and January 13, 2012, and was not related to the accident. In regard to the carpal tunnel syndrome, Dr. Rotman opined that this was a chronic condition also not related to the accident. Finally, Dr. Rotman opined that Petitioner could return to work without restrictions (Respondent's Exhibit 6; Deposition Exhibit 2).

Dr. Kube performed a cervical epidural steroid injection on February 6, 2013, which gave Petitioner some temporary relief from his symptoms. When Dr. Kube saw Petitioner on March 18, 2013, he recommended that Petitioner have a decompression and fusion procedure performed at C4-C5 (Petitioner's Exhibit 11).

Dr. Milne was deposed on April 19, 2010, and his deposition testimony was received into evidence at trial. Dr. Milne's testimony was consistent with his medical report and he opined that Petitioner's left shoulder condition and the need for the surgery performed by Dr. Morgan were causally related to the accident of March 9, 2009 (Petitioner's Exhibit 9; pp 13-15).

Dr. Carrillo was deposed on January 19, 2012, and his deposition testimony was received into evidence at trial. Dr. Carrillo's testimony was consistent with his medical report and he stated that Petitioner's left shoulder condition was related to the accident of March 9, 2009; however, he also opined that the carpal tunnel syndrome was not related because this diagnosis was not made until June 14, 2011, approximately two years and three months post accident (Petitioner's Exhibit 10; pp 28-30, 40-42).

Dr. Mirkin was deposed on September 17, 2012, and his deposition testimony was received into evidence at trial. Dr. Mirkin's testimony was consistent with his medical report and he reaffirmed his opinion that the neck condition was not related to the accident of March 9, 2009. He opined that Petitioner's current neck symptoms were related to his pre-existing conditions of spondylitis and the prior fusion Dr. Mirkin agreed that he did not review the medical records of either Dr. Kennedy or Dr. Kube (Respondent's Exhibit 5; pp 9-10, 14).

Dr. Kube was deposed on April 10, 2013, and his deposition testimony was received into evidence at trial. Dr. Kube's testimony was consistent with his records regarding his treatment of Petitioner. In regard to the neck injury, Dr. Kube stated that it is common for neck injuries to manifest symptoms in the trapezius and shoulder and that there is significant crossover when there is also a shoulder injury. In regard to causality, Dr. Kube opined that there was a 25 to 30% chance that the prior fusion was the cause of Petitioner's current neck condition; however, he also opined that the accident of March 9, 2009, was, at least, a contributing cause of Petitioner's current condition and the need for the fusion surgery that he recommended (Petitioner's Exhibit 12; pp 11, 27-30).

Dr. Morgan was deposed on June 20, 2013, and his deposition testimony was received into evidence at trial. Dr. Morgan's testimony was consistent with his records regarding his treatment of Petitioner. Dr. Morgan opined that Petitioner had C5 radiculopathy and a possible C4-C5 disc, attritional changes in the rotator cuff, bilateral carpal tunnel syndrome and double crush syndrome on the left. In regard to causality, Dr. Morgan opined that there was a causal relationship between Petitioner's left shoulder condition and the double crush syndrome (inclusive of the left carpal tunnel syndrome) and the accident of March 9, 2009, but that the right carpal tunnel syndrome was not related. In regard to Petitioner's neck condition, Dr. Morgan did not opined as to causality but stated that he would defer to the experts in that area. He renewed his recommendation that Petitioner undergo left carpal tunnel surgery (Petitioner's Exhibit 2; pp 19-22, 27-32).

Dr. Rotman was deposed on July 15, 2013, and his deposition testimony was received into evidence at trial. Dr. Rotman's testimony was consistent with his medical report and he reaffirmed his opinions that none of Petitioner's conditions were related to the accident of March 9, 2009, and that Petitioner could return to work without restrictions (Respondent's Exhibit 6).

Respondent introduced into evidence video surveillance of Petitioner that was obtained on October 9, 2013, when Petitioner was observed putting various items in the back of a pickup truck and driving it afterward (Respondent's Exhibit 7).

At trial, Petitioner testified that subsequent to the prior carpal tunnel and fusion surgeries that he was able to return to work as a truck driver without restrictions and was not receiving any medical treatment for either condition for a significant period of time prior to March 9, 2009. In regard to the motor vehicle accident of May 17, 2010, Petitioner testified that he did not receive any diagnostic procedures or treatment for either his neck or left shoulder when he was hospitalized following the accident.

Petitioner has not been able to return to work and wants to proceed with the fusion surgery recommended by Dr. Kube and the left carpal tunnel surgery recommended by Dr. Morgan.

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the accident of March 9, 2009.

In support of this conclusion the Arbitrator notes the following:

While Petitioner had both left carpal tunnel and cervical fusion surgeries performed in 2000 and 2001, respectively, Petitioner's testimony that he was able to return to work as a truck driver afterward and was not receiving any medical treatment for either or both conditions for a significant period of time prior to the accident of March 9, 2009, was unrebutted.

In regard to the left shoulder condition, Dr. Morgan testified that it was related to the accident of March 9, 2009. Two of Respondent's Section 12 examiner's, Dr. Milne and Dr. Carrillo, opined that the left shoulder condition was related to the accident of March 9, 2009; however, two of Respondent's Section 12 examiner's, Dr. Mirkin and Dr. Rotman opined that the left shoulder condition was not related to the accident of March 9, 2009.

The Arbitrator finds the opinions of Dr. Morgan, Dr. Milne and Dr. Carillo to be more persuasive. The Arbitrator notes that Respondent's four Section 12 examiners had inconsistent opinions.

In regard to the cervical spine condition, Dr. Kube testified that the accident of March 9, 2009, was, at least, a contributing factor to his current condition. The Arbitrator finds the opinion of Dr. Kube be more persuasive than that of Respondent's Section 12 examiners, Dr. Mirkin and Dr. Rotman, both of whom opined that none of Petitioner's conditions were related to the accident of March 9, 2009.

In regard to the left hand, Dr. Morgan opined that Petitioner had double crush syndrome (inclusive of the left carpal tunnel syndrome) which was related to the accident of March 9, 2009. The Arbitrator is not persuaded by the opinion of Respondent's Section 12 examiner, Dr. Carillo. Even though Petitioner did not have any left hand symptoms until June, 2011; however, he received extensive medical treatment for his neck and left shoulder conditions and was

diagnosed with double crush syndrome. It was noted that Petitioner had recovered from his prior left carpal tunnel surgery.

The Arbitrator finds the opinion of Dr. Morgan to be more persuasive than that of Respondent's Section 12 examiner, Dr. Carillo.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 22, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of $27,484.83 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to prospective medical treatment including, but not limited to, the cervical fusion surgery recommended by Dr. Kube and the carpal tunnel surgery recommended by Dr. Morgan.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to payment of temporary total disability benefits of 240 4/7 weeks commencing March 27, 2009, through November 8, 2013.

In support of this conclusion the Arbitrator notes the following:

At trial Petitioner claim entitlement to temporary total disability benefits of 240 4/7 weeks, March 27, 2009, through November 8, 2013 (the date of trial). Respondent's position was that Petitioner was entitled to temporary total disability benefits of 202 4/7 weeks, March 27, 2009, through February 12, 2013. Accordingly, the disputed period of temporary total disability benefits at the time of trial was 38 weeks.

At the time of trial, Petitioner was still unable to return to work as a truck driver and remained in need of active medical treatment.

The Arbitrator was not persuaded by the surveillance video which showed Petitioner loading some items in the back of a pickup truck and driving the truck thereafter. This did not show the Petitioner engaging in activities inconsistent with his claim of being disabled.

William R. Gallagher, Arbitrator