STATE OF ILLINOIS) BEFORE THE ILLINOIS WORKERS' COMPENSATION
) SS COMMISSION
COUNTY OF PEORIA)

Stacy Ash,
Petitioner,

vs. NOS. 03 WC 43923
03 WC 49089
15IWCC612

Bloomington Public Schools,
Respondent.

ORDER OF RECALL UNDER SECTION 19(F)

A Petition to Recall Decision pursuant to Section 19(f) of the Illinois Workers' Compensation Act to correct a clerical error in the Decision and Opinion on Review of the Commission dated August 10, 2015, having been filed by Respondent herein, and the Commission having considered said Petition, the Commission is of the opinion that the Petition should be granted.

IT IS THEREFOR ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated August 10, 2015, is hereby recalled pursuant to Section 19(f) for clerical error contained therein.

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

DATED: SEP 2 3 2015

RWW/rm
46

Ruth W. White

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stacy Ash,

Petitioner,

vs.

NO: 03 WC 43923
03 WC 49089
15 IWCC 612

Bloomington Public Schools,

Respondent.

CORRECTED DECISION AND OPINION PURSUANT TO §8(A) OF THE ACT

This claim comes before the Commission on Petitioner's petition for review under §8(a). Commissioner White conducted a hearing in this matter on February 11, 2015. The issue on review is whether pain management treatment by Dr. Benyamin in the form of a spinal cord stimulator trial and adhesiolysis is reasonable and necessary and causally related to Petitioner's April 21, 2003 accidental injury. After considering all of the evidence and being advised of the facts and law, the Commission grants Petitioner's petition for review under §8(a) but only with respect to the spinal cord stimulator trial recommended by Dr. Benyamin.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In companion decisions dated January 2, 2007, the Arbitrator found that Petitioner was in the course of her regular employment as a cafeteria worker at Bloomington Public Schools on February 25, 2003. On that date she sustained an accident arising out of her employment by Respondent when she pulled her back lifting a case of juice. She initially sought treatment with her primary care provider and was able to return to her regular duties. The Arbitrator found that Petitioner did not sustain any permanent injury as a result of the February 25, 2003 accident. Subsequently, on April 21, 2003 Petitioner sustained another back injury when she lifted a box of canned goods. She returned to her primary care provider for treatment and was eventually referred to Dr. Nardone. Ultimately, Dr. Nardone performed a right L3-4 laminotomy and foraminotomy with disc exploration and a right L4-5 laminotomy and foraminotomy with disc exploration on November 3, 2003. Petitioner underwent post-operative physical therapy and was

able to return to work in December of 2006 with a permanent lifting restriction of forty pounds. At arbitration on December 19, 2006, Petitioner testified that she continued to experience back pain and leg pain with prolonged sitting and standing. She testified that she takes Tylenol and sleeps in a recliner at night to ease the pain. The Arbitrator awarded 25% loss of use of the person as a whole.

The month following arbitration, Petitioner began treatment at Millennium Pain Center for her ongoing complaints. Petitioner was examined by Dr. Atiq Rehman on January 24, 2007. By this time, Petitioner no longer worked for Respondent and indicated that she was employed as a medical technician for BroMenn Hospital. She complained of left-sided low back and buttock pain with an average pain level of 5-6/10. Dr. Rehman diagnosed facet joint arthropathy, degenerative disc disease and failed back surgery syndrome. Dr. Rehman recommended facet joint injections and the medication Nortriptyline. Petitioner underwent bilateral lumbar facet medial branch blocks at L2-3, L3-4, L4-5, L5-S1 on January 25, 2007 and a right SI joint injection on February 5, 2007. An August 27, 2007 lumbar MRI indicated postsurgical changes on the left side at the L3-4 level without a recurrent disc herniation and a mild degree of postsurgical scarring. The scan also showed evidence of varying degrees of spinal stenosis at the L2-3, L3-4, L4-5, and L5-S1 levels, a focal right paracentral disc herniation at L5-S1 and a small central disc herniation at L4-5. On August 30, 2007, Dr. Rehman administered a bilateral L4-5 transforaminal epidural steroid injection and SI injections. Petitioner returned to Dr. Rehman on May 29, 2008 and reported that the pain had returned over the prior six months. Dr. Rehman repeated the bilateral L4-5 transforaminal epidural steroid injections and SI injections. Dr. Rehman once again administered bilateral L4-5 injections on December 22, 2008. Petitioner followed up with Dr. Rehman on July 30, 2009 and reported some improvement as a result of the injections and use of the medication Lyrica.

On March 23, 2010, Dr. Van Fleet examined Petitioner at the request of Respondent. Dr. Van Fleet was not provided with enough information to issue a diagnosis and recommendations and he requested copies of imaging studies to review.

After Dr. Rehman left Millennium Pain Center, Petitioner began seeing Dr. Ramsin Benyamin on July 19, 2010. Petitioner complained of low back pain that was most severe on the left side and radiated to her left foot. Dr. Benyamin recommended a new MRI and the medication Vicodin to be taken as needed for pain. An August 27, 2010 MRI showed postsurgical changes at L3-L4 level with the suggestion of small focal central and right paracentral recurrent disc herniation and mild to moderate central and lateral recess stenosis. Mild stenosis was also seen at L4-L5 and L5-S1 levels. On April 26, 2011, Dr. Benyamin administered left L3-4 transforaminal epidural steroid injections. He noted that if Petitioner failed to have any significant relief he would recommend adhesiolysis. On January 12, 2011, Dr. Benyamin concluded that Petitioner had failed conservative treatment because she was still complaining of the same symptoms of low back pain radiating down the left leg. Therefore, Dr. Benyamin recommended a trial of a spinal cord stimulator.

On May 18, 2012, Dr. Van Fleet reexamined Petitioner. Dr. VanFleet was provided with medical records and imaging reports, but no films. He opined that he would not recommend percutaneous adhesiolysis because he did not believe that the procedure had been proven to

produce good outcomes. He testified that he has not personally seen an adhesiolysis procedure of the type recommended by Dr. Benyamin performed. Further, Dr. VanFleet believed that Petitioner's current symptoms were actually related to her multilevel degenerative disc disease, not post-surgical scar tissue. *"In any event, this is not related, in my opinion, to a 2003 work-related injury, and is related to an underlying progression that is seen naturally in the lumbar spine consisting of the natural progression and nature history of lumbar DDD."*

Dr. Van Fleet was deposed on September 19, 2012. Dr. VanFleet testified that he is a board-certified practicing orthopedic surgeon who regularly performs spinal surgery. He explained the theory of adhesiolysis is that scar tissue is irritating the nerve root; the procedure is therefore intended to release the nerve from the scar tissue. Dr. VanFleet testified that he did not believe scar tissue was causing Petitioner's left-sided buttock and left leg pain. Although everyone develops some scar tissue as a result of surgery, he testified that scar tissue is not usually a source of pain. Dr. VanFleet believed that the injections Petitioner received were reasonable and necessary treatment for her spinal stenosis, and were more likely to be effective than adhesiolysis. He testified that if epidural steroid injections were successful, there would be no harm in repeating them every six months. Dr. VanFleet denied that the 2003 surgery contributed to the stenosis he believes is causing Petitioner's pain. Dr. VanFleet explained that laminotomies are actually the treatment for spinal stenosis - opening up the spinal canal. Dr. VanFleet testified that Petitioner's current stenosis was new and not related to the accident or the 2003 surgery. Dr. VanFleet did not believe that a disc herniation could develop as a result of having back surgery, and he testified that scar tissue cannot accelerate or cause a disc herniation. He believed that Petitioner's pain was most likely the result of spinal stenosis; he agreed that it was possible that it was also related to disc herniations.

Petitioner returned to Dr. Benyamin on March 25, 2013. Dr. Benyamin noted that Petitioner complained of low back pain with left leg pain radiating to the little toe. Dr. Benyamin had not yet received a copy of Petitioner's IME report. Dr. Benyamin recommended a new MRI due to Petitioner's new clinical findings at the left S1 distribution causing reduced sensation and S1 reflexes. Dr. Benyamin was deposed on June 26, 2013. Dr. Benyamin is a board certified anesthesiologist who practices pain management treatment. Whereas the focus of Dr. VanFleet's deposition was with respect to the adhesiolysis procedure, Dr. Benyamin was largely questioned with respect to the reasonableness and necessity of a trial spinal cord stimulator. He testified that he recommended a trial spinal cord stimulator because no other treatment relieved the symptoms of Petitioner's post-laminectomy syndrome. Dr. Benyamin explained that spinal cord stimulators have been shown in cases of post-laminectomy syndrome to basically mask the pain in the back and legs. Dr. Benyamin testified that there are many reasons for post-laminectomy or failed back surgery syndrome, including the presence of scar tissue. In addition to the stimulator trial, Dr. Benyamin also recommended adhesiolysis, wherein you access the epidural space and inject an enzyme that dissolves scar tissue and a steroid and medication to shrink inflammation compressing the nerve. Dr. Benyamin testified that the last time he saw Petitioner, on March 25, 2013, she had new symptoms. The left leg pain was *"more to the lateral part of the leg and going towards the little toes. Very typical of S1 nerve distribution. And she had – ironically, she had less sensation in that distribution. And more importantly was her ankle reflex on the left side which is controlled by the S1 nerve was diminished."* Due to indications of new pathology affecting the left S1 nerve he wanted to get a new MRI. Dr. Benyamin also noted that Petitioner

had positive straight leg raise test which is a sign of tension on the nerve root. Dr. Benyamin testified that at this point he could not recommend any treatment without new images, and that he is concerned that long time compression of the nerves will cause permanent nerve damage. Dr. Benyamin was asked whether he could testify within a reasonable degree of medical certainty that the current need for the MRI is related to the November 2003 surgery. He answered: *"It's hard to say without, you know, having the MRI. But the symptoms are at a different level, at least clinically. So, I don't think it's related to that," and "I don't think it would be related, but you never know. I have been surprised before."* He thought that possibly instead there is a *new* disc herniation at L5-S1.

Dr. Benyamin was asked whether he could testify that within a reasonable degree of medical certainty the treatment he has been providing has been related to the November 2003 back surgery. He answered *"I don't have any reason to believe otherwise."* He was asked whether Petitioner's back pain was related to the surgery and he answered *"Most probably."* He testified that the incidence of patients with failed back syndrome following hemilaminectomy is between 25-35%. He opined that the disc herniation at L3-4 on the left that was seen in the 2010 MRI occurred after November of 2003; he opined that the surgery could have triggered scar tissue and instability. Dr. Benyamin was also asked if the new symptoms could be from the natural progression of degeneration. He answered *"Could be. I mean, we don't know."* He added that it was too speculative to say what exactly caused or contributed to it Petitioner's current condition.

On October 11, 2013 Petitioner had a new MRI. The scan showed a relatively stable lumbar spine since August 27, 2010, with degenerative disc disease and small disc herniations at the lower four segments. The disc herniation at L5-S1 level appeared to have progressed slightly in the interim and was encroaching upon he lateral recesses and S1 nerve root sleeve. Dr. Benyamin issued a causation letter dated December 2, 2013 in support of his recommendations. Dr. Benyamin wrote that in three years the degenerative process at L5-S1 had not progressed and the disc heights had essentially stayed the same. Dr. Benyamin believed that Petitioner had annular tears and disc protrusions combined with facet disease at multiple levels. He testified that reasonable treatment options, considering Petitioner had no success with prior surgery, were adhesiolysis combined with physical therapy, or a spinal cord stimulator.

After consideration of the facts and the evidence in this case, the Commission grants Petitioner's petition under §8(a) with respect to the trial spinal cord stimulator. Dr. Benyamin testified that the trial allows the patient to see if the device will work before implanting the stimulator under the skin. A spinal cord stimulator operates to mask pain and is used when other treatment has failed. We rely on the opinion of Dr. Benyamin with respect to the reasonableness and medical necessity of this procedure. Dr. Benyamin is a board certified anesthesiologist and pain management specialist. Dr. VanFleet did not testify that a spinal cord stimulator trial would be an unreasonable or unnecessary course of treatment for failed back surgery syndrome. It appears that Petitioner continues to experience pain and discomfort as a result of the November 3, 2003 laminectomy, although she has developed new symptoms that were not proven to be related to the accident and 2003 surgery. We find that Petitioner is entitled to additional medical treatment in the form of a trial spinal cord stimulator and the medical expenses related thereto and those incurred to date that are related to Petitioner's work-related condition.

Petitioner offered the records of Millennium Pain Center as its Exhibit #2. The correlating bills were included in Petitioner's group bills Exhibit #5. We find that Petitioner is entitled to payment of the medical bills from Millennium Pain Center and bills from OSF Medical Group, St. Joseph Medical Center, Diagnostic Neuro Technologies and Bloomington Radiology for treatment and testing ordered by Millennium Pain Center.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's petition under §8(a) is hereby granted as stated above and only with respect to the trial spinal cord stimulator. Respondent shall authorize and pay for the trial spinal cord stimulator placement recommended by Dr. Benyamin and shall pay any outstanding medical expenses associated with Petitioner's work-related low back condition and reflected in Petitioner's Exhibit #5. Respondent shall hold Petitioner harmless for any demands for reimbursement by group insurance on amounts paid on her behalf and related amounts paid by the Illinois Department of Public Aid.

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: SEP 2 3 2015
RWW/plv
o-6/9/15
46

Ruth W. White

Joshua D. Luskin

Charles J. DeVriendt

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William "Randy" Bunn,
Petitioner,

vs.

NO: 09 WC 49372
15 IWCC 0520

Gilster-Mary Lee Corp.,
Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision of the Commission dated July 8, 2015 having been filed by Respondent herein. Upon consideration of said Petition, the Commission is of the Opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated July 8, 2015 is hereby vacated and recalled pursuant to Section 19(f) for clerical errors contained therein.

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: OCT 15 2015
KWL:vf
42

Kevin W. Lamborn

STATE OF ILLINOIS)	☐ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF WILLIAMSON)	☒ Reverse	☐ Second Injury Fund (§8(e)18)
		☐ PTD/Fatal denied
	☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WILLIAM "RANDY" BUNN,

Petitioner,

vs. NO: 15 IWCC 0520
09 WC 049372

GILSTER-MARY LEE CORP.,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, jurisdiction, notice, temporary disability and permanent disability and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below on the issue of accident and subsequently awards benefits under the Act.

Arbitrator Lindsay found there to be evidence to support Petitioner's claim of sustaining an accident while working for Respondent on August 13, 2009, but found both that the Commission lacked jurisdiction to hear his claim and that the Petitioner's claim was time-barred from proceeding due to his failure to provide timely notice to Respondent. The Commission finds otherwise and reverses the arbitrator on both counts.

The threshold issue in the Decision of the Arbitrator was jurisdiction. Arbitrator Lindsay found the Commission had no jurisdiction to adjudicate Petitioner's claim. She found that there was no nexus between Petitioner's claim and the State of Illinois, as required by the Act. Petitioner, a resident of the State of Missouri, was injured in McBride, Missouri, while working for Respondent, an Illinois entity. Arbitrator Lindsay recognized elements of Respondent's hiring process involved Petitioner undertaking certain acts in Illinois but found those acts insufficient to confer jurisdiction to the Commission. Of most significance to Arbitrator Lindsay were the final actions taken in the formation of the employment contract between Petitioner and Respondent. By the arbitrator's view, the Petitioner's hire occurred within the State of Missouri. As explained below, the Commission finds the final elements of Petitioner's contract formation occurred in Illinois and, resultantly, confers jurisdiction to the Commission.

There is agreement between the parties that the hiring process began in Illinois. Petitioner testified that he submitted his application for employment to Respondent's headquarters in Chester, Illinois. Richard Welker, Respondent's Traffic Manager and the Respondent's employee responsible for human resource matters, acknowledged that applications are received there and the receipt of the same begins the hiring process. Mr. Welker indicated that applications are reviewed and background investigations are conducted in Chester, Illinois. Those applicants Respondent feels merit an interview are then interviewed in Chester, Illinois.

During the interview, a discussion is had about Respondent and the benefits it offers to its employees. A successful interview results in the applicant being sent to a Chester, Illinois, hospital to undergo drug screening and a physical examination. Following this process, the applicant is then brought to Respondent's Perryville, Missouri, facility where the applicant's driver's license and eligibility for employment as well as Respondent's operational policies are reviewed. Mr. Welker testified the hiring process is not completed until the meeting in Perryville, Missouri. Petitioner's testimony corroborated Mr. Welker's testimony except as to where the post-drug screening and physical examination meeting occurred. Petitioner testified this meeting occurred in the basement of Respondent's headquarters in Chester, Illinois.

The Commission is not satisfied with Mr. Welker's explanation of the hiring process. The Commission questions the claimed changing of venue from Respondent's headquarters in Chester, Illinois, to its facility in Perryville, Missouri. The Commission's questions this as no explanation was offered as to why the second meeting would take place in Perryville, Missouri, if the only actions taken there were for Respondent to review Petitioner's driver's license and his eligibility to work and to review Respondent's operational policies.

Lost upon the Commission is why Respondent would initially interview Petitioner in Chester, Illinois, and have Petitioner undergo drug screening and a physical examination in Chester, Illinois, only to have a subsequent meeting in Perryville, Missouri. What was not lost upon the Commission is Mr. Welker's admission that he could not say to a certainty that the as-testified-to hiring procedures were followed in this situation. The combination of the unexplained changing of venues from Chester, Illinois, to Perryville, Missouri, and Mr. Welker's uncertainty as to whether the process he described actually occurred as described leads the Commission to find Petitioner's testimony concerning the hiring process to be credible. The Commission, therefore, finds the actions taken to finalize the employment contract between Respondent and Petitioner occurred in Respondent's headquarters in Chester, Illinois. Accordingly, the Commission finds there is jurisdiction for it to consider Petitioner's claim under the Act.

Arbitrator Lindsay adopted Petitioner's claim of having sustained a compensable injury on August 13, 2009, noting the opinions of both Dr. deGrange and Dr. Riew were that Petitioner did sustain a work-related injury as the result of removing the fifth wheel pin to disconnect the trailer from his semi-tractor. The Commission was presented with no evidence that would cause it to disturb Arbitrator Lindsay's finding with respect to accident. Arbitrator Lindsay, notwithstanding her finding a lack of jurisdiction to adjudicate Petitioner's claim, nevertheless found Petitioner failed to give timely notice of his injury to Respondent and, as a result, not be entitled to benefits under the Act. The Commission finds Petitioner provided notice within the statutory timeframe to do so.

Petitioner described experiencing a sensation akin to a shock on August 13, 2009, when he pulled the fifth wheel pin. He continued to decouple the trailer from his semi-tractor and proceeded to go home. Two days later, on August 15, 2009, the back of his left hand, his left arm and left thumb became cold. He subsequently experienced tingling in his left arm as well. Petitioner was seen by his primary care

physician, Dr. Womack, on September 14, 2009. Petitioner claims it was only then that he became aware that the problems he presented to Dr. Womack for were the result of the incident he experienced on August 13, 2009. Petitioner testified to having notified Respondent of the accident on September 21, 2009, the Monday after he was seen by Dr. Womack. Respondent countered this testimony with a recorded statement Petitioner made that indicated he first informed Respondent of his accident on October 19, 2009. Petitioner did not dispute the accuracy of the recorded statement.

The Commission acknowledges Petitioner's proffered testimony of providing notice of his injury to Respondent following his September 14, 2009, visit was convincingly rebutted by the aforementioned recorded statement. The Commission, however, does not find this to be fatal as to the issue of Petitioner's notice of an accident to Respondent. It simply clarifies the date on which the Commission finds notice was received by Respondent from September 21, 2009, to October 19, 2009. The revised date is still within the timeframe, as set forth in Section 6(c) of the Act, requiring Petitioner to inform Respondent of his injury. Petitioner became aware of the connection of his then-current condition of ill-being and his August 13, 2009, injury on September 14, 2009, and reported this to Respondent on October 19, 2009. Under this circumstance, the Commission is satisfied the Petitioner provided Respondent notice of his accidental injury that comports with the Act.

The Decision of the Arbitrator, having found against Petitioner on the issues of jurisdiction and notice, did not address the remaining contested issues, deeming them to be moot. Having found otherwise, the Commission now addresses those issues.

The Commission finds Petitioner's complaints of ill-being to be causally related to his August 13, 2009, accident. Petitioner, in 2005, had a history of symptomatic cervical spinal stenosis and of treating this condition with a number of physicians in 2005. The absence of treatment records for the same between 2005 until August 13, 2009, implies the symptomatic nature of Petitioner's condition had resolved to a degree that made treatment unnecessary. The Commission finds only a 50-pound lifting restriction continued beyond Petitioner's treatment in 2005.

On August 13, 2009, Petitioner sustained an accident while removing the fifth wheel pin, an accident that caused his cervical spinal stenosis to become symptomatic once more. The treatment that ensued included a decompression with a laminectomy of C3, laminoplasties of C4-7, and left-sided foraminotomies from C4-7, all occurring on November 23, 2009. Later, he underwent an anterior cervical discectomy and fusion a C5-6 and C6-7, that being on January 3, 2011. Petitioner's treating physician, Dr. Daniel Riew, lends credence to this claim, by the finding of the causal relationship between Petitioner's August 13, 2009, accident and his need for two surgical interventions to his cervical spine. He noted Petitioner had continued to work following the 2005 diagnosis and did so without any problems with ambulation or complaints of numbness or cold affecting his arms and hands. Those problems emerged, per Dr. Riew, only after Petitioner's August 13, 2009, accident. The Commission notes, despite the multiple surgical interventions, Petitioner testified to experiencing continued pain, numbness in his hands and arms, and numbness and tingling in his legs with generalized weakness. The Commission finds Petitioner's August 13, 2009, accident to have resulted in the two surgeries, as well as his continuing complaints.

In treating the injuries to his cervical spine, Petitioner undertook medical treatment at Washington University Orthopedic, Barnes Jewish Hospital, the Brain and Neurospine Clinic of Missouri and Therapy Solutions and incurred medical bills as a result. Respondent contested these charges only on the issue of liability. The Commission finds these bills were reasonably and necessarily incurred to treat Petitioner's injuries and are the responsibility of Respondent.

Petitioner, over the course of treatment for his injuries, was medically precluded from working for a total of eighteen (18) weeks, from October 19, 2009, through January 5, 2010, and again from January 3, 2011, through February 20, 2011. This period of disability was as a result of Petitioner's two surgeries to his cervical spine. The Commission awards TTD benefits accordingly.

The Commission notes Petitioner made a successful return to his career as truck driver and returned to his unrelated baseline lifting restriction of 50 pounds. It also notes, however, Petitioner's residual symptoms include pain in his left hand, generalized weakness, occasional loss of balance and dizziness. For these lingering after effects, the Commission finds Petitioner sustained a 25% loss of the person as a whole stemming from his August 13, 2009, accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $875.30 per week for a period of 18 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $664.72 per week for a period of 125 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of 25% use of the person as a whole

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $66,237.66 for medical expenses under §8(a) of the Act.

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

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

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

DATED: OCT 15 2015
KWL/mav
O: 5/11/15
42

Thomas J. Tyrrell

Michael J. Brennan

DISSENT

I respectfully dissent from the decision of the majority. Arbitrator Lindsay's findings are thorough, well-reasoned and grounded in the law. This decision is correct and should be affirmed.

Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

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William "Randy" Bunn,
Petitioner,

vs.

NO: 09 WC 49372
15 IWCC 0520

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Kevin W. Lamborn

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) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
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Petitioner,

vs. NO: 15 IWCC 0520
09 WC 049372

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Respondent.

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Arbitrator Lindsay found there to be evidence to support Petitioner's claim of sustaining an accident while working for Respondent on August 13, 2009, but found both that the Commission lacked jurisdiction to hear his claim and that the Petitioner's claim was time-barred from proceeding due to his failure to provide timely notice to Respondent. The Commission finds otherwise and reverses the arbitrator on both counts.

The threshold issue in the Decision of the Arbitrator was jurisdiction. Arbitrator Lindsay found the Commission had no jurisdiction to adjudicate Petitioner's claim. She found that there was no nexus between Petitioner's claim and the State of Illinois, as required by the Act. Petitioner, a resident of the State of Missouri, was injured in McBride, Missouri, while working for Respondent, an Illinois entity. Arbitrator Lindsay recognized elements of Respondent's hiring process involved Petitioner undertaking certain acts in Illinois but found those acts insufficient to confer jurisdiction to the Commission. Of most significance to Arbitrator Lindsay were the final actions taken in the formation of the employment contract between Petitioner and Respondent. By the arbitrator's view, the Petitioner's hire occurred within the State of Missouri. As explained below, the Commission finds the final elements of Petitioner's contract formation occurred in Illinois and, resultantly, confers jurisdiction to the Commission.

There is agreement between the parties that the hiring process began in Illinois. Petitioner testified that he submitted his application for employment to Respondent's headquarters in Chester, Illinois. Richard Welker, Respondent's Traffic Manager and the Respondent's employee responsible for human resource matters, acknowledged that applications are received there and the receipt of the same begins the hiring process. Mr. Welker indicated that applications are reviewed and background investigations are conducted in Chester, Illinois. Those applicants Respondent feels merit an interview are then interviewed in Chester, Illinois.

During the interview, a discussion is had about Respondent and the benefits it offers to its employees. A successful interview results in the applicant being sent to a Chester, Illinois, hospital to undergo drug screening and a physical examination. Following this process, the applicant is then brought to Respondent's Perryville, Missouri, facility where the applicant's driver's license and eligibility for employment as well as Respondent's operational policies are reviewed. Mr. Welker testified the hiring process is not completed until the meeting in Perryville, Missouri. Petitioner's testimony corroborated Mr. Welker's testimony except as to where the post-drug screening and physical examination meeting occurred. Petitioner testified this meeting occurred in the basement of Respondent's headquarters in Chester, Illinois.

The Commission is not satisfied with Mr. Welker's explanation of the hiring process. The Commission questions the claimed changing of venue from Respondent's headquarters in Chester, Illinois, to its facility in Perryville, Missouri. The Commission's questions this as no explanation was offered as to why the second meeting would take place in Perryville, Missouri, if the only actions taken there were for Respondent to review Petitioner's driver's license and his eligibility to work and to review Respondent's operational policies.

Lost upon the Commission is why Respondent would initially interview Petitioner in Chester, Illinois, and have Petitioner undergo drug screening and a physical examination in Chester, Illinois, only to have a subsequent meeting in Perryville, Missouri. What was not lost upon the Commission is Mr. Welker's admission that he could not say to a certainty that the as-testified-to hiring procedures were followed in this situation. The combination of the unexplained changing of venues from Chester, Illinois, to Perryville, Missouri, and Mr. Welker's uncertainty as to whether the process he described actually occurred as described leads the Commission to find Petitioner's testimony concerning the hiring process to be credible. The Commission, therefore, finds the actions taken to finalize the employment contract between Respondent and Petitioner occurred in Respondent's headquarters in Chester, Illinois. Accordingly, the Commission finds there is jurisdiction for it to consider Petitioner's claim under the Act.

Arbitrator Lindsay adopted Petitioner's claim of having sustained a compensable injury on August 13, 2009, noting the opinions of both Dr. deGrange and Dr. Riew were that Petitioner did sustain a work-related injury as the result of removing the fifth wheel pin to disconnect the trailer from his semi-tractor. The Commission was presented with no evidence that would cause it to disturb Arbitrator Lindsay's finding with respect to accident. Arbitrator Lindsay, notwithstanding her finding a lack of jurisdiction to adjudicate Petitioner's claim, nevertheless found Petitioner failed to give timely notice of his injury to Respondent and, as a result, not be entitled to benefits under the Act. The Commission finds Petitioner provided notice within the statutory timeframe to do so.

Petitioner described experiencing a sensation akin to a shock on August 13, 2009, when he pulled the fifth wheel pin. He continued to decouple the trailer from his semi-tractor and proceeded to go home. Two days later, on August 15, 2009, the back of his left hand, his left arm and left thumb became cold. He subsequently experienced tingling in his left arm as well. Petitioner was seen by his primary care

physician, Dr. Womack, on September 14, 2009. Petitioner claims it was only then that he became aware that the problems he presented to Dr. Womack for were the result of the incident he experienced on August 13, 2009. Petitioner testified to having notified Respondent of the accident on September 21, 2009, the Monday after he was seen by Dr. Womack. Respondent countered this testimony with a recorded statement Petitioner made that indicated he first informed Respondent of his accident on October 19, 2009. Petitioner did not dispute the accuracy of the recorded statement.

The Commission acknowledges Petitioner's proffered testimony of providing notice of his injury to Respondent following his September 14, 2009, visit was convincingly rebutted by the aforementioned recorded statement. The Commission, however, does not find this to be fatal as to the issue of Petitioner's notice of an accident to Respondent. It simply clarifies the date on which the Commission finds notice was received by Respondent from September 21, 2009, to October 19, 2009. The revised date is still within the timeframe, as set forth in Section 6(c) of the Act, requiring Petitioner to inform Respondent of his injury. Petitioner became aware of the connection of his then-current condition of ill-being and his August 13, 2009, injury on September 14, 2009, and reported this to Respondent on October 19, 2009. Under this circumstance, the Commission is satisfied the Petitioner provided Respondent notice of his accidental injury that comports with the Act.

The Decision of the Arbitrator, having found against Petitioner on the issues of jurisdiction and notice, did not address the remaining contested issues, deeming them to be moot. Having found otherwise, the Commission now addresses those issues.

The Commission finds Petitioner's complaints of ill-being to be causally related to his August 13, 2009, accident. Petitioner, in 2005, had a history of symptomatic cervical spinal stenosis and of treating this condition with a number of physicians in 2005. The absence of treatment records for the same between 2005 until August 13, 2009, implies the symptomatic nature of Petitioner's condition had resolved to a degree that made treatment unnecessary. The Commission finds only a 50-pound lifting restriction continued beyond Petitioner's treatment in 2005.

On August 13, 2009, Petitioner sustained an accident while removing the fifth wheel pin, an accident that caused his cervical spinal stenosis to become symptomatic once more. The treatment that ensued included a decompression with a laminectomy of C3, laminoplasties of C4-7, and left-sided foraminotomies from C4-7, all occurring on November 23, 2009. Later, he underwent an anterior cervical discectomy and fusion a C5-6 and C6-7, that being on January 3, 2011. Petitioner's treating physician, Dr. Daniel Riew, lends credence to this claim, by the finding of the causal relationship between Petitioner's August 13, 2009, accident and his need for two surgical interventions to his cervical spine. He noted Petitioner had continued to work following the 2005 diagnosis and did so without any problems with ambulation or complaints of numbness or cold affecting his arms and hands. Those problems emerged, per Dr. Riew, only after Petitioner's August 13, 2009, accident. The Commission notes, despite the multiple surgical interventions, Petitioner testified to experiencing continued pain, numbness in his hands and arms, and numbness and tingling in his legs with generalized weakness. The Commission finds Petitioner's August 13, 2009, accident to have resulted in the two surgeries, as well as his continuing complaints.

In treating the injuries to his cervical spine, Petitioner undertook medical treatment at Washington University Orthopedic, Barnes Jewish Hospital, the Brain and Neurospine Clinic of Missouri and Therapy Solutions and incurred medical bills as a result. Respondent contested these charges only on the issue of liability. The Commission finds these bills were reasonably and necessarily incurred to treat Petitioner's injuries and are the responsibility of Respondent.

Petitioner, over the course of treatment for his injuries, was medically precluded from working for a total of eighteen (18) weeks, from October 19, 2009, through January 5, 2010, and again from January 3, 2011, through February 20, 2011. This period of disability was as a result of Petitioner's two surgeries to his cervical spine. The Commission awards TTD benefits accordingly.

The Commission notes Petitioner made a successful return to his career as truck driver and returned to his unrelated baseline lifting restriction of 50 pounds. It also notes, however, Petitioner's residual symptoms include pain in his left hand, generalized weakness, occasional loss of balance and dizziness. For these lingering after effects, the Commission finds Petitioner sustained a 25% loss of the person as a whole stemming from his August 13, 2009, accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $875.30 per week for a period of 18 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $664.72 per week for a period of 125 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of 25% use of the person as a whole

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $66,237.66 for medical expenses under §8(a) of the Act.

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

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

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

DATED: OCT 15 2015
KWL/mav
O: 5/11/15
42

Thomas J. Tyrrell

Michael J. Brennan

DISSENT

I respectfully dissent from the decision of the majority. Arbitrator Lindsay's findings are thorough, well-reasoned and grounded in the law. This decision is correct and should be affirmed.

Kevin W. Lamborn

STATE OF ILLINOIS	)	
	) SS	BEFORE THE ILLINOIS WORKERS'
COUNTY OF WINNEBAGO	)	COMPENSATION COMMISSION
Robin Thiering,	)	
Petitioner,	)	
	)	No. 08WC 11926
vs.	)	15IWCC 686
	)	
Wal-Mart	)	
Respondent,	)	

ORDER

Motion to recall pursuant to Section 19(f) of the Act having been filed by the Petitioner on September 29, 2015, the Commission having been fully advised in the premises, finds the following:

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision and Opinion dated September 8, 2015 is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner David L. Gore.

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

David L. Gore

DATED: OCT 2 2 2015

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEBAGO

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBIN THIERING,

Petitioner,

vs.

NO: 08 WC 11926
15IWCCC686

WAL-MART,

Respondent,

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability and nature and extent of Petitioner's permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms the ruling of the Arbitrator in total. However, the Commission corrects the clerical error in the award for permanent partial disability (PPD) benefits. The correct minimum PPD rate for such benefits on the date in question is $199.32.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 31, 2014 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to $34,920.86 in PPD benefits based on the minimum PPD rate on the accident date in question.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $31,800.00. 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: OCT 2 2 2015
DLG/wde
O: 9/3/15
45

David L. Gore

Mario Basurto

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

15IWCC0686

THIERING, ROBIN
Employee/Petitioner

Case# **08WC011926**

WAL-MART
Employer/Respondent

On 1/31/2014, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0529 GREG TUITE & ASSOC
119 N CHURCH ST
SUITE 407
ROCKFORD, IL 61101

0210 GANAN & SHAPIRO PC
COURTNEY M QUITTER
210 W ILLINOIS ST
CHICAGO, IL 60654

STATE OF ILLINOIS)
)SS.
COUNTY OF **Winnebago**)

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

Corrected

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

15IWCC0686

Robin Thiering
Employee/Petitioner

v.

Wal-Mart
Employer/Respondent

Case # **08** WC **11926**

Consolidated cases: **n/a**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Waukegan, IL**, on **September 27, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

15IWCC0686

FINDINGS

On **February 5, 2007**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**16,537.56**; the average weekly wage was $**318.03**.

On the date of accident, Petitioner was **48** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**6,024.77** for TTD, $**4,211.21** for TPD, $**-0-** for maintenance, and $**2,500.00** for other benefits, for a total credit of $**12,735.98**.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $212.02/week for 28-2/7 weeks, commencing 2/5/2007 through 6/17/2007, 10/5/2007 through 10/18/2007, 11/15/2007 through 11/28/2007, and 12/10/2007 through 1/20/2008 as provided in Section 8(b) of the Act. Respondent shall be given a credit of $6,024.44 for temporary total disability benefits and $4,211.21 for temporary partial disability benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits of $190.82/week for 100.2 weeks, because the injuries sustained caused the 60% loss of the right foot, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $190.82/week for 75 weeks, because the injuries sustained caused the 15% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall be given a credit of $2,500.00 for permanent partial disability benefits that have been paid.

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.

Edward Lee
Arbitrator

1/30/14
date

JAN 31 2014

STATEMENT OF FACTS

Robin Thiering (hereinafter "Petitioner") worked for Wal-Mart (hereinafter "Respondent") as a fitting room associate. Her job duties included hanging clothes, returning clothes and answering the phone. On February 5, 2007, Petitioner suffered an injury to her right foot when she slipped and fell on ice while walking to her car.

Petitioner was taken by ambulance to Beloit Memorial Hospital where she came under the care of Dr. Sauer. She was diagnosed with a right tibia-fibula fracture with extension towards the ankle joint and a posterior malleolar fracture. She underwent surgery on February 6, 2007 consisting of fixation of the right ankle fracture with screws and a rod. Petitioner was discharged from the hospital on February 9, 2007. RX #2; PX #7.

On February 21, 2007, Petitioner saw Dr. Sauer in follow-up and was placed in a short leg cast. Initially, Petitioner testified she used a wheelchair. However, when she saw Dr. Sauer on March 27, 2007, Petitioner's cast was removed and she was instructed to start weight bearing. She was authorized to return to work light duty, performing sit down work only and no driving. Petitioner began attending physical therapy at Beloit Memorial Hospital on April 19, 2007. RX #2; PX #3.

On May 10, 2007, Petitioner saw Dr. McCarty for purposes of a second opinion. She complained of discomfort with weight bearing localized to the fracture site. Petitioner reported she was told the fracture was not healing and that it may be four to six months before the fracture healed. Dr. McCarty diagnosed traumatic fractures of the right distal tibia and fibula without evidence of significant progression of healing. He discussed the treatment options which included removal of the proximal screw, progressive weight bearing as comfort allowed and a bone stimulator. PX #5.

Petitioner next returned to Dr. Sauer on May 16, 2007 with complaints of pain around the fracture area and irritation around the proximal interlocking screw. She was instructed to progress to full weight bearing. Dr. Sauer recommended Petitioner continue physical therapy. RX #2; PX #3.

On June 13, 2007, Petitioner saw Dr. Sauer in follow-up. She complained of ankle swelling with activity but noted she could walk full weight bearing, was using a cane and could drive. Dr. Sauer ordered compression stockings and an ultrasound stimulator. He continued to recommend physical therapy and authorized Petitioner to return to work light duty performing sit down work only with limited standing and walking, four hours per day for six weeks. RX #2; PX #3.

Beginning on June 18, 2007, Petitioner testified she returned to work for Respondent, four hours per day or 20-25 hours per week. She testified she was sitting in a fitting room with her leg elevated where she would answer phones and occasionally wait on people.

On July 25, 2007, Petitioner returned to Dr. Sauer with complaints of numbness in the great and second toes, which Dr. Sauer noted could be due to her socks and shoes being too tight. Dr. Sauer instructed Petitioner to discontinue physical therapy and start a home exercise program. He authorized Petitioner to return to work light duty with limited standing and walking for two months, working four hours per day and five days per week for two months. RX #2; PX #3. Petitioner testified she worked in the fitting room answering phones during June, July and August.

Petitioner saw Dr. Sauer on August 28, 2007 after an incident when she was sitting at a desk, felt pain and heard a snap after pulling her leg back. Dr. Sauer prescribed pain medications. Petitioner then returned to Dr. Sauer on September 26, 2007 with complaints of pain along her leg. Dr. Sauer recommended she consider removal of the screws. Petitioner was otherwise authorized to return to work light duty with limited standing and walking, four hours per day or 20 hours per week for six weeks. She

testified in August and September she was given more responsibility which required her to walk more and wait on customers. Petitioner also described unpacking lingerie and stocking in the fitting room. RX #2; PX #3.

On October 5, 2007, Petitioner underwent a second surgery which consisted of removal of the screws from the tibia. Following the surgery, Petitioner was admitted overnight for post-operative nausea and vomiting. She was discharged the following day. Petitioner then returned to Dr. Sauer on October 8, 2007 at which time she was instructed to ambulate as tolerated. Dr. Sauer authorized Petitioner to return to work light duty with the same restrictions of working four hours per day. Petitioner testified she returned to work on October 15, 2007, performing seated work four hours per day. RX #2; PX #3.

Petitioner next saw Dr. Sauer on October 23, 2007 at which time she complained of soreness around the incisions. Dr. Sauer ordered physical therapy and authorized Petitioner to return to work light duty performing sit down work with limited standing and walking, four hours per day or 20 hours per week for four weeks. RX #2; PX #3.

On October 24, 2007, Petitioner resumed physical therapy at Beloit Memorial Hospital. She saw Dr. Sauer in follow-up on November 27, 2007 at which time he noted one wound remained open. Dr. Sauer referred Petitioner to the wound clinic and authorized her to return to work light duty six hours per day maximum and alternating sitting and standing for four weeks.

Petitioner began attending the wound clinic on November 27, 2007 at Beloit Memorial Hospital. At the time she saw Dr. Sauer on December 10, 2007, he noted the wound had turned into a deep ulcer and recommended excision of the ulcer. RX #2; PX #3.

On December 11, 2007, Petitioner underwent a third procedure consisting of excision of a right medial leg ulcer with debridement of soft tissue including skin and subcutaneous tissue and closure of the right leg wound. Following the procedure, Petitioner was authorized off work. RX #2; PX #3.

Petitioner returned to Dr. Sauer in follow-up on December 17, 2007. It was noted there were no signs of infection and Petitioner was instructed to complete the course of antibiotics. Petitioner next returned to Dr. Sauer on December 31, 2007 at which time the sutures were removed. RX #2; PX #3.

On January 14, 2008, Petitioner returned to Dr. Sauer for a recheck of the ankle wound. Dr. Sauer noted the wound was gradually closing and the amount of drainage had diminished. He authorized Petitioner to return to work performing sit down work with the right leg lifted, four hours per day for the next two weeks. Petitioner testified she returned to work in the fitting room on January 16, 2008. RX #2; PX #3.

On January 28, 2008, Petitioner saw Dr. Sauer and noted an improvement in pain. At that time, Dr. Sauer authorized Petitioner to return to work full duty but noted she may need to sit to rest at times over the next three weeks. There were no restrictions on the number of hours or days per week Petitioner was permitted to work. RX #2; PX #3.

Petitioner testified she continued to work for the store and began doing more work. She stated she began experiencing more pain and would go home in tears. She also indicated she was scheduled to work six days in a row and was being scheduled on weekends in 2008, while she was not scheduled to work on weekends in 2007. Petitioner testified she called in absent three times.

On January 31, 2008, Petitioner presented to Dr. Reinecke with concerns over continued swelling and numbness along the side of her foot and in the first and second toes. She also complained of her foot turning when she walked which made it more achy and sore. Dr. Reinecke diagnosed overpronation secondary to ankle injury and plantar fasciitis and explained to Petitioner that the thickness, swelling and

numb feelings were all expected after the type of injury and surgery since her foot was in a different position due to the injury. Dr. Reinecke recommended an orthotic. PX #11.

Petitioner returned to Dr. Reinecke on February 7, 2008 for purposes of casting for the orthotic. Dr. Reinecke noted Petitioner had questions regarding her foot position and wanted an explanation. Dr. Reinecke again explained the change in positioning of the foot and recommended an orthotic device to help support the foot and hopefully alleviate the irritation of the posterior tendon. PX #11.

On February 20, 2008, Petitioner presented to Dr. Sauer in follow-up. At that time, Dr. Sauer noted Petitioner was working full duty and was tolerating work without much difficulty. Dr. Sauer recommended an orthotic. Petitioner saw Dr. Reinecke on February 28, 2008 to pick-up the orthotic device. Petitioner then followed up with Dr. Reinecke again on March 11, 2008 at which time she reported no trouble with the orthotic but noted some soreness in the right leg. Dr. Reinecke recommended Petitioner work five hours per day. RX #2; PX# 3; PX #11.

Also on March 11, 2008, Petitioner saw Dr. Sauer in order to reassess work status. Petitioner reported she was working eight hours per day, six days straight and that she was having difficulty after five hours as well as tenderness at the fracture site. Dr. Sauer authorized Petitioner to return to work light duty working a maximum of five hours per day or 25 hours per week for eight weeks. RX #2; PX #3.

On March 31, 2008, Petitioner returned to Dr. Sauer with complaints of continued pain in the ankle and foot. She indicated her pain had gotten worse and she was having trouble tolerating five hours per day at work. Petitioner also reported she tried an orthotic but it did not help. Dr. Sauer ordered x-rays of the foot and ankle and a bone scan. He also referred Petitioner to Dr. Lang for a second opinion. Petitioner was otherwise authorized to return to work light duty five hours per day. RX #2; PX #3.

On April 3, 2008, Petitioner underwent a bone scan which demonstrated focus of activity in the distal tibia and to a much lesser extent the distal fibula which likely represented healing fractures. RX #2; PX #3.

On April 23, 2008, Petitioner testified she put in her two week notice at the store. She last worked for the store on May 4, 2008. RX #6; RX #9.

Petitioner saw Dr. Lang on June 9, 2008 for purposes of a second opinion. Dr. Lang felt there was nothing mechanical or structural to suggest or recommend further surgery as he suspected the bulk of Petitioner's symptoms were due to nerve pathology. He therefore recommended comprehensive evaluation and treatment with a pain management clinic. PX #13.

On June 18, 2008, Petitioner returned to Dr. Sauer with complaints of mild intermittent swelling of the foot. Dr. Sauer recommended a foot-ankle orthosis. RX #2; PX #3. Petitioner testified she still wears the orthosis all the time.

On August 14, 2008, Petitioner attended an IME with Dr. Holmes at the request of the Respondent. Dr. Holmes diagnosed a tib-fib fracture which resulted from the work accident and recommended a diagnostic ultrasound and EMG/NCV to determine whether there was nerve damage. He opined Petitioner's symptoms were causally related to the work accident. Dr. Holmes opined Petitioner could return to work in a sedentary or semi-sedentary position and anticipated MMI in three to six months. RX #10.

Petitioner next saw Dr. Sauer on October 1, 2008 with complaints of continued pain. Dr. Sauer recommended a CT scan, MRI and an EMG. He otherwise noted the claimant was completely off pain medications except Advil. He authorized the claimant off work and instructed her to follow-up three weeks after the EMG, MRI and CT scans. RX #2; PX #3.

On October 1, 2008, the claimant underwent a CT scan of the right lower leg which demonstrated healed fractures of the distal tibia and fibula with intermedullary rod within the tibia. RX #2; PX #3.

Petitioner underwent a MRI of the right ankle on October 10, 2008 which showed no bony, muscular or tendinous abnormality and mild soft tissue edema around the ankle. She also underwent a MRI of the right lower leg which showed subcutaneous soft tissue edema but no abnormal signal. RX #2; PX #3.

On October 13, 2008, Petitioner underwent an EMG/NCV which showed evidence of demyelinating and axonal neuropathy of the common peroneal nerve. However, it was noted Petitioner had 1+ bipedal edema during the examination which made testing difficult. It was also noted electrodiagnostic testing of the bilateral sural and saphenous nerves were undetectable. RX #2; PX #3.

Petitioner next saw Dr. Sauer on October 22, 2008 to review the test results. Dr. Sauer indicated his greatest concern was the possibility of a persistent nonunion of the tibial shaft fracture. He also noted nerve damage which may have occurred from the injury or due to entrapment in scar or irritation from hardware. Dr. Sauer instructed Petitioner to see Dr. Lang to confirm whether she had an ongoing nonunion of the tibia. He indicated if she had a bone grafting procedure, it may allow her to heal completely and improve her overall life. Dr. Sauer noted the alternative would be to leave her with a nonunion and ongoing pain with weightbearing. He indicated if Dr. Lang disagreed there was a nonunion then he was prepared to discharge her. PX #10.

On November 3, 2008, Petitioner returned to Dr. Lang with complaints of a significant amount of pain in her leg and difficulty walking. Dr. Lang felt adequate healing had taken place and noted he would not consider the fracture a nonunion. Instead, he felt the pain was neuropathic in nature and that pain medications may help Petitioner since her pain could not be reproduced with stressing of the leg. Dr. Lang also noted some patients benefited from rod removal and Petitioner could consider it. PX #13.

On February 9, 2009, Petitioner attended a repeat IME with Dr. Holmes who diagnosed a clear nonunion of the distal tibia status post tibial rodding which was directly related to the work accident. Dr. Holmes recommended surgery consisting of bone grafting which would give an 85-90% chance of healing. He further opined therapy would be useless and the tibia would not be stabilized by removing the rod. Dr. Holmes recommended an EMG when swelling was less and indicated a treatment plan for the nerve pain could be outlined. He opined Petitioner should either be off work or return to work in a strictly sedentary position. Dr. Holmes felt Petitioner would be at MMI within three to six months of bone grafting. RX #10.

On May 14, 2009, Petitioner underwent an EMG/NCV which was abnormal and showed evidence of right peroneal neuropathy at the ankle, mild peripheral polyneuropathy of the bilateral lower extremities, and mild posterior tarsal tunnel syndrome. PX #14.

Petitioner next presented to Dr. Blint at Rockford Orthopedic Associates on May 18, 2009. She complained of right leg, ankle and foot pain which was worse with pressure or standing on her leg. Dr. Blint diagnosed a closed tibia fracture and ordered a repeat MRI of the right leg. PX #14.

On May 29, 2009, Petitioner underwent a MRI of the right leg which demonstrated mild residual fracture deformities of the distal tibial and fibular shafts and mature osseous healing without osteomyelitis or other complications. PX #14.

Petitioner returned to Dr. Blint on June 8, 2009. At that time, Dr. Blint prescribed Neurontin and referred Petitioner to Dr. Bush for evaluation of tarsal tunnel syndrome. PX #14.

On June 11, 2009, Petitioner first saw Dr. Bush. She reported complaints of right foot, lower right leg and ankle pain. Dr. Bush diagnosed tarsal tunnel syndrome and neuritis. He instructed Petitioner to let the Neurontin take effect then return for a definitive plan. PX #14.

On July 9, 2009, Petitioner returned to Dr. Bush with complaints of pain and numbness on the medial aspect of the ankle. Dr. Bush diagnosed tarsal tunnel syndrome with right saphenous entrapment and neuritis of the right deep peroneal nerve. He prescribed Lidoderm. PX #14.

Petitioner next presented to Dr. Bush on August 6, 2009. At that time, Dr. Bush instructed the claimant to discontinue Neurontin due to side effects. He indicated he would not recommend surgery or injections due to a decrease in symptoms and recommended a brace. PX #14.

On August 18, 2009, Dr. Holmes prepared an IME addendum after reviewing the EMG/NCV and MRI report. He diagnosed a tibial nonunion, possible neuroma involving the peroneal nerve and overlying polyneuropathy. Dr. Holmes did not feel Petitioner had tarsal tunnel syndrome. He recommended use of a Lidoderm patch and a bone stimulator. Dr. Holmes noted the treatment options included bone grafting and immobilization and also indicated Petitioner may require decompression of the nerve or an attempt to release the neuroma. Dr. Holmes indicated he would not recommend rod removal. He noted Petitioner could take an additional three months to heal after bone grafting and if she did not heal after bone grafting, she could require full plating of the tibia. Overall, Dr. Holmes felt Petitioner would benefit from surgery. He opined she could return to work in a sedentary or semi-sedentary capacity with use of bracing and immobilization of the foot until a decision was made regarding surgery. Dr. Holmes felt Petitioner would be at MMI six months after surgery. RX #10.

Dr. Holmes saw Petitioner again on December 9, 2009. He diagnosed a nonunion and right peroneal nerve neuropathy. Dr. Holmes recommended a repeat CT scan and opined Petitioner could return to work light duty in a strictly sedentary position. RX #10.

On December 15, 2009, Petitioner underwent a repeat CT scan of the right leg which showed healed fractures of the tibia and fibula. RX #10.

On February 16, 2010, Dr. Holmes prepared an IME addendum after reviewing the updated CT scan. He opined the CT scan showed the fracture was not completely healed at one spot which could account for Petitioner's pain. Dr. Holmes indicated it may be helpful for Petitioner to undergo a re-evaluation to determine if she still has pain that may be from the potential continued nonunion of the tibia. RX #10.

Petitioner testified if she was going to have surgery, she wanted to treat with Dr. Holmes. She therefore requested a consultation with Dr. Holmes to discuss the surgery he was recommending. Petitioner attended a consultation with Dr. Holmes on April 15, 2010 at which time she testified she took paperwork for her SSDI case provided to her by her attorney for Dr. Holmes to fill out. Dr. Holmes noted Petitioner continued to have constant pain over the ankle and had developed ringworm on the top of her foot. He recommended a dermatology consultation which was unrelated to the work injury and pain management to resolve any pain prior to surgery. Dr. Holmes also completed a Physical Medical Source Statement which was required for Petitioner's SSDI case. He indicated Petitioner could sit for more than two hours, stand for five to ten minutes at a time, stand or walk less than two hours during an eight hour work day but sit for at least six hours, required a sitting position with the leg elevated and needed to use a cane, could not lift, twist, bend, crouch, squat or climb stairs or ladders. Dr. Holmes also recommended Petitioner be evaluated by a pain management doctor prior to returning to work. RX #10; PX #5.

On May 3, 2010, Petitioner presented to Dr. Jaworowicz at Medical Pain Management. She complained of pain starting in the right ankle and radiating to her knee and increased pain with any

activity. Petitioner reported her foot was cold and sensitive to touch. Dr. Jaworowicz diagnosed CRPS of the lower extremity, neuropathy and depression. He prescribed Topamax. PX #12.

On May 24, 2010, Petitioner last saw Dr. Jaworowicz. She reported trying the Topamax but woke up with shortness of breath, tremors and tachycardia. Dr. Jaworowicz noted Petitioner was not interested in a spinal cord stimulator. PX #12.

At the request of her attorney, Petitioner was evaluated by Dr. Coe on September 29, 2010. Dr. Coe diagnosed multiple fractures of the right ankle including a spiral intra-articular fracture of the right distal tibia, a fracture of the posterior malleolous and a fracture of the distal fibula. He opined there was a causal connection between the work injury and Petitioner's condition of ill-being. Dr. Coe opined Petitioner required additional treatment, including further pain management, possibly a spinal cord stimulator and a repeat right ankle surgery. He opined Petitioner required work restrictions including working in a primarily sedentary position with limited walking, kneeling, squatting and stair climbing, continued use of the right foot and ankle brace and a 10-lb lifting restriction. PX #6.

Also at the request of her attorney, Petitioner was evaluated by Susan Entenberg on May 2, 2011. Ms. Entenberg opined Petitioner was not able of performing her past work as a stocker and fitting room associate. She also felt Petitioner was not a good candidate for vocational rehabilitation and a stable labor market did not exist for her. Ms. Entenberg noted Petitioner had not performed a job search. She opined Petitioner did not have transferrable skills to a lighter occupation. PX #20.

On October 12, 2011, at the request of the Respondent, Ed Steffan of EPS Rehabilitation performed a labor market survey. He found 10 employers with 15 positions consistent with Petitioner's rehabilitation variables between $8.75-$13.00 per hour. Additionally, seven of nine employers had positions open and available at the time of his calls. The positions identified were located in the Rockford area. Mr. Steffan opined Petitioner should be able to obtain gainful employment based on the findings of the labor market survey and motivation of Petitioner to seek and secure employment. RX #11.

On November 15, 2011, Dr. Holmes prepared an IME addendum report. Dr. Holmes noted his opinions had not changed and he was still recommending the bone grafting procedure. He noted the bone grafting procedure would be considered a minor procedure and would probably require hospitalization for only one day after surgery. He further noted there was an 80-90% chance the procedure would improve Petitioner's condition. Dr. Holmes opined Petitioner could easily return to work in a sedentary capacity if not semi-sedentary or light duty. He otherwise recommended a FCE to determine work restrictions. RX #10.

On January 22, 2012, Susan Entenberg prepared an addendum report after reviewing the limited labor market survey. She felt the sedentary jobs identified in the labor market survey required basic computer skills, good communication, customer service skills and a light exertional level. She also felt the labor market survey did not consider the restrictions outlined by Dr. Holmes in the Physical Medical Source Statement dated April 15, 2010. Ms. Entenberg noted her opinions did not change as she felt Petitioner was not an appropriate candidate for vocational rehabilitation and a stable labor market did not exist for her. PX #20.

On May 11, 2012, Ed Steffan prepared an addendum report. Mr. Steffan noted although Petitioner was reporting difficulty with standing and walking, sedentary jobs are performed from a seated position. He further disagreed with Ms. Entenberg and felt Petitioner had transferrable skills from her prior work experience which she could use to pursue sedentary work. Mr. Steffan opined that based on the findings of his labor market survey and the reports of Dr. Holmes and Dr. Coe, Petitioner could pursue other positions besides those identified in the labor market survey, including a cashier,

switchboard operator, customer service representative, team assembler, security guard, monitor position, receptionist and information clerk. Mr. Steffan further opined that based on Petitioner's previous customer service experience, available physical capability and the labor market, there was an available and stable labor market which Petitioner could access if she was motivated to return to work. RX #11.

Petitioner underwent a FCE on September 17, 2012. The FCE was noted to be valid and demonstrated Petitioner had functional capabilities at the Light physical demand level. It was noted Petitioner previously worked as a fitting room attendant which was classified as a Light physical demand level occupation and Petitioner's current physical capabilities appeared to fall within the Light physical demand level but she failed to meet the expectations with floor to chair and above shoulder lifting. It was therefore recommended bending, stooping, stairs and right foot controls be performed on an occasional basis and balancing, squatting, and crouching be performed on a minimal basis. It was also recommended Petitioner not crawl at all. It was noted Petitioner was able to sit for 55 minutes with her right leg hanging down but as the assessment progressed, she requested a stool to elevate her leg and stated she experienced increased swelling and pain with prolonged sitting. It was therefore noted it would be important to consider the reports and behaviors if Petitioner was required to sit for extended periods of time. PX #19.

On September 29, 2012, Susan Entenberg prepared an addendum report after reviewing the FCE results. Ms. Entenberg's opinions remained the same that Petitioner was not an appropriate candidate for vocational rehabilitation and a stable labor market was not available. PX #20.

On October 31, 2012, Dr. Holmes prepared an addendum report after reviewing the FCE results. Dr. Holmes' opinions did not change regarding his prior surgical recommendations and he indicated if Petitioner did not undergo the bone grafting procedure, she would be at MMI. He otherwise opined Petitioner was capable of and able to return to work. Dr. Holmes could not provide a definite opinion regarding whether the fitting room associate position would be consistent with a sedentary position. However, he opined if the parties could find a job which was consistent with Petitioner's restrictions, she could return to work in those restrictions. RX #10.

On November 1, 2012, Ed Steffan prepared an addendum report after reviewing the FCE results and fitting room associate job description. Mr. Steffan's opinions did not change as he still felt there was a readily available and stable labor market Petitioner could access if she was motivated to use her physical capabilities to return to work. RX #11.

Susan Entenberg testified regarding her opinions on March 13, 2013. PX #20. Approximately 85% of the opinions Ms. Entenberg provides are at the request of the employee. Id at 34. Ms. Entenberg testified she did not feel Petitioner was a candidate for vocational rehabilitation and she did not feel a stable labor market existed for her. Id at 22, 24. She disagreed that Petitioner could perform the jobs identified in the labor market survey prepared by Ed Steffan. Id at 31. Ms. Entenberg testified she did not perform a labor market survey. Id at 35. Ms. Entenberg relied on the Physical Medical Source Statement prepared by Dr. Holmes in reaching her opinions. However, she acknowledged her report did not indicate that Dr. Holmes stated Petitioner could sit from 30-45 minutes up to two hours. Id at 37. She also admitted her report did not indicate that Dr. Holmes stated Petitioner could sit six hours out of an eight hour work day. Id at 38. Ms. Entenberg testified she relied on the doctors' opinions regarding work status and if Petitioner's work status was adjusted, it could impact her opinions. Id at 35-36. She admitted she did not review the November 15, 2011 report of Dr. Holmes and was therefore not aware Dr. Holmes felt Petitioner could return to work in a sedentary if not semi-sedentary or light duty capacity. Id at 49-50.

Ed Steffan testified regarding his opinions on June 5, 2013. RX #1. Approximately 60-70% of the opinions Mr. Steffan provides are at the request of the employee. Id at 5. Mr. Steffan testified regarding the labor market survey he performed. He used Petitioner's work history information as well as the opinions of Dr. Holmes and Dr. Coe and contacted 12 employers. Id at 8-9. Mr. Steffan testified 10 employers had 15 positions consistent with Petitioner's rehabilitation variables and seven employers had nine positions available. Id at 9. He also felt Petitioner could do jobs other than those identified in the labor market survey. Id at 17. Mr. Steffan opined a reasonably stable labor market exists for Petitioner. Id at 11, 20.

Mr. Steffan testified regarding the two subsequent reports he prepared. He explained Petitioner's prior work history was important and he considered it when rendering his opinions. RX #1 at 15. Mr. Steffan testified he believed Petitioner had transferrable skills which she acquired through her prior positions as a CNA and apartment demonstrator which she could use in a sedentary position. Id at 16-17. He concluded there is a readily available and stable labor market for Petitioner. Id at 20. Mr. Steffan acknowledged the Rockford labor market is smaller than the labor market of Chicago. Id at 11, 46. However, he explained the jobs he identified within Petitioner's restrictions were using his most conservative estimate and Petitioner has access to a labor market greater than just the town of Rockford. Id at 18. He further explained he did not list every possible job Petitioner could perform. Id at 55. Mr. Steffan testified the Physical Medical Source Statement is outdated as Dr. Holmes provided updated restrictions. Id at 54. He testified the updated restrictions do not preclude Petitioner from finding full-time employment. Id at 55.

Alicia Lawrence, store manager, testified on behalf of Respondent. Ms. Lawrence was the store manager on the accident date and during the time Petitioner worked for the store following the accident. She has worked for Respondent for a total of 18 years. Following the accident, Ms. Lawrence testified Petitioner returned to work with restrictions and the store was able to accommodate her restrictions with a position in the fitting room. Ms. Lawrence further confirmed Petitioner returned to work with a restriction on the number of hours she could work and the store was able to accommodate the restrictions with respect to Petitioner's hours.

Ms. Lawrence explained the employee schedules are generated by computer and there is no way for the computer to know whether an employee has a restriction on the number of hours she can work. Therefore, if the computer schedules an employee to work more than the number of hours allowed by their doctor, Ms. Lawrence explained the employee should tell the store so the hours can be adjusted. She further testified an employee's hours can be adjusted the same day she is scheduled to work provided the employee notifies the store of the issue. Ms. Lawrence recalled having one conversation with Petitioner regarding an issue with the number of hours she was being scheduled to work. She stated she told Petitioner to notify her if there was an issue with the hours so the schedule could be adjusted. Ms. Lawrence explained if Petitioner reported her hours or restrictions were not being accommodated, she would verify the restriction and adjust the hours. She confirmed Petitioner was not disciplined, punished or given fewer shifts to work due to her restrictions.

Ms. Lawrence testified Petitioner no longer works for the store because she turned in her resignation and quit. At the time she quit, Ms. Lawrence testified Petitioner's work restrictions were being accommodated and would have continued to be accommodated had she not quit. Ms. Lawrence explained there have been situations where employees with permanent restrictions have continued to work for the store and be accommodated since the date Petitioner quit.

With respect to her current condition, Petitioner testified she has to watch what she is doing to make sure she does not overdo it. She testified she is able to do laundry, watch TV, read, do puzzles and cook. Petitioner stated she is always has pain in her right leg and has problems with stairs. She is no longer able to dance, play with her five grandchildren or ice skate. Petitioner currently takes over the counter medications for pain. She last worked for the store on May 4, 2008 and has not attempted to returned to work since that time or performed a job search. She is not interested in undergoing additional surgery and is not currently seeing a doctor for her ankle.

With respect to (k), TTD benefits in dispute, the Arbitrator finds the following:

The Arbitrator finds Petitioner failed to prove she is entitled to additional TTD benefits. There is no dispute Petitioner quit working for Respondent when her work restrictions were being accommodated. Petitioner testified she put in her two week notice on April 23, 2008 and last worked for the store in May 2008. This was confirmed by Alicia Lawrence who was the store manager at the time of the accident and during the time Petitioner worked for the store. Ms. Lawrence confirmed Petitioner's work restrictions were accommodated during the time she worked for the store and would have continued to be accommodated had Petitioner not quit.

After Petitioner quit working for the store, she continued to be able to work light duty as indicated by both Dr. Holmes and Dr. Coe. On August 18, 2008, Dr. Holmes indicated Petitioner could return to work in a sedentary or semi-sedentary position. RX #10. Dr. Holmes indicated on February 9, 2009 Petitioner could either be off work or return to work in a sedentary position. On August 18, 2009, Dr. Holmes indicated Petitioner could return to work in a sedentary or semi-sedentary position. He stated on December 9, 2009 that Petitioner could work in a strictly sedentary position. On April 15, 2010, Dr. Holmes completed a Physical Medical Source statement in which he indicated Petitioner could sit for more than two hours and stand for five to ten minutes at a time, stand/walk less than two hours during an eight hour workday but could sit for at least six hours, required a seated position with her leg elevated and needed to use a cane and could not lift, twist, bend, crouch/squat or climb stairs/ladders. PX #5. The Arbitrator notes this is consistent with a sedentary or semi-sedentary position. The last doctor to see Petitioner was Dr. Coe on September 29, 2010. PX #6. Dr. Coe indicated Petitioner required work restrictions of a primarily sedentary position with limited walking, kneeling, squatting, stair climbing and a 10-lb lifting restriction. On November 15, 2011, Dr. Holmes indicated Petitioner could easily return to work in a sedentary if not semi-sedentary or light duty capacity. Dr. Holmes stated on October 31, 2012, Petitioner was capable of and able to return to work. RX #10. The medical evidence clearly demonstrates Petitioner continued to be able to work light duty after she quit. Furthermore, Ms. Lawrence testified Respondent would have continued to accommodate Petitioner's restrictions had she not quit.

Based on the foregoing, the Arbitrator finds Petitioner failed to prove she is entitled to additional TTD benefits.

With respect to (f) whether Petitioner's current condition of ill-being is causally related to the injury and (l) the nature and extent of the injury, the Arbitrator finds the following:

Petitioner is entitled to PPD benefits to the extent of 60% loss of use of the right foot and 15% man as a whole. Petitioner was diagnosed with a tibia-fibula fracture for which she underwent three surgical procedures consisting of fixation of the right ankle fracture with screws and rod, removal of the screws from the right tibia and excision of right medial leg ulcer with debridement of soft tissue including

skin and subcutaneous tissue and closure of leg wound. A fourth surgical procedure consisting of bone grafting in order to correct the nonunion of the fracture was recommended. Petitioner testified she does not wish to undergo another surgery. Following the third procedure, Petitioner was authorized to return to work full duty beginning on January 28, 2008. She was then given work restrictions of working five hours per day or 25 hours per week for eight weeks beginning on March 11, 2008 and returned to work for Respondent within the restrictions. Petitioner continued to work for Respondent within the work restrictions until she put in her two week notice on April 23, 2008. She last worked for the store on May 4, 2008. Petitioner testified she quit working for the store.

Although Petitioner wants the Arbitrator to ignore the fact she quit, it is undisputed Petitioner quit working for the store thereby removing herself from the labor force. The evidence establishes Petitioner's work restrictions were being accommodated at the time she quit and had she not quit, Respondent would have continued to accommodate her restrictions. The examining doctors of both Petitioner and Respondent established Petitioner could continue to work in a sedentary capacity. Furthermore, the testimony of the vocational experts, specifically Ed Steffan, establish there is a reasonable and stable labor market for Petitioner. Petitioner has made absolutely no attempt to return to work or look for a job. She has therefore failed to prove she is permanently and totally disabled.

The Arbitrator finds Petitioner's testimony that she was required to work outside of her restrictions unconvincing and not supported by the evidence based on the testimony of the witnesses and the evidence regarding Petitioner's work schedule.

The Arbitrator finds the testimony of Alicia Lawrence credible. Ms. Lawrence was the store manager on the accident date and during the time Petitioner worked for the store. She confirmed Petitioner returned to work with restrictions and the store was able to and did accommodate Petitioner's work restrictions until she quit working for the store. Although Petitioner testified she was required to work outside of the hourly restrictions placed by her doctor, Ms. Lawrence confirmed the store was aware of Petitioner's restriction on the number of hours she could work and accommodated the restriction. Ms. Lawrence explained the work schedules of the employees are generated by a computer and there is no way for the computer to know whether an employee has a restriction on the number of hours she can work. Therefore, if an employee has a restriction on the number of hours she can work and is scheduled to work more hours than the restriction allows, the store will adjust the hours so they are consistent with the restriction provided the employee alerts the store of the discrepancy. Ms. Lawrence stated the store is able to adjust the employee's hours the same day she is scheduled to work provided the employee notifies the store of the discrepancy. Ms. Lawrence recalled having one conversation with Petitioner regarding an issue with the number of hours she was scheduled to work. Ms. Lawrence testified she told Petitioner to notify her if there was an issue with the number of hours she was being scheduled so her hours could be adjusted. She further explained if Petitioner notified the store that her hours were not being accommodated, she would verify the restrictions and then adjust the hours accordingly. Ms. Lawrence confirmed Petitioner was not disciplined or given fewer shifts to work due to her restrictions. Furthermore, Ms. Lawrence testified Petitioner's work restrictions were being accommodated up until the time she quit and had Petitioner not quit, her restrictions would have continued to be accommodated.

The evidence regarding the days and hours Petitioner worked, specifically the work calendar and time clock archive, do not support Petitioner's contention that she was required to work outside her restrictions. PX #1, RX #8. Rather, the evidence demonstrates the store was accommodating Petitioner's work restrictions and complying with Petitioner's hourly restriction.

Immediately following the injury, Petitioner was authorized off work. On June 13, 2007, Dr. Sauer authorized Petitioner to return to work light duty with limited standing and walking, four hours per day for six weeks. RX #2; PX #3. Petitioner testified she returned to work on approximately June 18, 2007. The calendar confirms Petitioner worked a total of five days each week for the next six weeks. PX #1. Furthermore, the time clock archives confirm that for the next six weeks, Petitioner's hourly restrictions were also accommodated as she worked approximately 20 hours per week which equates to approximately four hours per day. RX #8:

6/16/2007-6/22/2007 = 20.24 hours worked; 5 days worked
6/23/2007-6/29/2007= 20.39 hours worked; 5 days worked
6/30/2007-7/6/2007 = 20.55 hours worked; 5 days worked
7/7/2007-7/13/2007 = 20.07 hours worked; 5 days worked
7/14/2007-7/20/2007= 20.15 hours worked; 5 days worked
7/21/2007-7/27/2007 = 19.99 hours worked; 5 days worked

Dr. Sauer next adjusted Petitioner's work restrictions on July 25, 2007. At that time, he authorized Petitioner to return to work light duty with limited standing and walking, four hours per day, five days per week, for two months. PX #3; RX #2. PX #1 confirms for the next two months, Petitioner worked five days per week, which is consistent with her work restrictions. The time clock archives also confirm that for the next eight weeks, Petitioner's hourly restrictions were accommodated as she worked five days each week for approximately four hours each day or 20 hours per week. RX #8:

7/28/2007- 8/3/2007 = 20.18 hours worked; 5 days worked
8/4/2007-8/10/2007 = 20.02 hours worked; 5 days worked
8/11/2007-8/17/2007 = 20.13 hours worked; 5 days worked
8/18/2007-8/24/2007 = 20.23 hours worked; 5 days worked
8/25/2007-8/31/2007 = 19.21 hours worked; 5 days worked
9/1/2007-9/7/2007 = 20.11 hours worked; 5 days worked
9/8/2007-9/14/2007 = 20.19 hours worked; 5 days worked
9/15/2007-9/21/2007 = 20.08 hours worked; 5 days worked

On September 26, 2007, Dr. Sauer authorized Petitioner to return to work light duty with limited walking and standing, 20 hours per week for six weeks. PX #3; RX #2. PX #1 indicates that for the next six weeks, Petitioner worked five days per week, consistent with the work restrictions. Additionally, the time clock archives also indicate the claimant worked five days each week and approximately 20 hours per week. RX #8:

9/22/2007-9/27/2007 = 20.10 hours worked; 5 days worked
9/29/2007-10/5/2007 = 16.35 hours worked; 5 days worked
10/6/2007-10/12/2007 = 0 hours worked
10/13/2007-10/19/2007 = 20.12 hours worked; 5 days worked
10/20/2007-10/26/2007 = 20.36 hours worked; 5 days worked

Petitioner returned to Dr. Sauer on October 23, 2007 at which time Dr. Sauer continued Petitioner's restrictions of sit down work with limited standing and walking, four hours per day and 20 hours per week for the next four weeks. PX #3; RX #2. PX #1 confirms Petitioner worked five days each week for the next four weeks. The time clock archive confirms Petitioner continued to work five days per week and approximately 20 hours per week. RX #8:

10/27/2007-11/2/2007 = 20.12 hours worked; 5 days worked
11/3/2007-11/9/2007 = 20.20 hours worked; 5 days worked

11/10/2007-11/16/2007 = 20.45 hours worked; 5 days worked
11/17/2007-11/23/2007 = 20.36 hours worked; 5 days worked

On November 27, 2007, Dr. Sauer authorized Petitioner to return to work light duty alternating sitting and standing, six hours per day for the next four weeks. PX #3; RX #2. PX #1 shows Petitioner continued to work five days per week for the next two weeks. The time clock archives also show Petitioner worked less than six hours per day or less than 30 hours per week for the next two weeks, which is again consistent with her work restrictions. RX #8:

11/24/2007-11/30/2007 = 22.01 hours worked; 5 days worked
12/1/2007-12/7/2007 = 27.36 hours worked.

Petitioner underwent surgery to her right lower leg on December 11, 2007 and was authorized off work following the procedure. She was then authorized to return to work light duty on January 14, 2008 performing sit down work and lifting her leg, four hours per day for two weeks. PX #3; RX #2. PX #1 shows Petitioner worked five days per week for the next two weeks. The time clock archives demonstrate Petitioner worked approximately four hours per day or 20 hours per week, which is again consistent with the work restrictions. RX #8:

1/12/2008-1/18/2008 = 12.26 hours worked; 3 days worked
1/19/2008-1/25/2008 = 20.61 hours worked; 5 days worked

Beginning on January 28, 2008, Dr. Sauer authorized Petitioner to return to work full duty and noted Petitioner may need to sit for periods to rest. PX #3; RX #2. Although Petitioner testified she began to work more during the month of January and was sometimes asked to work six days in a row, the Arbitrator does not find this is evidence that Respondent was not accommodating Petitioner's restrictions. Rather, PX #1 shows the entire time Petitioner worked for the store from February 5, 2007 through May 9, 2008, Petitioner worked six days in a row on one occasion from February 25, 2008 through March 1, 2008. During this period of time, Petitioner was authorized to work full duty and therefore, working six days in a row would not have been outside of her restrictions because Petitioner had no restrictions. Additionally, the time clock archives demonstrate during the time Petitioner was authorized to work full duty, she never worked more than 32.78 hours in one week. RX #8. The Arbitrator also finds Petitioner's testimony that she experienced more pain and would often go home in tears unconvincing. Again, the period of time Petitioner was referring to corresponds to when she was authorized to work full duty. Petitioner's testimony is also inconsistent with the medical records of Dr. Sauer on February 20, 2008 which indicate Petitioner was working full duty and tolerating work without much difficulty. PX #3; RX #2.

On March 11, 2008, Petitioner returned to Dr. Sauer who again authorized her to return to work light duty working a maximum of five hours per day or 25 hours per week for the next eight weeks. PX #3; RX #2. PX #1 demonstrates Petitioner continued to work five days per week. The time clock archive shows Petitioner continued to work within her hourly restriction of 25 hours per week until she quit working for the store. RX #8:

3/8/2008-3/14/2008 = 18.61 hours worked; 3 days worked
3/15/2008-3/21/2008 = 10.06 hours worked; 2 days worked
3/22/2008-3/28/2008 = 20.20 hours worked; 4 days worked
3/29/2008-4/4/2008= 23.10 hours worked; 5 days worked
4/5/2008-4/11/2008= 23.32 hours worked; 5 days worked
4/12/2008-4/18/2008= 20.32 hours worked; 5 days worked
4/19/2008-4/25/2008= 25.16 hours worked; 5 days worked

4/26/2008-5/2/2008= 16.21 hours worked; 4 days worked

5/3/2008-5/9/2008= 12.38 hours worked; 3 days worked

Based on the evidence contained in the work calendar and time clock archives, the Arbitrator finds Petitioner's testimony that she was being required to work more hours than allowed by her work restrictions, to be unconvincing. Instead, the Arbitrator finds the evidence establishes the opposite and shows Respondent was accommodating the hourly restrictions set forth by the claimant's treating doctor. When taken with the testimony of Ms. Lawrence who also confirmed the store was accommodating Petitioner's work restrictions, the Arbitrator finds the evidence proves Respondent was accommodating Petitioner's restrictions until the time she quit in May of 2008.

From a medical standpoint, the evidence shows Petitioner remained able to work in a sedentary or light duty capacity. Both the examining doctors of Petitioner and Respondent clearly felt Petitioner could return to work with restrictions. Dr. Holmes consistently opined Petitioner could return to work in a sedentary capacity, at a minimum. Petitioner first saw Dr. Holmes on August 14, 2008 for purposes of an IME at the request of the Respondent. Dr. Holmes opined Petitioner's condition was causally related to the work accident and opined she could return to work in a **sedentary or semi-sedentary** position. RX #10.

Petitioner saw Dr. Holmes a second time on February 9, 2009 for re-evaluation. Dr. Holmes recommended a bone grafting procedure which would give Petitioner an 85-90% chance of healing. He disagreed with the rod removal procedure suggested by Dr. Lang as he felt the procedure would not stabilize the tibia. Dr. Holmes opined Petitioner should be either off work or could work in a **strictly sedentary position.** On August 18, 2009, Dr. Holmes prepared an addendum to his report. He opined Petitioner would benefit from surgery and again recommended the bone grafting procedure. Dr. Holmes felt Petitioner had not yet reached MMI and therefore did not recommend a full duty return to work, but he did indicate Petitioner could work in a **sedentary or semi-sedentary capacity** until a decision was made regarding surgery. RX #10.

On December 9, 2009, Petitioner saw Dr. Holmes a third time. At that time, Dr. Holmes recommended a repeat CT scan and indicated Petitioner could return to work in a **strictly sedentary position.** Following the CT scan, Dr. Holmes prepared an addendum to his report in which he opined the fracture was not completely healed and recommended a re-evaluation to determine whether Petitioner still had pain from a continued nonunion of the tibia. RX #10.

Petitioner saw Dr. Holmes a fourth time on April 15, 2010. Petitioner admitted she requested a consultation with Dr. Holmes to discuss the surgery he was recommending. However, she also testified she took paperwork for Dr. Holmes to completed, specifically a Physical Medical Source Statement, which was provided by her attorney for purposes of her SSDI case. The Arbitrator finds this suspicious. Dr. Holmes recommended an unrelated consultation with a dermatologist for ringworm on her foot and an evaluation with a pain management doctor to resolve pain before surgery. Dr. Holmes completed the Physical Medical Source Statement in which he indicated Petitioner could **sit for more than two hours and stand for five to ten minutes at a time, stand/walk less than two hours during an eight hour workday but could sit for <u>at least</u> six hours, required a seated position with her leg elevated and needed to use a cane and could not lift, twist, bend, crouch/squat or climb stairs/ladders.** The Arbitrator finds the Physical Medical Source Statement indicative of Petitioner's ability to work and consistent with Dr. Holmes' prior opinions that Petitioner could work in a sedentary or semi-sedentary position. RX #10; PX #5.

On November 15, 2011, Dr. Holmes prepared an addendum report. Dr. Holmes' opinions regarding surgery did not change as he was still recommending the bone grafting procedure which he felt was a minor procedure and had an 80-90% chance of improving Petitioner's condition. Dr. Holmes otherwise opined Petitioner could return to work in a **sedentary, if not semi-sedentary or light duty capacity,** but recommended an FCE to determine restrictions. RX #10.

After reviewing the FCE results and a job description for a fitting room associate, Dr. Holmes prepared an addendum report dated October 31, 2012. His opinions regarding surgery did not change and Dr. Holmes stated if Petitioner did not undergo surgery, she would be at MMI. Although Dr. Holmes could not provide a definite opinion regarding whether the fitting room position would be consistent with a sedentary position, he opined **Petitioner was capable and able to return to work.** RX #10.

The opinions of Dr. Coe are consistent with the opinions of Dr. Holmes that Petitioner could return to work in a sedentary capacity. Dr. Coe examined Petitioner at the request of her attorney on September 29, 2010. Dr. Coe was also the last doctor who has seen Petitioner. He opined Petitioner **required work restrictions which included a primarily sedentary position with limited walking, kneeling, squatting, stair climbing and a 10-lb lifting restriction.** PX #6.

The opinions of Dr. Holmes and Dr. Coe are consistent as both doctors agreed Petitioner was capable of returning to work in a sedentary capacity at a minimum and therefore establish Petitioner remained able to work in a light duty capacity.

The opinions of Ed Steffan are more credible than the opinions of Susan Entenberg. Ms. Entenberg's opinions are biased as 85% of the vocational opinions she provides are at the request of the Petitioner. PX #20 at 34. Petitioner did not perform a job search and Ms. Entenberg did not perform a labor market survey. Id at 35. In reaching her opinions that there is no stable labor market for Petitioner and Petitioner is not a candidate for vocational rehabilitation, Ms. Entenberg relied largely on the Physical Medical Source Statement prepared by Dr. Holmes on April 15, 2010 for purposes of Petitioner's SSDI case, which has no relevance or bearing on the case at hand. However, Ms. Entenberg misread the physical capabilities indicated by Dr. Holmes. Specifically, Ms. Entenberg testified Petitioner could only sit for 30-45 minutes at a time and indicated this in her report. Id at 36. Her opinions were therefore based on this understanding. However, on cross-examination, Ms. Entenberg admitted she was not aware of and did not include in her report that Dr. Holmes stated Petitioner could sit 30-45 minutes up to two hours and she could sit **six** hours out of an eight hour workday. Id at 37-38.

Despite testifying she relied on the doctors' opinions regarding work status and admitted if work status was adjusted it could change her opinions, Ms. Entenberg admitted she was not aware of and did not review the November 15, 2011 report of Dr. Holmes. PX #20 at 35-36; 49-50. She was therefore not aware Dr. Holmes felt Petitioner could return to work in a sedentary if not semi-sedentary or light duty capacity. Ms. Entenberg was also not aware Dr. Holmes was recommending a minor surgery which had an 80-90% chance of improving Petitioner's condition. Id at 53. Ms. Entenberg therefore based her opinions on outdated information.

Furthermore, although she admitted she was aware of Dr. Coe's report and his opinions regarding work status, Ms. Entenberg completely disregarded and made absolutely no mention of Dr. Coe's opinions regarding work status in her report. PX #20 at 38-39. Ms. Entenberg's opinions are not credible and are therefore given little weight.

The opinions of Ed Steffan are more credible than the opinions of Ms. Entenberg. Mr. Steffan testified a readily available and stable labor market existed for Petitioner matching her rehabilitation variables. RX #1 at 11, 20. Mr. Steffan considered all information regarding Petitioner. Unlike Susan

Entenberg who only reviewed the initial reports of Dr. Holmes and the Physical Medical Source Statement, Mr. Steffan reviewed all of Dr. Holmes' reports. He testified he also considered the Physical Medical Source Statement which is used in SSDI cases, but felt it was outdated as Dr. Holmes prepared a subsequent report dated November 15, 2011 in which he again addressed Petitioner's work restrictions. Id at 54. Additionally, Mr. Steffan testified he also reviewed Dr. Coe's report, which is dated after the Physical Medical Source Statement, and also addressed Petitioner's work restrictions. Id at 8, 51. Mr. Steffan therefore considered all information regarding Petitioner's physical capabilities when rendering his opinions.

Unlike Ms. Entenberg, Mr. Steffan felt Petitioner had transferrable skills from her prior work as a CNA and apartment demonstrator which she could use in a sedentary position. RX #1 at 16-17. Also unlike Ms. Entenberg, Mr. Steffan performed a labor market survey in which he identified 10 employers with 15 positions consistent with Petitioner's rehabilitation variables. Id at 9. Mr. Steffan also identified seven employers with nine positions available within Petitioner's restrictions paying $8.75-$13.00/hour at the time the labor market survey was performed and which were located in the Rockford labor market. Id at 9-11. However, Mr. Steffan testified he felt Petitioner could perform other jobs than those listed in the labor market survey. Id at 17.

Following the labor market survey, Mr. Steffan prepared two additional reports in which he identified additional examples of positions Petitioner could access if she wanted to return to work which included 84,950 cashier positions, 4,206 switchboard operator positions, 66,640 customer service representative positions, 31,960 team assembler positions, 38,410 security guard positions, and 26,740 receptionist/information clerk positions. RX #1 at 18-19. Mr. Steffan explained he conservatively estimated 10% of the positions identified would be sit down, but believed a greater number would be available. Id at 18. Additionally, he testified he looked at the Bureau of Labor Statistics and identified in excess of 10,000 positions related to clerk and entry level unskilled positions which would be available to Petitioner. Id at 19. He therefore concluded there was a readily available and stable labor market for Petitioner. Id at 20.

When discussing the number of positions identified, Mr. Steffan explained he used the Chicago-Joliet-Naperville area. RX #1 at 18. He acknowledged the Rockford labor market is different and has less jobs available within the job positions he identified. Id at 11, 46. However, of the statistics related to the Rockford labor market which were presented to him at his deposition, Mr. Steffan testified there were jobs available within the positions he previously identified. Id at 48-49. Using the most conservative estimate of 10% and the information presented to him regarding the Rockford labor market, Mr. Steffan testified approximately 1000-1200 jobs would be available for Petitioner in the Rockford labor market alone. Id at 50. He further testified he did not list every possible job Petitioner could perform and Petitioner had access to a labor market greater than just the town of Rockford. Id at 55. Regardless, Mr. Steffan established there is a readily available and stable labor market for Petitioner. The Arbitrator therefore finds the testimony of Mr. Steffan to be credible and adopts his opinions over those of Susan Entenberg.

The Arbitrator notes Mr. Steffan was asked several questions on cross-examination regarding various factors which may preclude employment in a Social Security case, including the number of days per months a person could miss, the number of unscheduled breaks, non-exertional impairments, and being off task. RX #1, pgs. 35-41. The Arbitrator notes these are all factors considered by the Social Security Administration when evaluating a person's disability which have absolutely no relevance to the

case at hand. Inasmuch as this testimony was given from a Social Security Administration standpoint, the Arbitrator finds it irrelevant and gives it no weight.

Petitioner quit working for Respondent when her restrictions were being accommodated thereby removing herself from the labor force. Had Petitioner not quit, her restrictions would have continued to be accommodated. Both Dr. Holmes and Dr. Coe agreed Petitioner could continue to work at a minimum in a sedentary capacity. Petitioner wants the Arbitrator to ignore the fact she quit. Regardless of whether Petitioner quit, the testimony of the vocational experts, specifically Mr. Steffan, establishes there is a reasonable and stable labor market available for Petitioner. Petitioner has made absolutely no attempt to return to work or look for a job. For all these reasons, Petitioner failed to prove she is permanently and totally disabled. She is therefore entitled to PPD benefits to the extent of 60% loss of use of the right foot and 15% man as a whole.

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

Before the Illinois Workers' Compensation Commission

TAMMIE HOFFARD,

Petitioner,

vs.

No. 11 WC 39217
15 IWCC 0769

STATE OF ILLINOIS.
DU QUOIN IMPACT
INCARCERATION PROGRAM,

Respondent.

ORDER

The Commission on its own Motion recalls the Decision and Opinion on Review of the Illinois Workers' Compensation Commission dated October 21, 2015 under Section 19(f) of the Act.

The Commission is of the opinion that the Commission's Decision and Opinion on Review dated October 21, 2015 should be recalled due to a clerical error. The Decision should read **28.5 weeks**, as provided in §8(e), for the reason that the injuries sustained caused 10% loss of use of the left hand and 5% loss of use of the right hand.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated October 21, 2015 is hereby recalled and a Corrected Decision and Opinion on Review is issued simultaneously. The parties should return their original decision to Commissioner Michael J. Brennan.

Dated: OCT 30 2015

Michael J. Brennan

10/29/15
MJB:tdm
052

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TAMMIE HOFFARD,

Petitioner,

vs.

NO: 11 WC 39217
15 IWCC 0769

STATE OF ILLINOIS,
DU QUOIN IMPACT
INCARCERATION PROGRAM,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical, prospective medical, notice, temporary total disability (TTD), and permanent partial disability (PPD), and being advised of the facts and applicable 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.

So that the record is clear, and there is no mistake as to the intentions or actions of the 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. The Commission has considered all of the testimony, exhibits, pleadings and arguments submitted by the parties. The Commission finds that Tammie Hoffard sustained 10 percent loss of use of the left hand as a result of her work-related injuries. The Commission further modifies the PPD rate from $698.39 to $695.78, the maximum PPD rate pursuant to Section 8(b)4 of the Act. All else is affirmed and adopted.

According to Section 8.1(b) of the Act, for accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

The Commission adopts the Arbitrator's well-reasoned analysis of Section 8.1(b). The Commission notes, however, that Petitioner underwent left carpal tunnel release. She did not undergo surgery for her right carpal tunnel syndrome. Because of this, the Commission finds that Petitioner sustained 10% loss of use of the left hand, and affirms the award of 5% loss of use of the right hand.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 13, 2015, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $775.99 per week for a period of 1-3/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 per week for a period of 28.50 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused 10% loss of use of the left hand and 5% loss of use of the right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all reasonable and necessary medical expenses under §8(a) of the Act and subject to the medical fee schedule. Respondent shall have a credit for all amounts paid through its group carrier, but shall indemnify and hold Petitioner harmless from any claims regarding payment of any amount

for which it is receiving this credit, pursuant to Section 8(j) of the Act.

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

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

DATED: OCT 30 2015

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB/tdm
O: 8/24/15
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HOFFARD, TAMMIE
Employee/Petitioner

Case# **11WC039217**

15IWCC0769

SOI/DuQUOIN IMPACT INCARCERATION PROGRAM
Employer/Respondent

On 1/13/2015, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

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

0499 CMS RISK MANAGEMENT
801 S SEVENTH ST 6M
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0558 ASSISTANT ATTORNEY GENERAL
KENTON OWENS
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

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

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

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

JAN 13 2015

RONALD A. RASSIA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Tammie Hoffard
Employee/Petitioner

v.

State of Illinois/Du Quoin Impact Incarceration Program
Employer/Respondent

Case # 11 WC 39217

Consolidated cases: _____

15IWCC0769

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 **Edward Lee**, Arbitrator of the Commission, in the city of Herrin, on **November 12, 2014**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

15IWCC0769

FINDINGS

On **September 13, 2011**, 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 $**60,527.00**; the average weekly wage was $**1,163.98**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay the reasonable and necessary medical expenses as outlined in Petitioner's group exhibit. Respondent shall have credit for all amounts paid through its group carrier, but shall indemnify and hold Petitioner harmless from any claims regarding payment of any amount for which it is receiving this credit, pursuant to §8(j) of the Act.

Respondent is liable for the temporary total disability benefits of $775.99/week for 1 3/7 weeks as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $698.39/week for 20.5 weeks, because the injuries sustained caused the 5% loss of the left hand, as well as the 5% loss of the right hand, as provided in Section 8(e) of the Act.

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

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

Signature of Arbitrator

1/8/14
Date

JAN 13 2015

FACTS

At the time her injuries manifested, Petitioner was a forty-nine (49) year old correctional counselor for the State of Illinois at its Du Quoin Impact Incarceration Program facility. (T.10-11). Petitioner testified that this facility is similar to a military boot camp, and that the facility houses approximately 230 inmates. (T. 11). Petitioner indicated that she had worked at Du Quoin since 2010, and prior to 2010, she was employed at a number of other correctional facilities for the State of Illinois. (T.11). Petitioner also testified that she prepared a job description detailing all of the job titles as well as the duties she was required to perform in those positions with the State of Illinois in her thirty (30) years of employment. (T.13-14). This was admitted into evidence as Petitioner's Exhibit 8.

When asked to describe her job duties on a daily basis at Du Quoin, Petitioner testified:

> I do a call line, which basically just includes having the inmates come to the office and address whatever issues that they may have. Depending on the day, if we've had a recent intake I'll do an orientation class. If we have need for a parole school, I will do a parole school with the inmates that are soon to be graduating. It just kind of depends on the day. I do a lot of computer entry and also a lot of computer inquiry depending on what the issue is that the inmates have at the time. (T. 12-13).

When asked to describe how she would characterize her work for the State of Illinois over the past thirty (30) years, Petitioner testified that she would typically spend eighty to ninety (80-90) percent of her time performing clerical work, which included computer work and data entry, and that the remaining ten to twenty (10-20) percent of her job would involve hand writing reports. (T.22; PX8).

For the first five (5) years of her employment with the State of Illinois, beginning in 1984, Petitioner testified that her job required the use of a manual typewriter, which she testified was more difficult and required more force on her upper extremities, and that until approximately 2009, she was required to use an electric typewriter, which she also indicated required more force than a modern day keyboard would (T.23-24; T. 47, PX8).

On cross-examination, Petitioner was asked how often she ran a parole school, which she testified involved explaining to soon-to-be-graduated inmates how to complete various documents before their graduation. (T.42). Petitioner testified that she did not run a parole school each week, and would only hold these courses two to three (2-3) times per month. (T.42). On the several days per month that she ran a parole school, Petitioner acknowledged that she would typically spend less than 5-6 hours per day typing. (T.42).

At the time of trial, Respondent also submitted Respondent's Exhibit 15, which were medical records from Petitioner's primary care physician obtained by subpoena, into evidence. (RX15). Respondent's Exhibit 15 contains the results of a nerve conduction study performed on Petitioner's upper extremities at Neurology of Southern Illinois, which was dated April 25, 2005. Notably, at that time, the nerve conduction studies revealed no electrographic evidence of carpal tunnel syndrome. (RX15). Petitioner testified that she did recall undergoing this test in 2005

when presented with the medical records confirming same. (T.46). She further indicated that after this test was performed, she would simply have kept working to the best of her ability. (T.51).

Petitioner testified that in the course of performing her job duties for the State, she began to notice symptoms in her upper extremities, and specifically began to experience numbness and tingling, as well as pain in her wrist, thumb, index and middle fingers. (T.14). She indicated that she ultimately sought medical care and treatment for these symptoms with her primary care physician, and saw Ann Browning, a physician's assistant, on September 13, 2011 for these complaints. (T.15). Petitioner testified that her physician suspected carpal tunnel syndrome, and a nerve conduction study was recommended as a result. (T.15).

Specifically, the records reveal that Petitioner presented to her primary care physician's office on September 13, 2011 with complaints of bilateral hand pain at a level of seven out of ten (7 out of 10), left greater than right. (PX3, Dr. Karen Strack, 9/13/11). It was noted that Petitioner had difficulty buttoning buttons, opening bottles, and with any activity that required thumb and index grasp. It was also noted that Petitioner was employed with the Department of Corrections as a counselor, and she was required to perform "lots of keyboarding" in the course of her employment. *Id.* Ms. Browning's assessment was left hand pain, and recommended a nerve conduction study of Petitioner's bilateral upper extremities, carpal tunnel splints, non-steroidal anti-inflammatory medication, and that Petitioner consider an orthopedic consultation. *Id.*

Petitioner testified that she was ultimately referred to an orthopedic specialist, Dr. George Paletta, who discussed her job duties with her. (T.16-17). Petitioner acknowledged that according to a phone message from Dr. Strack's office, she was referred to Dr. Paletta by her attorney's office. (T.26-27).

On October 12, 2011, Petitioner presented to Dr. George Paletta, a board certified orthopedic surgeon. Dr. Paletta took the following history of Petitioner's complaints:

> This is the first visit for the 49-year-old right-hand dominant white female. She works as a correctional counselor. She works at DuQuoin Impact Incarceration Program. She is a counselor for up to 200 inmates. She states that her job involves a lot of typing and writing. She states that 90% of her job duties are typing either data inquiry or entry. She states the remaining 10% of the day would be forms completion. When I asked her what kind of counseling she does for the inmates, she states that basically all she does is type and write. She states that two days per week she holds orientation or parole class. She states that on the days that she is doing orientation or parole class, 80% of her time spent on the computer, 5% of the time spent completing the forms, and 15% of class participation or presentation. (PX5, Dr. George Paletta, 10/12/11).

Dr. Paletta also noted that Petitioner presented with bilateral wrist pain, as well as numbness and tingling, left greater than right, and pain in the region of the thenar eminence, which Dr. Paletta explained is the fleshy prominence at the base of the thumb. (PX5, Dr. Paletta,

10/12/11; PX12, Deposition of Dr. Paletta, p. 49). He indicated that she had been employed in her current position for approximately one year, but that she had worked for the State of Illinois since 1984 and has been in similar jobs throughout that time. (PX5, Dr. Paletta, 10/12/11). At that point, Dr. Paletta's impression was possible carpal tunnel syndrome bilaterally, and no evidence of De Quervain's syndrome. *Id.* He recommended that EMG/nerve conduction studies be performed on Petitioner's bilateral upper extremities, as well as cock-up splints and anti-inflammatory medication. Dr. Paletta also opined that based on his understanding of Petitioner's job description and job requirements, that her data entry and computer activity would be an aggravating factor in her potential carpal tunnel syndrome. *Id.* He also acknowledged that while her age and gender would serve as risk factors for peripheral compression neuropathies such as carpal tunnel syndrome, that she had no other identifiable systemic conditions that would increase her risk for carpal tunnel syndrome. *Id.* Dr. Paletta opined that Petitioner could continue to work full duty. *Id.*

On October 19, 2011, Dr. Paletta reviewed the results of Petitioner's nerve conduction studies, which were performed by Dr. Daniel Phillips, and demonstrated a moderate sensory and motor medial neuropathy at the level of the right carpal tunnel syndrome, with a more severe carpal tunnel noted on the left side. (PX4, Neurological and Electrodiagnostic Institute, 10/12/11; PX5, Dr. Paletta, 10/19/11). He also noted that the nerve conduction study showed no evidence of neuropathy at the level of the cubital tunnel. *Id.*

At that point, Dr. Paletta recommended continued conservative treatment, but that if Petitioner did not experience improvement in the next six to eight weeks, he would recommend carpal tunnel release, with the left side performed first. *Id.*

Petitioner returned to Dr. Paletta on January 9, 2012 with continued complaints of numbness and tingling in her hands, with the left worse than the right. As a result, Dr. Paletta recommended the following: "I had a discussion with the patient regarding treatment options. Option #1 is to continue symptomatic treatment. Option #2 is to consider surgical treatment with carpal tunnel release. The left is much more symptomatic than the right. As such, she wants to consider surgical treatment. I would recommend the left be done first." *Id.*

On January 19, 2012, Petitioner underwent a carpal tunnel release on the left side. Following surgery, Dr. Paletta noted improvement in her left-sided symptoms, but with some continued pain at the base of her left thumb. (PX5, Dr. Paletta, 2/3/12). At that point, Dr. Paletta indicated that he would not recommend right-sided surgery, as she continued to have minimal symptoms. *Id.* He advised her to follow up in six weeks' time. *Id.* Dr. Paletta returned Petitioner to work full duty as of February 3, 2012. *Id.*

Petitioner was last seen by Dr. Paletta on March 16, 2012. At that time, Dr. Paletta noted continued improvement in her left-sided symptoms, and reported that Petitioner had essentially complete relief of her carpal tunnel symptoms on that side. (PX5, Dr. Paletta 3/16/12). It was indicated that Petitioner did have some basal joint symptoms. *Id.* Dr. Paletta recommended that since Petitioner did have some symptoms related to de Quervain's and basal joint arthritis, he recommended use of a Cool Comfort splint as needed, and placed her at maximum medical improvement with regard to her bilateral carpal tunnel syndrome. *Id.* Specifically, Dr. Paletta

indicated that Petitioner's symptoms were relatively mild on the right, and he would recommend holding off on any right-sided surgery at that point. *Id.*

Dr. Paletta also testified by way of deposition on November 6, 2014, and his deposition transcript was admitted into evidence as Petitioner's Exhibit 12. Dr. Paletta testified that he is a board certified orthopedic surgeon with fellowship training in sports medicine whose practice is primarily confined to problems of the upper extremity, shoulder, elbow, hand and the knee. (PX12, p. 4). Dr. Paletta further testified that approximately thirty-five (35) of his practice involves caring for injured workers, and the remaining percentage of his practice involves treating commercially insured patients. (PX12, p. 5-6). A small percentage of Dr. Paletta's practice also involves performing independent medical evaluations for insurance companies, employers, attorneys' offices. *Id.* He indicated that he performs approximately 3-4 IMEs per week, and 50% of those were performed at the request of employers, and 50% at the request of an employee in workers' compensation cases. *Id.* at 6. Dr. Paletta also testified that he has performed IMEs at the request of the Respondent in this case, the State of Illinois. *Id.* at 6-7.

Dr. Paletta testified consistently with his records that Petitioner presented to him with complaints of bilateral hand pain, as well as numbness and tingling, and indicated that he discussed her employment with the State of Illinois with her at her first visit on October 12, 2011. *Id.* at 13-14. Dr. Paletta confirmed that at the time he first saw Petitioner, she provided him with a written job description, which was admitted into evidence at trial as Petitioner's Exhibit 8. *Id.* at 13-14. He reaffirmed his opinion that there was a causal connection between Petitioner's job duties and her bilateral carpal tunnel syndrome, and specifically testified:

> Well, she reported to me, again, this long history of spending 90 percent of her time typing and doing data entry, and I felt that that was over a long enough duration of time and hand-intensive enough that it would be a contributing factor. *Id.* at 17.

Additionally, Dr. Paletta also testified that in his opinion, Petitioner's left basal joint arthritis was aggravated by her work duties. *Id.* at 25.

Dr. Paletta also testified that a concept known as a latency period can be applicable to conditions like carpal tunnel syndrome. He specifically indicated that a latency period is defined as "a period of time that basically expires or occurs from exposure to something and the development of symptoms related to that exposure. So, in medicine, a good example is asbestos exposure. An individual may have exposure to asbestos, but it takes a long time to develop an asbestos-released lung condition, and that period of time from exposure to development of a related condition is considered a latency period. Smoking is another example. It takes a long time for people to develop lung cancer related to their smoking. It doesn't happen immediately at the time of exposure." *Id.* at 20-21. Dr. Paletta testified that a latency period is applicable "in syndromes or conditions that are considered cumulative repetitive trauma conditions, yes." There is a period of time that one has to experience those exposures before they will develop symptoms, so yes, it does as a concept apply." *Id.* at 21.

Dr. Paletta was also asked about Petitioner's use of a manual and electric typewriter, and was asked the following question: "In looking at the job description that Ms. Hoffard provided

you with, it looks like her work may have transitioned out of use of a typewriter. By her accounts, it appears in 2009. Even if she was performing less strenuous or less hand-intensive job duties beginning in 2009, would you have expected her carpal tunnel syndrome to not deelop or not become symptomatic necessarily?"

Dr. Paletta provided the following response:

> Well, it's certainly possible that it would not have been symptomatic at that point and that it became symptomatic after the transition from typewriter to non-typewriter, and as you said, it looks like that occurred in November of 2009, so two years before I saw her." *Id.* at 21-22.

He was then asked, "Any why would it be that, even if somebody was removed from some of the stressors, that they may still develop those conditions?"

Dr. Paletta then replied:

> Well, the nerve is—runs through a space called the carpal tunnel. It's a confined space, and increased pressure on that can affect the nerve and cause the symptoms. But this is something that occurs gradually over time, and there may have been enough damage up to that point that it was—I'll use the word irreversible—in the sense that even a transition from that more demanding work to the less demanding work wasn't going to reverse the process of the development of that condition. Simple as that. *Id.* at 22.

Dr. Paletta was also provided with the forms contained in Respondent's Exhibit 7, and asked if viewing these documents would change his opinion on causal connection in this case. Dr. Paletta testified:

> Well, I'm not exactly sure what these represent in terms of the volume of work that she has to do. These are forms that appear to require some data entry, and she's signed all of those forms, but I'm not sure if this represents an hour of work, a day of work, a week of work. It's unclear what—exactly how much this represents. So it did not result in a change in my opinion at this point. *Id.* at 26-27.

Petitioner testified that she agreed with Dr. Paletta's treatment notes and the job description he testified to during his deposition. (T.17). Petitioner indicated that Dr. Paletta recommended a nerve conduction study, and following the completion of the study, he had advised her those studies demonstrated the presence of carpal tunnel syndrome in both of her upper extremities, but that the findings were worse on her left side. (T.17-18). She indicated that she ultimately underwent surgery on her left side, but that her right hand was never operated on. (T.18-19).

Following her consultation with her primary care physician's office, Petitioner reported her injury to Respondent by completing an employee's first notice of injury form on September 18, 2011. (PX9). Petitioner also confirmed that she provided notice of her injuries on September

18, 2011, to her supervisor, Mr. Campanella. (T.21). When asked why she reported her injuries on September 18, 2011, Petitioner testified: "Because of her suspect [sic] that it was carpal tunnel, and I thought just to be protected I probably should." (T.21).

Petitioner also testified that she attended an independent medical examination with Dr. James Williams at the request of Respondent. She testified that she spoke with Dr. Williams about her job duties with the State of Illinois, and described to him the same job duties that she did to Dr. Paletta. (T.24-25). Petitioner credibly testified that she was honest with Dr. Williams about her job and the frequency with which she performed certain activities. (T.24-25).

Respondent also had Petitioner examined pursuant to Section 12 of the Act by Dr. James Williams, who produced two reports, which were admitted into evidence as Respondent's Exhibits 5 and 6. Dr. Williams initially examined Petitioner on January 18, 2012, at which time he obtained an in-person history from Petitioner with regard to her job duties. The history taken from Petitioner on pages 2-3 of his January 18, 2012 report appears to be identical to Petitioner's Exhibit 8, which Petitioner testified she authored. (RX5, p. 2-3). Dr. Williams also reviewed many other documents describing Petitioner's job duties, as evidenced in his report. (RX5). After review of all of the information provided to him by both Petitioner and Respondent, Dr. Williams opined:

> At this point, my current diagnosis is that Tammie has left thumb CMC joint arthritis as well as left and right carpal tunnel syndrome. From the job histories that Tammie has given me over the course of time it looks like she has done a lot of manual typewriter type work as well as completion of paperwork by hand. I note she is right hand dominant and Tammie states to me that her typing duties are now 90% of her day and other days it is 80% of her day. I do feel, in light of that, that her bilateral carpal tunnel syndrome could have been aggravated by her job duties of typing as it is greater than 6 hours per day as well as would her CMC joint arthritis. (RX5, p. 5-6). [Emphasis added].

Dr. Williams also noted: "I did find the patient to be honest and forthcoming. I did not find her to present any evidence of symptom magnification or malingering. She gave a good effort throughout the examination and all my opinions have been based upon a reasonable degree of medical and surgical certainty. I did review all the records with her and when there were discrepancies, I have noted those in my report." *Id.* at 6.

Subsequently, Respondent provided Dr. Williams with additional materials, and asked for a supplemental report, which was authored on November 1, 2012. In that report, which was admitted into evidence as Respondent's Exhibit 6, Dr. Williams opined, "in light of the information you have provided me, which are the forms filled out at DuQuoin by a Correctional Counselor II at the Du Quoin Impact Incarceration Program, it clearly illustrates the forms that are filled out." (RX6, p. 1). He continued:

> If indeed this is found to be correct that these are the forms which she fills out and indeed these are the signatures of which she has done, of which she is required to do, I obviously change my opinion; that does not appear

> to be very repetitive. It does not appear to be very time intensive and, obviously, it appears as through her typing is done intermittently. The only reason, obviously, I felt typing was an issue was due to the time as well as the fact she stated she used a manual typewriter, which obviously requires more force than does a regular typrwriter. Obviously, if this was the very infrequent typing of which she did though and the very infrequent writing of which she did, I do not feel her work duties would have been either aggravating or contributory to her problem. I feel more so that the CMC joint arthritis of which she had both on the left and right sides, as well as her hypertension, would have more likely been contributory than would her work duties.

Dr. Williams also testified by way of deposition, and his testimony was admitted into evidence as Respondent's Exhibit 14. Dr. Williams testified that he performs approximately 200 independent medical examinations on a yearly basis, and approximately 90% of those exams are at the request of employers in workers' compensation cases. (RX14, p. 35-36). Dr. Williams also estimated that he performs approximately half of his IMEs for the State of Illinois, which would equate to 100 IMEs. *Id.* at 36. Dr. Williams also confirmed that the concept of a latency period can occur in conditions like carpal tunnel syndrome and CMC joint arthritis, and that every individual's physiology is different and conditions may manifest themselves at different points in time. *Id.* at 40. He also testified that he believes Dr. Paletta is a very good physician. *Id.* at 42. Dr. Williams also acknowledged that the job description that Petitioner provided to him was identical to the one she provided to Dr. Paletta, and that in his January 18, 2012 report, he agreed with Dr. Paletta that her job duties for Respondent constituted an aggravating factor in the development of her carpal tunnel syndrome. *Id.* at 44.

With regard to the supplemental materials he was sent in anticipation of his supplemental report, Dr. Williams testified that he could not verify where or from whom these forms were obtained. *Id.* at 45-46. Dr. Williams also confirmed that he did not have any of Dr. Paletta's medical records with regard to Petitioner at the time of his deposition, and the only medical record of Dr. Paletta's that he was provided with were his October 12, 2011 and October 19, 2011 reports. *Id.* at 47-48. He further confirmed that he found Petitioner to be an honest and forthcoming individual when he saw her, and when asked:

Q: So if everything that Ms. Hoffard told you about her job duties is true isn't it correct that your opinion would be consistent with your first report which found that her carpal tunnel and CMC joint arthritis was aggravated by her job duties?

A: If indeed all that stuff is correct, yes.

Q: And just in your opinion, Doctor, who would know Ms. Hoffard's job the best?

A: I would hope Ms. Hoffard. *Id.* at 49-50.

Dr. Williams further acknowledged that Petitioner would be in the best position to describe the various forms he was provided with if in fact she was responsible for preparing them. *Id.* at 50-51.

At the time of trial, Respondent submitted several documents and forms into evidence as Respondent's Exhibit 7. (RX7). On direct examination, when Petitioner was asked to identify these forms, she testified that these "are some of the forms that I would do on a regular basis, depending on the circumstances. It's part of our forms procedure that we have at the boot camp." (T.26-27). When asked if the activity of simply filling out these forms was an accurate representation of what she is required to do throughout the day, she testified, "I don't believe they're inclusive. There are some other forms that I do that I don't believe were included in those." (T.27). Petitioner also testified that in addition to filling out these forms, she is also required to perform computer work and call lines with inmates. (T.27).

Following surgery, Petitioner testified that she has no further complaints with regard to her left hand. (T.28-29). With regard to her right hand, which was never treated surgically, Petitioner testified that her level of symptoms have remained the same, and she still experiences loss of range of motion, and occasional tingling. (T.29).

Respondent also called Clement Campanella, Petitioner's former supervisor, to testify at the time of trial. Mr. Campanella testified that he has known Petitioner for approximately four (4) years, and that they worked together during those years. (T.65). During cross-examination, the following dialogue took place:

Q: And is she [Petitioner] a good employee, in your opinion?

A: Yes, she was or is.

Q: Is she a hard worker?

A: Yes, she is.

Q: Is there anything—you were in the room when she testified in this case, correct?

A: That's correct.

Q: Was there anything that she described that was inaccurate, in your opinion?

A: Nothing came to mind, no.

Q: And I wrote this down, you testified earlier when you were talking about the job of a correctional counselor as Ms. Hoffard explained, would that indicate to you that she got the description of her job right?

A: I believe so. (T.65-66).

Mr. Campanella testified that when he worked as a correctional counselor supervisor at DuQuoin, in approximately 1997, he performed some of the same job duties that Petitioner would perform as a correctional counselor II, but acknowledged that correctional counselors had additional job duties that were previously Mr. Campanella also confirmed that he has never worked in any of the same positions as Petitioner throughout her tenure with the State of Illinois and was unable to testify about the details of those jobs. (T.66-68).

CONCLUSIONS OF LAW

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

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

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture,* 99 I.I.C. 0961. "The word 'accident' is not a technical legal term, and has been held to mean anything that happens without design, or an event which is unforeseen by the person to whom it happens…Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor." *Laclede Steel. Co. v. Industrial Comm.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (1955) citing *Baggot Co. v. Industrial Comm.*, 290 Ill. 530, 125 N.E. 254 (1919). Under Illinois law an injury need not be the sole factor, or even the primary factor of an injury, as long as it is a causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205, 797 N.E.2d 665 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, "[*A*] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037, 723 N.E.2d 846 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. *A.C.& S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (Ill. 2006).

In the repetitive trauma case of *Fierke*, the Appellate Court specifically applied the foregoing legal standard of causation specifically to a repetitive trauma case and noted that non-employment related factors that contribute to a compensable injury do not break the causal connection between the employment and a claimant's condition of ill-being. *Id.* at N.E.2d at 849. The Court specifically stated, "The fact that other incidents, whether work related or not, may have aggravated a claimant's condition is irrelevant." *Id.*

The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission recently noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All*

Steel, Inc. v. Indus. Comm'n, 582 N.E.2d 240 (1991) and *Edward Hines supra.* The Appellate Court in *Darling v. Indus. Comm'n* even stipulated that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 195, 530 N.E.2d 1135, 1142 (1st Dist. 1988).

In 2009, the Appellate Court issued a favorable decision in a repetitive case to a claimant in which the claimant's work was "varied" but also "repetitive" or "intensive" in that he used his hands, albeit for different task, for at least five (5) hours out of an eight (8) hour work day. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (Ill.App. 4th Dist., 2009). As was noted by the Commission and reiterated in the Appellate Court decision in *City of Springfield v. Illinois Workers' Compensation Comm'n*, "while [claimant's] duties may not have been 'repetitive' in a sense that the same thing was done over and over again as on an assembly line, the Commission finds that his duties required an intensive use of his hands and arms and his injuries were certainly cumulative." *Id.*

Additionally, as the *Fierke* Court noted, employment need only be *a* factor in the total condition of ill-being. *Fierke supra.* If a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 37 Ill.2d 123, 227 N.E.2d 65, 67-68 (Ill. 1967); see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 66 Ill.2d 234, 362 N.E.2d 339 (Ill. 1977). The same theory applies to cases in which the employee's pre-existing condition is aggravated by the repetitive nature of the employment. *Cassens Transport Co. Inc. v. Indus. Comm'n*, 262 Ill.App.3d 324, 633 N.E.2d 1344 (2nd Dist.1994).

Furthermore, in support of a finding of causal connection, the Arbitrator notes that the job duties performed by Petitioner, including computer keyboarding and data entry have been held to be compensable by the Commission in the very recent past. *See Lewis Bebout v. State of Illinois/Pinckneyville Correctional Center*, 14 IWCC 0167 (2014); *Toma Osman v. State of Illinois/Tamms Correctional Center*, 11 IWCC 0601 (2011); *Cynthia Jenkins v. State of Illinois/Southern Illinois University, Carbondale*, 14 IWCC 0335 (2014); *Nancy Rambo v. State of Illinois/Department of Transportation,* 12 IWCC 1020 (2012).

In this case, Dr. Paletta and Dr. Williams both opined that Petitioner suffered from bilateral carpal tunnel syndrome, as well as left CMC joint arthritis in her thumb. The Arbitrator finds it significant that both Dr. Paletta and Dr. Williams were provided with an identical job description from Petitioner, which indicated that 80-90% of her day involved keyboarding and typing, which would contribute to and aggravate her conditions. (PX10; RX14). Additionally, both physicians testified that Petitioner's prolonged use of a manual and electric typewriter over the course of many years caused her condition to become aggravated and worsen. The Arbitrator notes that both Dr. Paletta and Dr. Williams testified to the presence of a latency period and its applicability to cases involving peripheral compressive neuropathies such as carpal tunnel syndrome and basal joint arthritis, which explains why Petitioner's symptoms may not have manifested until after she had been exposed to more extreme repetitive forces from using a manual and electric typewriter.

The Arbitrator also finds Petitioner to be a credible witness who testified credibly on her own behalf regarding the details of her job duties, and also notes that her testimony was consistent with the job descriptions she prepared, as well as the testimony of Respondent's witness, Mr. Campanella. The Arbitrator also notes that despite Respondent's contention, the genesis of a referral to a physician is irrelevant, as attorneys are frequently and routinely involved in the referral process. *See Timothy Knop v. State of Illinois/Menard Correctional Center*, 14 IWCC 0303 (2014).

The Arbitrator also gives great weight to the fact that the Respondent's own expert, Dr. Williams, initially opined that Petitioner's cumulative job duties would be an aggravating factor in the development of her condition, and testified that if in fact Petitioner's job description to him was accurate, he would still find her work to be a contributing and aggravating factor in her conditions. The Arbitrator also assigns great weight to the testimony of Mr. Campanella, who testified credibly and without rebuttal that Petitioner was a hard worker, good employee, and that he agreed entirely with her description of her job duties for Respondent.

Issue (D): What was the date of the accident?

The manifestation date can be set as: **(a)** the date the employee actually became aware of the physical condition and its relation to work through medical consultation; **(b)** the date the employee requires medical treatment; **(c)** the date on which the employee can no longer perform work activities; or **(d)** when a reasonable person would have plainly recognized the injury and its relation to work. *Durand v. Industrial Commission*, 224 Ill.2d 53, 862 N.E.2d 918 (2007), *see also Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987); *Oscar Mayer & Co. v. Industrial Commission*, 176 Ill.App.3d 607, 531 N.E.2d 174 (3rd Dist. 1988); *Three "D" Discount Store v. Industrial Commission*, 198 Ill.App.3d 43, 556 N.E.2d 261 (4th Dist. 1989).

As the Appellate Court in *A.C. & S.* noted, the Supreme Court **deliberately** modified the standards for determining the date of injury for repetitive trauma cases in order provide protection for injured workers. *A.C. & S. v. Industrial Commission*, 304 Ill.App.3d 875, 710 N.E.2d 837, 840-841 (Ill. App. 1st Dist., 1999). It has even been permissible to change the date of accident during litigation as long as doing so would not prejudice the employer. *See Steven Beal v. Town of Normal,* 06 IL.W.C. 25261, 10 I.W.C.C. 0380 (2010). "The purpose behind the Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work." *Durand*, 862 N.E.2d at 925.

The law also allows Petitioner to select a manifestation date that coincides with discovery of injury and its relation to work after medical consultation. See *Steven Beal v. Town of Normal,* 06 IL.W.C. 25261, 10 I.W.C.C. 0380 (2010); *see also White v Worker's Compensation Commission*, 374 Ill.App.3d 907, 873 N.E.2d 388, 392-393 (4th Dist. 2007) (holding Petitioner could select accident date); *A.C. & S. v. Industrial Commission*, 304 Ill.App.3d 875, 710 N.E.2d 837, 841-842 (1st Dist. 1999).

In this case, Petitioner alleged a manifestation date of September 13, 2011, when her condition first required treatment, and as this was the date that she plainly recognized the injury

and its relation to work. The Supreme Court in *Durand* noted that it is common practice to set the manifestation date on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities. *Durand* citing *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 487 N.E.2d 356 (1985). Based upon said precedent, Petitioner has selected an appropriate manifestation date under the Act. The Arbitrator finds that Petitioner's injuries manifested on September 13, 2011.

Issue (E): Was timely notice of the accident given to Respondent?

The Act provides that notice may be given orally or in writing, regardless of the administrative procedures of the employer. 820 ILCS 305/6(c). The purpose of the notice requirement of the Act is to enable an employer to investigate an alleged accident, and to protect an employer from unjust or fraudulent claims. *Gano Electrical Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 631 N.E.2d 724, 727 (Ill. App. 4th Dist., 2004); *Thrall Car Manufacturing Co. v. Indus. Comm'n*, 64 Ill.2d 459, 356 N.E.2d 516 (1976). A claim is only barred if no notice whatsoever has been given. *Gano supra.* Because the legislature has mandated a liberal construction on the issue of notice, if some notice has been given, although inaccurate or defective, then the employer must show that he has been unduly prejudiced. *Gano supra*; *Thrall supra.*

The evidence clearly shows that Petitioner provided notice of her injuries. Petitioner testified without rebuttal that she provided written notice following her September 13, 2011 appointment with her primary care physician's office, and Petitioner's Exhibit 9 confirms that Petitioner provided notice to her supervisor on September 18, 2011, only five (5) days subsequent to this appointment. Respondent's ability to investigate was in no way impacted, and Respondent has not alleged or proved prejudice. The Arbitrator therefore finds that Petitioner met the notice requirements of the Act.

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

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

Upon a claimant's establishment of a causal nexus between injury and illness, employers are responsible for the employees' medical care reasonably required in order to diagnose, relieve, or cure the effects of the claimant's injury. *Plantation Mfg. Co. v. Indus. Comm'n,* 294 Ill.App.3d 705, 691 N.E.2d 13 (2000); *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill.App.3d 527, 758 N.E.2d 18 (1st Dist. 2001).

Causal connection has been resolved in Petitioner's favor, and Respondent's Section 12 examiner, Dr. Williams, agreed that the treatment rendered to Petitioner was reasonable for her condition.

Respondent is therefore ordered to pay the medical expenses outlined in Petitioner's group exhibit. Respondent shall have credit for the amounts paid through its group carrier but

shall indemnify and hold Petitioner harmless from any claims pertaining to the payment of medical expenses for which it is receiving this credit.

Respondent is liable for 1 3/7 weeks of temporary total disability to Petitioner under 8(b) of the Act as she credibly testified that she was taken off work for a period of time following her left carpal tunnel surgery. This is also reflected and documented in Dr. Paletta's medical records.

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

The Arbitrator notes that Pursuant to §8.1(b) of the Act, the nature and extent of Petitioner's injuries is to be reached by evaluating five factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. The Act provides that "no single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1(b)(v).

(i) **Level of Impairment**: Neither Party submitted an AMA rating. Therefore, the Arbitrator will use the remaining factors to evaluate Petitioner's permanent partial disability.

(ii) **Occupation**: Petitioner has returned full duty to her prior employment, but testified that she experiences occasional numbness and tingling as well as pain in the right hand.

(iii) **Age**: Petitioner was 49 years old at the time of her injury. She has diminished healing capacity as a result thereof.

(iv) **Earning Capacity**: Petitioner testified to several physical limitations as a result of her injury. While there is no direct evidence of reduced earning capacity contained in the record; based on the amount of typing and use of her upper extremities that Petitioner's job requires of her, it is reasonable to conclude that such repercussions will manifest in the near future. Accordingly, the Arbitrator places great weight on this factor.

(v) **Disability**: As a result of her injuries, Petitioner underwent a left carpal tunnel release, and was never surgically treated on the right side, despite positive Electrodiagnostic studies confirming the presence of carpal tunnel syndrome on the right. Petitioner testified that while she is essentially symptom free on the left following surgery, she still suffers from some residual symptoms on the right side, including occasional pain, numbness and tingling. (T.28-29). She was also diagnosed with CMC basal joint arthritis in her right thumb, which was treated conservatively.

Based upon the foregoing, Petitioner sustained serious and permanent injuries that resulted in the 5% loss of her left hand, and 5% loss of her right hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

SOTO, HUMBERTO Case# **12WC002366**
Employee/Petitioner

VILLAGE OF FOREST PARK
Employer/Respondent

On 10/28/2015, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.15% 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:

5511 DeCARLO LAW GROUP
ANITA M DeCARLO
6525 W NORTH AVE SUITE 204
OAK PARK, IL 60302

0507 RUSIN & MACIOROWSKI LTD
TOM CROWLEY
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

STATE OF ILLINOIS)

)SS.

COUNTY OF Cook)

☐ 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
AMENDED ARBITRATION DECISION

Humberto Soto
Employee/Petitioner

Case # **12** WC **002366**

v.

Consolidated cases:

Village of Forest Park
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ketki Steffen**, Arbitrator of the Commission, in the city of **Chicago**, on **June 5, 2015**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

O. ☐ Other _____

FINDINGS

On **11/17/2011**, 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 $**69,925.88**; the average weekly wage was $**1,344.73**.

On the date of accident, Petitioner was **40** years of age, ***married*** with **1** dependent children.

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

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

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

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

RESPONDENT SHALL PAY THE REASONABLE AND NECESSARY MEDICAL BILLS FROM LOYOLA UNIV. MEDICAL CENTER ($3,163.20), HOA ($539), ATHLETICO ($4026.00) AND LOYOLA PHYSICIANS ($1,371.00) AS PROVIDED IN SECTIONS 8(A) AND 8.2 OF THE ACT.

RESPONDENT SHALL PAY PETITIONER TEMPORARY TOTAL DISABILITY BENEFITS OF $896.49/WEEK FOR 10 2/7 WEEKS, COMMENCING 11/19/2011 THROUGH 01/29/2012, AS PROVIDED IN SECTION 8(B) OF THE ACT.

THE ARBITRATOR FINDS THAT PETITIONER SUSTAINED PERMANENT PARTIAL DISABILITY TO THE EXTENT OF 10% OF HIS RIGHT ARM PURSUANT TO $8(E)) 10 OF THE ACT. RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY BENEFITS OF $ 695.78/ **WEEK FOR 25.3 WEEKS.**

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.

Ketki S. Steffen — 10/27/15

Signature of Arbitrator Ketki Steffen — Date

FACTUAL HISTORY

The Petitioner, Humberto Soto, has worked for the Respondent, Village of Forest Park, as a firefighter and EMT for 8 years. The facts surrounding the incident/accident are largely uncontested.

Petitioner attended a training program at the Cicero Fire Academy entitled Advanced Firefighting. (Rx. 2) The course ran through November 14, 2011 to November 18, 2011. Petitioner testified that learned about the course through notice posted at work and that several of his fellow fire-fighters had attended such courses.

As required, Petitioner asked for and received permission to attend the course from his supervising fire chief, Steve Glinke. (Rx.2)

During the training, Petitioner was not in pay status but the Respondent did pay the tuition for the classes and accommodated the Petitioner by allowing him to adjust his schedule to attend the classes. Petitioner paid for his own transportation to go to and from the classes and paid for his own incidental expenses. Petitioner testified that the course attendance was purely optional and voluntary and he did so to obtain the Advance Technician Firefighter certification. This certification required the course completion as well as the Fire Service Vehicle Operator training as well as Vehicle and Machinery Operations training modules to the satisfaction of the Illinois State Fire Marshall. If he satisfactorily completed these courses he was entitled by the union contract to an annual stipend from the Village of Forest Park in the amount of $200.00 per year. Additionally, such certification also entitled him to a one-time grant of 24 hours paid time off, referred to as "comp. time", and would be eligible for up to three bonus points to be

considered in any promotional examination. This was part of his negotiated union benefits through his employer.

The Petitioner testified the completion of the course enabled him to become a better and more efficient firefighter/EMT, strengthening his techniques in firefighting including search and rescues, extractions, and assistance to other firefighters and other firefighting departments which is a benefit to the Village of Forest Park in making the community safer.

The Petitioner also testified that as a result of his completion of the requirements of the State Fire Marshall and his designation of Advanced Technician Firefighter by the Illinois State Fire Marshall, he was entitled by the union contract to an annual stipend from the Village of Forest Park in the amount of $200.00 per year. Additionally, as a result of the certification by the Illinois State Fire Marshall as an Advanced Technician Firefighter, the Petitioner was also entitled to a one-time grant of 24 hours paid time off, referred to as "comp. time", and would be eligible for up to three bonus points to be considered in any promotional examination.

The Petitioner testified the completion of the course enabled him to become a better and more efficient firefighter/EMT, strengthening his techniques in firefighting including search and rescues, extractions, and assistance to other firefighters and other firefighting departments which is a benefit to the Village of Forest Park in making the community safer.

During the week of this training at the Cicero Fire Academy, the Petitioner sustained an injury to his right arm. Specifically, on November 17, 2011, he was injured during a training exercise as he was helping lift a person. He testified that he felt a pop in his right biceps area with immediate pain and burning down to his hands.

Petitioner's partner, Tim Conrad, drove him to Loyola's emergency department at the direction of the Chief Glinke, who met them at Loyola. X-rays of the right arm were taken and

Petitioner was diagnosed with a possible distal biceps rupture. He returned to the class the next day to take a written exam but did not perform any of the physical activities. Ultimately, the Petitioner completed the course and also completed additional training modules. On October 29, 2012 he was awarded a certificate with the designation of Advanced Technician Firefighter by the Illinois State Fire Marshall. (Px. 8,9,10,11)

On November 18, 2011 Petitioner treated at Hinsdale Orthopedics with Dr. Justin M. Lareau. X-rays and MRI were taken. Petitioner also began treatment at Loyola University Medical Center with Dr. Douglas Evans. On November 21, 2011, Dr. Evans ordered an MRI of Soto's right elbow. The exam showed a moderate grade partial tear of the distal biceps. Dr. Evans reviewed the MRI and diagnosed a right elbow distal biceps tendon partial tear. It was noted that the tendon was not disrupted or retracted, and he was released with lifting restrictions not to exceed five pounds with his hand. He was also told to continue wearing the brace and follow up in four weeks. (Px. 2)

The Petitioner underwent physical therapy and strengthening exercises. He followed up with Dr. Evans on December 19, 2011. He stated he had been resting the arm. Dr. Evans felt his pain was improved. There was still tightness in the morning. It was recommended Petitioner start on physical therapy to work on stretching and anti-inflammatory modalities as well as a couple weeks of strengthening.

Dr. Evans next saw the Petitioner on January 16, 2012. It was noted the Petitioner was doing physical therapy and making progress feeling good until a week prior when he had pain after physical therapy along the lateral aspect of the biceps and progressing up his arm. A prior history of lateral epicondylitis was noted. Dr. Evans continued to recommend physical therapy

and noted the risk for complete rupturing had gone as far as it was likely. At that visit, the Petitioner was returned to work effective January 30, 2012 at full duty without restrictions.

The Petitioner was seen by Dr. Scott Sagerman for an independent medical evaluation and AMA impairment rating examination on July 10, 2012. On examination, Dr. Sagerman found normal and symmetric contour of the biceps muscle. There was no focal tenderness. Petitioner exhibited full range of motion. There was no pain with resisted flexion or supination. There was no apparent weakness, joint crepitus, or effusion. Dr. Sagerman reviewed the MRI report that showed a less than one centimeter partial tear of the biceps tendon. Dr. Sagerman noted that Petitioner had been released to return to work, and he was working without restrictions. It was Dr. Sagerman's opinion that Petitioner could continue to do so. Dr. Sagerman then performed an AMA impairment rating analysis and determined that the petitioner sustained 0% upper extremity impairment. (Rx.1)

Several other witnesses testified during the hearing. Forest Park firefighter/paramedic Bobby Reid testified for the Petitioner. He testified that he is employed as a Forest Park firefighter/paramedic as well as operating as a part-time training officer for the fire department. In his position as a part-time training officer, he schedules annual training including drills and other training that is to be performed during Petitioner's work hours. He also provides optional or voluntary training that takes place while the firefighters are not in pay status. He also posts on a bulletin board at the fire department training opportunities outside of the opportunities provided in-house by the Village of Forest Park.

Fire Chief Steve Glinke testified on behalf of the Respondent. He has been Fire Chief for the Village of Forest Park since 2007. It is his duty to set policy, create rules and regulations, and delegate authority for efficient and safe operating of the fire department. The Chief went on to

testify regarding optional training versus mandatory training as it has been practiced by the Forest Park Fire Department. If a firefighter undergoes mandatory training required by the department, the firefighter would be paid overtime as well as any incidental expenses associated with the mandatory training, including transportation costs.

Chief Glinke confirmed the Petitioner's testimony that the Advanced Firefighter course that was attended by the Petitioner at the Cicero Fire Academy when he sustained his injury was not mandatory but purely optional and voluntary. The Petitioner was not in pay status for any of the days he attended that training. The Petitioner received no salary or payments for the dates that he attended the optional training at the Cicero Academy from November 14, 2011 through November 18, 2011.

Chief Glinke further testified that the Village of Forest Park did not direct or mandate any firefighters take the Advanced Firefighting class. Chief Glinke also confirmed that pursuant to the collective bargaining agreement that was in place, the firefighters who completed all of the requirements mandated by the State of Illinois Fire Marshall and obtained the Advanced Firefighting Technician designation received an annual stipend of $200.00 and 24 hours of comp time. Completion of the advanced firefighter class in and of itself did not warrant any type of additional benefit from the Village of Forest Park, either in salary increases or promotional considerations. Additionally, pursuant to the collective bargaining agreement, if the firefighter completed all the requirements as outlined above and was awarded the Advanced Firefighting Technician designation by the State of Illinois Fire Marshall, that firefighter would be eligible for an additional three points that could be used toward a promotional examination.

Petitioner also provided testimony regarding his current situation. He testified that he has returned to full duty work with respondent as a firefighter/EMT without restrictions or accommodations. He is seeking TTD payments for lost work time from November

19, 2011 until January 29, 2012 representing 10 2/7 weeks. Petitioner indicated that is continues to suffer from stiffness in his arm on cold mornings and after working out or lifting heavy objects. He also occasionally experiences burning sensation during weight lifting and has numbness, irritation, muscle spasms and tingling on some occasions.

FINDINGS/ANALYSIS

Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

The relevant facts of the case are largely not at issue. Petitioner voluntarily attended an advanced firefighter course and was injured during the training drill. The central issue is whether the date, type, location and manner of the training course placed Petitioner outside of his employment. After a careful review of the evidence and the applicable case law the Arbitrator finds that the Petitioner's accident did arise out of and in the course of his employment with the Respondent.

Citing the Illinois Workers' Compensation Act, the Appellate Court has held that "[a]n employee's injury is compensable under the Act only if it arises out of and in the course of the employment." *University of Illinois v. Industrial Comm.*, 365 Ill. App. 3d 906, 910, 851 N.E.2d 72 (2006). The "in the course of employment" element refers to "[i]njuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing his duties, and while a claimant is at work...." *Metropolitan Water Reclamation District of Greater Chicago v. IWCC*, 407 Ill. App. 3d 1010, 1013-14, 944 N.E.2d 800, (2011). The "'arising out of' component refers to the origin or cause of the claimant's injury and requires that the risk be connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Metropolitan Water*

Reclamation District, 407 Ill. App. 3d at 1013-14 (*citing Caterpillar Tractor Co. v. Industrial Comm.*, 129 Ill. 2d 52, 58, 541 N.E.2d 665 (1989)). Where an "employee is exposed to a risk common to the general public to a greater degree than other persons, the accidental injury is also said to arise out of his employment." *Id.* That is, a claimant must demonstrate that the risk of injury was peculiar to or increased by his work duties and the "increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public." *Metropolitan Water Reclamation District*, 407 Ill. App. 3d at 1014 (*citations* omitted). A claimant must prove both elements were present (i.e., that an injury arose out of and occurred in the course of his employment) to establish that his injury is compensable. *University of Illinois*, 365 Ill. App. 3d at 910.

In the case at bar, Petitioner has met his burden by a preponderance of the evidence that his accident arose out of and in the course of employment. This decision is based on the sworn testimony of the Petitioner and his fellow fighters who testified as well as case law that clearly supports Petitioner's argument that his employment was a contributing factor to the injury, that his training was incidental to his employment and provided a benefit to him and to his employer.

Risk Incidental to Employment

An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Technical Tape Corp. v. Industrial Commission*, 58 Ill.2d 226, N.E.2d 515 (1974). Arising out of is primarily concerned with causal connection to the employment, looking to facts showing an increased risk to which the employee is subjected as compared to the general public, while performing a task in furtherance of the employer's business or incidental thereto.

There are three categories of risk to which an employee may be exposed: (a) risks distinctly associated with the employment, (b) personal risks, and (c) neutral risks that have no particular employment or personal characteristics. *Illinois Institute of Technology Research Institute v. Industrial Commission,* 314 Ill.App.3d 149, 731 N.E.2d 795, 247 Ill.Dec 22 (1st Dist. 2000). Whether an injury caused by a neutral risk arises out of employment is dependent upon whether claimant was exposed to a risk to a greater degree than the general public. *Id.* at 163. In this case, the risk from the training exercise was not a personal or neutral risk.

The Arbitrator finds the risks from training class activity arose out of and was incidental to Petitioner's employment. He received information about the class at this employment, he received approval for the same through his employer and his employer paid for the class. The nature of the training exercises, lifting a de-capacitated body akin to the work required of a firefighter, subjected Petitioner to an increased risk to that which the general public is not exposed. The class was not open to the general public and is not the type of event an ordinary individual would engage in for recreation or personal growth. Although the training is conducted at a different facility, the Arbitrator finds that he nature and the form of the training places it in the category of an activity intrinsically connected to his employment with respondent. Furthermore the time, location and approval into the program limited it to firefighters as opposed to the general public.

Personal Benefit vs. Benefit to Employer

Undoubtedly, the Petitioner is not required to enroll in the Advanced Firefighter Class. His employer offers all required training to their employees so they can maintain their qualifications. Petitioner voluntarily enrolled in the program to further his skills/techniques. In exchange, he received benefits of a possible one time stipend, a comp day off and a possible

chance for future advancement at work. The employer has bargained for these benefits with the Petitioner's union and in exchange Respondent benefits from a better trained firefighter with new skills and training. Training Officer Reid's testimony proves this benefit to the Petitioner-Employee and to Respondent-Employer. In the Arbitrator's estimation, this mutual benefit is undeniable and is arguably in the best interest of public policy.

Regardless, Respondent paid for the training and The Village of Forest Park provided the funds for Firefighter Soto to attend the Advanced Firefighting class. Both Training Officer Reid and Chief Glinke were aware of the physical nature of the class. Additionally, since approximately 50% of the 21 firefighters employed by the Forest Park Fire Department have taken Advanced Firefighter the Respondent clearly facilitated, promoted and encouraged this activity. This strengthens and supports the argument that both sides derived a benefit and that the activity was incidental to employment.

Unreasonable vs. Foreseeable Risk

Additional support for the argument that the activity arose out of employment lies in the nature of the activity. The activity is voluntarily undertaken but did not involve an unreasonable/unforeseeable risk; nor was the activity recreational in nature. Rather, the nature and risks associated with the training class were known and should have been foreseeable to the employer. In *Scheffler Greenhouses, Inc. v. Industrial Commission*, 66 Ill.2d 361, 362 N.E.2d 325, 5 Ill.Dec 854 (1977), an employee of Greenhouse was injured while swimming in a pool of a fellow employee who rented a house on Greenhouse acreage. The Employee had permission to use the pool by both the employer and the fellow employee. The court reasoned that the risk was connected with or incidental to the employment and that the conduct was not so unreasonably

dangerous that the claimant might be expected to have foreseen the danger. *Id.* In Petitioner's case, the risk, of a firefighter training exercise was obvious and reasonable, not recreational.

Therefore, Petitioner injury arose out of and in the course of his employment.

Is Petitioner's current condition of ill-being causally connected to his injury?

Petitioner's present condition of ill being is causally related to his injury. The arbitrator concludes that the petitioner has proven by a preponderance of the evidence that his present condition of ill being relative to his right arm is casually connected to his injury on November 17, 2011. This conclusion is based upon the testimony of the petitioner and an examination of the medical records. His injury was within the scope of his employment as he was lifting a distressed firefighter during a training exercise. His current complaints are in line with the type and nature of the injury he suffered.

Is Respondent liable for Petitioner's outstanding medical bills?

The Arbitrator finds that Petitioner's medical treatment was related to his accident and injury of November 17, 2011. The Petitioner has requested payment for 4 separate medical bills totaling $9,099.20 (AX1 attachment). The Arbitrator awards these bills. Respondent shall pay these reasonable and necessary medical services as provided in Section 8(A) and 8.2 of the Act.

Is Petitioner entitled to TTD?

Petitioner has requested TTD payments for a period of 10 2/7th weeks during which he was off-work following his work accident. Based on the prior causal connection finding, Respondent shall pay TTD benefits of $896.49 per week for 10 2/7 weeks, commencing November 19, 2011 through January 29, 2012, as provided in Section 8(B) of the Act.

What is the nature and extent of the injuries?

Petitioner sustained a moderate grade partial tear of the distal biceps. Petitioner's testimony regarding the mechanism of the injury as well as the treating records from Loyola University Medical Center, Hinsdale Orthopedics and Athletico all support and give credence to Petitioner's claim regarding his current condition. The Arbitrator finds that the Petitioner has a moderate grade partial tear of the distal biceps, has reached MMI and returned back to full duty work after successful treatment and physical therapy from December 20, 2011 to February 4, 2012.

This case arises out of a November 17, 2011accident, a date after September 1, 2011 amendment of Worker's Compensation Act ("Act"). Post amendment, pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

In applying these criteria to the case at bar, the Arbitrator initially notes that Dr. Scott Sagerman evaluated the Petitioner an independent medical evaluation and AMA Evaluation on

July 10, 2012. With regard to Subsection (I) of §8.1b(b), the arbitrator notes that the records contains an impairment rating of 0% of the right arm as determined by Dr. Sagerman, pursuant to the most current edition of the American Medical Association's Guides to the evaluation of the permanent impairment. (RX1 and PX 16). In assessing Dr. Sagerman's ratings, the Arbitrator notes that Dr. Sagerman did not review any of the treating records from Dr. Evans.

With regard to Subsection (II) of §8.1b(b), the occupation of the employee, the Arbitrator notes that Firefighter Soto enjoys a full duty release back to his occupation as a firefighter.

With regard to subsection (III) of §8.1b (b), the arbitrator notes that the Petitioner was forty years old at the time of the accident. The Arbitrator finds his to be in the middle years of his job/occupation and gives this factor moderate weight.

With regard to Subsection (IV) of §8.1b(b), Firefighter Soto's future earnings capacity is not affected. He is able to continue to work in his full duty capacity. There is little or no evidence of any loss of future earnings. In fact, his training may have helped Petitioner hone his skills and may open up the prospect higher earnings in the future. This factor has little or no weight.

With regard to Subsection (V) of §8.1b(b), evidence of disability, the Arbitrator takes note of Petitioner's injury, his good recovery and his current complaints. Petitioner testified that he suffers from stiffness and occasional burning sensation in his arm following heavy lifting. He also complained of numbness, irritation, pain and occasional muscle spasms and tingling sensation. The Arbitrator finds his testimony credible and supported by the medical findings.

Based on the above factors, and the records taken as a whole, the arbitrator finds that Firefighter Soto sustained permeant partial disability to the extent of 10% loss of the right arm.

Signature of Arbitrator Ketki Shroff Steffen Date

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

FARAGOI, TARA Case# **14WC012836**
Employee/Petitioner

PLAINFIELD SCHOOL DISTRICT #202
Employer/Respondent

On 11/6/2015, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.28% 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:

2221 VRDOLYAK LAW GROUP LLC
MICHAEL P CASEY
741 N DEARBORN ST 7TH FL
CHICAGO, IL 60610

2461 NYHAN BAMBRICK KINZIE & LOWRY
DEIDRE A CHRISTENSON
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☐ 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
CORRECTED ARBITRATION DECISION

TARA FARAGOI,
Employee/Petitioner

Case # **14 WC 12836**

v.

Consolidated cases:

PLAINFIELD SCHOOL DISTRICT #202,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **GERALD GRANADA**, Arbitrator of the Commission, in the city of **NEW LENOX**, on **October 2, 2015**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **8/10/2012**, 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 $**56,992.00**; the average weekly wage was $**1,096.00**.

On the date of accident, Petitioner was **39** years of age, ***married*** with **3** dependent children.

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

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

Respondent shall be given a credit of $**7,835.57** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**7,835.57**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of Radiologist Joliet $108 and Community Orthopedics $427.50 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 pay Petitioner temporary total disability benefits of $730.66/week for 10 4/7 weeks, commencing 8/14/12 through 10/26/12, as provided in Section 8(b) of the Act. Respondent shall be given a credit for two days of overpayment of temporary total disability benefits.

Respondent shall pay Petitioner permanent partial disability benefits of $657.60/week for 61.5 weeks, because the injuries sustained caused the 30% loss of the left hand, as provided in Section 8(e) of the Act.

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

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

Signature of Arbitrator

11/5/15
Date

FINDINGS OF FACT

Petitioner testified that on August 10, 2012 she was working in her classroom before the start of the new school year. Petitioner testified that she was standing on a chair putting a box of supplies away and when she stepped off the chair, lost her balance and fell onto her left upper extremity, injuring her left wrist.

Medical records of Provena St. Joseph Hospital were admitted into evidence as Petitioner's Exhibit 1. X-rays of the left wrist were completed at that time. (PX 1). Following the diagnosis of acute left distal radius fracture, Petitioner underwent a closed reduction of her fractured left distal radius. (PX 1). Petitioner was prescribed medication, and referred to Dr. Michael Murphy, an orthopedic surgeon. (PX 1).

Petitioner testified that she presented to Dr. Michael Murphy on August 13, 2012. Dr. Murphy diagnosed unstable distal radius fracture for which he recommended surgery. (PX 2). Dr. Murphy took her off of work and prescribed medication. (PX 2).

On August 14, 2012, Petitioner testified and the records reflect that Petitioner underwent open reduction, internal fixation of her left wrist with a post-operative diagnosis of displaced distal radius fracture. (PX 2). Petitioner testified and the medical records of Premier Dermatology showed that she underwent treatment for a blistering rash of her left wrist post-surgically. (PX 3). Petitioner testified that the rash resolved.

Petitioner continued to follow-up with Dr. Murphy. On August 23, 2012, an x-ray of the left wrist showed near anatomic alignment; ulnar styloid fracture not significantly displaced. (PX 2).

Petitioner testified and the medical records reflect that Petitioner continued to follow-up with Dr. Murphy and began physical therapy at Midwest Hand Care. (PX 3).

Petitioner testified that she continued to follow-up with Dr. Murphy and undergo physical therapy during October and November, 2012.

The last medical record from Dr. Murphy is dated December 28, 2012. It notes that Petitioner stated that her wrist was feeling really good and the x-rays demonstrated a healed fracture. Petitioner was instructed at that time to return as needed. (PX 2). Petitioner testified that she returned to work on October 26, 2012. She testified that she continues at this time to work for Plainfield School District. Petitioner testified that she has modified the way she performs her job duties, specifically with lifting and carrying paper and books. She testifies she uses her dominant right hand to assist when she uses her left hand. Petitioner testified further that she has returned to all of her regular activities at home and at work with some modification of the way she performs certain functions.

Petitioner testified that she does not take any prescription medication for her left wrist. Medical records indicate that the last appointment with Dr. Murphy was December 28, 2012.

Petitioner testified that when she returned to work she did not suffer any lowering of her salary. Petitioner further testified that she is right hand dominant.

CONCLUSIONS OF LAW

1. With regard to the issue of causation, the Arbitrator finds that the Petitioner has met her burden of proof.

This finding is supported by the Petitioner's credible testimony and the medical evidence which undeniably show that the Petitioner suffered a fracture to her left wrist as following her undisputed fall at work on August 10, 2012. There was no evidence presented to the contrary. Accordingly, the Arbitrator concludes that the Petitioner's current condition of ill-being, specifically the fracture and retained hardware in her left wrist, is related to her August 10, 2012 work accident.

2. With regard to the issue of medical expenses, the Arbitrator finds that the Petitioner's medical treatment following her undisputed August 10, 2012 work accident was reasonable and necessary to alleviate her work-related injury to her left wrist. Therefore, the Arbitrator awards all the related medical expenses incurred as a result of the Petitioner's undisputed work accident, including: the medical services provided by Radiologist Joliet in the amount of $108; by Community Orthopedics in the amount of $427.50; and by Premier Dermatologists in the amount of $276 subject to the provisions of Section 8(a) and Section 8.2 of the Act with credit for payments made by respondent as stipulated by the parties.

3. Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. Applying this standard to this claim, the Arbitrator notes the following:

(i) Level of Impairment – there was no reported level of impairment presented in the evidence, and therefore the Arbitrator places no weight on this factor;

(ii) Occupation – Petitioner is a grammar school teacher and continues to do this job with no medical restrictions, but with some modifications requiring her to use her non-injured, dominant hand more – a factor on which the Arbitrator places some weight;

(iii) Age – Petitioner was 39 years old at the time of the injury and her age did not play a significant factor in assessing her permanent disability;

(iv) Future Earning Capacity – there was no evidence of the Petitioner's injury affecting her future earning capacity, and therefore the Arbitrator places no weight on this factor;

(v) Evidence of Disability – there was evidence of disability corroborated by the medical evidence, which showed that Petitioner underwent open reduction, internal fixation of her left wrist with a post-operative diagnosis of displaced distal radius fracture, followed by the development and treatment of a skin rash at the site of her surgery and resulting in the Petitioner's complaints of residual pain and the need to modify her activities by using her non-injured, dominant right hand more often – a factor upon which the Arbitrator places great weight.

Based upon all of the above factors, the Arbitrator concludes that the Petitioner has sustained permanent partial disability to the extent of 30% loss of use of the left hand under Section 8(e) of the Act.

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

BEFORE THE ILLINOIS WORKERS COMPENSATION COMMISSION

Mark James Egan,
Petitioner,

vs.

Nos. 11WC 40046 & 14WC026079
15IWCC0474

City, Water, Light and Power,
Respondent.

ORDER

The Commission on its own Motion pursuant to Section 19(f) of the Workers' Compensation Act recalls the Review Decision dated June 22, 2015.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated June 22, 2015, is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained herein.

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

Stephen J. Mathis

DATED: JUL 10 2015

SJM/sj
44

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

☒ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mark James Egan,

Petitioner,

vs.

NO. 11 WC 40046 &
14WC026079
15IWCC0474

City, Water, Light and Power

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, prospective medical care, medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 14, 2014 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired

without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

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. No bond is required for removal of this cause to the Circuit Court.

DATED: JUL 10 2015
SJM/sj
o-5/28/2015
44

Stephen J. Mathis

Mario Basurto

David L. Gore

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

EGAN, MARK JAMES
Employee/Petitioner

Case# **11WC040046**
14WC026079

15IWCC0474

CITY WATER LIGHT AND POWER
Employer/Respondent

On 11/14/2014, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

1157 DELANO LAW OFFICES PC
PATRICK JAMES SMITH
1 S E OLD STATE CAPITOL PLZ
SPRINGFIELD, IL 62701

0332 LIVINGSTONE MUELLER ET AL
L ROBERT MUELLER
PO BOX 335
SPRINGFIELD, IL 62705

15IWCC0474

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

MARK JAMES EGAN,
Employee/Petitioner

v.

CITY WATER, LIGHT AND POWER,
Employer/Respondent

Case # **11** WC **40046**

Consolidated cases: **14 WC 26079**

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 **Maureen H. Pulia**, Arbitrator of the Commission, in the city of **Springfield**, on **10/14/14**. 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. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] Is Petitioner entitled to any prospective medical care?
L. [ ] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [ ] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On the dates of accident, **7/13/11 and 5/25/14**, Respondent *was* operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship *did* exist between Petitioner and Respondent.

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

Timely notice of these accidents *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident on 7/13/11.

In the year preceding the injuries, Petitioner earned **$46,995.50**; the average weekly wage was **$903.76**.

On the dates of accident, Petitioner was **51** years of age, ***married*** with **no** dependent children.

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

Respondent shall be given a credit of **$00.00** for TTD, **$00.00** for TPD, **$00.00** for maintenance, and **$00.00** for other benefits, for a total credit of **$00.00**.

Respondent is entitled to a credit of **$00.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services for petitioner's lumbar spine, as provided in Sections 8(a) and 8.2 of the Act through 10/14/14.

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 pay reasonable and necessary medical services for the L5-S1 TLIF recommended by Dr. Acapko-Satchivi, Dr. Payne, and Dr. Pineda, as provided in Sections 8(a) and 8.2 of the Act.

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

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

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

Signature of Arbitrator

11/7/14
Date

NOV 14 2014

ICArbDec19(b)

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 51 year old Maintenance Equipment Operator (MEO), sustained an accidental injury to his low back on 7/13/11 (11 WC 40046) and 5/25/14 (14 WC 26079). Petitioner has been an MEO for respondent for 13 years. Petitioner testified that he performs multiple tasks during the day. Petitioner admitted that he had some prior low back problems prior to 7/13/11.

On 7/13/11 petitioner was working in the East Cotton Hill Park with a co-worker lifting a 55 gallon barrel of garbage on the back of a truck. As they were lifting the barrel onto the truck petitioner felt a sharp pain in his low back. (11 WC 40046)

Petitioner presented to Prompt Care on 7/13/11 with complaints of low back pain after lifting a 55 gallon barrel into a truck at work and felt sharp pains going across his lumbar area. He reported that he was currently using muscle relaxers and pain killers at nighttime only for ongoing back pain. He stated that he does not use them during the day. He stated that the pain that he was currently experiencing was more intense than what he had previously experienced. He reported that the pain was located in the central lumbar area, and he did not have any radicular pain, weakness, numbness, or tingling of the lower extremities. Petitioner was prescribed hydrocodone for pain. He was taken off work through 7/16/11.

On 7/15/11 petitioner presented to Dr. Western. Prior to this visit petitioner last saw Dr. Western on 5/23/11. In the year prior to 7/15/11 Dr. Western saw petitioner three additional times for back pain. Petitioner gave a history of lifting the 55 gallon barrel at work on 7/13/11 and experiencing sharp pains in his low back area. Petitioner gave a history of chronic back pain that did not radiate into his buttocks or down his legs. An examination revealed paralumbar muscles that were tender to palpation. Straight leg raise reproduced pain at about 35 to 40°, but stayed mostly in his back and into his buttocks region. Dr. Western prescribed Cymbalta and instructed petitioner to return in three weeks. He authorized petitioner off work until 7/19/11, when he could return to work with a 20 pound weight restriction.

On 7/15/11 petitioner was seen by Windie McKay, DC. He was there for a follow-up visit for acupuncture. He stated that he hurt his lower back again and was in pain. Dr. McKay performed acupuncture on petitioner. Petitioner underwent additional modalities on 8/2/11. She authorized petitioner off work until 8/29/11.

On 8/2/11 petitioner returned to Dr. Western with continuing complaints of lower back pain. Petitioner stated that he went back to work and respondent did not accommodate his restrictions. As such he stated that his back was getting steadily more and more painful. Petitioner indicated that he would like

to see Dr. Russell. Dr. Western referred petitioner to Dr. Russell. He also told him to stop the Cymbalta since it did not seem to be helping. He prescribed Paxil. Dr. Western authorized petitioner off work for three weeks.

On 8/26/11 petitioner returned to Dr. Western. He reported that his condition remained unchanged, if not worse. Again, Dr. Western referred petitioner to Dr. Russell. Petitioner reported that he had gotten some temporary relief from the chiropractic visits. Dr. Western continued petitioner on Paxil, and added Wellbutrin. He also discussed a referral to a physiatrist.

On 8/26/11 petitioner returned to Dr. McKay for follow-up concerning his back pain and migraines. He stated that his back was staying a little better after the last adjustment. Additional modalities were performed on petitioner. Dr. McKay restricted petitioner to half days work from 8/26/11 – 9/23/11 with a 20 pound work restriction during that period and afterwards.

On 9/20/11 petitioner presented to Dr. Russell. Petitioner reported constant low back pain since his injury about two months ago. Petitioner denied any radicular components at that time. He stated that he had undergone some therapy without much relief. Dr. Russell noted that petitioner had previous back issues for which he underwent an MRI scan that failed to show any significant compressive lesion. He also noted that petitioner has had no recent injections or therapy. Dr. Russell noted that petitioner has also had EMGs that failed to show any significant nerve compromise. Following an examination Dr. Russell was of the opinion that there was no clear evidence of radiculopathy. He noted some mild degenerative changes, but no significant compromise of the neural elements. He believed that petitioner was not a candidate for any operative intervention. He recommended that petitioner continue with the conservative approach, try some physical therapy, nonsteroidals, and core strengthening exercises. He was also of the opinion that petitioner may need to be involved in a work rehab program to try and build his endurance and get him back to his regular occupation. He referred petitioner back to Dr. Western.

On 10/7/11 petitioner followed up with Dr. Western. He reported that his pain was now in the left paralumbar area of his back radiating down into his left buttocks and his left leg. Petitioner stated that his current work involved driving a truck and it does not stay on the road. He stated that "it goes across the park and lots of bumping and hills, potholes, etc., and does not seem to help his back at all." Dr. Western prescribed Flexeril and ordered some x-rays. He asked petitioner to let him know of any other type of work restrictions that might allow him to do his job, and protect his back. X-rays of the lumbar spine showed no acute findings. On 10/10/11 petitioner returned to Dr. Western stating that his pain was getting worse and felt like a sharp ice pick in his back. He also complained of shooting pains in his legs.

Dr. Western was of the opinion that petitioner's pain complex was changing somewhat and was now definitely going down his left leg into his knee. Petitioner did not think he could go back to work in his current condition. Dr. Western noted that petitioner's best position was now sitting down and leaning forward some. He noted that this was different from before when petitioner would lay on his back, and raise his legs to be in the most comfortable position. Petitioner reported that standing is definitely worse after several minutes. He reported that after standing for several minutes the pain starts to go down into his left knee. Dr. Western noted that petitioner has had back pain for well over a year, but now his back pain has a new character to it in that it has a radicular component that is different. Dr. Western ordered an MRI of petitioner's lumbar spine. He also prescribed a short course of prednisone. Petitioner was authorized off work for an additional two weeks.

On 10/13/11 petitioner underwent an MRI of his lumbar spine. The impression was multilevel degenerative changes including interval new broad-based central disc protrusion at L4 – L5 superimposed on a chronic mild diffuse disc bulge. Also noted was interval new effacement of the descending L5 nerve roots bilaterally at the L4 – L5 level by the new disc protrusion.

On 10/18/11 petitioner underwent an EMG and nerve conduction study performed by Dr. Fortin. The findings were consistent with a left lumbosacral radiculopathy. Dr. Fortin assessed lower back pain likely associated with radiculopathy. He recommended a lumbar epidural steroid injection.

Petitioner returned to Dr. Western on 10/27/11. Petitioner's pain was notably better from the last time he was there. Petitioner stated that his pain was back to about baseline. He stated that it was not bad enough to get an injection. Since petitioner was improving Dr. Western gave him the option of repeating the course of prednisone in the future if it flares up again. He returned petitioner to work with restrictions on lifting over 50 pounds.

On 12/14/11 petitioner presented to Dr. Fortin. He noted that petitioner had failed a facet block as well as an LESI, and various medications. He noted that petitioner had an MRI that showed arthritis as well as disc bulging. Petitioner complained of low back pain with radiation to the legs. He stated that he had temporary relief from chiropractic adjustments, and acupuncture. He also stated a TENS unit and physical therapy did not help him. Dr. Fortin referred petitioner to neurology.

On 3/7/12 petitioner returned to Dr. Western. He reported that he was still having quite a bit of pain and stated that the myelogram was very uncomfortable. Dr. Western noted that the myelogram showed a tear. Dr. Western noted that Dr. Fortin recommended aqua therapy. Dr. Western noted that

when petitioner was hit in the head and neck with a big branch at work, this took some time to get over, but eventually it healed. He then noted that petitioner then hurt his back moving a log and has had problems since then. Petitioner reported that he felt he could occasionally, and from time to time, on a daily basis, lift 50 pounds and requested that he be allowed to return to work. Dr. Western felt that this was reasonable for petitioner to try.

On 5/8/12 petitioner underwent a Section 12 examination performed by Dr. Gunner Andersson, at the request of the respondent. He noted that petitioner had a prior history of back problems. He reviewed the medical records from Springfield Clinic prior to the accident on 7/13/11, as they relate to petitioner's history of chronic back problems. Petitioner gave a consistent history of the injury on 7/13/11. Petitioner complained of pain in the lower back. He denied any radiculopathy. He rated his pain at a 6–7/10. He stated that he takes Vicodin for his pain. Following a record review and examination Dr. Andersson was of the opinion that petitioner's degenerative changes preceded the alleged injury on 7/13/11. He compared the MRI from 7/23/10 to the MRI of 10/13/11 and noted no significant changes. He was of the opinion that petitioner does not have a specific surgical indication. He could not exclude that petitioner aggravated his pre-existing degenerative condition on 7/13/11, but was of the opinion that it is more likely that he actually strained his back based on the report of the nature of the accident.

In response to respondent's questions he opined that the petitioner's current diagnosis and symptoms did not originate from the injury on 7/13/11. He believed that they are related to petitioner's underlying degenerative condition in the lumbar spine which was documented a year earlier. He opined that there was nothing to suggest that petitioner's current symptomatology was related to his work injury. He was of the opinion that the electrophysiological changes noted on the EMG were soft and subjective. He was of the opinion that petitioner did not have any radiculopathy currently and had no neurologic symptoms whatsoever. He believed it would be reasonable to treat petitioner symptoms. He recommended active physical therapy by a licensed physical therapist. Dr. Andersson opined that at that time petitioner was not a surgical candidate. He further opined that petitioner should be able to return to full duty work. Since petitioner had been off work for a period of time he suggested a gradual work return with limitations of lifting of 20 pounds occasionally for the first four weeks after which petitioner can return to full duty work. He opined that petitioner reached maximum medical improvement with respect to the work injury on 7/13/11.

On 5/25/12 Dr. Western drafted a letter to "to whom it may concern". He reported that he had been treating petitioner for several years and several of his injuries arose out of work. After reviewing

respondent's Section 12 examination his concern was petitioner going back to work without any restrictions. He noted that he has documented throughout his chart in the past several years that some work activities definitely aggravate petitioner's back situation, including riding a tractor. Dr. Western noted that although he agreed that petitioner could probably return back to work, he did not believe petitioner would be able to return to work restriction free. He believed that a 20 pound weight restriction, and perhaps some limiting or eliminating such aggravating things as riding a tractor, might be a reasonable start to his return to work. Dr. Western was of the opinion that if petitioner's history is taken in its totality, one can see that if some of the factors were not caused directly by work they certainly were exacerbated at work.

On 6/13/12 petitioner returned to Dr. Western for evaluation. He felt that he did not have any choice but to go back to work with an FMLA status that when the back pain gets so severe he can no longer stand it that he will take time off intermittently to allow it to settle down. Dr. Western was of the opinion that there was a time when his back flared up and it has stayed flared up since then. Dr. Western prescribed a different muscle relaxer. Dr. Western returned petitioner to work on 6/22/12.

On 6/26/12 Dr. Western drafted another letter clarifying his letter dated 6/13/12. Dr. Western wrote that one can clearly see from at least his notes that petitioner has had back problems ever since his visit on 7/15/11 stemming from an injury within the previous two weeks. Dr. Western was of the opinion that petitioner has had an exacerbation of his back pain ever since that date. In summary, Dr. Western wrote that petitioner has had some chronic back and neck pains, but on the 7/15/11 visit he sustained an injury within the previous couple of weeks lifting a 55 gallon barrel drum and had an acute flareup of back pain that has not gone away since then. Dr. Western wrote that he would attribute the exacerbation of petitioner's back pain to that work incident.

On 8/20/12 petitioner followed up with Dr. Western for pain in his right leg that he described as shooting from the inside upper right leg down to the right foot and from the inside upper right leg up through the neck and into his whole head. He reported that it felt like an electric shock. Dr. Western assessed an abnormal MRI. He noted that he had offered petitioner surgery with a 50-50 chance of improvement. As a result petitioner declined surgery at that time. He stated that he had to work at least two more years before even thinking about retiring.

On 9/10/12 the evidence deposition of Dr. Andersson, orthopedic surgeon, was take in on behalf of the respondent. Dr. Andersson opined that petitioner's current condition of ill being as it relates to his low back is not related to the injury on 7/13/11 because petitioner had similar pain before the alleged

accident, and actually within six weeks of the accident had been advised to consider additional studies. He also noted that petitioner had an MRI the year before the alleged accident which was similar to the one obtained after the accident and did not have any evidence of radiculopathy. He opined that it was more probable than not that petitioner suffered a strain to his back as a result of the accident on 7/13/11.

On cross-examination Dr. Andersson opined that the treatment petitioner received from the doctors in Springfield was appropriate. Dr. Anderson testified that he could not exclude an aggravation of a pre-existing condition, but based on the pre-and post-MRI it was not very likely. He was of the opinion that petitioner had a temporary aggravation of his pre-existing condition and that caused a strain.

Petitioner followed-up with Dr. Fortin on 10/23/12 for his annual checkup. Petitioner complained of severe back pain. Dr. Fortin assessed lower back pain, lumbago and discogenic syndrome. He recommended a prednisone taper to see if they could stop his flare-up of pain. On 4/2/13 Dr. Fortin recommended that petitioner return to Dr. Western for a referral to a psychiatrist. He continued petitioner's narcotic medications.

On 12/6/12 the evidence deposition of Dr. Western, family practitioner, was taken on behalf of the petitioner. Dr. Western stated that the first time he saw petitioner was 11/29/05, and he had been treating petitioner for chronic back pain since 2010. Dr. Western opined that the injury on 7/13/11 was an aggravation of his pre-existing back condition. Dr. Western testified that petitioner was not a surgical candidate and he continued to treat him with conservative measures. Dr. Western opined that petitioner had undergone an MRI in 2010 and another one on 10/13/11. He opined that the difference between those MRI studies with regard to the L4 – L5 level was that the one that was performed on 10/13/11 had more of a disc bulge present that was new. He further opined that an EMG/NCV was done in 2010 and again in 2011 after the injury. The one that was done on 10/18/11 showed left lumbosacral radiculopathy, whereas there was no evidence for radiculopathy on the 2010 test. Dr. Western opined that petitioner suffered an aggravation of his pre-existing back condition as a result of the lifting incident on or about 7/13/11.

On cross-examination Dr. Western testified the last time he observed radiculopathy in petitioner's lower back emanating from his lower back was 10/7/11.

On 1/15/13 petitioner followed up with Dr. Acakpo-Satchivi for his L5 – S1 discogenic pain syndrome. He noted that petitioner had previously undergone a discogram demonstrating concordant pain. He stated that he had been seen by Dr. Payne for a second opinion and was also offered an L5–S1

TLIF with the understanding that the outcome of this particular surgery with this particular indication was less than certain. Petitioner stated that he was on the fence with regards to surgery. Petitioner told Dr. Acakpo-Satchivi that he had been assigned some of the more physically demanding duties at work and was told that he can return to work only if he has no restrictions, despite the fact that the Worker's Compensation physician who evaluated him felt that restrictions would be appropriate. Dr. Acakpo-Satchivi told petitioner that while he could not say with 100% certainty that his lumbar spine injury was a direct result of his work related activities, there was clearly a temporal concordance. Conversely he noted that discogenic pain syndromes can occur as a result of the expected degeneration of the spine with age and also due to certain genetic factors. He recommended that petitioner should be allowed restrictions in his work related activities given his ongoing pain complaints.

On 3/19/13 petitioner followed up with Dr. Acapko-Satchivi to discuss surgery. Details as well as risk and benefits of the L5 – S1 TLIF were discussed. Dr. Acakpo-Satchivi stated that he would be performing this procedure with Dr. Payne.

On 6/3/13 petitioner presented to the emergency room at St. John's Hospital after a large tree branch fell on him while working with a coworker to cut the branch down at work. He reported that the branch hit him on the top of the head. He complained that he had been dizzy since the incident that afternoon. He complained of headaches, neck pain, and low back pain. He also complained of elbow pain. Petitioner was assessed with a cervical spine strain, and minor head injury. Petitioner underwent a CT of the lumbar spine. The impression was T12-L1 spondylosis, and prominent herniation of the nucleus pulposus into the anterior aspect of the inferior endplate of T12, which was age indeterminate. No acute lumbar vertebral fracture or traumatic malalignment was noted.

On 6/5/13 petitioner followed up with Dr. Western. Petitioner gave a history of the incident on 6/3/13. He reported pain around his elbow and somewhat in his wrist. Dr. Western released petitioner to work with left arm duty only. He assessed sprains, contusion, and a mild concussion.

On 7/9/13 petitioner returned to Dr. Acakpo-Satchivi with ongoing complaints of lower back pain. He stated that he had talked to someone that had successfully tried a dorsal column stimulator. He asked if this was something he could consider in lieu of the surgery. Dr. Acakpo-Satchivi felt that it was a reasonable option to explore. He referred him to Dr. Pineda since he had no experience with this particular procedure.

On 8/12/13 petitioner presented to Dr. Pineda complaining of chronic back pain and pain in his legs. He stated that his back pain seemed to be the overriding issue. Following an examination Dr. Pineda was of the opinion that a fusion may be an option, but has potential for failure. He noted that another option was a spinal cord stimulator, that may or may not work. He stated that the spinal cord stimulator is not useful to control back pain, but is much better for leg pain. He recommended a trial. He referred petitioner to a pain center for the trial spinal cord stimulator.

On 9/17/13 petitioner returned to Dr. Acakpo-Satchivi. They discussed the L5-S1 TLIF. Petitioner expressed an understanding of the risks and wished to go forward with the surgery. This surgical authorization was denied by Health Link on 11/6/13. Petitioner appealed this decision.

On 10/9/13 petitioner underwent an MRI of the lumbar spine. The impression was chronic loss of disc height with chronic endplate deformity at T 12 – L1, and small broad-based noncompressive central disc protrusion at L4 – L5.

On 10/15/13 petitioner followed-up with Dr. Fortin. Following an examination Dr. Fortin assessed lower back pain and discogenic syndrome. He assessed low back pain syndrome with associated lumbar radiculopathy. He noted that petitioner was scheduled for lumbar surgery with Dr. Payne.

On 12/18/13 Dr. Fortin drafted a letter to "to whom it may concern". He wrote that petitioner was under his care for his discogenic low back pain syndrome with radiation to his legs. He wrote that he had consulted with Dr. Acakpo-Satchivi and Dr. Pineda and both offered an L5 – S1 TLIF to address petitioner's otherwise refractory pain syndrome. He wrote that this letter was a request for reconsideration of denial of surgery for petitioner's refractory pain. He wrote that petitioner had failed narcotics, chiropractic care, hydrotherapy, acupuncture, massage, physical therapy, amitriptyline, carisoprodol, cyclobenzaprine, Cymbalta, dexamethasone, gabapentin, hydrocodone, Fentanyl, ketorolac, Lyrica, naproxen, paroxetine, prednisone, Skelaxin, and trazodone. He further wrote that the MRI of petitioner's lumbosacral spine demonstrates endplate deformity at T12–L1, and non-compressive central disc protrusion at L4 – L5 with EMG that demonstrated left lumbosacral radiculopathy. He stated that he considered surgical intervention for his otherwise refractory pain syndrome a medical necessity and requested reconsideration for insurance authorization for the surgery.

Petitioner last followed up with Dr. Acakpo-Satchivi on 4/1/14. They discussed surgery. Petitioner also requested a referral to a different insurance carrier. An EMG of the lower extremities was recommended.

On 4/15/14 petitioner underwent an EMG/NCV. The impression was unremarkable nerve conduction study and EMG of both legs. On 4/21/14 petitioner followed up with Dr. Fortin. He continued to complain of low back pain which was partially improved with low dose fentanyl. He requested a higher dose. Petitioner testified that he has six months to retirement and did not know if he was going to make it because of his low back pain. Dr. Fortin examined petitioner and assessed lower back pain. He increased petitioner's fentanyl dosage. He instructed petitioner to follow-up in six months or earlier should there be any interval complaints.

On 5/25/14 petitioner presented to the emergency room after lifting two bags at work and experiencing increased pain in his low back (14 WC 26079). Petitioner underwent a CT of the lumbar spine without contrast. Mild facet degenerative changes were noted at L4 – L5. Also noted at the L4-L5 level was a minimal central disc protrusion without significant spinal canal stenosis. There was no evidence of nerve root compression at this level. At L5 – S1 a minimal disc bulge without significant spinal canal narrowing or evidence of nerve root compression was noted. Partial lumbarization of S1 was noted. Petitioner was prescribed Flexeril.

On 6/5/14 petitioner presented to Dr. Fortin following a visit to the ER after working and hurting his back when he picked up a couple things that were too heavy for him. Petitioner stated that he picked up two bags of material at his work that weighed 70 pounds each. After completing the lifting he reported increased pain in his lower back, and extreme difficulty walking. He also reported numbness and tingling. Petitioner testified that the Flexeril he was given at the emergency room was not helping. Petitioner rated his pain as a 7–8/10. He testified that when he sweats at work his Fentanyl patches do not stay in place. Dr. Fortin spoke to him regarding physical therapy. Petitioner indicated that he had tried physical therapy as well as aqua therapy and acupuncture, and none of these modalities were successful. He stated that he had recently changed insurance carriers and was hopeful that the new insurance would approve a request for back surgery. He stated that he was planning on retiring in October of this year and was just trying to make it from day-to-day until he could retire. Dr. Fortin renewed petitioner's hydrocodone and Fentanyl. Dr. Fortin instructed petitioner returned in November for his regularly scheduled drug testing.

Respondent offered into evidence medical records from Springfield Clinic for petitioner prior to the injury on 7/13/11. On 10/3/07 petitioner presented complaining of low back pain injury from lifting a big log on 10/1/07. Petitioner was given a 5 pound weight restriction with no bending for the next two days. Petitioner did not return until 4/30/08. At that time he stated that his low back was still bothering

him. He stated that he went to a chiropractor and it did not seem to help. He stated that he was concerned about the upcoming lawn mowing season where the lawn mower is quite bumpy. Petitioner's pain was mostly in his mid back. He denied radiation in his buttocks or down his legs. On 5/20/08 petitioner began a course of physical therapy. He reported that he has had low back pain for about 30 years, and it had been worse over the last couple months. He stated that he had been spending all day on a lawnmower and this jarring motion aggravated his back. He stated his last course of physical therapy was about 20 years ago. At its worst petitioner's pain was a 6-7/10. On 6/27/08 petitioner returned to Dr. Western complaining of some intermittent back pain. Dr. Western instructed him to continue the pain medicine for his back. On 7/17/09 petitioner complained of lower back pain for the past two years, with intermittent treatment. He stated that riding a tractor at work or mowing the lawn was most bothersome to him. He stated he was not interested in shots and did not want to go to physical therapy. Dr. Western prescribed Skelaxin. He also ordered x-rays of the lumbar spine. On 5/28/10 petitioner followed up with Dr. Western for complaints of back pain. He stated that his back pain is always there, and has not really gotten any better. Dr. Western recommended an MRI of the lumbar spine. He stated that petitioner has continued pain for over a year radiating into his buttocks. On 6/11/10 petitioner was released to light duty only through 6/23/10. On 6/16/10 Dr. Western noted that petitioner has chronic back pain and has failed physical therapy and chiropractic therapy. He noted that his request for an MRI was denied. On 7/6/10 petitioner was seen by Dr. Fortin for neurological consultation. Dr. Fortin assessed lumbago and cervicalgia. His impression was low back pain, nonradiating in nature. He also recommended amitriptyline, gabapentin, and an MRI of the lumbosacral spine.

On 7/23/10 petitioner underwent an MRI of the lumbar spine. The impression was small left paracentral disc protrusion impressing on the ventral thecal sac at T11 – T12, and mild multilevel degenerative changes without high grade canal or foramina stenosis. On 8/10/10 petitioner followed up with Dr. Fortin. He rated his pain at 7/10. He stated that he had work restrictions. Dr. Fortin assessed refractory low back pain with an element of facet syndrome. On 8/17/10 petitioner underwent a right L4 – L5 facet block. On 9/14/10 petitioner underwent an EMG/NCV. The impression was unremarkable nerve conduction study and EMG of the right leg and lumbar paraspinal muscles. There was no electrophysiologic evidence for neurogenic lesion including a right lumber radiculopathy, lumbosacral plexopathy or polyneuropathy.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

Prior to the injury on 7/13/11 petitioner had been treating for a chronic low back condition from 10/30/07 through 8/10/10. There were no treatment records offered for the period 8/11/10 through 7/12/11. Prior to the injury on 7/13/11petitioner underwent physical therapy, chiropractic treatment, L4-L5 facet injection, EMGs that showed no radiculopathy, an MRI that showed a small left paracentral disc protrusion impressing on the ventral thecal sac at T11–T12, and mild multilevel degenerative changes without high grade canal or foramina stenosis, and some periods of light duty work.

Following the accident on 7/13/11 petitioner experienced and immediate increase in his low back pain and began treating for that pain. Although petitioner did not have any radiating pain complaints at that time, petitioner continued treating for his ongoing low back complaints and by 10/7/11 had complaints that included radiating pain to his left leg. Petitioner repeatedly reported that his pain following the accident on 7/13/11 was more intense than the pain before that and was ongoing. On 10/7/11 Dr. Western was of the opinion that petitioner's current back pain had a new radicular component that was different from the pain he experienced in the year before the accident on 7/13/11. An MRI of the lumbar spine performed 10/13/11 showed a new broad based central disc protrusion at L4-L5 superimposed on a chronic mild diffuse disc bulge, and an interval new effacement of the descending L5 nerve roots bilaterally at the L4-L5 level by the new disc protrusion. An EMG performed 10/18/11 also showed left lumbosacral radiculopathy that was not present before 7/13/11.

Following a course of prednisone, on 10/27/11 petitioner told Dr. Western that his pain was back to about baseline. However, Dr. Western continued petitioner on light duty work, restricting him from lifting over 50 pounds. By 12/4/11 petitioner was again complaining of low back pain with radiation to the legs. On 3/7/12 Dr. Western noted that the myelogram showed a tear.

On 5/8/12 Dr. Andersson examined petitioner on behalf of respondent. Petitioner had no complaints of radiculopathy at that time. Although Dr. Andersson was of the opinion that petitioner's degenerative changes preceded the alleged injury on 7/13/11, the MRI from 7/23/10 and 10/13/11 showed no significant changes, and the petitioner most likely strained his back, he also admitted that he could not exclude that petitioner aggravated his preexisting degenerative condition on 7/13/11. Dr. Andersson was also of the opinion that the EMG findings from 2010 were the same as the EMG findings from 2013. The arbitrator does not find Dr. Andersson's opinions the most persuasive given the fact that there clearly were new findings on MRI dated 10/13/11 that showed a new broad based central disc protrusion at L4-L5 superimposed on a chronic mild diffuse disc bulge, and an interval new effacement of the descending L5 nerve roots bilaterally at the L4-L5 level by the new disc

protrusion, and the EMG dated 10/18/13 that showed left lumbosacral radiculopathy when the EMG in 2010 showed no radiculopathy.

Dr. Western opined that petitioner exacerbated his preexisting back condition on 7/13/11 and it has remained exacerbated since that date. He based this opinion on the fact that the difference between the MRI in 2010 and 2013 was that the one in 2013 had more of a disc bulge present that was new, and the EMG done on 10/18/11 showed left lumbosacral radiculopathy that the one performed in 2010 did not.

When his complaints continued petitioner presented to Dr. Acakpo-Satchivi for his L5-S1 discogenic pain. Even though Dr. Acakpo-Satchivi could not say with 100% certainty that petitioner's lumbar spine injury was a direct result of his work related activities, he was of the opinion that there was clearly a temporal concordance. He believed petitioner could work with restrictions that he did not have before the 7/13/11 accident.

Just before the accident on 5/25/14 petitioner underwent a repeat EMG/NCV. The impression was unremarkable nerve conduction study and EMG of both legs. However, petitioner continued to complain of low back pain.

Following the accident on 5/25/14 petitioner complained of increased pain in his lower back and extreme difficulty walking. He underwent a CT scan of the lumbar spine that showed mild facet degenerative changes were noted at L4–L5. Also noted at the L4-L5 level was a minimal central disc protrusion without significant spinal canal stenosis. There was no evidence of nerve root compression at this level. At L5–S1 a minimal disc bulge without significant spinal canal narrowing or evidence of nerve root compression was noted. Partial lumbarization of S1 was noted.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner 's current condition of ill-being as it relates to his low back is causally related to the injuries he sustained on 7/13/11. The arbitrator bases this finding on the opinions of Dr. Western and finds that as a result of the accident on 7/13/11 the petitioner aggravated his preexisting degenerative lumbar spine condition. The arbitrator finds the opinions of Dr. Western more persuasive than those of Dr. Andersson given the fact that the EMG and MRI taken after the accident 7/13/11 showed new diagnostic findings that were consistent with petitioner's complaints and were not present on the MRI and EMG performed before the accident on 7/13/11. The arbitrator finds the accident on 5/25/14 was merely a temporary aggravation of the his preexisting condition. She bases this opinion on the fact that the diagnostic tests taken after the accident on 5/25/14 showed no new findings that were not seen on the diagnostic tests taken after the 7/13/11 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?

Having found the petitioner's current condition of ill-being as it relates to his lumbar spine condition is causally related to the injury he sustained on 7/13/11 and his condition after the injury on 5/25/14 was only a temporary exacerbation of his preexisting condition before that date, the arbitrator finds all treatment petitioner received for his lumbar spine from 7/13/11 through 10/14/14 was reasonable and necessary to cure or relieve petitioner from the effects of the injuries he sustained on 7/13/11 and 5/25/14.

Respondent shall pay reasonable and necessary medical services for petitioner's lumbar spine, as provided in Sections 8(a) and 8.2 of the Act through 10/14/14.

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.

K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

Prior to the accident on 7/13/11 surgery had never been recommended for petitioner. On 9/20/11 Dr. Russell opined that petitioner was not a candidate for any operative intervention. On 5/8/12 Dr. Andersson was of the opinion that petitioner did not have a specific surgical indication. On 8/20/12 Dr. Western noted that he had offered petitioner surgery with a 50-50 chance of improvement. Petitioner declined the recommendation for surgery at that time. However, during his deposition on 12/6/12 Dr. Western opined that petitioner was not a surgical candidate.

On 1/15/13 petitioner told Dr. Acakpo-Satchivi that he had been seen by Dr. Payne and was offered an L5-S1 TLIF with the understanding that the outcome of this particular surgery with this particular indication was less than certain. At that time petitioner was on the fence with regards to surgery.

On 7/9/13 petitioner asked Dr. Acapko-Satchivi if he could try a dorsal column stimulator in lieu of surgery. Dr. Acapko-Satchivi felt it was a reasonable option to explore. He sent him to Dr. Pineda.

On 8/12/13 Dr. Pineda examined petitioner and stated that a fusion may be an option, but has a potential for failure. He also stated that another option was a spinal cord stimulator, that may or may not work. He stated that it was not useful for back pain, but much better for leg pain. He referred petitioner to a pain center for a trial cord stimulator. Since petitioner's pain is primarily related to his low back and not his legs the arbitrator finds the spinal cord stimulator would not be reasonable and necessary at this time.

On 9/17/13 petitioner told Dr. Pineda he wanted to undergo the surgery. The surgery was denied by petitioner's health insurer. Dr. Fortin requested that the insurer reconsider based on the fact that petitioner had failed conservative treatment and the MRI demonstrated endplate deformity at T 12–L1, and non-compressive central disc protrusion at L4–L5 with EMG that demonstrated left lumbosacral radiculopathy. He also noted that he considered surgical intervention for petitioner's otherwise refractory pain syndrome a medical necessity.

Based on the above, as well as the credible record, the arbitrator finds that given petitioner's failure to receive any long-lasting relief from any conservative treatment over the three year period following his injury on 7/13/11, the arbitrator adopts the opinions of Dr. Pineda, Dr. Acakpo-Satchivi and Dr. Payne that surgery in the form of an L5-S1 TLIF is a reasonable option to cure or relieve petitioner from the effects of his injury on 7/13/11. Although surgery was not recommended by Dr. Andersson, Dr. Russell or Dr. Western, the arbitrator notes that these opinions were rendered over a year before those of Dr. Pineda, Dr. Acapko-Satchivi and Dr. Payne. The arbitrator further finds that although all doctors who are recommending this procedure agree that there is a potential for failure with this procedure, they also agree that there is also a potential for the surgery to relieve petitioner from effects of his low back pain syndrome, that to date has not resolved.

Respondent shall pay reasonable and necessary medical services for the L5-S1 TLIF recommended by Dr. Acapko-Satchivi, Dr. Payne, and Dr. Pineda, as provided in Sections 8(a) and 8.2 of the Act.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alex Durbin,
Petitioner,

vs.

NO. 11 WC 15014
15 IWCC 0531

Caterpillar,
Respondent,

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision of the Commission dated July 13, 2015, having been filed by Respondent. 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 dated July 13, 2011 is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein. The parties should return their original Orders to Commissioner Mario Basurto.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Order shall be issued simultaneously with this Order.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: AUG 18 2015

Mario Basurto

David L. Gore

Stephen Mathis

MB/jm
43

STATE OF ILLINOIS

COUNTY OF MACON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alex Dubrin,
Petitioner,

vs.

NO: 11 WC 15014

15IWCC0531

Caterpillar Inc.,
Respondent.

CORRECTED DECISION AND OPINION ON REMAND

Petitioner appeals the decision of Arbitrator Andros finding Petitioner failed to prove he sustained an accidental injury arising out of and in the course of his employment on March 9, 2011 and he failed to prove a causal relationship exists between his present condition of ill-being and the alleged March 9, 2011 work accident. The Issues on Review are whether an employment relationship exists between Petitioner and Respondent, whether Petitioner sustained an accidental injury arising out of and in the course of his employment on March 9, 2011, whether a causal relationship exists between his present condition of ill-being and the alleged March 9, 2011 work accident, and if so, the extent of Petitioner's temporary total disability, the nature and extent of Petitioner's permanent disability and the amount of reasonable and necessary medical expenses. On December 7, 2012, the Commission affirmed the Arbitrator's decision. On December 10, 2013 the Circuit Court of Macon County reversed the Commission's finding that the Petitioner's injury was not related to work, confirmed the Commission's findings regarding Petitioner's average weekly wage and remanded the case back to the Commission for a calculation of an award consistent with the Circuit Court Order. While the Commission finds no basis in law or the record to alter the decision, the Commission, pursuant to the Circuit Court's Order, finds Petitioner sustained an accidental injury arising out of and in the course of his employment on March 9, 2011 and he proved a causal relationship exists between his present condition of ill- being and the alleged March 9, 2011 work accident. As a result, Petitioner was temporarily totally disabled from June 2, 2011 through September 11, 2011 for 14-4/7 weeks under Section

8(b) of the Illinois Workers' Compensation Act, is entitled to $2,021.29 in medical expenses under Section 8(a) of the Act and permanently lost 25% of the use of his right leg under Section8(e) of the Act, for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner, a 25 year old assembly team leader, testified that on March 9, 2011 he was filling in on the truck assembly line for an Operator II who was absent. Petitioner testified that the Operator II is positioned on the top of the truck during the assembly process. On that day, Petitioner said he was putting wiring harnesses on trucks. He created Petitioner's PX9, a diagram, to explain where the harness is attached and where he was positioned while working on the truck. Petitioner said he was working in the corner of C and D and his right foot was on X while his left foot was on Y. Petitioner testified that he squatted down to get the harness. He twisted to tum the harness at the comer. His back was to A. He twisted his body towards D. His right leg was bent. When he turned out of a squat, he kind of stood up; his right leg popped and he felt pain. He got off of the truck. He did not tell a supervisor about the injury that day because it was about time to leave and he assumed his knee would get better. He was off of work the next day. He sought medical help at the medical clinic as soon as he walked into work on the day he came back to work.

2. The March 11, 2011 Incident Report indicates "I was working on op #2 in 7945 when my knee popped a couple of times; Witness: John; No prior injuries".

3. The March 11, 2011 Initial Nursing Assessment indicates that Petitioner reported his right knee popped a couple of times on Wednesday while at work but it did not start hurting right away. Petitioner reported the pain was worse on Thursday and now he is having problems walking. The Petitioner states he was working on top of truck when the pain/pop started. The Petitioner also reported that he was not at work on Thursday because he was attending a funeral. Nurse Brown reported in her progress note that Petitioner reported his initial injury occurred on March 9, 2011. He stated, "My knee is not right. I did not do anything that I know of to hurt it. It popped a couple of times on Wednesday. I did not do anything differently. I worked on a big truck and crawled around." Petitioner said he does not recall giving a history of "right knee popped a couple of times on Wednesday while at work but his right knee did not start to hurt right away". He agreed that two sentences down in the clinical department's records it indicates "patient states he was working on top of truck when pain/pop started".

4. At the Arbitration hearing, Petitioner testified that the pain started as soon as his knee popped. He denied that it started gradually. He told the supervisor about the accident

the day he came back to work. He completed an incident report which states "I was working on Operator 2 in 7945 when my knee popped a couple of times".

5. On March 25, 2011 Dr. Gill noted that the patient presents today with right knee pain secondary to an injury he sustained on March 9, 2011 while working. He says he typically works climbing up and down onto the trucks and he said on March 9, 2011 while walking he felt something pop in his knee. The patient requested a referral to Dr. Schopp which was given.

6. The March 30, 2011 Intake form for Dr. Schopp indicates that Petitioner sustained an accidental injury on March 9, 2011 while at work. He reports that while positioned on top of truck at work, his knee popped twice and he has experienced pain ever since. He has no pain in his knee before going to work on March 9, 2011 and the pain started suddenly. There was some discomfort after knee popped at work but the pain has gotten worse since.

7. On April 4, 2011, Petitioner saw Dr. Schopp who noted that on March 9th. Petitioner was on top of a truck. He felt two pops in his right knee along the lateral joint line and he has had problems with his knee ever since that time. Dr. Schopp diagnosed Petitioner as having knee joint pain and a knee sprain. He prescribed a right knee MRI which took place on April6, 2011 and which showed a bucket-handle type tear involving the lateral meniscus with flipped meniscal tissue into the central aspect of the joint with a double PC sign. Moderate-grade partial tear involving the lateral half of the distal patellar tendon near the tibial tubercle insertion, along with moderate knee joint effusion.

8. During the April 11, 2011 follow-up visit with Dr. Schopp, the doctor opined that Petitioner's MRI is consistent with a bucket handle tear of the lateral meniscus. Dr. Schopp advised that Petitioner undergo surgery. On June 2, 2011 Petitioner underwent an arthroscopic partial lateral menisectomy. The post-operative diagnosis was a lateral meniscus tear.

9. At the June 10, 2011 follow-up visit with Dr. Schopp, Petitioner reported he was on top of a truck on March 9th at the plant. During the course of that activity, he felt a pop in his right knee along the lateral joint line. It was associated with an immediate onset of pain. From that moment on, Petitioner has had persistent swelling and joint line pain and trouble with range of motion. Based on Petitioner's history, the mechanism of injury and the surgical findings, it is very reasonable to conclude that it was the March 9th event where Petitioner was on top of the truck which was the origin of his symptoms. Therefore, the March 9th work accident was the cause of the injury.

10. On July 6, 2011 at Taylorville Memorial Hospital's physical therapy department, the therapist indicted that Petitioner's initial injury occurred on March 9th while he was at work. He reported twisting the knee and experiencing pain. His prior job

duties included building trucks, which required climbing, squatting and lifting up to 30 pounds.

11. On September 13, 2011 follow-up visit with Dr. Schopp, the doctor noted that on physical examination Petitioner has fluid motion, healed portals and was neurovascularly intact. He released Petitioner to return to full duty.

12. Petitioner testified that his knee is still painful at times. He experiences trouble with climbing ladders, squatting and kneeling down. Sometimes, standing all day is painful. He now has to sit on the couch differently. He experiences difficulty washing his feet while in the shower because he has to bend at the knee. A couple of times at night his knee popped out and woke him up. He has noticed pain with cold weather. Petitioner testified that he is back at work and is still a team lead. He fills in when people are not there. When no one is absent, he sits at a desk and orders parts. He has not gone back to the plant medical department for additional treatment. He worked overtime last week. He takes Tylenol at home if his knee starts to hurt.

13. John Eytchison testified he was an Operator I on March 9, 2011. He connects the engine to the radiator along with other components. He works directly below the Operator II. He can see the Operator II placing the wiring harness on the truck in the C and D positions as noted on PX9. He sees the Operator II squat. On March 9, 2011, Petitioner told him that he had popped his knee and it caused him pain. The conversation in which Petitioner said his knee popped took place after Petitioner was off the truck base and he was on the floor.

14. Dr. Schopp, a board certified orthopedic surgeon, was deposed on September 12, 2011. Based on Petitioner's history, mechanism of injury and the findings at surgery, it is very reasonable to conclude that the event on March 9th was the origin of his injury. Squatting, twisting and climbing are the type of activities that cause this type of injury. Meniscus injuries are usually twisting injuries, sometimes athletic injuries, but they can occur when arising from a deep squat if the leg is twisted awkwardly or if enough force is put through the leg. He did not record and cannot recall any specifics regarding twisting or squatting that Petitioner was doing at the time he felt the pop.

15. Dr. Kornblatt, an orthopedic surgeon, was deposed on October 5, 2011. He evaluated Petitioner on April 10, 2011. At that time, Petitioner reporting developing an acute pain and popping in his right knee while working on the top of a truck on March 9, 2011. Petitioner stated he did not have any prior knee injuries. Dr. Kornblatt testified that he specifically asked Petitioner how the injury occurred and Petitioner said he was squatting and he sustained a twisting injury to his right knee on March 9, 2011. Based on Petitioner's history, the medical records and his physical examination, it is his opinion that Petitioner's mensical pathology was not caused by his work activities on March 9th. A bucket-handle lateral mensical tear usually takes significant trauma or significant twisting along with deep flexion. Usually when you get a big tear in the

meniscus, you know when it happened. The fact that Petitioner said he did not have any pain when he felt the pop in his knee suggest that this was an unstable meniscal tear that was there prior to alleged incident and during his activities, the meniscus was moving in and out causing the pop. Dr. Kornblatt opined that it was highly unlikely that Petitioner tom the meniscus during his job activities. Dr. Kornblatt agreed that squatting and twisting of the knee can cause this particular type of injury. He noted that if Petitioner had a prior condition and he attempted to squat or twist his knee sometimes he would experience the pain and if he did not experience pain until after the popping that would not necessarily indicate that the tear occurred around the time of the popping. In the medical records, it indicates Petitioner was working on top of a truck. Petitioner provided two conflicting facts. When Petitioner was in my office, he claimed to be squatting and twisting his knee. There was no mention of that in the written medical records. The medical records say he did not do anything to his knee. It just popped. Dr. Kornblatt opined that if Petitioner tore the meniscus when it popped he would have experienced pain right away. Dr. Kornblatt opined that Petitioner had a pre-existing tear and part of the meniscus moved into the joint. He further opined that it was hard to believe that Petitioner would have that big a tear without significant trauma that was not pre-existing. Even straight deep squatting is not likely to result in a bucket-handle mensical tear. It would most likely be related to squatting in association with twisting. It is highly unlikely that the meniscus would move into the joint, tear at that time and the patient not have pain until the next day. It does not make sense to him.

While the Commission finds no basis in law or the record to alter the decision, the Commission, pursuant to the Circuit Court's Order, finds Petitioner sustained an accidental injury arising out of and in the course of his employment on March 9, 2011and he proved a causal relationship exists between his present condition of ill-being and the alleged March 9, 2011 work accident. As a result, Petitioner was temporarily totally disabled from June 2, 2011 through September 1 1 , 2011 for 14-4/7 weeks under Section8(b) of the Illinois Workers' Compensation Act, is entitled to $2,021.29 in medical expenses under Section 8(a) of the Act and permanently lost 25% of the use of his right leg under Section 8(e) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $454.67 per week for a period of 14-4/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $2,021.29 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $409.21 per week for a period of 53.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 25% loss of use of the right leg.

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 in the amount of $9,657.83 under Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit in the amount of $6,658.56 paid, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $14,400.00.

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: AUG 18 2015

Mario Basurto

MB/jm

David L. Gore

O: 5/27/15

43

Stephen Mathis

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

James Parra,
Petitioner,

vs.

Admiral Heating & Ventilating,
Respondent,

No. 12WC 43353
15IWCC0606

ORDER

This matter comes before the Commission on its own Petition to Recall the Commission Decision to Correct Clerical Error pursuant to Section 19(f) of the Act. The Commission having been fully advised in the premises finds the following:

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated August 5, 2015, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner Kevin W. Lamborn.

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

Kevin W. Lamborn

DATED: AUG 2 5 2015

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES PARRA,

Petitioner,

vs.

NOS: 12 WC 43353
13 WC 00609
15IWCC0606

ADMIRAL HEATING & VENTILATING,

Respondent,

CORRECTED DECISION AND OPINION ON REMAND

This matter come before the Illinois Workers' Compensation Commission on remand from the Circuit Court of Cook County in case number 14 L 50467. On June 12, 2013 Arbitrator Williams issued 19(b) Decisions in 12 WC 43353 and in 13 WC 00609. In 12 WC 43353, the Arbitrator found Petitioner failed to prove he sustained accidental injuries, to his right elbow and low back, arising out of and in the course of his employment with Respondent on November 14, 2012, and that Petitioner failed to provide timely notice of his claim of injury. In 13 WC 00609, the Arbitrator found Petitioner failed to prove he sustained accidental injuries, to his right elbow and low back, arising out of and in the course of his employment with Respondent on August 17, 20011, and that Petitioner failed to provide timely notice of his claim of injury.

On Remand Order:

> "The Illinois Workers' Compensation Commission's Decision and Opinion on Review of Case No. 14 IWCC 0362 is substantively and procedurally deficient in a number of areas

– including an articulation for the bases [sic] for its Decision and the reasonableness of its Decision."

On June 21, 2013, Petitioner timely filed a Petition for Review in 12 WC 43353 and 13 WC 00609, raising issues of accident, notice, causal connection, medical expenses, temporary total disability, prospective medical care, and penalties and fees.

On February 11, 2014 oral arguments were heard in the matter, with both parties represented by counsel. On May 16, 2014, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, temporary total disability benefits, prospective medical care, and penalties and fees, and being advised of the facts and law, reversed the Decision of the Arbitrator with regard to Petitioner's right elbow injuries sustained on November 14, 2012, in 12 WC 43353, but affirmed the Arbitrator's finding in 13 WC 609 that Petitioner failed to prove accidental injuries arising out of and in the course of employment and causal connection with regard to Petitioner's alleged right elbow and low back injuries on August 17, 2011. The Commission further remanded 12 WC 43353 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).

Pursuant to Judge Robert Lopez Cepero's November 14, 2014 Remand Order, the Commission herein provides further articulation for the basis for its Decision.

Findings of Fact and Conclusions of Law:

1) Petitioner testified he began working as a sheet metal worker for Respondent in 2003, performing installation of heating and A/C equipment. Petitioner testified that on August 17, 2011, while at a job site at a grade school, he sustained a right elbow and low back injury when he threw a 50 pound extension cord up to his foreman, Paul Tobin, who was up in the ceiling. [13 WC 609]. Petitioner testified he felt a pulling or burning in his right arm and elbow and a twisting injury in his lower back. Petitioner testified that prior to August 17, 2011 he had no right arm or low back treatment or injury. Petitioner testified that following his injury on that date he drove directly to Respondent's shop in Hillside and reported his injury to Mike Crnkovich, the general superintendent. Petitioner testified he returned to work for Respondent thereafter and continued working full duty for Respondent throughout the course of 2011, and into 2012. (T13-22).

2) Petitioner's immediate supervisor, Paul Tobin, testified Petitioner was not working with him on August 17, 2011, that Petitioner was actually kicked off the grade school jobsite due to Petitioner's behavior on August 3, 2011. Tobin testified Petitioner never advised him that he had

injured himself at work on August 3, and that Petitioner did not return to the jobsite after being kicked off of it on August 3, 2011. (T73-75). Mike Crnkovich, testified Petitioner never reported an August 17, 2011 work-related injury to him on that date or any other date thereafter. Crnkovich testified that in August of 2011 he had a conversation with Petitioner after he was kicked off the grade school jobsite, and that during that conversation Petitioner made no mention of any work-related injury, but instead complained about working conditions, and that Petitioner was then placed on a different job project thereafter, at the Dirksen Federal Building. (T88-92).

3) Petitioner admitted he sought no treatment for his alleged right elbow or low back injuries from August 17, 2011. (T45). Petitioner admitted he saw Dr. Riccardo, his personal physician at Westbrook Internal Medicine, for a comprehensive physical on January 30, 2012. At the time of the January 30, 2012 office visit Dr. Riccardo noted all of Petitioner's systems were negative, no joint pain or swelling, no sciatic symptoms, and no low back spinous process tenderness, normal examination of his extremities, and a normal neurological exam. Dr. Riccardo's assessment was anxiety and alopecia. The office note fails to contain any history of Petitioner's alleged August 17, 2011 work injury, of any right elbow or low back injury, or of any right elbow or low back symptoms. (RX1).

4) Petitioner testified that on November 14, 2012 he was working on a project for Respondent at Capital One on Golf Road in Rolling Meadows, performing retrofit heating and A/C work, with a co-worker, Robert Muldoon. Petitioner testified that on that date he was moving pallets of material weighing 400 to 500 pounds with a pallet jack, and while attempting to maneuver the materials he felt a pain in his right elbow and lower back. [12 WC 43353]. Petitioner testified he continued working until his supervisor, Mike Chancellor, called his co-worker, Muldoon, on Muldoon's cell phone at 12:45pm. Petitioner testified he spoke to Chancellor on Muldoon's cell phone and advised Chancellor that he had re-aggravated his right elbow and low back while working. Petitioner testified Chancellor advised him to take a few days off and see how he felt afterward. (T23-29).

5) Petitioner testified that on Sunday, November 18, 2012 at approximately 8:00 p.m. he called Chancellor and advised him that his right arm and back were no better with time off work, and that he had wanted to see a doctor regarding same. Petitioner testified that at that point Chancellor advised him that he was laid off. (T30-31). Petitioner testified that he reported back to the Capital One job site on November 19, 2012, and waited there for eight hours until Crnkovich arrived at the job site and gave him his layoff check. (T30-33).

6) On December 18, 2012, an Application for Adjustment of Claim was filed in 12 WC 43353, alleging an injury to the arm and back on August 24, 2012, with Petitioner's signature having been affixed to the document on November 20, 2012.

7) On November 21, 2012 Petitioner sought treatment with Dr. Hsu at Westbrook Internal Medicine, at which time he reported he reinjured his back and right elbow on November 14, 2012, and that he had sustained a prior low back and right arm injury in August of 2011 when he threw 100 feet of cable to someone above him. [Companion Case 13 WC 609]. At the time of the November 21, 2012 office visit Petitioner complained of low back pain and right arm pain. Petitioner further reported that he had been taking Aleve four times a day for his low back symptoms since his prior injury in August of 2011 without resolution of symptoms. Dr. Hsu diagnosed back pain and right elbow pain/strain, referred Petitioner to physical therapy, and advised Petitioner x-rays and an orthopedic referral would be made if he failed to improve. (PX1).

8) On November 29, 2012, Petitioner sought treatment with Dr. Freedberg at Suburban Orthopaedics, at which time Petitioner provided a history that he pulled his right arm and low back while moving material with a pallet jack. Dr. Freedberg's assessment was a lumbar sprain/strain with left SI joint dysfunction, grade 1 spondylolisthesis at L5-S1, and right elbow lateral epicondylitis with brachialradialis strain. Dr. Freedberg recommended physical therapy and MRI scans of the lumbosacral spine and right elbow, and authorized Petitioner off work. (PX2). On cross-examination Petitioner admitted that he advised Dr. Freedberg at his November 29, 2012 office visit that he had been having elbow and back pain for well over a year. (T56).

9) On December 3, 2012, Petitioner underwent an MRI study of the lumbar spine, significant for spondylolysis at L5 and right foraminal herniation and a diffuse bulge at L2-3, and an MRI study of the right elbow, significant for a radial collateral ligament tear and partial-tear of the common extensor tendon. (PX3).

10) On December 10, 2012 Petitioner was seen in follow up with Dr. Freedberg, at which time he reported constant burning, numbness, and tingling in his elbow, as well as constant backaches. Dr. Freedberg recommended Petitioner remain off work, continue physical therapy, and consider right elbow surgery. (PX2).

11) On January 9, 2013, Dr. Freedberg performed right elbow surgery, with right elbow debridement of the extensor carpi radialis brevis and decortication of the bone, repair of the extensor mechanism, and imbrication of the posterior anterior capsule and radial collateral ligament. Petitioner's post operative diagnosis was right elbow lateral epicondylitis with mild laxity of the posterolateral corner. (PX4).

12) Petitioner was seen in follow up on January 24, 2013, February 25, 2013, and on April 10, 2013, during which time Petitioner underwent a course of physical therapy, remained off work, and reported improvement in his right elbow symptoms but continuing symptoms in his low back. (PX2).

13) On April 10, 2013 Dr. Freedberg recommended Petitioner remain off work, continue physical therapy for Petitioner's low back and right elbow, and referred him to Dr. Novoseletsky for consultation and possible lumbar injections. (PX2). Petitioner testified he was seen by Dr. Novoseletsky on April 17, 2012, but that he had not undergone any low back injections to date. Petitioner testified he was last seen by Dr. Freedberg on May 8, 2013, that he was still undergoing physical therapy three times a week, and that his elbow was improving. Petitioner testified he was authorized off work by Dr. Freedberg from November 29, 2012 through the date of hearing. (T34-39).

Although the Arbitrator found, with regard to Petitioner's alleged November 14, 2012 right elbow injury, that Petitioner had failed to meet his burden of proof concerning the issues of accident, notice, causal connection, and temporary total disability, the Commission finds otherwise. The Commission finds that on November 14, 2012 Petitioner sustained an accidental injury arising out of and in the course of his employment with regard to his right elbow, that his current right elbow condition is causally connected to said accident, that Petitioner provided timely notice as required under Section 6(c), and that Petitioner was temporarily totally disabled with regard to his right elbow condition from November 29, 2012 through the date of 19(b) hearing, May 17, 2013.

On January 30, 2012, Petitioner underwent a comprehensive physical with his personal physician, Dr. Riccardo. Petitioner's physical examination was essentially normal, and the assessment made by Dr. Riccardo was limited to anxiety and alopecia. The January 30, 2012 office note contains no complaint with regard to Petitioner's right elbow. The Commission transcript further contains no evidence of any right elbow medical treatment or any surgery recommendation in the years preceding the date of injury. The Commission finds significant that Petitioner testified, unrebutted, that prior to his November 14, 2012 work injury he received no medical treatment with regard to his right elbow. The Commission is also persuaded by the fact that Petitioner, a 45 year-old on the date of injury, worked full duty as a sheet metal worker for Respondent from 2003 up until time of his November 14, 2012 work injury, and that the record is void of any evidence of lost time due to any right elbow complaints during that period.

The Commission is cognizant that both Dr. Hsu and Dr. Freedberg's office notes as they indicate they were treating Petitioner for pain in his right elbow due to a work related injury. On November 29, 2012 Dr. Freedberg issued a work duty status form authorizing Petitioner off work due to a work related injury. The Commission finds significant the December 3, 2012 right elbow MRI findings indicating significant findings of a radial collateral ligament tear and partial-tear of the common extensor tendon. The Commission notes the record is void of a medical expert's opinion disputing the issue of causal connection between Petitioner's current right elbow condition and his November 14, 2012 work-related injury or right elbow MRI findings.

For the reasons stated above, the Commission finds Petitioner sustained accidental injuries, with regard to his right elbow, arising out of and in the course of his employment on November 14, 2012, and that his current right elbow condition of ill-being is causally related to same.

With regard to the issue of notice, the Commission finds Petitioner provided timely notice of his November 14, 2012 right elbow injury based upon his credible testimony on the issue. Petitioner testified that during the course of Mike Chancellor's November 14, 2012 cell phone call to his co-worker, Muldoon, he participated in the phone call and specifically advised Chancellor that he re-aggravated his right elbow during the course of the day. Petitioner testified Chancellor advised him to take a few days off, after which Petitioner contacted Chancellor on Sunday, November 18, 2012 and advised that his right elbow had not improved and he needed to seek medical treatment for same.

Based upon the finding of causal connection with regard to Petitioner's right elbow condition herein, the supporting medical records, and the off work authorizations, the Commission finds Petitioner was temporarily totally disabled for a period of 24-1/7 weeks, from November 29, 2012 through the date of 19(b) hearing, May 17, 2013, at $1,084.93 per week under Section 8(b).

Although the Commission finds Petitioner proved he sustained an accidental injury arising out of and in the course of his employment on November 14, 2012 with regard to his right elbow, with regard to Petitioner's low back condition the Commission affirms and adopts the Arbitrator's finding that Petitioner failed to prove his low back condition of ill-being is causally related to his November 14, 2012 work-related injury. In so finding, the Commission finds Petitioner's testimony and the history he provided to his medical providers following his November 14, 2012 work injury less than credible with regard to his low back condition. The Commission notes that on November 21, 2012, Petitioner provided a medical history to his personal physician, Dr. Hsu, that in the year prior to his November 14, 2012 work injury he suffered from low back complaints requiring him to take four Aleve each day, without resolution of his symptoms. The Commission finds Petitioner's history of having low back pain for a year requiring him to take four Aleve each day highly suspect given that Petitioner worked full duty as a sheet metal worker for Respondent following an alleged injury of August 11, 2011 up until time of his November 14, 2012 work injury. Furthermore, the January 30, 2012 office visit note of Dr. Riccardo, at which time Petitioner was underwent a comprehensive physical, noted all of Petitioner's systems were negative, with no joint pain or swelling, no sciatic symptoms, and no low back spinous process tenderness, normal examination of his extremities, and a normal neurological exam. Dr. Riccardo's assessment on that date was limited to anxiety and alopecia. The office note failed to contain any history of Petitioner's alleged August 17, 2011 work injury, of any ongoing low back condition, low back symptoms, or of Petitioner taking four Aleve a day for any ongoing low back symptoms. In addition, Dr. Riccardo's listing of Petitioner's current medications failed to reflect "Aleve" or any other similar medication as of that January 30, 2012

office visit. (RX1). Petitioner also admitted at the time of hearing that he provided Dr. Freedberg with a similar history of low back pain for well over a year as of his initial office visit with him on November 29, 2012. The Commission finds Petitioner's medical records fail to corroborate his history of ongoing low back symptoms following his August 11, 2011 alleged incident, and that Petitioner's testimony as to a new low back injury is also not credible.

With regard to Petitioner's request for a prospective medical award for his low back condition, based upon the Commission's finding of no causal connection with respect to same, the issue is moot.

With regard to the issue of penalties and fees based upon non-payment of temporary total disability benefits, the Commissions declines to award same, and finds a real controversy exists as to whether or not Petitioner's current condition of ill- being is causally related to his work accident. The Commission further finds Respondent behavior was not unreasonable nor did Respondent's action result in vexatious delay or intentional underpayment of benefits.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 13, 2013 is hereby reversed with regard to Petitioner's right elbow condition of ill-being, for the reasons stated herein, and affirmed and adopted with regard to Petitioner's low back condition of ill-being.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $1,084.93 per week for a period of 24-1/7 weeks, from November 29, 2012 through May 17, 2013, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $26,300.00. 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: AUG 2 5 2015
KWL/kmt
R-05/11/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Nina Carter,

Petitioner,

vs. No. 14 WC 11971
15 IWCC 0814

Children's Habilitation Center,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

This matter comes before the Commission on Respondent's Petition Under §19(f) for Correction of a Clerical Error in the Arbitration Decision [sic] dated November 2, 2015. Upon consideration of said Petition, the Commission is of the opinion that the Commission's Decision and Opinion on Review dated November 2, 2015 should be recalled due to a clerical error.

The Commission therefore corrects the first full paragraph on page 4 of the Corrected Decision to read:

> Based upon the finding of MMI on October 8, 2014, the Commission denies prospective medical treatment and terminates TTD after October 8, 2014.

The Commissioner further corrects the fourth full paragraph on page 4 of the Corrected Decision to read:

> IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner reasonable and necessary medical services, pursuant to the fee schedule, to Family Christian Health Center, and to Dr. Thometz, as provided in §8(a) and §8.2 of the Act, incurred prior to October 8, 2014.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated November 2, 2015 is hereby vacated and recalled. A Corrected Decision and Opinion on Review shall be issued simultaneously with this Order.

DATED: NOV 2 3 2015
TJT/gaf
O: 9/1/15
51

Thomas J. Tyrrell

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Nina Carter,

Petitioner,

vs. NO: 14 WC 11971
15IWCC0814

Children's Habilitation Center,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability ("TTD"), medical expenses, prospective medical expenses, evidentiary issues, 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 permanency if any.

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 Commission affirms and adopts the Arbitrator's decision in all respects, except with regard to TTD, the award of prospective medical treatment, and the amount of medical expenses awarded. For the reasons set forth below, the Commission modifies the Arbitrator's decision and

finds that Petitioner was at maximum medical improvement ("MMI") on October 8, 2014. The Commission further modifies the award of TTD awarded to March 25, 2014 through March 30, 2014, and April 21, 2014 through October 8, 2014, but not thereafter.

The Petitioner was injured at work when a 2-foot wide hospital-type air compressor fell on her foot on March 24, 2014. The Petitioner sought treatment with Dr. Joseph Thometz, an orthopedic specialist, who diagnosed her with a right foot contusion Dr. Thometz also opined that Petitioner's main problem was a neurapraxia from the contusion with dysesthesias related to the injury, and that she had symptoms indicative of Complex Regional Pain Syndrome ("CRPS"). He ultimately recommended pain management with Dr. Howard Robinson on August 25, 2014. She had not treated with Dr. Robinson as of the December 2, 2014 hearing due to a lack of authorization by Respondent. (Px1, Tr. 32-33)

The Petitioner underwent a Section 12 examination with Dr. George Holmes, an orthopaedic specialist, on July 17, 2014. Dr. Holmes agreed with Dr. Thometz that Petitioner suffered a contusion to her right foot. However, Dr. Holmes disagreed with Dr. Thometz regarding Petitioner demonstrating signs of CRPS because her pain was not consistent with that diagnosis. He noted that Petitioner had normal x-rays that were negative for a fracture, but that having Petitioner under-go an EMG or bone scan could be beneficial to determine if there was any pathology related to her symptoms. He also opined that Petitioner could return to work in a full-duty status. During the examination, Dr. Holmes noted an absence of instability, swelling, or atrophy in her right foot. (Rx1)

Both a bone scan and EMG were ultimately completed, and Dr. Holmes completed an addendum report dated October 8, 2014. He noted that he concurred with the radiologist's interpretation of the May 2, 2014 MRI results of Petitioner's right foot that it was a normal MRI. (Rx1). Dr. Holmes noted that the report from the EMG on Petitioner's right foot indicated that it was a normal EMG with "no electrical evidence of any active right…neuropathy." (Id.). Petitioner's bone scan results showed an increased uptake in both of Petitioner's feet, but it was noted that: "The right foot is far more benign in terms of uptake on the bone scan than the left foot." Petitioner's injury was to her *right* foot. (Id.) Dr. Holmes also wrote:

> "(a)fter review of the EMG, bone scan, and the MRI, there is no conclusive evidence that this claimant has sustained any neurologic damage to her foot. There is no evidence that the claimant has sustained a Lisfranc injury to the foot. There is no indication that the patient, as a result, has sustained any significant contusion or soft tissue injury to the foot as well. Therefore, the current diagnosis is that the patient has essentially a normal examination and normal orthopaedic examination of her foot." (Id.)

Dr. Holmes also reviewed the surveillance video of Petitioner walking in a normal shoe and opined that since she was walking "with a normal gait with regular shoes," it supported his opinion that Petitioner had already reached MMI. (Rx2). He subsequently opined that the diagnostic findings supported his contention that Petitioner had already reached MMI and could return to work without restrictions. (Rx1)

Petitioner returned to work on a light duty status on March 31, 2014. Due to pain in her right foot, she left early that day. She was kept off of work between April 3, 2014 and April 13, 2014. She was then placed on sedentary work restrictions on April 14, 2014. She did not work again until April 16 and April 17, 2014 when she worked for a few hours and thirty minutes, respectfully. She testified that she left early both days: The first day may have been for a family emergency or for pain in her foot, and the second day was because the supervisor of housekeeping told her that she was authorized to leave. Petitioner also testified that she attempted to work "every day," but that she was told that light duty work was not available for her. A letter to Petitioner dated April 21, 2014 indicated that Petitioner could only return to work for the Respondent once Petitioner could return to work full duty. This was based on a lack of availability for Petitioner to work light duty because she could not work in the basement on light duty due to her asthma. (Tr. 46-59).

Respondent's CEO, Pamela Schaetzle, also testified at trial. Ms. Schaetzle testified that Petitioner worked for a brief time on April 16th and April 17th, but that Petitioner left early for non-right foot related problems: April 16th was due to Petitioner's husband going to a hospital emergency room, and April 17th was due to Petitioner receiving a phone call and stating that she had to leave. Ms. Schaetzle also testified that it was inaccurate that Petitioner had attempted to return to work light duty every day since her accident, as Petitioner had testified. Petitioner did not return to work or call the Respondent about returning to work on April 18, 2014 or any time thereafter. (Tr. 87-93).

To be entitled to TTD, a claimant must prove not only that she did not work, but that she was unable to work. *Gallentine v. Industrial Com., 201 Ill. App. 3d 880 (Ill. App. Ct. 2d Dist. 1990)*. Here, Petitioner has not shown that she was incapable of working. We find that Petitioner could have worked light duty for Respondent during the dates that she was authorized by a medical professional to work, but voluntarily chose not to. We find Ms. Schaetzle's testimony to be more credible than the Petitioner's testimony regarding Petitioner's attempted to return to work after April 17th and the availability of light duty work for Petitioner.

The Petitioner's lack of credibility is also a factor in the Commission's decision. The Petitioner testified that the pain in her right foot worsened from March 24, 2014 to December 2, 2014, and that her foot hurt her all day, every day. She also testified that she only wore her post-operative shoe on her right foot and never wore a regular shoe. However, the Commission reviewed videotape evidence of the Petitioner walking May 16, 2014 and concurs with Dr. Holmes assessment that Petitioner was seen walking in a regular shoe and had a normal gait. (Rx1, Tr. 29-31, 34-36).

By her testimony Petitioner attempted to lead the Commission to believe that her pain was so great that she could neither wear a normal shoe nor work. This is proven to be false by the video evidence presented by Respondent. Her testimony is at best disingenuous.

Based upon the totality of the evidence and the factual findings above, we find that Dr. Holmes' opinion that Petitioner merely suffered a contusion is more compelling than Dr. Thometz's opinion that Petitioner suffered from CRPS. The absence of any objective evidence to support Petitioner's ongoing pain complaints is particularly compelling. Given that the

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: NOV 2 3 2015
TJT/gaf
O: 9/1/15
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

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

CARTER, NINA
Employee/Petitioner

Case# **14WC011971**

CHILDREN'S HABILITATION CENTER
Employer/Respondent

15IWCC0814

On 12/19/2014, 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 0.11% 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:

2208 CAPRON & AVGERINOS PC
STEPHEN SMALLING
55 W MONROE ST SUITE 900
CHICAGO, IL 60603

2965 KEEFE CAMPBELL BIERY & ASSOC
JOE D'AMATO
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

15IWCC0814

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Nina Carter
Employee/Petitioner

v.

Children's Habitation Center
Employer/Respondent

Case # 14 WC 11971

Consolidated cases: N/A

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen Friedman**, Arbitrator of the Commission, in the city of **Chicago**, on **December 2, 2014**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **March 24, 2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**18,252.00**; the average weekly wage was $**351.00**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**1,590.29** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**1,590.29**.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $253.00/week for 33 1/7 weeks, commencing March 25, 2014 through March 30, 2014 and April 21, 2014 through December 2, 2014, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $**1,590.29** for TTD paid.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $500.00 to Family Christian Health Center and $90.00 to Dr. Thometz, as provided in Sections 8(a) and 8.2 of the Act. Further, Respondent shall pay prospective medical to include the initial evaluation with Dr. Robinson as directed by Dr. Thometz and pay all reasonable and necessary charges incurred therewith, and any further reasonable necessary and causally connected treatment thereafter.

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

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

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

Signature of Arbitrator

December 19, 2014
Date

ICArbDec19(b)

DEC 19 2014

Statement of Facts

Petitioner Nina Carter was employed by Respondent Children's Habilitation Center on March 24, 2014. Respondent provides care for special needs children. Petitioner testified that she had been employed by Respondent for 14 years. Petitioner testified that she was employed as a team assistant. Her job duties were to bath, clothe, and lift the children. She assisted with making beds, and conducting activities. Petitioner testified that before the accident, she did not have any prior injury to her right foot. She did not have any physical limitations with respect to her right foot. Petitioner testified that on March 24, 2014 she was making a bed when a large metal compressor fell on her right foot. Petitioner testified that the compressor struck her on the top of the foot.

Petitioner testified that she was taken to Ingalls Occupational Health on the date of the accident. The records of Ingalls Occupational Health were admitted as Petitioner's Exhibit 2. The March 24, 2014 record contains a consistent history of accident with complaints of pain and swelling in the right foot. The physical examination notes mild swelling. Petitioner walked with a limp and was unable to put weight on the right foot. X-rays did not show a fracture. Petitioner was diagnosed with a contusion. She was placed on restricted duty with no standing or walking. Petitioner was seen in follow up on March 27, 2014. The examination noted that she could move with moderate difficulty. There was still swelling and tenderness to palpation noted. Petitioner was advised to use a cane for safe ambulation and a post op shoe for comfort. She was advised to continue work restrictions. Further x-rays were discussed if she did not improve. Petitioner was seen on April 3, 2014. She continued to complain of pain and swelling. The examination did not note swelling, but continued tenderness. Petitioner advised she was transferring her care to her personal physician. She was continued on light duty and advised to use the post op shoe and cane.

Respondent offered Petitioner work within her restrictions (Resp. Ex. 4). The work consisted of folding and stacking laundry. Petitioner testified that she was given a wheelchair that was too small and was taken to the basement to perform the light duty job duties. Petitioner testified that she was left alone in the basement. There was no bathroom in the basement. Petitioner testified that there were no doors or windows. Petitioner testified that she needed to be taken by the maintenance man because she could not operate the freight elevator door by herself. Petitioner testified that she worked about two hours and then had the maintenance man take her to see Pam. Pam Schaetzle, CEO and administrator for Respondent testified that Petitioner left work on March 31, 2014 due to pain in her right foot.

Petitioner testified that she saw her own doctor, Julie Austin, at Family Christian Health Center on April 1, 2014. The records of Family Christian Health Center were admitted as Petitioner's Exhibit 3. Petitioner was seen by Julie Austin on April 1, 2014. The records reveal that she is an APRN (advanced practice registered nurse). Petitioner complained of significant right foot pain, burning and tingling. The examination noted moderate swelling and significant tenderness. The recommendations were to use NSAIDs, see an orthopedic doctor and remain off work until evaluation by a specialist. Repeat x-rays were ordered. Petitioner returned to Family Christian Health Center on April 15, 2014. The note reflects review of multiple physical and health problems including the right foot injury. Ms Austin authored a note stating Petitioner should not work in the basement due to her asthma and that she should not be left unattended due to her injury.

Petitioner testified that she was referred by Ms. Austin to Dr. Thometz. Dr. Thometz' records were admitted as Petitioner's Exhibit 1. Petitioner first saw Dr. Thometz on April 14, 2014. She complained of constant burning pain with hypersensitivity. Dr. Thometz stated that the x-rays showed no acute changes. His examination noted swelling with marked hypersensitivity. His impression was a contusion to the right foot. He ordered an MRI. He noted signs of contusion to the superficial peroneal nerve with neuralgia. He placed Petitioner on sedentary work restrictions.

Petitioner returned to restricted work for Respondent on April 16, 2014. Ms. Schaetzle testified that Petitioner was set up to fold laundry in the physical therapy room on the first floor. Petitioner worked for three hours. Petitioner testified that her foot began to hurt and she left to see the doctor. Petitioner returned on April 17, 2014, but left within half an hour because of a personal emergency. Ms. Schaetzle testified that Petitioner did not complain about her foot at that time. Petitioner did not return to work thereafter.

Petitioner received a letter from Respondent concerning continued light duty dated April 21, 2014 (Petitioner's Exhibit 5). Ms. Schaetzle testified that this letter was drafted by Respondent's attorney and under her authority. The letter stated that Petitioner would only be able to perform the temporary job folding laundry in the basement, and since Julie Austin's April 15, 2014 note says Petitioner should not work in the basement, the work is no longer being offered. Petitioner is advised to provide a fitness for duty certification when she can perform the essential functions of her regular job. Ms. Schaetzle testified that restricted work could still be available, but that it would be offered only in the basement.

Petitioner's MRI was performed on May 2, 2014 (Pet. Ex. 3, pg 31). It was read as unremarkable. Dr. Thometz saw Petitioner on May 7, 2014. He opined that her main problem was a neuropraxia from the contusion. He prescribed Lidoderm patches and physical therapy. On June 16, 2014, Dr. Thometz notes that Petitioner has not made progress in therapy. Stretching made her pain worse. He notes a little soft tissue swelling and loss of motion with hypersensitivity. His impression is a nerve contusion with symptoms suggesting a complex regional pain type syndrome in response to the nerve injury. Dr. Thometz suggests referral to Dr. Robinson. He states Petitioner is not capable of work at this time. Dr. Thometz' records include follow up visits through September 15, 2014. He continues to diagnosis CRPS and recommends referral to Dr. Robinson for pain management. He continues to restrict Petitioner to sedentary work. Petitioner testified that she last saw Dr. Thometz on November 4, 2014. Petitioner testified that his recommendations remain the same.

Respondent placed Petitioner under surveillance. The video and reports were admitted as Respondent's Exhibit 2. The surveillance covered four days. The Arbitrator has viewed the video which totals approximately 35 minutes. The Petitioner was seen briefly on May 16, 2014 when she walked from her car into a private reception. She is seen to be wearing regular shoes. Petitioner testified that she was going to her daughter's graduation and wanted to look nice. She testified that she took her shoes off when she got inside. Petitioner was also filmed on July 13, 2014 walking from her home to her vehicle and then returning to her home. She is wearing the post op shoe in this video. This video does not clearly view Petitioner's feet and legs as she enters her home and climbs or descends the stairs into the house.

Petitioner was sent by Respondent for an examination with Dr. George Holmes on July 17, 2014 (Resp. Ex. 1). Dr. Holmes diagnosis is a possible neuritic type of pain. He notes that the objective parameters appear to belie the level of subjective complaints. He did view the surveillance video and reports. He opines that the symptoms are not consistent with RSD or CRPS. He stated that Petitioner may benefit from an EMG and bone scan. He stated Petitioner did not need any restrictions and does not need to be off work based upon the objective data.

The EMG study was performed on September 4, 2014. It was read as normal. The bone scan was performed on September 2, 2014. The impression was inflammatory/stress related changes-both feet and right knee (Pet. Ex. 1).

Dr. Holmes authored an addendum report on October 8, 2014. He reviewed the MRI, EMG and bone scan and opined that there is no conclusive evidence that Petitioner sustained any neurologic damage to her foot. The current diagnosis is an essentially normal examination of her foot. Dr. Holmes opined that Petitioner was at maximum medical improvement and could return to work without restrictions (Resp. Ex. 1).

Petitioner testified that she continues to have sharp pain in her foot. She does not wear regular shoes. She can't go down stairs normally. She cannot walk long distances. She cannot bend her toes backwards. When she wears shoes it compresses her foot and hurts. Petitioner testified that she still wants to see Dr. Robinson. Petitioner testified she has been terminated by Respondent.

Conclusions of Law

In support of the Arbitrator's decision with respect to F (Causal Connection), the Arbitrator finds as follows:

Petitioner sustained an undisputed accident on March 24, 2014 with injuries to her right foot sustained when a heavy air compressor fell and struck the top of her foot. The medical histories and complaints of pain and swelling of her right foot provided to all of the medical providers are consistent with the trauma suffered. The Petitioner was examined and treated at Ingalls Occupational Health Center and Family Christian Health Center before coming under the care of Dr. Thometz. At both facilities, it was deemed that the Petitioner had sustained injuries to her right foot necessitating the imposition of work restrictions, prescribing of medication and ongoing treatment. The Petitioner was subsequently examined by Dr. Thometz who after examining her on numerous occasions concluded that she was suffering from neurapraxia from the contusion to the foot with associated dysesthesias. Physical examinations revealed swelling and pain through the foot with medications providing no relief. Dr. Thometz opined that she had a nerve condition with symptoms suggesting a complex regional pain type syndrome in response to the nerve injury and recommended she be seen by Dr. Robinson, a pain physician for further treatment options.

Dr. George Holmes, Respondent's independent examiner, examined the Petitioner on a single occasion on July 17, 2014. Dr. Holmes opinion, based upon his examination and subsequent review of the diagnostic testing, is that there is no objective or "conclusive" evidence of neurologic damage to Petitioner's foot.

The Arbitrator has had the opportunity to observe the Petitioner and finds her testimony as to complaints of pain to be credible. The Arbitrator has reviewed the videotape surveillance and finds nothing therein to contradict Petitioner's ongoing complaints of pain and reliance on use of the post-op shoe. The video of Petitioner's activity is so minimal and the view of Petitioner's gait so limited, that no reasonable conclusions on the Petitioner's physical ability can be drawn to contradict her testimony and the treating medical records. The Arbitrator also finds Petitioner's explanation for wearing regular shoes in the May 16, 2014 video plausible.

Given the foregoing, the Arbitrator finds the medical opinions and diagnosis of Dr. Thometz to be more persuasive than those of Dr. Holmes. Dr. Thometz has had the opportunity to examine the Petitioner on numerous occasions. Dr. Thometz has recommended additional evaluation by a pain specialist to treat Petitioner's ongoing complaints of pain.

Based upon the totality testimony, the medical evidence and exhibits submitted in this matter, the Arbitrator finds that the Petitioner's current condition of ill-being is causally related to the accidental injuries sustained on March 24, 2014 arising out of and in the course of her employment with Respondent.

In support of the Arbitrator's decision with respect to J (Medical) and K (Prospective Medical), the Arbitrator finds as follows:

Petitioner's Exhibit 4 consists of unpaid medical expenses incurred at Family Christian Health Center for visits dated April 1, 2014 and April 15, 2014 totaling $500.00. The Exhibit further reflects unpaid medical expenses incurred with Dr. Thometz of $90.00 for services on September 15, 2014. Based upon the Arbitrator's

decision with respect to causal connection above, the Arbitrator finds that the treatment from Family Christian Health Center was reasonable, necessary and causally connected to the accidental injuries sustained on March 24, 2014. The Arbitrator finds that the treatment received from Dr. Thometz was reasonable, necessary and causally connected to the accidental injuries sustained on March 24, 2014.

Accordingly, the Arbitrator finds that the charges incurred totaling $500.00 from Family Christian Health Center and the $90.00 by Dr. Thometz for treatment on September 15, 2014 were reasonable and necessary. Respondent shall pay reasonable and necessary medical services of $590.00 as provided in Sections 8(a) and 8.2 of the Act.

Based upon the Arbitrator's decision with respect to causal connections, the Arbitrator also has found the Petitioner's current condition of ill-being is causally related to the injury which continues to disable the Petitioner from engaging in her regular work activities. Dr. Thometz has opined that she needs to be evaluated by a pain specialist in order to ascertain what additional treatment, if any, is reasonable and necessary to address her ongoing complaints of pain. The Arbitrator finds the opinion of Dr. Thometz more persuasive than that of Dr. Holmes.

The Arbitrator therefore also finds that the Petitioner is entitled to prospective medical treatment and orders the Respondent to authorize the initial evaluation with Dr. Robinson as directed by Dr. Thometz and pay all reasonable and necessary charges incurred therewith, and further reasonable necessary and causally connected treatment thereafter.

In support of the Arbitrator's decision with respect to K (Temporary Compensation) the Arbitrator finds as follows:

Based upon the Arbitrator's decision with respect to causal connection including the Arbitrator's finding that Dr. Thometz' opinions are more persuasive that those of Dr. Holmes, the Arbitrator finds that, as a result of the accidental injuries sustained by Petitioner on March 24, 2014, she has been restricted to sedentary duty since the date of the accident. Respondent offered a Petitioner a limited duty position on March 31, 2014 folding laundry in the basement of their facility. As of March 31, 2014, light duty within Petitioner's restrictions was available. Petitioner performed the restricted work assignment on March 31, April 16 and April 17. However, Respondent withdrew the offer of restricted duty in the correspondence sent to Petitioner on April 21, 2014, advising Petitioner that the position was no longer available (Pet. Ex. 5). Petitioner and Ms. Spaetzle testified that the meaning of the letter was that Petitioner would need to be able to perform the essential functions of her regular job duties to return to work thereafter.

It is a well-settled principle that when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement. *Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n*, 236 Ill. 2d 132, 142, 923 N.E.2d 266, 271, 2010 Ill. LEXIS 12, 11, 337 Ill. Dec. 707, 712 (Ill. 2010). In accordance with the Arbitrator's decisions with respect to causal connection and prospective medical, the Arbitrator finds that Petitioner is still restricted to sedentary work by Dr. Thometz and has not yet reached maximum medical improvement.

The Arbitrator finds that Petitioner is entitled to temporary compensation for the period from March 25, 2014 through March 30, 2014 and from April 21, 2014 through December 2, 2014, a period of 33 1/7 weeks.