STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DANIEL R. HOPKINS,

Petitioner,

vs.

NO: 13 WC 9207
16 IWCC 280

SNAP-ON-TOOLS,

Respondent,

ORDER

This matter comes before the Commission on Respondent's "Request to Recall Award to Clarify Decision and Opinion on Review," which was filed on May 19, 2016, within the time period allowed under §19(f) of the Act. The Commission, having been fully advised in the premises, grants Respondent's motion in order to address the issue of §8(j) credit, which was omitted from the previous decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision and Opinion dated May 3, 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.

DATED: JUN 20 2016

Charles J. DeVriendt

CJD/se
49

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DANIEL R. HOPKINS,

Petitioner,

vs.

NO: 13 WC 9207
16 IWCC 280

SNAP-ON-TOOLS,

Respondent,

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses, permanent partial disability, and §8(j) credit, 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 award for permanent partial disability. Applying the five factors in §8.1b(b), we find that:

(i) There was no American Medical Association Impairment report so we give that no weight.

(ii) At the time of Petitioner's injury on January 18, 2013, he worked for Respondent as a "Franchise Developer" under 50-pound restrictions that existed due to a previous fusion surgery. After his post-accident lumber fusion surgery on September 5, 2013, Petitioner was ultimately released to full duty work under the same 50-pound restrictions that he had previously. Although Petitioner testified that when he returned to work, he was no longer a "Franchise Developer" but instead was a "Techno Sales Rep," we find that Petitioner failed to prove that this change in position was required as a result of his work injury. We give this factor no weight.

(iii) Petitioner was 50 years old at the time of the accident and will have to live with his ongoing symptoms longer than an older worker. The Commission gives this factor

some weight.

(iv) Although Petitioner testified that he is now earning $400 less per pay period since returning to work as a "Techno Sales Rep" instead of his previous job as a "Franchise Developer," as we noted in (ii) above, Petitioner failed to prove that this change in position was required by his accident or due to any new restrictions. We find that Petitioner has not suffered an accident-related diminishment in his future earning capacity and give no weight to this factor.

(v) Regarding "evidence of disability corroborated by the treating medical records," Petitioner testified that he has muscle pain in his back "all the time" and he can't do anything for a long period of time. The last medical record from Dr. Kennedy on April 24, 2014, indicates that Petitioner noted increased pain with walking for any distance and had some reduced range of motion but that Petitioner was overall improved compared to his pre-operative condition. As mentioned above, Petitioner was released to the same 50-pound restrictions that he had previously. We find that Petitioner's testimony is corroborated by the last medical record and we give some weight to Petitioner's continuing evidence of disability.

Based on the above, the Commission finds that Petitioner is permanently partially disabled to the extent of 12.5% of the person as a whole.

On the issue of §8(j) credit, both parties listed this on their Petition for Review. At the hearing, the parties stipulated that Respondent is entitled to §8(j) credit of $28,882.63 for payments made by Respondent's group health insurance carrier. This amount is supported by the payment history ledger (Px17). On Review, Respondent argues that this amount covered all medical bills. However, we find that the medical bills in evidence do not support Respondent's claim. Although some of the bills show a zero balance with payments made by "UHC," "United Healthcare," or some variation thereof, there are several bills with outstanding balances remaining. Petitioner argues, on Review, that Respondent was not actually entitled to the §8(j) credit at all and attached a letter to his brief purporting to show that those payments were not made by Respondent's group health insurance carrier. Since additional evidence is not allowed on Review, we find that Petitioner is bound by his stipulation at hearing.

We affirm the Arbitrator's finding that Respondent is liable for all of the medical bills in evidence, totaling $123,015.39, as those are all reasonable, necessary, and causally related to Petitioner's work injury. Respondent's §8(j) credit of $28,882.63 reflects the actual dollar amount that was paid for various charges but Respondent is also entitled to any adjustments/credits that are associated with those payments since those reflect a "negotiated rate" under §8(a) of the Act. Respondent shall hold Petitioner harmless for the full amount of payments and adjustments from any claims and demands by any providers of the benefits for which Respondent is receiving credit. Respondent is also allowed a credit for any payments, as reflected by the medical bills in evidence, made by its workers' compensation carrier or third-party administrator. Respondent shall pay all outstanding balances, as reflected by the medical bills in evidence, to Petitioner subject to the fee schedule in §8.2 of the Act.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $902.03 per week for a period of 27-6/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act, with Respondent receiving a credit of

$20,392.89 for short-term and long-term disability benefits paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $712.55 per week for a period of 62.50 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 12.5% loss use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $123,015.39 for medical expenses under §8(a) of the Act, subject to the fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit of $28,882.63 under §8(j) of the Act for medical benefits that have been paid; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 2 0 2016

Charles J. DeVriendt

Ruth W. White

Joshua D. Luskin

SE/
O: 4/12/16
49

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HOPKINS, DANIEL R
Employee/Petitioner

Case# **13WC009207**

SNAP-ON-TOOLS
Employer/Respondent

16IWCC0280

On 4/2/2015, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

1413 BRAD L BADGLEY PC
26 PUBLIC SQUARE
BELLEVILLE, IL 62220

4942 LEAHY WRIGHT & ASSOC LLC
KEVIN LEAHY
10805 SUNSET OFFICE DR #306
ST LOUIS, MO 63127

16IWCC0280

STATE OF ILLINOIS)
)SS.
COUNTY OF ST. CLAIR)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

08CC[illegible]

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DANIEL R. HOPKINS
Employee/Petitioner

v.

SNAP-ON-TOOLS
Employer/Respondent

Case # 13 WC 009207

Consolidated cases: N/A

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Nowak**, Arbitrator of the Commission, in the city of **Belleville**, on **November 21, 2014**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

16IWCC0280

FINDINGS 14IWCC0181

On **January 18, 2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$70,358.70**; the average weekly wage was **$1,353.05**.

On the date of accident, Petitioner was **50** years of age, ***married*** with **no** dependent children.

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

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

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$20,392.89** for other benefits, for a total credit of **$20,392.89**.

Respondent is entitled to a credit of **$28,882.63** for medical payments made under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $902.03 per week for 27 6/7 weeks, commencing September 5, 2013 through March 18, 2014 as provided in Section 8(b) of the Act. Respondent shall be given credit of $20,392.89 for STD and LTD benefits paid.

Respondent shall pay reasonable and necessary medical services of $123,015.39, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit of $28,882.63 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.

Pursuant to the factors set forth in §8.1b(b) of the Act, which the Arbitrator specifically addresses herein below, Respondent shall pay Petitioner permanent partial disability benefits of $712.55 per week for 112.5 weeks, because the injuries sustained caused the 22.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

Signature of Arbitrator

3/23/15
Date

ICArbDec p. 2

APR 2 - 2015

BACKGROUND

Prior to beginning his employment with Respondent, Petitioner was a member of the Collinsville Police Department for 19 years. During the course of his employment with the Police Department Petitioner suffered a back injury in 2004. As a result of the injury he underwent fusion surgery at the L4-5 and L5-S1 levels. Petitioner was ultimately granted a line of duty disability pension. He was released at maximum medical improvement in 2006. At that point he had a 50 pound lifting restriction with only occasional bending, twisting or stooping. He underwent no treatment for his low back between 2006 and January 18, 2013.

FINDINGS OF FACT

Petitioner went to work Respondent in 2009 as a franchise developer. His duties required Petitioner to would work with the individual franchisees helping to start up their businesses. He would ride with them on their sales calls for 3 to 5 weeks. Petitioner worked from his home and would travel throughout the country to wherever the franchisees were located. When close enough to home, he would work with the franchisees during the week and return to his home on the weekends.

On January 18, 2013 Petitioner was working with a franchisee in the Indianapolis Indiana area. He was injured on the last day of the work week. As was his custom, Petitioner dropped his personal vehicle before beginning the work day in a location near the last planned stop of the day. He would then ride along with the franchisee for the entirety of the workday and pick up his personal vehicle once the day's stops were complete. The last stop of the day on January 18, 2013 was Hobbs Automotive. Petitioner and the franchisee with whom he was working arrived at Hobbs between 330 and 4:30 PM on that Friday. There were two parking lots at Hobbs automotive. There was a parking lot in front which was open to the general public and a back lot which is fenced in and not accessible to the public. When they returned to Hobbs that afternoon they parked the Snap-On tool truck in the rear gated lot, 20 to 30 yards from the rear entrance to the business. As Petitioner was walking toward the rear entrance he stepped on a snow and sleet covered piece of 2 x 4 lumber. This caused him to slip and struggle to retain his balance. Petitioner caught himself before he actually fell. He wrenched, but did not strike his back. He experienced immediate onset of low back and leg pain. Petitioner testified that the franchisee was in front of him at the time and did not see him slip. Petitioner also indicated that it was his custom to carry his tool catalog into each stop. He was able to complete the last stop of the day with the franchisee. Thereafter, he returned to his personal vehicle and made the drive back home to the St. Louis area.

In the days and weeks that followed the accident Petitioner's symptoms got progressively worse. Eventually he made and appointment with Dr. Kennedy. He was familiar with Dr. Kennedy, having had treated with him previously for the 2004 back injury. Petitioner's first visit with Dr. Kennedy following the date of accident was February 12, 2013. A CT scan of the lumbar spine with contrast performed on February 26, 2013 showed a large posterior disc herniation L3–4 resulting in severe canal stenosis. (PX 2) On September 5, 2013 Petitioner underwent a lumbar decompression and fusion at L3–4. (PX 1, p.13) Postoperatively Petitioner developed a hematoma in the groin area which ultimately resolved.

Dr. Kennedy testified that the very large herniated disc at L3–4 which he operated on was a new injury to a new site. The area which was previously operated on "did not have any issues so that was not involved in his current pain condition." (PX1, pp. 11–12) it was Dr. Kennedy's opinion that the herniated disc at L3-4 was causally related to Petitioner wrenching his back when he slipped on the 2 x 4. Dr. Kennedy indicated that the herniated disc at L3–4 was not related to the prior surgery and would not have occurred absent a significant trauma. (P X1, p. 17) On January 28, 2014 Dr. Kennedy released Petitioner to return to work only for the purpose of participating in training. Later, on March 19, 2014 Petitioner was released to light duty. His last visit with Dr. Kennedy was April 24, 2014 at which point he was released with permanent restrictions.

Dr. Robert Backer examined Petitioner on April 25, 2013 at Respondent's request pursuant to § 12. Dr. Backer agreed that Petitioner required surgery. He did not address the specific procedure performed by Dr. Kennedy. He did not feel, however that the condition of Petitioner's lumbar spine was causally related to the accident. Instead, Dr. Backer testified that Petitioner suffered from "adjacent segment" disease as a result of the prior two level fusion. He indicated that this condition could have been aggravated by normal activities of daily living. Dr. Backer did agree, however that based upon the treatment and history, the January 18, 2013 accident brought Petitioner to seek medical attention. (RX2, pp. 40 – 41)

The parties agreed that Petitioner incurred $123,015.39 in medical expenses as a result of the treatment necessitated by the accident. Respondent however disputes their liability for medical expenses based on the issues of accident and causation. The parties further agree that Respondent is entitled to a credit of $28,882.63 pursuant to §8 (j).

The parties agree that Petitioner was temporarily and totally disabled for the period of September 5, 2013 through March 18, 2014 a period of 27 6/7 weeks. It was stipulated that Petitioner's average weekly wage was

$1,353.05. At the corresponding temporary total disability rate of $902.03, the temporary total disability due would be $25,127.94.

The parties also agreed that Petitioner was paid $23,605 (gross) in short-term disability benefits (STD) and $3,697.23 in long-term disability benefits (LTD). Petitioner agrees with Respondent's claimed credit of $3,697.23 for long term disability payments. With respect to the short term disability benefits Petitioner claims that Respondent is only entitled to credit for $16,695.66 as that was the net amount received by Petitioner(JX1). The unrefuted testimony of Petitioner shows that while on short term disability he received bi-weekly checks in the gross amount of $1,820.00 from which he netted $1,285.27 after taxes were withheld.

CONCLUSIONS OF LAW

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

At the time of injury Petitioner was clearly in the course of his employment. In addition, the parking lot in which Petitioner and the franchisee had parked the Snap-On tools truck was a private fenced lot behind Hobbs automotive. The area in which Petitioner slipped was not an area open to the public. Petitioner sustained his injury when he slipped on a 2 x 4 which was hidden from view by snow and wrenched his back. Petitioner's testimony in this regard was forthright and credible. Based upon forgoing, the Arbitrator finds Petitioner did sustain an accident which arose out of and in the course of his employment.

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

Both Dr. Kennedy and Dr. Backer agreed that surgical treatment for Petitioner was reasonable and necessary given his condition of ill-being. Dr. Kennedy testified that the condition of ill-being which brought Petitioner to seek treatment following the January 18, 2013 accident was a new injury to a new part of the body. The treatment was unrelated to Petitioner's prior two level lumbar fusion. Dr. Kennedy pointed out that during the surgical procedure his observation of the prior surgery site indicated there were no untoward findings with respect to those levels. It was his opinion that when Petitioner wrenched his back on January 18 that trauma led to the herniated disc which he treated in September 2013. (PX1, pp.11-12, 17) Dr. Backer on the other hand indicated that although the incident led Petitioner to seek treatment, the pre-existing condition was such that any activities of normal daily living could have resulted in the need for treatment. (RX2, pp.24, 40-41) It is clear from the evidence that there was no herniated disc present at the L3-4 level in 2006. Further, the Petitioner had

no significant symptoms in his low back and did not require any medical treatment for the low back between 2006 and the date of accident. The Arbitrator finds Dr. Kennedy's testimony to be more persuasive.

Based upon the foregoing the Arbitrator finds the condition of ill-being of Petitioner's lumbar spine which necessitated surgical intervention on September 5, 2013 is causally related to the accident he sustained on January 13, 2013.

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?

Both Dr. Kennedy and Dr. Backer agreed that the Petitioner required surgery to treat his condition. There is no evidence in the record to refute that the procedure recommended by Dr. Kennedy and accepted by Petitioner was both reasonable and necessary. Further, the parties stipulated that Petitioner incurred $123,015.39 in medical expenses related to his low back condition. Respondent disputes responsibility for these medical expenses based upon the issues of accident and causation only. Having previously found Petitioner sustained an accident which arose out of and in the course of his employment and that his current condition of ill-being was causally related to the accident, the Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary and Respondent shall pay those expenses pursuant to the fee schedule.

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

The parties agreed that Petitioner's period of temporary total incapacity began on September 5, 2013 and ran through March 18, 2014, a total of 27 6/7 weeks. Based on Petitioner's average weekly wage of $1,353.05, his TTD rate is $902.03 and the temporary total disability benefits due are $25,127.84.

Issue (L): What is the nature and extent of the injury?

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a franchise developer at the time of the accident. He was able to return to work for Respondent as a techno-sales representative following his surgery with essentially the same

restrictions on his activities that he had prior to the accident. The Arbitrator notes that now, although Petitioner is able to tolerate the duties, his employment causes his symptoms to increase through the course of the work day and he has difficulty sitting for long periods of time. The Arbitrator therefore gives some weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 50 years old at the time of the accident. Because Petitioner will have to suffer from his ongoing symptoms longer than an older worker the Arbitrator gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner has returned to work for Respondent with no diminution in earning capacity indicated in the record. The Arbitrator therefore gives little weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner's complaints are consistent with the medical records of the treating physician. Petitioner now has three adjacent levels of his lumbar spine fused. He continues to suffer ongoing symptoms of pain and reduced range of motion. The Arbitrator therefore gives great weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 22.5% loss of use of the person as a whole pursuant to §8(d)2 of the Act.

Issue (N): Is Respondent due any credit?

During the period of time Petitioner was off work he received short term and long term disability benefits. The parties agreed he received long term disability benefits in the amount of $3,697.23. Respondent claimed that Petitioner received $23,605.00 in short term disability benefits however, that figure did not take into consideration taxes and other deductions. Petitioner testified he received net after tax payments, of $16,695.66. His testimony was unrefuted. Although this claim arose after the 2011 amendments to the Act, the Legislature in those amendments did modify the calculation method for TPD benefits under §8(a), but did not address the computation of credit under §8(j). As a matter of Statutory construction the Arbitrator presumes that if the Legislature had intended to modify the method of calculating §8(j) credit they would have done so. Therefor the Arbitrator finds Respondent only entitled to §8(j) credit for the net STD benefits paid pursuant to *Navistar Int'l Transp. Corp. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 734 N.E.2d 900 (2000). When the net

amount of STD payments is added to the agreed sum for LTD payments, this results in a total of $20,392.89 for which Respondent is entitled to a credit pursuant to §8(j) of the Act against the temporary total disability benefits awarded.

Respondent disputed its obligation to pay Petitioner's medical expenses, again based on the issues of accident and causal connection. Many of Petitioner's medical expenses were, however paid by his health insurance carrier, Optum. This coverage was provided by Respondent. Optum paid $28,882.63 for which they have asserted a lien. Respondent shall be given a credit of $28,882.63 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, and shall further hold Petitioner harmless from the claimed lien of Optum.

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sara Hoyle,
Petitioner,

vs.

No: 14 WC 28294
16 IWCC 0221

McAlister's Deli,
Respondent.

ORDER

Motion to Recall pursuant to Section 19(f) of the Act was filed by the Respondent on June 6, 2016. The Commission finds that a clerical error exists in its Decision and Opinion on Review dated March 24, 2016, in the above captioned.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated March 24, 2016 is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein.

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

DATED: JUN 24 2016

Joshua D. Luskin

jdl/wj
68

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sara Hoyle,
Petitioner,

vs.

No: 14 WC 28294
16 IWCC 0221

McAlister's Deli,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, Section 19(k) and Section 19(l) penalties, and Section 16 attorneys' fees, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission hereby 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 modifies the Arbitrator's Decision by vacating the penalties awarded under Section19(k) and the attorneys' fees awarded under Section 16. In McMahan v. Industrial Commission, 183 Ill.2d 499, 515 (1998), the Supreme Court held that Section 19(l) penalties are in the nature of a mandatory "late fee" while Section 19(k) penalties and Section 16 attorneys' fees are to be awarded on a discretionary basis where there is evidence of unreasonable conduct on the part of the employer.

In the matter at hand, the Commission finds the Arbitrator's award of Section 19(l) penalties to be appropriate, as the Respondent failed to set forth in writing the basis for its delay of payment of benefits. However, the Commission finds that Respondent's conduct as a whole – in particular its actions as to procuring and subsequently relying upon the opinions from its Section 12 examiner Dr. Peter Mirkin – does not evince vexatious or unreasonable conduct as envisioned under Section 19(k) of the Act. The Commission notes that without an award under Section 19(k) of the Act, there remains no basis for an award of attorney fees under Section 16 of the Act. The Commission concludes that the awards under Section 19(k) and Section16 of the Act should be vacated.

IT IS THEREFORE ORDERED BY THE COMMISSION that the awards of penalties under Section 19(k) and the attorneys' fees under Section 16 are vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the penalty of $3,330.00 (October 16, 2014 (date of demand of benefits) to February 4, 2015) as provided in Section 19(l) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay reasonable and necessary medical services, pursuant to the Medical Fee Shedule, of $7,350.21 to Heartland Regional Medical Center, $864.00 to Carterville Family Practice, and $7,354.00 to Herrin Hospital, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $191.82/week for 34 & 4/7 weeks, commencing June 8, 2014 through February 4, 2015, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the Petitioner's upcoming visit with Dr. Koth.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 19,600.00 The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 24 2016

Joshua D. Luskin

Charles J. DeVriendt

o-02/09/16
jdl/ac
68

Ruth W. White

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

HOYLE, SARA
Employee/Petitioner

Case# 14WC028294

McALISTER'S DELI
Employer/Respondent

16IWCC0221

On 4/14/2015, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0355 WINTERS BREWSTER CROSBY ET AL
LINDA J CANTRELL
11 W MAIN PO BOX 700
MARION, IL 62959

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

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Sara Hoyle
Employee/Petitioner

v.

McAlister's Deli
Employer/Respondent

Case # 14-WC-28294

Consolidated cases: N/A

16IWCC0221

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **February 4, 2015**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS **16IWCC0221**

On the date of accident, **06/07/2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$9,974.64**; the average weekly wage was **$191.82.**

On the date of accident, Petitioner was **24** years of age, **married** with **1** dependent child.

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

Respondent shall be given a credit of **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$2,500.00** for other benefits, for a total credit of **$2,500.00**.

Respondent is entitled to a credit of **$0.00** for any medical bills paid by its group medical plan for which credit is allowed under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the Medical Fee Schedule, of $7,350.21 to Heartland Regional Medical Center, $864.00 to Carterville Family Practice, and $7,354.00 to Herrin Hospital, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$253.00/week** for **34 4/7** weeks, commencing **6/08/14** through **2/04/15**, as provided in Section 8(a) of the Act.

Respondent shall pay to Petitioner penalties of **$1,537.05**, as provided in Section 16 of the Act; **$4,355.27**, as provided in Section 19(k) of the Act; and **$3,330.00 (10/16/14 demanded benefits to 2/04/15)**, as provided in Section 19(l) of the Act.

Petitioner's request for prospective medical care is allowed and Respondent is ordered to authorize and pay for Petitioner's upcoming visit with Dr. Koth.

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

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

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

Signature of Arbitrator

April 2, 2015
Date

APR 14 2015

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the time of arbitration the disputed issues included accident; causal connection; medical bills; temporary total disability benefits; prospective medical care; and penalties and attorney's fees. Respondent's attorney requested leave to submit a response to the Petition for Penalties and Fees with his proposed decision. No such response was received by the Arbitrator. Therefore, there is no "Respondent's Exhibit 3." Petitioner was the sole witness testifying at the hearing.

The Arbitrator finds:

On June 8, 2014, Petitioner reported to the emergency room of Heartland Regional Medical Center. (PX 2, pp. 2 - 10) Petitioner complained of injury to her head with brief loss of consciousness, low back pain, coccyx pain, and left and right gluteus maximum pain, after having fallen the day before when she slipped in tea. She denied any similar symptoms in the past. (PX 2) A Nurse's Note also indicated that Petitioner was carrying a bucket of water when she fell. (PX 2, p. 6) A CT Scan of Petitioner's head was negative and a CT Scan of her lumbar spine revealed a disc bulge at level L5-S1. (PX 2, pp. 11-12) She was prescribed Norco and Cyclobenzaprine and provided a work release form, Petitioner was instructed to follow up with Dr. James Alexander in five to six days.

On June 8, 2014 Petitioner and Perry Austin communicated via cell phone and texting. Mr. Austin texted "OK. Get better. Paperwork will get started tomorrow." (RX 4)

Later that same day at 9:02 p.m. Petitioner contacted Perry Austin via her cell phone texting:

> Hey Perry it's Sara again. Sorry to bother you but I was just gonna say don't worry about the workers comp papers as long as you made that report I'm okay with that. I'm not trying to make it hard on you...I think I'm going to be okay. (RX 4)

Mr. Austin responded "Ok glad to hear you're doing better." (RX 4)

On June 12, 2014, Petitioner was evaluated by her primary care physician, Dr. Nekzad, at Carterville Family Practice. (PX 4) Dr. Nekzad recorded a history of Petitioner falling at work on June 7, 2014 with a brief loss of consciousness. He further noted Petitioner's back pain was radiating into her legs. Dr. Nekzad continued Petitioner's pain medication and ordered her off work.

On June 19, 2014, Dr. Nekzad ordered an MRI as Petitioner's pain made it difficult for her to "get up and down", climb stairs or take care of her 2-year old child. (PX 4) She experienced a stabbing pain in her lumbar spine. Dr. Nekzad refilled Petitioner's pain medications and ordered her not to drive while taking the medications.

The MRI taken on June 25, 2014 revealed a moderate disc protrusion effacing the thecal sac at L5-S1, minimal bilateral neural foramen stenosis at L4-5, mild left greater than right neural foramen stenosis at L5-S1, no central canal stenosis, multilevel facet and liagamentum flavum hypertrophy, and mild degenerative disc disease at L5-S1 with intervertebral disc dessication. (PX 4, p.-022) On July 8, 2014, Dr. Nekzad opined Petitioner was not a surgical candidate and referred her to physical therapy. (PX 4, p.-023) Petitioner started physical therapy at Herrin Hospital on July 30, 2014, which was interrupted when she was hospitalized for a kidney infection the first week of August, 2014. (PX 4, p.-026) On August 15, 2014, Petitioner followed up with Dr. Nekzad who ordered her to resume physical therapy to assist with her back pain. Petitioner was also noted to be experiencing some anxiety and depression. (PX 4-026; PX 6, p. 109)

Petitioner filed her Application for Adjustment of Claim in this matter on August 21, 2014.

As of August 28, 2014 the physical therapist noted Petitioner could lift her 2 year old with complaints of increasing pain, could stand for one hour with increased pain complaints, could sleep comfortably, and was independent with her home exercise program. Petitioner's pain level was rated at "4/10" when at its worse. (PX 6, p. 00110)

On September 19, 2014, Petitioner returned to see Dr. Nekzad. She reported that her symptoms were unchanged and that physical therapy only helped for about an hour. Dr. Nekzad ordered Petitioner to continue physical therapy and indicated Petitioner should remain off work. (PX 4, pp.030-032)

On October 7, 2014 an Employer's First Report of Injury was completed by Respondent. (RX 1)

On October 16, 2014 Petitioner's attorney e-mailed Paul Wilson requesting the adjuster's contact information for Petitioner's workers' compensation claim. That same day, Mr. Wilson advised her that it was Rosemary Scumaci at AmTrust Group. (PX 8, pp. 126-127) On October 16, 2014 Petitioner's attorney e-mailed Ms. Scumaci requesting that temporary total disability (TTD) benefits for Petitioner be paid. She also enclosed "pertinent medical bills and records." (PX 8, p. 128)

On October 21, 2014, Dr. Nekzad noted Petitioner's lumbar condition was worsening and physical therapy was aggravating her symptoms. (PX 4, p.033) Dr. Nekzad stated she would start pain management tomorrow (October 22, 2014). Petitioner was to return within one month. (PX 4, pp.033-034)

Petitioner signed an Amended Application for Adjustment of Claim on October 27, 2014.

On November 5, 2014 Petitioner's attorney faxed Ms. Scumaci a demand for TTD benefits from June 7, 2014 to the present. (PX 8, pp. 129-130)

On November 6, 2014, Petitioner was evaluated at Johnston City Community Health Center by FNP Youngblood for moderately severe depression and lumbago. This was Petitioner's initial visit with FNP Youngblood. FNP Youngblood noted Petitioner was having a difficult time functioning as she had a depressed mood, difficulty falling asleep and staying asleep, diminished interest or pleasure, feelings of guilt, loss of appetite and restlessness. Petitioner also reported stress in personal life due to leaving her abusive husband. With regard to her back Petitioner indicated her symptoms began six months earlier when she fell at work. She had recently undergone an MRI and physical therapy. No back examination was conducted at that visit. (PX 7, p.0111) According to a "Referral Communication Form" of the same date Petitioner was being referred to an osteopath for evaluation and treatment. (PX 7, p. 0115)

On November 10, 2014 Tamra Horn from FNP Youngblood's office documented a telephone call with Petitioner's mother. According to it, Ms. Horn tried to reach Petitioner but couldn't and got her mother. She told her an appointment had been set with Dr. Koth for April 8, 2015 and she could call and try to get in sooner if there was a cancellation. (PX 7, p.0116)

On November 13, 2014 Petitioner's attorney e-mailed Mr. Wilson regarding Petitioner's claim being set for hearing on December 1st in Herrin and enclosing copies of pleadings. Counsel further represented that same was being sent to Ms. Scumaci who, to date, had failed to respond to any phone calls or demands for payment of TTD or medical bills. (PX 8, p. 131)

On November 24, 2014, the nurse practitioner Youngblood refilled Petitioner's pain medication -- both for her anxiety and depression as well as her lumbago. Ms. Youngblood noted Petitioner reported ongoing difficulty with functioning and no change in her emotional symptoms from the last visit. Xanax was only working for about 1.5 hours. No back examination was noted. (PX 7, pp.-0117 - 00120)

Petitioner's attorney and Ms. Scumaci spoke on November 25, 2014. On that same date additional medical records were sent to Ms. Scumaci and she was notified that Petitioner had met with "Dr. Griffith" that day. A copy of Petitioner's current off work slip was to be forthcoming. (PX 8, pp. 132-133)

Petitioner returned to see Nurse Youngblood on November 25, 2014 requesting a work note for her back. Petitioner's mood and affect appeared improved. No particular findings regarding a back exam were noted. In a note dated November 25, 2014 Nurse Youngblood stated that Petitioner was under her care and that Petitioner could not return to work at the present time and until further notice. (PX 7, pp. 00121 - 00123)

Petitioner underwent an examination at the request of Respondent on December 19, 2014. That examination was conducted by Respondent's independent medical examiner, Dr. Mirkin. Dr. Mirkin reveiwed reports from Dr. Nekzad from July through October of 2014. He also had the MRI scan report and First Report of Injury. After the exam, he issued a written report. In it he stated that Respondent filled out a First Report of Injury on October 7, 2014, indicating Petitioner had slipped and fell and "strained" her back. On examination Petitioner's lumbar spine was 70 percent of normal. She had an exaggerated pain response to light palpation of her lumbar spine. She complained of pain when her head was compressed and her legs distracted -- all indicative of positive Waddell's signs. Her motor and sensory exam was intact. She had no lower extremity atrophy. She could heel and toe walk. She could squat and rise from a squatting position. Straight leg raise in the sitting position was to 100 degrees and elicited neither back pain nor leg pain. She had no radicular symptoms.

Dr. Mirkin was of the opinion that Petitioner had sustained a lumbar contusion and that the amount of time she had been off work was unnecessary. He felt she was at maximum medical improvement and could work without restrictions. He saw no evidence of disability or need for pain management or surgery. (RX 1)

Petitioner returned to see Nurse Youngblood on December 23, 2014. With regard to her depression, the office notes indicate ongoing symptoms as shown in previous visits. Petitioner was having trouble concentrating and felt tired with little energy. With regard to her back, she was given a medication refill. Petitioner was to return in three months. (PX 7, pp. 00124-00125)

According to Commission records, Respondent's counsel entered his appearance on December 4, 2014.

By e-mail dated December 29, 2014 Petitioner's attorney notified Respondent's attorney that she had not yet received a PPD advance of $2500.00 as agreed to when Petitioner continued the previously scheduled December 1st 19(b) hearing so that an IME could be held on December 19, 2014. (PX 8, p. 134)

On January 5, 2015 Dr. Mirkin issued a supplement report after reviewing a CT scan dated June 8, 2014 taken of Petitioner's lumbar spine as well as therapy notes/records. He noted that the therapy discharge summary dated August 7, 2014 indicated Petitioner had stopped attending physical therapy for unknown reasons. He read the CT scan of Petitioner's spine as negative. His earlier opinions remained unchanged. (RX 2)

The PPD advancement was received on January 9, 2015. (PX 8, p. 134)

At the arbitration hearing, Petitioner, who is 25 years old, testified that she began working for Respondent in September, 2012. As of June 7, 2014 Petitioner worked as a Shift Leader working approximately 25 to 30 hours per week. Petitioner testified she began her shift at 8:00 a.m. on June 7, 2104. Part of her job duties as a shift leader included brewing tea and preparing to open the store. Petitioner testified that she was brewing tea and the tea basket fell

into the tea, requiring her to discard the tea in a sink located outside the kitchen doors. The tea urn weighed approximately 45 pounds and was full. While carrying the urn to the sink to dump it and start a new pot, Petitioner slipped on water near the sink and fell backward onto her buttocks and she believed that she struck the back of her head. Petitioner testified she lost consciousness and when she woke her clothes were saturated with tea. The accident occurred at approximately 9:30 a.m.

Petitioner testified that she yelled for her manager, Perry Austin, who was in the kitchen when she fell. Mr. Austin helped her off the floor and sat her in a chair. Petitioner and Mr. Austin were the only employees in the store at the time of the accident as the store did not open until 10:30 a.m. Petitioner testified that when she regained consciousness the back of her head hurt and it felt like her tailbone was broken making it difficult to walk. Petitioner also testified that her lower back hurt. Petitioner worked her shift until 2:00 or 4:00 p.m. the day of the accident.

Petitioner was not scheduled to work the day after the accident. She did report to the emergency room at Heartland Regional Medical Center complaining of pain in the back of her head, neck and back. Petitioner recalled CT Scan results revealed a bulging lumbar disc, inflammation, but no concussion. Petitioner was given a work release form upon discharge which she testified she delivered to her employer on her way home from the hospital. She gave the work slip to either her general manager, Perry Austin, or the kitchen manager, Holly Shultz.

Petitioner testified she followed up with her primary care physician, Dr. Nekzad, as instructed by the emergency room physician. Petitioner stated her doctor took her off work until further notice and gave her an off work slip. She testified she was "pretty positive" she took the work slip to Respondent the day of her doctor's appointment and gave it to either Perry Austin or Holly Schultz. She underwent an MRI at Herrin Hospital at the direction of Dr. Nekzad which revealed a moderate L5-S1 disc protrusion. Dr. Nekzad prescribed physical therapy and medication. Petitioner began physical therapy in July but stopped due to being hospitalized for a kidney infection. After being discharged she resumed physical therapy. Dr. Nekzad also prescribed pain management. Petitioner testified she could not obtain pre-authorization for pain management by the workers' compensation insurance carrier; therefore she did not receive such treatment.

Petitioner testified that her primary care physician, Dr. Youngblood, at Johnston City Community Health Center referred her to Dr. Koth, at Orthopedic Institute of Southern Illinois. Petitioner testified she is scheduled to see Dr. Koth in April, 2015. Petitioner's primary doctor has ordered her off work pending further notice and has prescribed Ultram.

Petitioner testified she has never been prescribed light duty restrictions or advised to return to work following her accident. She was given off work slips from her treating physicians and has not been released from treatment since the date of accident. Respondent has not offered any light duty position to Petitioner, nor has it requested any additional off work slips or medical

documentation since June 12, 2014 when Petitioner provided her manager with Dr. Nekzad's off work slip. Respondent never requested that Petitioner fill out an accident report.

On cross-examination Petitioner testified she was not aware of any light duty work opportunities with Respondent, nor has Respondent offered her light duty work. She testified she has not been terminated or put on inactive status. Respondent has not contacted Petitioner to inquire about her return to work. Petitioner testified that after she retained counsel in August, 2014, she was instructed by her attorneys not to communicate directly with Respondent. Petitioner acknowledged that she is a Type 1 diabetic and occasionally has health issues, like her kidney infection, related to that condition. She agreed that her kidney problems caused some lower back pain. Petitioner also acknowledged that she underwent no drug testing after the accident and that she texted Perry Austin on June 8, 2014. She acknowledged that she has received no benefits since the accident.

Petitioner testified that she is able to drive, go shopping, and care for things around her house. Since her therapy ended and pain management wasn't approved, she basically sits at home.

Petitioner testified that she sometimes feels pain in her back; otherwise, it's a sharp, stabbing pain. The pain goes from below her waist/beltline to her buttocks. Petitioner denied any ongoing leg pain. She finds it difficult to sit or stand for long periods of time. It hurts to pick up her three year old daughter. Climbing stairs must be done slowly.

Petitioner denied any difficulties performing her job before June 7, 2014.

On redirect examination Petitioner explained that she still has the same symptoms she had prior to being hospitalized for her kidney infection. She also testified that Mr. Austin never asked her to fill out an accident report.

Respondent did not call any witnesses.

The Arbitrator concludes:

Issue C. Did an accident occur that arose out of and in the course of Petitioner's employment on June 7, 2014?

Petitioner sustained an accident on June 7, 2014 that arose out of and in the course of Petitioner's employment with Respondent. This conclusion is based upon Petitioner's credible and unrebutted testimony, the First Report of Injury (mentioned in RX 1), and the histories contained in various medical records which corroborate Petitioner's testimony. Petitioner was engaged in a task required by her job at the time of her accident. She was in the course of her employment.

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

Petitioner's current condition of ill-being in her low back is causally related to her accident of June 7, 2014. This conclusion is based upon a chain of events and the treating medical records. Dr. Mirkin believed Petitioner had sustained a lumbar contusion but felt that it had resolved by the date of his report. Additionally, Dr. Mirkin does not mention anywhere in his IME report that Petitioner sustained a prior injury to her lumbar spine or that Petitioner's symptoms are caused by another source. Dr. Mirkin's report does not indicate he reviewed any medical records related to Petitioner's hospitalization in July/August, 2014 (related to her kidney infection) or whether it contributed to or caused Petitioner's lumbar pain. Petitioner testified that her lumbar symptoms existed prior to her hospitalization and her symptoms did not change after her kidney infection resolved, which is supported by her medical records.

It does not appear from Dr. Mirkin's report that he reviewed the actual MRI performed on June 25, 2015, although he agreed that the MRI report showed a moderate disc protrusion at L5-S1. Dr. Mirkin's opinion that Petitioner sustained a "lumbar contusion" is unsupported by the objective medical records and testimony introduced at arbitration.

Petitioner's head and arm injuries appear to have resolved.

Issues J. & K. Were the medical services that were provided to Petitioner reasonable and necessary and is prospective medical care appropriate pursuant to Section 8(a)?

At Arbitration, the Petitioner placed the following bills into evidence:

(1)	Heartland Regional Medical Center (PX-1)	$ 7,350.21
(2)	Carterville Family Practice (PX-3)	$ 864.00
(3)	Herrin Hospital (PX-5)	$ 7,354.00

There was no question raised at arbitration as to the reasonableness or necessity of the charges incurred. A review of the medical records presented at arbitration by Petitioner show that the treatment received by Petitioner was appropriate. Respondent's Section 12 examiner, Dr. Mirkin, opined that physical therapy was appropriate treatment for Petitioner's injury and he did not state that any prior treatment received by Petitioner was unreasonable or unnecessary. (RX1)

Based upon the evidence presented at arbitration, the Arbitrator finds that the above charges were reasonable and necessary and causally related to the accidental injuries sustained by Petitioner on June 7, 2014. Accordingly, the Arbitrator awards the medical bills in the amount of $15,568.21 subject to the Medical Fee Schedule.

The Arbitrator further awards compensation as provided by Section 8(a) of the Act for future medical treatment as the medical evidence supports a referral to a neurologist to treat her lumbar disc injury. Dr. Mirkin's Section 12 report is void of any medical evidence that Petitioner sustained a "lumbar contusion" and is directly contradictory to objective diagnostic studies supporting her injury. Even he acknowledged that her MRI showed a disc protrusion at L5-S1. While he read the CT lumbar scan as being negative he provided no explanation for that conclusion and the radiologist and Dr. Nekzad interpreted it differently and consistent with what the subsequent MRI showed. Furthermore, Dr. Mirkin was the only physician noting positive Waddell's signs. No other doctor has questioned her veracity. It is also interesting that Dr. Mirkin expressed his opinions of December 19, 2014 in terms of "I think," thereby suggesting less than certainty in his opinions. He then issued a subsequent report; however, it was not based upon a subsequent exam of Petitioner. Furthermore, his analysis of Petitioner's physical therapy records was not insightful. Petitioner stopped attending physical therapy in July/August of 2014 due to her kidney infection. Apparently, the doctor was not aware of that. It also doesn't appear he had any updated information concerning Petitioner's ongoing care since October of 2014 and her ongoing need for pain medication. Respondent is ordered to authorize and pay for Petitioner's appointment with Dr. Koth.

Issue L. What amount of compensation is due for temporary total disability benefits?

Based on the above findings of accident and causal connection, the Arbitrator hereby finds Petitioner is entitled to temporary total disability benefits related to the accident of June 7, 2014. Petitioner was provided a work status form by the emergency room on June 8, 2014, which she delivered to the Respondent. Petitioner was taken off work by her primary care physician, Dr. Nekzad, on June 12, 2014. Petitioner has remained off work through the course of her treatment, including physical therapy in August and September, 2014. In September, 2014, Dr. Nekzad noted Petitioner was not improving with physical therapy and ordered pain management, which Petitioner did not undergo due to insurance reasons. On November 25, 2014, Petitioner was ordered to remain off work until further notice.

Petitioner's treating physicians have consistently ordered Petitioner off work while she underwent treatment. Respondent failed to introduce any evidence at arbitration that Petitioner's time off work was unreasonable or unnecessary. Dr. Mirkin's IME report was not prepared until December 19, 2014 and was not received by Petitioner or Respondent's counsel until January 20, 2015. (PX8, pp.0135-0136) For over seven (7) months Petitioner was allowed to treat at the direction of her physicians without any opinion from Respondent that her treatment or time off work was unreasonable or unnecessary. Further, Respondent never contacted Petitioner to inquire when she intended to return to work or to request updated off work slips.

The Arbitrator hereby awards temporary total disability benefits for the period June 8, 2014 through February 4, 2015.

While Dr. Mirkin is of the opinion that Petitioner can return to work without any restrictions and is of the opinion she is at maximum medical improvement, his reasoning is not

persuasive. In his January 2015 addendum report he comments on Petitioner's attendance with physical therapy, noting she had stopped in August of 2014. Dr. Mirkin was not aware of Petitioner's hospitalization in July. That would explain why Petitioner on August 7, 2014 was noted to have stopped attending. He saw no evidence of disability or need for surgery or pain management. While he felt she didn't need to be off work for the amount of time she had been, he didn't state what an appropriate amount of time would be. While he felt the CT scan of Petitioner's lumbar spine was negative he agreed that the MRI showed a moderate disc protrusion at L5/S1. The radiologist reading the CT scan taken on June 8, 2014 noted it, too.

The Arbitrator hereby awards temporary total disability benefits for the period June 8, 2014 through February 4, 2015.

Issue M. Should penalties or fees be imposed upon Respondent?

Based upon the evidence presented by Petitioner and Respondent at Arbitration, the Arbitrator finds that Respondent's failure or refusal to pay compensation as provided in Section 8(a) of the Act was unreasonable and vexatious.

Petitioner sustained an accidental injury on June 7, 2014. On August 14, 2014, Petitioner's counsel mailed the Application for Adjustment of Claim to McAlister's Deli. On October 16, 2014, Petitioner's counsel e-mailed Paul Wilson at Charter Insurance who insured McAlister's Deli to obtain insurance information. (PX9, p. 0127) On October 16, 2014, Petitioner's counsel e-mailed the insurance adjuster, Rose Scumaci, making a written demand for benefits and providing her with supporting medical records and bills. (PX9, p. 0128)

On November 5, 2014, Petitioner's counsel sent a fax to Rose Scumaci again requesting a response to the demand for benefits. (PX9, pp. 0129-0130) Rose Scumaci failed to respond to Petitioner's phone calls, emails or faxes; therefore Petitioner emailed a Notice of 19(b) Hearing to Paul Wilson at Charter Insurance. (PX9, p. 0131) The 19(b) hearing was scheduled for December 1, 2014. On December 1, 2014, Respondent agreed to advance $2,500 to Petitioner to allow Respondent time to obtain a Section 12 examination, in exchange for continuing the 19(b) hearing.

On December 29, 2014, Petitioner still had not received the $2,500 payment that was promised in exchange for continuing the December 1, 2014 hearing. (PX9, p. 0134) The IME was performed on December 19, 2014. Petitioner emailed James Clune demanding the $2,500 payment and advising the case was going to be reset in January, 2015, with penalties, for failure to pay benefits and no reasonable basis for nonpayment. (PX 9, p. 0134) The advance payment of $2,500 was not received by Petitioner until January 9, 2015.

The Section 12 report was not received by Petitioner or Respondent's counsel until January 20, 2015. (PX9, pp. 0135-0136) Even after receiving the IME report, Respondent did not pay any medical bills or temporary total disability benefits. Dr. Mirkin's report did not find any of Petitioner's medical care to be unreasonable or unnecessary.

Petitioner filed her Petition for Penalties on November 19, 2014. (PX 9) Respondent did not file a response to the Petition. There is no evidence in the record from which the Arbitrator can determine why Respondent did not pay benefits to Petitioner. Respondent disputed accident but presented no witnesses to contradict Petitioner's testimony nor did it include the First Report of Injury as an exhibit. Respondent received prompt notice of the accident as evidenced, at a minimum, by the text messages between Petitioner and Mr. Austin. Respondent never presented Petitioner with a "written explanation of the basis" of its denial of benefits as required by Section 7110.70 of the Rules. As a result of Respondent's refusal/denial of benefits, Petitioner has received no temporary total disability benefits or payment of medical bills. Only when pressed to obtain a report pursuant to Section 12 did Respondent advance a payment and, even then, that payment was not entirely timely.

Respondent's failure or refusal to pay any medical or temporary total disability benefits to Petitioner without a reasonable basis for denying same for over seven months following the accident represents a rebuttable presumption of unreasonable delay.

Accordingly, and as set forth in Petitioner's proposed decision, the Arbitrator awards penalties as provided by Sections 19(k) in the amount of $4,355.27, Section 19(l) penalties in the amount of $3,330.00, and Section 16 attorneys' fees in the amount of $1,537.05.

****