

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<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 type="checkbox"/>	PTD/Fatal denied
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stuart Sanders,
Petitioner,

vs.

NO: 15 WC 12506
17 IWCC 0261

State of Illinois/Centralia Correctional Center,
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 Decision of the Commission dated April 25, 2017 having been filed by the Commission 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 Decision and Opinion on Review dated April 25, 2017 is hereby vacated and recalled pursuant to Section 19(f) for clerical errors contained therein.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision and Opinion on Review 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.

MAY 4 - 2017

DATED:
KWL:vf
42



Kevin W. Lamborn

STATE OF ILLINOIS)

)

) SS.

COUNTY OF)

WILLIAMSON)

<input checked="" 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

Stuart Sanders,
Petitioner,

vs.

NO: 15 WC 12506

State of Illinois/Centralia Correctional Center,
Respondent.

17IWCC0261

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary total disability, 8(j) credit and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 13 2016 is hereby affirmed and adopted.

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

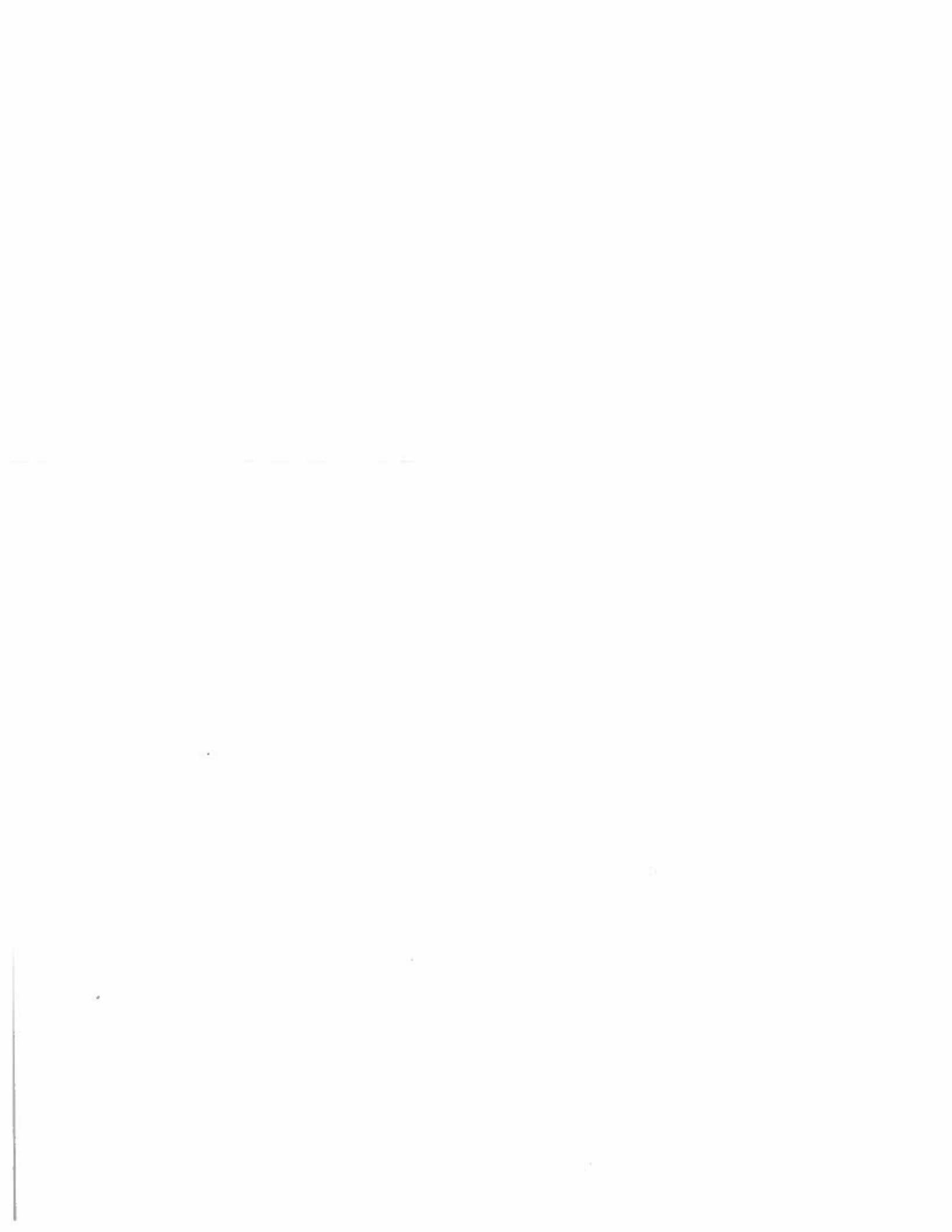
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: **MAY 4 - 2017**
KWL/vf
O-4/11/17
42

Kevin W. Lamborn

Michael J. Brennan

Thomas J. Tyrrell



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

17IWCC0261

SANDERS, STUART

Employee/Petitioner

Case# 15WC012506

SO/CENTRALIA CORRECTIONAL CENTER

Employer/Respondent

On 5/13/2016, 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 0.38% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0969 THOMAS C RICH PC
6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0558 ASSISTANT ATTORNEY GENERAL
KYLEE J JORDAN
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

1350 CENTRAL MANAGEMENT SYSTEMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

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

MAY 13 2016



Ronald A. Mascia
RONALD A. MASCIA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

<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
19(b)

17IWCC0261

STUART SANDERS
Employee/Petitioner

Case # 15 WC 012506

v.

Consolidated cases: N/A

STATE OF ILLINOIS/CENTRALIA CORRECTIONAL CENTER
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Nowak**, Arbitrator of the Commission, in the city of **Herrin**, on **July 14, 2015**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **February 4, 2015**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned **\$55,980.00**; the average weekly wage was **\$1,076.54**.

On the date of accident, Petitioner was **27** years of age, *single* with **0** dependent children.

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

Respondent shall be given a credit of **\$12,625.68** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$12,625.68**.

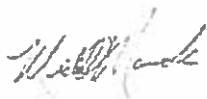
Respondent is entitled to a credit of **\$IF ANY** under Section 8(j) of the Act.

ORDER

Because Petitioner failed to establish that he sustained an accidental injury which arose out of and in the course of his employment with Respondent benefits are denied.

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

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



Signature of Arbitrator

5/3/16
Date

ICArbDec19(b)

MAY 13 2016

FINDINGS OF FACT

At the time of injury, Petitioner was a 27 year-old employed by Respondent, Centralia Correctional Center, as a Correctional Officer. On the date of injury, January 4, 2015, Petitioner was playing basketball with his fellow officers on his lunch break when he came down on another officer's leg, injuring his right foot and right knee. (T. 13). Petitioner was taken to the ER at St. Mary's Good Samaritan Hospital where x-rays were taken of his right knee and right foot, which revealed no fractures in his knee and fractures of his distal 2nd, 3rd, and 4th metatarsals. (PX3). Petitioner was prescribed hydrocodone and tramadol, given a boot, and released. *Id.*

On January 5, 2014, Petitioner saw Dr. Angela Freehill at the Orthopedic Center of Southern Illinois, who took his medical history and placed Petitioner off work pending an MRI. (PX4 1/5/14). On February 26, 2015, Petitioner received an MRI which revealed objective findings of a complete ACL tear, a mild MCL sprain, a displaced bucket-handle tear medial meniscus, a sever chondromalacia posterior central medial femoral condyle and posterior medial aspect medial tibial plateau, a 6mm in depth impaction fracture lateral femoral condyle, and a large hemarthrosis. (PX4 2/26/15).

On March 20, 2015, Petitioner came under the care of Drs. Brian Wegman and Richard Rames at Woods Mill Orthopedics. (PX6 3/20/15). Dr. Wegman took Petitioner's history, reviewed his MRIs, recommended conservative treatment in the form of anti-inflammatory drugs and home exercises, and suggested he see Dr. Rames for possible knee surgery. *Id.* On March 25, 2015, Petitioner met with Dr. Rames, who recommended knee surgery. (PX6 3/25/15).

On April 1, 2015, Dr. Rames performed ACL reconstruction surgery and a partial medial meniscectomy on Petitioner's right knee. (PX7). Intraoperative objective findings revealed a torn ACL and a bucket-handle medial meniscus tear. *Id.*

Following surgery, Petitioner performed physical therapy at the Orthopedic Center of Southern Illinois for a period of April 14, 2015 through July 13 2015. (PX4 4/14/15 - 7/13/15).

Petitioner testified at trial that he had no prior injuries to his right knee or right foot.

Petitioner testified that on January 4, 2015, he was playing basketball with other officers on his lunch break when he "came down on another officer's leg" which resulted in injury to his right foot and knee. Petitioner stated that he is not allowed to leave the premises during his lunch break. Petitioner was not the gym officer on the date of his accident. Petitioner testified that he was paid during his lunch break and that he was a salaried employee. Petitioner testified he had been working at Centralia Correctional Center for six months, and that he had been playing basketball for at least two months. Petitioner testified that he had never gotten in trouble for playing basketball. Petitioner testified that Respondent provides both the court and the basketballs for the use of the Correctional Officers during their break hours. Petitioner testified that he had to stay in good physical shape to be able to perform his job duties. Although he testified that he had to take and pass a physical to secure employment with the State of Illinois approximately three and a half years prior, he had not undergone any physical testing for fitness since then. On cross-examination Petitioner admitted that there was no official mandate or memorandum asking correctional officers to work out or play basketball on their lunch periods. Petitioner testified that he did not receive any kind of monetary bonus or incentive to work out or play

basketball on his lunch break. Petitioner testified that he did not have to report to anyone that he was working out on his lunch break, and agreed that the facility would not know whether he was eating lunch or working out.

Former Warden, Julius Flagg, testified on behalf of Respondent. Mr. Flagg testified that correctional officers are paid for seven and a half hours, and that they are not paid for their lunch break. Mr. Flagg agreed that what correctional officers do on their lunch was their own time "per contract". Mr. Flagg testified that there was no mandate from the Department of Corrections, or Centralia Correctional Center, requiring the Petitioner to do any type of physical activities to stay in shape for his job. Mr. Flagg testified that over the course of his career at the Department of Corrections there had never been a mandate requiring a correctional officer to perform physical activities to stay in shape for their job. Mr. Flagg testified that there were correctional officers who were overweight and who were physically fit, and that it was their own choice. Mr. Flagg testified that although the officers were allowed to use them, the basketballs were provided by Leisure Time Service (LTS) and bought by the Inmate Benefit Fund for inmate use, not Centralia Correctional Center

CONCLUSIONS

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

The Petitioner bears the burden of proving each and every element of his case in order to recover under the Illinois Workers' Compensation Act. *Shelton v. Indus. Com'n*, 267 Ill. App. 3d 211, 221, 641 N.E.2d 1216, 1224 (5th Dist.). In order to satisfy the "arising out of" portion of the Act, the Petitioner must show that the injury was derived from some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. App. 3d 193, 203, 797 N.E.2d 665, 672 (3rd Dist.). The "in the course of requirement speaks to the time, place, and circumstances of the injury". *Orsini v. Indus. Com'n*, 117 Ill. 2d 38, 45, 509 N.E.2d 1005. "An injury is received in the course of employment where it occurs within a period of employment, at a place where the worker may reasonably be in the performance of his duties, while he is fulfilling those duties or engaged in something incidental thereto." *Scheffler Greenhouses, Inc. v. Indus. Com'n*, 66 Ill. 2d 361, 367, 362 N.E.2d 325.

Petitioner did not allege a defect on the employer's premises, or more specifically the basketball court, that caused or contributed to his fall and lead to his injury. In fact, Petitioner testified, and Respondent's Exhibits 1, 4, and 5 corroborate, that his fall was due to the fact that he came down on another player's foot while playing a game of basketball. Therefore, the issue then becomes whether Petitioner's participation in a purely voluntary recreational activity during an authorized unpaid lunch break is compensable under the Illinois Workers' Compensation Act.

The Arbitrator finds that Petitioner's activities in this case fell outside the protections of the Act. The Arbitrator finds Petitioner was engaged in a voluntary recreational activity as outlined under Section 11 of the Act. Section 11 provides:

Accidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties and picnics do not arise out of

and in the course of employment even though the employer pays some or all of the cost thereof. This exclusion shall not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program.

If Petitioner's participation in the basketball game was deemed to be involuntary he would be entitled to benefits under the Act, however, in this instance Petitioner's participation in the basketball game on January 4, 2015, was purely voluntary. Petitioner admitted that on the day of his injury that he was not assigned to be the gym officer. Petitioner admitted that there was no official mandate or memorandum asking correctional officers to work out or play basketball on their lunch periods. Petitioner testified that he did not receive any kind of monetary bonus or incentive to work out or play basketball on his lunch break. Petitioner testified that he did not have to report to anyone that he was working out on his lunch break, and agreed that the facility would not know whether he was eating lunch or working out.

Additionally, Petitioner admitted on cross-examination that the basketballs and basketball court were actually there for the inmates use. Petitioner agreed that the facility allowed him to use the basketballs and basketball court on his lunch break as a courtesy. Respondent's witness, Mr. Julius Flagg, later testified that the basketballs were provided by Leisure Time Service (LTS) and bought by the Inmate Benefit Fund, not Centralia Correctional Center. Mr. Flagg testified that the Inmate Benefit Fund purchased things for inmate use.

On cross-examination Petitioner admitted that, while he had to take a physical to get his job approximately three and a half years prior, he had not undergone any physical testing for fitness since then. Petitioner testified that the Department of Corrections did not test his physical fitness throughout his career, just at his time of hire. Petitioner testified that his current height was 6'3 and his current weight was 265 pounds. Therefore, Respondent did not require Petitioner to maintain a certain level of fitness.

Mr. Flagg testified that correctional officers are paid for seven and a half hours, and that they are not paid for their lunch break. Mr. Flagg testified that correctional officers are paid for 37.5 hours. Mr. Flagg agreed that what correctional officers do on their lunch was their own time "per contract". Therefore, Petitioner's injury while participating in the basketball game occurred during his unpaid lunch break.

Mr. Flagg testified that there was no mandate from the Department of Corrections, or Centralia Correctional Center, requiring the Petitioner to do any type of physical activities to stay in shape for his job. Mr. Flagg testified that over the course of his career at the Department of Corrections, which was thirty two years, there had never been a mandate requiring a correctional officer to perform physical activities to stay in shape for their job. Mr. Flagg testified that there were correctional officers who were overweight and correctional officers who were physically fit, and that it was their own choice.

The Arbitrator finds that there was no compulsion on the part of the Respondent to have Petitioner use or participate in the playing of basketball. There were no factors introduced at trial to indicate that Respondent offered the recreational facilities as anything other than on a completely voluntary basis as a courtesy to Respondent's employees.

Based upon the foregoing and the record taken as a whole, the Arbitrator finds that Petitioner has failed to prove that he sustained an accident that arose out of and in the course of his employment with Respondent on January 4, 2015. Benefits are, therefore denied.

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner testified at trial that he had no prior injuries to his right knee or right foot. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64, 66 Ill.Dec. 347, 442 N.E.2d 908 (Ill.,1982)). The Arbitrator notes that Petitioner suffered an immediate injury and symptoms. Therefore, the Arbitrator relies on the medical records and the credible testimony of Petitioner, who stated at trial that prior to his accident he had no right knee or foot injuries. The Arbitrator finds that this evidence establishes a causal nexus between the accident and the employee's injury. However, based upon the Arbitrator's finding with regard to Issue C, benefits are denied.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Issue (K): Is Petitioner entitled to any prospective medical care?

The Arbitrator finds that all medical services provided to Petitioner have been reasonable and necessary. Petitioner had x-rays and MRIs which revealed objective findings of a 3 fractures in his right foot, a torn ACL, and a torn meniscus. Petitioner wore a boot for his foot and underwent an appropriate surgery for his knee injury. Following surgery Petitioner completed physical therapy. However, based upon the Arbitrator's finding with regard to Issue C, benefits are denied.

Issue (L): What temporary benefits are in dispute?

The Arbitrator finds Petitioner was temporarily and totally disabled beginning 1/12/15 through the date of hearing. However, based upon the Arbitrator's finding with regard to Issue C, benefits are denied.

