

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Powell,

Petitioner,

vs.

NO: 15 WC 29725
17 IWCC 205

Manchester Tank & Equipment Co.,

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 Order of the Commission dated April 19, 2017, having been filed by Petitioner herein. Upon consideration of said Petition, the Commission is of the Opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Order on Review dated April 5, 2017, 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 Order on Review shall be issued simultaneously with this Order.

DATED:
TJT:yl
51

JUN 13 2017


Thomas J. Tyrrell

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Powell,

Petitioner,

vs.

NO: 15 WC 29725
17 IWCC 205

Manchester Tank & Equipment Co.,

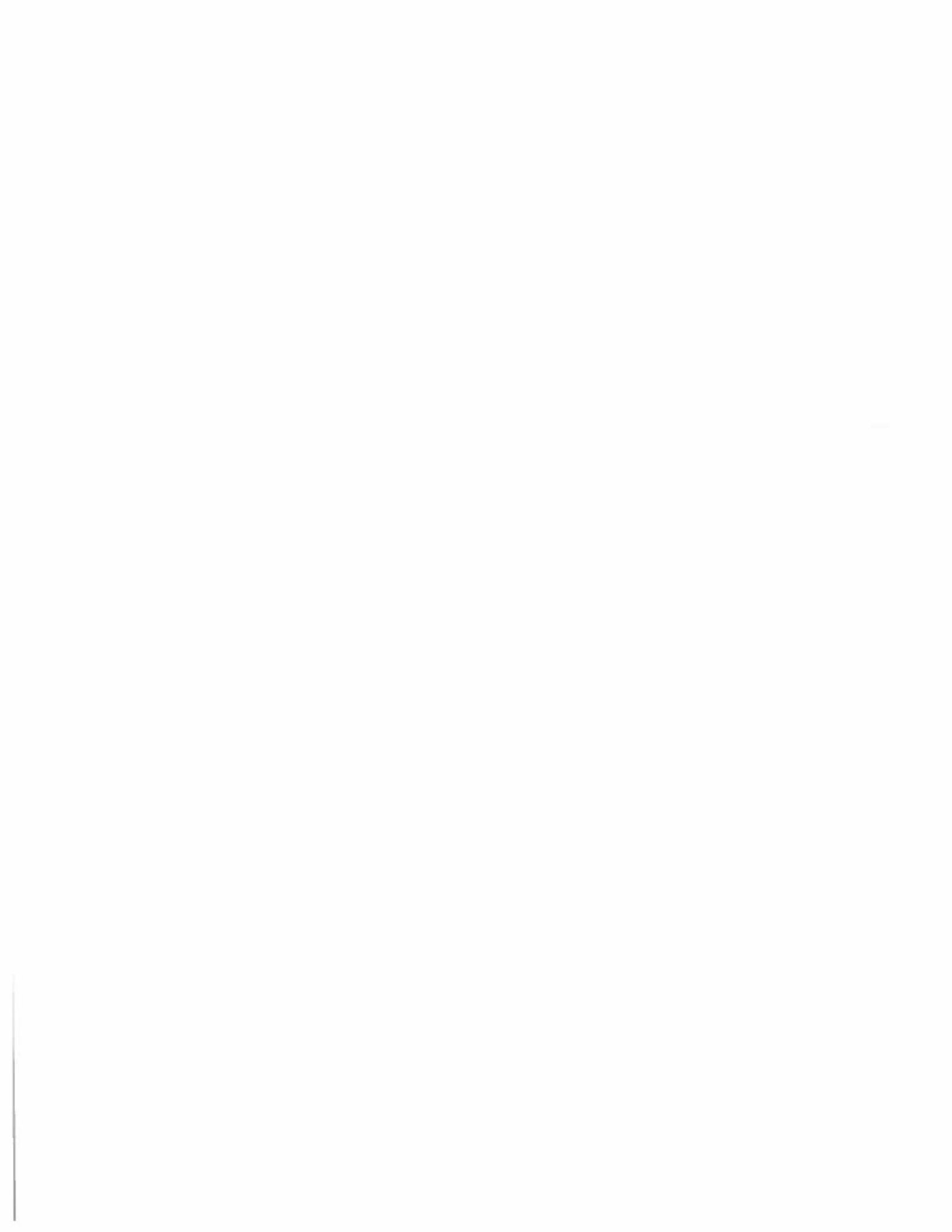
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical, temporary total disability, wage rate, 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).

For the reasons set forth below, the Commission modifies the time period that the Petitioner was entitled to temporary total disability. The issue of the Petitioner's wage calculation was conceded by the Respondent at the February 6, 2017 oral argument.

So that the record is clear, and there is no mistake as to the intentions or actions of this Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical / legal perspective. We have considered all of the testimony, exhibits, pleadings and arguments submitted by the Petitioner and the Respondent. One should not and cannot presume that we have failed to review any of the record made below. Though our view of the record may or may not be different than the Arbitrator's, it should not be presumed that we have failed to consider any evidence taken below. Our review of this material is statutorily mandated and we assert that this has been completed.



The Petitioner testified on cross examination that after his work-related accident, specifically from April 2016 to the date of hearing, he was performing activities at home that went beyond his restrictions, including mowing the yard and working in the vegetable garden. The Petitioner also testified to periods of prolonged sitting at home including sitting on a lawn mower and sitting on a 4-wheeler, which aggravated his work-related back condition. He further testified on re-cross examination that when he was offered a light duty position in April 2016 with the Respondent, he declined the position due to issues with sitting. (Tr. 46-50, 66)

The Commission finds that the Petitioner is not entitled to temporary total disability from April 1, 2016 through the date of the Arbitration hearing due to the Petitioner's refusal to work in a light duty capacity for the Respondent. The Petitioner admitted during his testimony that he exceeded his work restriction of prolonged sitting while at home, yet refused to work light duty for the Respondent due to prolonged sitting. However, since Petitioner did not testify as to a specific date in April when he began participating in activities beyond his restrictions, the Commission chooses to terminate TTD as of the first day of that month. Accordingly, the Petitioner is precluded from an entitlement to temporary total disability after April 1, 2016.

Therefore, based upon the totality of the evidence and the factual findings above, the Commission modifies the Petitioner's entitlement to temporary total disability. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision, filed on July 19, 2016, is hereby modified.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act, as follows: \$35.00 to Quincy medical group, \$245.00 to Hannibal Regional Medical Center, \$51.00 to Clinical Radiologists, \$5,575.62 to Blessing Hospital, and \$2,868.43 to Unity Point Health.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize the treatment proposed by Dr. Mark Gold for Petitioner's work-related lumbar condition.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability of \$408.92 per week for a period of 16-2/7 weeks – including September 9, 2015 (one day), October 2, 2015 through January 18, 2016, January 28, 2016 through January 29, 2016, and February 17, 2016 through February 18, 2016 – 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 for permanent disability, if any.

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.

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 \$65,000.00. 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 13 2017

O: 2/6/2017
TJT/gaf
51



Thomas J. Tyrrell



Michael J. Brennan



Kevin W. Lamborn

2011

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

POWELL, RICHARD

Employee/Petitioner

Case# **15WC029725**

MANCHESTER TANK & EQUIPMENT CO

Employer/Respondent

17IWCC0205

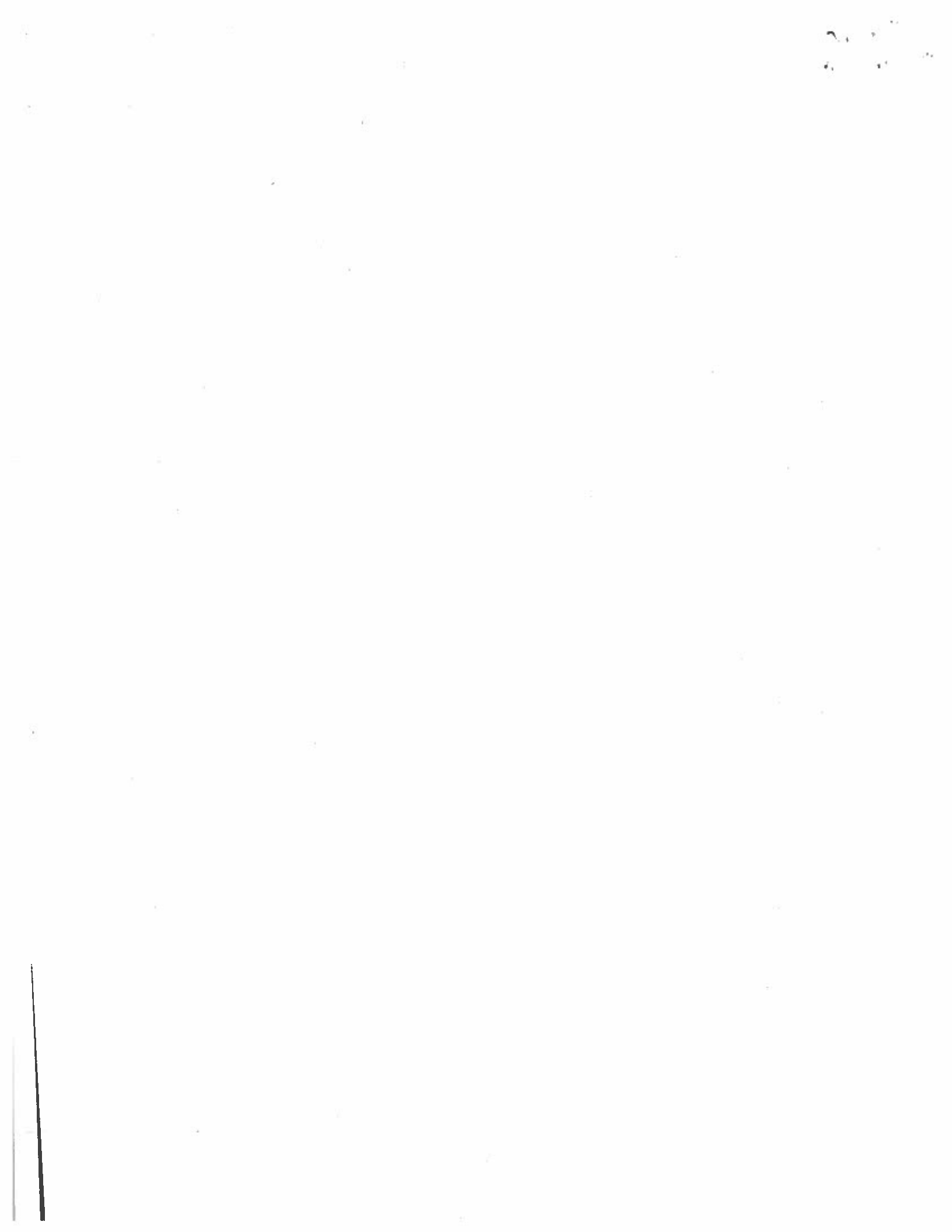
On 7/19/2016, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.43% 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:

2028 RIDGE & DOWNES PC
JOHN E MITCHELL
415 N E JEFFERSON AVE
PEORIA, IL 61603

1337 KNELL LAW LLC
STEPHEN P KELLY
2710 N KNOXVILLE AVE
PEORIA, IL 61604



17IWCC0205

STATE OF ILLINOIS)

)SS.

COUNTY OF ADAMS)

- 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)

Richard Powell

Employee/Petitioner

Case # 15WC 29725

v.

Manchester Tank & Equipment Co.

Employer/Respondent

Consolidated cases: _____

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 McCarthy, Arbitrator of the Commission, in the city of Quincy, on 6/1/2016. 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 _____

17IWCC0205

FINDINGS

On the date of accident, 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 **\$\$31,896**; the average weekly wage was **\$\$613.38**.
On the date of accident, Petitioner was **45** years of age, *married* with **2** children under 18.
Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.
Respondent shall be given a credit of **\$\$8,798.50** for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of **\$\$8,798.50**.
Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of \$35 to Quincy Medical Group, \$245 to Hannibal Regional Medical Center, and \$51 to Clinical Radiologists, \$5,575.62 to Blessing Hospital, \$2,868.43 to Unity Point Health, as provided in Sections 8(a) and 8.2 of the Act.
Respondent shall be given a credit 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 the treatment proposed by Dr. Gold, as explained in the attached findings of fact and conclusions of law.
Respondent shall pay Petitioner temporary total disability benefits of \$408.92/week for 14.4/7 weeks, commencing on September 9, 2015 (One Day); October 2, 2015 through January 18, 2016; January 28, 2016 through January 29, 2016; February 17, 2016 through February 18, 2016; and May 29, 2016 through June 1, 2016, 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.

17IWCC0205

D. Glass Mc Cart

7/14/2016

Signature of Arbitrator

Date

JUL 19 2016

ICarbDec19(b)



17IWCC0205

STATE OF ILLINOIS)
) SS
COUNTY OF ADAMS)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICHARD POWELL,)
)
Petitioner,)
)
v)
)
MANCHESTER TANK & EQUIPMENT CO.,)
)
Respondent.)

IWCC: 15WC 29725

FINDINGS OF FACTS APPLICABLE TO ALL ISSUES

Richard Powell, age 47 at the time of his accident, obtained his GED and spent one year at John Wood Community College and two years at Cardinal Area Career Center in Springfield. (T9-10) His training was that of an electrician but he is not licensed as one. (T10) He does not do electrical work. (T56)

Petitioner stated he had no back problems prior to April 2015 and saw no doctor for back problems. (T32) Prior to April 2015, Petitioner does not recall ever seeing a physician for his back. (T61) He did acknowledge that he had occasional back aches when he over exerted himself. (T61) When that happened prior to the accident of 2015, he would take Tylenol. (T62) But, his history to Dr. Bernardi indicated some chiropractic care years ago. (RE 10)

Petitioner began working for the Respondent on February 28, 2011. He had various jobs with the Respondent. He went from working prefab as a welder or breaking out parts or running a robot, whatever they needed. (T10-11)

Petitioner believes his current hourly rate of pay is \$16.30. He generally worked 8 hours a day unless a supervisor or lead hand asked him to work overtime. He can refuse overtime but if he does, they won't ask him to work overtime any more. (T31) His normal work week is 5 days. (T31)

17IWCC0205

In April 2015 he was performing hand welding of top plate and base ring. (T11) As a welder, he lifts top plates, base rings and he may end up breaking out parts before you can build a part. They come off the Amada machine. (T11) They are stacked in trays and you use a pry bar and slide underneath them and beat them with a hammer. (T11-12) The parts he breaks, he lifts himself. The parts coming out of the Amada machine are on big tables and they are picked up with a forklift. (T12) Petitioner himself lifts up to 90 pound plates. (T12) He bends his back all day long at times, depending on the job he is doing. (T12)

On April 8, 2015 Petitioner assisted in opening the drawer underneath the Amada machine that cuts out the parts. He was asked to help by another worker. (T13) The other employer was trying to pry the door open with a shovel but it didn't open because it was heavy. (T13) The drawer is 4 feet wide and 6 to 8 feet deep, it is about 4 inches off the ground. (T14)

While the other employee was trying to pry the door open with a shovel, Petitioner was on his knees trying to pull on the front handle and when it finally came open when suddenly something popped in his back. (T14) The door was full of scrap steel, extras like slugs or cut outs from the top plate. (T14) After his back popped, it started hurting and it got worse as the day went by. (T15) At that time his pain was limited to the low back. (T15) He reported the incident to his supervisor. (T15) He filled out accident forms. (T15) Petitioner stated that he had only one accident working at Manchester on April 8, 2015. (T36)

He was sent to Dr. Henry by his employer. (T16) Dr. Henry checked him out, never did any x-rays the first day and told him to come back in 2 weeks. (T16-17) He did not take him off work. (T17) Petitioner did not know of any problems with his back occurring off and on prior to the April 8, 2015 accident. (T35) When he returned to Dr. Henry, the pain still hadn't gone away. (T17) Petitioner was put on light duty at the second visit. (T17) X-rays were performed. Dr. Henry released him to return to work. (T35) Petitioner disagrees with the doctor's statement that he had off and on back problems. (T35)

Petitioner saw Dr. Basho two or three times. An MRI was reviewed and x-rays were taken. (T17) Dr. Basho released him to return to work. (T37)

Around June 2015 physical therapy was recommended by Dr. Basho. (T37) After seeing Dr. Basho, he was referred to Dr. DeDes, a pain management doctor, who gave Petitioner an epidural injection at L5/S1 on June 23, 2015.

Petitioner stated that he went all through the physical therapy and disagrees that he stopped voluntarily coming to physical therapy. (T37) He was not aware that he was discharged from First Choice Physical Therapy on August 6, 2015 because of non-compliance. (T38)

Petitioner sought no medical care between August 16 and August 31, 2015 until he entered the Blessing Walk In Clinic giving them a history of trimming horse hooves. (T38-39) He gave a history feeling immediate pain while he was doing and that he had an aggravation of pain. (T39) He told them that his pain had increased. (T39-40)

On September 17, 2015 Petitioner called Dr. Basho telling him that he rolled a bail of hay over. (T40) Dr. Basho wouldn't see him so he went to the emergency room. (T40-41)

On September 17, 2015, Petitioner sought care at Blessing Hospital's ER. Petitioner gave a history of moving a bale of hay. (T23-24) He rolled a square bale of hay over, the bale weighing about 30 pounds. Petitioner moved it from edge to flat. (T23-24) As he did so, he went numb. (T24) Prior to rolling the bale his pain had never gone away since the accident. (T24) Petitioner stated there was the same injury, he just aggravated it again. (T40) At the time he was working with the hay he gave a history he had a pop in his back as well as numbness in his legs. (T41) At that time it was suggested he see a neurosurgeon. (T42) The injection that was given at the emergency room when Dr. DeDes was absent, the day that he rolled the bale, the injection to the numbness away for a period of time but it came back to the same level as before. (T33)

Petitioner worked from September 10 until October 2 in light duty capacity. (T 43) Petitioner was taken off work for the period of October 2, 2015 to January 11, 2016. From January 2016 to April 2016 he was provided light duty work and was receiving medical care. (T43-44) His complaints to the doctor during that period were problems with bending and sitting. (T44)

Finally, in October 2015 Petitioner saw Dr. Taylor Moore of Quincy Medical Group. Dr. Moore referred him to Dr. Gold. (T19) Dr. Moore gave him pain medication and took x-rays. (T20)

Dr. Gold scheduled him for a fusion at L4, L5 and S1 (on May 4, 2016). (T20) He didn't get the surgery because worker's comp refused it and he couldn't afford to pay the deductible for his insurance. (T20-21) Before surgery, Dr. Gold wanted him to get fitted for a back brace. (T21) Petitioner has not seen Dr. Gold since April but did see his nurse two days before his surgery had been scheduled to occur. (T21-22)

At work, he lifts items that are heavier than those he lifts on the farm. (T27) He spends more time doing lifting activities at work than he does on his property. (T27)

Petitioner was willing to accept the surgery suggested by Dr. Gold. (T32)

The Petitioner original complaint was that of his back and left side. (T24) He had pain in the middle of his back, cross his hips, and both legs would go numb. (T24) Petitioner told Respondent he couldn't perform sitting and didn't think he could do sitting activities. (T45, 60) Any activity that he does that requires sitting does that. (T60) When Petitioner is on his feet, it doesn't bother him as bad because whatever is getting pinched in his back isn't pinching his back when he is on his feet. (T61) His feet and legs do not bother him as bad when he is on his feet. (T61)

Previously they gave him light duty work. (T64) The Petitioner has not been offered light duty work since April 2016. (T64) Petitioner calls his employer on the phone once a month. (T64) Petitioner stated his legs are numb now from sitting. (T45) It makes sense that you would avoid sitting, avoid bending, doing activities that cause problems to your back around April to present. (T45-46) Petitioner didn't want to take a light duty job because of problems sitting. (T51-52) But he does do activities at home sitting that aggravate his back. (T52)

Petitioner lives on about 2 ½ acres of land which they garden, have horses, chickens, turkeys and ducks. (T23) He does not use the animals or corps for sale, just personal use. (T23) Petitioner stated he hasn't done any heavy lifting around the house. (T51)

The bale of hay, which is rectangular, is stacked in his barn. (T62) It is stacked up in a stack, the bale was sitting on the edge of the board, he needed to roll it over into

a two wheel so that is what he did, bent over and rolled it over. (T62-63) It was one bale high, 14 or 16 inches. (T63) He used the hay to feed he horses. (T63) He rolled it over on to a two-wheel dolly across the yard, cut the bale string with a pocket knife and picked up pieces of it and threw it over the fence to the horses. (T63) He did not carry the bale at any time. (T63)

He has a vegetable garden is about 20 feet by 20 feet and requires him to bend down, weed, plant, etc., to which he took exception. (T49, 46-47) He uses the hoe to weed and a planter to plant. He agreed that type of activity could aggravate his back pain. (T47) The average time he spends hoeing is 10 to 15 minutes. (T57) The hoe is fiberglass handle and has a flat blade of steel (58) You cut off weeds with it, stick in the ground and pull it back to you. (T58) The hoe weighs about 2 ½ pounds (T58)

The Petitioner grows green beans and picks them by leaning over the row and picking them. (T24-25) You can pick a row of green beans in 20 minutes. (T25) He was picking them most of the time by standing and bending over. (T25)

The Petitioner's children ran the tiller 99% of the time but he did touch the tiller this season. (T47-48) When asked if that exceeded his restrictions, he indicated that the tiller is self-propelled, he didn't pick it up or do anything of that nature. (T48) Running a tiller sometimes can be hard work, sometimes it gets stuck and sometimes it can aggravate your back pain. (T48-49)

Petitioner has used a hoe in his garden once this year. (T58) His plant uses a push type planter, all aluminum, you put ½ pound of seed and push it across the garden, like a fertilizer two-wheel bucket. (T58) The whole thing weighs about 7 or 8 pounds and he pushes it. (T59) Before using the hoe, the planter, etc., he noticed constant (pain) all the time. (T59-60) The pain gets worse and then it goes back to its normal level. (T60)

Petitioner uses a riding lawn mower once a week, it takes about 30 minutes to do his yard. (T57) Sitting on the lawn mower can aggravate his back at times. (T50) Riding a four wheeler can aggravate his back. (T50-51) When he is on the job for his employer, he doesn't work 30 minutes and then stop. (T57)

He has three horses which require feed and he tried to trim one hoof this year which aggravated his back. (T55) He stated he tried to ride a horse but he couldn't do

it. (T52) His son saddled the horse. (T52) He would agree that riding a horse aggravates his complaints. (T52-53) He has tried not to do that since September 2015. (T53) He also cut hooves on horses by putting the hoof between his knees and trimming it with nippers. (T25) The nippers are like a large fingernail clipper. (T25-26) After the incident of trimming hooves, picking green beans or tipping a bale of hay, his pain does reduce after a period of time if he quits doing what he was doing and just lay on the floor it will relax. (T27-28)

In working on his brakes, it took him an hour and a half or two hours which would have normally taken him about 30 minutes to set the brakes. (T59) It took Petitioner about 2 ½ hours to do both sides. (T59)

Petitioner agreed that he was performing some activities that were probably beyond his restrictions. (T46) Certain activities at home exceeded his restrictions. that he exceeded his restrictions in mowing the lawn and working in the garden. (T46)

When asked if he reinjured his back in any of those activities, he stated no. (T26) He stated his back pain has never gone away, it has different degrees of pain with some days he can deal with it and some days he wants to cry because it hurts so bad. (T26) The back just doesn't get better. (T27) He stated that if he is sitting around doing nothing, he can deal with it, it is just a dull constant pain. However, if he is working, bending over, twisting it could make him cry on some days. (T27) He does bend and twist at work. (T27)

Medical records of the Petitioner's care were introduced into evidence. Petitioner was seen by Dr. Henry. He obtained a history of low back pain of an acute nature with an onset suddenly due to an incident at work on April 8, 2015 and has been occurring in a persistent pattern for a week, gradually worsening. He had low back pain described a mild to moderate dull aching, shooting, burning and electrical and tingling. Pain radiates from his lower back down to the left thigh and left foot. He received no relief from the pain.

On April 14, 2015 Dr. Henry noted that this was a work related injury.

Dr. Henry noted tenderness to palpation at the left buttock and over the sacroiliac joint on the left. Straight leg raising was negative on the right and left.

X-rays were taken. On that date, Petitioner was found able to work without any restrictions.

Petitioner returned to Dr. Henry on April 22, 2015 with the same complaints. The doctor felt that he had a low back strain and a lumbar disc displacement. In his notes for April 22 he suggested modified duties of lifting 15 pounds with no bending and suggested an MRI. However, in contradiction to his notes, his report to the employer indicated that Petitioner was able to work with no limitations. He was to return on the 5th of May, 2015. Dr. Henry marked the form indicating it was a work related injury.

At Dr. Henry's direction, an MRI was performed on April 30, 2015. It was performed at Hannibal Regional Hospital and the reviewing doctor was Emad Hamid.

After the MRI was taken, Dr. Gregory gave the Petitioner restrictions noting that he had to work with limitations. He could lift 20 pounds and needs to limit his bending. He, on that note, indicated that this was a work related injury.

On April 30, 2015 Dr. Henry again saw the Petitioner. On his examination, he found the left lower extremity to have 40 degrees with posterior and thigh calf pain. The doctor's assessment is that of low back strain and lumbar disc displacement. He confirmed the Petitioner should be lifting no more than 20 pounds and have limited bending. He is suggesting referral to a back surgeon..

Petitioner was referred to Dr. Basho, an orthopedic surgeon, by Dr. Henry with complaints of low back and numbness and tingling down the left leg. (PX 2)

The initial examination on May 26, 2015 showed the Petitioner's motor strength to be normal in the upper extremities, the hip, the knee, the tibialis anterior, AHL, and GSC sensation was intact in the cervical and lumbar regions. Reflexes in the Achilles and patellar tendons were 2+ and symmetric.

Review of x-rays and MRI taken previously, resulted in the opinion of a Grade I spondylolisthesis at L5-S1 on x-ray. The MRI showed a broad based disc bulge with slight caudal migration at L4-5 segment, severe foraminal stenosis is noted at L5-S1.

Dr. Basho's assessment was that of lumbar radiculopathy, Grade I spondylolisthesis at L5-S1 and L4-5 disc herniation.

The doctor stated that he wasn't sure if the Petitioner's pain emanated from L4-5 or L5-S1. He suggested a left side L5-S1 transforaminal injection. If that injection is

inefficacious, then he will be sent for an L4-5 translaminal epidural steroid injection. He was also to be placed in physical therapy. He could return to work with a 20-pound restriction. He is to return on June 13, 2015. Doctor's notes indicate that this was a work related injury.

Petitioner returned to Dr. Basho on July 21 in follow up to the L5-S1 injection stating that he gave him no significant or lasting relief. The doctor's assessment remained the same. The physical examination Petitioner remained unchanged. Dr. Basho noted that the injections have not enough of any diagnostic value and have given him no relief. Therefore, he concluded surgical intervention was not what he believed to be the answer. He suggested continued conservative treatment of oral medication and therapy. He is to be referred to the pain clinic.

Dr. Basho prepared a report to the employer indicating that Petitioner would return to work on July 21, 2015, that he is able to work with restrictions of lifting 20 pounds. The doctor again noted that this was a work related injury/illness.

On September 17, 2015 Petitioner called Dr. Basho's office speaking to a nurse, Ashley Kelle LPN, he explained he was rolling the bale of hay and experienced numbness in both arms and legs, his extremities are still tingling and he would like to see Dr. Basho. The nurse stated she would have to figure out how they could go about seeing him due to a previous worker's comp injury and she would have to talk to someone else about scheduling. She suggested that if was concerned and thought he needed immediate care, he could return to the walk in clinic he previously visited for pain control or call his PCP. The note goes on to indicate that the nurse talked to Dr. Basho who stated he didn't need to see the patient because he had released him from care and needed to seek treatment with pain management.

On referral from Dr. Basho, Petitioner was referred to Frist Choice Physical Therapy.

Petitioner tolerated the exercise at therapy as well as at home without any significant problems or increased pain. He continues to have symptoms after performing his work duties at a current 20-pound restriction. Patient described an incident where he bent over at work on 7/14/15 and felt a pop in his back causing

increased symptoms at that time to a level of 6/10. His thoracal lumbar junction back pain index score is 52%.

As to spine range of motion, flexion caused pain, was at 35 degrees. Extension was 20 degrees with lower lumbar and lower thoracic pain. SVR was 38 degrees, SVL, 37 degrees. Range of motion on right for internal rotation was 14 degrees and on the left 20 degrees. External rotation of the hip was 40 degrees on the right and 30 degrees on the left. Thoracic spine range of motion was extension of 23 degrees, right and left rotation was 30 degrees. Lower extremities strength myotomes were 5/5, gluteals 4/5, upper abs 4-/5, lower abs 4-/5 and oblique's 4/5.

The assessment is that he is improving with his lumbar and thoracic spine motion as well as his hips showing improvement. He tolerates exercises without increase in symptoms but continues to have pain that is relatively constant in the thoracal lumbar region. His pain will worsen after lifting activities including activities at work or household chores.

- First Choice made no comments with regard to causal relationship but noted a work injury.

Rodney Brumley, PT, authored a discharge summary from physical therapy after Petitioner was seen for 8 visits for the period of June 16, 2015 through July 16, 2015. A progress note was completed on his last visit for follow up with his referring physician. A phone message left with the Petitioner did not result in contact. At that time, physical therapy was discontinued.

The therapist noted that the Petitioner met all of his short term goals with the exception of improved ability to sleep up to 4 hours as he continues to awake every 2 to 3 hours due to low back pain or not getting comfortable because of pain. The physiatrist plan was to send a progress note for follow up with physician continuing per physician recommendation.

Respondent suggests the Petitioner just quit physical therapy on his own which Petitioner denied. In a therapy note of July 16, 2015, the therapist, Rodney Brumley in the PN section of his notes, seemed to indicate he was awaiting the physician's recommendation and checking on Petitioner's status. In his note of July

21, 2015, Dr. Basho merely indicated that Petitioner was to return as necessary and makes no comment about continuing physical therapy.

The Petitioner was admitted to Blessing Hospital on August 31, 2015 with a history of his accident, and he has now and then sharp pain that comes in his lower back stating that yesterday he was trimming the feet of his horses, he bent over and the pain came back and (?) his lower back. His pain is 4/10 with intensity worse with bending side to side or turning side to side. He stated he had a previous steroid shot which decreased his pain. The practitioner Daanish Shaikh assessed him as having lower muscle spasms for which he was given shot of steroid and morphine and was sent home. The physician wrote a note excusing Petitioner from work and physical activities beginning on August 31, 2015 and allowing him to return to work on September 2, 2015.

On September 17, 2015 Petitioner was seen at Blessing Hospital Emergency Room with back pain. It was noted he had an open worker's compensation claim. He stated he moved a bale of hay and felt a pop in his back stating now he is numb and tingling all over his body. A review of symptoms seems to be normal. It was noted that on August 3, 2015 he was seen for back pain by Dr. Shaika. Clinical impression appeared to be paresthesia.

Petitioner submitted to an independent medical examination at Respondent's request on December 15, 2015. Petitioner gave the doctor history of both his accident, his subsequent occurrence regarding his back and mentions a chiropractor visit 15 years prior to the accident. Dr. Bernardi reviewed the medical records available to him covering up to October 19, 2015.

In his physical examination, he found no signs of symptom magnification nor any Waddell's signs. His positive findings were that of flexion and extension rotation of the right hip produced complaints of right lateral buttock pain. Flexion and external rotation of the left hip produced complaints of left lateral buttock pain. He notes deep tendon reflexes of 1+ $\frac{1}{4}$ at the knees, 1 $\frac{1}{4}$ on the left ankle reflex and 0 $\frac{1}{4}$ on the right ankle reflex. The plantar response was down going. Thereafter he reviewed the MRI performed on April 30, 2015.

Dr. Bernardi noted that he did not believe it was possible to determine whether his symptoms were due to an acute central disc protrusion at L4-5, an aggravation of a pre-existing L4-5 disc disease/stenosis, an aggravation of his L5-S1 isthmic spondylolisthesis or a blending of all of them. He notes that the waxing and waning of symptoms is normal, that is how most episodes of back/leg pain behave.

The doctor notes that it is extraordinarily unlikely that having been present for approximately 3 ½ years, the main symptoms completely subside following his appointment with Dr. Moore on July 27, 2015 only to recur again on August 30, 2015.

The doctor stated that **"were it not for his occupational accident I can see no reason to believe that this man's activities at home in late August or mid-September 2015 would have produced any type of back complaints"**. He does not believe that the Petitioner has yet reached maximum medical improvement. He felt it would be reasonable to have a second and third epidural steroid injection.

Later, when queried by defense counsel, Dr. Bernardi checked on a form indicating that the activities Petitioner provided outside of Manchester Tank were types of activities that could aggravate the condition of ill being. On May 26, 2016 in response to defense counsel's fill in the blank letter, Dr. Bernardi agreed that if an individual is performing activities beyond his restrictions, those activities could be aggravating his condition of ill being. Nowhere was it mentioned that those aggravations were permanent in nature.

Petitioner was seen by Dr. Howard DeDes, a pain specialist, on June 19, 2015 with a chief complaint of low back and left leg pain, describing the accident that he sustained and noting that he was referred to them by Dr. Basho. He reviewed the imaging performed noting, among other things, that there were posterior disc bulges with degenerative changes and a right paracentral component at L4-5 producing moderate central stenosis and foraminal stenosis, left greater than right. There was also a L5-S1 bilateral foraminal stenosis. The doctor believed that the foraminal stenosis at L4-5 and L5-S1 is consistent with the lumbar radiculopathy.

On June 23, 2015 Petitioner was seen by Dr. DeDes who performed a transforaminal epidural steroid injection procedure at the left L5-S1 neuroforamen. Petitioner was given restrictions of no repetitive shoveling, no lifting over 40 pounds no

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pushing or pulling over 40 pounds of force and no work requiring repetitive bending. In reviewing medical necessity, he noted that Petitioner's symptoms were consistent with the radiographic findings.

On September 14, 2015 he was again seen by Dr. DeDes who had requested Petitioner return for evaluation. His plan was to start pain management for brachial pain with Tramadol 3 times daily. For diagnostic and therapeutic options, they will provide transforaminal epidural steroid injections at L4-5 and L5-S1 on the left side. Depending upon the efficacy of those injections they will consider repeat injections within a month for a series of three. If pain does not improve, he will go back to Dr. Basho.

On September 17, 2015 Petitioner called the office at 3:17 p.m. stating that he went out to feed his horses and went to roll over a small bale of hay from the edge of the flat side. He states as he did so, something moved in his back and his whole body began tingling. The office told Petitioner that Petitioner was referred to Dr. DeDes so he needs to call that office. Dr. DeDes indicated that obviously he should go to the emergency room. A CMA called and spoke to his wife about coming to the emergency room.

September 18, 2015 Kayla Berhorst, RN spoke with Petitioner who indicated that he had a disc pushing on the nerve causing his tingling. He needed weight restrictions from Dr. DeDes as he is the attending physician. The nurse wasn't sure the doctor would comply and told the Petitioner ask that he could be referred to someone else if Dr. DeDes isn't going to give him restrictions. Dr. DeDes apparently replied indicating that he can have weight restrictions until he sees him again next scheduled visit.

Petitioner called on September 21 notified of restrictions and will move up for an objection getting approved. Petitioner came to the office about noon to pick up the restrictions.

Ultimately Petitioner stated he wanted to keep the appointment of October 27 for the injection.

On October 2, 2015 Petitioner saw Dr. Taylor Moore. Petitioner is here to establish care in his clinic and receive general health history/physical. Physical examination appears to be normal.

Assessment and orders indicate that a general medical examination was held. In addition, he has midline low back pain with sciatica, sciatica laterally unspecified.

They will get his FMLA papers. They are going to try to get him to a neurosurgeon sooner than December with his work comp will approve the visit. They were going to get flexion and extension views of his back and discuss chronic pain medications. He will follow in one month or as needed.

September 2, 2015 x-rays were taken of the lumbar spine and interpreted by Dr. Willet Pang on October 2, 2015. The x-rays compare with the earlier one of April 14, 2015. Bilateral pars defects at L5 segment with 15% anterolisthesis L5 upon S1. No added displacement with flexion or extension. No compression fracture. Disc spaces are preserved. The doctor's impression was that of bilateral pars defects. Fifteen percent anterolisthesis without instability demonstrated.

On October 7, 2015 a letter was written to Petitioner by Deborah King, RN/Dr. Taylor Moore. After reviewing the x-rays, it was stated that the pars deficit was noted. The back is more unstable. I think this is likely what happened when you were pulling on that heavy object. The 15% anterior was noted. It is not unstable however, not slipping back and forth. He would like him to be evaluated by a neurosurgeon. He conferred with their occupational medicine team and they agreed. They are going to send over a referral to neurosurgery.

On July 27, 2015 Dr. Taylor Moore gave Petitioner an excuse from work from July 27 to July 28, 2015.

On September 18, 2015 Petitioner was given a note from a doctor whose signature is not clear. He is to return to work on 9/21/15 he is to do no repetitive shoveling, no lifting overhead more than 40 pounds, no pushing or pulling over 40 pounds of force, no work requiring repetitive bending of the spine or lower back and he will be followed up for a physician's appointment on October 21.

On October 19, 2015 Petitioner was seen by Mark Gold who recited the Petitioner's history of accident which gave him severe back pain. He still has had persistent complaints of low back pain as well as pain radiating down the right hip into the leg and also has pain in the left leg but not as severe. He has the sense of his legs going numb, tingling much of the time. He does feel that his right leg is weaker than his

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left. Sitting or bending make the back worse. He has undergone an epidural steroid injection without relief.

Dr. Gold indicated he reviewed the MRI and the lumbar radiographs with flexion and extension views. The MRI reveals a Grade I spondylolisthesis (anterolisthesis) at L5-S1. There are probable bilateral L5 pars defects. There is a disc degenerative change and a disc bulging/protrusion centrally at the L4-5 and L5-S1 levels with moderate severity stenosis at both of those levels. In addition, he has a disc bulge or protrusion/extrusion at L4-5 level and disc bulge centrally at L5-S1 level producing neuroforaminal stenosis bilaterally. **I do believe that it is more likely than not that the patient's injury that he describes occurring at work aggravated or exacerbated his underlying conditions, and may have produced additional disc protrusion or herniation at L4-5 level.** He does now have intractable lower back pain as well as bilateral lower extremity pain which is likely related to a combination of stenosis and mildly unstable degenerative spondylolisthesis.

He believes surgery is a reasonable alternative. His plan is to attempt surgery if and when it is approved. The proposed procedure would be L4-5 and L5-S1 360 fusion.

On February 17, 2016 Dr. Moore gave the Petitioner an excuse from work for the 17th through the 18th of February.

Dr. Taylor Moore saw Petitioner on return to clinic for continued management of his chronic low back pain his chronic low back pain. He has been evaluated now by two separate surgeons about his back both of them apparently recommending surgery. Worker's compensation has denied surgery thus far. His examination indicated positive for musculoskeletal tenderness to palpation over the mid line and paravertebral musculature to the lumbar spine with no step-offs noted. Diagnosis is that of midline low back pain with sciatica, sciatica laterally unspecified; displacement of lumbar intervertebral disc without myelopathy; and acquired spondylolisthesis. The doctors suggested Petitioner restart Cymbalta and take Baclofen for muscle relaxants. He would recommend work restrictions per his visit with the last surgeon.

On February 27, 2016 Petitioner was seen by Dr. Moore again. He has increasingly lower back extremity and weakness symptoms. He had increasing sciatica symptoms with shock pain going down his lower extremities and emanating from his low

back. His low back pain is still there as it has been since the original injury. He is unable to work because of increasing symptoms of weakness and numbness down his legs. Musculoskeletal examination shows strength currently bilaterally in lower extremities decreased deep tendon reflexes in the patellar tendon on the right side. He has slightly reduced sensation on the right side of the lower extremity. Assessment is the same as previously. The doctor notes that two neurosurgeons have recommended surgery and the doctor also feels it is appropriate.

On March 17, 2016 Petitioner returned to Dr. Moore for management of his chronic low back pain with sciatica symptoms. He denies any side effects from the medication and his sciatic symptoms are about 80% improved as far as the pain goes. The medical findings are still the same as are the assessment. The doctor noted Petitioner is doing well with Gabapentin. He recommended follow up with the surgeon.

Petitioner returned to Dr. Moore on April 4, 2016. Petitioner's complaints were that of bilateral numbness, weakness and tingling in the lower extremity that began in April. He suffered a back injury a year ago and is complaining of his lower back now. Petitioner appeared there with frustration with his back injury and problems with his employer. Petitioner complained to the doctor that the employer expected him to do things beyond his restrictions and then would write him up for working outside of his restrictions. It was noted that he would be seeing Dr. Gold again on the 11th. They gave him another letter for work with the same restrictions that he had previously.

The Petitioner was then seen by Dr. Gold again on April 11, 2016. Petitioner advised the doctor that he returned to work in January 2016 with the same symptoms and with some increase in back pain and feeling that his legs were going to give way while at work. After a particularly long day, spent bending over and welding, his condition worsened. Wherever he has to lift or bend frequently he experiences increased pain and feels his leg go numb. Recently his leg did give way causing him to fall face forward.

Physical examination shows tenderness across the lower lumbar spine but otherwise relatively normal. Straight leg raising and cross straight leg raising were performed and were painful bilaterally producing lower lumbosacral pain.

The doctor's assessment remained the same as previously. He felt that Petitioner has not changed and believes that he has a tractable lower back pain as well as paresthesia since the industrial injury of April 2015.

In support of Arbitrator's decision relating to F, the Arbitrator finds the following facts:

It is undisputed that Petitioner sustained an accidental injury arising out of and in the course of his employment on April 8, 2015. Causation is being questioned. Review of the medical records establish that most all of the practitioners found that there was causal relationship between his accident and his current condition.

Respondent argues the intervening incidents, particularly the one on September 17, 2015 when the Petitioner rolled the 35 pound bale of hay and had increased symptoms, broke the chain of causation related to the accident. The Arbitrator does not find the Respondent's argument persuasive.

The case of Vogel v. The Illinois Workers Compensation Commission is helpful in this analysis. In Vogel, a petitioner suffered a work related accident to her lower back. She later had several auto accidents which the respondent argued broke the causal chain. The Court first cited the oft cited earlier opinion in Sisbro, explaining that an accident need not be the sole or principal cause of injury so long as it was a cause. They found that the evidence supported causation because the claimant's condition had been weakened by the work accident to the point where the auto accidents, while aggravating, were not sufficient to break the causal chain. Vogel v. The Illinois Workers Compensation Commission, 354 Il. App. 3d 780, 813, (2005).

Here the evidence shows that the Petitioner had severe bilateral foraminal narrowing at L5-S1, along with severe left foraminal narrowing at L4-5, as shown by the MRI of April 30, 2015, long before any of the alleged intervening events. His symptoms noted in the medical treatment records from the Hannibal Clinic through Dr. DeDes note of September 14, 2015 are consistent with the above pathology. While the Quincy Medical Group records of September 17 and 18th show that moving the bale of hay did increase the Petitioner's radiculopathy, the subsequent records of Dr. Moore on October 2, 2015 point to the conclusion that the aggravation was in large part temporary. At that

time, the Petitioner primarily complained of back pain. While he did report that his feet and legs were asleep daily, he had neither shooting pain nor weakness down either leg. Nonetheless, Dr. Moore reiterated his earlier belief that the Petitioner needed to see a neurosurgeon based on the MRI findings referenced above. (PX 6) Also, Dr. Gold's surgical recommendation was made in large part by his review of said MRI.

Respondent also argues that surgery was not recommended until after the hay bale event. While this is true, it was not recommended because of any new symptoms. In fact, Dr. Basho's notes from May and July indicate that he was considering surgery. He did not ultimately recommend it due to his belief that the epidural steroid injection did not reduce the Petitioner's leg pain sufficiently. He did, however, continue to note the Petitioner's ongoing diagnosis of lumbar radiculopathy, spondylolisthesis and a disc herniation. (PX 2; 7/21/15 o.v.) Also, the history the Petitioner provided to Dr. DeDes on September 14, 2015 shows that the injection did, in fact, help with some of his left leg symptoms. Finally, as stated above, Dr. Gold's surgical recommendation was based in large part on the Petitioner's ongoing symptoms and the April MRI findings.

The Arbitrator finds the above evidence shows that the various instances where the Petitioner noticed increased symptoms with activities were aggravations of the underlying condition and did not break the causal chain from the work accident forward.

Dr. Taylor Moore, in his note of October 7, 2015 when commenting upon the lesion in his back being more unstable, the doctor thought it was likely something happened when he was pulling on the heavy object. Dr. Gold, a neurosurgeon to whom Petitioner was referred also found the Petitioner's condition was related to the accident of April 8, 2015.

Petitioner was examined at Respondent's request by Dr. Bernardi. Dr. Bernardi noted that Mr. Powell struck him as a credible historian and did not detect any Wadell's signs. Dr. Bernardi stated that he thinks Petitioner's symptoms are best considered work related. Petitioner volunteered that he raises animals and this requires physical exertion. Dr. Bernardi stated that it is not as if Petitioner was claiming to be disabled when he experienced flare ups in late August and mid-September. Instead, Petitioner worked from the date of accident until he was taken off in October. Dr. Bernardi noted that the waxing and waning of symptoms was normal. He couches his opinion with

regard pathology could be based upon a second MRI to be had. He further notes that "were it not for his occupational accident I can see no reason to believe that this man's activities at home in late August or mid-September 2015 would have produced any type of back complaints".

Letters were sent to Dr. Bernardi by Respondent's counsel months after the IME and apparently without additional medical records. Dr. Bernardi responded to supplemental inquiries about baling hay, performing farm activities and working with horses, two of which were originally addressed in this original narrative. The most he could say was that those incidents could aggravate his complaint, he did not alter his original causation opinion. Additionally, Petitioner wasn't baling hay, he doesn't have a farm, just a large garden. Petitioner did work with horses and did have an incident but Petitioner testified that his level of pain subsided to the normal level after a short period of time after these "aggravations". Dr. Bernardi also commented in an inquiry from defense counsel, that if he was performing duties beyond his restrictions, those could aggravate Petitioner's condition. Again, he did not specifically alter his original causation position.

In addition, Petitioner received physical therapy at First Choice. They made no comments with regard to causal relationship but noted a work injury. Respondent suggests the Petitioner just quit physical therapy on his own which Petitioner denied. In addition therapy in the note of June 16, 2015, the therapist, Rodney Brumley in the PAN section of his notes, seemed to indicate he was awaiting the physician's recommendation. In his note of July 21, 2015, Dr. Basho merely indicated that Petitioner was to return as necessary and makes no comment about continuing physical therapy. It would seem clear that the Petitioner's incidents subsequent to the accident of April 8, 2015. Petitioner's un rebutted and credible testimony indicates that his condition returned to the status quo after each of the incidents discussed on both direct and cross examination.

The Arbitrator therefore finds Petitioner's condition of ill being is causally related to the accident occurring on April 8, 2015.

In support of Arbitrator's decision relating to G, the Arbitrator finds the following facts:

Respondent submitted into evidence a wage statement covering the period of April 10, 2014 through April 2, 2015. The exhibit lists the number of hours Petitioner worked but not the days worked consistent with those hours. There is no explanation in the statement why there are multiple listings of "regular" earning in the same week.

As directed in Section 10 of the Workers' Compensation Act, if an employee loses five (5) or more days of work, then the remainder of the 52 weeks will be divided by the number of weeks and parts thereof to determine the average weekly wage.

In this instance, the wage statement does not offer the number of days for which the total earnings were made. One cannot divide the earnings by the number of weeks or parts thereof given the wage statement offered as RX #8. The Respondent's exhibit # purports to be the Petitioner's earnings. What is clear is that the Petitioner earned \$14.70/hour on April 10, 2014 and his wage was increased to \$15.70/hour on and after August 14, 2014. There were 14 weeks paid at the hourly wage of \$14.70. There were 18 weeks paid at the \$15.70 hourly wage. The payroll records disclose Petitioner worked regularly. Not knowing how many days or parts thereof in all of the weeks, using a full week for each would be equitable.

Therefore, the yearly wage would be \$31,896.00 and the average weekly wage would be \$613.38. As such, the total temporary benefit rate would be \$408.92.

Other issues

Respondent contested the issue of TTD and medical, past and future, based upon its arguments on causation. Having found the Petitioner's condition to be causally related to the accident, the Arbitrator awards the TTD and medical requested. The Request for Hearing requests benefits for a period of 14 4/7 weeks,

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including 9/9/15; 10/2/15 to 1/4/16; 1/12/16 to 1/18/16; 1/28/16 to 1/29/16; 2/17/16 to 2/18/16 and 5/29/16 through the date of hearing 6/1/16. The Respondent has paid \$8,798.05 to which they are entitled to credit.

As to Petitioner having lumbar surgery, Dr. Basho was of the opinion that the Petitioner did not need surgery. Dr. Bernardi, Respondent's evaluating physician, did not exclude it but did not recommend it either. Dr. Gold, the neurosurgeon, and Dr. Moore the family physician, agreed that surgery was necessary. Petitioner is willing to undergo surgery. Surgery appears to be a reasonable treatment option based upon the medical opinions espoused.

With regard to medical bills, Petitioner has submitted those as follows:

Quincy Medical Group 10/19/15	\$ 35.00
Hannibal Regional Medical Center 4/14-4/30/15	\$ 245.00
Clinical Radiologists 9/17/15	\$ 51.00
Blessing Hospital 9/7/15	\$2,772.21
Blessing Hospital 9/17/15	\$2,235.53
Blessing Hospital 9/17/15	\$ 536.68
Blessing Hospital 9/17/15	\$ 31.20
Unity Point Health 6/18-10/19/15	\$2,868.43

Some of the medical bills have been paid by group. Respondent shall hold Petitioner harmless for any request for reimbursement for those related to the accident and paid by Respondent's group carrier.

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Powell,

Petitioner,

vs.

NO: 15 WC 29725
17 IWCC 205

Manchester Tank & Equipment Co.,

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 Order of the Commission dated April 19, 2017, having been filed by Petitioner herein. Upon consideration of said Petition, the Commission is of the Opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Order on Review dated April 5, 2017, 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 Order on Review shall be issued simultaneously with this Order.

DATED:
TJT:yl
51

JUN 13 2017


Thomas J. Tyrrell

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Powell,

Petitioner,

vs.

NO: 15 WC 29725
17 IWCC 205

Manchester Tank & Equipment Co.,

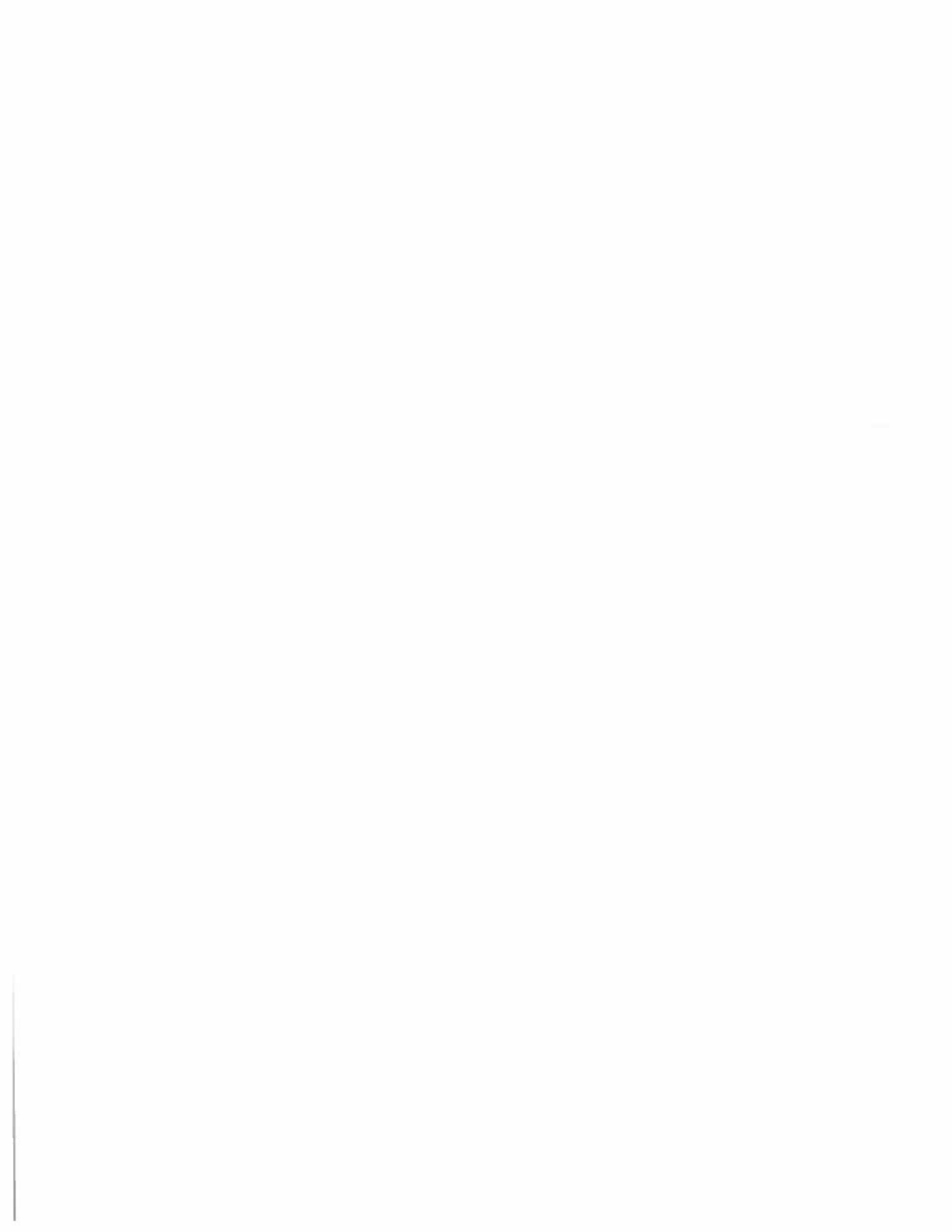
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical, temporary total disability, wage rate, 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).

For the reasons set forth below, the Commission modifies the time period that the Petitioner was entitled to temporary total disability. The issue of the Petitioner's wage calculation was conceded by the Respondent at the February 6, 2017 oral argument.

So that the record is clear, and there is no mistake as to the intentions or actions of this Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical / legal perspective. We have considered all of the testimony, exhibits, pleadings and arguments submitted by the Petitioner and the Respondent. One should not and cannot presume that we have failed to review any of the record made below. Though our view of the record may or may not be different than the Arbitrator's, it should not be presumed that we have failed to consider any evidence taken below. Our review of this material is statutorily mandated and we assert that this has been completed.



The Petitioner testified on cross examination that after his work-related accident, specifically from April 2016 to the date of hearing, he was performing activities at home that went beyond his restrictions, including mowing the yard and working in the vegetable garden. The Petitioner also testified to periods of prolonged sitting at home including sitting on a lawn mower and sitting on a 4-wheeler, which aggravated his work-related back condition. He further testified on re-cross examination that when he was offered a light duty position in April 2016 with the Respondent, he declined the position due to issues with sitting. (Tr. 46-50, 66)

The Commission finds that the Petitioner is not entitled to temporary total disability from April 1, 2016 through the date of the Arbitration hearing due to the Petitioner's refusal to work in a light duty capacity for the Respondent. The Petitioner admitted during his testimony that he exceeded his work restriction of prolonged sitting while at home, yet refused to work light duty for the Respondent due to prolonged sitting. However, since Petitioner did not testify as to a specific date in April when he began participating in activities beyond his restrictions, the Commission chooses to terminate TTD as of the first day of that month. Accordingly, the Petitioner is precluded from an entitlement to temporary total disability after April 1, 2016.

Therefore, based upon the totality of the evidence and the factual findings above, the Commission modifies the Petitioner's entitlement to temporary total disability. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision, filed on July 19, 2016, is hereby modified.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act, as follows: \$35.00 to Quincy medical group, \$245.00 to Hannibal Regional Medical Center, \$51.00 to Clinical Radiologists, \$5,575.62 to Blessing Hospital, and \$2,868.43 to Unity Point Health.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize the treatment proposed by Dr. Mark Gold for Petitioner's work-related lumbar condition.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability of \$408.92 per week for a period of 16-2/7 weeks – including September 9, 2015 (one day), October 2, 2015 through January 18, 2016, January 28, 2016 through January 29, 2016, and February 17, 2016 through February 18, 2016 – 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 for permanent disability, if any.

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.

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 \$65,000.00. 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 13 2017

O: 2/6/2017
TJT/gaf
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Thomas J. Tyrrell



Michael J. Brennan



Kevin W. Lamborn

2011

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

POWELL, RICHARD

Employee/Petitioner

Case# **15WC029725**

MANCHESTER TANK & EQUIPMENT CO

Employer/Respondent

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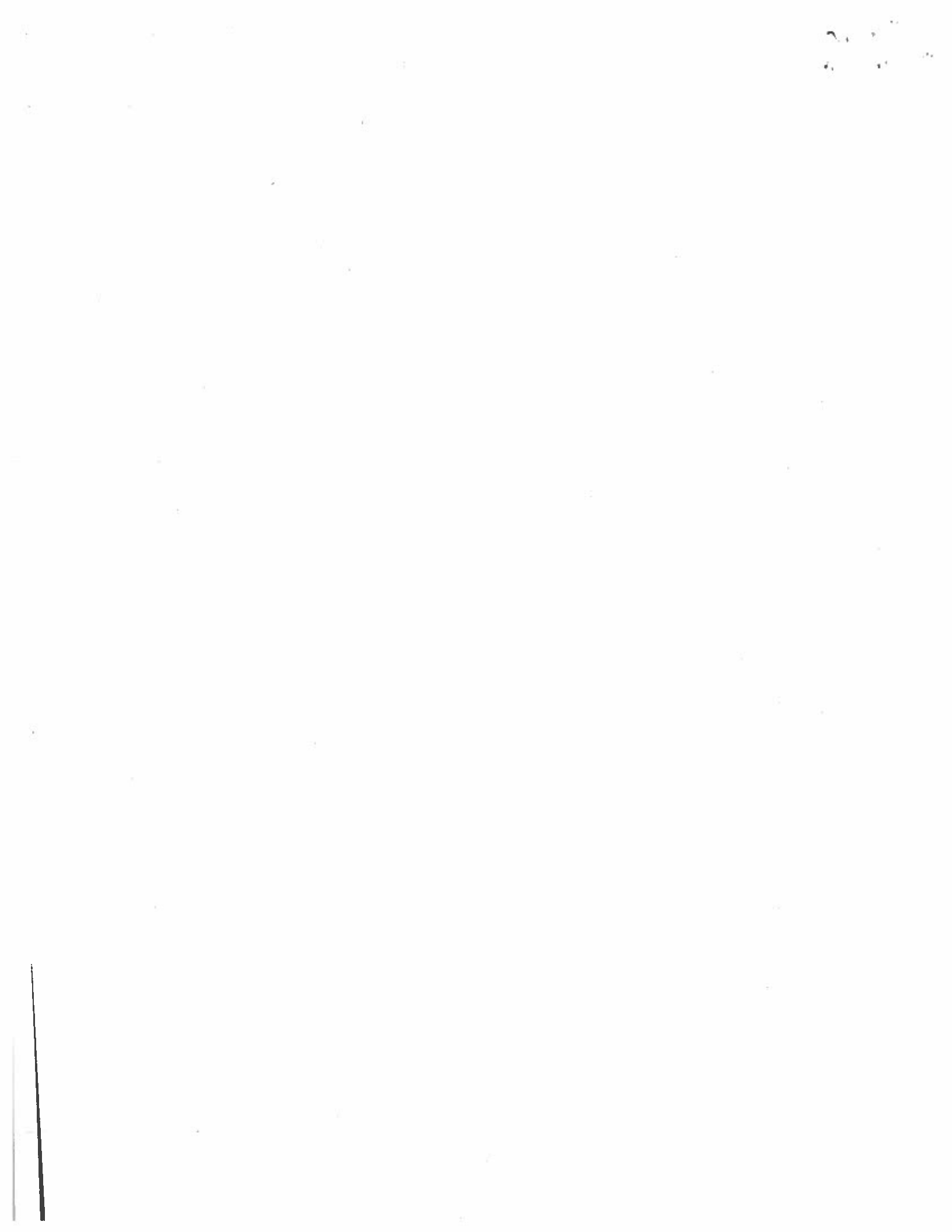
On 7/19/2016, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.43% 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:

2028 RIDGE & DOWNES PC
JOHN E MITCHELL
415 N E JEFFERSON AVE
PEORIA, IL 61603

1337 KNELL LAW LLC
STEPHEN P KELLY
2710 N KNOXVILLE AVE
PEORIA, IL 61604



17IWCC0205

STATE OF ILLINOIS)

)SS.

COUNTY OF ADAMS)

- 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)

Richard Powell

Employee/Petitioner

Case # 15WC 29725

v.

Manchester Tank & Equipment Co.

Employer/Respondent

Consolidated cases: _____

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 McCarthy, Arbitrator of the Commission, in the city of Quincy, on **6/1/2016**. 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 _____

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FINDINGS

On the date of accident, 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 **\$\$31,896**; the average weekly wage was **\$\$613.38**.
On the date of accident, Petitioner was **45** years of age, *married* with **2** children under 18.
Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.
Respondent shall be given a credit of **\$\$8,798.50** for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of **\$\$8,798.50**.
Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of \$35 to Quincy Medical Group, \$245 to Hannibal Regional Medical Center, and \$51 to Clinical Radiologists, \$5,575.62 to Blessing Hospital, \$2,868.43 to Unity Point Health, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit 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 the treatment proposed by Dr. Gold, as explained in the attached findings of fact and conclusions of law.

Respondent shall pay Petitioner temporary total disability benefits of \$408.92/week for 14.4/7 weeks, commencing on September 9, 2015 (One Day); October 2, 2015 through January 18, 2016; January 28, 2016 through January 29, 2016; February 17, 2016 through February 18, 2016; and May 29, 2016 through June 1, 2016, 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.

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D. Glass Mc Cart

7/14/2016

Signature of Arbitrator

Date

JUL 19 2016

ICarbDec19(b)



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STATE OF ILLINOIS)
) SS
COUNTY OF ADAMS)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICHARD POWELL,)
)
Petitioner,)
)
v)
)
MANCHESTER TANK & EQUIPMENT CO.,)
)
Respondent.)

IWCC: 15WC 29725

FINDINGS OF FACTS APPLICABLE TO ALL ISSUES

Richard Powell, age 47 at the time of his accident, obtained his GED and spent one year at John Wood Community College and two years at Cardinal Area Career Center in Springfield. (T9-10) His training was that of an electrician but he is not licensed as one. (T10) He does not do electrical work. (T56)

Petitioner stated he had no back problems prior to April 2015 and saw no doctor for back problems. (T32) Prior to April 2015, Petitioner does not recall ever seeing a physician for his back. (T61) He did acknowledge that he had occasional back aches when he over exerted himself. (T61) When that happened prior to the accident of 2015, he would take Tylenol. (T62) But, his history to Dr. Bernardi indicated some chiropractic care years ago. (RE 10)

Petitioner began working for the Respondent on February 28, 2011. He had various jobs with the Respondent. He went from working prefab as a welder or breaking out parts or running a robot, whatever they needed. (T10-11)

Petitioner believes his current hourly rate of pay is \$16.30. He generally worked 8 hours a day unless a supervisor or lead hand asked him to work overtime. He can refuse overtime but if he does, they won't ask him to work overtime any more. (T31) His normal work week is 5 days. (T31)

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In April 2015 he was performing hand welding of top plate and base ring. (T11) As a welder, he lifts top plates, base rings and he may end up breaking out parts before you can build a part. They come off the Amada machine. (T11) They are stacked in trays and you use a pry bar and slide underneath them and beat them with a hammer. (T11-12) The parts he breaks, he lifts himself. The parts coming out of the Amada machine are on big tables and they are picked up with a forklift. (T12) Petitioner himself lifts up to 90 pound plates. (T12) He bends his back all day long at times, depending on the job he is doing. (T12)

On April 8, 2015 Petitioner assisted in opening the drawer underneath the Amada machine that cuts out the parts. He was asked to help by another worker. (T13) The other employer was trying to pry the door open with a shovel but it didn't open because it was heavy. (T13) The drawer is 4 feet wide and 6 to 8 feet deep, it is about 4 inches off the ground. (T14)

While the other employee was trying to pry the door open with a shovel, Petitioner was on his knees trying to pull on the front handle and when it finally came open when suddenly something popped in his back. (T14) The door was full of scrap steel, extras like slugs or cut outs from the top plate. (T14) After his back popped, it started hurting and it got worse as the day went by. (T15) At that time his pain was limited to the low back. (T15) He reported the incident to his supervisor. (T15) He filled out accident forms. (T15) Petitioner stated that he had only one accident working at Manchester on April 8, 2015. (T36)

He was sent to Dr. Henry by his employer. (T16) Dr. Henry checked him out, never did any x-rays the first day and told him to come back in 2 weeks. (T16-17) He did not take him off work. (T17) Petitioner did not know of any problems with his back occurring off and on prior to the April 8, 2015 accident. (T35) When he returned to Dr. Henry, the pain still hadn't gone away. (T17) Petitioner was put on light duty at the second visit. (T17) X-rays were performed. Dr. Henry released him to return to work. (T35) Petitioner disagrees with the doctor's statement that he had off and on back problems. (T35)

Petitioner saw Dr. Basho two or three times. An MRI was reviewed and x-rays were taken. (T17) Dr. Basho released him to return to work. (T37)

Around June 2015 physical therapy was recommended by Dr. Basho. (T37) After seeing Dr. Basho, he was referred to Dr. DeDes, a pain management doctor, who gave Petitioner an epidural injection at L5/S1 on June 23, 2015.

Petitioner stated that he went all through the physical therapy and disagrees that he stopped voluntarily coming to physical therapy. (T37) He was not aware that he was discharged from First Choice Physical Therapy on August 6, 2015 because of non-compliance. (T38)

Petitioner sought no medical care between August 16 and August 31, 2015 until he entered the Blessing Walk In Clinic giving them a history of trimming horse hooves. (T38-39) He gave a history feeling immediate pain while he was doing and that he had an aggravation of pain. (T39) He told them that his pain had increased. (T39-40)

On September 17, 2015 Petitioner called Dr. Basho telling him that he rolled a bail of hay over. (T40) Dr. Basho wouldn't see him so he went to the emergency room. (T40-41)

On September 17, 2015, Petitioner sought care at Blessing Hospital's ER. Petitioner gave a history of moving a bale of hay. (T23-24) He rolled a square bale of hay over, the bale weighing about 30 pounds. Petitioner moved it from edge to flat. (T23-24) As he did so, he went numb. (T24) Prior to rolling the bale his pain had never gone away since the accident. (T24) Petitioner stated there was the same injury, he just aggravated it again. (T40) At the time he was working with the hay he gave a history he had a pop in his back as well as numbness in his legs. (T41) At that time it was suggested he see a neurosurgeon. (T42) The injection that was given at the emergency room when Dr. DeDes was absent, the day that he rolled the bale, the injection to the numbness away for a period of time but it came back to the same level as before. (T33)

Petitioner worked from September 10 until October 2 in light duty capacity. (T 43) Petitioner was taken off work for the period of October 2, 2015 to January 11, 2016. From January 2016 to April 2016 he was provided light duty work and was receiving medical care. (T43-44) His complaints to the doctor during that period were problems with bending and sitting. (T44)

Finally, in October 2015 Petitioner saw Dr. Taylor Moore of Quincy Medical Group. Dr. Moore referred him to Dr. Gold. (T19) Dr. Moore gave him pain medication and took x-rays. (T20)

Dr. Gold scheduled him for a fusion at L4, L5 and S1 (on May 4, 2016). (T20) He didn't get the surgery because worker's comp refused it and he couldn't afford to pay the deductible for his insurance. (T20-21) Before surgery, Dr. Gold wanted him to get fitted for a back brace. (T21) Petitioner has not seen Dr. Gold since April but did see his nurse two days before his surgery had been scheduled to occur. (T21-22)

At work, he lifts items that are heavier than those he lifts on the farm. (T27) He spends more time doing lifting activities at work than he does on his property. (T27)

Petitioner was willing to accept the surgery suggested by Dr. Gold. (T32)

The Petitioner original complaint was that of his back and left side. (T24) He had pain in the middle of his back, cross his hips, and both legs would go numb. (T24) Petitioner told Respondent he couldn't perform sitting and didn't think he could do sitting activities. (T45, 60) Any activity that he does that requires sitting does that. (T60) When Petitioner is on his feet, it doesn't bother him as bad because whatever is getting pinched in his back isn't pinching his back when he is on his feet. (T61) His feet and legs do not bother him as bad when he is on his feet. (T61)

Previously they gave him light duty work. (T64) The Petitioner has not been offered light duty work since April 2016. (T64) Petitioner calls his employer on the phone once a month. (T64) Petitioner stated his legs are numb now from sitting. (T45) It makes sense that you would avoid sitting, avoid bending, doing activities that cause problems to your back around April to present. (T45-46) Petitioner didn't want to take a light duty job because of problems sitting. (T51-52) But he does do activities at home sitting that aggravate his back. (T52)

Petitioner lives on about 2 ½ acres of land which they garden, have horses, chickens, turkeys and ducks. (T23) He does not use the animals or corps for sale, just personal use. (T23) Petitioner stated he hasn't done any heavy lifting around the house. (T51)

The bale of hay, which is rectangular, is stacked in his barn. (T62) It is stacked up in a stack, the bale was sitting on the edge of the board, he needed to roll it over into

a two wheel so that is what he did, bent over and rolled it over. (T62-63) It was one bale high, 14 or 16 inches. (T63) He used the hay to feed he horses. (T63) He rolled it over on to a two-wheel dolly across the yard, cut the bale string with a pocket knife and picked up pieces of it and threw it over the fence to the horses. (T63) He did not carry the bale at any time. (T63)

He has a vegetable garden is about 20 feet by 20 feet and requires him to bend down, weed, plant, etc., to which he took exception. (T49, 46-47) He uses the hoe to weed and a planter to plant. He agreed that type of activity could aggravate his back pain. (T47) The average time he spends hoeing is 10 to 15 minutes. (T57) The hoe is fiberglass handle and has a flat blade of steel (58) You cut off weeds with it, stick in the ground and pull it back to you. (T58) The hoe weighs about 2 ½ pounds (T58)

The Petitioner grows green beans and picks them by leaning over the row and picking them. (T24-25) You can pick a row of green beans in 20 minutes. (T25) He was picking them most of the time by standing and bending over. (T25)

The Petitioner's children ran the tiller 99% of the time but he did touch the tiller this season. (T47-48) When asked if that exceeded his restrictions, he indicated that the tiller is self-propelled, he didn't pick it up or do anything of that nature. (T48) Running a tiller sometimes can be hard work, sometimes it gets stuck and sometimes it can aggravate your back pain. (T48-49)

Petitioner has used a hoe in his garden once this year. (T58) His plant uses a push type planter, all aluminum, you put ½ pound of seed and push it across the garden, like a fertilizer two-wheel bucket. (T58) The whole thing weighs about 7 or 8 pounds and he pushes it. (T59) Before using the hoe, the planter, etc., he noticed constant (pain) all the time. (T59-60) The pain gets worse and then it goes back to its normal level. (T60)

Petitioner uses a riding lawn mower once a week, it takes about 30 minutes to do his yard. (T57) Sitting on the lawn mower can aggravate his back at times. (T50) Riding a four wheeler can aggravate his back. (T50-51) When he is on the job for his employer, he doesn't work 30 minutes and then stop. (T57)

He has three horses which require feed and he tried to trim one hoof this year which aggravated his back. (T55) He stated he tried to ride a horse but he couldn't do

it. (T52) His son saddled the horse. (T52) He would agree that riding a horse aggravates his complaints. (T52-53) He has tried not to do that since September 2015. (T53) He also cut hooves on horses by putting the hoof between his knees and trimming it with nippers. (T25) The nippers are like a large fingernail clipper. (T25-26) After the incident of trimming hooves, picking green beans or tipping a bale of hay, his pain does reduce after a period of time if he quits doing what he was doing and just lay on the floor it will relax. (T27-28)

In working on his brakes, it took him an hour and a half or two hours which would have normally taken him about 30 minutes to set the brakes. (T59) It took Petitioner about 2 ½ hours to do both sides. (T59)

Petitioner agreed that he was performing some activities that were probably beyond his restrictions. (T46) Certain activities at home exceeded his restrictions. that he exceeded his restrictions in mowing the lawn and working in the garden. (T46)

When asked if he reinjured his back in any of those activities, he stated no. (T26) He stated his back pain has never gone away, it has different degrees of pain with some days he can deal with it and some days he wants to cry because it hurts so bad. (T26) The back just doesn't get better. (T27) He stated that if he is sitting around doing nothing, he can deal with it, it is just a dull constant pain. However, if he is working, bending over, twisting it could make him cry on some days. (T27) He does bend and twist at work. (T27)

Medical records of the Petitioner's care were introduced into evidence. Petitioner was seen by Dr. Henry. He obtained a history of low back pain of an acute nature with an onset suddenly due to an incident at work on April 8, 2015 and has been occurring in a persistent pattern for a week, gradually worsening. He had low back pain described a mild to moderate dull aching, shooting, burning and electrical and tingling. Pain radiates from his lower back down to the left thigh and left foot. He received no relief from the pain.

On April 14, 2015 Dr. Henry noted that this was a work related injury.

Dr. Henry noted tenderness to palpation at the left buttock and over the sacroiliac joint on the left. Straight leg raising was negative on the right and left.

X-rays were taken. On that date, Petitioner was found able to work without any restrictions.

Petitioner returned to Dr. Henry on April 22, 2015 with the same complaints. The doctor felt that he had a low back strain and a lumbar disc displacement. In his notes for April 22 he suggested modified duties of lifting 15 pounds with no bending and suggested an MRI. However, in contradiction to his notes, his report to the employer indicated that Petitioner was able to work with no limitations. He was to return on the 5th of May, 2015. Dr. Henry marked the form indicating it was a work related injury.

At Dr. Henry's direction, an MRI was performed on April 30, 2015. It was performed at Hannibal Regional Hospital and the reviewing doctor was Emad Hamid.

After the MRI was taken, Dr. Gregory gave the Petitioner restrictions noting that he had to work with limitations. He could lift 20 pounds and needs to limit his bending. He, on that note, indicated that this was a work related injury.

On April 30, 2015 Dr. Henry again saw the Petitioner. On his examination, he found the left lower extremity to have 40 degrees with posterior and thigh calf pain. The doctor's assessment is that of low back strain and lumbar disc displacement. He confirmed the Petitioner should be lifting no more than 20 pounds and have limited bending. He is suggesting referral to a back surgeon..

Petitioner was referred to Dr. Basho, an orthopedic surgeon, by Dr. Henry with complaints of low back and numbness and tingling down the left leg. (PX 2)

The initial examination on May 26, 2015 showed the Petitioner's motor strength to be normal in the upper extremities, the hip, the knee, the tibialis anterior, AHL, and GSC sensation was intact in the cervical and lumbar regions. Reflexes in the Achilles and patellar tendons were 2+ and symmetric.

Review of x-rays and MRI taken previously, resulted in the opinion of a Grade I spondylolisthesis at L5-S1 on x-ray. The MRI showed a broad based disc bulge with slight caudal migration at L4-5 segment, severe foraminal stenosis is noted at L5-S1.

Dr. Basho's assessment was that of lumbar radiculopathy, Grade I spondylolisthesis at L5-S1 and L4-5 disc herniation.

The doctor stated that he wasn't sure if the Petitioner's pain emanated from L4-5 or L5-S1. He suggested a left side L5-S1 transforaminal injection. If that injection is

inefficacious, then he will be sent for an L4-5 translaminal epidural steroid injection. He was also to be placed in physical therapy. He could return to work with a 20-pound restriction. He is to return on June 13, 2015. Doctor's notes indicate that this was a work related injury.

Petitioner returned to Dr. Basho on July 21 in follow up to the L5-S1 injection stating that he gave him no significant or lasting relief. The doctor's assessment remained the same. The physical examination Petitioner remained unchanged. Dr. Basho noted that the injections have not enough of any diagnostic value and have given him no relief. Therefore, he concluded surgical intervention was not what he believed to be the answer. He suggested continued conservative treatment of oral medication and therapy. He is to be referred to the pain clinic.

Dr. Basho prepared a report to the employer indicating that Petitioner would return to work on July 21, 2015, that he is able to work with restrictions of lifting 20 pounds. The doctor again noted that this was a work related injury/illness.

On September 17, 2015 Petitioner called Dr. Basho's office speaking to a nurse, Ashley Kelle LPN, he explained he was rolling the bale of hay and experienced numbness in both arms and legs, his extremities are still tingling and he would like to see Dr. Basho. The nurse stated she would have to figure out how they could go about seeing him due to a previous worker's comp injury and she would have to talk to someone else about scheduling. She suggested that if was concerned and thought he needed immediate care, he could return to the walk in clinic he previously visited for pain control or call his PCP. The note goes on to indicate that the nurse talked to Dr. Basho who stated he didn't need to see the patient because he had released him from care and needed to seek treatment with pain management.

On referral from Dr. Basho, Petitioner was referred to Frist Choice Physical Therapy.

Petitioner tolerated the exercise at therapy as well as at home without any significant problems or increased pain. He continues to have symptoms after performing his work duties at a current 20-pound restriction. Patient described an incident where he bent over at work on 7/14/15 and felt a pop in his back causing

increased symptoms at that time to a level of 6/10. His thoracal lumbar junction back pain index score is 52%.

As to spine range of motion, flexion caused pain, was at 35 degrees. Extension was 20 degrees with lower lumbar and lower thoracic pain. SVR was 38 degrees, SVL, 37 degrees. Range of motion on right for internal rotation was 14 degrees and on the left 20 degrees. External rotation of the hip was 40 degrees on the right and 30 degrees on the left. Thoracic spine range of motion was extension of 23 degrees, right and left rotation was 30 degrees. Lower extremities strength myotomes were 5/5, gluteals 4/5, upper abs 4-/5, lower abs 4-/5 and oblique's 4/5.

The assessment is that he is improving with his lumbar and thoracic spine motion as well as his hips showing improvement. He tolerates exercises without increase in symptoms but continues to have pain that is relatively constant in the thoracal lumbar region. His pain will worsen after lifting activities including activities at work or household chores.

- First Choice made no comments with regard to causal relationship but noted a work injury.

Rodney Brumley, PT, authored a discharge summary from physical therapy after Petitioner was seen for 8 visits for the period of June 16, 2015 through July 16, 2015. A progress note was completed on his last visit for follow up with his referring physician. A phone message left with the Petitioner did not result in contact. At that time, physical therapy was discontinued.

The therapist noted that the Petitioner met all of his short term goals with the exception of improved ability to sleep up to 4 hours as he continues to awake every 2 to 3 hours due to low back pain or not getting comfortable because of pain. The physiatrist plan was to send a progress note for follow up with physician continuing per physician recommendation.

Respondent suggests the Petitioner just quit physical therapy on his own which Petitioner denied. In a therapy note of July 16, 2015, the therapist, Rodney Brumley in the PN section of his notes, seemed to indicate he was awaiting the physician's recommendation and checking on Petitioner's status. In his note of July

21, 2015, Dr. Basho merely indicated that Petitioner was to return as necessary and makes no comment about continuing physical therapy.

The Petitioner was admitted to Blessing Hospital on August 31, 2015 with a history of his accident, and he has now and then sharp pain that comes in his lower back stating that yesterday he was trimming the feet of his horses, he bent over and the pain came back and (?) his lower back. His pain is 4/10 with intensity worse with bending side to side or turning side to side. He stated he had a previous steroid shot which decreased his pain. The practitioner Daanish Shaikh assessed him as having lower muscle spasms for which he was given shot of steroid and morphine and was sent home. The physician wrote a note excusing Petitioner from work and physical activities beginning on August 31, 2015 and allowing him to return to work on September 2, 2015.

On September 17, 2015 Petitioner was seen at Blessing Hospital Emergency Room with back pain. It was noted he had an open worker's compensation claim. He stated he moved a bale of hay and felt a pop in his back stating now he is numb and tingling all over his body. A review of symptoms seems to be normal. It was noted that on August 3, 2015 he was seen for back pain by Dr. Shaika. Clinical impression appeared to be paresthesia.

Petitioner submitted to an independent medical examination at Respondent's request on December 15, 2015. Petitioner gave the doctor history of both his accident, his subsequent occurrence regarding his back and mentions a chiropractor visit 15 years prior to the accident. Dr. Bernardi reviewed the medical records available to him covering up to October 19, 2015.

In his physical examination, he found no signs of symptom magnification nor any Waddell's signs. His positive findings were that of flexion and extension rotation of the right hip produced complaints of right lateral buttock pain. Flexion and external rotation of the left hip produced complaints of left lateral buttock pain. He notes deep tendon reflexes of 1+ $\frac{1}{4}$ at the knees, 1 $\frac{1}{4}$ on the left ankle reflex and 0 $\frac{1}{4}$ on the right ankle reflex. The plantar response was down going. Thereafter he reviewed the MRI performed on April 30, 2015.

Dr. Bernardi noted that he did not believe it was possible to determine whether his symptoms were due to an acute central disc protrusion at L4-5, an aggravation of a pre-existing L4-5 disc disease/stenosis, an aggravation of his L5-S1 isthmic spondylolisthesis or a blending of all of them. He notes that the waxing and waning of symptoms is normal, that is how most episodes of back/leg pain behave.

The doctor notes that it is extraordinarily unlikely that having been present for approximately 3 ½ years, the main symptoms completely subside following his appointment with Dr. Moore on July 27, 2015 only to recur again on August 30, 2015.

The doctor stated that **"were it not for his occupational accident I can see no reason to believe that this man's activities at home in late August or mid-September 2015 would have produced any type of back complaints"**. He does not believe that the Petitioner has yet reached maximum medical improvement. He felt it would be reasonable to have a second and third epidural steroid injection.

Later, when queried by defense counsel, Dr. Bernardi checked on a form indicating that the activities Petitioner provided outside of Manchester Tank were types of activities that could aggravate the condition of ill being. On May 26, 2016 in response to defense counsel's fill in the blank letter, Dr. Bernardi agreed that if an individual is performing activities beyond his restrictions, those activities could be aggravating his condition of ill being. Nowhere was it mentioned that those aggravations were permanent in nature.

Petitioner was seen by Dr. Howard DeDes, a pain specialist, on June 19, 2015 with a chief complaint of low back and left leg pain, describing the accident that he sustained and noting that he was referred to them by Dr. Basho. He reviewed the imaging performed noting, among other things, that there were posterior disc bulges with degenerative changes and a right paracentral component at L4-5 producing moderate central stenosis and foraminal stenosis, left greater than right. There was also a L5-S1 bilateral foraminal stenosis. The doctor believed that the foraminal stenosis at L4-5 and L5-S1 is consistent with the lumbar radiculopathy.

On June 23, 2015 Petitioner was seen by Dr. DeDes who performed a transforaminal epidural steroid injection procedure at the left L5-S1 neuroforamen. Petitioner was given restrictions of no repetitive shoveling, no lifting over 40 pounds no

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pushing or pulling over 40 pounds of force and no work requiring repetitive bending. In reviewing medical necessity, he noted that Petitioner's symptoms were consistent with the radiographic findings.

On September 14, 2015 he was again seen by Dr. DeDes who had requested Petitioner return for evaluation. His plan was to start pain management for brachial pain with Tramadol 3 times daily. For diagnostic and therapeutic options, they will provide transforaminal epidural steroid injections at L4-5 and L5-S1 on the left side. Depending upon the efficacy of those injections they will consider repeat injections within a month for a series of three. If pain does not improve, he will go back to Dr. Basho.

On September 17, 2015 Petitioner called the office at 3:17 p.m. stating that he went out to feed his horses and went to roll over a small bale of hay from the edge of the flat side. He states as he did so, something moved in his back and his whole body began tingling. The office told Petitioner that Petitioner was referred to Dr. DeDes so he needs to call that office. Dr. DeDes indicated that obviously he should go to the emergency room. A CMA called and spoke to his wife about coming to the emergency room.

September 18, 2015 Kayla Berhorst, RN spoke with Petitioner who indicated that he had a disc pushing on the nerve causing his tingling. He needed weight restrictions from Dr. DeDes as he is the attending physician. The nurse wasn't sure the doctor would comply and told the Petitioner ask that he could be referred to someone else if Dr. DeDes isn't going to give him restrictions. Dr. DeDes apparently replied indicating that he can have weight restrictions until he sees him again next scheduled visit.

Petitioner called on September 21 notified of restrictions and will move up for an objection getting approved. Petitioner came to the office about noon to pick up the restrictions.

Ultimately Petitioner stated he wanted to keep the appointment of October 27 for the injection.

On October 2, 2015 Petitioner saw Dr. Taylor Moore. Petitioner is here to establish care in his clinic and receive general health history/physical. Physical examination appears to be normal.

Assessment and orders indicate that a general medical examination was held. In addition, he has midline low back pain with sciatica, sciatica laterally unspecified.

They will get his FMLA papers. They are going to try to get him to a neurosurgeon sooner than December with his work comp will approve the visit. They were going to get flexion and extension views of his back and discuss chronic pain medications. He will follow in one month or as needed.

September 2, 2015 x-rays were taken of the lumbar spine and interpreted by Dr. Willet Pang on October 2, 2015. The x-rays compare with the earlier one of April 14, 2015. Bilateral pars defects at L5 segment with 15% anterolisthesis L5 upon S1. No added displacement with flexion or extension. No compression fracture. Disc spaces are preserved. The doctor's impression was that of bilateral pars defects. Fifteen percent anterolisthesis without instability demonstrated.

On October 7, 2015 a letter was written to Petitioner by Deborah King, RN/Dr. Taylor Moore. After reviewing the x-rays, it was stated that the pars deficit was noted. The back is more unstable. I think this is likely what happened when you were pulling on that heavy object. The 15% anterior was noted. It is not unstable however, not slipping back and forth. He would like him to be evaluated by a neurosurgeon. He conferred with their occupational medicine team and they agreed. They are going to send over a referral to neurosurgery.

On July 27, 2015 Dr. Taylor Moore gave Petitioner an excuse from work from July 27 to July 28, 2015.

On September 18, 2015 Petitioner was given a note from a doctor whose signature is not clear. He is to return to work on 9/21/15 he is to do no repetitive shoveling, no lifting overhead more than 40 pounds, no pushing or pulling over 40 pounds of force, no work requiring repetitive bending of the spine or lower back and he will be followed up for a physician's appointment on October 21.

On October 19, 2015 Petitioner was seen by Mark Gold who recited the Petitioner's history of accident which gave him severe back pain. He still has had persistent complaints of low back pain as well as pain radiating down the right hip into the leg and also has pain in the left leg but not as severe. He has the sense of his legs going numb, tingling much of the time. He does feel that his right leg is weaker than his

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left. Sitting or bending make the back worse. He has undergone an epidural steroid injection without relief.

Dr. Gold indicated he reviewed the MRI and the lumbar radiographs with flexion and extension views. The MRI reveals a Grade I spondylolisthesis (anterolisthesis) at L5-S1. There are probable bilateral L5 pars defects. There is a disc degenerative change and a disc bulging/protrusion centrally at the L4-5 and L5-S1 levels with moderate severity stenosis at both of those levels. In addition, he has a disc bulge or protrusion/extrusion at L4-5 level and disc bulge centrally at L5-S1 level producing neuroforaminal stenosis bilaterally. **I do believe that it is more likely than not that the patient's injury that he describes occurring at work aggravated or exacerbated his underlying conditions, and may have produced additional disc protrusion or herniation at L4-5 level.** He does now have intractable lower back pain as well as bilateral lower extremity pain which is likely related to a combination of stenosis and mildly unstable degenerative spondylolisthesis.

He believes surgery is a reasonable alternative. His plan is to attempt surgery if and when it is approved. The proposed procedure would be L4-5 and L5-S1 360 fusion.

On February 17, 2016 Dr. Moore gave the Petitioner an excuse from work for the 17th through the 18th of February.

Dr. Taylor Moore saw Petitioner on return to clinic for continued management of his chronic low back pain his chronic low back pain. He has been evaluated now by two separate surgeons about his back both of them apparently recommending surgery. Worker's compensation has denied surgery thus far. His examination indicated positive for musculoskeletal tenderness to palpation over the mid line and paravertebral musculature to the lumbar spine with no step-offs noted. Diagnosis is that of midline low back pain with sciatica, sciatica laterally unspecified; displacement of lumbar intervertebral disc without myelopathy; and acquired spondylolisthesis. The doctors suggested Petitioner restart Cymbalta and take Baclofen for muscle relaxants. He would recommend work restrictions per his visit with the last surgeon.

On February 27, 2016 Petitioner was seen by Dr. Moore again. He has increasingly lower back extremity and weakness symptoms. He had increasing sciatica symptoms with shock pain going down his lower extremities and emanating from his low

back. His low back pain is still there as it has been since the original injury. He is unable to work because of increasing symptoms of weakness and numbness down his legs. Musculoskeletal examination shows strength currently bilaterally in lower extremities decreased deep tendon reflexes in the patellar tendon on the right side. He has slightly reduced sensation on the right side of the lower extremity. Assessment is the same as previously. The doctor notes that two neurosurgeons have recommended surgery and the doctor also feels it is appropriate.

On March 17, 2016 Petitioner returned to Dr. Moore for management of his chronic low back pain with sciatica symptoms. He denies any side effects from the medication and his sciatic symptoms are about 80% improved as far as the pain goes. The medical findings are still the same as are the assessment. The doctor noted Petitioner is doing well with Gabapentin. He recommended follow up with the surgeon.

Petitioner returned to Dr. Moore on April 4, 2016. Petitioner's complaints were that of bilateral numbness, weakness and tingling in the lower extremity that began in April. He suffered a back injury a year ago and is complaining of his lower back now. Petitioner appeared there with frustration with his back injury and problems with his employer. Petitioner complained to the doctor that the employer expected him to do things beyond his restrictions and then would write him up for working outside of his restrictions. It was noted that he would be seeing Dr. Gold again on the 11th. They gave him another letter for work with the same restrictions that he had previously.

The Petitioner was then seen by Dr. Gold again on April 11, 2016. Petitioner advised the doctor that he returned to work in January 2016 with the same symptoms and with some increase in back pain and feeling that his legs were going to give way while at work. After a particularly long day, spent bending over and welding, his condition worsened. Wherever he has to lift or bend frequently he experiences increased pain and feels his leg go numb. Recently his leg did give way causing him to fall face forward.

Physical examination shows tenderness across the lower lumbar spine but otherwise relatively normal. Straight leg raising and cross straight leg raising were performed and were painful bilaterally producing lower lumbosacral pain.

The doctor's assessment remained the same as previously. He felt that Petitioner has not changed and believes that he has a tractable lower back pain as well as paresthesia since the industrial injury of April 2015.

In support of Arbitrator's decision relating to F, the Arbitrator finds the following facts:

It is undisputed that Petitioner sustained an accidental injury arising out of and in the course of his employment on April 8, 2015. Causation is being questioned. Review of the medical records establish that most all of the practitioners found that there was causal relationship between his accident and his current condition.

Respondent argues the intervening incidents, particularly the one on September 17, 2015 when the Petitioner rolled the 35 pound bale of hay and had increased symptoms, broke the chain of causation related to the accident. The Arbitrator does not find the Respondent's argument persuasive.

The case of Vogel v. The Illinois Workers Compensation Commission is helpful in this analysis. In Vogel, a petitioner suffered a work related accident to her lower back. She later had several auto accidents which the respondent argued broke the causal chain. The Court first cited the oft cited earlier opinion in Sisbro, explaining that an accident need not be the sole or principal cause of injury so long as it was a cause. They found that the evidence supported causation because the claimant's condition had been weakened by the work accident to the point where the auto accidents, while aggravating, were not sufficient to break the causal chain. Vogel v. The Illinois Workers Compensation Commission, 354 Ill. App. 3d 780, 813, (2005).

Here the evidence shows that the Petitioner had severe bilateral foraminal narrowing at L5-S1, along with severe left foraminal narrowing at L4-5, as shown by the MRI of April 30, 2015, long before any of the alleged intervening events. His symptoms noted in the medical treatment records from the Hannibal Clinic through Dr. DeDes note of September 14, 2015 are consistent with the above pathology. While the Quincy Medical Group records of September 17 and 18th show that moving the bale of hay did increase the Petitioner's radiculopathy, the subsequent records of Dr. Moore on October 2, 2015 point to the conclusion that the aggravation was in large part temporary. At that

time, the Petitioner primarily complained of back pain. While he did report that his feet and legs were asleep daily, he had neither shooting pain nor weakness down either leg. Nonetheless, Dr. Moore reiterated his earlier belief that the Petitioner needed to see a neurosurgeon based on the MRI findings referenced above. (PX 6) Also, Dr. Gold's surgical recommendation was made in large part by his review of said MRI.

Respondent also argues that surgery was not recommended until after the hay bale event. While this is true, it was not recommended because of any new symptoms. In fact, Dr. Basho's notes from May and July indicate that he was considering surgery. He did not ultimately recommend it due to his belief that the epidural steroid injection did not reduce the Petitioner's leg pain sufficiently. He did, however, continue to note the Petitioner's ongoing diagnosis of lumbar radiculopathy, spondylolisthesis and a disc herniation. (PX 2; 7/21/15 o.v.) Also, the history the Petitioner provided to Dr. DeDes on September 14, 2015 shows that the injection did, in fact, help with some of his left leg symptoms. Finally, as stated above, Dr. Gold's surgical recommendation was based in large part on the Petitioner's ongoing symptoms and the April MRI findings.

The Arbitrator finds the above evidence shows that the various instances where the Petitioner noticed increased symptoms with activities were aggravations of the underlying condition and did not break the causal chain from the work accident forward.

Dr. Taylor Moore, in his note of October 7, 2015 when commenting upon the lesion in his back being more unstable, the doctor thought it was likely something happened when he was pulling on the heavy object. Dr. Gold, a neurosurgeon to whom Petitioner was referred also found the Petitioner's condition was related to the accident of April 8, 2015.

Petitioner was examined at Respondent's request by Dr. Bernardi. Dr. Bernardi noted that Mr. Powell struck him as a credible historian and did not detect any Wadell's signs. Dr. Bernardi stated that he thinks Petitioner's symptoms are best considered work related. Petitioner volunteered that he raises animals and this requires physical exertion. Dr. Bernardi stated that it is not as if Petitioner was claiming to be disabled when he experienced flare ups in late August and mid-September. Instead, Petitioner worked from the date of accident until he was taken off in October. Dr. Bernardi noted that the waxing and waning of symptoms was normal. He couches his opinion with

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regard pathology could be based upon a second MRI to be had. He further notes that "were it not for his occupational accident I can see no reason to believe that this man's activities at home in late August or mid-September 2015 would have produced any type of back complaints".

Letters were sent to Dr. Bernardi by Respondent's counsel months after the IME and apparently without additional medical records. Dr. Bernardi responded to supplemental inquiries about baling hay, performing farm activities and working with horses, two of which were originally addressed in this original narrative. The most he could say was that those incidents could aggravate his complaint, he did not alter his original causation opinion. Additionally, Petitioner wasn't baling hay, he doesn't have a farm, just a large garden. Petitioner did work with horses and did have an incident but Petitioner testified that his level of pain subsided to the normal level after a short period of time after these "aggravations". Dr. Bernardi also commented in an inquiry from defense counsel, that if he was performing duties beyond his restrictions, those could aggravate Petitioner's condition. Again, he did not specifically alter his original causation position.

In addition, Petitioner received physical therapy at First Choice. They made no comments with regard to causal relationship but noted a work injury. Respondent suggests the Petitioner just quit physical therapy on his own which Petitioner denied. In addition therapy in the note of June 16, 2015, the therapist, Rodney Brumley in the PAN section of his notes, seemed to indicate he was awaiting the physician's recommendation. In his note of July 21, 2015, Dr. Basho merely indicated that Petitioner was to return as necessary and makes no comment about continuing physical therapy. It would seem clear that the Petitioner's incidents subsequent to the accident of April 8, 2015. Petitioner's un rebutted and credible testimony indicates that his condition returned to the status quo after each of the incidents discussed on both direct and cross examination.

The Arbitrator therefore finds Petitioner's condition of ill being is causally related to the accident occurring on April 8, 2015.

In support of Arbitrator's decision relating to G, the Arbitrator finds the following facts:

Respondent submitted into evidence a wage statement covering the period of April 10, 2014 through April 2, 2015. The exhibit lists the number of hours Petitioner worked but not the days worked consistent with those hours. There is no explanation in the statement why there are multiple listings of "regular" earning in the same week.

As directed in Section 10 of the Workers' Compensation Act, if an employee loses five (5) or more days of work, then the remainder of the 52 weeks will be divided by the number of weeks and parts thereof to determine the average weekly wage.

In this instance, the wage statement does not offer the number of days for which the total earnings were made. One cannot divide the earnings by the number of weeks or parts thereof given the wage statement offered as RX #8. The Respondent's exhibit # purports to be the Petitioner's earnings. What is clear is that the Petitioner earned \$14.70/hour on April 10, 2014 and his wage was increased to \$15.70/hour on and after August 14, 2014. There were 14 weeks paid at the hourly wage of \$14.70. There were 18 weeks paid at the \$15.70 hourly wage. The payroll records disclose Petitioner worked regularly. Not knowing how many days or parts thereof in all of the weeks, using a full week for each would be equitable.

Therefore, the yearly wage would be \$31,896.00 and the average weekly wage would be \$613.38. As such, the total temporary benefit rate would be \$408.92.

Other issues

Respondent contested the issue of TTD and medical, past and future, based upon its arguments on causation. Having found the Petitioner's condition to be causally related to the accident, the Arbitrator awards the TTD and medical requested. The Request for Hearing requests benefits for a period of 14 4/7 weeks,

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including 9/9/15; 10/2/15 to 1/4/16; 1/12/16 to 1/18/16; 1/28/16 to 1/29/16; 2/17/16 to 2/18/16 and 5/29/16 through the date of hearing 6/1/16. The Respondent has paid \$8,798.05 to which they are entitled to credit.

As to Petitioner having lumbar surgery, Dr. Basho was of the opinion that the Petitioner did not need surgery. Dr. Bernardi, Respondent's evaluating physician, did not exclude it but did not recommend it either. Dr. Gold, the neurosurgeon, and Dr. Moore the family physician, agreed that surgery was necessary. Petitioner is willing to undergo surgery. Surgery appears to be a reasonable treatment option based upon the medical opinions espoused.

With regard to medical bills, Petitioner has submitted those as follows:

Quincy Medical Group 10/19/15	\$ 35.00
Hannibal Regional Medical Center 4/14-4/30/15	\$ 245.00
Clinical Radiologists 9/17/15	\$ 51.00
Blessing Hospital 9/7/15	\$2,772.21
Blessing Hospital 9/17/15	\$2,235.53
Blessing Hospital 9/17/15	\$ 536.68
Blessing Hospital 9/17/15	\$ 31.20
Unity Point Health 6/18-10/19/15	\$2,868.43

Some of the medical bills have been paid by group. Respondent shall hold Petitioner harmless for any request for reimbursement for those related to the accident and paid by Respondent's group carrier.

STATE OF ILLINOIS)
)
) SS.
COUNTY OF KANE)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Victoria Garcia,
Petitioner,

v.

Case Nos. 13 WC 10775
 13 WC 10776
 14 WC 15686

Bimbo Bakeries USA,
Respondent.

ORDER

This matter comes before the Commission on Petitioner's Motion to Correct the Decision Pursuant to Section 19(f) of the Act. The Commission, having jurisdiction over the persons and subject matter, denies the petition, for the reasons set forth below.

Section 19(f) of the Act provides that "[t]he decision of the Commission acting within its powers *** shall *** be conclusive unless reviewed as in this paragraph hereafter provided. However, the *** Commission may on [its] own motion, or on the motion of either party, correct any clerical error or errors in computation within 15 days after the date of receipt of any *** decision on review of the Commission and shall have the power to recall the original *** decision on review, and issue in lieu thereof such corrected *** decision."

On June 2, 2017, the Commission issued an order granting Petitioner's Petition for Assessment of Penalties and Attorney's Fees but denying her petition for a hearing pursuant to Section 8(a) of the Act.

On June 9, 2017, Petitioner filed the instant motion, on two grounds. First, Petitioner asserts that the Commission failed to add Petitioner's attorney's fees pursuant to section 16 of the Act. However, the Commission's order includes an award under section 16 for the full amount of attorney's fees and costs presented at the hearing before the Commission.

Second, Petitioner asserts that the Commission erred in dismissing her petition for a section 8(a) hearing, because she sought a new award of an outstanding bill, not enforcement of a settlement contract. That outstanding bill, however, creates liability because Respondent is required to pay it pursuant to the settlement contract. As explained in the Commission's prior order, the Commission lacks authority to enforce the settlement contract.

For the above reasons, Petitioner raises no clerical errors of the type to be corrected pursuant to section 19(f) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's "Motion to Correct the Arbitrator's Decision Pursuant to §19(f)" is hereby denied.

DATED:

JUN 14 2017

r-06/13/17

TJT/knc

A handwritten signature in black ink, appearing to read "Thomas J. Tyrrell". The signature is written in a cursive style with a large, sweeping initial "T".

Thomas J. Tyrrell