STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ 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

Denis Mosby,
Petitioner,

vs.

NO: 12WC 38972

14IWCC0001

Massman Traylor Alberici aka MTA,
Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of jurisdiction and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 15, 2013, is hereby affirmed and adopted.

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: JAN 0 2 2014
0121813
CJD/jrc
049

Charles J. DeVriendt

Michael J. Brennan

Ruth W. White

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

MOSBY, DENIS
Employee/Petitioner

Case# **12WC038972**

MASSMAN TRAYLOR ALBERICI AKA MTA
Employer/Respondent

14IWCC0001

On 4/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

4463 GALANTI LAW OFFICES
DAVID GALANTI
PO BOX 99
EAST ALTON, IL 62024

1433 McANANY VANCLEVE & PHILLIPS
LISA HENDERSON
515 OLIVE ST SUITE 1501
ST LOUIS, MO 63101

14IWCC0001

STATE OF ILLINOIS)
)SS.
COUNTY OF Madison)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DENIS MOSBY
Employee/Petitioner

v.

MASSMAN TRAYLOR ALBERICI aka MTA
Employer/Respondent

Case # **12** WC **38972**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Collinsville**, on **2/26/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **10/20/12**, Respondent *was* operating under and subject to the provisions of the Act. However, jurisdiction under the Illinois Workers Compensation Act is not found, for reasons set forth herein.

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 **$58,465.68**; the average weekly wage was **$1124.34**.

On the date of accident, Petitioner was **50** years of age, ***single*** with **1** dependent children.

Respondent ***has*** paid all reasonable and necessary 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

For reasons set forth in the attached decision, jurisdiction under the Illinois Workers Compensation act is not applicable.

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

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

Signature of Arbitrator

April 11, 2013
Date

ICArbDec19(b)

APR 15 2013

14IWCC0001

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DENIS MOSBY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 12 WC 38972**
	)	
MASSMAN TRAYLOR ALBERICI, a/k/a MTA,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

This matter was heard pursuant to Section 19(b) of the Act. Prior to hearing, the parties acknowledged that the sole issue in dispute at this time is whether Illinois has jurisdiction over the case, and the parties agreed to reserve the issue of medical costs incurred to this point to a future hearing date if Illinois jurisdiction is established, or address them in Missouri if Illinois jurisdiction is not proper.

STATEMENT OF FACTS

The facts of the case were essentially undisputed. Live testimony was not presented. The petitioner was injured on October 20, 2012 in a construction accident while assembling the I-70 bridge over the Mississippi River. When complete the bridge will link Missouri and Illinois. At the time of the accident, the bridge was not complete; each end of the bridge was connected to its respective river bed, but not to each other. Regarding the facts surrounding the accident and jurisdictional basis, the parties tendered stipulations of fact as follows (see PX2):

1. Petitioner was involved in an accident which occurred on October 20, 2012 while working for the employer.
2. Petitioner's accident occurred on the Missouri side of the Mississippi River.
3. Petitioner's contract for hire was executed in the State of Missouri.
4. Petitioner's paychecks were issued from the employer's Missouri office.
5. Petitioner parked his car on the Illinois river bank every morning before reporting to the job site he was assigned to work on.
6. Petitioner worked fifty-percent of his hours in Missouri and the other fifty-percent in Illinois.
7. Petitioner's accident occurred when he fell from Pier 11, which is attached to the Missouri river bed. He then swung over the Mississippi River but did not fall into the river.
8. Pier 11 and Pier 12 are being utilized to construct the I-70 bridge, which when complete, will connect Missouri and Illinois.
9. Pier 12 is located on the Illinois side of the Mississippi River and attached to its river bed.

10. At the time of the accident, Petitioner was wearing a harness secured to Pier 11, and had he not been wearing his harness, he would have fallen into the Mississippi River.
11. At the time of the accident, Pier 11 was not connected to Pier 12 and the I-70 bridge was not complete.
12. At the time of the accident, no one could travel from Illinois to Missouri using the I-70 bridge.
13. This is a non-disputed accident. Respondent agrees to authorize surgery as per Dr. Paletta's recommendation.

The medical treatment to date notes that the petitioner has continued to work for the respondent in a generally supervisory position and disability is not presently at issue. While the claimant's left shoulder injury has resolved with conservative care, Dr. Paletta has recommended surgical exploration and repair for the claimant's right shoulder rotator cuff tear. See generally PX1.

LEGAL ANALYSIS

As stipulated by the parties, the sole issue in dispute at this time is jurisdiction. The petitioner argues that Illinois and Missouri jurisdiction would concurrently apply, and the respondent argues that only Missouri would have proper jurisdiction regarding this claim. Notably, if Illinois jurisdiction is available, the injured employee may elect to receive benefits under the Illinois Workers Compensation Act even if jurisdiction could also be properly established in Missouri.

Jurisdiction under the Illinois Workers' Compensation Act is determined pursuant to Section 1(b)2 of the Workers' Compensation Act, 820 ILCS 305/1(b)2, which allows for jurisdiction to be proper for any one of three circumstances:

1. Where the contract of hire is made within the State of Illinois; or
2. Where the injury is incurred within the State of Illinois; or
3. Where the injured person's employment is principally localized within Illinois.

The parties stipulated that the contract for hire was not made within the state of Illinois, and therefore the first avenue is foreclosed to the claimant. Attention then turns to the other two potential routes.

SITUS OF THE INJURY?

Neither party identifies a prior Workers' Compensation case directly on point. The claimant argues that the civil case of *Schueren v. Querner Truck Lines, Inc.*, 22 Ill.App.2d 183 (4th Dist. 1959), would be instructive. There, the Appellate Court found that concurrent jurisdiction had been established in Missouri and Illinois relative to a personal injury claim which had occurred when a man exiting a vehicle on the bridge was struck by a passing motorist driving over the bridge. The defendant in that matter had petitioned the claim for removal to Federal Court, and that the Federal Court refused jurisdiction. The defendant then raised a jurisdictional defense, arguing that the accident

occurred on the Missouri side of the bridge and not on an Illinois highway. The Appellate Court found that "though the state boundaries go to the middle of the river, it is established law that Missouri and Illinois have concurrent jurisdiction over the entire river and its traffic," citing Chapter 22, 3 U.S. Statutes 545. Id at 190-191.

The claimant further points to a criminal case, *People of the State of Illinois vs. Norman Pierre Pitt*, 106 Ill.App.3d 117 (5th Dist. 1982), where a defendant who had murdered someone while on a bridge spanning the Mississippi attempted to defeat an Illinois prosecution based on a jurisdictional argument. The appellate court relied on the Statehood Admission Act and found that the prosecution could establish jurisdiction by proof that the crime occurred on the bridge, rather than some particular portion of the bridge, and that the waterway would be subject to concurrent jurisdiction. Id. at 118-120.

The problem with the reasoning advanced by the claimant is that the courts that granted concurrent jurisdiction did so because "a traveler on a bridge is usually not likely to know whether he is over an island or over the water, or on one side of the main channel or the other." *Pitt* at 120, citing to *State v. George* (1895), 60 Minn. 503, 505-06, 63 N.W. 100, 100-01. The cases granting concurrent jurisdiction on the bridge have done so precisely because it would be logistically nightmarish to determine exactly at what particular foot the jurisdiction transferred from one State to the other, especially if someone fell from the bridge into the water, or if (in a murder case) evidence or a body was thrown from a bridge. That is exactly opposite of the case here. There is no uncertainty or question about where the claimant was when the accident occurred.

Moreover, the cases cited all involve a bridge between two states, connecting solid ground. The legal reasoning throughout these cases has been that the State keeps its jurisdiction and control over that which is attached to it. If a bridge is attached to the State, the State may exercise legal authority on the bridge. If a river touches the State, the State keeps control over that aspect of the water attached to the State.

But in this case, there was no bridge. The claimant was injured on what is effectively a pier or a dock, extending from Missouri over water, and not touching Illinois or any structure linked to Illinois. He did not fall into the river, but remained attached to the pier thanks to the safety harness. There is no confusion or difficulty in determination of borders here, and accordingly, no basis for concurrent jurisdiction. He was injured on a solid structure which was part of Missouri, and that is where the Arbitrator finds the situs of the accident to be appropriately assigned.

PRINCIPALLY LOCALIZED?

The question of principal localization of employment was addressed in *Cowger v. Industrial Commission*, 313 Ill.App.3d 364 (5th Dist. 2000). There, a nationwide truck driver who lived in Illinois wished to exercise Illinois jurisdiction regarding a vehicular accident in Texas. The Commission denied jurisdiction, and the Appellate Court affirmed that finding. The Court stated, "'...employment is principally localized in this or another State when (1) his employer has a place of business in this or such other State

and he regularly works at or from such place of business, or (2) if clause (1) foregoing is not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or such other State.'" *Id.* at 372, internally citing *Montgomery Tank Lines v. Industrial Commission*, 263 Ill.App.3d 218, 222 (1994, and 4 A. Larson, Workmen's Compensation Law app. H, 629, 649-50 (Model Act) (1986).

The *Cowger* Court noted further that this "'focuses first, and foremost, upon the situs where the employment relationship is centered,' and the alternative test involving domicile and working time is not be considered unless the situs of the relationship cannot be determined." *Id.* The *Cowger* Court then enumerated five factors to be considered in determining the situs of the employment relationship, to wit:

(1) where the employment relationship is centered, i.e., the center from which the employee works;

(2) the source of remuneration to the employee;

(3) where the employment contract was formed;

(4) the existence of a facility from which the employee received his assignments and is otherwise controlled; and

(5) the understanding that the employee will return to that facility after the out-of-State assignment is complete.

Cowger at 373, itself citing *Montgomery Tank Lines*, supra.

The Court then detailed the application of each factor to the claimant's employment, ultimately concluding that the claimant's employment was not principally localized in Illinois.

Applying those factors to this case, the parties stipulated that the petitioner worked 50% of his hours in Illinois and the other 50% of his hours in Missouri. He was paid from the employer's Missouri office. The employment contract was formed in Missouri. The fourth and fifth factors (surrounding the existence of a control facility) are unclear. While the parties stipulated the claimant would park in Illinois before reporting to work, there is no specific demonstration of where the petitioner would receive his daily assignment, though the employer's office is in Missouri (noting the hiring location, pay department, and the notice on the Application for Adjustment of Claim).

The *Cowger* Court faced a similar situation in its review, noting that the claimant had no fixed center of work, and while he would call the Indiana facility for assignment and have the truck serviced there, was not required to check in. Factors two and three (remuneration site and employment contract site) were clearly sited in Indiana. The Court found that the job was principally sited in Indiana. *Cowger* at 373. The analogy to this case is strong enough that the Arbitrator is convinced that the claimant's employment is principally sited in Missouri within the *Cowger* analysis.

CONCLUSION AND ORDER

For the forgoing reasons, this claim is denied due to a lack of jurisdiction.

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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Amanda Jordan,

Petitioner,

vs.

NO: 05 WC 54728
06WC 18691

City of Chicago,

14IWCC0002

Respondent,

DECISION AND OPINION ON REVIEW

A Petition for Attorney's Fees having been filed by Joseph Spingola and due notice having been given; this cause came on for hearing before Commissioner Charles J. DeVriendt on November 14, 2012, in Chicago, Illinois. The Commission having jurisdiction over the persons and subject matter and being advised in the premises finds:

The Petitioner hired the law firm of Larry Coven to represent her in a Workmen's Compensation case against the City of Chicago. This was for an accident she sustained on December 9, 2005. This claim received a 05 WC54728 case number at the Commission.

Petitioner allegedly had some difficulty finding Mr. Coven after she signed up her case and sought representation with Joseph Spingola. (Transcript of Arbitration Hearing Pgs. 32-33) Mr. Spingola filed case number 06 WC18691 for the same accident date.

Apparently, Petitioner went back to Mr. Coven, and he settled the case with the City of Chicago and had a settlement hearing with Arbitrator Cronin on November 14, 2007. Mr. Spingola was present at that hearing. Based on a preliminary conference held by the two attorneys and the Arbitrator, it was decided by all parties involved that Mr. Spingola should be

entitled to 5% of the 20% attorney's fees. This was only if Petitioner decided to accept the settlement that was to be presented. (Transcript of Settlement Contract Hearing Pg. 9)

After undergoing direct examination from Mr. Coven the Petitioner indicated that, she wanted to settle the claim. (Transcript of Settlement Contract Hearing Pgs. 6-10) However, Mr. Spingola under additional questioning was able to get the Petitioner to admit that she sent him a copy of her credit report and discussed with him the unpaid medical expenses contained on that report. She recalled telling him that those bills were not paid and still have not been paid on the date of the settlement hearing. (Transcript of Settlement Contract Hearing Pgs. 14-15)

She also admitted under Mr. Spingola's questioning that she was not told that by settling her case the Respondent is not obligated to pay for the second surgery if in the future she changes her mind about that second surgery. When Mr. Spingola asked her if she was aware that if she tried her case she maintains the rights to future medical she indicated, "Now I do, yes." When informed by Mr. Spingola that the City, upon settlement of this case, could ask her to go back to work as a sanitation laborer. She indicated that she did not realize that her job as a ward secretary making sanitation laborer's wages could cease upon settlement of her claim. She decided she did not want the settlement. (Transcript of Settlement Contract Hearing Pgs. 20-23)

The claim proceeded to trial on October 24, 2012, almost 5 years after the settlement hearing. The case was heard at 2:00 p.m. and Mr. Spingola did not appear. Petitioner testified that when she sought Mr. Spingola for representation she spent 15-20 minutes in her first meeting with Mr. Spingola. She testified that she did not speak to Mr. Spingola about the case after that date. She never called him and he never called her. She is not aware of him doing anything to help her. She never asked him for advice and he never gave her advice. Mr. Spingola did not attend any hearings on her behalf and to the best of her knowledge did not talk to her doctor. She has no idea as to how Mr. Spingola could indicate that he spent six hours on her file. (Transcript at Arbitration Pgs. 32-34)

The Commission finds that Mr. Spingola's Quantum Meruit of $250.00 an hour for six hours of work should be paid by the Petitioner and Mr. Coven.

Petitioner's testimony at her settlement contract hearing supports Mr. Spingola's Quantum Meruit statement and her testimony regarding what Mr. Spingola did at the Arbitration Hearing was not credible.

In addition, it is apparent that Arbitrator Cronin forgot about the hearing regarding the fees on the settlement contract that took place 7 years before the actual Arbitration hearing. Mr. Coven had an obligation to point that out to the Arbitrator at the time of the Arbitration Hearing.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner pay to Joseph Spingola the sum of $1,500.00 per the services he rendered in representation of the Petitioner in claim number 06 WC18691.

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:

JAN 0 2 2014

Charles J. DeVriendt

Michael J. Brennan

Ruth W. White

CJD/HSF
O: 11/6/13
049

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

JORDAN, AMANDA
Employee/Petitioner

Case# **05WC054728**
06WC018691

CITY OF CHICAGO
Employer/Respondent

14IWCC0002

On 1/2/2013, 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 0.12% 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:

2675 COVEN LAW GROUP
LARRY COVEN
180 N LASALLE ST SUITE 3650
CHICAGO, IL 60601

0494 SPINGOLA, JOSEPH J LTD
47 W POLK ST
3RD FLOOR
CHICAGO, IL 60602

0464 CITY OF CHICAGO-WORK COMP
DAN NIXA
30 N LASALLE ST RM 800
CHICAGO, IL 60602

14IWCC0002

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
ARBITRATION DECISION

Amanda Jordan
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **05** WC **54728**

Consolidated cases: **06 WC 18691**

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 **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **October 24, 2012**. 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 **Fee Petition of Attorney Joseph Spingola**

FINDINGS

On **December 9, 2005**, 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 **$55,648.32**; the average weekly wage was **$1,070.16**.

On the date of accident, Petitioner was **27** years of age, ***single*** with **5** 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 **$57,776.89** for TTD, **$0.00** for TPD, **$92,531.31** for maintenance, and **$0.00** for other benefits, for a total credit of **$150,308.20**.

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

Attorney Joseph Spingola, who filed a duplicate case on behalf of Petitioner (06 WC 18691), is not entitled to a fee for his efforts.

ORDER

RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY BENEFITS OF $591.77/WEEK FOR 88.55 WEEKS BECAUSE THE INJURIES SUSTAINED CAUSED A LOSS OF USE, MAN AS A WHOLE, OF 17.71%, AS PROVIDED IN SECTION 8(D)2 OF THE ACT.

AS STIPULATED TO BY THE PARTIES, RESPONDENT IS ENTITLED TO A CREDIT FOR OVERPAYMENT OF MAINTENANCE BENEFITS IN THE AMOUNT OF $101.93.

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 31, 2012
Date

JAN 2 - 2013

Petitioner testified that on December 9. 2005, she was employed as a laborer for Respondent in the Department of Streets and Sanitation. Her duties consisted of collecting trash and loading it into the truck. On December 9. 2005, Petitioner had just finished a stop and was preparing to climb back into the truck. As she was pulling on the truck door. whose handle was over her head and was stuck, she felt a pop in her right shoulder. Petitioner experienced immediate, severe pain and numbness in her right shoulder which immediately felt frozen. She advised the driver, and the supervisor was contacted. Petitioner was driven directly to Mercy Works Occupational Clinic and then immediately taken across the street to the emergency room at Mercy Hospital.

At Mercy Hospital emergency room. Petitioner was examined and the decision was made to immediately reduce the dislocation under anesthesia. The procedure was completed and she was directed to follow-up with William Heller, M.D., through the City of Chicago Occupational Clinic, Mercy Works.

On December 12, 2005, Petitioner sought the care of Dr. William Heller. a board-certified orthopedic surgeon. (Pet. Ex. #A). Dr. Heller examined Petitioner and was concerned about the instability in her shoulder. Dr. Heller ordered an MRI, stated that surgery may be necessary. and took Petitioner off of work. The MRI revealed a labral tear consistent with the recent dislocation. At that point, the Petitioner decided to get a second opinion from Ronald Silver. M.D. Dr. Silver opined that shoulder reconstruction surgery was necessary. Petitioner elected to return to Dr. Heller for treatment since Respondent referred her to Dr. Heller and it was easier. Dr. Heller referred Petitioner for physical therapy which failed and surgery was scheduled for February 3, 2006. On February 3, 2006 Dr. Heller performed a right shoulder arthroscopic Bankart repair and extensive debridement. The Petitioner made steady progress in physical therapy and in August 2006, she was transitioned into work conditioning. By September 22. 2006, the Petitioner plateaued in work conditioning and she was released with light-duty restrictions. The Respondent elected to accommodate the restrictions and Petitioner returned to work light duty as an office clerk.

Petitioner continued to experience significant pain even in a light-duty capacity but attempted to work through the pain. Petitioner could no longer handle the pain and on November 14. 2007, she returned to Dr. Silver. Dr. Silver recommended a repeat MRI. The MRI did not reveal a tear yet arthroscopic surgery was recommended to treat impingement. A second surgery was completed on June 19, 2008 consisting of subacromial decompression. acromioplasty, ligament transection. synovectomy, debridement. and distal clavicle resection. Following surgery, Petitioner continued to receive physical therapy until November 14. 2008. On November 14. 2008, Dr. Silver released Petitioner to light-duty work. Respondent was unable to accommodate Petitioner's restrictions and kept her on temporary total disability (maintenance). Petitioner attempted to find work within her restrictions but was not successful. Petitioner testified that the pain and reduced range of motion continued. She treated with Vicodin until it ran out and then prescription-strength Ibuprofen. Petitioner testified that she was having a hard time supporting her five children on her maintenance benefits. When finances got tootight, Petitioner returned to Dr. Silver on August 26, 2011 and requested a full-duty no restrictions release. Against his medical advice and judgment. Dr. Silver released Petitioner at her request. Petitioner has been back to work full-duty, no restrictions, since September 9. 2011.

Petitioner testified that since she returned to her duties on the garbage truck, the pain in her shoulder has continued. Petitioner testified that she relies on her left arm and constantly guards her right arm while performing her duties. Petitioner testified that her range of motion and strength are not the same and that she requires assistance from co-workers for the heavier trash. Petitioner testified that she continues to take 3-4 prescription-strength Ibuprofen a week when she experiences shoulder pain that she cannot handle.

Petitioner testified that before the shoulder injury, she used to help her son play baseball. Now she is unable to do so. She also finds that since the shoulder injury, she cannot bowl with her children. On the job, Petitioner testified, she has to work more slowly and be very careful when she is lifting. She stated that she has to compensate with her left arm when pulling, holding and hanging onto the truck. Petitioner testified that she has not returned to Dr. Silver for her ongoing pain because he already told her that he disagreed with her return to full-duty work.

On cross-examination, Petitioner testified that no doctor has told her that she cannot go bowling. She testified that she takes Ibuprofen 80 mg. and refills the prescription as needed. She stated that some months she refills the prescription, and some months she does not.

On redirect examination, Petitioner testified that she is afraid to bowl because she does not want to risk re-injury. So, Petitioner continued, she guards herself in all activities.

Petitioner further testified that she retained the services of Attorney Joseph Spingola (06 WC 18691) when she had difficulty reaching Attorney Larry Coven. She testified that she met with Joseph Spingola for 15-20 minutes and that she never called Mr. Spingola and he never called her. She testified that there were no hearings at which Mr. Spingola was present. She testified that, to her knowledge, Mr. Spingola never spoke with her doctors. Petitioner concluded that she did not know how Mr. Spingola spent six hours on her file.

Although properly notified, Joseph Spingola was not present for the hearing.

The Arbitrator concludes that although Joseph Spingola filed duplicate case 06 WC 18691, he is not entitled to a fee for his efforts.

On November 14, 2008, Dr. Silver declared Petitioner to be at maximum medical improvement with permanent restrictions of limited use of the right arm above shoulder level, no lifting over five pounds with the right arm and avoidance of repetitive-motion activities with the right shoulder. Yet, against Dr. Silver's judgment, but at the request of the Petitioner, Dr. Silver permitted her to return to the full-duty activities of a refuse collector for Respondent, effective August 29, 2011.

Since this release, Petitioner has worked as a refuse collector for the City of Chicago. She testified that she earns more money now than she earned prior to the right shoulder accident.

Based on the foregoing, the Arbitrator concludes that as a result of the accident of December 9, 2005, Petitioner has sustained a loss of use, man as a whole, of 17.71% thereof.

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 notice/manifestation	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JON AUGUST,

Petitioner,

vs. NO: 11 WC 00477

STATE OF ILLINOIS – MENARD CORRECTIONAL CENTER,

Respondent. 14IWCC0003

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, date of accident, notice, causation, and the nature and extent of Petitioner's permanent partial disability, and being advised of the facts and law, reverses the Decision of the Arbitrator for the reasons stated below.

Findings of Fact and Conclusions of Law

1. Petitioner testified he has been a correctional officer ("CO") for Respondent for 11 years. He described the activity of bar-rapping as when a CO basically strikes the bars of cells with a steel bar to test their integrity. He had to rap the bars of about 50 cells each day. Petitioner also uses Folger Adams keys. "Sometimes" he uses both hands in using those keys. He has to repetitively open and close cell doors and chuck holes, and to pull on cell doors to ensure they are closed. Petitioner testified he also handcuffs inmates anywhere between 20 and 100 times. Some of the cell doors are difficult to open and require force. His job requires heavy gripping and grasping. Sometimes he has to flex his elbows to turn the cell door keys.

2. Petitioner further testified that in the course of his duties he began developing numbness and pain in his arms. He first noticed symptoms two, three, or four years ago. The symptoms progressed over time. However, he was not aware that he may have had a potentially repetitive traumatic injury.

3. Petitioner testified he first became aware of his condition and that the condition may be work-related when he was diagnosed by a doctor on December 22, 2010. Respondent filed its First Report of Injury on December 26, 2010.

4. Petitioner sought treatment from Dr. Brown. Initially, Dr. Brown recommended Petitioner wear splints on his elbows. The splints did not permanently alleviate Petitioner's symptoms. Dr. Brown performed surgery on both of Petitioner's elbows; on the right on December 2, 2011 and on the left on December 16, 2011. The delay between the diagnosis and surgeries was the result of Respondent's delay in authorizing the surgeries. Dr. Brown released Petitioner from treatment on March 2, 2012. He has recently returned to full duty work as a CO.

5. Petitioner also testified his condition improved after the surgeries. His current condition was "not too bad," "aside from the soreness." "They're still real stiff when [he] use them" too much and they start to ache. There was also "still a little weakness."

6. On cross examination, Petitioner testified Dr. Brown released him to full duty on January 9, 2012, and it appears Dr. Brown released him from treatment at that time. He had not gone back to see Dr. Brown since. Dr. Brown told him strength would return over time. Petitioner was in segregation for "little over a year." Prior to that he worked in the main visiting room, where he worked for about two years.

7. In December of 2010, Petitioner was working in the main visiting room. There is no bar rapping in the visiting room. However, he still had to cuff and uncuff inmates. When the inmates arrived Petitioner would "shake them down" and uncuff them. After the visit he has to shake the inmates down again. "Shake down" means a full strip search. Sometimes he recuffs the inmates after the visit. There is still a Folger Adams key at the main door. He estimated he would open the door with that key "probably 100, 150 times" a shift. There are no chuck holes in the visiting room.

8. Prior to about March of 2009, Petitioner had various cell house assignments. He was required to rap bars in those assignments. However, he was working the midnight shift so he would only have to rap the bars of 10 cells rather than 50 per shift. There would generally be five COs and only one or two would rap bars, so there were days he would not rap bars. He also would use the chuck holes to serve breakfast in the midnight shift.

9. Petitioner testified he remembered telling Dr. Brown that he had numbness and tingling for five years. Although he knew he had symptoms for five years he had no idea that it had anything to do with his work activities. He first learned of cubital tunnel syndrome when he was diagnosed.

10. Petitioner did not recall being aware of co-workers having been diagnosed and treated for the condition. He never heard of any co-workers having either carpal tunnel syndrome or cubital tunnel syndrome. He did not mention his symptoms to his general practitioner. Petitioner's lawyer sent him to Dr. Brown. Petitioner signed his Application for

Adjustment of Claim on December 23, 2010.

11. Petitioner had some physical therapy. He does not have any additional appointments with doctors or for physical therapy. Since his return to work, Petitioner has been able to perform his duties satisfactorily. He has not had any complaints from supervisors.

12. On redirect examination, Petitioner testified he had not had a previous work-related injury and had not filed a workers' compensation claim. He did not have complete knowledge of the Workers' Compensation Act. When Petitioner saw his lawyer he mentioned his symptoms, but did not know what he had or that it was work related. When he signed the Application for Adjustment of Claim, his lawyer told him he had to notify Respondent.

13. On re-cross examination, Petitioner testified he did not remember how he came to see his lawyer and did not know why he saw an attorney about his condition before seeing a doctor. He reiterated that he did not know of his condition or that it was work related until he was diagnosed.

14. Joseph Durham was called to testify by Petitioner. He testified he is a Major for Respondent and Petitioner works for him. Petitioner had worked for the witness for "practically a year." The witness had no complaints about Petitioner's work. He heard Petitioner's testimony about his job activities and he testified accurately.

15. On cross examination, the witness testified he knew that Petitioner worked the visiting room prior to working for him. There is no bar rapping in that assignment. Before that Petitioner worked the midnight shift. Since his return to work, Petitioner had no problems performing his duties and he not complained about his elbows or lack of strength.

16. The medical records reveal that Petitioner presented to Dr. Brown on December 22, 2010 with problems in both arms. Dr. Brown indicated that Petitioner was a CO at Menard and told him his job entailed turning Folger-Adams keys repeatedly 50 times an hour. He also opens and closes cell doors, pulls on cell doors, cuffs and uncuffs inmates, and raps bars. Petitioner reported a history of numbness and tingling for five years. After examination, Dr. Brown concluded that Petitioner had symptoms of bilateral cubital tunnel syndrome and possibly carpal tunnel syndrome. He attributed Petitioner's condition to his work activities. Dr. Brown ordered an EMG/NCV. Petitioner was given splints and told to take over-the-counter anti-inflammatories. He released Petitioner to work full duty.

17. The EMG/NCV taken on December 23, 2010 revealed "mild, left worse than right demyelinative ulnar neuropathies across the elbows" but no carpal tunnel syndrome.

18. On December 2, 2011, Dr. Brown performed "right cubital tunnel release with an anterior submuscular transportation of the ulnar nerve with myofascial lengthening of the flexor-pronator tendon origin." On December 16, 2011, Dr. Brown performed the same cubital

tunnel surgery on the left.

The Arbitrator acknowledged that Petitioner had subjective symptoms of cubital tunnel syndrome for four to five years prior to the date he filed his Application for Adjustment of Claim. That fact is supported by Petitioner's testimony as well as his report to Dr. Brown. Petitioner also testified that he did not inform anybody about his symptoms or seek treatment until he was eventually diagnosed with cubital tunnel syndrome on December 22, 2010. The Arbitrator found Petitioner's notice of accident was adequate because he filed his report of accident within a few days of his diagnosis by Dr. Brown. She also noted that Respondent was not prejudiced by any delay in the report of accident.

It is axiomatic in workers' compensation law that the Petitioner has the burden of proving all elements of his claim for it to be compensable. *See, Hannibal, Inc. v. Industrial Commission*, 38 Ill. 2d 473 (1967). The date of manifestation for repetitive trauma injuries is the date on which the claimant became aware of the condition and reasonably should have known it may be work related. *See, Peoria County Bellwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524 (1987). Therefore, the manifestation date can be the date of diagnosis, but it does not necessarily have to be that date.

In the case before the Commission, it is clear that Petitioner had symptoms of cubital tunnel syndrome for at least four to five years prior to his report of accident. It also seems clear to the Commission that Petitioner was aware that his condition was likely related to his work activities prior to his diagnosis. That is the only explanation for his consulting an attorney prior to seeking medical treatment for his condition. Therefore, the Commission finds that Petitioner's testimony that he was unaware of his condition or that it may be work-related prior to his diagnosis by Dr. Brown is not credible. In addition, the Commission finds questionable Petitioner's assertion that he had not heard of any co-workers having repetitive trauma conditions or that they had filed workers' compensation claims for such conditions. The Commission notes that repetitive trauma claims from Correctional Officers specifically at Menard Correctional Center were the subject of intense local media scrutiny.

The Arbitrator reasoned that the reason for the notice requirement is to give the Respondent the opportunity to investigate promptly the facts of the alleged accident. While she also noted that the statutory 45-day notice requirement was jurisdictional in nature, she also noted that the notice requirement must be liberally construed. In finding Petitioner provided adequate notice the Arbitrator determined that Respondent was not prejudiced by any delay in Petitioner's notice of accident.

The Arbitrator is correct that the ability to promptly investigate the facts related to an alleged work accident is a basis for requiring prompt notice. However, that factor is not necessarily the only reason for the requirement. In the case now before the Commission, Respondent could have been prejudiced because his duties as CO changed over the years of his service making it difficult to determine what exact work activities may or may not have contributed to Petitioner's symptoms. In addition, if Petitioner had promptly informed Respondent of his symptoms, Respondent would have had the opportunity to modify his work activities. Such modification of work activities along with prompt conservative treatment may

have resolved Petitioner's condition without the need for surgery, substantially reducing Respondent's financial liability.

The Commission concludes that Petitioner has failed to sustain his burden of establishing a credible date of manifestation or of proving he provided adequate notice of his repetitive trauma injuries within 45-days of such date. Because the Commission denies compensation based on Petitioner's failure to prove date of manifestation and prompt notification after that date, all other issues are moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator issued on October 9, 2012 is hereby reversed and compensation is denied.

DATED: JAN 0 2 2014

Ruth W. White

Daniel R. Donohoo

Charles J. DeVriendt

RWW/dw
O-12/4/13
46

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

AUGUST, JON
Employee/Petitioner

Case# **11WC000477**

MENARD CORRECTIONAL CENTER
Employer/Respondent

14IWCC0003

On 10/9/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

4075 FISHER KERHOVER & COFFEY
JASON E COFFEY
P O BOX 191
CHESTER, IL 62233

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

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

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
201 E MADISON ST SUITE 3C
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

OCT 9 2012

KIMBERLY B. JANAS 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

Jon August
Employee/Petitioner

v.

Menard Correctional Center
Employer/Respondent

Case # 11 WC 00477

Consolidated cases: _____

14IWCC0003

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 **Deborah L. Simpson**, Arbitrator of the Commission, in the city of **Herrin**, on **March 21, 2012**. 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 **accident, notice, unpaid medical,and nature and extent**

FINDINGS

On **December 22, 2010**, 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 **$56,948.00**; the average weekly wage was **$1,095.15**.

On the date of accident, Petitioner was **41** years of age, ***married*** 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.

ORDER

The Petitioner has proven a compensable injury pursuant to the Act and that the treatment was reasonable and necessary.

The respondent shall pay the petitioner $657.09 / week for 75.9 weeks as the petitioner has sustained a 15% loss of both his right and left arms.

The Respondent shall pay the outstanding medical bills for diagnosis and treatment of the Petitioner related to cubital tunnel syndrome pursuant to the fee schedule or agreement pursuant to the Worker's Compensation Act. The Respondent shall be given credit for all bills previously paid by the Respondent or by the group health insurance carrier.

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.

Deborah L. Simpson
Signature of Arbitrator

October 9, 2012
Date

OCT - 9 2012

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jon August,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 11 WC 00477**
	)	
Menard Correctional Center,	)	
	)	**14IWCC0003**
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on December 22, 2010, the petitioner and the respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. The Petitioner's current condition of ill-being is causally connected to this injury or exposure.

At issue in this hearing is as follows: (1) did the petitioner sustain accidental injuries on December 22, 2010 that arose out of and in the course of his employment with the respondent; (2) based upon the manifestation date was notice of the accident given by the petitioner to the respondent within the time limits stated in the Act; (3) was notice given to Cindy Cowell, Worker's Compensation Coordinator on December 26, 2010 and was it proper notice; (4) Is the respondent liable for the unpaid medical bills that are described in Petitioner's Exhibit #6; (5) the nature and extent of the injury.

STATEMENT OF FACTS

The Petitioner is employed by the Respondent as a correctional officer and has been so employed for eleven years. As a correctional officer the Petitioner is required to bar rap, which requires him to take a 1 ½ foot length of steel pipe and strike the bars on the cells to check their integrity one time each day. The bars on the cells are divided in sections so you have to rap from top to bottom on each cell. He must do this on 50 cells per day. He also uses a Folger-Adams key to open the doors. They are also used to open chuck holes which are cut out of a door that you use to cuff inmates. Cuffing inmates requires using a key as well, but not a Folger-Adams key. Petitioner cuffs inmates everyday 20 to 50 or 100 times per day. He is right handed. Some of his responsibilities include heavy gripping and grasping. The Petitioner has read Dr. Sudekum's job summary and he believes it is accurate.

The Petitioner testified that he developed pain, tingling and numbness in his hands about four years ago. The symptoms progressed over time. On cross-examination the Petitioner

testified that he developed the symptoms more than five years ago and on December 22, 2010 he told Dr. Brown it he had a five year history of numbness and tingling. (P. Ex. 2) The Petitioner testified further that he first learned that he had bilateral cubital tunnel syndrome on December 22, 2010, when he was diagnosed with the problem by Dr. Brown. He believed that the condition was related to his job. On December 26, 2010, four days after he was diagnosed with cubital tunnel he notified the Respondent and Petitioner's exhibit #1, an Illinois Form 45 was filled out.

On cross examination the Petitioner provided a more detailed description of his job. Currently he is assigned to the segregation unit on the seven to three shift. He has been there a little over one year. He has bar raps and has chuck holes to open for breakfast in segregation. Prior to that, he spent two years in the main visiting room working from eight o'clock to four o'clock. In the main visiting room there is no bar rapping, the inmates are all escorted to the visiting room by other correctional officers. He would have to shake the prisoner down sometimes and take their cuffs off and then bring them to the room where they see their visitors. After the visit is over he has to do a full search of the inmate. Occasionally he would cuff an inmate and bring him back to his cell. In the main visiting room he used a Folger-Adams key about 100 to 150 times. There are no chuck holes in the main visiting room. It was while he was working in the main visiting room that he noticed the problem with his hands.

Before he worked in the main visiting room he was assigned to various cell houses. He worked various shifts including mid-nights. On the midnight shift there is no bar rapping. In 2009 there was five correctional officers assigned to a shift, the officers would all do the bar rapping so there were times when he did not have to bar rap on a shift.

The Petitioner testified that he does not know why he went to his attorney before he saw a doctor for the numbness and tingling in his hands. The Petitioner filled out the application for adjustment of claim on December 23, 2010, the day after he saw Dr. Brown. (Arbitrators Exhibit #1) He did not report the injury to the Respondent until December 26, 2010 when he filled out the form. (R. Ex. 1, 2, 6) The Petitioner testified that he was not aware of cubital tunnel syndrome or carpal tunnel syndrome before he saw Dr. Brown.

Respondent's exhibit number 6 is an incident report signed by the Petitioner and a Major Olson of the Menard Correctional Center and is dated December 26, 2010. It is an incident report that documents that the Petitioner was diagnosed with bilateral cubital tunnel syndrome and that a Workman's Comp packet was done with a supervisors report.

The Petitioner went to see Dr. David M. Brown at the Orthopedic Center of St. Louis; he was referred to Dr. Brown by his attorney. He first saw Dr. Brown on December 22, 2010. (P. Ex. 2) He reported to Dr. Brown that he was a correctional officer, working 37 ½ hours per week, that his job requires turning Folger-Adams keys fifty times per hour (400 times per shift), cuffing and uncuffing inmates pushing and pulling cell doors and bar rapping. He described having numbness and tingling in his hands, primarily little and ring fingers and decreased strength. (P. Ex. 2) Dr. Brown diagnosed cubital tunnel syndrome, bilaterally and possibly

carpal tunnel syndrome as well, ordered nerve conduction studies that were done that day by Dr. Daniel Phillips, and ordered the Petitioner to wear pillow splints over both elbows at night and take a non-steroidal anti-inflammatory. The nerve conduction studies revealed that the Petitioner did have bilateral cubital tunnel syndrome. The Petitioner was allowed to return to work full duty with no restrictions. (P. Ex. 2) It was Dr. Brown's opinion that the Petitioner's work activities would be considered in part an aggravating factor in the need for further evaluation and treatment for both cubital tunnel and carpal tunnel syndrome. (P. Ex. 2)

The Petitioner returned to Dr. Brown on March 2, 2011, claiming no improvement in his symptoms. At that time Dr. Brown discussed the nerve conduction results with the Petitioner, he discussed conservative treatment alternatives with the Petitioner but felt that based upon the fact that he had no relief over the past two months he felt that the prognosis for resolution with conservative treatment was poor. He recommended surgery, an ulnar nerve transposition bilaterally. He told the Petitioner if he could get the surgery approved through worker's compensation that he would be happy to do the procedures, but if Petitioner was not able to get it approved through worker's compensation and had to do it through his group health insurance that he would be happy to refer the Petitioner to a qualified hand surgeon who could perform the surgery as he, Dr. Brown does not take Petitioner's private insurance. (P. Ex. 2)

On December 2, 2011 the Petitioner had surgery by Dr. Brown on his right elbow for cubital tunnel syndrome. He tolerated the surgery well and was returned to work with restrictions on December 12, 2011. On December 16, 2011 the Petitioner had surgery on his left elbow for cubital syndrome. He tolerated that procedure well also. He was returned to work on limited duty with restrictions on December 26, 2011. (P. Ex. 2) He was also referred for physical therapy at Apex Network PT beginning on December 5, 2011. He successfully completed the physical therapy. (P. Ex. 4)

The Petitioner testified that he had the surgery done as soon as the State allowed him to have it. That he did participate in physical therapy as directed and that he was returned to work full duty with no restrictions on March 2, 2012. Aside from the soreness that he still experiences he feels that he has greatly improved. If he uses his hands too much they get sore. He can do his job, like he did before the problems. He can perform his duties satisfactorily without any complaints from supervisors.

Major Joseph Durham testified on behalf of the Respondent. Major Durham is the supervisor for the Petitioner currently and has been so for a little over one year. He has no complaints with the Petitioner as far as doing his job is concerned. He agrees with the Petitioner that there is no bar rapping in the main visitors area.

CONCLUSIONS OF LAW

The burden is on the party seeking the award to prove by a preponderance of credible evidence the elements of the claim, particularly the prerequisites that the injury complained of

arose out of and in the course of the employment. *Hannibal, Inc. v. Industrial Commission*, 38 Ill.2d 473, 231 N.E.2d 409, 410 (1967)

An injury is accidental within the meaning of the Worker's Compensation Act when it is traceable to a definite time, place and cause and occurs in the course of the employment unexpectedly and without affirmative act or design of the employee. *Matthiessen & Hegeler Zinc Co. v Industrial Board*, 284 Ill. 378, 120 N.E. 2d 249, 251 (1918)

An injury arises out of one's employment if it has its' origin in a risk that is connected to or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Technical Tape Corp. vs IndustrialCommission*,58 Ill. 2d 226, 317 N.E.2d 515 (1974) "Arising out of" is primarily concerned with the causal connection to the employment. The majority of cases look for facts that establish or demonstrate an increased risk to which the employee is subjected to by the situation as compared to the risk that the general public is exposed to.

Section 6(c) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(c) (2) states that "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." *820 ILCS 305/6(c)* (West 2004)

The purpose of the notice provisions is to enable the employer to investigate promptly and to ascertain the facts of the alleged accident. *City of Rockford v. Industrial Commission*, 214 N.E.2d 763 (1966) The giving of notice under the Act is jurisdictional and a prerequisite of the right to maintain a proceeding under the Act. However, the legislature has mandated a liberal construction on the issue of notice. *S&H Floor Covering v. The Workers Compensation Commission*, 870 N.E.2d 821 (2007)

We therefore hold that the date of an accidental injury in a repetitive trauma compensation case is the date on which the injury "manifests itself." Manifests itself means the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Peoria County Belwood Nursing Home vs Industrial Commission*, 115 Ill.2d 524, 505 N.E.2d 1026, 1029, 106 Ill.Dec. 235 (1987)

Did the Petitioner sustain accidental injuries on December 22, 2010 that arose out of and in the course of his employment with the Respondent?

The Petitioner testified that he had been experiencing numbness and tingling for between 4 years and 5 ½ years but that he did nothing about it until he saw a lawyer in December of 2010 who referred him to Dr. David Brown. Dr. Brown took a history and examined the Petitioner

and determined that he had bilateral cubital tunnel syndrome and perhaps bilateral carpal tunnel syndrome as well. The Petitioner was sent to Dr. Phillips for nerve conduction tests which supported the diagnosis of cubital tunnel syndrome. The Petitioner gave a history of employment that was consistent with cubital tunnel syndrome in the beginning of his four to five year onset, when he was working in the cell houses and was required to bar rap, use the Folger-Adams key to lock and unlock cells and was handcuffing and unhandcuffing inmates. During that time period he testified that there were five guards to a unit so they did not have to bar rap every day. At the time the Petitioner began to complain of his condition he had been working in the main visiting room for two years, where he did not have bar rapping to do and did not have cells to open and close. He was using the Folger-Adams key 100 to 150 times per eight hour shift.

While the fact that the Petitioner reported to doctors that he had the symptoms beginning 5 years ago and he testified on direct examination it was four years ago and on cross examination five years ago, and that he never told anyone during that four or five years it is clear that he did have the subjective symptoms and the objective nerve conduction study to verify the condition. It is also suspect that he went to an attorney before he saw a doctor and that the doctor was recommended by the attorney.

When Dr. Brown determined that the Petitioner had cubital tunnel syndrome he opined based upon the description of the Petitioner's job duties to him as well as his own personal knowledge of what the correctional officers job duties are, that his work duties were at least an aggravating factor in causing the Petitioner's condition. No evidence to the contrary was offered.

The Petitioner has proven by a preponderance of the evidence that he sustained an injury that arose out of and in the course of his employment with the Respondent.

Based upon the manifestation date was notice of the accident given by the petitioner to the respondent within the time limits stated in the Act, was notice given to Cindy Cowell, Worker's Compensation Coordinator on December 26, 2010 and was it proper notice?

The Petitioner testified that the symptoms began to manifest either four or five years ago, that he never said anything about them and he did not seek medical treatment for them until December 22, 2010. That he found out on December 22, 2010 that he had cubital tunnel syndrome; and on December 23, 2010 he signed the IWCC Application for adjudication of a claim and then on December 26, 2010 he notified the Respondent. Technically the notice was given within four days of the diagnosis the day that the Petitioner testified that he knew he had cubital tunnel and that it was related to his work duties. There was no evidence presented to establish that the Respondent had a diagnosis at any time before the twenty-second of December or that the Respondent was prejudiced by the Petitioner waiting four or five years to get a diagnosis and treatment. The Worker's Compensation Act provides, in relevant part that "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on

arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." *820 ILCS 305/6(c)* (West 2004)

Based upon the evidence presented and admitted the time between the onset of symptoms and the seeking of diagnosis and treatment are not a bar to the proceedings in this case or the ability of the Respondent to seek benefits under the Act.

Is the respondent liable for the unpaid medical bills that are described in Petitioner's Exhibit #6?

Since the Petitioner has proven a compensable act by a preponderance of the evidence the Respondent is liable for the unpaid medical bills described in Petitioner's exhibit 6 that are related to the diagnosis and treatment of cubital tunnel syndrome that the Petitioner sustained on December 22, 2010.

What is the nature and extent of the injury?

Surgery consisted of right cubital tunnel release with an anterior submuscular transposition with myofascial lengthening of the flexor pronator tendon origin. And two weeks later left cubital tunnel release with an anterior submuscular transposition with myofascial lengthening of the flexor pronator tendon origin. The Petitioner completed a course of physical therapy and returned to work. He states that presently, aside from the soreness that he still experiences, he feels that he has greatly improved. If he uses his hands to much they get sore. He can do his job, like he did before the problems. He can perform his duties satisfactorily without any complaints from supervisors.

As a result of his injuries the petitioner has sustained a loss of 15% of the right arm and 15% of the left arm pursuant to section 8 of the Act.

ORDER OF THE ARBITRATOR

The respondent shall pay the petitioner $657.09 / week for 75.9 weeks as the petitioner has sustained a 15% loss of both his right and left arms.

The Respondent shall pay the outstanding medical bills for diagnosis and treatment of the Petitioner related to cubital tunnel syndrome pursuant to the fee schedule or agreement pursuant to the Worker's Compensation Act.

Deborah L. Simpson
Signature of Arbitrator

October 9, 2012
Date

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stanford Dorsey,
Petitioner,

vs. No. 13 WC 03624

City of Chicago,
Respondent.

14IWCC0004

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the sole issue of nature and extent of the permanent partial disability, and being advised of the facts and law, modifies the July 1, 2013 decision of Arbitrator Deborah Simpson as stated below and otherwise affirms and adopts the decision of the Arbitrator, which is attached hereto and made a part hereof. After considering the record as a whole, and for the reasons set forth below, the Commission modifies the permanent partial disability award of the Arbitrator. Arbitrator Simpson awarded Petitioner 17% loss of use of the person as a whole, pursuant to §8(d)2, for his biceps tear at the elbow. The Commission finds that the Arbitrator's permanency award should not have been based upon §8(d)2, but should have been awarded pursuant to §8(e), and hereby modifies the award to 37.5% loss of use of the left arm. The Commission further finds that Respondent is entitled to a credit for a 1998 settlement with Petitioner for 30% of the left arm, leaving Respondent responsible for 7.5% of the left arm for this injury.

On February 8, 2010, Petitioner, an electrician working to maintain street lights, sustained an injury to his left arm when he assisted a co-worker in moving a 350-400 pound manhole cover. He was diagnosed with a biceps tear at the left elbow and underwent surgical repair of the tear on February 15, 2010. Following extensive occupational therapy, Petitioner was released to return to work full duty as of September 17, 2010. He returned to his former position and testified that he was able to perform all of his duties. However, a year after his return, he requested a transfer to the traffic light division, which has less demanding lifting requirements.

§8(e) vs. §8(d)2

Arbitrator Simpson relied upon *Will County Forest Preserve v. IWCC*, 2012 Ill. App. (3d) 110077WC, *Dobczyk v. Lockport Twp. Fire Protection Dist.*, 12 IWCC 1367, and *Veath v. State of Illinois, Menard C.C.*, 10 WC 12821, for the proposition that shoulder, biceps and elbow injuries are now classified as person as a whole injuries under §8(d)2 of the Act, instead of scheduled arm injuries under §8(e) of the Act.

The Commission acknowledges that the Appellate Court in *Will County* determined that shoulder injuries are no longer to be considered scheduled injuries under §8(e), but are now to receive person as a whole awards under §8(d)2. In this case, however, Petitioner's injury did not involve his shoulder, but his biceps, and the tear occurred at the left elbow, not at the upper arm.

Arbitrator Simpson cited *Veath* for the holding that elbows are non-scheduled body parts and fall under §8(d)2, like shoulders, pursuant to *Will County*. In *Veath*, Petitioner suffered two injuries, one to the right shoulder and one to the left elbow. The Arbitrator in *Veath* awarded Petitioner 22.5% of the right arm for his shoulder injury and 17.5% of the left arm for his elbow injury. On appeal, the Commission modified the Arbitrator's award for the right arm to comply with *Will County*. However, the Commission affirmed the award of 17.5% of the left arm for the Petitioner's elbow injury. Therefore, Arbitrator Simpson's reliance on *Veath* for the proposition that elbow injuries are now considered non-scheduled injuries is misplaced. Petitioner's biceps injury which occurred at the elbow fell within the scheduled injuries listed in §8(e) of the Act.

Therefore, the Commission modifies the Arbitrator's award to change the permanent partial disability award of 17% loss of use of the person as a whole under §8(d)2 to 37.5% loss of use of the left arm pursuant to §8(e).

§8(e)17 Credit

Arbitrator Simpson denied Respondent credit for a prior settlement with Petitioner for a left arm injury. In 1998, Respondent settled Petitioner's claim for a torn rotator cuff injury for 30% loss of use of the left arm. Section 8(e)17 of the Act provides as follows:

> In computing the compensation to be paid to any employee who, before the accident for which he claims compensation, had before that time sustained an injury resulting in the loss by amputation or partial loss by amputation of any member, including hand, arm, thumb or fingers, leg, foot or any toes, such loss or partial loss of any such member shall be deducted from any award made for the subsequent injury. For the permanent loss of use or the **permanent partial loss of use of any such member** or the partial sight of an eye, for which compensation has been paid, **then such loss shall be taken into consideration and deducted from any award for the subsequent injury.**

820 ILCS 305, §8(e)17 (emphasis added). Arbitrator Simpson found that although the 1998 settlement was based upon §8(e) loss of use of the arm, the Appellate Court in *Will County* had subsequently ruled that shoulder injuries properly belonged under §8(d)2. The Arbitrator found that the §8(e)17 credit provision does not apply to §8(d)2 awards and reasoned that, since Petitioner's 1998 settlement should have fallen under §8(d)2, the credit provision was not available to reduce Respondent's liability for this 2010 injury.

After reviewing all of the evidence and the relevant case law, the Commission finds that Petitioner's 1998 settlement occurred prior to the Appellate Court's decision in *Will County* and that the permanent partial disability settlement for Petitioner's shoulder injury fell properly under §8(e) at the time of the settlement. Based on the Commission's determination above, Petitioner's biceps injury in this case also fell properly under §8(e) of the Act. Therefore, credit was available for Respondent's prior settlement for 30% of the left arm, leaving Respondent liable for 7.5% loss of use of the left arm for this injury.

Arbitrator Simpson's reliance on *Dobczyk v. Lockport Twp. Fire Protection Dist.*, 12 IWCC 1367, in support of her denial of credit for the prior shoulder settlement is misplaced. In *Dobczyk,* Petitioner suffered two shoulder injuries, one in 2003 and another in 2010. The Arbitrator awarded Petitioner a nature and extent award under §8(e) for the 2003 injury. Following a hearing for the 2010 injury, the Arbitrator awarded Petitioner permanency under §8(d)2, pursuant to *Will County.* The Arbitrator in *Dobczyk* refused to give Respondent credit for the prior award under §8(e)17, because that credit is available only when the permanency awards or settlements are under §8(e).

In this case, both Petitioner's prior settlement and the current award fall within the scope of §8(e). Therefore, credit for the prior settlement is available to Respondent under §8(e)17. The Commission finds that Petitioner is entitled to 37.5% loss of use of the left arm for his 2010 biceps tear and that Respondent is entitled to credit under §8(e)17 of 30% loss of use of the left arm for the 1998 settlement.

All else is otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $664.72 per week for a period of 15.375 weeks, as provided in Section 8(e) of the Act, for the reason that the injuries sustained caused the loss of use of 37.5% loss of use of Petitioner's left arm, and Respondent is entitled under §8(e)17 to a credit for a 1998 settlement for 30% loss of use of Petitioner's left arm.

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

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

14IWCC0004

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $10,300.00. 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:

JAN 0 3 2014

Daniel R. Donohoo

Kevin W. Lamborn

Thomas J. Tyrrell

o-12/03/13
drd/dak
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DORSEY, STANFORD
Employee/Petitioner

Case# **13WC003624**

CITY OF CHICAGO
Employer/Respondent

14IWCC0004

On 7/1/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

WILLIAM B MEYERS & ASSOC
640 N LASALLE ST
SUITE 555
CHICAGO, IL 60654

0010 CITY OF CHICAGO DEPT OF LAW
MICHAEL GENTITHES
30 N LASALLE ST 8TH FL
CHICAGO, IL 60602

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
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Stanford Dorsey
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # 13 WC 003624

Consolidated cases: _____

14IWCC0004

The only disputed issue is the nature and extent of the injury. 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 **Deborah L. Simpson**, Arbitrator of the Commission, in the city of **Chicago**, on **April 26, 2013**. By stipulation, the parties agree:

On the date of accident, **February 8, 2013**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained 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 **$63,632.40**, and the average weekly wage was **$1,223.70**.

At the time of injury, Petitioner was **55** years of age, ***single*** with **0** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

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**.

14IWCC0004

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of **$664.72**/week for a further period of **85** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **a 17% loss of the man as a whole.**

Respondent shall pay Petitioner compensation that has accrued from **02/08/2010** through **05/26/2013**, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected 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.

Deborah L. Simpson
Signature of Arbitrator

June 29, 2013
Date

JUL -1 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stanford Dorsey,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 13 WC 03642**
	)	
City of Chicago,	)	
	)	**14IWCC0004**
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on February 8, 2013, the Petitioner and the Respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. On that date the Petitioner sustained an accidental injury or was last exposed to an occupational disease that arose out of and in the course of the employment. They further agree that the Petitioner gave the Respondent notice of the accident within the time limits stated in the Act and that the Petitioner's current condition of ill-being is causally connected to the accidental injury sustained.

At issue in this hearing is as follows: (1) the nature and extent of the injury.

STATEMENT OF FACTS

The Petitioner has been employed by the Respondent for twenty-four years as an electrician. He worked in the bureau of electricity maintaining street lights. His job included painting, lifting poles that were down, fixing poles that were out, stringing temporary wire the wiring was bad, which included pulling wire from one light to another and any other required maintenance.

On February 8, 2010, he was working with his crew at 79th & St. Louis on lights that were out. They determined that they were going to need to go underground to work on this particular problem. They had to lift the manhole cover, which weighed between 350 and 400 pounds. He and his partner had a grip on each side, lost their balance and in the struggle not to fall he felt immediate pain in his left arm and dropped the manhole cover.

He sought medical attention immediately at Mercy Works where he had x-rays and was sent for an MRI. The MRI revealed a complete disruption of the biceps tendon retraction at least 4.5 cm. Petitioner had a hollow deformity in the distal biceps tendon area, could not flex his elbow and had tenderness in the left forearm as well. The Petitioner was referred to Dr. William Hellar at Woodland Ortho. (P. Ex. 1)

Petitioner saw Dr. Hellar on February 12, 2010, who after examining the Petitioner and reviewing the MRI results informed the Petitioner he needed surgery to repair the ruptured tendon. (P. Ex. 1,3) As a result of the work-related accident on February 8, 2010, Petitioner sustained (1) a complete rupture of the left distal biceps tendon, which retracted from the radial tuberosity at least 4.5 cm, (2) a retraction of the stump into proximal arm, and (3) a sprain of the radial collateral ligament. (P. Ex. 3).

On February 15, 2010, the Petitioner had surgery, at Mercy Hospital, performed by Dr. Hellar. Specifically the injury required surgical intervention in the form of a left elbow distal biceps tendon rupture repair and radial nerve neurolysis. (P. Ex. 3). The tendon repair first required a debridement of the biceps tendon before the tendon could be reattached to the bone. (P. Ex. 3). Further, the surgical operation performed included drilling a hole into Petitioner's bone and anchoring the biceps tendon back to the bone with a 7mm screw and anchor system. (P. Ex. 3).

The Petitioner went through a course of physical therapy and then work hardening, through Mercy at the Chatham Hand Rehab. (P. Ex. 2) The Petitioner was released to return to work full duty with no restrictions on September 17, 2010. (P. Ex. 1)

The Petitioner testified that after the surgery he still had pain in his left arm. He took the prescription pain medications three times per day while he was doing physical therapy and off work. He stated that at the time he returned to work his left arm was not as strong as it had been prior to the injury. Prior to the injury, he never had trouble performing his job duties.

The Petitioner returned to work for the Respondent in September of 2010 at his same position with his same duties and responsibilities at the same rate of pay. The Petitioner testified that he was able to perform all of the tasks required by the job but he was still experiencing pain in his left arm. He testified that he took over the counter ibuprofen for the pain. The Petitioner testified that he continued to work in that position for about a year. He then switched to working on traffic lights which was a less strenuous job than the street lights were. He testified that the traffic lights that need to be lifted weigh only ten to fifteen pounds. He stated that the job was less strenuous and he only had to take ibuprofen occasionally for the pain in that assignment.

The Petitioner testified that he had no trouble or problems doing the job when he switched from street lights to traffic lights. The Petitioner testified that he did not miss any work because of the injury to his arm once he was released to return to work full duty on September 17, 2010. The Petitioner testified that he has not worked for the Respondent since January 7, 2013.

The Petitioner testified that the injury he sustained on February 8, 2010, still causes him problems to date. He stated that although once he returned to full duty work he did not miss any work days because of the injury or the pain, he still has pain and residual effects.

The Petitioner testified that currently he has problems lifting heavy objects. Prior to the accident he lifted weights, recreationally, not competitively; he could easily lift eighty pounds. He testified that they have a facility at his apartment complex and he lifted steel weights, bench pressed, did curls, bicep curl and that he lifted about 80 pounds. He no longer does that. He has tried to lift the 80 pounds he used to lift but cannot because his arm is not as strong as it used to be and it causes pain. He stated that he is unable to help people move or lift furniture and he cannot carry heavy objects.

The Petitioner testified that he is right hand dominant so he does not have any trouble dressing himself, writing, eating or cooking and is otherwise able to perform the activities of daily living without incident.

The Petitioner testified that he does not currently have any appointments for further medical treatment or medications and does not expect to make any. He states that he uses over the counter ibuprofen for the occasional pain he experiences.

The Petitioner admitted that he had a previous work injury in November of 1995, while working for the Respondent. He received treatment and filed a worker's compensation claim for that injury. That injury was to his left shoulder and he settled the claim for 30% loss of the use of the left arm which was $28,590.80. (R. Ex. 1) Petitioner testified that the injury at that time was to his rotator cuff, and did not involve the biceps tendon. He testified that after treatment he returned to his regular job and did not require any time off for that injury after he was treated. He was able to do his job without problems until the injury of February 8, 2010.

CONCLUSIONS OF LAW

The burden is upon the party seeking an award to prove by a preponderance of the credible evidence the elements of his claim. *Peoria County Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987). This includes the nature and extent of the petitioner's injury.

Will County Forest Preserve v. Workers' Compensation Commission, 2012 Ill. App. (3d) 110077WC, *Dobczyk v. Lockport Township Fire Protection District*, 12 IWCC 1367, and *Veath v. Illinois, State of Menard Correctional Center*, 10 WC 12821, changed shoulder, biceps, and elbow injury classifications under the Act. Instead of being awarded under Section 8(e), the aforementioned body parts are now classified under man as a whole awards pursuant to Section 8(d)2 of the Act.

In this case, the credible evidence showed that the Petitioner suffered a torn left bicep tendon at the elbow, which was surgically repaired in an outpatient procedure by Dr. Heller. Following physical therapy, the Petitioner was able to return to work full duty approximately

seven months after the injury. At the time of his return, the Petitioner worked in the same position for the same pay and with the same hours as he had prior to his injury. The Petitioner also testified that he was able to perform all the duties attendant to that position. Petitioner testified that he requested the reassignment from street lights to traffic lights on his own, not because of any restrictions placed upon him by his treating physicians. Because the Petitioner is right-handed, his injury to his left arm has not affected his daily activities other than preventing him from lifting weights up to 80 pounds and doing other heavy lifting activities.

Due to Petitioner's injuries, treatment, and current residual symptoms and limitations, pursuant to Section 8(d)2 of the Act, he is entitled to an award of 17% loss of the man as a whole.

Is the Respondent Entitled to a Credit for the Previous Work Injury Settlement from 1995?

In *Dobczyk*, the Commission affirmed the Arbitrator's decision to deny respondent a credit for a previous award paid to Petitioner. The Petitioner in *Dobczyk* suffered a shoulder injury in 2003. He was diagnosed with a mild grade two AC separation, prescribed medication and removed Petitioner from work. Shortly after petitioner returned to work he sustained an aggravation of his AC separation. Petitioner underwent a distal clavicle resection, then went through a course of physical therapy and was returned to work full-duty by May 2004. Petitioner was awarded a nature and extent award for permanent partial disability pursuant to Section 8(e) of the Act subsequent to this initial injury.

Petitioner worked unimpeded until March 2010, when Petitioner sustained a work-related injury. Petitioner was diagnosed with a SLAP tear, supraspinatus tear, and partial rotator cuff tear in his left shoulder. Petitioner underwent surgery to repair all of the conditions followed by another course of physical therapy. The Arbitrator in *Dobczyk* awarded Petitioner a nature and extent award for permanent partial disability pursuant to Section 8(d)2 of the Act subsequent to this second injury. The Arbitrator found Respondent was not entitled to a credit for the previous shoulder award based on the court's ruling in the *Will County Forest Preserve v. Workers' Compensation Commission* Decision. The changed classification of the body parts under the Act from Section 8(e) to Section 8(d)2 was sufficient to deny Respondent a credit.

The *Dobczyk* court held that Respondent was not entitled to a credit for an award paid to Petitioner for a previous shoulder award based on the *Will County* decision. Specifically, because the *Will County* court ruled that a shoulder is not considered a "member" of Section 8(e) of the Act, and any PPD awards for shoulder conditions should be awarded pursuant to 8(d)2. Moreover, the court said that Section 8(e)17 credits under the act only apply to permanency losses contained within the bounds of Section 8(e) of the Act. The original award granted to Petitioner in the present case was for a left shoulder condition, where Petitioner sustained a rotator cuff tear. While at the time the injury was classified under Section 8(e) of the Act, pursuant to the *Will County* and *Dobczyk* decisions, shoulders injuries, for the purpose of credits, are no longer covered by Section 8(e); rather under Section 8(d)2.

The recent case of *Veath v. Illinois, State of Menard Correctional Center*, 10 WC 12821, changed the classification of elbow awards from Section 8(e) to Section 8(d)2. In *Veath*, the Arbitrator awarded the petitioner 17.5% loss of the use of his left elbow after sustaining injuries

which required a left elbow ulnar nerve debridement. However, the Commission changed the award from a Section 8(e) award to a Section 8(d)2 award citing the *Will County* decision as its basis for the augmentation.

In the present case Petitioner suffered an elbow injury as well, in the form of a torn biceps tendon, in light of these decisions, he is entitled to an award under Section 8(d)2 of the Act. Given that his award should be under Section 8(d)2 and that the award for which Respondent claims a credit was pursuant to Section 8(e), Respondent is due no credit for the award paid out for Respondent's previous permanent partial disability payment to Petitioner. Petitioner is entitled to his full Section 8(d)2 award.

ORDER OF THE ARBITRATOR

Petitioner is found to have suffered a permanent injury pursuant to Section 8(d)2 of the Act. Respondent shall pay Petitioner permanent partial disability benefits of **$664.72**/week for **85** weeks, because the injuries sustained caused the **17%** loss of the man as a whole as provided in Section 8(d)2 of the Act

Deborah L. Simpson
Signature of Arbitrator

June 29, 2013
Date

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ 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

Debra Scoggins,

14IWCC0005

Petitioner,

vs.

NO: 11 WC 45932

City of Jerseyville,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 6, 2013 is hereby affirmed and adopted.

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.

No bond is required for removal of this cause to the Circuit Court by Respondent. 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: JAN 0 3 2014

David L. Gore

Michael J. Brennan

Mario Basurto

DLG/gal
O: 12/19/13
45

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

SCOGGINS, DEBRA
Employee/Petitioner

Case# **11WC045932**

14IWCC0005

CITY OF JERSEYVILLE
Employer/Respondent

On 2/6/2013, 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:

0487 SMITH ALLEN MENDENHALL ET AL
DOUG MENDENHALL
PO BOX 8248
ALTON, IL 62002

1001 SCHREMPF BLAINE KELLY & DARR
MATTHEW W KELLY
307 HENRY ST SUITE 415
ALTON, IL 62002

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0005

Debra Scoggins
Employee/Petitioner

v.

City of Jerseyville
Employer/Respondent

Case # 11 WC 045932

Consolidated cases: ___

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Collinsville**, on **11/28/2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

14IWCC0005

On the date of accident, **11/03/2011**, 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 not* sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned **$52,025.85**; the average weekly wage was **$1,000.50**.

On the date of accident, Petitioner was **54** years of age, *married* with **0** dependent children.

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

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

Respondent is entitled to a credit of **$for all medical bills paid** under Section 8(j) of the Act.

ORDER

Petitioner failed to meet her burden of proof regarding accident. Accordingly, this claim is denied.

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

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

Signature of Arbitrator

1/30/13
Date

ICArbDec19(b)

FEB - 6 2013

Findings of Fact

14IWCC0005

Petitioner began her employment with the City of Jerseyville in 1976 in the police department as a telecommunicator. In August of 2005, petitioner moved to the water department and read meters for three years. In August of 2008, petitioner began work for respondent as an operator at the waste water treatment plant.

In connection with her job duties at the waste water treatment plant, petitioner was one of three operators who rotated duties. Petitioner's job duties were varied and self-paced. Petitioner's job duties involved many different activities which included some button pushing and some valve turning. It also included operating hoses, climbing ladders, traveling between lift stations and cutting grass. Petitioner worked an eight hour day with two 15 minute breaks and an hour off for lunch, for a total workday of six and one-half hours.

Petitioner first sought treatment for hand complaints in March of 2005, at which time she saw her primary care physician, Dr. James Ricci, who ordered EMG/nerve conduction studies. The EMG/nerve conduction studies were completed on April 5, 2005 and were positive for bilateral carpal tunnel syndrome. Petitioner had further complaints with respect to her wrists and was again seen by her primary care physician, Dr. Ricci, in April of 2007, at which time it was recommended that she see a surgeon in connection with her carpal tunnel problems. Petitioner testified that she thought her complaints were related to her employment at that time. Petitioner did not undertake any activities to pursue a workers' compensation claim as a result of her complaints in 2005 or 2007.

In addition to her prior carpal tunnel complaints, petitioner also had a lengthy course of care for a diagnosed condition of hypothyroidism with Dr. Ricci. By 1999, petitioner had had her thyroid removed and was on Synthroid in connection with her diagnosed surgical hypothyroidism. Petitioner remained on medications for her hypothyroidism at the time of trial. Dr. Ricci also diagnosed petitioner with hypertension as early as February of 2005.

Petitioner returned to Dr. Ricci on October 12, 2011, at which time he diagnosed chronic carpal tunnel syndrome. Dr. Ricci recommended updated EMG/nerve conduction studies as of his evaluation on November 3, 2011. Those studies were also positive for bilateral carpal tunnel syndrome.

Thereafter, petitioner initiated a course of care with Dr. Michael Beatty whom she first saw on December 8, 2011. Dr. Beatty testified on behalf of petitioner prior to trial. He concluded that petitioner did not have a diagnosis of hypothyroidism and, as such, that condition was not relevant in determining the question of causation as it related to petitioner's carpal tunnel syndrome and her employment. Dr. Beatty was of the opinion that petitioner's employment duties were sufficiently repetitive to constitute a causal connection with her carpal tunnel syndrome. Dr. Beatty recommended bilateral carpal tunnel releases. Dr. Beatty also completely discounted the possibility that petitioner might have thumb arthritis which could be a causative factor in the development of her carpal tunnel syndrome.

Respondent had petitioner seen by Dr. David Brown for an independent medical evaluation on June 5, 2012. Dr. Brown explored petitioner's job duties directly with petitioner. Dr. Brown also had a formal job description and a video which showed representative tasks performed by petitioner during the course of her normal workday. Dr. Brown ordered x-rays of both of petitioner's wrists which revealed

advanced, severe degenerative changes at the base of both thumbs, worse on the left than the right, consistent with petitioner's complaints..

Dr. Brown testified on behalf of respondent prior to trial. Dr. Brown noted that petitioner was of the gender and in the age group for which carpal tunnel syndrome is prevalent. He also concluded that petitioner's diagnosed hypothyroidism and her hypertension could be causative factors in the development of petitioner's bilateral carpal tunnel syndrome. Dr. Brown cited authoritative studies in support of those propositions, which studies were admitted at trial with his deposition. Dr. Brown testified that petitioner's severe degenerative changes at the base of her thumbs would have constituted a causative factor in the development of petitioner's condition. Finally, Dr. Brown expressed the opinion that petitioner's employment activities did not rise to a sufficient level to constitute a causative factor in petitioner's diagnosed condition or her need for treatment.

Based on the foregoing, the Arbitrator makes the following conclusions:

Petitioner failed to meet her burden of proof regarding the issue of accident. Petitioner's medical records clearly show that was diagnosed with carpal tunnel in 2005 and the evidence indicates she believed it was due to her employment at the time. The Arbitrator finds the opinions of Dr. Brown well-supported by the evidence which was presented at trial and more persuasive than those of Dr. Beatty. Accordingly, all other issues are rendered moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ 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

Dennis Grah,

14IWCC0006

Petitioner,

vs.

NO: 11 WC 33051
12 WC 44481

State of Illinois/ Menard Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 10, 2013 is hereby affirmed and adopted.

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: JAN 0 3 2014

DLG/gal
O: 12/19/13
45

David L. Gore

Michael J. Brennan

Mario Basurto

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

GRAH, DENNIS
Employee/Petitioner

Case# **11WC033051**

12WC044481

14IWCC0006

SOI/MENARD C C
Employer/Respondent

On 5/10/2013, 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 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

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

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

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

MAY 10 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0006

Dennis Grah
Employee/Petitioner

v.

State Of Illinois/Menard C.C.
Employer/Respondent

Case # **11** WC **033051**

Consolidated cases: **12 WC 44481**

An *Application for Adjustment of Claim* was filed in each of these matters, and a *Notice of Hearing* was mailed to each party. These matters were heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Collinsville**, on **February 20, 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. ☒ 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

14IWCC0006

FINDINGS

On each date of accident the Respondent *was* operating under and subject to the provisions of the Act.

On each date of accident an employee-employer relationship *did* exist between Petitioner and Respondent.

On August 13, 2011, the petitioner *did not* sustain an accident that arose out of and in the course of employment. On June 28, 2012, the petitioner did sustain such an accident.

Timely notice of the asserted accidents *was* given to Respondent.

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

In the year preceding the 2011 injury, Petitioner earned **$62,880.00**; the average weekly wage was **$1,209.23.**

In the year preceding the 2012 injury, Petitioner earned **$65,580.00**; the average weekly wage was **$1,261.15.**

On each date of accident, Petitioner was **53** years of age, *married* with **0** dependent children.

Respondent is not liable for the submitted charges for the 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 $ **if any** under Section 8(j) of the Act.

ORDER

For reasons set forth in the attached decision, the requested medical benefits are denied.

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

May 9, 2013
Date

ICArbDec19(b)

MAY 10 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DENNIS GRAH,	)	
	)	
Petitioner,	)	14IWCC0906
	)	
vs.	)	**Nos. 11 WC 33051**
	)	**12 WC 44481**
STATE OF ILLINOIS/MENARD C.C.,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

These matters were consolidated and tried jointly pursuant to Sections 8(a) and 19(b) of the Act. The parties requested a singular decision encompassing both claims. Given the overlapping issues, the Arbitrator concurs with this approach.

STATEMENT OF FACTS

The claimant is a correctional sergeant at Menard Correctional Center. At the time of the asserted repetitive trauma and during the pendency of these matters he has worked the 11 P.M. to 7 A.M. shift. He began working at Menard in 1994 as a correctional officer and was promoted to sergeant in 2010. He also acknowledged being a beef cattle farmer since approximately 1976; the petitioner testified the duties surrounding this took approximately thirty hours per week.

The petitioner acknowledged that while employed at Menard he previously filed a claim for carpal and cubital tunnel syndrome incurred through repetitive trauma with an effective date of loss of November 23, 2009; that claim received case number 09 WC 49498. Both wrists and the left elbow were corrected surgically, and the petitioner was off work until June 27, 2010. That case settled with the contracts being approved on July 13, 2010, for 17.5% of each hand and 22.5% of the left arm. See RX2.

The petitioner now asserts repetitive trauma in claim 11 WC 33051 with an effective date of loss of August 13, 2011, and an acute accident on June 28, 2012 in 12 WC 44481. With regard to case 11 WC 33051, the claimant originally asserted repetitive trauma to the right arm and elbow, and thereafter amended the application to include the neck and the body as a whole. Both cases currently surround a surgical recommendation from Dr. Matthew Gornet for cervical spine disk replacement surgery at C5-6 and C6-7.

The petitioner filed the Application for Adjustment of Claim in August 2011, but did not obtain care regarding this claim until his appointment with Dr. Paletta on

September 14, 2011. PX3. The intake questionnaire indicates pain in the right elbow and arm. RX4. When he spoke with Dr. Paletta, however, he noted neck pain and pain in both elbows. He advised the pain had begun four to five years prior, and worsened over the last two years. Dr. Paletta prescribed an EMG study, which was done that day. PX4. The results indicated cervical radiculopathy and mild right ulnar neuropathy. Dr. Paletta ordered a cervical MRI and referred the petitioner to Dr. Gornet. PX3. The MRI was conducted that day and revealed multilevel disk disease, with herniations at C3-4 and C4-5 and bulging disks at C5-6 and C6-7, with foraminal stenosis at C5-6 and to a lesser extent at C6-7. PX5.

The claimant was seen by Dr. Gornet on October 24, 2011. See PX6. At that time he reported a one to two year history of symptoms which had worsened gradually. Dr. Gornet recommended injections at C5-6 and C6-7. The petitioner thereafter reported some relief from the injections but did have persistent symptoms.

On December 20, 2011, the petitioner saw Dr. Robson for a Section 12 examination at the request of his employer. Dr. Robson opined the petitioner suffered from degenerative disk disease and spondylosis, which in turn caused radiculopathy. Dr. Robson opined the petitioner would benefit from surgical intervention, but opined that the progression of the disease was not related to the claimant's work activities. RX6.

On March 5, 2012, Dr. Gornet recommended the petitioner attempt to live with his symptoms but would otherwise recommend dual level disk replacement at C5-6 and C6-7. On June 7, 2012, Dr. Gornet reviewed Dr. Robson's report and opined that the workplace activities did not cause the cervical spondylosis, but had caused the symptoms and again recommended surgical intervention based on that. PX6.

Regarding the second accident, the petitioner testified that on June 28, 2012, he was escorting a diabetic prisoner for an insulin shot, and the prisoner collapsed. The petitioner caught the falling inmate. He testified that this incident caused a pulling sensation in his shoulders, and reported the incident, but did not seek medical attention for that incident at the time or immediately thereafter.

On October 8, 2012, Dr. Gornet saw the petitioner. The petitioner did not report the June 2012 accident at that point. The petitioner's examination "was unchanged from 06/07/12." PX6. Dr. Gornet renewed his recommendation for surgery. On January 15, 2013, the petitioner presented and reported the June 2012 accident, and asserted worsening symptoms. Dr. Gornet recommended a new MRI. PX6.

The MRI was performed on January 15, 2013. It was not compared by the radiologist. It again demonstrated disk protrusions at multiple levels from C3 through C7 with multilevel foraminal stenosis. See PX5. On February 11, 2013, the petitioner saw Dr. Gornet. Dr. Gornet reviewed the MRI and opined it was generally comparable to the prior films, but opined the C4-5 level had increased. However, Dr. Gornet did not recommend intervention at that level, and maintained his prior recommendation for C5 through C7 surgery. See PX6.

Dr. Gornet and Dr. Robson each testified in deposition in support of their respective opinions relative to causal connection. See PX12, RX6.

At trial, the respondent, on cross-examination, illuminated a pre-injury incident on January 5, 2011, when the petitioner was involved in a physical altercation outside of work. See RX13, RX14. His typewritten statement acknowledges he was struck in the left side of his neck. RX13. Medical records from January 6 show he described anterior neck pain where redness was observed. RX14 (p.2).

OPINION AND ORDER

Accident and Causal Relationship

Given the overlapping facts and circumstances relative to these issues, the Arbitrator will address these issues jointly.

Relative to the August 2011 accident assertion, the petitioner is relying on a repetitive trauma theory, as opposed to an acute injury. See, e.g., *Peoria County Bellwood*, 115 Ill.2d 524 (1987); *Quaker Oats Co. v. Industrial Commission*, 414 Ill. 326 (1953). When performance of the employee's work involves constant or repetitive activity that gradually causes deterioration of or injury to a body part, the case may be compensable, provided it can be medically established that the origin of the injury was the repetitive stressful activity. However, it is required that the claimant prove that the injury is related to the employment and not the result of the normal degenerative aging process, as simply performing work over a period of years is not legally sufficient to prove that work is repetitive enough to cause an increased risk to the petitioner. *Id.*

The petitioner acknowledged a multitude of activities during any given day, as reflected in the job descriptions. These activities include paperwork; observation of inmates; verifying cell locks and deadlock checks; bar rapping one time per shift depending on the house; maintaining various logs, including inmate count sheets, tickets and incident reports; utilization of keys for doors and other locked items; assisting with inmate movement, which included application of handcuffs; room compliance assessments; generalized security and inmate control as needed. It should also be noted that the claimant worked the night shift, with reduced inmate movement. He also rotated between assignments on a regular basis. Based on the above findings and the credible record, the arbitrator finds the petitioner's duties may have a usual pattern or schedule, but are numerous and varied, with evidence of alternating activities in between. Moreover, the August 13, 2011 date carries no evidence of any substantial issue which could be rationally linked to a manifestation date of loss.

An examination of the evidence deposition of Dr. Gornet further shows that his causal opinion was based on an incomplete and inaccurate description of the petitioner's employment history. He was unaware of the claimant's substantial and rigorous outside

employment. Furthermore, he does not adequately explain how, if the condition was related to the petitioner's work, the symptoms would have continued to progress despite not being at work for a substantial portion of the relevant time period, when the petitioner was on Temporary Total Disability following the other asserted date of loss.

Dr. Gornet's analysis of the kinds of stressors the petitioner was exposed to was based on flawed information. The petitioner has not demonstrated by a preponderance of the credible evidence that any repetitive work activities have a causal link to his claimed injuries. The claim for compensation in 11 WC 33051 is denied.

Regarding the June 28, 2012 accident, 12 WC 44481, the petitioner did demonstrate an acute incident arising out of and in the course of his employment, thus satisfying the accident requirement. However, the surgical recommendation was made prior to the June 28, 2012 incident, and Dr. Gornet did not modify the recommendation following that accident, nor alter his assessment that it was the repetitive trauma which prompted the surgical recommendation. Moreover, the only level of the cervical spine that was arguably changed on the MRI was not the target of the surgical intervention. Most significantly, while the petitioner asserted there had been an increase in symptoms, the first examination by his physician following the June 2012 incident specifically noted there had been no change in his physical examination, and the petitioner did not seek any substantial treatment at the time. As such, the Arbitrator finds that the petitioner has not demonstrated a causal relationship between either the incurred treatment or the proposed course of medical care and the June 28, 2012 date of loss.

Notice

The Arbitrator finds that the petitioner did provide notice of the asserted accidents to the respondent within the time frame established by Section 6 of the Act.

Medical Services (Past and Prospective)

As these are not causally related, they are denied. The proposed future medical care requested is likewise denied, due to the lack of a causal relationship.

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)
& 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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sherri Edwards,

Petitioner,

14IWCC0007

vs.

NO: 10 WC 16509

State of Illinois/ Menard Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 26, 2012 is hereby affirmed and adopted.

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: JAN 0 3 2014

David L. Gore

Michael J. Brennan

Mario Basurto

DLG/gal
O: 12/19/13
45

ILLINOIS WORKERS' COMPENSATION COMMISSION

NOTICE OF 19(b) DECISION OF ARBITRATOR

EDWARDS, SHERRI
Employee/Petitioner

Case# **10WC016509**

SOI/MENARD CORRECTIONAL CENTER
Employer/Respondent

14IWCC0007

On 9/26/2012, 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 0.14% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

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

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

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

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
201 E MADISON ST SUITE 3C
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

SEP 26 2012

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF St. Clair & Williamson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0007

Sherri Edwards
Employee/Petitioner

v.

State of Illinois / Menard Correctional Center
Employer/Respondent

Case # 10 WC 16509

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Deborah L. Simpson**, Arbitrator of the Commission, in the city of **Collinsville / Herrin**, on **January 25, 2012 / March 21, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0007

FINDINGS

On the date of accident, **April 12, 2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$55,860.00**; the average weekly wage was **$1074.23**.

On the date of accident, Petitioner was **42** years of age, ***single*** with **0** dependent children.

ORDER

The Petitioner failed to prove a compensable accident within the meaning of the Act. Benefits requested pursuant to Section 8 and penalties and attorney fees pursuant to Sections 16 and 19 are therefore denied.

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.

Deborah L. Simpson
Signature of Arbitrator

Sept 25, 2012
Date

ICArbDec19(b)

SEP 26 2012

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sherri Edwards,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 10 WC 16509**
	)	
State of Illinois / Menard Correctional Center,	)	
	)	
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on April 12, 2010, the petitioner and the respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. They further agree that the petitioner gave the respondent notice of the accident which is the subject matter of this hearing within the time limits stated in the Act.

At issue in this hearing is as follows: (1) did the petitioner sustain accidental injuries on April 12, 2010, that arose out of and in the course of her employment with the respondent; (2) is the petitioner's current condition of ill-being causally connected to the injury (3) is the respondent liable for the unpaid medical bills that are the subject of petitioner's exhibit number 1; and (4) is the petitioner entitled to TTD from July 13, 2011 to January 24, 2012, (the present) The petitioner has filed a petition for penalties and attorneys fees under sections 19(l), 19(k) and 16 of the act.

STATEMENT OF FACTS

The petitioner is employed by the State of Illinois at the Menard Correctional Center as a correctional officer. She has worked there for about fourteen (14) years. She is currently assigned to the health care unit on the 7 a.m. to 3 p.m. shift and spends the majority of her work time there; however she has been assigned to other parts of the facility including the towers from time to time. It is usually when she works overtime that she is in a different part of the facility. Over the years she has had various assignments, she has worked in the gallery an assignment that included bar rapping, where you take a metal bar and run it across each bar on each cell that has open bars one time per shift; cell shake downs where you search everywhere in the inmates cell checking the toilet, mattress, beds, property box and windows; she has operated the crank to put the cells on lock down or remove them from lock down; and she has opened and closed cell doors. She has also worked in the infirmary, which includes carrying trays of food to feed the inmates that are there. No information was provided as to the length of time she was assigned to

any of these other positions or what sequence they were in. She testified that she is currently in the health care unit and that this is the longest stint she has done, six years (6) in the unit. She is right hand dominant.

In her current assignment the health care unit, they provide medical services to inmates. She is responsible for the flow of traffic into and out of the unit. This requires her to open doors to allow inmates and corrections officers into the unit and then again to let them out. To get into the unit, the officer or inmate buzzes and she flips a switch to let them in the doorway. Then she has to open the door with a key to let them into the space where the cages are to hold the inmates that are there to see medical personnel. There is a four by four square that she reaches into to use the key to unlock the door. The door usually shuts by itself. While an inmate is in the health care unit they wait in a holding cell or cage. She has to unlock the cage to let the inmates in and out. There are three cages/cells that they wait in until their name is called for their turn with the medical person who they are there to see. She unlocks the cage to let them out, then when they finish they go back into the cage until a correctional officer is available to take them back to their cell. Most days there is about one hundred (100) people in and out of the healthcare unit during her 8 hour shift, sometimes it could be as many as two hundred (200).

The petitioner testified that she turns keys in the lock, a folger-adams key which is larger than a house key or a key for a padlock, two hundred (200) times per day. On petitioner's exhibit 11, a handwritten description of her job which petitioner claims she wrote it says "I am currently assigned to healthcare as the door officer approximately ten of the fourteen years of my employment. This job includes turning a key approximately five hundred to one thousand times a day letting inmates and staff in and out the door." (P. Ex. 11) She denies that this job description was written at the request of her attorney. During her description of her job requirements in the health care unit no mention is made of lifting heavy objects or of overhead lifting. She described handling paper forms and lists, locking and unlocking doors, opening doors and closing them and flipping a switch.

Joseph Durham, a major at the correctional facility testified that there is a second person assigned to the health care unit; the petitioner is not there by herself. That there are not two hundred inmates getting treated in a day and that turning the key to open the locks could happen as many as three hundred times a day at most, not the five hundred to one thousand times that the petitioner wrote in her job description.

On Rebuttal the petitioner was recalled to testify. At that time she testified that she is in the health care unit by herself a lot. That every inmate that comes down is escorted to the unit and that her estimate of between five hundred and one thousand times per shift turning keys was not an exaggeration.

Petitioner testified that sometimes she does work overtime and that would be the 3:00 p.m. to 11:00 p.m. shift. When she works overtime it is in a different position in the facility. In those different assignments she has worked in the gallery and had to bar wrap, she has participated in cell shake downs, she has operated the crank and opened and closed cell doors. She has worked in the tower and the armory as well. No information was provided as to how much overtime petitioner works, or how many times she is assigned to other areas of the facility.

She spoke in generalities as to what corrections officers had to do in various assignments but did not provide any information as to how that translated to her.

Petitioner testified that she began noticing at work that she had pain in her right arm and then tingling and numbness in both hands. She had had previous surgery on her neck for a herniated disc in about June of 2007. The surgery was successful and she did not think that the problems she was experiencing with her hands and arm were related to her prior neck issues. She went to Dr. David Brown, at the Orthopedic Center of St. Louis in 2009 and he ordered an EMG and a NCV. The results of the tests were negative for any problems in the elbows or the wrists. (R. Ex. 6) She said he told her it could be coming from her shoulder but she did not follow up. Petitioner's exhibit #3 is from her visit on April 12, 2010 and makes reference to her visit in 2009 and the nerve conduction study that was done in July of 2009 which according to Dr. Brown was unrevealing.

Petitioner returned to Dr. Brown on April 12, 2010 with continuing complaints of intermittent numbness and tingling and pain in both hands. Her examination according to Dr. Brown was again negative. Dr. Brown suggested she try wearing wrist splints at night on both wrists and take a nonsteroidal anti-inflammatory medication. He ordered repeat nerve conduction studies. Petitioner filled out a patient Questionnaire on April 12, 2010 indicating that her symptoms were pain, tingling and numbness in both hands. She put lines through both of the hands on both drawings of the human figure one representing the front and the other the back. (P. Ex. 4) Petitioner listed lying down and sleeping as the factors that aggravate her symptoms, skipping over activities like reaching, repetitive activities, household activities and other _____. It is difficult to tell on question four (4) whether she chose #7 that sports and recreation was the best description of how her symptoms began or #13 unknown. (P. Ex. 4,) The nerve conduction studies were completed on April 12, 2010 by Dr. Daniel Phillips. (P. Ex. 4) They were reviewed by Dr. Brown on April 15, 2010 and were normal. Based upon the examination he conducted in the office on the 12th and the nerve conduction studies the same day he had no further recommendations to make. Dr. Brown noted that screening for a neurogenic brachial plexopathy by Dr. Phillips was also unremarkable. (P. Ex. 3) She was told that she could work full duty with no restrictions by the doctor.

The petitioner said she knew about Dr. Brown and the carpal tunnel and cubital tunnel workers comp cases and heard that he was the one everyone had been seeing for the carpal tunnel thing for years. Petitioner testified that she was speaking with a co-worker about her numbness and tingling in her hands and the fact that the tests came back negative. He told her about Thoracic Outlet Syndrome, which is what he had so she went and looked it up on the internet. She thought some of the symptoms were similar to hers. She talked to her attorney about it before she went to see the doctors. She did tell the doctors that she had read about thoracic outlet syndrome and thought that she had it and to her knowledge no one tested her for that. She is the person who gave the doctor's offices Tom Rich's name as her attorney and she marked the medical information questionnaire with the name of Tom Rich as the person who referred her to them.

On April 25, 2011 Petitioner was again seen by Dr. D. Phillips, this time at the request of Dr. George Paletta, for nerve conduction studies. She had seen Dr. Paletta earlier and after his

examination he determined that there was no evidence of active cervical radiculopathy, carpal tunnel syndrome, cubital tunnel syndrome or neurogenic brachial plexopathy. He thought it was possible that she might have carpal tunnel and if she did he recommended surgery. He sent her to Dr. Phillips to repeat the nerve conduction studies since they were over one year old. (P. Ex. 5) On the date of the nerve conduction studies, Petitioner informed Dr. Phillips that she has read about thoracic outlet syndrome and found the symptoms to be similar to the symptoms that she is experiencing. At that time she filled out the patient information sheet as before she indicated that her symptoms were numbness and tingling in both hands, she again drew lines through both hands on the two diagrams representing the front and back of a person. She clearly checked #7 during recreation and sports as the best description of how her symptoms occurred. (P. Ex. 4) This time however she indicated that the pain/symptoms were periodic, they increased as the day progressed, and that lying down, repetitive activities including _____ (she left the area to fill in any activities blank, household activities and sleeping aggravated her symptoms. (P. Ex. 4) She was again told that she could work full duty with no restrictions.

Symptoms of thoracic outlet syndrome include pain, dysesthesia, numbness and weakness, usually throughout the affected hand or arm; positional effects, almost all patients describe reproducible exacerbation of symptoms by activities that require elevation or sustained use of the arms or hands, like reaching for objects overhead, lifting, prolonged typing or work at computer consoles, driving a motor vehicle, speaking on the telephone, shaving and combing and brushing the hair. Additionally lying supine can bring out the symptoms especially if the arms are positioned overhead and can result in difficulty sleeping. Headaches are a common complaint, as well as weakness and atrophy which is rare. (Pet. Ex. 12, R. Ex. 10) Possible causes of neurogenic thoracic outlet syndrome include repeated lifting of heavy objects overhead, repeated keyboard maneuvers for hours on end, carrying heavy objects below the waist and even actions like those of swimmers and weight lifters are possible causes. (P. Ex. 12) Turning a key repeatedly has not been listed in any medical journals as a cause of thoracic outlet syndrome. (P. Ex. 12)

On July 13, 2011 the Petitioner saw Robert Thompson, M.D. a vascular surgeon who has a specialization in Thoracic Outlet Syndrome. (P. Ex. 12, p.3) When she was examined by Dr. Thompson she complained of pain and an aching feeling which was exacerbated by overhead use of the arm, she reported that she is unable to lift the left arm without developing discomfort. She had bilateral hand numbness and in the last few months had developed left arm pain that radiates up the arm. She did not complain about having headaches or any weakness in her hands or with her grip. (P. Ex. 7, 12) She indicated that her job included heavy lifting and repetitive actions. She described her job as being required to lock and unlock the prison door to the health care unit between 150 and 200 times per day. (P. Ex. 7, 12) Her physical examination revealed full range of motion to both upper extremities tenderness over the subcoracoid space with radiation of the symptoms in the right and left arms with the left being greater than the right; mild tenderness with palpation over the left scalene triangle. The right and left radial pulses are present at rest and with the arms in the elevated position. (P. Ex. 7, 12) The upper limb tension test and the elevated arm stress test were both positive in that petitioner reported experiencing symptoms of numbness and tingling and discomfort during both. (P. Ex. 7, 12) When petitioner presented to Dr. Thompson she did not have any muscle weakness or atrophy in her hands, she had pain related limitations, she had equal grip strength on the left and the right hands, she did not

complain of any upper back or shoulder issues. (P. Ex. 12) Based upon the above, the petitioner was diagnosed with neurogenic thoracic outlet syndrome. (P. Ex. 7, 12)

Dr. Thompson recommended that she not work at this time, that she should be evaluated by a physical therapist at the Center for Thoracic Outlet Syndrome and that she begin a course of physical therapy for 4 to 6 weeks and that she return for follow-up in 6 to 8 weeks or sooner if necessary. Physical therapy was not successful and petitioner underwent surgery on September 20, 2011 by Dr. Thompson, on her left side. (P. Ex. 7) She had a second surgery on January 3, 2012 on her right side. (Supp. P. Ex. A, P. Ex. 7) The surgeries were followed by physical therapy. (P. Ex. 7, 8)

The arbitrator has reviewed a DVD (R. Ex. 5) and read the CorVel report, State of Illinois Job Analysis (R. Ex. 3). Neither the report nor the DVD showed or analyzed the health care unit and the work that is done there. The health care unit is mentioned as being a part of the 155 buildings that make up the correctional facility in the first paragraph on page one, but that is the extent of the information provided regarding that unit and what goes on there. (R. Ex. 3) The DVD showed various areas of the facility and demonstrated opening and closing different cells, doors, and security devices that are used on a daily basis. It included the gate house, the armory, the visitors screening area and the staircase and opening that inmates and correctional officers use when inmates have a visitor. They demonstrated bar rapping, the crank, opening chuck holes to pass food etc to inmates and to cuff them before they are removed from the cell. They showed the different types of keys used including the folger-adams key and the keys for pad locks and for the cell areas.

CONCLUSIONS OF LAW

An injury is accidental within the meaning of the Worker's Compensation Act when it is traceable to a definite time, place and cause and occurs in the course of the employment unexpectedly and without affirmative act or design of the employee. *Matthiessen & Hegeler Zinc Co. v Industrial Board*, 284 Ill. 378, 120 N.E. 2d 249, 251 (1918) If the condition or injury is not shown to be traceable to a definite time, place and cause and no evidence shows that the work activity caused the physical condition, compensation will be denied. *Johnson v. Industrial Commission*, 89 Ill.2d 438, 433 N.E.2d 649, 60 Ill.Dec. 607 (1982) 607 (1982)607 (1982)

An injury arises out of one's employment if it has its' origin in a risk that is connected to or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Technical Tape Corp. vs IndustrialCommission*,58 Ill. 2d 226, 317 N.E.2d 515 (1974) "Arising out of" is primarily concerned with the causal connection to the employment. The majority of cases look for facts that establish or demonstrate an increased risk to which the employee is subjected to by the situation as compared to the risk that the general public is exposed to.

The burden is on the party seeking the award to prove by a preponderance of credible evidence the elements of the claim, particularly the prerequisites that the injury complained of arose out of and in the course of the employment. *Hannibal, Inc. v. Industrial Commission*, 38 Ill.2d 473, 231 N.E.2d 409, 410 (1967)

Did the petitioner sustain accidental injuries on April 12, 2010 that arose out of and in the course of her employment and is the petitioner's current condition of ill-being causally connected to the injury?

These two issues are closely connected and the same evidence and reasoning can be applied to both so they will be addressed together.

In this case, where the only positive indicators that the petitioner has a condition of ill being are all subjective, the petitioner's credibility is a major factor. The petitioner testified that she was aware of the correctional facility personnel who have been filing workers' compensation claims for carpal tunnel and cubital tunnel for years and that the doctor to see for these cases is Dr. Brown. In July of 2009 and again in April of 2011 petitioner complained to Dr. Brown about numbness and tingling in both of her hands. She does not mention any pain with the numbness or tingling nor does she mention any symptoms in her arms or her shoulders or her neck. Dr. Brown sends her for nerve conduction studies and each time the results are normal, there is no indication of carpal or cubital tunnel, nor is there evidence of neurogenic brachial plexopathy which would indicate possible thoracic outlet syndrome according to Dr. Phillips, the neurologist doing the testing. The patient questionnaire that she fills out each time only indicates numbness and tingling in both hands, nothing else. Petitioner testified at the hearing that in 2009 she began noticing at work that she had pain in her right arm and then tingling and numbness in both hands. That information is not in any of the forms she filled out.

Petitioner then has a conversation with a co-worker who told her about his diagnosis of thoracic outlet syndrome. Petitioner gets some information regarding the condition, talks to a lawyer, goes to a different doctor, Dr. Paletta, who sends her back to Dr. Phillips for nerve conduction studies again. When she returned to Dr. Phillips in April of 2012 the petitioner actually tells Dr. Phillips that she has read about thoracic outlet syndrome and it fits her symptoms. On the patient questionnaire she again notes only numbness and tingling on both hands, however, she adds that the symptoms increase as the day goes on, they are aggravated by repetitive activities and household activities; she also indicated that her symptoms included weakness. The petitioner's third set of nerve conduction studies are again negative. She is sent to Dr. Thompson for further evaluation.

By the time she gets to Dr. Thompson, the petitioner is adding pain in her arms, the left side worse than the right to her increasing symptom list. She tells the doctor that she cannot lift with her left arm. She tells the doctor that she works as a correctional officer, that she had day to day activities that involved lifting weight, that it involved repetitive activity. She said she worked in a healthcare unit and her work required locking and unlocking prison doors between approximately one hundred and fifty to two hundred times per shift also.

Between the contradictions in the job description (opening and closing locks 150-200 times verses 500 to 1000 times) and duties (heavy repetitive lifting as well as opening and closing the prison doors) depending upon whom she is speaking with, the addition of symptoms after reading about thoracic outlet syndrome (addition of weakness, increasing pain as day goes on, repetitive behaviors aggravating her condition with no information in the blank for what

types of activities) and then adding even more symptoms (pain in her arms, more on the left than on the right, unable to lift anything with her left arm) when she sees Dr. Thompson to testifying at the hearing that she noticed pain in her right arm and then tingling and numbness at work, the petitioner was not a credible witness.

According to Dr. Thompson when a patient presents with the possibility of neurogenic thoracic outlet syndrome it is important to take a detailed and well documented history from the patient and from the medical records. Additionally it is important to make a detailed and well documented physical examination of the patient as well. At his deposition on direct examination he testified that he had the medical records from Dr. Brown as well as from doctors Paletta and Phillips and that he reviewed those records as part of his evaluation of the petitioner. He brought the file with him and it included the reports. On cross examination he testified that he did not have Dr. Brown's records, that Dr. Brown was just mentioned in Dr. Phillips' report. Based upon the information he received from the petitioner, the examination that he performed and the medical records from doctors Phillips and Paletta, Dr. Thompson diagnosed petitioner with neurogenic thoracic outlet syndrome and determined that it was related to her work.

The diagnosis, at least the basis for saying the petitioners symptoms were related to her job that the doctor relied on in making that determination was flawed. The doctor agrees that repetitively locking and unlocking the doors could cause carpal tunnel of cubital tunnel, however it is not a known cause or aggravating factor for thoracic outlet syndrome. The petitioner told the doctor that her job involved heavy lifting, repetitively, however there is no evidence of that in the job description she wrote in her own hand, she did not tell what items were being lifted or how often, nor was there any testimony regarding repeated heavy lifting at the hearing. Petitioner told him she was a correctional officer, he was familiar with the CorVel study and video as well as Dr. Sudekum's report describing the duties of a corrections officer and he relied on the information in there as to correctional officers duties as well. The medical tests that he relied on in making his diagnosis and decision required the petitioner to indicate to him when and if she felt pain and where she was feeling it. They are all subjective. There is no positive objective test used in making the determination described by the doctor. Additionally he did not have any of the information from Dr. Brown who had treated her in the past.

There is also the matter of the objective tests that were negative each time for carpal tunnel, cubital tunnel and neurogenic brachial plexopathy that were done in 2009, 2011 and April of 2012 by Dr. Phillips. There was no evidence presented that indicates that the job that the petitioner is doing and has been doing according to her for ten out of the fourteen years she has worked at the correctional facility caused the injury that petitioner claims she sustained or that it aggravates a pre-existing condition.

Based upon the evidence that has been presented, the petitioner has failed to prove that she sustained accidental injuries that arose out of and in the course of her employment and that the injuries are causally related to her current condition of ill being. The Petitioner failed to prove a compensable accident within the meaning of the Act.

The other issues regarding the unpaid medical bills and TTD, attorney's fees and penalties are moot.

ORDER OF THE ARBITRATOR

The Petitioner failed to prove a compensable accident within the meaning of the Act. Benefits requested pursuant to Section 8 and penalties and attorney fees pursuant to Sections 16 and 19 are therefore denied.

Deborah L. Simpson
Signature of Arbitrator

Sept 25, 2013
Date

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 Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN BICKEL,

Petitioner,

vs.

NO: 12 WC 12417
12 WC 12418

COOK COUNTY SHERIFF'S OFFICE,

14IWCC0008

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses and temporary total disability, and being advised of the facts and law, reverses in part 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. Moreover, the Commission remands this case to the Arbitrator for additional proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission finds the following facts. Petitioner worked for the Cook County Sheriff's Department as a civil process server in March 2012. He worked for Respondent for about 24 years and as a process server for approximately 15 years. Petitioner worked out of the Bridgeview office. As a process server, Petitioner would serve court summons, which required him to drive from stop to stop, get out of his car, knock on the door and serve the summons if someone answered the door. He would serve about 50 summonses per day.

On March 5, 2012, Petitioner's sergeant assigned him to participate in riot training. The training lasted for three days, from March 3 through 5 at the UIC Pavilion. The trainees were learning crowd control and how to respond during protests when the crowd becomes uncontrollable. The training included running, pushing and circling crowds, and was led by five to six instructors from Cook County and the federal government. Petitioner dressed in a riot uniform consisting of a helmet, shield, gas mask and baton; it all weighed about 25 to 30 pounds.

Petitioner and the other trainees were instructed to practice a scenario where they arrived at a scene, got off a bus and then ran to the scene. About 50 trainees from Cook County and the Chicago Police Department were running down the 20 foot wide hall at the same time. They were instructed to run about 70 feet. Petitioner ran about 20 to 30 feet at a fast jog when his right knee gave out and he fell into a pop machine. Petitioner's employee accident report reflects the same history as his testimony.

Petitioner testified that he felt like he twisted his right knee and it became very painful. Petitioner stated that he hobbled and fell behind the line. He added that he told two of the instructors and the man running the training, Mr. Stone, that he twisted his knee and he had to sit down. Petitioner testified he rested for the remainder of the day but noticed his knee was swelling. Petitioner called his primary care physician, Dr. Levy, that day at about 3 p.m. to make an appointment. He also called in sick the next day, March 6, 2012, because his knee was swollen and it was painful to ambulate.

Petitioner returned to work on Sunday, March 11, 2012, the next day he was scheduled to work. He worked the noon to 10 p.m. shift. Petitioner's supervisors were Sergeant Dave Martin and Sergeant Sandra Anteczk. On March 11, one of his supervisors directed Petitioner to serve a summons to a residential home. Petitioner testified that he fell down about three stairs while serving the summons. Petitioner testified that he noticed his right knee was again sore and hurt. After falling, Petitioner took his lunch break before returning to the Bridgeview courthouse. Toward the end of his shift, Petitioner testified he told Sergeant Anteczk about the incident. No one else was present for the conversation and he is unsure if she filled out any paperwork. Petitioner testified about the process for reporting a work injury – the deputy fills out the initial paperwork and then turns it into the sergeant. Petitioner testified he followed the process for reporting this incident and is not aware of what Sergeant Anteczk did with the paperwork after he gave it to her.

Petitioner admitted on cross examination that he filled out paperwork for ordinary disability benefits. The Instruction and Application for Disability Benefits document notes that Petitioner applied for workers' compensation benefits for his disability but had not received any. Petitioner testified he only applied for ordinary disability benefits because his workers' compensation claim had been denied and otherwise Petitioner would not be paid.

Petitioner sought medical treatment shortly after the incidents. Petitioner first saw Dr. Levy on March 16, 2012, where Petitioner reported the history of the incidents. Dr. Levy examined Petitioner, prescribed Vicodin and referred him to Dr. Seymour.

Petitioner then treated with Dr. Seymour on March 19, 2012. Dr. Seymour recommended Petitioner have an MRI, which he had on March 20 and indicated a medial meniscus tear and some degenerative changes. When Petitioner returned to Dr. Seymour on March 22, 2012, Dr. Seymour recommended right knee arthroscopic surgery. Dr. Seymour performed a right knee arthroscopy on Petitioner on May 8, 2012. His post operative diagnosis was right knee medial meniscal tear and degenerative joint disease with torn cartilage.

Petitioner testified that immediately following the surgery his knee was still sore but with rest and therapy it started to improve. Dr. Seymour prescribed physical therapy for Petitioner three times a week for six weeks; however, Petitioner stated he was only able to attend therapy for three weeks because he could not afford the gas to drive to the sessions. Petitioner continued to treat with Dr. Seymour. On August 6, 2012, Dr. Seymour noted that Petitioner continued to have discomfort in his right knee and he administered a cortical steroid injection. Petitioner received three more injections on September 20, September 27 and October 8. Petitioner testified that after the injections, his knee was 95% improved. Dr. Seymour also continually kept Petitioner off work during his treatment. Petitioner remains under Dr. Seymour's care and had not been released to return to work at the time of the arbitration hearing.

Dr. Seymour offered the only causation opinion of record. On May 30, 2012, Dr. Seymour opined that Petitioner's injury occurred while he was at riot training and it was the proximate cause of his medial meniscus and cartilage tears. Dr. Seymour wrote "Certainly, the degenerative changes seen on x-ray and the MRI and arthroscopy would have predated the riot training injury, however, it is more probable than not that the meniscal tear was caused by the riot training injury and the cartilage tears were caused by an aggravation of the preexisting degenerative changes."

While Petitioner's right knee has greatly improved, Petitioner testified about his continued discomfort. Petitioner testified that he continues to experience pain in his right knee when he does a lot of walking. His right knee will also throb at night while Petitioner sleeps. Petitioner testified his range of motion and strength returned to about his pre-injury level.

Respondent called several witnesses to testify on its behalf. Michael Drew testified first; he is a claims adjuster and has worked in that capacity since 1978. As a claims adjuster, he handles workers' compensation issues for the Sheriff's Department and the Department of Transportation and has worked at Cook County since May 16, 2011. Mr. Drew testified about the process of receiving workers' compensation benefits on his end. Claims begin in the safety office of the Sheriff's Department and then Mr. Drew receives a fax with the first report and a supervisor's report. If the Sheriff's Department does not send Mr. Drew an accident report, he

has nothing to investigate. He also testified that he determines whether or not an incident qualifies as an injury for workers' compensation purposes and agreed what one was doing at the time of the injury is important if making that decision.

Mr. Drew testified he received Petitioner's file in March 2012 but it only contained information regarding the first alleged accident. Mr. Drew performed a preliminary investigation and obtained medical records. During the process of his investigation, Mr. Drew spoke to Petitioner's supervisor, a female sergeant whom he believes had a last name "A." He did not believe she witnessed the accident. Mr. Drew stated the sergeant told him Petitioner participated in the training class but the accident did not occur there. But, Mr. Drew later testified it was his understanding that Petitioner was actually participating in an exercise at the time he was injured. He then assigned an outside agent from 'Secure Path' to take a recorded statement. Mr. Drew determined that Petitioner was not entitled to temporary total disability payments or medical benefits and informed Petitioner of his decision on April 12, 2012.

Respondent also called Steve Hensley. He is the safety manager in the Safety Department for the Cook County Sheriff and in that role, he handles workers' compensation claims from various departments. Mr. Hensley's duties are limited to investigating the circumstances of the accident; he does not review the medical records. He also testified to the workers' compensation process. Mr. Hensley stated the injured employee is required to notify a supervisor and fill out paperwork; additionally, the supervisor fills out a form and any witness fill out statements. Mr. Hensley testified on March 12, 2012, he received notification of one accident involving Petitioner on March 6, which is the incorrect accident date. Mr. Hensley testified he did not receive any notification for an accident which allegedly occurred on March 10 or 11. Mr. Hensley testified on cross examination that about once a year, he will receive a phone call or a note from an employee advising him of an injury that did not go through the supervisor. However, it is not common for Mr. Hensley to be contacted directly about an accident and the injured employee has no responsibility to provide Mr. Hensley with an accident report.

Based on the aforementioned facts and considering the evidence as a whole, we hold that Petitioner proved he suffered an accident arising out of and in the course of his employment with Respondent on March 5, 2012, during riot training. Further, we find Petitioner's condition of ill being is causally connected to the March 5, 2012, work related accident. We hold that Petitioner should then be compensated as such. We find that Petitioner did not suffer a work related accident on March 11, 2012. Respondent did not receive notice of the incident and Petitioner's medical records consistently reflect the March 5 riot training accident were the cause of his right knee complaints. The evidence does not support that Petitioner suffered a second work accident on March 11.

Petitioner suffered from a work injury arising out of and in the course of his employment with Respondent on March 5, 2012. In Petitioner's regular job duties, he served summons for the Cook County Sheriff's Department. However, March 3-5, 2012, Petitioner was required to attend riot training as part of his job. His sergeant directed him to attend the training and he took part of the training as a Cook County police officer. Even though this training was not part of Petitioner's normal job duties, he participated in the training as part of his job requirement. Petitioner was following the instructions of the training directors when he injured his right knee. Petitioner testified that he was quickly jogging through a hallway when his knee gave out and he fell into a pop machine. His right knee was sore and swelled up immediately following the incident. The evidence clearly supports the history that Petitioner injured his right knee while participating in a work assignment. Petitioner's right knee injury unquestionable arose out of and in the course of his employment with Respondent; hence, we hold Petitioner proved he suffered an accident.

Additionally, Petitioner followed appropriate protocol after he injured himself. He reported to the instructors that he injured himself and sat out the rest of the training that day. Petitioner also testified that his fall was witnessed by the Chicago police officer who was running behind him. Petitioner filled out an accident report, which he turned into his sergeant. Both Mr. Drew and Mr. Hensley testified they received Petitioner's accident report and proper protocol was followed. Petitioner properly notified Respondent of his March 5, 2012, accident.

We further hold that Petitioner's condition of ill being is causally connected to his work related injury. Petitioner testified he immediately noticed pain and swelling in his right knee. The same day Petitioner injured himself, he called his family physician, Dr. Levy, and made an appointment to have his right knee examined about 10 days after the accident. Petitioner reported a consistent history of his right knee injury to Dr. Levy, who referred Petitioner to Dr. Seymour, a specialist. Dr. Seymour learned the same history of Petitioner's right knee issues and continuously treated Petitioner for his right knee complaints. The March 20 MRI showed that Petitioner suffered a medial meniscus tear and supported Dr. Seymour's findings. Petitioner's treatment culminated in right knee surgical intervention. Petitioner then experienced improvement following physical therapy and rest. On May 30, 2012, Dr. Seymour wrote a letter opining that Petitioner's right knee condition was causally connected to his riot training accident on March 5, 2012. This is the only, and thus unrebutted, causation opinion in this case. Based on Petitioner's continued treatment and Dr. Seymour's causation opinion, we hold that Petitioner proved his condition is causally related to his work injury.

Based on our findings of accident and causation, we hold Petitioner is entitled to medical expenses of $42,543.20. His treatment was reasonable and necessary as supported by his testimony and the medical evidence. The medical treatment also alleviated Petitioner's right knee complaints. Petitioner did not receive excessive treatment and his medical records support that the treatment was necessary for his pain complaints.

Additionally, we award temporary total disability benefits from March 11, 2012, through October 21, 2012, for a total of 32 weeks. Petitioner was unable to work as a result of the March 5, 2012, accident. Petitioner sought medical treatment shortly after that accident and has not been released to return to work by his treating physician, Dr. Seymour. Petitioner is awarded temporary total disability benefits for the time he has been unable to work due to his work related injury.

Based on the testimony and evidence as a whole, we find that Petitioner readily proved that he suffered a work related injury on March 5, 2012, and he should be compensated as such.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is reversed and Petitioner proved he suffered a work related accident on March 5, 2012, and his condition of ill being is causally connected to that accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $882.67 per week for a period of 32 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $42,543.20 for medical expenses under §8(a) of the Act.

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.

14IWCC0008

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: JAN 07 2014
TJT: kg
R: 11/5/13
51

Thomas J. Tyrrell

Daniel R. Donohoo

Kevin W. Lamborn

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

BICKEL, JOHN
Employee/Petitioner

Case# **12WC012417**

12WC012418

COOK COUNTY SHERIFF'S OFFICE
Employer/Respondent

14IWCC0008

On 1/17/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0412 JAMES M RIDGE & ASSOC
KARIN CONNELLY
101 N WACKER DR SUITE 200
CHICAGO, IL 60606

0132 COOK COUNTY STATE'S ATTORNEY
RICHARD CRUSOR ASA
509 RICHARD J DALEY CENTER
CHICAGO, IL 60602

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

14IWCC0003

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

John Bickel
Employee/Petitioner

Case # 12WC 012417

v.

Cook County Sheriff's Office
Employer/Respondent

Consolidated cases: 12 WC 012418

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 **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **10/22/2012 & 11/08/2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

E. ☒ Was timely notice of the accident given to Respondent?

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

G. ☐ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☐ Is Petitioner entitled to any prospective medical care?

L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD

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

N. ☐ Is Respondent due any credit?

O. ☐ Other _____

FINDINGS

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

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

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

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

In the year preceding the injury, Petitioner earned **$68,848.00**; the average weekly wage was **$1,324.00**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **0** children under 18.

Respondent ***has*** paid all reasonable and necessary 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

The Petitioner has failed to prove, by a preponderance of the evidence, that an accident occurred, which arose out of and in the course of his employment therefore, no benefits are awarded, pursuant to the Act.

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

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

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

L. Thompson-Smith

Signature of Arbitrator

January 17, 2013

JAN 17 2013

ICArbDec19(b)

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

BICKEL, JOHN
Employee/Petitioner

Case# **12WC012418**

12WC012417

COOK COUNTY SHERIFF'S OFFICE
Employer/Respondent

14IWCC0008

On 1/17/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0412 JAMES M RIDGE & ASSOC
KARIN CONNELLY
101 N WACKER DR SUITE 200
CHICAGO, IL 60606

0132 COOK COUNTY STATE'S ATTORNEY
RICHARD CRUSOR ASA
509 RICHARD J DALEY CENTER
CHICAGO, IL 60602

14IWCC0008

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)

John Bickel
Employee/Petitioner

v.

Cook County Sheriff's Office
Employer/Respondent

Case # 12WC 012418

Consolidated cases: 12 WC 012417

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 **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of Chicago, on **10/21/2012 & 11/08/2012**. 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. [x] 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. [x] 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, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

In the year preceding the injury, Petitioner earned **$68,848.00**; the average weekly wage was **$,1,324.00**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **0** children under 18.

Respondent ***has*** paid all reasonable and necessary 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

The Petitioner has failed to prove, by a preponderance of the evidence, that an accident occurred, which arose out of and in the course of his employment therefore, no benefits are awarded, pursuant to 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.

L. Thompson-Smith

Signature of Arbitrator

January 17, 2013

JAN 17 2013

John Bickel
12 WC 12417
12 WC 12418

14IWCC0008

FINDINGS OF FACT

The disputed issues in these matters are: 1) accident; 2) causal connection; 3) notice; 4) medical bills; 5) temporary total disability; and 6) prospective medical services. *See*, AX1 & 2.

On March 5, 2012, the petitioner was working for the Cook County Sheriff's Department as a Deputy Sheriff. He was a process server and had had that job for 15 years; working out of the Bridgeview courthouse; serving approximately fifty (50) summons per day.

On March 5, 2012, he was required by his sergeant, to participate in riot training. The purpose of the training was to learn how to control crowds. The petitioner testified that he was dressed in riot clothing including a helmet, shield and gas mask. He further testified that the gear weighed between 25 and 30 pounds. The officers were practicing a scenerio where they arrived at the scene by bus, exited the bus and ran into the arena. To practice this action, they were in the UIC Pavilion with approximately 50 other officers. jogging at a fast pace, in a line. As Officer Bickel was running, he testified that his right knee gave way and he fell into a pop machine. He fell behind the line, sitting down and noticing immediate pain and that his knee was swelling.

The petitioner testified that he reported the accident that day, to two (2) instructors at the training class and a Mr. Stone, then made an appointment to see Dr. Levy, his family physician.

On March 16, 2012, Petitioner provided Dr. Levy with a history of injuring his knee at work about ten (10) days prior. Dr. Levy noted right knee pain, moderate to severe, with symptoms of swelling and giving way. He prescribed medication and advised the petitioner to follow-up in three (3) months or as needed. Petitioner was then referred to Dr. Scott A. Seymour, an orthopedic surgeon, who sent him for an MRI which was performed on March 20, 2012; indicating a probable horizontal tear of the medial meniscus. *See,* PX1.

On May 8, 2012, Dr. Seymour performed surgery; and his post-operative diagnosis was right knee medial meniscus tear and degenerative joint disease with torn cartilage. Dr. Seymour opined that Mr. Bickel sustained medial meniscus and cartilage tears in his

right knee while riot training and that that action was the approximate cause of the tears. He further opined that the degenerative changes seen on the x-ray and the MRI and arthroscopy would have predated the riot training injury, however, it is more probable than not that the meniscal tear was caused by the riot training injury and the cartilage tears were caused by an aggravation of the pre-existing degenerative changes."

The Arbitrator notes that the Petitioner alleges having suffered a second accident on March 11, 2012 (12 WC 12418), when he fell down three stairs while serving a summons The Arbitrator further notes that Petitioner amended the Request for Hearing, at trial, to change the date of accident from March 10, 2012 to March 11, 2012.

On cross examination, the petitioner was questioned regarding the accident report dated March 12, 2012 and an application for disability benefits, dated April 24, 2012, that he executed. On the employee's accident report the petitioner stated that the accident happened on March 6, 2012 not March 5, 2012, and that he did not receive medical treatment for his right knee however, did make a doctor's appointment right after the incident happened. He also related that he twisted his right knee during a riot training class and sat out the rest of the training because his knee was swollen and that he did advise a Director Stone of the incident. *See*, RX1.

Regarding the application for disability, the petitioner testified that he executed this form, which states that his disability began March 5, 2012. And that he ripped a muscle on his right knee; that he did not visit an emergency room; and further stated that this was an ordinary disability benefit, as opposed to a duty disability, "resulting from cause other than injury/illness in the performance of an act of duty." The form also states that the petitioner did file for workers' compensation benefits but had not received them. *See,* RX2.

Regarding case number 12 WC 12418, the petitioner testified that he prepared and tendered a written accident report to his supervisor, Sergeant Anzek however, the document never made it through the system. The respondent called Mr. Steven Hensley to testify that among his duties, he verifies injuries on duty reports and that he had not received such a report from Petitioner regarding an injury of March 10 or 11, 2012. The Arbitrator notes that the petitioner did not present any medical evidence supporting a work injury, on or about March 11, 2012.

CONCLUSIONS OF LAW

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

A claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. It is the function of the Commission to judge the credibility of the witnesses and resolve conflicts in the medical evidence. *See, O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E. 2d 221, 223 (1980). In deciding questions of fact, it is the function of the Commission to resolve conflicting medical evidence, judge the credibility of the witnesses, and assign weight to the witnesses' testimony. *See, R & D Thiel*, 398 Ill. App. 3d at 868; *See also, Hosteny v. Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009).

For an employee's workplace injury to be compensable under the Workers' Compensation Act, he must establish the fact that the injury is due to a cause connected with the employment such that it arose out of said employment. *See, Hansel & Gretel Day Care Center v. Industrial Comm'n*, 215 Ill.App.3d 284, 574 N.E.2d 1244 (1991). It is not enough that Petitioner is working when accidental injuries are realized; Petitioner must show that the injury was due to some cause connected with employment. *See, Board of Trustees of the University of Illinois v. Industrial Comm'n*, 44 Ill.2d 207 at 214, 254 N.E.2d 522, (1969).

The Arbitrator finds the petitioner has not proven, by a preponderance of the evidence, that accidents that are alleged to have occurred on March 5, 2012 and March 11, 2012, arose out of and were in the course of Petitioner's employment by Respondent. As there has been no finding of accident, the remaining matters are moot and will not be addressed.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ 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

William Johnson,

Petitioner,

vs.

NO: 11 WC 33406

14IWCC0009

State of Illinois Menard Correctional Center,

Respondent.

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 accident, causal connection, medical expenses, temporary total 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 20, 2013, is hereby affirmed and adopted.

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.

DATED: JAN 09 2014
TJT:yl
o 11/26/13
51

Thomas J. Tyrrell

Kevin W. Lamborn

Daniel R. Donohoo

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

JOHNSON, WILLIAM
Employee/Petitioner

Case# **11WC033406**

SOI/MENARD C C
Employer/Respondent

14IWCC0009

On 2/20/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

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

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

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

FEB 20 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

14IWCC0009

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

WILLIAM JOHNSON
Employee/Petitioner

v.

SOI/MENARD C.C.
Employer/Respondent

Case # **11**WC **033406**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **EDWARD LEE**, Arbitrator of the Commission, in the city of **COLLINSVILLE**, on **December 27, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **07/28/11**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$58,080.88**; the average weekly wage was **$1116.94**

On the date of accident, Petitioner was **47** years of age, ***married*** with **1** 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 **$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 $ **if any** under Section 8(j) of the Act.

ORDER

No benefits are awarded.

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

2/16/13
Date

ICArbDec19(b)

FEB 20 2013

WILLIAM JOHNSON V. MENARD C.C., 11 WC 33406

The Arbitrator finds the following facts:

This is a 19(b) decision. The issues in dispute are causation, prospective medical care.

Petitioner is a 47 year old employee of the State of Illinois at the Menard Correctional Center. Petitioner began working at Menard in January 2001. Petitioner testified that on July 28, 2011 he was escorting inmates and one of the inmates ran at him and hit him. Petitioner was sent by his attorney to see Dr. George Paletta.

Dr. Paletta sent Petitioner to be examined by Dr. Gornet. Dr. Gornet diagnosed petitioner with disc herniations at C5-6 and C4-5 and recommended disc replacements at those levels.

Petitioner was examined by Dr. Joseph Williams in Springfield, Illinois. Dr. Williams authored a report concerning his opinions; said report is attached to Respondent's Exhibit 1. Dr. Williams deposition was taken. In said deposition, Dr. Williams testified that the July 28, 2011incident did not have any significant effect on the overall condition of his cervical spine. (Rx. 1) Dr. Williams explained that Petitioner had right foraminal stenosis at C5-6 and C3-4. Dr. Williams noted that Petitioner complaints involve left arm numbness and tingling. Dr. Williams stated that Petitioner's symptoms do not correlate with the disc herniations at C5-6 and C3-4.

A review of the medical records shows that on July 29, 2011 x-rays of Petitioner's neck were taken that show loss of disc height at C4-5 and C5-6. (Px. 3) Loss of disc height is a degenerative condition that predated the July 28, 2011 accident.

After being see at the Medical Arts Clinic, Petitioner was referred to Workcare Occupational Health in Herrin, IL. As of August 19, 2011, it was noted that complaints were numbness and tingling down his left arm . (Px. 5) At that time Petitioner's neck range of motion was better and it was noted that his cervical strain was improved. (Id.)

Dr. Paletta referred Petitioner for a Nerve Conduction Study by Dr. Daniel Phillips. Dr. Phillips found no abnormalities in the left upper extremity and no cervical radiculopathy. (Px. 8)

The Petitioner argues that his preexisting degenerative condition was causally connected because he may have been symptom free before the accident and exhibited subjective symptoms thereafter. However, this position is offset by the fact that right sided MRI findings do not anatomically correlate to the Petitioner's left sided complaints.

THEREFORE, THE ARBITRATOR FINDS, there is no casual connection between Petitioner's current condition and Petitioner's July 21, 2011 accident.

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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Martha Rodriguez Lomeli,

Petitioner,

vs.

14IWCC0010

NO: 11 WC 24932

ABM Janitorial Services,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, and benefit rates, hereby reverses the Arbitrator's Decision and finds that Petitioner failed to prove that she sustained accidental injuries arising out of and in the course of her employment on June 16, 2011.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner started working for Respondent, a janitorial/cleaning service, as a maintenance worker in December 2010. (T.7-8) Petitioner testified that she worked 8 hours a day and that her job consisted of cleaning and wiping down handrails, cleaning restrooms (including the toilets, stalls, walls and doors), sweeping and mopping. (T.8-10) Petitioner explained that she used a circular motion to clean and wipe down the handrails. (T.8-10) Petitioner had breaks every two hours and a lunch. (T.10-11) Petitioner explained that she cleaned the handrails for about two to three days every month and that she usually sprayed with the left hand and wiped down the handrail with the right. (T.11,12) When her hands got tired, she would switch and spray with the right and wipe with the left. (T.16) Petitioner testified that there were handrails all over the building and that each handrail was about 35 feet in length. (T.13,14) Petitioner cleaned the

bathrooms, mopped and swept daily. (T.11-12) At the end of the day, she would clean all the supplies she used throughout the day with a water-powered compressor. (T.17-18) Petitioner testified that she used both hands to operate the compressor's nozzle. (T.18-19) Petitioner testified that she felt vibrations in her hands while operating the compressor, which she did for about fifteen minutes at the end of every day. (T.19)

2. Petitioner testified that on June 16, 2011, she noticed numbness and coldness in her hands. (T.19-20) Petitioner later changed her testimony and claimed that she felt symptoms in her right hand and did not have any difficulties in her left hand. (T.20) Petitioner testified that she told her supervisor what was happening and the supervisor told her to take the day off. (T.20) Petitioner then went to Schererville Immediate Care and was seen by Dr. Fausto Magno. (PX1) Petitioner complained of local pain, abnormal sensation and numbness in the volar surface of the right wrist. Dr. Magno noted that the "[o]nset of symptoms was about 2 days ago." (PX1) Dr. Magno prescribed pain medication.

3. Petitioner followed up at Schererville Immediate Care and saw Dr. Julie De Rosa on June 17, 2011. (PX1) Dr. De Rosa noted that Petitioner was "[f]eeling a little better but work told her to get a note from doctor regarding restrictions or not. Symptoms began after wiping/polishing rails for long hours at work. [Petitioner] states another worker has similar symptoms and has carpal tunnel syndrome." (PX1) Dr. De Rosa diagnosed Petitioner as having carpal tunnel syndrome and referred Petitioner to an orthopedist. Dr. De Rosa also placed the following restrictions on Petitioner for one week: no repetitive use of right hand/wrist.

4. Petitioner followed up with Dr. De Rosa on June 24, 2011. (PX1) Dr. De Rosa noted that Petitioner's pain had "improved" but that she continued to have numbness "off and on." (PX1) Dr. De Rosa again referred Petitioner to an orthopedist and restricted Petitioner from using her right hand.

5. Petitioner saw Dr. Sunil Patel on June 28, 2011 and June 30, 2011. (PX2) During both visits, Dr. Patel noted that Petitioner had developed pain and numbness in her right hand. Dr. Patel indicated that Petitioner was to follow up with Dr. Robert Coats and restricted Petitioner from using her right hand at work.

6. On July 9, 2011, Respondent prepared a job analysis of Petitioner's position, listed as Class 1 Cleaner. (JX1) The analysis states, in pertinent part: "2. The client is required to mop floors up to frequently throughout the shift on many days. She pushes and empty mop bucket out of the supply closet and uses the power washer to clean the mop and bucket. The power washer has a hose and nozzle. She squeezes a trigger on the hose to activate the water and soap. The client fills the mop bucket with approximately two gallons of water and then hangs the hose and nozzle back on the wall of the power washer at approximately chest to shoulder level. She pushes the mop bucket along to the area where the spill is located. The client wrings out the mop and mops the floor. When she is finished mopping, the client pushes the mop bucket to the power washer area and tips the mop bucket to empty it. 3. The client is required to use a 'walk behind' machine, which is a floor scrubber. She uses a hose to dispense water and soap solution into the machine at hip level. She operates the hand controls at waist level to run the machine along the floor space and clean the floor areas in the plant. There is a button that controls the speed of the

machine. The machine is self-propelled, so she doesn't push it, she merely guides it along the floor and turns it around to change direction. The client uses this machine approximately once a week. 4. The client is required to lift a 5 gallon bucket of disinfectant approximately twice per week. The bucket weighs 49 pounds and she lifts it from approximately knee to waist level. She usually uses a hose to dispense the disinfectant solution, but approximately twice a week she is required to lift an entire bucket of this solution and pour it into her mop bucket at approximately knee level to make a more concentrated solution....5. The client is required to dust the guardrails throughout the plant....For more thorough cleaning, such as during a Line Release, she uses a spray bottle and rag to clean the rails. All the rails in the building are cleaned once a month, but there are three cleaners who split this task throughout the month. 6. The client uses a spray bottle and cloth to clean windows on the equipment in the plant as needed. She uses a squeegee wrapped in a soft wool for this activity if the window is large....11. The client is required to clean the women's restrooms and locker rooms. There are two to eight stalls in each restroom. It takes an average of 20 minutes to clean a restroom. The client restocks the paper and sanitary products. She empties the trash cans and cleans the toilets. She wipes down the sinks and counters and mirrors. The client replaces the soap as needed. The soap box weighs 19 pounds and is lifted from floor to shoulder level....The client sweeps and mops the floor....12. The client cleans the office areas inside the plant. She dusts the desks, phones, file cabinets and counters in the office area with a rag and dust wand as needed. She empties the small garbage cans as needed....13. The client pushes a garbage cart around the plant while she is performing her job demands. It required 5 to 7 pounds of force at waist level to push/pull this cart....14. The client is required to vacuum the entry way area rug as needed....15. The client is required to clean during a 'Line Release.' A Line Release involves a more thorough cleaning of a section of the production line." The more thorough cleaning involved sweeping, mopping, wiping down handrails, machine doors, cabinets and windows, and using a "walk behind" floor scrubber. Petitioner also swept, mopped, and picked up trash throughout the building. (JX1)

Video taken of the job analysis, which is 20:02 minutes long, shows a worker mopping, using a power washer to clean a dirty mop and bucket, squeezing out excess water from the mop using the compressor on the bucket, filling a bucket with water, operating the self-propelled floor scrubber, carrying a bucket of cleaning solution, dusting and wiping down handrails/guardrails, wiping down machinery, sweeping up scraps, rolling up/rolling out felt mats, and cleaning/wiping down a water fountain while someone narrates and points out some of the equipment required to perform the job, such as mops, buckets, floor scrubber, and weighs a couple of bags of trash. (RX5) When the narrator slightly lifts the bags to see how much they weigh, she determines that the bags weigh about 16 pounds & 8 pounds, respectively; however, as she releases the slightly lifted portions of the bags, it appears that the scale numbers move, indicating that the bags weigh more than claimed by the narrator. (RX5)

7. Petitioner started treating with Dr. Robert W. Coats II on July 13, 2011. (PX2) Dr. Coats noted that Petitioner does janitorial work. "She has been working for the last six months and in early June she stated (sic) having symptoms of pain as well as numbness and tingling in both hands. She says she is right-hand dominant and the right hand bothers her more than the left." (PX2) Dr. Coats diagnosed Petitioner as having bilateral carpal tunnel and felt that it was work related. Dr. Coats administered steroid injections to Petitioner's carpal tunnels and ordered neutral wrist splints and physical therapy. Dr. Coats also took Petitioner off work for two weeks.

8. On November 30, 2011, Petitioner saw Dr. Robert A. Wysocki for a Section 12 examination at Respondent's request. (RX1) Dr. Wysocki examined Petitioner and reviewed Petitioner's medical records and diagnostic exams, along with the job analysis for Petitioner's position. Dr. Wysocki diagnosed Petitioner as having bilateral carpal tunnel syndrome and recommended that Petitioner undergo an EMG, to confirm the diagnosis, and bilateral wrist cock-up splints. However, Dr. Wysocki did not feel that Petitioner's carpal tunnel syndrome is causally related to her work activities with Respondent and explained that Petitioner's work duties, which he detailed in the report, "include primarily fine motor use of the hands with light occasional lifting, but no heavy repetitive gripping use of significant vibratory tools or heavy repetitive lifting which have been shown in the literature to be causally related to carpal tunnel syndrome. It should be noted that the majority of her symptoms early on in the course of symptoms primarily were numbness and tingling that awoken her at night and were not symptoms which came on during her activities at work....I believe that [Petitioner] is capable of an attempt for return back to work full duty at this time." Dr. Wysocki felt that if Petitioner failed conservative treatment, then surgery would be appropriate.

9. Petitioner stopped working for Respondent on January 21, 2012. (T.47) Petitioner testified that Respondent sent her home. (T.47)

10. On January 25, 2012, Dr. Coats issued a narrative report in which he outlined Petitioner's condition and treatment up to that point. (PX3) Dr. Coats' assessment was that Petitioner has "work induced bilateral carpal tunnel syndrome." Dr. Coats explained that "[i]t is very rare for a 24 year old woman who is not pregnant without any other disorders affecting her metabolism or fluid status, to develop carpal tunnel syndrome, especially without any history of trauma. I find it quite compelling that she was asymptomatic when she started working and within six months of working, she developed pain and paresthesias in the median distribution that seems to have responded well to oral steroid medications, steroid injections and Naprosyn....I am fairly certain that if she continues to do the type of work that she is currently doing, that her symptoms will become re-exacerbated and require operative intervention. In the meantime, she needs restrictions for work; no repetitive motion, no lifting, pushing, pulling or carrying greater than 5 lbs. with either extremity and neutral wrist splints to wear at work to prevent excessive wrist flexion and extension."

11. Petitioner continued to follow up with Dr. Coats, who continued to administer conservative treatment, including steroid injections and having Petitioner use neutral wrist splints. (PX2) On February 21, 2012, noting that conservative treatment had failed, Dr. Coats ordered carpal tunnel surgery.

12. Surveillance video was taken of Petitioner on February 23, 2012, February 24, 2012, February 27, 2012 and February 28, 2012. (RX3,RX6) The video shows Petitioner driving, talking on her cell phone, loading and unloading items into and out of the back of her vehicle, and carrying a couple of bags of groceries. The video also shows a woman, who appears to be Petitioner, carrying a child.

13. On August 3, 2012, Dr. Coats issued an addendum to his January 25, 2012 narrative report after reviewing a job description of Petitioner's job. (PX4) Dr. Coats explained that Petitioner

"clearly" had carpal tunnel syndrome and that the condition is causally related to her job with Respondent. "Whether [Petitioner's duties] would cause carpal tunnel syndrome in the average person, I don't know, but certainly in [Petitioner's] case, they have and I have in the past recommended and will continue in the future to recommend operative treatment for her problem."

14. Additional surveillance was conducted on Petitioner on September 10, 2012 and September 11, 2012. (RX7,RX8) The video shows Petitioner carrying a toddler and performing semi-lunges while carrying the toddler. Petitioner did not appear to be in any pain or distress, nor did she appear to have any problem carrying the child. At hearing, Petitioner testified that she has two children, a five year old and a six year hold. (T.30-31) Petitioner also testified that the only time she picks up her 5 year old son is when he falls asleep in the car. (T.33)

In reversing the Arbitrator's decision, the Commission notes that despite being diagnosed as having bilateral carpal tunnel syndrome, Petitioner claims only right carpal tunnel syndrome was brought on by her work for Respondent. The Commission also notes that Petitioner first testified that she noticed numbness and coldness in her hands on June 16, 2011, but later changed her testimony and claimed that she felt symptoms only in her right hand on June 16, 2011. (T.19-20) Furthermore, the Commission notes that Petitioner's work, while hand intensive, did not require constant heavy repetitive gripping, significant use of vibratory tools, or heavy repetitive lifting. Petitioner admitted at hearing that she cleaned handrails for about two to three days every month, not daily. (T.11,12) Petitioner also admitted that when she did this she usually sprayed with the left hand and wiped down the handrail with the right and when her hands got tired, she would switch and spray with the right and wipe with the left. (T.11,12,16)

The evidence does not establish any work which was repetitive and forceful with the right hand only. Considering Petitioner used both her hands to perform the same actions, the Commission is not persuaded by Petitioner's explanations for why her left arm was idiopathic carpal tunnel, but that her right was caused by work.

The Commission also finds the opinions of Dr. Wysocki more persuasive and supported by the evidence than those of Dr. Coats. In his Section 12 examination of Petitioner, Dr. Wysocki diagnosed Petitioner as having bilateral carpal tunnel syndrome, but opined that it was not causally related to Petitioner's work for Respondent. (RX1) Dr. Wysocki explained that Petitioner's work duties "include primarily fine motor use of the hands with light occasional lifting, but no heavy repetitive gripping use of significant vibratory tools or heavy repetitive lifting which have been shown in the literature to be causally related to carpal tunnel syndrome." (RX1) Dr. Wysocki further noted that "the majority of [Petitioner's] symptoms early on in the course of symptoms primarily were numbness and tingling that awoken her at night and were not symptoms which came on during her activities at work." (RX1) As explained above, Petitioner's description of her duties, as well as the job analysis of Petitioner's job entered into evidence by Petitioner, show that Petitioner's job did not involve constant or repetitive heavy lifting, gripping, or use of vibratory tools. (T.7-14,16-19,PX6) In fact, the Commission notes that the only heavy lifting Petitioner is seen doing is carrying and playing with her child on surveillance video. (RX7,RX8)

14IWCC0010

Based on the totality of the evidence, the Commission finds that Petitioner has failed to establish that she sustained accidental injuries arising out of and in the course of her employment with Respondent on June 16, 2011. Accordingly, we reverse the Decision of the Arbitrator and deny compensation.

IT IS THEREFORE ORDERED BY THE COMMISSION that that the Decision of the Arbitrator is reversed since Petitioner failed to prove he sustained an accidental injury arising out of his employment with Respondent, and, therefore, her claim for compensation is hereby denied.

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.

DATED: JAN 09 2014
MPL/ell
o-12/12/13
052

Michael P. Latz

Michael P. Latz

David L. Gore

Mario Basurto

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Carol Neal,

Petitioner,

14IWCC0011

vs.

NO: 11 WC 09311

State of Illinois/East Moline Correctional Facility,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, and permanency, hereby reverses the Arbitrator's Decision and finds that Petitioner failed to prove that she sustained accidental injuries arising out of and in the course of her employment on October 25, 2010. The Commission vacates the Arbitrator's award of benefits and denies Petitioner's claim for benefits under the Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner started working for Respondent as a correctional nurse in 2004. (T.8-9)

2. On October 25, 2010, Petitioner parked in the parking lot at the bottom of the hill because she had been told she could not park "on the hill." (T.9,12) According to Petitioner, there are two paths towards Respondent's main building from the parking area at the bottom of the hill where she had parked: "go up the road where also the cars drive up to get to work or the grassy hill." (T.9-10) According to Petitioner, the roadway used to walk to the main building is the same roadway used by vehicles to enter and exit the prison once inside the gate. (T.15) Petitioner

testified that some people drive "a little too fast and honk at you" on the roadway. (T.18) Petitioner testified that the parking area at the top of the hill contained designated parking for wardens, doctors, and administration people, as well as for the general public. (T.39)

On cross-examination, Petitioner testified that she continues to, at times, park at the bottom of the hill. (T.42) Petitioner explained that she and her husband, who also works for Respondent, will sometimes switch vehicles at work and the vehicles will be parked at the bottom of the hill. (T.42) Petitioner also testified that she has continued to use the grassy hill path to get to work. (T.42) When questioned by the Arbitrator, Petitioner admitted that both Respondent's employees and the general public park at the bottom of the hill. (T.54)

3. Petitioner testified that on October 25, 2010, she chose to go up the grassy hill path to get to work because it "seemed easier and safer." (T.9-10) Petitioner explained that she walked on the worn path on the hill and noted that the ground was damp and that there were wet spots along the path. (T.9-10) Petitioner testified that as she walked up the hill she had to "catch" herself a "couple of times" with her hand and knee. (T.9-10) Petitioner explained that her feet "slid out from underneath" her a couple of times and when she landed she "kind of landed on one or the other knee" but catching herself so that she did not "totally fall." (T.19) Once Petitioner reached the top of the hill, she walked on the paved walking area on the top of the hill and into the main building through the employee designated entrance. (T.9-10,16-17) As Petitioner performed her work duties, she noticed that her back ached and "could tell something was not right." (T.10-11) While reaching down to retrieve something from the bottom of a cart, Petitioner felt "excruciating" back pain and could barely move. (T.10-11) Another nurse notified Petitioner's supervisor of Petitioner's condition and the supervisor called Petitioner's husband to pick Petitioner up. (T.10-11,20-21)

4. After leaving work, Petitioner went to Dr. Sanders at Sanders Chiropractic. (T.21,PX1) Petitioner described the accident and complained of mid and low back, hip, thigh, and leg pain. (PX1) Dr. Sanders took x-rays of the lumbar spine that showed moderate hyperlordotic lumbar sagittal curature, mid left-sided lumbar spinous rotation, compression fracture at L5 with right lateral wedging, moderate disc space narrowing at L4-L5 & L5-S1, posterior disc wedging at L5-S1, and retro vertebral body listhesis at L5. Dr. Sanders ordered an MRI, provided chiropractic treatment, and took Petitioner off work.

5. Petitioner then went to her primary care physician, Julianna Castro, APN. (T.22-23,PX2) Again, Petitioner described the accident and complained of severe low back pain. (PX2) Julianna Castro diagnosed Petitioner as having low back pain and radiculopathy and prescribed pain medication.

6. On October 26, 2010, Petitioner completed an accident report explaining that she sustained injuries to her mid and low back, hips and legs while "walking up the hill to come into work. The ground was wet + my feet slipped out from under me." (RX2) Also that day, Petitioner underwent a lumbar MRI that showed a shallow left lateral disc protrusion that narrowed the lateral recess at L3-4, a tiny annular fissure posteriorly at L4-5, and a small central disc protrusion without canal stenosis at L5-S1 where there was mild bilateral lateral recess narrowing. (PX1) The radiologists report indicates that the MRI showed lumbar spine degenerative disc disease primarily at L4 and L5 with an annular rent involving the posterior

aspect of the L4 disc and diffuse broad-based posterior annular protrusion at L5-S1 extending into the left neural foramen with suspicion of contact with the left L5 nerve. (PX1)

7. Petitioner underwent conservative treatment with Dr. Sanders and Julianna Castro from October 26, 2010 through January 14, 2011. (PX1,PX2) Petitioner continued to complain of mild and low back pain with radiation into the lower extremities throughout her treatment.

8. On December 13, 2010, Petitioner was walking out of work and noticed that the snow and ice in the parking lot had not been removed. (T.26-27) As Petitioner was getting into her car, she slipped and fell, hitting her knee on the car door. (T.26-27) According to Petitioner, her treatment did not change as a result of this fall. (T.27)

9. On January 5, 2011, Petitioner saw Dr. Karuparthy for pain management. (PX5) Dr. Karuparthy administered trigger point injections and a facet/medial branch injection on the left side at the L4-L5 levels, a sacroiliac joint injection on the left side, and trigger point injections in the low back bilaterally. The injections failed to provide Petitioner substantial lasting relief.

10. On August 31, 2011, Petitioner saw Dr. Miller who administered a left L5-S1 intralaminar epidural steroid injection. (PX4)

11. Petitioner underwent an EMG/NCV study on September 1, 2011, the results of which revealed incomplete evidence of L5 radiculopathy on the left. (PX4) After reviewing the results of the study, Dr. Miller recommended continued management of symptoms with conservative treatment, including physical therapy, injections, lumbar traction and muscle stimulator. On October 20, 2011, Petitioner reported 75% improvement in her symptoms following the August 31, 2011 injection.

12. On November 9, 2011, Dr. Miller administered a midline L5-S1 intralaminar epidural steroid injection. On January 31, 2012, Dr. Miller diagnosed Petitioner as having chronic low back pain and myofascial pain of the hip girdles and low back. (PX4) Dr. Miller counseled Petitioner on performing a stretching and exercise regimen daily, prescribed pain medication, and recommended that Petitioner return for "a more focused osteopathic structural examination and manipulation treatment." On February 20, 2012, Dr. Miller recommended and administered osteopathic manipulation procedure. (PX4)

13. At the arbitration hearing, Petitioner complained of ongoing back pain and problems. (T.31-33) Petitioner also testified to difficulty performing activities of daily living as well as her work duties as a result of her continued back pain and problems. (T.31-33,37-38)

In reversing the Arbitrator's decision that Petitioner sustained a compensable work accident on October 25, 2010, the Commission relies on *Dodson v. Industrial Commission*, 308 Ill.App.3d 572 (1999). In *Dodson*, the claimant was heading to her vehicle after work and left the paved walkway to walk across the grassy slope, which provided a more direct route to her car. *Dodson*, 308 Ill.App.3d at 573. While walking on the glassy slope, the claimant slipped on the wet grass and broke her ankle. *Id.* The court held that claimant's injuries did not arise out of her employment and explained that:

> "[s]he chose to take a shortcut to her vehicle and walked down a grassy slope that was ostensibly wet and icy from rain. Claimant did so instead of proceeding down the unobstructed stairs and sidewalk, both of which the employer provided for employees' ingress and egress. This was a voluntary decision that unnecessarily exposed her to a danger entirely separate from her employment responsibilities. Moreover, her choice was personal in nature, designed to serve her own convenience and not the interests of employer." *Dodson*, 308 Ill.App.3d at 576-577.

We find the facts in the case at bar analogous to *Dodson*. In the case at bar, Petitioner had two choices as to how to get to Respondent's main building: 1) the roadway in the parking lot; or 2) the grassy hill. Petitioner chose to take the grassy hill, which she admitted was damp and contained wet spots throughout. (T.9-10) Petitioner defended the choice to use the grassy hill path instead of the roadway by claiming that the grassy hill was safer than the roadway and that she had witnessed people using the grassy hill path daily. (T.17-18) Furthermore, According to Petitioner, people would drive their cars "a little too fast" on the roadway. (T.18) Petitioner explained that cars would "zoom" by her and "skid their tires as they are going around the corner." (T.40-41)

The Commission does not find Petitioner's claim that the roadway is dangerous persuasive. First, the Commission notes that Petitioner admitted that she did not know of anyone who had been hit by a car on the roadway. (T.41) Furthermore, Petitioner testified that the roadway that pedestrians use to get to the main building is the same roadway vehicles use to enter and exit the prison once inside the gate. (T.15) The Commission finds that any roadways inside the gate are essentially no different than the roadways usually traversed in parking lots. This view is supported by Petitioner's testimony that she has witnessed other people walk on the roadway as well as the grassy hill. (T.44) The Commission further notes that Petitioner admitted that despite her accident, she has continued to use the grassy hill path to get to work. (T.42)

The evidence shows that while Respondent may control where Petitioner can and cannot park, Respondent does not control what pathway Petitioner takes to get to work. Petitioner admitted that she has options as to how to get to work. The Commission finds that on October 25, 2010, Petitioner chose to take a wet, grassy hill to get to work. There is nothing in the record to support Petitioner's claim that the roadway is dangerous and Petitioner admitted at hearing that the grassy hill "seemed easier" to her. As in *Dodson*, Petitioner's voluntary decision to take the grassy hill path exposed her to a danger entirely separate from her employment responsibilities.

The Commission also relies on *Orsini v. Industrial Commission*, 117 Ill.2d 38, 45 (1987), in which the Illinois Supreme Court explained that:

> "[f]or an injury to have arisen out of the employment, risk of injury must be a risk peculiar to the work or a risk to

which the employee is exposed to a greater degree than the general public by reason of his employment."

Petitioner testified that the parking area at the bottom of the hill is for Respondent's employees and the general public. (T.54) Petitioner is exposed to the same exact pathways as the general public to get to Respondent's main building. Therefore, Petitioner's injury did not arise from a risk to which she was exposed to a greater degree that the general public.

Based on the testimony and evidence presented, as well as the case law on the issue, the Commission finds that Petitioner failed to establish that her October 25, 2010 accident arose out of and in the course of her employment with Respondent. Therefore, the Commission hereby reverses the Arbitrator's Decision and vacates the Arbitrator's award of benefits. Finally, the Commission notes that on November 13, 2013, Respondent filed a Request for Special Findings by the Commission. The Commission denies Respondent's request.

IT IS THEREFORE ORDERED BY THE COMMISSION that that the Decision of the Arbitrator, filed on December 5, 2012, is reversed. Petitioner's claim for benefits is denied.

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

DATED: JAN 0 9 2014
MJB/ell
o-11/20/13
68

Michael J. Brennan

Mario Basurto

DISSENT

I respectfully dissent from the majority decision and would affirm the Arbitrator's decision in its entirety. Petitioner is employed by the State of Illinois as a nurse at the East Moline Correctional Facility. On the date of incident, Petitioner slipped while walking up a damp grassy hill path leading from the parking lot to the Employer's main building (Administration Building). Petitioner's unrebutted testimony was that there were two means of reaching the Employer's facility from the lower parking lot; the grassy foot path, and the main road leading into the facility. Further, petitioner testified that the grassy foot path "seemed easier and safer" than walking along side the road.

The majority relies on Dodson v. Industrial Commission, 308 Ill.App.3d 572 (1999) in reversing the Arbitrator's decision that Petitioner sustained a compensable work accident. In Dodson, the Claimant was heading to her vehicle after work and left the paved walkway to walk across a grassy slope, which provided a more direct route to her car. Dodson, 308 Ill.App 3d at 573. While walking on the grassy slope, the claimant slipped on the wet grass and broke her ankle. *Id.* The court held that the claimant's injuries did not arise out of her employment and

explained that the Petitioner exercised "a voluntary decision that unnecessarily exposed her to a danger entirely separate from her employment responsibilities. Moreover, her choice was personal in nature, designed to serve her own convenience and not the interests of the employer."

The majority finds the facts in the case at bar analogous to Dodson. However, the case at bar is distinguishable from Dodson. In Dodson, the employer provided a sidewalk for employees to walk on for ingress and egress. In the case at bar, no such employer provided sidewalk exists. In fact, the Employer acknowledged that the paved surfaced it provides for ingress and egress is a roadway. Petitioner's employer provided her with two poor choices for ingress and egress to its facility from the lower parking lot; a worn footpath up a grassy hill or a roadway which carries vehicular traffic into and between the various correctional center buildings. Although the majority equates the roadway inside the employer's facility to that of a parking lot, it does not make it less dangerous than traversing a worn grassy footpath.

The case at bar is more analogous to Huizar v. Swords Veneer and Lumbar, 01 WC 1620, relied upon by the arbitrator to find accident. In Huizar, the Commission affirmed the Arbitrator's finding that the employer failed to provide a clear, unobstructed way "by which the claimant could have avoided the snowy area on which she fell" and that the claimant's decision to walk over the mound on the premises "was not unreasonable or unsafe in comparison to alternative routes." In the case at bar, Petitioner's decision to use the footpath was not unreasonable or unsafe in comparison to the alternative route along the roadway. Petitioner's choice to use the hill to get to the Administration Building did not constitute a personal risk as claimed by the majority, but a risk to which Petitioner was exposed to a greater degree than the general public. There was nothing unreasonable or personal about Petitioner's use of the hill to get to the Administration Building considering the employer does not provide a specific walkway from the parking lot to the Administration Building. Therefore, Petitioner's use of the hill constitutes a risk to which she was exposed to a greater degree that the general public due to her employment. Accordingly, based upon the above, the Arbitrator's decision should be affirmed in its entirety.

David L. Gore

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☐ 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

Carshima Clayton,

Petitioner,

14IWCC0012

vs.

NO: 08 WC 40986

Illinois Department of Rehabilitation,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the only issue of nature and extent of permanent partial disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

In modifying the Decision of the Arbitrator, the Commission concludes Petitioner exaggerated the true nature of her physical condition at the time of her arbitration hearing on May 13, 2013, to such a degree that the conferred permanent partial disability benefits are found to be excessive.

At her May 13, 2013, arbitration hearing, Petitioner testified as to her then-present symptoms, notably of being in pain at the hearing; of pain being brought on by prolonged walking and sitting as well as by stair climbing; of losing her balance; of experiencing a sensation "like veins bursting" in her leg; of her leg swelling up; and of her having to sit of an hour or two before going to work due to the severity of the pain. The Commission takes notice that, despite what would be construed as conditions that would merit constant medical attention, Petitioner's records indicate that she was last seen by her orthopedic physician in December 2011 and by her pain management physician on March 8, 2011.

14IWCC0012

The Commission also finds Petitioner's as-testified-to condition as of May 13, 2013, represents a dramatic worsening of her condition as compared to how she was found to be upon completion of physical therapy on December 8, 2011, a worsening to such a degree that one would expect a reasonable person would have sought medical intervention. At the time of her December 8, 2011, discharge from physical therapy, Petitioner demonstrated good tolerance to treatment and performed all exercises without increased pain and complained only of having difficulty when reaching for items that were at a low height. After physical therapy, Petitioner presented for a KEY Functional assessment. The assessment was deemed to be a valid representation of her capabilities and determined that Petitioner would be able to work at sedentary-light physical demand level. Petitioner's as-testified-to symptoms presumptively manifested themselves sometime after December 2011 as they were not evident at the time she engaged in physical therapy or when she participated in the functional assessment. The Commission finds it incredible that she chose to live with the worsening symptoms rather than attempt to reverse the claimed worsening of her physical self.

The evidence the Commission finds most telling with respect to Petitioner's claimed condition is the apparent misrepresentations she made to her treating physicians during the time she actively treated her symptoms. It is noted that Petitioner repeatedly told Dr. Rivera that she was scheduled to follow-up with Dr. Templin for a surgical consultation, only for it to be later recorded that she never scheduled any such appointment with Dr. Templin. Similarly, Petitioner was recorded as informing Dr. Trksak that she was going to seek chiropractic care at the Chicago Spine Institute, but there was no evidence that she actually sought treatment there. Also noted was that Petitioner failed to inform Dr. Patel, a successor physician to Dr. Rivera, that she had been seen by his colleague, Dr. Anwar, weeks earlier and that Dr. Anwar discharged her from his care after she had tested negative for opiates despite being prescribed both hydrocodone and OxyContin for approximately one year and after Petitioner initially failed to provide a urine sample for a toxicology test he asked be administered and then attempted to obtain a urine sample from a third person. The Commission finds Petitioner's behavior inapposite for one seeking relief of debilitating pain.

The Commission recognizes Petitioner was involved in motor vehicle accident while engaged in her normal work activities as a Certified Nurse's Assistant on August 26, 2008, that resulted in injuries that were conservatively treated. The Commission, however, also recognizes Petitioner engaged in behavior that leads it to conclude that she exaggerated her condition, as noted extensively above, for reasons known only to her. The Commission, accordingly, reduces the permanent partial disability award to 22-1/2% loss of use of a person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $171.89 per week for a period of 177-6/7 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 $171.89 per week for a period of weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 22-1/2% loss of use of a person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner

14IWCC0012

the sum of $52,155.38 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.

DATED: JAN 10 2014
KWL/mav
O: 12/3/13
42

Kevin W. Lamborn

Daniel R. Donohoo

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0012

CLAYTON, CARMISHA
Employee/Petitioner

Case# **08WC040986**

ILLINOIS DEPT OF REHABILITATION
Employer/Respondent

On 6/7/2013, 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:

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0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
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SPRINGFIELD, IL 62794-9255

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

JUN 7 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

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
ARBITRATION DECISION

14IWCC0012

Carmisha Clayton
Employee/Petitioner

v.

Illinois Dept. of Rehabilitation
Employer/Respondent

Case # 08 WC 40986

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robert Falcioni**, Arbitrator of the Commission, in the city of **New Lenox**, on **5/13/13**. 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 **8/26/08**, 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 **$2,647.10**; the average weekly wage was **$171.89**.

On the date of accident, Petitioner was **36** years of age, ***single*** 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 **$44,228.91** for TTD and maintenance.

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

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $171.89/week for 177 6/7 weeks, commencing 9/3/08 through 1/30/12, as provided in Section 8(b) of the Act. Respondent to receive credit for all sums previously paid hereunder.

Maintenance

Respondent shall pay Petitioner maintenance benefits of $171.89/week for 41 weeks, commencing 1/31/12 through 11/12/12, as provided in Section 8(a) of the Act. Respondent to receive credit for all sums previously paid hereunder.

Medical benefits

Respondent shall pay reasonable and necessary medical services of $52,155.38, as provided in Section 8(a) of the Act. Respondent to receive credit for all sums previously paid hereunder.

Permanent Partial Disability: Person as a whole

Respondent shall pay Petitioner permanent partial disability benefits of $171.89/week for 150 weeks, because the injuries sustained caused the 30% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

14IWCC0012

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.

Robert E Dalton
Signature of Arbitrator

June 3, 2013
Date

FACTS

On the date of accident, 8/26/08, Ms. Clayton was working as a Certified Nurse's Assistant for the Illinois Department of Rehabilitation. She was involved in a motor vehicle accident while transporting a patient. She was restrained in the front passenger seat. Her knees hit the dashboard and her head hit the windshield. Ms. Clayton lost consciousness for a few minutes during the accident. After the accident, there was a "sunburst" in the windshield on the front passenger side.

At 12:08 pm that day, Ms. Clayton arrived via ambulance to the emergency department of Provena Saint Joseph Medical Center. She complained of headache, neck pain, back pain and right sided elbow pain after a motor vehicle accident. She was seen by Dr. Andrew Zwolski. She underwent a brain CT, without contrast. Impression: Unremarkable noninfusion CT study of the brain.

Right elbow X-rays were taken. Impression: No discrete acute traumatic bone change is observed in the right elbow Early arthritic changes and mild soft tissue swelling present. If symptoms persist may obtain a follow-up examination in two weeks.

She underwent a cervical spine CT study. Impression: Unremarkable CT examination of the cervical spine.

Chest X-rays and thoracic spine X-rays were normal. Diagnosis was contusion to elbow headache, neck and back strain. She was treated with acetaminophen, and hydrocodone. She was also prescribed Vicodin. PX2

On 8/28/08 Dr. H. A. Metcalf at Millenium Medical Services ordered physical therapy two to three times a week until further notice to treat her injuries post motor vehicle accident. Diagnosis was :

1. Post motor vehicle accident right upper extremity sensory neuralgia.

2. Post motor vehicle accident acute cervical sprain.

3. Post motor vehicle accident acute lumbar sprain.

4. Post motor vehicle accident bilateral knee contusion.

5. Post motor vehicle accident concussive syndrome.

On 9/2/08 Dr. Metcalf provided the following work restrictions: No lifting over five pounds; stooping or bending as tolerated; limit continuous walking or standing to fifteen minutes per hour; limited stair climbing; and no overhead reaching.

On 9/9/08 Dr. Metcalf completed a Disability Certificate restricting Ms. Clayton from all work duties from September 2, 2008 until further notice.

On 9/10/08 Ms. Clayton underwent CT scans at Fox Valley Imaging. PX4. The CT scan of the cervical spine was normal. The CT scan of the lumbar spine revealed severe degenerative disc disease at L5-S1 with a large osteophyte – hard disc in the midline at L5-S1. The CT scan of the head was normal.

On 9/25/08 Dr. Metcalf completed a Physicians and Surgeons Report stating that Ms. Clayton was injured while working, and that she required further treatment.

On 9/30/08 Dr. Metcalf wrote that Ms. Clayton was receiving therapy three to four times per week and was not working at that time. He planned for her to see a pain management physician for assessment and treatment.

On 11/7/08 Dr. Paul Trksak at Hinsdale Orthopaedic examined Ms. Clayton and noted her motor vehicle accident on August 27, 2008. Dr. Trksak restricted Ms. Clayton to: no prolonged walking, standing or sitting; no bending or lifting greater than five pounds; restricted crawling or kneeling; no operating moving vehicles; no overhead lifting. PX5.

Dr. Teksak explained that Ms. Clayton was on medication that would affect her ability to work safely. He stated that her injuries were work related. His impression was:

1. Cervical strain

2. Lumbosacral strain.

3. Contusion of both knees.

4. Sprain of both wrists.

He recommended physical therapy three times a week for four weeks to treat her injuries. He prescribed Motrin and Parafon Forte DSC.

On 11/17/08 Ms. Clayton underwent an initial evaluation for physical therapy to treat lumbar and cervical strain at Premier Physical Therapy.

On 12/19/08 Dr. Trksak placed Ms. Clayton off work and ordered cervical, thoracic and lumbar spine MRIs. He continued physical therapy three times a week for three weeks to treat cervical and lumbosacral strain, and he prescribed Relafen 1500.

On 1/16/09 Ms. Clayton underwent an MRI of the lumbar spine at Future Diagnostics Group. The MRI revealed the following:

1. The dominant finding was a large central disc herniation at the L5-S1 level. This was approximately 5.5 mm in depth and likely contributing to a bilateral S1 radiculopathy, right greater than left.

2. Degenerative changes.

On 1/16/09 Dr. Trksak continued Ms. Clayton off work and ordered a cervical spinal cord CT scan as Ms. Clayton was unable to undergo a cervical MRI due to claustrophobia. PX5. Dr. Trksak reviewed Ms. Clayton's lumbar spine MRI taken that day and noted it revealed evidence of a herniated disc at L5-S1. Dr. Trksak referred Ms. Clayton to Dr. Templin to evaluate if she was a surgical candidate.

On 2/2/09 Dr. Cary Templin at Hinsdale Orthopaedic examined Ms. Clayton and noted her work injury. PX5. Ms. Clayton's medications included Lisinopril, Metformin, Norco and Flexeril. Dr. Templin continued Ms. Clayton off work. He referred her to pain management for a trial of facet block at the cervical spine, and epidural steroid injection at the L5-S1 level.

On 2/16/09 Ms. Clayton was examined and underwent a first interlaminar L5/S1 epidural steroid injection performed by Dr. Anthony Rivera at Health Benefits Pain Management. PX7. Dr. Rivera discontinued Ms. Clayton's previous pain medications and prescribed Percocet, Naprelan, and Lidoderm patches.

On 3/16/09 Ms. Clayton reported great relief after the first injection, and underwent a second interlaminar L5/S1 epidural steroid injection performed by Dr. Anthony Rivera at Health Benefits Pain Management. PX7. Dr. Rivera continued Ms. Clayton off work and continued her pain medications.

On 4/6/09 Dr. Rivera performed a third L5/S1 epidural steroid injection. He continued Ms. Clayton off work and continued her pain medications. His diagnosis at that time:

1. Lumbar radiculopathy.

2. Lumbar disc herniation at L5-S1.

3. Neuropathic pain.

4. Cervical facet arthropathy.

On 5/4/09 Dr. Rivera continued Ms. Clayton off work. He discontinued Naprelan and Lidoderm. He prescribed Opana ER 5 mg and continued Percocet.

On 6/29/09 Ms. Clayton did not obtain lasting relief from her epidural steroid injections. Dr. Rivera referred Ms. Clayton to a spine surgeon for a second opinion and continued Ms. Clayton off work.

On 7/27/09 Dr. Rivera continued Ms. Clayton off work. Diagnosis was :

1. Lumbar radiculopathy.

2. Lumbar disc herniation at L5-S1.

3. Neuropathic pain.

4. Cervical facet arthropathy.

His assessmentwas that Petitioner was a 37-year-old female who was being followed for chronic neck and low back pain. The low back pain appeared to be secondary to possible lumbar radiculopathy issue due to a disc herniation.Surgical second opinion was still currently pending. In regards to her pain medication regimen since it was not controlling her symptoms, he stated that he would increase her medications for better pain control.

On 8/10/09 Dr. Rivera continued Ms. Clayton off work.

On 8/14/09 respondent obtained a section 12 exam. PX17. Causation was explained to be aggravation of pre-existing condition. Dr. Howard An gave a 10 lb. restriction, sedentary and stated the following:

"Summary: The patient's current diagnosis is cervical strain which has been improving and herniated disc at L5-S1 causing back and some radicular symptoms. I believe that the current condition of the disc problem is probably pre-existing in nature but the work injury of a motor vehicle accident aggravated the preexisting condition beyond normal progression or caused the herniation. This is based on the patient's history in that there are no significant back or neck problems prior to the alleged incident on August 26, 2008. The treatment that has been given so far has been reasonable including medication, injections and physical therapy. The patient also has some facet osteoarthritis at L5-Sl which may be also causing back pain at this time. Currently her main problem is low back pain rather than leg pain; therefore the herniation may be improving at this point."

"Recommendation: My recommendation for treatment is to continue conservative modalities with pain management, a weight loss program and strengthening exercises. Because she went through these modalities before it might be a good to refer her to a physical medicine rehabilitation specialist. I would be glad to see the patient if her condition persists despite further conservative care in about two months time. I would be glad to render more opinions at that time. I believe that the patient is able to work at this time; however, I recommend sedentary work of lifting no greater than 10 pounds and avoid frequent twisting and bending of the back. These

restrictions will be in place for two months time. If you have any further specific questions, please feel free to contact me again."

On 9/2/09 Dr. Rivera restricted Ms. Clayton to sedentary work, with no bending or lifting greater than ten pounds. He referred her to a spine surgeon for surgical consultation and ordered lumbar spine X-rays, lumbar MRI, and EMG and NCS of the lower extremities. Dr. Rivera discontinued Percocet and started OxyContin 20 mg and Norco 10/325.

On 9/23/09 Dr. Rivera prescribed the sleeping aid Restoril 15 mg to help with insomnia and placed Ms. Clayton off work.

On 10/19/09 Ms. Clayton underwent an EMG and NCS studies performed by Dr. Rivera at Health Benefits Pain Management. PX7. The EMG was read as an abnormal electrodiagnostic study with electrodiagnostic evidence of chronic denervation noted in the lower extremities in the L5/S1 innervated muscles. No evidence of demylinating or axonal neuropathy components involving the lower extremities was found. Evidence of a chronic lumbar motor radiculopathy noted on was noted on the exam of the L5/S1 myotome. Of note, EMG unable to detect small sensory fibers and therefore clinical correlation is recommended.

Dr. Rivera continued Ms. Clayton off work.

On 11/16/09 Dr. Rivera assessed: "This is a 37-year-old female who is being followed for chronic low back pain. Working diagnosis is a lumbar radiculopathy issue secondary to disc herniation at the L5-S1 level. At this time, she is attempting to control her pain symptoms with medication. Given the prolonged nature of her pain symptoms and the fact that it has not improved, will recommend that she followup with a surgeon to consider possible surgical options. I discussed the options of increasing her pain medication for better pain control, but at this time the patient wishes to hold off on this if possible."

He continued Ms. Clayton off work.

On 11/17/09 Ms. Clayton underwent a lumbar MRI and X-rays at Future Diagnostics Group.

Findings were as follows:

1. No significant change in central disc extrusion at L5-S1.

2. Degenerative changes at L5-S1 with mild bilateral neural foraminal stenosis at this level as well.

Impression of Lumbar X-ray: Degenerative changes at L5-S1.

On 12/14/09 Dr. Rivera continued Ms. Clayton off work. Diagnosis did not change.

Dr. Rivera increased Ms. Clayton's pain medication and added the following neuropathic pain medication:

1. OxyContin 30 mg p.o. q.12h. (#60).

2. Norco 10/325 mg p.o. t.i.d. p.r.n. (#90).

3. Restoril 15 mg p.o. q.h.s. p.r.n. (#20).

4. Neurontin 600 mg p.o. q.h.s. x7 days then increase to two pills p.o. q.h.s. (#50).

On 1/13/10 Dr. Rivera increased Ms. Clayton's prescription for the long lasting opioid OxyContin to 40 mg and he continued Ms. Clayton off work.

On 2/10/10 Dr. Rivera examined Ms. Clayton and continued her off work.

On 3/10/10 Dr. Rivera continued Ms. Clayton's medications and continued her off work.

On 4/2/10 Ms. Clayton was examined by Dr. Cary Templin, a specialist in spinal disorders and spinal surgery. Dr. Templin explained that, although surgery was an option, he did not feel Ms. Clayton was a prime candidate for a transforaminal interbody lumbar fusion. Due to her morbid obesity, he believed the surgery would be quite risky for her.

He felt that Ms. Clayton could work with a ten pound restriction, and sitting at least five minutes every hour. He noted that her pain medications would restrict her ability to work and deferred her restrictions relating to medication to whoever was prescribing narcotic pain medication. He recommended that she undergo a functional capacity evaluation.

On 4/12/10 Ms. Clayton was continued off work. Dr. Rivera wrote, "She has undergone multiple conservative treatment options such as physical therapy and interventional procedures and it is currently being controlled with pain medication. At this time since surgery is not recommended, I would state that the patient is at maximum medical improvement. She will require long term pain management, which may include followup visits for pain medication adjustment and/or interventional procedures. It is also possible in the future if symptoms became severe enough, she may reconsider her surgical options. At this time, will place the patient at a permanent partial disability. Will recommend basically a sedentary job with no lifting."

Dr. Rivera continued Ms. Clayton's medications, and continued her off work.

5/17/10 Petitioner was seen again by Dr. Rivera whose impressions at the time were:

1. Lumbar radiculopathy.

2. Lumbar disc herniation at L5-S1.

3. Neuropathic pain.

4. Cervical facet arthropathy.

Ms. Clayton wanted to continue with conservative measures at that time. Dr. Rivera continued Ms. Clayton off work and ordered a functional capacity evaluation. He wrote prescriptions for Oxycontin 40 mg, Norco, Restoril, Neurontin, Lidoderm.

Dr. Rivera stated that Ms. Clayton was at maximum medical improvement without surgical intervention. He placed her at permanent partial disability, and explained that she would require long term pain management.

On 5/25/10 Ms. Clayton tried to undergo a KEY functional capacity evaluation at ATI Physical Therapy. She was unable to complete the evaluation secondary to pain and an assessment of her physical capabilities could not be established.

On 6/14/10 Dr. Rivera noted that Ms. Clayton was unable to tolerate the functional capacity evaluation due to increased pain. He recommended sedentary work with the opportunity to change positions every hour to decrease some of her pain issues. Dr. Rivera continued Ms. Clayton off work and renewed her prescription for Oxycontin.

On 7/13/10 Dr. Zaki Anwar at Health Benefits Pain Management continued Ms. Clayton off work and renewed her prescriptions. His findings were of

1. Acute lumbar radiculitis.

2. Sciatica.

3. Extruded lumbar disc at L5-S1 level that is 5.5 mm in herniation.

4. Status post epidural injections and physical therapy without any significant relief.

5. Neurosurgery recommendation is not to proceed with the surgery due to her weight and a short stature as well as the nature of the injury at this point.

6. Opioid dependency issue with Oxycontin and Norco at this point.

7. Multiple conservative treatment by Dr. Cary Templin, in the past without any significant relief.

8. The patient at a permanent partial disability at this point.

9. Functional capacity evaluation was done in which the patient was unable to do the test and at that time she was given a sedentary job that allows her to change positions to help decrease some of her pain issues.

Dr. Anwar recommended diagnostic lumbar discography and a possible microdiscetomy.

On 8/24/10 Dr. Udit Patel at Health Benefits Pain Management restricted Ms. Clayton to sedentary duty.

He prescribed Norco 10/325, Oxycontin 20 mg, and Lidoderm 5% patch.

On 9/21/10 Dr. Patel placed Ms. Clayton off work and referred her to a spine surgeon for a second opinion.

He found that Petitioner's condition was as follows:

1. Status post work injury via a motor vehicle accident on August 08, 2008.

2. Work status sedentary level.

3. Chronic opioid therapy and chronic pain.

4. Extruded disc at L5-S1 level that is 5.5 mm in herniation.

5. Review of chart said neurosurgical recommendation is not to proceed with surgery.

Dr. Patel renewed prescriptions for Norco 10/325, Oxycontin 20 mg, and Lidoderm 5% patch.

On 10/29/10 Ms. Clayton was examined by Dr. Templin at Hinsdale Orthopaedics. He reviewed her MRI. Again it showed degenerative changes at L5S1 with severe loss of disc height, central disc protrusion narrowing the lateral recess on the right and the left. PX5.

He prescribed a discogram at L3-4, L4-5, and L5-S1 to determine if L5-S1 was the causative factor in her pain. If it was, he would consider performing a TLIF. He wrote that he explained to her because of her obesity she would be at increased risk for complications from such a procedure. He returned her to work same day with restrictions to no bending or lifting greater than ten pounds; no overhead lifting; sitting five minutes every hour.

On 11/2/10 Dr. Patel at Health Benefits Pain Management referred Ms. Clayton to a pain clinic.

On 12/21/10 Dr. Udit Patel continued Ms. Clayton off work.

On 12/21/10 respondent obtained a second section 12 exam with Dr. Howard An at Midwest Orthopaedics at Rush. Impression: Persistent axial back pain with some radicular symptoms due to a centrally herniated disc as well as a significant degenerative disc at the L5-S1 level. PX17.

Dr. An did not recommend a diskogram as he believed the L5-S1 was her main problem at that time. He believed she could become a surgical candidate for a diskectomy and fusion at L5-S1. He thought it would be reasonable to first try a third epidural steroid injection, and to continue an exercise program. But he doubted that further conservative treatment would improve her symptoms. Diagnosis was herniated disc at L5-S1 with advanced disc degeneration at L5-S1 causing significant diskogenic back pain as well as radicular pain symptoms more on the right compared to the left side.

Dr. An believed Ms. Clayton's condition was pre-existing in nature but the injury on August 26, 2008 aggravated that condition beyond normal progression. He did not believe she could work as a CNA in her condition. He would restrict her to sedentary duty with no lifting greater than ten pounds and avoidance of frequent bending and twisting of the back. Without surgery, he felt she would plateau with maximum medical improvement in four weeks.

On 3/8/11 Dr. Udit Patel at Health Benefits Pain Management placed Ms. Clayton on light duty. He administered an epidural steroid injection at the bilateral L5 spinal nerve level.

On 3/22/11 Dr. Patel noted that Ms. Clayton's recent epidural steroid injection at L5 only afforded one day of relief. He believed the next step for Ms. Clayton was surgery at the L5-S1 level.

Impression:

1. Status post work injury via a motor vehicle accident on August 08, 2008.

2. Work status at sedentary level.

3. Extruded disc at the L5-S1 level.

4. Status post L5 transforaminal epidural steroid injection done on both sides on March 08, 2011, with no long term relief of her pain.

Dr. Patel referred Ms. Clayton to Dr. Templin to discuss surgery.

On 4/15/11 Ms. Clayton was examined by Dr. Cary Templin. The diagnosis was LS-S1 degenerative disk disease and axial instability with discogenic low back pain. Dr. Templin recommended a L5-S1 TLIF but Ms. Clayton wanted to try chiropractic care first. Dr. Templin prescribed two months of chiropractic care to see if that would improve her symptoms. Dr. Templin placed Ms. Clayton off work.

On 9/20/11 Ms. Clayton was examined by Dr. Cary Templin. "Assessment and Plan: For Ms. Clayton, options would be for vocational rehabilitation and continued nonoperative management of her back. I do think she would be a good candidate for surgery for a 5-1 fusion, and I discussed this with her. Given that there are no problems elsewhere in the spine with significant degenerative change, I think she has a good chance to benefit from a fusion at that level assuming that it can be done without complication and I discussed this with her. She will consider it in the meantime given that she has not done a full course of physical therapy. We will start her in physical therapy for four weeks, transition to a functional capacity evaluation. If she opts against surgery, I will see her back in four weeks time for further discussion of this."

Dr. Templin completed a Medical Consultant's Review Sheet recommending a fusion at L5-S1, or physical therapy and a functional capacity evaluation. He also completed a work restriction summary returning Ms. Clayton to work next day with the following restrictions:

Frequent sitting; occasional standing, walking, squatting, climbing stairs; no ladder climbing.

Frequent lifting up to ten pounds; occasional lifting no greater than twenty pounds.

Frequent lifting waist to shoulder up to ten pounds; no lifting waist to shoulder over ten pounds.

No lifting shoulder to overhead.

Frequent carrying waist to shoulder level up to ten pounds. No carrying waist to shoulder over ten pounds.

Light grasping with either hand permitted.

Limited pushing and pulling weight.

Using feet and legs in operation of foot controls permitted.

Dr. Templin prescribed physical therapy to treat degenerative disc disease at L5-S1 two to three times a week for four to six weeks.

On 10/3/11 PT Ms. Clayton started physical therapy to treat her lumbar degenerative disc disease at L5-S1, at ATI Physical Therapy. She continued to attend as prescribed on October 6, 13, 14, 20, 21, 25, 27 and November 1, 3, 4, 8, 11, 30 and December 2, 5, 8.

On 12/13/11 Dr. Templin noted: "For Carmisha at this point, she does not want to do work conditioning, therefore, I would do a functional capacity evaluation and return her to work with restrictions put forth there, and then she has reached maximum medical improvement, and will see me on an as needed basis, as she wants no further intervention. I think that is reasonable."

Dr. Templin continued Ms. Clayton's work restrictions and ordered a functional capacity evaluation.

On 1/13/12 Ms. Clayton completed a valid functional capacity evaluation at ATI Physical Therapy. She demonstrated her functional capabilities at the sedentary to light physical demand level during the assessment. She was capable of occasionally lifting 14.8 pounds at the chair-to-floor height. She was capable of occasionally lifting 20 pounds at the desk-to-chair height.

Ms. Clayton was capable of working eight hours. There was no apparent limitation to her ability to sit. She could stand for a duration of forty minutes, up to a total of four hours. She could walk for a total of eight hours with breaks.

Ms. Clayton's employment as a Certified Nurse's Assistant was considered a medium physical demand level position. Her capabilities fell below that level. The therapist recommended work hardening to reach her goal of medium physical demand level, pending medical doctor recommendations.

On 1/30/12 Dr. Templin returned Ms. Clayton to limited duties with restrictions per her functional capacity evaluation on January 13, 2012.

On 4/26/12 Ms. Clayton met with David Patsavas, M.A., C.R.C., a Vocational Rehabilitation and Career Consultant. Mr. Patsavas recommended that Ms. Clayton be assigned to a Certified Rehabilitation Consultant for the purpose of assisting her with job readiness, job seeking, and job placement activities. He further recommended that Ms. Clayton register for appropriate classes to upgrade her skill levels to be competitive in the workforce. PX13.

Ms. Clayton underwent vocational rehabilitation and acquired a job where she currently works. She testified at trial that on a day to day basis she still experiences back pain, pain in her legs, swelling in her legs, and occasional loss of balance. She cannot go upstairs or walk long distances without pain and difficulty. She also

cannot sit for long periods of time. She testified that she continues to take pain medication and use an H-wave machine.

WITH RESPECT TO ISSUE (L) WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

On the issue of nature and extent, the Arbitrator notes that under section 8(d)2 if petitioner's injuries "partially incapacitate [her] from pursuing the duties of [her] usual and customary line of employment but do not result in an impairment of earning capacity" then she "shall receive . . . compensation . . . for that percentage of 500 weeks that the partial disability resulting from the injuries covered by this paragraph bears to total disability." In the present case, Ms. Clayton was unable to return to either of her former jobs for respondent, and instead has begun a new job that falls within restrictions. She continues to work at the new job despite ongoing pain and symptoms.

Ms. Clayton has restrictions placed on her activities. She is limited by her FCE to occasionally lifting 14.8 pounds at the chair-to-floor height and occasionally lifting 20 pounds at the desk-to-chair height. She can only stand for a duration of forty minutes, up to a total of four hours.

Based upon loss of her former employment and erosion of her vocational base, her permanent restrictions and the severity of the injury, as well as the need for an accommodation by her employer, the arbitrator finds that Petitioner sustained a loss of use of the person as a whole pursuant to Section 8(d)(2) of the Act to the extent of 30% thereof.

CREDIT

Having reviewed RX1 the arbitrator finds a credit of $44,228.91 for temporary total disability and maintenance paid through the date of trial. This shall be applied against the total award.

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

ANTONIO RICE,
Petitioner,
vs.

14IWCC0013

NO: 11 WC 43591

CHICAGO CONSTRUCTION SPECIALISTS, INC.,
Respondent.

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, temporary total disability, and medical 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. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission finds that Antonio Rice failed to prove that his left knee condition is causally related to his work-related accident of November 7, 2011. The Commission modifies the Decision of the Arbitrator and finds that the Petitioner reached maximum medical improvement as of June 30, 2012. The Commission further modifies the award of temporary total disability (TTD) and awards the Petitioner TTD from November 7, 2012 through June 30, 2012. Prospective medical is denied. All else if affirmed and adopted.

Mr. Rice worked as a construction laborer since 1986. He began working for Chicago Construction Specialists, Inc. as a laborer on November 7, 2011. He had been previously laid off. On the date of the accident, Petitioner was assigned to push a wheelbarrow to the dumpster and empty it into a dumpster. T.12. The wheelbarrow weighed between 10 and 15 pounds when empty and between 80 and 90 pounds when full. He pushed the debris to the dumpster between 20 and 30 times during the first three hours of work. T.15.

As the Petitioner pushed the wheelbarrow which weighed about 100 pounds, his left knee popped. T.19. He notified his supervisor and went to the Northwestern emergency room due to the pain. This was Petitioner's first day of work.

Mr. Catarino Huizar worked with the Petitioner on the day of the accident. He testified that he did not see the accident, but knew everyone stopped working when the Petitioner was injured. T.55. He noticed that the Petitioner walked with a limp prior to the accident. T.56. Mr. Paul Barkow works as a claims consultant for Secura Insurance. He testified that he spoke with the Petitioner on November 10, 2011. He testified that the Petitioner denied any prior left knee problems. T.77.

The Petitioner testified that he had two prior arthroscopic procedures on his left knee. The first scope was in December 2010 and the second scope was in May 2011. He also had two prior scopes of the right knee. The first scope was in November 2006 and the second scope was in December 2009. He testified that he walked with a wobble because of the knee scopes. T.24.

The Petitioner's pre-existing left knee condition is well documented in the record. On December 9, 2010, Mr. Rice was seen by Dr. James Allen Hill. Petitioner was doing well until his knee popped while getting out of a chair on December 2, 2010. He had pain, swelling and walked with an antalgic gait. He had medial joint line tenderness and a positive McMurray's finding. The Petitioner lacked 5 degrees of full extension of the left knee and flexed to 120 degrees. PX.2.

On December 10, 2010, Mr. Rice was seen in the emergency room after he twisted his left knee. PX.2. On December 15, 2010, Dr. Hill noted that Petitioner still had significant pain and lacked 5 degrees of full extension. Dr. Hill recommended left knee arthroscopy. *Id.*

On December 22, 2010, Mr. Rice was seen by Dr. Dale Kaufman in the emergency room. Petitioner reported that he heard a pop in his left knee followed by a buckle while stepping out of his car. The x-ray of the left knee revealed patellofemoral arthritis with a small effusion. There was a spur formation at the anterior and posterior aspect of the superimposed knee joint. He was diagnosed with an acute knee strain. PX.1.

On December 28, 2010, Petitioner underwent left knee arthroscopy and partial medial meniscectomy. The post-operative diagnosis was left knee medial meniscal tear. PX.1. On January 27, 2011, examination revealed full range of motion of the left knee, but he still had joint line tenderness and some weakness of his knee. PX.2.

On April 27, 2011, Dr. Hill noted Petitioner was doing well until he twisted his knee. He had an antalgic gait and lacked 10 degrees of full extension. He had medial tenderness and a positive McMurray's finding. PX.2.

On May 10, 2011, Petitioner underwent left knee arthroscopy with lateral chondroplasty. The discharge diagnosis was left knee arthroscopy with lateral chondroplasty. PX.1.

Petitioner was seen by Dr. Hill on July 18, 2011 with acute left knee pain since May 18, 2011. He had an antalgic gait and diffused tenderness of the knee. He had mild degenerative changes and questionable loose bodies. Petitioner received an injection and was to follow-up in six weeks. PX.2. Petitioner followed-up on August 29, 2011 and reported that the injection helped, but he was still having discomfort. He still had an antalgic gait with diffused tenderness. He was to continue with home exercise and return in six weeks. *Id.*

On October 10, 2011, Petitioner reported to Dr. Hill that his left knee was tolerable and he returned to work with minimal problems. He had a normal gait and full range of motion of the knee with diffuse tenderness. The impression was degenerative arthritis of the left knee. He was to continue his home exercise program and return in six week. PX.2.

The Petitioner presented to Northwestern Emergency Room on November 8, 2011. Petitioner reported that he was working when his left knee popped. He was not able to put any weight on his leg and his knee was painful and swollen. Examination revealed tenderness to the medial and lateral joint line. He had pain with varus and valcus stress, and no ligament laxity. The x-ray of the left knee revealed moderate tricompartmental degenerative changes and a small suprapatellar joint effusion. He was diagnosed with knee pain. PX.1.

On November 21, 2011, Petitioner was seen by Dr. Hill. Petitioner reported his accident and that he still had pain and swelling of his left knee since the accident. Examination revealed an antalgic gait. He had full extension and only flexed to 60 degrees. There was no discernible ligamentous laxity, but he had 1+ knee effusion. Dr. Hill opined that Petitioner had pre-existing degenerative arthritis of the left knee. He further opined that the accident caused the development of new loose bodies. He was to remain off work. PX.2. Petitioner testified that this appointment was scheduled prior to the accident. T.45.

On January 10, 2012, Petitioner underwent an IME with Dr. Douglas Dirk Nelson. Dr. Nelson noted there were no loose bodies. Dr. Nelson opined that Petitioner's current condition was not causally related to the accident. The popping event was no more than a patellofemoral event related to grade IV arthritis. The work accident did not cause an aggravation or acceleration of the left knee problem. His symptoms and problems were the same as he was having in 2011. The primary cause of the ongoing symptoms was related to degenerative arthritis and he was at maximum medical improvement. The accident did not cause the need for surgical intervention. The need for knee replacement was in no way related to the accident. He could work with restrictions but was to avoid activities involving kneeling and climbing. RX.1.

Dr. Nelson testified that Petitioner's condition was not casually related to his accident because he had the same symptoms prior to the accident. RX.1. pg.18. Given the advanced arthritis, it was expected that Petitioner's condition would wax and wane. *Id.* He noted that

arthritis can be aggravated by daily activities. He recommended total knee replacement, but noted that Petitioner was going to need a total knee replacement regardless of the injury. RX.1. pg.26.

On January 27, 2012, Mr. Rice underwent a left knee arthroscopy and partial medial meniscectomy. There was no discernible ligamentous laxity. Dr. Hill testified that the tear was small and frayed, and did not have a sharp edge. PX.6. pg.36. He testified that fraying could be indicative of an acute injury or something that could have occurred over time. PX.6. pg.37. His opinion that the tear was caused by the accident was based on Petitioner's history. He had a complex tear of the posterior horn of his medial meniscus which was excised. PX.2.

On February 6, 2012, Petitioner was seen by Dr. Hill who noted Petitioner had full range of motion of his knee with a mild knee effusion. PX.2.

On February 21, 2012, Dr. Nelson authored an addendum to his January 10, 2010 IME. He opined the accident did not result in the loose bodies. The mechanism of injury was more consistent with arthritis in the patellofemoral joint and was causing the popping sensation. The small tear could have been caused at any time during normal activities such as weigh bearing or walking and twisting during the summer of 2011. His subjective complaints were consistent with grade 4 arthritis in the patellofemoral joint which was the primary symptom generator. RX.1.

On March 5, 2012, Petitioner reported to Dr. Hill that his knee was improving. He had a fairly normal gait and lacked 10 degrees of full extension. He had some diffuse tenderness but no knee effusion. Dr. Hill noted that Petitioner undoubtedly will be a candidate for total knee arthroplasty in the near future. PX.2.

On March 28, 2012, Dr. Hill authored a report to Petitioner's attorney. He opined that Petitioner had some post-traumatic arthritic changes of his left knee. He further opined that Petitioner's work accident caused the tear to his left medial meniscus as it was not present during the May 10, 2011 surgery. The future prognosis was guarded as the new injury will cause a further acceleration of arthritic problems in his left knee. At some point he will be a candidate for total knee arthroplasty. He opined that the work injury caused a new tear of the medial meniscus. PX.2.

Dr. Hill testified that the Petitioner is a candidate for total knee replacement based on the degenerative changes and the prior procedure performed. PX.6. pg.22. He opined that Petitioner's accident aggravated his current condition. While he had prior issues with his knee, he had more menisci damage that aggravated his arthritic changes. PX.6. pg.23.

On April 4, 2012, Petitioner was seen by Dr. Hill. Petitioner recently started physical therapy and complained of weakness and discomfort, but was much better when compared to his pre-operative status. He had a normal gait and lacked 10 degrees of full extension. He had diffused tenderness of the left knee. PX.2.

On April 13, 2012, the physical therapist from AthletiCo noted Petitioner was getting frustrated because he felt like his progress was good, but he still had stiffness with walking. PX.3.

On April 24, 2012, the physical therapist noted Petitioner felt much better and reported decreased stiffness and an increased ability to walk without limping. PX.3.

On May 11, 2012, the physical therapist from AthletiCo noted Petitioner was seeing major improvement over the last two months. He claimed to no longer be limping and thought he may be able to return to work. PX.3.

On May 14, 2012, Petitioner reported to the physical therapist that he had increased pain and tenderness to the posterior access of the knee. On May 16, 2012, Petitioner reported a lot of pain. He claimed that he did not do anything out of the ordinary and was frustrated with the pain he was experiencing. PX.3.

On June 8, 2012, Petitioner was seen at AthletiCo and reported that he no longer had pain. His only limitation was stiffness. He had stiffness in the morning that decreased when he started working. However, he stated that with increased stiffness, he was not sure he could return to work. PX.3.

Petitioner was seen by Dr. Raju Ghate on June 26, 2012 for left knee pain that had been present for about a year. He had constant anterior knee pain that was 8 out of 10. He had pain when he walked. Examination revealed that he walked with an antalgic gait and his range of motion of the left knee was 5-90 degrees. He had a stable ligamentous exam and no effusion. He had patellofemoral grinding. The x-ray of the left knee revealed loss of joint space with osteophyte formation and subchondral sclerosis. The assessment was left knee degenerative joint disease. PX.4. He recommended total knee replacement.

On June 30, 2012, the physical therapist from AthletiCo authored a letter to Dr. Hill noting Petitioner had decreased pain overall, but still had decreased range of motion and endurance. Petitioner was worried that he could not return to work. Petitioner was frustrated with his left knee and its position. He demonstrated improvement with strength, range of motion and pain. He still had limited ability to complete squatting and crouching secondary to increased pain with knee flexion past 100 degrees. It was noted that all objective measurements were consistent with those taken on April 30, 2012. This was secondary to the patient not showing up for his final appointment on June 11, 2012. He was discharged from physical therapy as he plateaued. PX.3.

On July 13, 2012, Dr. Hill noted Petitioner completed physical therapy and was still complaining of intermittent swelling and pain in his left knee. Examination revealed that he lacked 10 degrees of full extension. He had medial joint line tenderness with crepitus. He was

diagnosed with post left knee arthroscopy, partial medial meniscectomy and degenerative arthritis of the left knee. PX.2.

Petitioner testified that he has been in a lot of pain since the accident. He manages his pain with Norco. He has not been able to work since the accident. It is hard for him to walk up stairs and he cannot walk long distances. T.31. He would like to undergo the total knee replacement. T.32.

The Commission finds that the Petitioner failed to prove that his left knee condition is causally related to his November 7, 2011 work-related accident. The evidence establishes that the Petitioner had advanced arthritis in his left knee. On one prior occasion, the Petitioner sustained injury to his left knee as the result of getting out of a chair. He also underwent two prior surgeries. Prior to his work-related accident, he was noted to have an antalgic gait, medial tenderness and he lacked 10 degrees of full extension of the left knee. On October 10, 2011, Petitioner sought treatment for his left knee.

The Petitioner then sustained an accident on November 7, 2011. The medical record establishes that he had pain and swelling, and tenderness to the medial and lateral joint line. The Petitioner underwent left knee arthroscopy on January 27, 2012. Dr. Hill opined the tear was causally related to the accident. However, Dr. Hill noted the fraying could be indicative of either an acute injury or a degenerative condition. Dr. Hill examined the Petitioner on April 4, 2012. The examination of the left knee revealed a normal gait though he lacked 10 degrees of full extension. He had diffused tenderness of his left knee. Petitioner was then discharged from physical therapy on June 30, 2012 as he had plateaued. On July 13, 2012, Dr. Hill noted that Mr. Rice still had pain and swelling. He lacked 10 degrees of full extension of the left knee and had medial joint line tenderness. The diagnosis was left knee degenerative arthritis.

The Commission finds the fraying and the need for the surgery to be casually related to the accident. However, the Commission finds that the Petitioner returned to his pre-injury condition as of June 30, 2012. The examination findings from May 10, 2011 through October 10, 2011 are virtually identical to those beginning on March 5, 2012. Prior to the accident, the Petitioner had diffused tenderness, pain and he lacked 10 degrees of full extension of the left knee. On October 10, 2011, Petitioner had a normal gait and was diagnosed with degenerative arthritis of the left knee. Following the accident, various examinations revealed that Petitioner lacked 10 degrees of full extension of the left knee and had diffused tenderness. On April 4, 2012, his gait was normal. As of June 13, 2012, Petitioner's diagnosis was degenerative arthritis of the left knee, which is the same diagnosis from his October 10, 2011 examination. Therefore, the Commission finds that the Petitioner's condition returned to its pre-existing state as of June 30, 2012 and is no longer causally related to his work-related accident of November 7, 2011.

The Commission further finds that the Petitioner is not entitled to total knee replacement as recommended by Dr. Hill. Dr. Hill noted that the need for the replacement was based on Petitioner's degenerative condition and prior surgeries, along with the accident. However, Dr.

Nelson was of the opinion that Petitioner was going to need total knee replacement regardless of the injury and the surgery is not related to the accident. The Commission finds Dr. Nelson's opinion more persuasive. Dr. Nelson's opinion is supported by the fact that the Petitioner had Grade 4 degenerative left knee arthritis and had two prior surgeries. Therefore, the Petitioner is not entitled to total left knee replacement.

The Commission further modifies the Arbitrator's decision and finds that the Petitioner is entitled to TTD from November 7, 2011 through June 30, 2012.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 30, 2013, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $938.67 per week for a period of 33-5/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that 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 nterest 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 $31,700.00. 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: JAN 10 2014

Michael P. Latz

Mario Basurto

David L. Gore

MPL/tdm
12-12-13
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NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0013

RICE, ANTONIO
Employee/Petitioner

Case# **11WC043591**

CHICAGO CONSTRUCTION SPECIALISTS INC
Employer/Respondent

On 1/30/2013, 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:

0222 GOLDBERG WEISMAN & CAIRO LTD
DANIEL P SULLIVAN
ONE E WACKER DR 39TH FL
CHICAGO, IL 60601

2912 HANSON & DONAHUE LLC
KURT E HANSON
900 WARREN AVE SUITE 3W
DOWNERS GROVE, IL 60515

14IWCC0013

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
ARBITRATION DECISION
19(b)

ANTONIO RICE
Employee/Petitioner

v.

CHICAGO CONSTRUCTION SPECIALISTS, INC.
Employer/Respondent

Case # 11 WC 43591

Consolidated cases: __

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **KURT CARLSON**, Arbitrator of the Commission, in the city of **CHICAGO**, on **NOVEMBER 27, 2012.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **11/07/2011**, 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 $**73,216.00**; the average weekly wage was $**1,408.00**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **1** dependent children.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $ 938.67 /week for 55 1/7 weeks, commencing 11/8/2011 through 11/27/2012 , as provided in Section 8(b) of the Act.

Respondent shall authorize a total knee replacement with Dr. Raju Ghate, and Respondent shall authorize all attendant pre-surgical work-ups and post-surgical follow-ups necessitated by this surgery pursuant to Section 8(a) of the Act.

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

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

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

Signature of Arbitrator

01-29-13
Date

ICArbDec19(b)

JAN 30 2013

STATEMENT OF FACTS

Petitioner Antonio Rice was working for Respondent Chicago Construction Specialists, Inc. He was working as a construction laborer. Prior to working for Respondent, Petitioner worked for Walsh Construction, as well as other places. He has been working as a construction laborer since 1986. As of November 7, 2011—the date Petitioner is claiming the work accident at issue—Petitioner had been working for Respondent for one day.

Petitioner reported to work the night shift on November 7, 2011; he arrived to start his shift at approximately 6:00 p.m. Petitioner testified that he received this job through his union; he did not apply directly, but was instead referred to this job. Petitioner understood that this particular job was demolition: he was to help clear a demolished building near the Merchandise Mart in Chicago. Petitioner arrived, spoke with the job foreman, and was put to work.

Petitioner initially started in the basement of the area where debris was to be cleared. He had to push a large, wheelbarrow-like object that he described as a "gondola" to an over-sized dumpster. The gondola was plastic and light when empty. It was approximately 4' tall, 4' wide and 5' long. However, when the gondola was full, it would weigh approximately 80-90 lbs. He would push the full gondola about 50 feet to the dumpster, where he'd empty the debris. He would then push the empty gondola back and replace it with another full gondola to be emptied. He completed this task 40-50 times and was in the basement for about 3 hours. Petitioner then went on break.

Petitioner switched to a different crew later in the shift. He was upstairs. He would help load debris into the gondola and push it about 100 feet to the elevator. He would then receive an empty gondola and push it back to the debris piles to be loaded.

Immediately prior to Petitioner's claimed injury, he was pushing a full gondola weighing approximately 90 lbs. Not only was the gondola full, but also there was half of a wall laying flat on top of the debris. While pushing the gondola, Petitioner felt a pop in his left knee. He immediately reported this injury and immediately sought medical treatment.

Petitioner treated initially at Northwestern Hospital Emergency Room, where he was seen at approximately 1:00 a.m. on 11/8/2011. (Petitioner's Exhibit 1, Medical Records from Northwestern Memorial Hospital). The treatment notes indicates a "45 yo man presenting with left knee pain (moderate, constant, non-radiating since earlier today). She [sic] was pushing a heavy item at his construction job when he felt and heard a pop from his left knee. He has since noted swelling and has had difficulty bering [sic] weight to the area." (PX 1). Petitioner was instructed to follow up with Dr. James Hill, with whom he had previously treated for both his left and his right knee. (PX 1).

Subsequent to this accident, Petitioner saw Dr. James Hill on 11/21/11. (Petitioner's Exhibit 2, Medical Records from Dr. James Allen Hill). On that date, Dr. Hill indicated that he believed that a new loose body may have developed. (PX 2). Petitioner next saw Dr. Hill on 12/21/2012, where Dr. Hill recommended a left knee arthroscopy. (PX 2). Petitioner underwent a left knee arthroscopy, partial medial meniscectomy and osteophyte excision on 1/27/2012. (PX 2). Dr. Hill subsequently saw Petitioner on 2/6/2012, 3/5/2012, 4/4/2012, and 6/13/2012. (PX 2). Petitioner also completed a post-operative physical therapy regimen consisting of approximately 31 visits from 3/31/12 – 5/31/12. (Petitioner's Exhibit 3, Medial Records from Athletico Physical Therapy, Berwyn, IL).

On the 6/13/2012 visit, Dr. Hill noted that Petitioner was not pleased with his progress, and Dr. Hill referred Petitioner to Dr. Raju Ghate. (PX 2). Petitioner saw Dr. Ghate on 6/26/2012. (Petitioner's Exhibit 4, Medical Records from Dr. Raju Ghate). Dr. Ghate recommended that Petitioner undergo a total knee replacement. (PX 4). Petitioner stated that he currently has difficulty walking and walking upstairs. Petitioner testified that he believes this procedure would help him, and that should the IWCC authorize this procedure, he would undergo it.

Petitioner also testified that he has had previous problems with his knee. Prior to this accident, Petitioner stated that he had two previous surgeries in his left knee and two previous surgeries in his right knee. The medical evidence presented supports this. Petitioner had scopes on his right knee in November 2006 and December 2009. (*See* PX 1). Petitioner also had a scope on his left knee in December 2010. (*See* PX 1). Most recently, Petitioner underwent a left knee arthroscopy with lateral chondroplasty and meniscal debridement/repair on 5/11/2011. (PX 1).

Petitioner testified that he has not walked normally since his first knee surgery in 2006. He stated that he walks with a slight limp and probably was walking with a limp on 11/7/2011. There is no dispute he is bowlegged.

Respondent presented three witnesses in this matter: construction supervisor Katarino Huizar, construction laborer Osmen Mendelose and Secura claims specialist Paul Barkow. Mr. Huizar testified that he worked with Petitioner on 11/7/2011 and that Huizar was primarily in a machine knocking down walls. He stated that he did not work that close to Petitioner. However, Huizar noted that he saw Petitioner walking a couple of different times with a limp. Huizar did not witness Petitioner's claimed accident. Mr. Huizar never saw or spoke with Petitioner prior to 11/7/2011 and has not seen or spoken to Petitioner after 11/7/2011, other than testifying.

Mr. Mendelose testified that he was working as a construction laborer. He also had never seen nor spoken to Petitioner prior to 11/7/2011, and has not seen or spoken to Petitioner after 11/7/2011, other than testifying. Mendelose was knocking down drywall and compiling the debris to be loaded into a gondola and taken down the elevator to the dumpster. Mendelose also indicated that he was not working that close to Petitioner and only saw him a few times. Mendelose stated that Petitioner "more or less" was walking with a limp, but stressed that Petitioner just seemed "tired." Mendelose did not witness Petitioner's claimed accident.

Mr. Barkow testified that he works for Secura Insurance, and he is the claims specialist that was assigned to Petitioner's case. He testified that he had a conversation with Petitioner subsequent to Petitioner reporting an injury. In that conversation, Barkow claims that Petitioner denied to Barkow that Petitioner had had any prior knee problems or knee surgeries. Barkow's investigation led him to discover that Petitioner did have prior knee problems. This discrepancy was one significant factor that resulted in Barkow denying Petitioner's claim. However, Barkow's investigation revealed no other discrepancies in Petitioner's statements. To date, no benefits have been paid on this claim to Petitioner.

In rebuttal, Petitioner testified that he has no independent recollection of working with, seeing, or speaking to either Mr. Huizar or Mr. Mendelose. He also testified that he told Mr. Barkow about his previous knee issues when Barkow contacted him after Petitioner filed his claim.

CONCLUSIONS OF LAW

The Arbitrator adopts the above findings of material facts in support of the following conclusions of law:

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

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

An employee's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (West 2006). Both elements must be present at the time of the claimant's injury in order to justify compensation. *Ill. Bell Tel. Co. v. Indus. Comm'n*, 131 Ill.2d 478, 483 (1989). "Arising out of the employment" refers to the origin or cause of the claimant's injury. *Caterpillar Tractor Co. v. Indus. Comm'n.*, 129 Ill.2d 52, 58 (1989). "In the course of the employment" refers to the time, place, and circumstances under which the claimant is injured. *Scheffler Greenhouses, Inc. v. Indus. Comm'n*, 66 Ill.2d 361, 366 (1977). There is no dispute regarding the second element, as all witnesses testified that Petitioner was present at the job site during the night shift on November 7, 2011.

"For an injury to 'arise out of the employment,' its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Johnson v. Indus. Comm'n.*, 2011 IL App (2d), 100418, ¶ 20. An injury will arise out of employment if the employee performs acts he was instructed to perform by his employer, or acts that the employee might reasonably be expected to perform incident to his assigned duties. *Id.*

Petitioner testified that his duty was to clear debris as part of a construction team demolishing buildings. He used the gondola to push a load weighing approximately 80-90 lbs. when he heard his knee pop. The only witnesses present, Mr. Huizar and Mr. Mendelose, testified that they were not near Petitioner when this happened.

The true dispute in this case is whether or not there exists a causal connection between the employment and the accidental injury, thus not "arising under" Petitioner's employment. Both Petitioner and Respondent have conflicting medical opinions as to whether or not Petitioner's current condition of his left knee is causally connected to his claimed work accident of 11/7/2011. Petitioner offers the opinion of Petitioner's treater, Dr. James Allen Hill, via narrative report and deposition. (*See* Petitioner's Exhibit 6, Deposition of Dr. James Allen Hill). Respondent offers the opinion of Section 12 examiner, Dr. Douglas Dirk Nelson via independent medical examination report, addendum report, and deposition. (*See* Respondent's Exhibit 1, Deposition of Dr. Douglas Dirk Nelson).

Dr. Hill testified that he first saw Petitioner to treat his left knee on 12/9/2010, where Petitioner reported that his knee popped when getting out of a chair. (PX 6, 8:2-11). Dr. Hill performed a left knee arthroscopy on Petitioner in December 2010. (PX 6, 9:17-18). Petitioner underwent post-operative physical therapy. (PX 6, 10:14-17). Petitioner had another episode in April 2011, which resulted in a second arthroscopy to the left knee on 5/10/2011; Dr. Hill found additional damage to the knee. (PX 6: 10:3-8, 11:3-12). Petitioner underwent additional post-operative physical therapy, but received a cortisone injection to the left knee on 7/18/2011. (PX 6, 13:6-8, 14:24-15:1-3). Petitioner saw Dr. Hill again on 8/29/2011, and Petitioner's condition had improved. (PX 6, 14:7-14). Dr. Hill treated Petitioner on 10/10/2011, where Dr. Hill indicated that Petitioner could work full duty as a construction worker. (PX 6, 14:19-15:6).

Subsequent to this accident, Dr. Hill treated Petitioner on 11/21/2011, where Petitioner reported that his knee gave out on him while pushing a cart at work. (PX 6, 15:7-17). Petitioner was experiencing pain, giving

way and swelling of the left knee, which were symptoms that were not present on his 10/10/2011 visit. (PX 6, 15:18-16:5). Dr. Hill recommended that Petitioner undergo a third left knee scope, which Petitioner underwent on 1/27/2012. (PX 6, 18:7-20). Of note, Dr. Hill testified that there was a small new tear in Petitioner's left knee that was not present as of his 5/10/2011 arthroscopy. (PX 6, 19:20-23). Dr. Hill identified the new tears via photographs that he took of Petitioner's left knee during surgery. (PX 6, dx 2). Dr. Hill eventually referred Petitioner to Dr. Raju Ghate for examination to see whether or not Petitioner needed a total knee replacement. (PX 6, 22:1-5).

Dr. Hill opined that Petitioner's claimed accident of November 7, 2011 is causally connected to his current condition in that it aggravated his pre-existing problems. (PX 6 23:6-12) It aggravated Petitioner's condition based on Petitioner's having damaged more menisci. (PX 6, 23:15-20). Dr. Hill also opined via narrative report that the work accident of November 7, 2011 caused Petitioner to tear his left medial meniscus which was not present for his May 10, 2011 surgical procedure. (PX 6, dx 3). Dr. Hill indicated that Petitioner had not worked since the date of accident and was still off work; his prognosis at that time was guarded. (PX 6; dx 3).

Dr. Douglas Dirk Nelson conducted an independent medical examination of Petitioner on 1/10/2012. (RX 1, 8:17-19). Dr. Nelson conducted a physical examination of Petitioner, as well as reviewed various medical records (*See generally*, RX 1). Based on his physical examination and records review, Dr. Nelson opined to a reasonable degree of medical and surgical certainty, that the incident of 11/7/2011 was not causally connected to Petitioner's current condition. (RX 1, 18:5-12). Dr. Nelson based this opinion on the fact that Petitioner complained of pain and popping prior to 11/7/2011 (RX 1, 18: 10-18). Dr. Nelson characterizes this incident was a "periodic flare-up" of Petitioner's pre-exisiting degenerative arthritis. (RX 1, 18:19-19:9).

It is the Petitioner's burden to establish a causal connection between an injury and his employment. *Caterpillar Tractor Co. v. Indus. Comm'n*, 83 Ill.2d 213, 216 (1980). Petitioner, through his treating medical records as a whole, plus the narrative report and deposition of Dr. James Allen Hill, has established a prima facie case of causal connection. First, Dr. Hill indicates that Petitioner suffered new symptoms that were not present on 10/10/2011, which Petitioner reported on his 11/21/2011 visit. Second, Dr. Hill indicates that Petitioner suffered a new tear that was present on 1/27/2012 that was not present on 5/10/2011.

It is apparent that Respondent disputes causal connection based on Dr. Douglas Dirk Nelson's opinion. Dr. Nelson essentially opines that the popping that Petitioner felt when he was pushing the 80-90 lb. cart was a flare-up of Petitioner's pre-existing arthritic degenerative condition and, therefore, not causally connected to his 11/7/2011 claimed accident. Dr. Nelson bases his opinion on one physical examination, records review, as well as two eyewitness statements indicating that they saw Petitioner limping in some time frame prior to the claimed accident.

Dr. Nelson agrees with Dr. Hill: there was certainly a new tear that occurred sometime between 5/10/2011 and 1/27/2012. Dr. Hill opines that the tear occurred as a result of Petitioner's pushing an 80-90 lb. gondola, and Dr. Nelson opines that is could have occurred at any time as a result of any activity (e.g., "walking, weight-bearing"). Dr. Nelson even indicates that the very activity that Petitioner was engaging in at the time of the accident could have caused his injury (RX 1, 32:16-23).

Based on the preponderance of the evidence presented, the Arbitrator finds that there exists a causal connection between Petitioner's claimed accident of 11/7/2011 and his current condition. Dr. Hill's opinion causally connecting the claimed accident to Petitioner's current condition, based on new symptoms and a new tear, carries more weight than Nelson's opinion.

K. **Is Petitioner entitled to any prospective medical care?**

Petitioner's treating surgeon, Dr. James Allen Hill, recommended that Petitioner see Dr. Raju Ghate. (*See* PX 2). Dr. Ghate recommended, based on his examination of Petitioner, that Petitioner undergo a total knee replacement. (PX 4).

Respondent's Section 12 examiner agrees: "If Mr. Rice had seen a surgeon that recommended a total knee replacement, I would agree with that recommendation. I mean based on diagnosis and review of records that I performed we already documented that he has grade four arthritis throughout his knee. So I agree completely that that's probably the next treatment for this gentleman." (RX 1 at 27:3-10).

There is no real dispute as to the reasonableness and necessity of this course of medical treatment. Because the threshold issues of accident and causal connection have been satisfied, it is clear, based on all three doctors' opinions, that a total knee replacement is appropriate prospective medical care.

Respondent shall authorize a total knee replacement with Dr. Raju Ghate, and Respondent shall authorize all attendant pre-surgical work-ups and post-surgical follow-ups necessitated by this surgery pursuant to Section 8(a) of the Act.

L. **What temporary benefits are in dispute?—*TTD***

Petitioner testified that he has not worked since 11/7/2011. Dr. Hill's report indicates that was still off work as of March 28, 2012 and was continuing to have ongoing treatment, which included a third arthroscopy of the left knee. Petitioner regularly and consistently treated with Dr. Hill, who eventually referred Petitioner to Dr. Ghate; Dr. Ghate has recommended a total knee replacement.

The Arbitrator notes that Dr. Hill's medical records do not explicitly take Petitioner off of work for every visit. However, finds that based on the totality of the circumstances—medical records showing consistent treatment by Petitioner, and the satisfaction of all other issues—that Petitioner is entitled to total temporary disability benefits from November 7, 2011 through the hearing date of November 27, 2012.

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify Down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Evangelina Martinez,

Petitioner,

vs. NO: 12 WC 25867

Alternative Staffing,

14IWCC0014

Respondent.

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 issue of causal connection for temporary total disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

After considering all of the evidence, we find that Petitioner is entitled to temporary total disability benefits from August 7, 2012 through August 20, 2012. Following the July 12, 2012 accident, Petitioner was provided with light duty restrictions from Respondent's occupational medicine provider and subsequently from Petitioner's treating physician, Dr. Barnabas. On August 7, 2012, a pain management provider, Dr. Chunduri, examined Petitioner at the request of Dr. Barnabas. Dr. Chunduri diagnosed an L5-S1 disc herniation and right leg radiculitis. Dr. Chunduri performed a series of lumbar epidural steroid injections commencing on August 8, 2012. Dr. Chunduri issued an off-work slip for the period of August 7, 2012 through August 20, 2012. Dr. Chunduri failed to reissue Petitioner's off-work slip after August 20, 2012; in fact,

14IWCC0014

Petitioner reported significant functional improvement following the first injection and near-total resolution of her symptoms with the final injection. There is no medical testimony and we find no credible evidence in the record that Petitioner was temporarily totally disabled from all employment after August 20, 2012. We do not find the off-work slips contained in the records of Dr. Barnabas to be reliable. We note that none of the assertions made on the slips are corroborated by testimony or medical records and furthermore that the slips themselves bear errors negating their reliability.

Therefore, we modify the award of the Arbitrator as stated above and otherwise affirm and adopt the decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $265.67 per week for a period of two weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

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

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

DATED: JAN 15 2014
RWW/plv
o-12/11/13
46

Ruth W. White

Charles J. DeVriendt

Michael J. Brennan

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

MARTINEZ, EVANGELINA
Employee/Petitioner

Case# **12WC025867**

ALTERNATIVE STAFFING
Employer/Respondent

14IWCC0014

On 6/27/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

2356 DONALD W FOHRMAN & ASSOC
JACOB BRISKMAN
1944 W CHICAGO AVE
CHICAGO, IL 60622

0481 MACIOROWSKI SACKMANN & ULRICH
JEREMY SACKMAN
10 S RIVERSIDE PLZ SUITE 2290
CHICAGO, IL 60606

14IWCC0014

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
ARBITRATION DECISION
19(b)

EVANGELINA MARTINEZ
Employee/Petitioner

v.

ALTERNATIVE STAFFING
Employer/Respondent

Case # 12 WC 25867

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **December 21, 2012 & January 14, 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. ☐ 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 _____

14IWCC0014

FINDINGS

On the date of accident, **7/12/12**, 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 conditions of ill-being of his low back, right elbow and right hip *are* causally related to the accident.

In the year preceding the injury, Petitioner earned an average weekly wage of **$265.67.**

On the date of accident, Petitioner was **40** years of age, *married* with **2** dependent children.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$500.00** as a permanency advance, for a total credit of **$500.00**.

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

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of **$265.67**/week for **19-4/7** weeks, commencing **08/07/12** through **12/21/12**, as provided in Section 8(b) of the Act.

The Arbitrator has deferred, to a later hearing, the issues of reasonableness, relatedness and necessity of past and prospective medical care.

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

June 26, 2013
Date

ICArbDec19(b)

JUN 27 2013

Evangelina Martinez v. Alternative Staffing, Inc.
12 WC 25867

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Arbitrator agreed to hear this case on the issues of causal connection and TTD benefits only, and to defer to a later hearing the issues of the reasonableness and necessity of past and prospective medical care.

In support of his decision with regard to issue (F) "Is Petitioner's current condition of ill-being causally related to the injury?", the Arbitrator makes the following findings of fact and conclusions of law:

The Arbitrator finds that Petitioner's conditions of ill-being of her low back, right elbow and right hip are causally related to the accidental injury of July 12, 2012.

Despite Dr. Chunduri's August 7, 2012 chart note that Petitioner told him that three days after this injury, she started also feeling pain in her neck and right shoulder, the Arbitrator specifically finds that any condition of ill-being of her neck or cervical area, if such exists, is not related to the accidental injury of July 12, 2012. The Arbitrator bases this finding on the absence of cervical complaints/ symptoms at the time Petitioner treated with the Concentra staff and with Dr. Barnabas, as well as on Dr. Levin's September 6, 2012 cervical examination of Petitioner.

At the time of the injury, Petitioner was employed by Respondent as a temporary staffing employee. She had been employed in that capacity for approximately ten years. Petitioner testified that on July 12, 2012, she was placed by Respondent to work at Assemblers, Inc. Petitioner had been working at this placement for a number of months prior to July 12, 2012. Petitioner's job assignments included popping and packing popcorn.

It is not disputed that on July 12, 2012, Petitioner and Respondent were operating under the Illinois Workers' Compensation Act and that their relationship was one of employee and employer. Respondent has stipulated to accident.

On the afternoon of July 12, 2012, while at Assemblers, Inc. and on her way to the restroom, Petitioner slipped and fell backwards and on her right side. Petitioner immediately notified her supervisor and was sent to Concentra Medical Center (RX2). She complained of right hip pain, right elbow pain and lower back pain. Petitioner was seen on four separate occasions at Concentra Medical Center (7/12, 7/16, 7/19 and 7/23) (RX2). Gregory S. O'Neill, M.D., examined Petitioner on three occasions and each time he examined her, a translator, Vanessa, was present. Ashley E. Loos, D.P.T., examined Petitioner on one occasion.

X-rays of the right hip were interpreted as showing no fracture and no dislocation. However, Dr. O'Neill advised Petitioner that the x-rays would be sent to a radiologist for a formal review and written report.

X-rays of the right elbow were interpreted as showing no evidence of dislocation. No effusion or posterior fat pad sign was seen, but there was some irregularity in the olecranon process. No radial head fracture was seen.

Each time she treated at Concentra, she complained of lower back pain and right hip pain. There is no history in the Concentra records of any lower extremity paresthesia, sensory loss, numbness or radicular symptoms. Yet, each time she visited Concentra, her bilateral, straight leg-raising test results were found to be positive. (RX2)

The Arbitrator takes judicial notice that the exam findings "Negative bilateral leg raise to 60 degrees" is not the same thing as a negative result for the bilateral straight leg raising test.

With regard to Petitioner's neck/cervical region, Dr. O'Neill recorded the following examination results:

7/12/12 Visit

NECK: No cervical spine tenderness. Normal range of motion.

7/16/12 Visit

Cervical: Spurlings test is negative. No pain on motion. No swelling. No tenderness. Full active range of motion with normal extension, flexion, axial rotation and lateral flexion.

7/23/12 Visit

Cervical: Spurlings test is negative. No pain on motion. No swelling. No tenderness. Full active range of motion with normal extension, flexion, axial rotation and lateral flexion.

When Ashley Loos, D.P.T., saw Petitioner, she recorded that her chief complaint was pain in the low back, primarily on the right, but no complaint of radiating symptoms. Ms. Loos noted, *inter alia*, the following:

JOINT MOBILITY

Unable to assess secondary to pain response, superficial tenderness C7-L5/S1

PALPATION

Diffuse tenderness, pain to light touch of C7-L5/S1 spinal regions, pain to light touch over area of sacrum, PSIS, bilateral S1 joint line.

Waddell's Testing

Waddell's overreaction positive.
Waddell's superficial tenderness positive.

Dr. O'Neill's assessment on July 23, 2012 was (1) Lumbar strain, (2) Hip contusion (the patient's overall clinical condition has improved.), and (3) Elbow contusion (condition has resolved).

Petitioner testified that at that point, Concentra only provided her with medication and one session of physical therapy. She testified that Concentra told her that she was fine.

Petitioner further testified that at that time, she saw a television ad about medical/legal help for those who have suffered a work injury.

On July 24, 2012, Petitioner chose to begin treating with Ravi Barnabas, M.D. She treated with him through November 30, 2012. Throughout Dr. Barnabas' records, he makes no mention of any neck pain or cervical condition of ill-being. (PX1)

An MRI was administered on July 24, 2012. Such images were interpreted, in relevant part, as follows: at the L5-S1 level, there is a 3-4mm subligamentous broad-based posterior protrusion/ herniation indenting the thecal sac without significant spinal stenosis. Mild bilateral neuroforaminal narrowing was seen, exacerbated by mild facet arthrosis and some ligamentum flavum hypertrophy. (PX1).

On August 7, 2012, upon referral from Ruben Bermudez, D.C., P.A., Petitioner saw Krishna Chunduri, M.D. Dr. Chunduri recorded that she had complaints of pain "primarily in her lower back radiating down her right lower extremity as well as right elbow pain and neck pain since a work-related accident on 07/12/12 . . . [s]he was on her way to lunch and slipped on a wet floor, falling backwards to her right side. She states she suddenly started having pain, a shooting, burning pain in her lower back with numbness and tingling and pain radiating down her right lower extremity down to her heel. She states that three days after this injury, she started also feeling pain in her neck and right shoulder." Upon examination of her cervical spine, Dr. Chunduri found: "No cervical tenderness. Normal flexion, extension, and rotation of cervical spine." There is no mention of any upper extremity radicular symptoms. The doctor found, *inter alia*, Petitioner's straight leg raising test to be positive on the right and negative on the left. Dr. Chunduri offers the following diagnoses: (1) L5-S1 disk herniation with right radiculitis and lumbago (2) Cervicalgia, and (3) Right elbow pain. So, despite the fact that there were no examination findings with regard to the cervical spine, Dr. Chunduri diagnosed cervicalgia. Dr. Chunduri administered a series of injections to Petitioner's lower back. (PX1)

According to Petitioner, none of the injections provided lasting relief.

On August 28, 2012, Dr. Chunduri noted that "her neck pain has increased since the initial presentation." (PX1)

Petitioner was seen by her physician, Dr. Chunduri on September 4, 2012. (RX5) On this date, the Petitioner advised Dr. Chunduri that overall her pain had significantly diminished. "She states that

she no longer has any low back pain where she initially complained." "She also states that her right lower extremity numbness has resolved." "She states that she only has pain the mid-back radiating up the base of her neck." "She has no other complaints." (RX5)

On examination, Dr. Chunduri had the following findings: no lumbar tenderness to palpation; mildly decreased flexion, extension and rotation; straight leg raising is negative bilaterally; knee extensions were 5/5 bilaterally; patellar flexion 5/5 bilaterally; deep tendon reflexes were 2+ bilaterally; there is no S1 joint tenderness. The doctor indicated that the pain originating from the L5-S1 disc appeared to have resolved with the injections. She no longer had radicular symptoms. She now had pain and complaints in a different area radiating into the neck of a myofascial nature. She was discharged from the pain clinic and was to follow up as needed. (RX5)

When questioned about Dr. Chunduri's findings on September 4, 2012, Petitioner denied the majority of such findings and testified that she was still in significant pain.

At the request of Respondent, and pursuant to Section 12 of the Act, orthopedic surgeon Mark N. Levin, M.D., examined Petitioner on September 6, 2012. Upon examination, Dr. Levin found, inter alia, the following: "Cervical spine exam shows that when one presses the earlobe, she complains of neck pain. Releasing the earlobes initially she said it was better, but then upon repeat exam stated that upon releasing her earlobes gave her no improvement. She has diffuse discomfort over the trapezius bilaterally with no cervical or trapezial spasm. She has full range of motion of the cervical spine. She has diffuse discomfort when anyone palpates over the thoracic spine with no thoracic spasm." (RX8)

Dr. Levin also wrote the following: "Based upon this patient's history, physical exam, radiographic studies, and medical records, this patient has subjective complaints of low back and right buttock pain after an alleged fall at work . . . In regards to her right arm, she does appear to be at maximum medical improvement. (RX8)

In a report dated October 3, 2012, Scott E. Lipson offered the following interpretation of the EMG/NCV of Petitioner's right lower extremity: "Lumbago – 724.2 (Primary), Normal study. There is no electrophysiologic evidence for right lumbosacral plexopathy, mononeuropathy or polyneuropathy affecting the right leg. Nevertheless, she developed back pain only after her fall and whatever is causing her back pain clearly developed as a result of her fall. Note is made that this study can be entirely normal in cases of pure sensory radiculopathy."

The Arbitrator notes that neither Scott E. Lipson's credentials nor the graphs that support the EMG/NCV results were included in his report.

Petitioner was later referred to Michel H. Malek, M.D., a neurosurgeon. On November 14, 2012, Dr. Malek diagnosed Petitioner with, *inter alia*, the following: S/P work injury 7/12/12, cervical musculoligamentous sprain/strain, non-radicular neck pain, lumbar musculoligamentous sprain/strain, lumbar radiculopathy primarily right-sided (clinically in L5-S1 distribution with preponderance of pain), evidence of myelopathy on examination, S/P ESI x3 with Dr. Chunduri with good but partial and temporary response, persistence of symptoms at a level patient not capable or willing to live with and EMG/NCV done 10/3/12 of the right lower extremity was negative electrodiagnostically. Dr. Malek ordered an MRI of the cervical spine. (PX1)

On November 30, 2012, Dr. Barnabas saw Petitioner and recorded the following subjective complaints: "The patient comes in with pain in her lower back, right hip and right elbow with a pain scale of 7/10 in her right hip and 6/10 in the right elbow, and 7/10 in the lower back."

Radiologist George G. Kuritza, M.D., offered the following impression of Petitioner's December 3, 2012, MR images:

(1) At the C3-C4 level, there is a 2-3 mm. focal central posterior disk protrusion/herniation slightly indenting the thecal sac without significant spinal stenosis, nor significant neuro-foraminal narrowing.
(2) At the C4-C5 and C5-C6 levels, mild posterior annular disk bulges slightly indented the thecal sac without spinal stenosis, nor significant neuroforaminal narrowing.
(3) The rest of the cervical spine appeared unremarkable. (PX1)

On December 5, 2012, Dr. Malek performed a discogram at the L3-L4, L4-L5 and L5-S1 levels, fluoroscopy and post-diskogram CT scan of the lumbar spine. (PX1)

At the arbitration hearing, Petitioner testified that since the time she was referred to Dr. Malek, she has seen him because her neck bothers her a lot. She said that he sent her for an MRI of the neck and a discogram of the low back. She further testified that she never injured herself before while working for Alternative Staffing. She testified that she feels a lot of pain and takes a lot of pain pills. She complained of neck and low back pain.

In support of his decision with regard to issue (L) "What temporary benefits are in dispute?" (TTD), the Arbitrator makes the following findings of fact and conclusions of law:

In the Request for Hearing, Petitioner claimed to be entitled to a TTD period from "8/7/12 through 12/21/12, representing 19.4 weeks." (AX1) Respondent disputed such claim and wrote, with regard to Petitioner's entitlement to a TTD period: "*none - π released for light duty work which was offered and available.*" (AX1)

Dr. Barnabas released Petitioner to return to work with light-duty restrictions on July 24, 2012 (PX1).

Petitioner testified that she returned to work on or about July 30, 2012 (PX2). She testified that after an hour of packing soup containers on the soup line, she felt pain in her back. After two hours of work that day, Petitioner testified, she "couldn't support them." Axel then told her that if she couldn't tolerate the pain, she should leave. Petitioner testified that she attempted to return to work on August 1, 2012, but could not tolerate the pain after packing for awhile and had to leave.

On August 7, 2012, Krishna Chunduri, M.D., took Petitioner completely off work and prescribed a series of injections. (PX1)

Petitioner testified that the injections were successful in alleviating the pain in her lower back temporarily, but that the pain returned each time.

On September 6, 2012, Petitioner attended a Section 12 examination with Dr. Levin. In his report, Dr. Levin opined: "At the present time, she does appear to be capable of working at least light duty with no repetitive bending, squatting, or stooping activities and just based on objective complaints of pain, should avoid excessive lifting and carrying." (RX8)

In Respondent's Exhibit #9, an addendum report dated December 13, 2012, Dr. Levin amends this last statement in RX8 and replaces the word "objective" with "subjective." Dr. Levin also wrote: "As outlined in my report of September 6, 2012, if she has completed her physical therapy, she should have a baseline functional capacity evaluation with validity measurement and with that information determine the ability to return back to work full duty." (RX9)

In Respondent's Exhibit #10, an addendum report dated December 18, 2012, Dr. Levin wrote: "From an orthopedic standpoint, the patient has had excessive modalities and should have been capable of returning back to work full duty within 3-4 months post injury." (RX10)

Petitioner testified that on the date of the accident, she spoke with Ana, an Alternative Staffing employee, on the telephone. Petitioner admitted, and the records from Concentra confirm, that she was released for work with restrictions of no lifting over ten pounds and no bending.

Petitioner was questioned about whether or not she spoke with Lupe Almaraz, the Alternative Staffing risk manager, on July 13, 2012. Petitioner admitted that she did. Lupe testified that she offered Petitioner a light, sedentary job consistent with the Concentra restrictions to be performed at the Alternative Staffing office. The job was an office job wherein Petitioner would be sorting and highlighting hundreds of applications. Lupe advised Petitioner that she could sit or stand.

Lupe testified that Petitioner was specifically advised it was an office job and she would report to Alternative Staffing.

Petitioner admitted that no physician advised her that she could not perform this job. She just felt that she couldn't and therefore she did not report for work. She also denied that an office job was offered.

Petitioner admitted that on July 16, 2012, she was questioned by the doctor at Concentra as to why she was not working. She denied that she stated that there wasn't any light duty.

The Concentra records reflect that Petitioner advised the facility she was not working as there wasn't any light-duty work available.

The Arbitrator notes that Petitioner's statement was inaccurate. Lupe had advised Petitioner on July 13, 2012, that light-duty, sedentary work available.

Lupe testified that she spoke with Petitioner again on July 17, 2012. Petitioner failed to report for work. When she spoke with Petitioner, she once again advised her that sedentary work was available in the Alternative Staffing office. Petitioner was once again advised that she could stand or sit. Petitioner advised Lupe she would report for work on July 18, 2012.

Petitioner admitted that she did not report for work on July 18, 2012 and testified that she telephoned Lupe and advised her she would not be reporting for work. Lupe denied that she received a telephone call from Petitioner, but indicated that she was aware Petitioner would not be reporting. It turned out that Petitioner spoke with Ana, and not Lupe, and advised Ana that she would not be reporting for work. Petitioner admitted that when she refused to return to work on July 18, 2012, there was no physician who indicated she was incapable of performing the work offered. In fact, the only physician Petitioner had seen released her for work with restrictions. Once again, Petitioner, on her own, refused to accept the job that had been offered.

Petitioner attended physical therapy at Concentra on July 19, 2012. She only attended one physical therapy session at this facility. She once again admitted she had been released for work with restrictions.

Petitioner was asked whether or not, prior to July 25, 2012, she had ever been advised by Alternative Staffing that the light-duty work offered by Respondent was in Respondent's office. Petitioner denied any such offer and testified that the work offered was always at Assemblers.

Petitioner was then shown Respondent Exhibit #6(a), a letter authored by Lupe Almaraz and dated July 18, 2012. That letter, which Petitioner acknowledged receiving, (receipt is confirmed by certified mail – Respondent's Exhibit #6(b)), is clear as to the nature of the job offered. Petitioner was advised that light-duty work was available and offered. The letter confirms the July 17, 2012 conversation in which Petitioner was advised that light-duty work was offered in Respondent's "office". The conversation in which Petitioner accepted that light duty offer was detailed. The fact that Petitioner later telephoned and refused the light-duty job offered was noted. The letter concludes with instructions that Petitioner needs to report to the office for the work assignment. Petitioner was advised to contact the office regarding her intent to remain employed.

Petitioner admitted that she reads Spanish and that she received the letter. She claimed that she was confused as to where the job was to be performed. She denied that she reported to the office on July 25, 2012 and spoke with Lupe.

Lupe credibly testified that Petitioner reported to the Alternative Staffing office on July 25, 2012. Petitioner advised Lupe that she had received the certified letter. Lupe advised Petitioner that light-duty work was available in the Alternative Staffing office and Petitioner was advised that she could sit or stand. Petitioner handed Lupe the ten-pound lifting restriction she received from Alivio. Lupe told Petitioner that this restriction could be accommodated. Petitioner was also advised that she would be "highlighting" employment applications. Petitioner was advised that if she worked, she would be paid and if she did not work, she would not be paid. Lupe testified that Petitioner told her she would not accept the job.

Petitioner admitted that she was released for work with restrictions by Alivio on July 24, 2012 and again on July 31, 2012. (RX#, RX4) Petitioner was asked whether or not she made an effort to perform office work. She claimed that she was never offered office work.

Petitioner was asked if Respondent ever sent her to Assemblers to perform light-duty work for them. Petitioner claimed that on Sunday, July 29, 2012, she had a telephone conversation with Ana.

She claimed that Ana advised her that she should report to Assemblers for light-duty work. Petitioner claimed that Ana gave this assignment after she had spoken with Lupe.

Lupe testified that she did not work on Saturday or Sunday and that it would have been impossible for Petitioner to have spoken with Ana on Sunday July 29, 2912 to make this assignment. Lupe also testified that since Petitioner had light-duty restrictions, she was coded into the system as work comp. Lupe was the only person at Respondent who could assign the Petitioner to a light-duty position. Lupe testified without contradiction that she never assigned the Petitioner to work at Assemblers. She testified that, in fact, she telephoned Assemblers on or about July 13, 2012. Assemblers advised that they were unable to accommodate Petitioner's light-duty restrictions. This was the reason Respondent offered Petitioner light-duty work in its office.

Lupe testified that Petitioner's attorney contacted her and asked her if Respondent had light-duty work for Petitioner. Lupe testified that in response to Petitioner's attorney's question, she said "Yes, we do." Lupe then testified that Petitioner's attorney then stated that he would be looking to have Petitioner taken off work.

This conversation was not contradicted by Petitioner's attorney.

Lupe testified that she spoke with Leticia at Assemblers sometime in December of 2012 when she first learned that Petitioner had actually reported to Assemblers for work in July. Lupe further testified that Leticia advised her that when Petitioner reported for work on the two days in July and August of 2012, Petitioner advised Leticia that Lupe had told her to report to Assemblers for light-duty work. Lupe denied this allegation. Lupe testified that she never assigned Petitioner for light-duty work at Assemblers.

Ana Hernandez testified on January 14, 2013. She testified that she is employed with Respondent as a dispatcher. Her job as a dispatcher involves sending people to work, which depends on the work orders received from the customers. She testified that she was at work on July 29, 2012. She testified that this was a Sunday. She testified that Lupe Almaraz was not at work as Ms. Almaraz did not work on Saturday or Sunday. She testified that she would never telephone Lupe at home with a question regarding specific employee assignments.

Ana testified with regard to the procedures she followed as a dispatcher. When an employee phoned in to seek a job assignment, she would immediately look up that employee's information on the computer to determine his or her status. She would check to determine whether or not the person is an Alternative Staffing employee, i.e., had the person completed an application and was he or she accepted. She would also check to see if the person is in good standing with the customer with whom he or she would be working. She would check to see if that person was listed as having a workers' compensation injury. There is a portion in the file of each employee that indicates whether or not that person has workers' compensation restrictions. Only Lupe Almaraz can assign an employee with restrictions.

Ana testified that she is not authorized to assign an individual to a light-duty job if that person has restrictions. Only Lupe is authorized to assign an employee to a light-duty job.

Ana could not specifically recall whether or not she had a conversation with Petitioner on July 29, 2012. She testified that hundreds of employees call daily and, to be honest, she could not recall if she spoke with Petitioner on that date. However, she recalled that she did not speak with Lupe on that date. Petitioner had claimed that when she spoke with Ana on July 29, 2012, Ana told her she would have to confer with Lupe before assigning her.

Petitioner testified that Ana advised her during that call that she had spoken with Lupe on Sunday and Lupe advised Ana to assign Petitioner to Assemblers. Since this was Lupe's day off and Ana did not telephone Lupe at home, Ana testified, that portion of the conversation never occurred, if indeed there was a conversation. Ana testified that she never assigned Petitioner to Assemblers on July 29, 2012. Ana testified that had Petitioner telephoned, she would have looked up her file on the computer and seen that Petitioner had a workers' compensation claim. At that point, she simply would have referred Petitioner to Lupe for further conversation.

Ana was shown a pay stub that indicated Petitioner worked at Assemblers on July 30 and August 1, 2012. Ana testified that employees could report directly to the customer and if the customer chose to have that person work, Alternative Staffing did not have any input regarding the same. Ana reiterated that she never assigned Petitioner to Assemblers for light-duty work or otherwise on July 29, 2012 or any other date.

Petitioner acknowledged she was aware that light-duty work had been available with Respondent since July 13, 2012 and throughout the course of her treatment. She admitted that she has not had any contact with Respondent or Lupe since she last attempted to work there. She has not made any effort to contact the Respondent and return to light-duty work. Petitioner admitted that as recently as December 14, 2012, light-duty work in the Alternative Staffing office was once again offered to her and she refused the same.

Petitioner was questioned regarding her examination with Dr. Levin on September 6, 2012. She testified she was aware that Dr. Levin released her for light-duty work and admitted that she never contacted Respondent to determine whether or not the light-duty positions offered were still available.

Lupe testified without contradiction that the light-duty, sedentary work offered to Petitioner three times verbally and once in writing, has been available since July 13, 2012 and is still available.

Notwithstanding the testimony of Lupe and Ana, as well as the work status opinions of Dr. Levin, the Arbitrator finds that Petitioner's has had consistent complaints of low back pain since the date of the accident. She received temporary relief following the injections.

Dr. Chunduri first took Petitioner off work on August 7, 2012, and never released her to return to work. (PX1)

In his November 14, 2012 chart note, Dr. Malek notes: "Persistence of symptoms at a level patient not capable or willing to live with." (PX1) Dr. Malek continued to keep Petitioner off work. (PX1)

At the arbitration hearing, Petitioner testified that she feels a lot of pain and takes a lot of pain pills.

Based on the foregoing, and by a preponderance of the evidence, the Arbitrator finds that Petitioner was temporarily totally disabled from August 7, 2012 through December 21, 2012.

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 Down	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary Lynn Roll,

Petitioner,

vs. NO: 09 WC 14840

United School District #304,

14IWCC0015

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection and permanent disability and being advised of the facts and law, modifies the Decision of the Arbitrator on the issue of permanent disability as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator found that Petitioner proved a compensable accidental injury on October 24, 2009 and that her current condition of ill-being in the right leg is causally connected to the injury. Petitioner underwent a diagnostic arthroscopy of her right knee on February 23, 2009; the findings were consistent with degenerative arthritic changes of the patella involving both the medial and lateral facet areas. A synovectomy and chondroplasty were performed to address synovial hypertrophy and articular surface degeneration. Four weeks later, Petitioner was released to return to full duty work as a school bus driver. She underwent a series of Euflexxa injections in December of 2009 and January of 2010. Petitioner testified that she experiences aching in her right knee and a feeling of instability while descending stairs. Petitioner testified that she has been able to perform all of her regular duties since her return to work in March of 2009. The Arbitrator awarded 20% loss of use of the right leg. After considering all of the evidence, we view the Petitioner's disability differently and reduce the award of the Arbitrator to 12.5% loss of use of the right leg.

14IWCC0015

All else is otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $161.53 per week for a period of 25 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 12.5% loss of use of the right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $29,660.18 for medical expenses under §8(a) and §8.2 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.

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: JAN 15 2014
RWW/plv
o-12/04/13
46

Ruth W. White

Charles J. DeVriendt

Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION

NOTICE OF ARBITRATOR DECISION

ROLL, MARY LYNN
Employee/Petitioner

Case# **09WC014840**

UNITED SCHOOL DISTRICT #304
Employer/Respondent

14IWCC0015

On 12/5/2012, 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 0.14% 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:

4019 GULLBERG & BOX LLC
MEAGAN K BOX
122 W BOSTON AVE SUITE 200
MONMOUTH, IL 61462

1337 KNELL & KELLY LLC
MATT BREWER
504 FAYETTE ST
PEORIA, IL 61603

14IWCC0015

STATE OF ILLINOIS)
)SS.
COUNTY OF Peoria)

☐ 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

Mary Lynn Roll
Employee/Petitioner

v.

United School District #304
Employer/Respondent

Case # 09 WC 14840

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Mathis**, Arbitrator of the Commission, in the city of **Peoria, Illinois**, on **September 25, 2012**. 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, **October 24, 2008** 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 $; the average weekly wage was **$230.76**.

On the date of accident, Petitioner was **62** years of age, ***single*** with **0** dependent children.

Petitioner ***has not*** 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

Medical benefits

Respondent shall pay reasonable and necessary medical services of $29,660.18, as provided in Sections 8(a) and 8.2 of the Act.

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of $161.53/week for 43.00 eeks, because the injuries sustained caused the 20% loss of the Right Leg, 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.

S J Mathis
Signature of Arbitrator

Nov 29, 2012
Date

DEC - 5 2012

FACTS

Petitioner testified that on 10/24/08 she was employed by the Respondent, United School District #304, as a bus driver. The Petitioner's duties on that day were to drive the football team to its game versus Elmwood United. Petitioner testified that she watched the game from the bleachers and the weather for that particular day was wet and rainy. Petitioner testified that towards the end of the game she got up from her seat in the bleachers to use the restroom and to then go and warm up the bus for the ride home.

Petitioner testified that as she walked down the bleachers she reached the last step when she hopped down to the ground and felt pain in her right knee. Petitioner testified that the distance between the lowest stair of the bleachers where she was and the ground was approximately three feet. Petitioner testified that her right leg hit the ground first followed by her left leg. Petitioner described her getting off of the bleachers as sort of a hop.

Petitioner testified that once she was on the ground she then proceeded to the restroom and subsequently arrived at her bus. Petitioner testified that she was in a great deal of pain and used her umbrella as a cane to walk with. Petitioner testified that once the game had ended she drove the football players back to the school.

The Petitioner testified that she did not seek medical treatment for her alleged injury until the following Monday on 10/27/08. At that time the Petitioner was given anti-inflammatories and was released from care with a diagnosis of "pain in limb." (*Resp. Ex.* 5). Petitioner then followed up with her primary care physician Dr. Medrano on November 5, 2008. Dr. Medrano noted the Petitioner had only moderate knee pain and evidenced no swelling or edema. (*Resp. Ex.* 6). Dr. Medrano ordered x-rays to be taken at this time which showed no evidence of recent fracture or dislocation as well as osteoarthritic changes in the right knee and patella. (*Resp. Ex.* 2). Subsequently the Petitioner underwent a course of physical therapy which was unsuccessful.

Petitioner underwent an MRI of her right knee on 12/8/08 at Southeast Iowa Open MRI. Petitioner's MRI showed that the menisci, cruciate ligaments, extensor mechanism, iliotibial band, and collateral ligaments were all intact. Petitioner was noted to have adequate articular cartilage remaining and otherwise the marrow signal was noted to be normal. (*Resp. Ex.* 1). The Petitioner's MRI was normal. (*Resp. Ex. 1*). Petitioner later came under the care of Dr. Norman Cohen. Dr. Cohen noted in his 1/13/09 record that the Petitioner's MRI scan did not reveal any different pathology. Dr. Cohen also noted that the Petitioner's x-rays revealed at most Grade 2 medial narrowing. (*Resp. Ex.* 10).

Petitioner testified that in her second visit with Dr. Cohen the recommendation for an arthroscopy for her right knee was given. The Petitioner underwent an arthroscopy of the right knee, chondroplasty medial femoral condyle, chondroplasty medial tibial plateau, chondroplasty patella, synovectomy intercondylar notch, synovectomy suprapatellar compartment all of the right knee on 2/23/09 by Dr. Cohen. Petitioner testified that she was off work for four weeks following the surgery. Petitioner was released to work full duty on 3/23/09. (*Resp. Ex.* 10). The Petitioner testified that following her release to return to work she continued to have aching and stiffness in the knee. Petitioner testified that following her injury she can no longer work with special needs children with the Rainbow Riders program. This program involves teaching special needs children to ride horses and other equestrian type activities.

The Petitioner testified that she continued to follow up with Dr. Cohen following her full release to return to work in March 2009. Petitioner testified that from December 2009 through January 2011, Dr. Cohen performed Euflexxa injections. Petitioner testified that a portion of her medical bills were paid for by her husband's health insurance through his employer. Petitioner testified that at the time of trial her current complaints consisted of knee aches and a warm

feeling within her right leg and knee. Petitioner testified she has difficulty with walking extended distances.

CONCLUSIONS OF LAW

14IWCC0015

The Arbitrator Concludes:

Paragraph C. The Arbitrator concludes that on October 24, 2008, the Petitioner sustained an accidental injury to her right knee that arose out of and in the course of her employment with United..

Paragraph F. The Arbitrator concludes that the Petitioner has proven a causal relationship exists between the injury she sustained on October 24, 2008 and her current condition of ill-being through the chain of events, the medical records of Dr. Medrano and Dr. Cohen, and the opinion of Dr. Cohen.,

Paragraph J. The Arbitrator concludes that the medical services were reasonable and necessary. Therefore, United should pay for these services.

Paragraph L. The Arbitrator concludes that the injury resulted in a loss of 20% use of the right leg.

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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Latasha Steele,

Petitioner,

vs. No. 10WC026343

Binny's Beverage Depot,

14IWCC0016

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, the necessity of medical treatment, prospective medical care, temporary disability, and "[m]arital status; evidence issues; admissibility; order of witnesses; [and] credits for medical paid," 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 remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

The Arbitrator found that Petitioner's current condition of ill-being is causally related to the June 28, 2010, undisputed accident. Relying on Dr. Crovetti's opinions, the Arbitrator also found that the January 18, 2011, motor vehicle accident did not break the chain of causation between the undisputed accident and Petitioner's lower back injury. The Commission disagrees.

Petitioner testified that on January 18, 2011, a motorist rear-ended her vehicle while she was stopped at a red light. At the time of the incident, Petitioner felt "a little tap" and noticed that her vehicle moved a few inches. Petitioner was not hurt from the impact and there was no damage to either vehicle. On cross examination, Petitioner acknowledged that on January 6, 2011, Dr. Crovetti decreased her pain medication. Petitioner also acknowledged that on January 20, 2011, Dr. Crovetti asked her to describe her pain. When asked whether she had been tearful

and melancholy during the same appointment, Petitioner stated that she "could have been" but could not remember. Petitioner also could not remember whether she told Dr. Crovetti that she had increased her pain medication since the motor vehicle incident.

Dr. Crovetti's records show that on January 6, 2011, Petitioner reported feeling much better, rating her lower back pain as six out of ten, and had no radicular pain. Petitioner also reported that she had decreased her pain medication. Dr. Crovetti recommended that she continue physical therapy and noted that if she continued to improve, he would release her to "more full time" work within two weeks. On January 20, 2011, Dr. Crovetti noted that Petitioner was melancholy and tearful, and had been doing well until two days before when she was involved in a rear-end motor vehicle accident. Petitioner reported that before the accident, her pain was rated two out of ten. After the accident, Petitioner rated her pain as five out of ten and increased her pain medication. Petitioner also reported having "some discomfort going into her left leg" during physical therapy that day. Dr. Crovetti diagnosed Petitioner with "[l]ow back pain with radiculopathy secondary to L5-S1 disc herniation [which] was improving until the motor vehicle accident this Tuesday," and recommended that she undergo a second epidural injection. On February 16, 2011, Dr. Crovetti performed a left L5-S1 transforaminal epidural injection.

On March 2, 2011, Petitioner reported that she was doing okay and rated her pain as two to three out of ten. Petitioner also reported that she experienced severe lower back pain about one week after undergoing the second epidural injection, which Dr. Crovetti attributed to her bed. Dr. Crovetti recommended that Petitioner begin aggressive physical therapy. On March 16, 2011, Petitioner rated her lower back pain as eight out of ten and reported having radiating pain in her arms, legs and buttocks. Dr. Crovetti opined that Petitioner's increased pain was muscular in nature and was secondary to the aggressive physical therapy. However, Dr. Crovetti referred Petitioner to Dr. Sokolowski for a second opinion because almost one year had passed since her injury. On March 24, 2011, Petitioner treated with Dr. Sokolowski and complained of continued lower back pain rated eight out of ten. Dr. Sokolowski diagnosed Petitioner with lumbar pain and radiculopathy, noted that she had reached nonoperative maximum medical improvement, and recommended that she undergo surgery.

The Commission finds that the motor vehicle accident on January 18, 2011, was an intervening accident that broke the chain of causation between the undisputed June 28, 2010, accident and Petitioner's lower back injury. Petitioner's testimony that she sustained no injuries at the time of the motor vehicle accident is contradicted by Dr. Crovetti's January 20, 2011 note, which shows that after the motor vehicle accident, Petitioner's pain increased and her radicular symptoms recurred. The Commission finds Dr. Butler's opinion, that the motor vehicle accident changed Petitioner's condition and caused the previously successful conservative medical treatments to fail, persuasive and consistent with the medical records. Prior to the motor vehicle accident, Petitioner had begun to take less pain medication and Dr. Crovetti planned to release Petitioner to "more full time" work within a few weeks. After the motor vehicle accident, Petitioner's pain increased and did not improve with pain medication, physical therapy or another epidural injection. The Commission awards Petitioner all medical expenses for treatment incurred before January 18, 2011, and awards Petitioner temporary total disability

benefits from June 29, 2010, through August 19, 2010, and from November 30, 2010, through January 18, 2011.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator filed on January 22, 2013, is hereby modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner all reasonable and necessary medical expenses for treatment incurred before January 18, 2011, under §8(a) and §8.2 of the Act and subject to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $245.33 per week for 14-4/7 weeks, from June 29, 2010, through August 19, 2010, and from November 30, 2010, through January 18, 2011, which is the period of temporary total disability 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 shall 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.

No bond is required for removal of this cause to the Circuit Court by Respondent. 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: JAN 15 2014
MB/db
o-12/11/13
44

Michael J. Brennan

Charles J. DeVriendt

Ruth W. White

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

STEELE, LATASHA
Employee/Petitioner

Case# **10WC026343**

14IWCC0016

BINNY'S BEVERAGE DEPOT
Employer/Respondent

On 1/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0786 BRUSTIN & LUNDBLAND LTD
CHARLES E WEBSTER
100 W MONROE ST 4TH FL
CHICAGO, IL 60603

0532 HOLECEK & ASSOCIATES
LAWRENCE A SZYMANSKI
161 N CLARK ST SUITE 800
CHICAGO, IL 60601

14IWCC0016

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
ARBITRATION DECISION
19(b)

Latasha Steele
Employee/Petitioner

v.

Binny's Beverage Depot
Employer/Respondent

Case # 10 WC 26343

Consolidated cases: ___

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **July 24, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **June 28, 2010**, 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 **$13,260.00**; the average weekly wage was **$255.00**.

On the date of accident, Petitioner was **28** years of age, *married* with **1** dependent child.

Respondent shall be given a credit of **$7,675.32** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$7,675.32**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$245.33**/week for **93-4/7** weeks, commencing **6/29/2010** through **8/19/2011** and from **11/30/2010** through **7/24/2012** as provided in Section 8(b) of the Act.

Respondent shall authorize and pay the reasonable cost of the prospective medical care that Dr. Sokolowski has recommended.

Respondent shall pay petitioner an amount equal to the sum of the unpaid medical bills in Px.4, Px.6, Px.9 and Px.11, pursuant to Section 8(a) and subject to Section 8.2 of the Act.

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

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

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

Signature of Arbitrator

January 19, 2013
Date

ICArbDec19(b)

JAN 22 2013

Latasha Steele v. Binny's Beverage Depot, 10 WC 26343

FINDINGS OF FACT

Latasha Steele testified that on June 28, 2010, she was employed as a cashier at Binny's Beverage Depot, 733 W. North Avenue, Elmwood Park, Illinois, when she slipped on water and fell to the floor. The water had collected on the floor following a delivery of ice. Petitioner further testified that her job as a cashier required her to twist, turn, bend and reach in order to bag customer's purchases and to stock shelves.

She testified that she noticed immediate pain in her low back, her left knee and a cut on her lip. She testified that her health to this slip-and-fall was good and that she never had these types of pain before June 28, 2010. She testified that two managers Susan Mariott and Keisha Smith were with her when she fell and that Keisha Smith instructed a co-employee named Zak to drive her to Resurrection Immediate Care in Elmwood Park.

At Resurrection Immediate Care, petitioner testified, she noticed that she could barely walk due to the severe pain. At Resurrection Immediate Care, petitioner had x-rays taken. She was also fitted with a hinged knee brace and told to remain off work.

From Resurrection Immediate Care in Elmwood Park, Ms. Steele returned home. Due to the pain, she found it hard to sit down or to lie in bed.

She began treating with Amit Mehta, M.D. of Instant Care. He ordered an MRI and physical therapy, which underwent she at West Suburban Hospital. Dr. Mehta also prescribed the Hydrocodone and Naproxen. Dr. Mehta injected the petitioner.

The staff at Resurrection Immediate Care referred her to Gregory Crovetti, M.D., at Trinity Orthopedics. Dr. Crovetti prescribed a back brace that she still wears. She displayed such brace to the Arbitrator.

Petitioner testified that she returned to work on August 23, 2010, but that she really should not have gone back to work when she did. She said she then experienced pain with all the standing, and pain up and down her legs (left more than right). She experienced pain from twisting her body as a cashier, pain in her shoulders and pain in her left knee. She further testified that she had to take additional breaks at work due to the pain.

Petitioner returned to Dr. Crovetti on November 30, 2010. Dr. Crovetti reinstituted conservative treatment. (Px.5)

Petitioner testified to the following: On Jan. 18, 2011, she was stopped in her car at a light when she was rear ended by another vehicle. There was no damage to either vehicle. The impact was barely a tap although it moved her vehicle a couple of inches. Petitioner testified that she was not

hurt and no one else was hurt as a result of such motor vehicle collision.

Petitioner's mother was a passenger and testified as a witness that she "didn't notice any impact."

Dr. Crovetti later referred the petitioner to Mark Sokolowski, M.D., for further treatment.

Dr. Sokolowski ordered and performed injections.

Dr. Sokolowski has now recommended surgery. He has offered the petitioner either a lumbar decompression at L5-S1, which would be intended to relieve her radiculopathy symptoms, or a lumbar decompression and fusion at L5-S1, which would be intended to relieve her radiculopathy symptoms and back pain. (Px.12, pp. 11-12)

Dr. Sokolowski referred Petitioner to Dr. Patodia for pain management.

Two sets of MR images of petitioner's lumbar spine were taken. One set was taken on July 2, 2010 and the other set was taken on November 1, 2011.

George G. Kuritza, M.D., offered the following impression of the 7/2/10 images:

1. At the L5-S1 level, there is mild loss of normal hydration of this nucleus pulposus representing early desiccation changes.
2. At the L5-S1 level, there is a 3-4 mm. far left intraforaminal disk herniation indenting the ventral and left side of thecal sac with mild left lateral recess narrowing seen.
3. The rest of the lumbar spine appeared unremarkable. (Px.3)

Navraj Grewal, M.D., interpreted the 11/1/11 images. At L5-S1, he found disc desiccation, some minimal left neural foraminal narrowing and a 2 mm. broad-based disc bulge. He then offered this impression:

> Some degenerative disc disease at L5-S1 with minimal left neural foraminal narrowing at this level. The remainder of the lumbar spine is unremarkable. There is no spinal stenosis. (Px.8)

Currently, petitioner testified, she experiences pain in her low back and left knee. She stated that since June 28, 2010, her left knee has gotten better. She further testified that when she walks, he left knee flares up, her buttocks go numb and her low back hurts. She testified that she has pain after walking half a block. She testified that she has pain if she stands for 20 minutes and has pain if she sits for a long period of time.

Petitioner testified that she has had no other accidents since June 28, 2010. She has not worked anywhere since she stopped working at Binny's on November 29, 2010.

At the request of the respondent, and pursuant to Section 12 of the Act, Jesse P. Butler, M.D.,

examined petitioner. Dr. Butler later testified on behalf of the respondent.

CONCLUSIONS OF LAW

F. Is petitioner's current condition of ill-being is causally related to the injury?

The arbitrator finds that petitioner's current condition of ill-being is causally related to the injury of June 28, 2010.

On August 16, 2010, Dr. Crovetti concluded that petitioner was doing much better with regard to her work-related injury. However, she had been in an emergency room that morning for a non-work-related condition. Dr. Crovetti concluded "At this time, I would allow her to return to full duty later this week once the gastroenteritis is cleared and have her follow up with me on a p.r.n. basis."

On August 19, 2010, Dr. Mehta examined her and found that she had no pain related to the work-related accident, and was fully functional and had no pain issues. He discharged her from care at maximum medical improvement.

When petitioner returned to Dr. Crovetti on November 30, 2010, Dr. Crovetti took the following history:

"Patient returns today complaining of reaggravation of lower back pain with associated bilateral buttock pain radiating down into the legs. The patient has previously been seen and treated for sacroiliitis and lumbosacral spasming as well as left knee pain in the past. The pain stemmed from the incident where she slipped on a wet floor and fell at work. She has been released back to full duty and notes that over the last week with the prolonged standing and that was required from her job, she has begun experiencing pain particularly on the left side with spasming and pain in the buttock radiating down into the legs and the left knee. She denies any new trauma associated with onset of symptoms and has been taking over-the-counter Ibuprofen with only mild alleviation of her symptoms . . . My impression is that this is a 28-year-old female with reaggravation of existing lumbosacral spasming and sacroiliitis secondary to prolonged standing that is required in her job." (Px.5)

When Dr. Crovetti saw the petitioner on January 6, 2011, the doctor noted that her low back pain was 6/10 and that she had no leg pain. (Px.5) Dr. Crovetti came up with the following plan:

"At this time, I would continue doing the physical therapy. I would continue the Naproxen and increase that to twice a day. Continue to wean off the Nucynta and Lyrica. I feel that if she continues to improve, we should be able to return her to more full time type of work within two weeks." (Px.5)

On January 20, 2011, petitioner returned to Dr. Crovetti. Dr. Crovetti took the following history:

"She returns at this time. She was doing well until Tuesday of this week, when she states she was involved in a motor vehicle accident where she was rear-ended. She was with the pain down to about 2/10 after the accident, and her pain was backup (sic) to 5/10 and has gone backup (sic) on Nucynta to twice a day and continuing the Naproxen twice a day. She states today in therapy, she had some discomfort going into her left leg during the therapy." (Px.5)

Dr. Crovetti later referred petitioner to Dr. Sokolowski. (Px.5)

During the deposition of Dr. Sokolowski, the following exchange took place on cross-examination:

Q: So, you think a three-month gap is just waxing and waning; is that correct?

A: You told me September and October she had no symptoms. I would say it is possible for a person to have no symptoms for a two-month period, and then have a run of symptoms in precisely the same distribution. The coincidence would be remarkable if she had return of pain when she never had pain before her accident, and now has return of pain in exactly the same spot that she had it before is too much of a coincidence to disrupt the causal connection. (Px.12, p. 47)

In his report dated April 29, 2011, Dr. Butler wrote:

"Medical documentation supports a causal relationship for care and treatment between June 28, 2010 and August 20, 2010. The documentation concerning her "reaggravation" in November 2010 does not substantiate any work-related injury. The onset of her back pain could be related entirely to deconditioning and obesity. There is no documentation of any specific work activity that brought about her symptoms other than standing. I do not find this to be a valid mechanism of injury. Even if one considers that standing is an injury, her symptoms improved with conservative care until a rear end motor vehicle collision in January 2011. The patient's failure of conservative treatment subsequent to the MVA is most likely the result of a motor vehicle collision as opposed to a work injury from June 28, 2010. It is interesting that despite the documentation of a motor vehicle collision with worsening subjective complaints that no additional imaging was obtained."

The arbitrator finds the opinions of Dr. Sokolowski to be more persuasive than those of Dr. Butler.

In Vogel v. Indus. Comm'n, 354 Ill. App. 3d 780, 821 N.E.2d 807 (2d Dist., 2005), the court held that they have recognized repeatedly that when the claimant's condition is weakened by a work-related accident, a subsequent accident that aggravates the condition does not break the causal chain.

As with the claimant in Vogel, the petitioner had not fully recovered from the work-related accident and had not been released to full-duty work at the time she was involved in the motor vehicle accident.

J. **Were the medical services that were provided to petitioner were reasonable and necessary? Has respondent paid all appropriate charges for all reasonable and necessary medical services?**

The arbitrator finds that the medical services that were provided to petitioner were reasonable and necessary.

Petitioner submitted an Exhibit List in which total bills are listed. Such Exhibit List was not offered into evidence.

Petitioner failed to list, on Ax.1, the unpaid medical bills.

The arbitrator orders respondent to pay petitioner an amount equal to the sum of the unpaid medical bills in Px.4, Px.6, Px.9 and Px.11, pursuant to Section 8(a) and subject to Section 8.2 of the Act.

K. **Is petitioner is entitled to any prospective medical care?**

As the arbitrator has found Dr. Sokolowski's opinions to be more persuasive than those of Dr. Butler, the arbitrator finds that petitioner is entitled to the prospective medical care that Dr. Sokolowski has recommended and petitioner desires.

L. **What temporary benefits are in dispute (TTD)?**

Based on the above findings and conclusions, the arbitrator further finds that petitioner is entitled to TTD benefits from 06/28/10 through 08/19/10 and from 11/30/10 through 07/24/12. Respondent is entitled to a credit in the amount of $7,675.32 for TTD benefits previously paid.

M. **Should penalties or fees be imposed on respondent?**

The arbitrator finds that penalties and fees are not warranted in this case. Respondent's dispute with regard to causation was a bona fide dispute. Dr. Butler examined petitioner and rendered opinions.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☐ 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

Joseph Rodriguez,

Petitioner,

vs.

No. 10WC037099

14IWCC0017

Menards,

Respondent.

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, causal connection, medical expenses, temporary disability and permanent disability, and being advised of the facts and law, reverses the decision of the Arbitrator for the reasons stated below.

FACTS

At the arbitration hearing, Petitioner testified that he worked as a salesman for Respondent at the time of the September 1, 2010, undisputed accident. That day, Petitioner drove a company pick-up truck through Respondent's parking lot to reach his designated parking space, and as he turned to his left to check for oncoming traffic, the truck hit the concrete base of a light post. Petitioner's right shoulder struck the steering wheel of the truck on impact and he experienced immediate right shoulder pain. Petitioner estimated that the truck was traveling at the speed of five to seven miles per hour at the point of impact. Prior to the undisputed accident, Petitioner had no right arm injuries or problems. On cross examination, Petitioner testified that he did not brace himself before the truck hit the light post. Petitioner acknowledged that he played recreational racquetball from 1991 until about 2005.

On the date of the undisputed accident, Petitioner sought treatment at the Rush Copley Occupational Medicine Clinic and complained of pain in his right shoulder and left leg, along with a head injury. Petitioner reported sustaining his injuries when he struck a light pole with a company pick-up truck, hitting his right shoulder on the steering. Dr. Oana Patrascu diagnosed Petitioner with a right shoulder contusion, a closed-head injury, and a left leg abrasion and contusion; prescribed Tylenol with Codeine; recommended that Petitioner apply ice to his right shoulder and perform shoulder exercises; and released Petitioner to work with restrictions of no over-the-shoulder work with the right arm and no driving for two days. Dr. Patrascu noted that "[t]his is a work-related injury."

On September 3, 2010, Petitioner returned to Rush and treated with Dr. Paul Copps. Petitioner complained of worsening right shoulder pain rated six out of ten, and difficulty sleeping and moving his right shoulder due to pain. Dr. Copps diagnosed Petitioner with a right shoulder contusion, a left leg abrasion, and a history of a closed-head injury; recommended that he apply ice to his shoulder, wear a sling while working and continue taking Tylenol with Codeine; and released Petitioner to work with restrictions of no work using the right arm and no driving at work. Dr. Copps noted that "[t]his is a work-related injury."

On September 7, 2010, Dr. Copps reexamined Petitioner who reported feeling moderately better although he continued to rate his right shoulder pain as six out of ten. Petitioner also reported that he had increased movement in his right shoulder but he had developed some ecchymosis on the lateral aspect of the shoulder. Petitioner's left leg injury was also improving and he reported having a mild amount of pain from his head injury. Dr. Copps reiterated his diagnoses, treatment recommendations and work restrictions from the previous appointment, and recommended that Petitioner begin physical therapy. Dr. Copps continued to note that Petitioner had sustained a work-related injury.

On September 14, 2010, Petitioner reported that he had no right shoulder pain after two physical therapy sessions and had almost normal movement. Petitioner also reported that his left leg abrasion was healing well and he had no concerns with respect to his head injury. Dr. Copps diagnosed Petitioner with a contusion, left leg abrasion and a history of a closed head injury; and recommended that Petitioner attend physical therapy, apply ice as needed and continue taking Tylenol with Codeine; and released Petitioner to work with restrictions of no lifting more than 15 pounds with the right arm. Dr. Copps reiterated that Petitioner had sustained a work-related injury.

On September 20, 2010, Petitioner reported that his right shoulder pain had returned, rating it as three out of ten, and he had difficulty sleeping secondary to pain. Dr. Copps diagnosed Petitioner with a right shoulder strain and contusion, a left leg abrasion and a history of a closed-head injury; recommended that he continue physical therapy and take Tylenol with Codeine as needed; and released him to work with restrictions of no lifting more than 15 pounds with the right arm. Dr. Copps continued to note that Petitioner had sustained a work-related injury.

On September 27, 2010, Petitioner filed an Application for Adjustment of Claim, alleging that on September 1, 2010; he sustained injuries to his right shoulder, right arm, left leg and man as a whole in a work-related motor vehicle accident.

On September 28, 2010, Petitioner rated his right shoulder pain as one out of ten. However, Petitioner also reported that he woke up that morning with considerable right shoulder pain and continued to have sharp pain that worsened with movement. Petitioner noted that he did not feel physical therapy had helped. Dr. Copps diagnosed Petitioner with a right shoulder contusion and strain; recommended that he continue physical therapy, begin H-wave therapy and take Ibuprofen as needed; and released Petitioner to work with restrictions of no lifting more than 15 pounds with the right arm. Dr. Copps noted that he would consider an orthopedic referral and an MRI if Petitioner's pain did not improve in the next two to three weeks. Dr. Copps continued to note that Petitioner had sustained a work-related injury.

On October 13, 2010, Petitioner underwent a right shoulder MRI at Dr. Copps's recommendation, which showed a complete full-thickness tear of the supraspinatus tendon, glenolabral articular disruption of the posterior inferior labrum, tendinopathy with partial tearing of the infraspinatus tendon and mild tendinopathy of the biceps tendon.

On October 21, 2010, Petitioner treated with Dr. Arif Saleem at Dr. Copps's request. Petitioner reported having right shoulder pain since September 1, 2010, which he rated as four to five out of ten. Petitioner also reported having significant right shoulder pain at night, weakness when lifting objects and an inability to perform overhead activities. Dr. Saleem reviewed Petitioner's MRI, diagnosed Petitioner with a large rotator cuff tear with impingement and acromioclavicular arthritis, and recommended that Petitioner undergo an arthroscopic rotator cuff repair.

On November 17, 2010, Dr. Hythem Shadid, an orthopedic surgeon, conducted a section 12 examination on Respondent's behalf, and prepared a report on December 2, 2010. Dr. Shadid diagnosed Petitioner with a chronic right shoulder rotator cuff tear with degenerative changes. Dr. Shadid opined:

> "The overall picture is that of chronic repetitive overhead activities over many years. An example of that would be years of playing racquetball, but these findings are not limited to a single activity. While there was no objective evidence of any acute injuries, the jolt from the low speed collision could have caused a very mild aggravation of his pre-existing condition, but that would have resolved within a few days to two weeks."

Dr. Shadid also opined that Petitioner would have continued complaints of weakness and a persistent right shoulder ache. Petitioner had reached maximum medical improvement.

On March 14, 2011, Petitioner underwent a right shoulder arthroscopic rotator cuff repair, subacromial decompression, distal clavicle excision and biceps tendon tenotomy.

At his March 24, 2011, evidence deposition, Dr. Saleem testified that the September 1, 2010, motor vehicle accident aggravated Petitioner's pre-existing right shoulder rotator cuff tear; however, based on the size of the tear, it was not the sole cause of the tear. Dr. Saleem was unsure of how much strength and motion Petitioner would regain in light of his large rotator cuff tear, which usually results in long-term restrictions. On cross examination, Dr. Saleem disagreed with Dr. Shadid's opinion that Petitioner suffered a mild aggravation of a pre-existing rotator cuff tear that would have resolved within a few days or weeks because Petitioner's right shoulder continued to bother him beyond that time. Dr. Saleem opined that the work-related accident could have aggravated Petitioner's rotator cuff tear regardless of the pick-up truck's speed at the time of the accident. By itself, Petitioner's racquetball playing did not cause the development of his rotator cuff tear.

On April 14, 2011, Petitioner returned to Dr. Saleem who noted that he was doing well and could transition from a brace to a splint. Dr. Saleem recommended that Petitioner continue physical therapy. Petitioner testified that Dr. Saleem released him to light duty work at this time.

At his May 11, 2011, evidence deposition, Dr. Shadid testified that Petitioner's MRI showed no acute injuries. Dr. Shadid opined that Petitioner had an arthritic and chronic rotator cuff tear that is commonly seen in athletes who play overhead sports and people who perform manual labor. Petitioner might have sustained a temporary aggravation of his right shoulder rotator cuff tear if he were bracing himself just before the truck hit the light pole base; however, Petitioner reported that he did not brace himself just before the accident.

On May 12, 2011, Dr. Saleem reevaluated Petitioner. On examination, Petitioner had full passive range of motion. Dr. Saleem noted that Petitioner was doing well and was going to take a three week break from physical therapy because he obtained a new job with a different employer.

On June 13, 2011, Petitioner returned to physical therapy and his therapist noted that he was able to perform all activities of daily living without increased pain. The therapist recommended that Petitioner undergo additional physical therapy to increase his strength and stability. Petitioner testified that Dr. Saleem discharged him from care on July 28, 2011.

Petitioner testified that he can currently perform very few overhead activities with his right arm, resulting in the increased use of his left shoulder. Petitioner's right shoulder has "locked up" on one occasion since being released to full duty work and he cannot lift objects as he did prior to the accident. Petitioner's right shoulder is sore when he wakes up and he takes over-the-counter pain medication in the morning. Petitioner works as a salesman for a different employer and carries a satchel or case of pamphlets every day. At the end of his work day, he experiences some soreness in his right shoulder.

DISCUSSION

The Arbitrator found Petitioner failed to prove that a causal connection exists between his current condition of ill-being and the September 1, 2010, undisputed work accident. The Commission disagrees.

The Commission finds that the medical records fully support Petitioner's claim that his current right shoulder condition is causally related to the undisputed accident. The medical records show that on the date of the accident, Petitioner began to complain of right shoulder pain, and continued to complain of right shoulder symptoms despite conservative treatment. The Commission notes that the treating physicians at Rush consistently noted that Petitioner's injuries were work-related. At Dr. Copps's referral, Dr. Saleem evaluated Petitioner and diagnosed him with a complete full thickness rotator cuff tear, which required surgery. The Commission finds Dr. Saleem's opinion that the undisputed accident aggravated Petitioner's pre-existing rotator cuff tear, more persuasive than Dr. Shadid's opinions. The Commission finds it significant that Petitioner was able to perform his full duties before the undisputed accident. Dr. Shadid's emphasis on whether Petitioner braced for the impact at the time of the accident is irrelevant as the mechanism of injury was sufficient to cause a right shoulder injury based on the medical records and Dr. Saleem's opinions. The Commission awards Petitioner all medical expenses related to his right shoulder condition. The Commission also awards Petitioner temporary total disability benefits from March 14, 2011, through April 14, 2011.

With respect to permanency, the Commission finds that Petitioner's injuries caused the loss of the person as a whole to the extent of 12.5 percent. The September 1, 2010, undisputed accident aggravated Petitioner's pre-existing right shoulder rotator cuff tear, requiring Petitioner to undergo a right rotator cuff repair, subacromial decompression, distal clavicle excision and biceps tendon tenotomy. On May 12, 2011, Dr. Saleem noted that Petitioner had full passive range of motion on examination and was doing well.[1] Petitioner testified that Dr. Saleem released him to full duty work on July 28, 2011. Petitioner works as a salesman and carries a satchel every day, which causes some right shoulder soreness at the end of the day. Petitioner can perform very few overhead activities with his right arm and as a result, has increased the use of his left arm. Petitioner also has right shoulder soreness in the morning and takes over-the-counter medication.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator filed on February 19, 2013, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner all medical bills related to his right shoulder condition under §8(a) and §8.2 of the Act and subject to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $345.60 per week for 4-4/7 weeks, from March

[1] The Commission notes that the record contains no other medical records from Dr. Saleem after May 12, 2011.

14, 2011, through April 14, 2011, which is the period of temporary total disability for which compensation is payable.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $311.04 per week for a period of 62.5 weeks, as provided in §8(d)2 of the Act, because the injuries sustained caused permanent partial disability equivalent to 12.5 percent loss of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall 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 $22,000.00. 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: JAN 15 2014
MB/db
o-12/11/13
44

Michael J. Brennan

Charles J. DeVriendt

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0017

RODRIGUEZ, JOSEPH
Employee/Petitioner

Case# 10WC037099

MENARD INC
Employer/Respondent

On 2/19/2013, 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 0.12% 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:

0787 FOOTE MEYERS MIELKE & FLOWERS
CRAIG S MIELKE
3 N SECOND ST SUITE 300
ST CHARLES, IL 60174

0445 RODDY LEAHY GUILL & ZIMA LTD
SAM J CERNIGLIA ESQ
303 W MADISON ST SUITE 1500
CHICAGO, IL 60606

14IWCC0017

STATE OF ILLINOIS)
)SS.
COUNTY OF Kane)

- [ ] 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

Joseph Rodriguez
Employee/Petitioner

v.

Menard,Inc.
Employer/Respondent

Case # **10** WC **37099**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Arb. George Andros**, Arbitrator of the Commission, in the city of **Geneva**, on **12/13/2012**. 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] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] TTD
L. [x] 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 **09/01/2010**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$26956.80**; the average weekly wage was **$518.40**.

On the date of accident, Petitioner was **55** 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** 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

BASED UPON THE FIINDING OF NO CAUSATION, COMPENSATION IS HEREBY DENIED.

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

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

/s/ George J. Andros
Signature of Arbitrator

February 15,2013
Date

FEB 19 2013

JOSEPH RODRIGUEZ V. MENARD , Inc. 10 WC 37099

With respect to issue (F), is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds the following facts :

This Petitioner testified that he was an outside contract salesperson for the Respondent. On September 1, 2010 when returning from sales calls, he was in the company parking lot when his pickup truck struck the concrete base of a light pole. He was driving approximately five miles to seven miles per hour. The impact did not activate the airbag. His right shoulder struck the steering wheel.

The Arbitrator heard the testimony and studied the video. Rx 3.

Petitioner presented to Rush Copley Medical Center on September 1, 2010. Px 13. The Petitioner eventually had shoulder surgery on March 14, 2011 Px 2. The operative report gives a postoperative diagnosis of right shoulder massive rotator cuff tear, right shoulder impingement, right shoulder acromioclavicular joint arthritis, and right shoulder degenerative biceps tear.

Dr. Arif Saleem M.D. of Castle Orthopedics testified the trauma could cause an aggravation to a rotator cuff tear, but looking at the shoulder and scope and size of the tear, it would unlikely be the sole source of injury to cause this magnitude of a rotator cuff tear. P 8. On cross-examination he again states the extent of the injury is likely not caused by the trauma. He goes on to state that whether there was an aggravation of this tear, it certainly could have been aggravated by an injury. Doctor's subspecialty is shoulders and elbows. P 4.

Dr. Saleem is then asked how much force would that trauma need to be to cause an aggravation and the doctor states it depends on how weak the tendon is before the trauma occurred. When asked if the vehicle striking a light post without airbag deployment would be sufficient to cause the rotator cuff tear Dr. Saleem states that "unless the tear – the tendon was already a weak tendon to start with and the patient was using their arms to support themselves, had a contraction of their arms, that you could potentially exacerbate or tear further a tendon that is already torn, if you have a weak tendon to start with". P 19.

The Arbitrator read and re-read both depositions. By the end of cross examination and more so at the end of redirect examination, I was certain that the balance of the preponderance was tipping away from his (Dr. Saleem's) opinion.

Dr. Hythem P. Shadid, Respondent's section 12 examiner, Rx 2, states there was nothing of any acute nature on the MRI with respect to the rotator cuff tear. Moreover, the Petitioner's years of racket ball activity could be a causative factor for the chronic degenerative changes seen in this Petitioner. Dr. Shadid opined Petitioner, probably in the worst case scenario, might have had a very temporary aggravation to his shoulder from this vehicle accident. That also assumes that the Petitioner was bracing himself in order to stress the shoulder. P 15. However, the Petitioner stated that he had no awareness and no preconceived apprehension about the impending accident and so he would not have been holding on to the steering wheel in a way with any force to brace himself against the hit. P 16) The expert viewed the video and there just was not much force involved in the accident. P 16.

When asked if Dr. Shadid had an opinion with respect to the incident of September 1, 2010 aggravating the preexisting condition, Dr. Shadid testified that it should have aggravated the situation if Petitioner was wrong about anticipating the hit. It is possible that it could have aggravated it but it would have been a temporary aggravation. P 17. Dr. Shadid has undergraduate degrees in engineering and mechanical engineering from University of Illinois along with residencies in general surgery and orthopedic surgery at University of Illinois.

Given all the evidence in this particular case, the medical opinion of the section 12 expert was more persuasive on the issue of causation. The Arbitrator makes the inference after reviewing all the evidence and testimony that relative to the concept of aggravation, that the minor injury may have manifested some symptoms of the underlying pathology but given the surgery, the preexisting condition was not aggravated in the sense of compensability under the Workers Compensation Act.

Based upon the totality of the evidence and a preponderance thereof, the Arbitrator finds as a matter of law and finding of fact there is no causal connection between the injury on September 1, 2010 and the present condition of ill being as found in situ at surgery or post recovery.

Therefore the issues of TTD benefits, medical bills and nature and extent will not be addressed.

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Arscott,
Petitioner,
vs.
Conway Freight, Inc.,
Respondent,

NO: 12 WC 3876
14IWCC0018

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 issue of permanency 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 viewed the evidence differently than the Arbitrator and finds Petitioner lost 25% of the use of his left leg under Section 8(e) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 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 a 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 for $23,364.63 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 $37,500.00. 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: JAN 16 2014

Mario Basurto

David L. Gore

Michael J. Brennan

MB/jm
O: 12/19/13

43

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
AMENDED

ARSCOTT, MICHAEL
Employee/Petitioner

Case# **12WC003876**

14IWCC0018

CON-WAY FREIGHT
Employer/Respondent

On 1/24/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0154 KROL BONGIORNO & GIVEN LTD
CHARLES R GIVEN
100 W MONROE ST SUITE 1410
CHICAGO, IL 60603

RUSIN MACIOROWSKI & FRIEDMAN LTD
SARAH L TRIPP
239 S LEWIS LANE
CARBONDALE, IL 62901

14IWCC0018

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

☐ 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 PURSUANT TO SECTION 19(F)
NATURE AND EXTENT ONLY

Michael Arscott
Employee/Petitioner

v.

Con-Way Freight
Employer/Respondent

Case # 12 WC 3876

Consolidated cases: n/a

The only disputed issue is the nature and extent of the injury. 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 **Joshua Luskin**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **December 6, 2012**. By stipulation, the parties agree:

On the date of accident, **January 10, 2012**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained 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 $**93,641.60**, and the average weekly wage was $**1,800.79**.

At the time of injury, Petitioner was **57** years of age, ***married*** with **0** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $**16,290.82** for TTD, $**6,973.81** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**23,264.63**. The parties stipulated that all periods of TTD and TPD benefits were paid correctly at the correct rate.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $**695.78**/week for a further period of 43 weeks, as provided in Section **8** of the Act, because the injuries sustained caused **permanent partial disability to the extent of 20% of the left leg**.

Respondent shall pay Petitioner compensation that has accrued from **August 7, 2012 (MMI)** through the present, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected 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

1-23-2013
Date

JAN 24 2013

14IWCC0018

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL ARSCOTT,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 12 WC 3876
	)	
CON-WAY FREIGHT, INC.,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner has been employed as a freight truck driver sales representative for the respondent since 1987. On January 10, 2012, he injured his left knee while exiting his tractor. Accident was not disputed. He initially was recommended physical therapy, but was shortly thereafter recommended an MRI scan. This was performed on January 28, 2012, and demonstrated a torn meniscus. See PX2.

The petitioner was thereafter recommended arthroscopic repair. He underwent the surgery to repair the meniscus on May 22, 2012. He underwent postoperative physical therapy and was released to full duty work on July 2, 2012. On August 7, 2012, he was discharged by Dr Petsche at maximum medical improvement. He had been working full duty at that point and was instructed to continue. See generally PX1.

On October 24, 2012, the respondent had Dr. Sanjay Patari, an orthopedist, perform an AMA Impairment Examination. His report noted a finding of 20% impairment to the lower extremity, or 8% disability to the person. PX3, RX3.

At trial, the petitioner testified that he had been working his regular duties as before the accident, with the same shift and hours. He continues to perform home exercise and takes over the counter medications as needed. He does not use a knee brace.

OPINION AND ORDER

Nature and Extent of the Injury

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 as follows:

(i): Dr. Patari found a PPI rating of 20% of the lower extremity, which translates to 8% person as a whole.

(ii): The claimant was employed as a driver sales representative for the respondent since 1987 and has returned to his usual employment as of the trial date.

(iii): The claimant was 57 years old as of the date of loss.

(iv): The claimant was released to his regular job by his treating physician and continues to work in that position as before the incident.

(v): The claimant described some residual symptoms in the knee, which are generally consistent with the surgery performed.

The claimant has undergone meniscal repair surgery. The evidence adduced substantiates loss to the petitioner's left leg to the extent of 20% thereof; as such, the respondent shall pay the petitioner the sum of $695.78/week for a period of 43 weeks, as provided in Section 8(e) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Timothy Sandifer,

Petitioner,

vs.

NO: 11 WC 38235

14IWCC0019

Piasa Commercial Interiors,

Respondent,

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 average weekly wage, causal connection, extent of temporary total disability, medical expenses, prospective medical care and whether Petitioner exceeded his choice of physicians and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322 (1980).

The Commission modifies the Arbitrator's Decision. Regarding average weekly wage, the Commission notes that Petitioner testified on cross-examination that he agreed that if he were to count the days from the time he returned to work for Respondent in November 2010 to July 5, 2011, he had worked for Respondent for approximately 33 weeks and a few days. However, the Rx3 wage statement shows that out of the 52 week proceeding July 5, 2011, Petitioner actually worked 95 days, or 19 workweeks. During that period, Rx3 shows Petitioner did not work for 48 days. Petitioner earned $26,602.20 during that period. From week ending November 16, 2010 through April 26, 2011, Petitioner earned $34.73 per hour. From week ending May 17,

2011 through July 5, 2011, Petitioner earned $35.38 per hour. $26,602.20 ÷ 19 workweeks = $1,400.11 average weekly wage. The Commission finds that Rx3 is the best evidence of what Petitioner actually earned during the 52 week period preceding July 5, 2011. Rx3 did show an hourly rate if dividing earnings for a particular week by the hours worked during that week. The Commission modifies Petitioner's average weekly wage to $1,400.11. This yields a TTD rate of $933.40.

The Commission affirms the Arbitrator's finding that Petitioner was temporarily totally disabled from July 6, 2011 through October 3, 2012, the date of arbitration, a period of 65-1/7 weeks. Respondent paid Petitioner TTD benefits at the rate of $960.00 and this was based on an average weekly of $1,440.00. However, as indicated above, the average weekly wage of $1,400.11 yields a TTD rate of $933.40. Therefore, Respondent overpaid Petitioner by $26.60 per week ($960.00 - $933.40). Respondent is entitled to credit for overpayment of TTD benefits of $1,732.81 ($26.60 per week X 65.143 weeks) and the Commission awards same.

Regarding choice of physicians, the Commission agrees with the Arbitrator that chiropractor Dr. Althardt should not be considered a choice as Petitioner did not want to see him and his supervisor had taken him there. However, the Arbitrator found Dr. Raskas to be Petitioner's first choice of physician, which the Commission does not agree with. Petitioner was seen at Greenville Regional Hospital ER on July 8, 2011 and the Commission agrees with the Arbitrator that this was for emergency care. The Commission notes that the medical records show that the ER did not refer Petitioner to Dr. Sola; the ER notes indicate that Petitioner was to follow-up with his primary care physician. Petitioner subsequently saw Dr. Sola on July 13, 2011 for an initial evaluation for his back and it was noted that there was no referral. Therefore, the Commission finds that Dr. Sola was Petitioner's first choice of physician as Petitioner chose to treat with Dr. Sola. The Commission finds that Dr. Raskas was Petitioner's second choice of physician. The Commission affirms the Arbitrator's finding that Petitioner did not exceed his choice of physicians under §8(a) of the Act. The Commission affirms all else.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $933.40 per week for a period of 65-1/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $110,666.50 for medical expenses under §8(a) of the Act, subject to the Medical Fee Schedule under §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize in writing and pay for the treatment recommended by Dr. Raskas pursuant to the Medical Fee Schedule.

14IWCC0019

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 Commission notes that Respondent paid $62,537.28 for TTD benefits ($960.00 X 65.143 weeks) and this results in an overpayment of $1,732.81 which is to be credited against any future award.

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

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

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: JAN 16 2014
MB/maw
o12/19/13
43

Mario Basurto

Michael J. Brennan

David L. Gore

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

SANDIFER, TIMOTHY
Employee/Petitioner

Case# **11WC038235**

14IWCC0019

PIASA COMMERICAL INTERIORS
Employer/Respondent

On 11/27/2012, 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 0.14% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

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

0167 DOWD & DOWD LTD
ELLINA KHOTIMLYANSKY
617 W FULTON ST
CHICAGO, IL 60661

14IWCC0019

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

TIMOTHY SANDIFER
Employee/Petitioner

v.

PIASA COMMERCIAL INTERIORS
Employer/Respondent

Case # 11 WC 38235

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **October 3, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other: Did Petitioner exceed his choice of physicians under Section 8(a) of the Act?

FINDINGS

On the date of accident, **07/05/2011**, 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 **$74,880.00**; the average weekly wage was **$1,440.00**.

On the date of accident, Petitioner was **47** years of age, ***single*** 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 for **any and all TTD paid**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $960.00/week for 65 1/7 weeks, commencing July 6, 2011 through October 3, 2012, as provided in section 8(b) of the Act. Respondent shall have credit for any amounts previously paid.

Respondent shall pay for the reasonable and necessary medical expenses contained in Petitioner's Exhibit 1, totaling $110,666.50, but shall have credit for any amounts previously paid and hold Petitioner harmless from any claims by any providers of the services for which Respondent claims credit. Respondent shall authorize and pay for the surgery recommended by Dr. Raskas. Petitioner did not exceed his choice of physicians under Section 8(a) of the Act.

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

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

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

Signature of Arbitrator

11/19/2012
Date

ICArbDec19(b)

NOV 27 2012

14IWCC0019

STATE OF ILLINOIS)
)SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

TIMOTHY SANDIFER
Employee/Petitioner

v. Case # 11 WC 38235

PIASA COMMERICAL INTERIORS
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Timothy Sandifer, is employed as a carpenter for Respondent, Piasa Commercial Interiors. (Arbitration Transcript (AT), p. 33). On July 5, 2011, Petitioner sustained undisputed accidental injuries when his back gave out while moving a 110-120 lb. bundle of group studs. (AT, p. 34). He felt a "pop" and immediate pain. (AT, p. 34). He testified that he had never experienced such a painful sensation before in his life; he felt he was nearly paralyzed and could hardly move his legs without extreme pain. (AT, p. 34-35). He dropped the studs, as he could barely move. (AT, p. 35). Petitioner notified his supervisor, Robert Howard, following the incident. (AT, p. 35).

Respondent does not dispute accident or notice. (Arbitrator's Exhibit (AX) 1). Respondent disputes causation, average weekly wage, medical as it pertains to choice of physician, prospective medical care, credit for overpayment in temporary total disability benefits, and nature and extent based upon its contention that Petitioner only suffered a lumbar strain and has reached maximum medical improvement (MMI). (AT, pp. 4-6; AX 1).

Mr. Howard testified that he was not on the scene when the accident occurred because he had gone to the lumber yard. (AT, p. 15). Mr. Howard also testified that he helped Petitioner limp to his (Petitioner's) truck without any other assistance; Petitioner testified that he was not assisted to his truck by his supervisor, but carried out to his truck by two other gentlemen, Chad Vonberg and Anthony Macon. (AT, p. 15; p. 36). Petitioner confirmed Mr. Howard's testimony that he was not on the scene when the incident occurred; Petitioner further testified that Mr. Howard was not there when he was carried out to his truck. (AT, p. 36). Mr. Howard testified that Petitioner was sitting up in the seat, but he observed that Petitioner was in a quite a bit of pain. (AT, p. 20). Petitioner testified that he reclined back as far as he could in the seat of a truck with no back seat. (AT, pp. 36-37).

Following the accident, Petitioner was driven by his supervisor to Althardt Chiropractic Clinic. (AT, p. 15). Petitioner's supervisor, Mr. Howard, initially testified that Petitioner did not specifically state where he wanted to go for treatment, but he later testified that Petitioner is the one who decided to go to the chiropractor. (AT, pp. 16-17; pp. 22-23). Petitioner testified in rebuttal that he specifically requested to go to the Greeneville Hospital Emergency Room, and his supervisor replied, "let's go here," meaning Althardt Chiropractic Clinic. (AT, p. 35-36; p. 49). Petitioner unequivocally testified that he did not choose Dr. R.T. Althardt as his first doctor. (AT, p. 41; p. 50; pp. 54-55). He testified that he felt as if he was required to do as his boss instructed. (AT, p. 49; p. 55). Petitioner did not know why Mr. Howard did not take him where he requested. (AT, p. 50). There is no known affiliation between Respondent and Dr. Althardt. (AT, pp. 21-22; p. 51). Both Petitioner and Mr. Howard have treated with Dr. Althardt in the past. (AT, pp. 17-18; p. 37). Petitioner testified that Mr. Howard told him that he goes to Dr. Althardt once per month. (AT, p. 53). Petitioner, however, had not sought treatment with Dr. Althardt for over seven years. (AT, p. 52; PX 3, Althardt Chiropractic, 2/21/05).

Dr. Althardt took a history of Petitioner's accident and performed a clinical examination that revealed positive straight leg rising on Petitioner's right and left sides. Petitioner reported pain and an inability to stand straight. Petitioner had -10 degrees range of motion in extension, low back pain greater on the left side, 25% limited flexion with discomfort, left and right lateral bending restriction, and muscle spasms. Dr. Althardt's impression was that Petitioner sustained a low back strain/muscle pull. He administered conservative care with Ibuprofen and ice packs, and kept Petitioner off work 3-4 days. He instructed Petitioner to return the next day. (PX 3, Althardt Chiropractic, 7/5/11). Petitioner testified that Dr. Althardt's treatment failed to provide any relief; he only returned to Dr. Althardt because he thought he had to. (AT, pp .40-41).

The next day, July 6, 2011, Dr. Althardt noted Petitioner's persistent pain and muscle spasms. (PX 3, Althardt Chiropractic, 7/6/11). Petitioner did not return to Dr. Althardt, but instead reported to the Greenville Hospital Emergency Room on July 8, 2011. (AT, p. 56; PX 4, Greenville Regional Hospital, 7/8/11). It was reported that Petitioner's back pain was "worse today." Petitioner's clinical impression was acute lower back pain. Petitioner was given an outpatient MRI of his lumbar spine, Vicodin, Flexeril, and instructed to follow up with a Dr. Sola. (PX 4).

Petitioner underwent the MRI of his lumbar spine on July 11, 2011, and reported to Dr. James Sola at Illinois Southwest Orthopedics on July 13, 2011, upon referral from the emergency room. (PX 4, Greenville Regional Hospital, 7/8/11, 7/11/11 [MRI report]; PX 5, Dr. Sola/Illinois Southwest Orthopedics, 7/13/11). Dr. Sola took the history of Petitioner's onset of acute back pain after an audible pop occurred while Petitioner was lifting metal studs. He noted that Petitioner was unable to hold on to the studs. Petitioner demonstrated clinical evidence of a lumbar strain. Dr. Sola interpreted Petitioner's MRI and noted that it demonstrated a fairly good size disk bulge at L3-L4 with neuroforaminal stenosis. He also believed that Petitioner may have sustained irritation of one of the nerve roots of his femoral nerve, due to his decreased patellar tendon reflex on his left side and discomfort in his right thigh. He recommended a Medrol Dosepak, anti-inflammatory medication, and a physical therapy program at Greenville Regional Hospital. (PX 5, Dr. Sola/Illinois Southwest Orthopedics, 7/13/11).

Petitioner returned to Dr. Sola on August 1, 2011, with some improvement in his symptoms. Dr. Sola recommended that Petitioner continue his physical therapy program at Greenville. (PX 5, Dr. Sola/Illinois Southwest Orthopedics, 8/1/11). On August 22, 2011, Petitioner presented to Dr. Irving at Greenville Regional Hospital for a rehab progress report after completing 16 sessions of physical therapy. Although Petitioner made progress through therapy, concerns were noted about easy and unexpected aggravation with minor tasks. Dr. Irving was concerned with the movement and loads Petitioner would have to perform at work, specifically heavy overhead work. Petitioner was instructed to undergo another week of physical therapy and report to Dr. Sola. (PX 4, Greenville Regional Hospital, 8/22/11).

On August 29, 2011, Petitioner reported to Dr. Sola with continued complaints of persistent back pain. Petitioner informed Dr. Sola that his back had gone out on him twice since his last visit on August 1, 2011. He had pain across his low back and more left thigh discomfort. Dr. Sola only recommended that Petitioner continue a home exercise program and anti-inflammatory medication. He instructed Petitioner to return in a month for re-evaluation. (PX 5, Dr. Sola/Illinois Southwest Orthopedics, 8/29/11).

When Petitioner returned on October 3, 2011, Dr. Sola noted that his back pain and discomfort persisted. (PX 5, Dr. Sola/Illinois Southwest Orthopedics, 10/03/11). He noted that Petitioner experienced more improvement when he was seeing a therapist, and referred Petitioner back to therapy for a month at Francis Physical Therapy. *Id.*; (PX 7, Francis PT, 10/10/11). The initial assessment at Francis Physical Therapy noted that Petitioner appeared to be recovering from disc displacement in the L3-L4 nerve distribution. Petitioner continued to show some neurologic deficit with absent reflex along with weakness in his myotome. Petitioner's problem list noted low back pain, decreased left hip flexion strength, decreased quad strength on his left, and limited work activities. (PX 7, Francis PT, 10/10/11).

On October 5, 2011, Petitioner presented to Dr. David Raskas. Dr. Raskas took a consistent history of Petitioner's accident and noted Petitioner's persistent complaints of lower back and left thigh pain, as well as pain that radiated up Petitioner's back. Although Petitioner could drive, walk, stand, and get dressed, he was unable to perform his duties and had been off of work since July 5, 2011. Petitioner had no prior back injuries of significance that inhibited his ability to work. Petitioner's pain was worsened by exercise, bending backwards or forwards, lying down, or general fatigue. He also noted that Petitioner's left knee jerk reflex was diminished compared to his right. Dr. Raskas viewed Petitioner's MRI and felt that it showed left lateralizing of the second from the last motion segment at L4-L5, and disc displacement in the foramen with loss of fat signal around the edge of the left exiting nerve root. X-rays revealed unusual appearance to the left facet and disc space narrowing at the lowest motion segment which he interpreted as mild degenerative disc disease of the lumbar spine. His impression after reviewing the diagnostic studies is that Petitioner's work accident caused a broad-based disc herniation that lateralizes to the left and impinges on the L4 nerve root at the L4-L5 level in the far lateral area, causing Petitioner's symptoms. He indicated in his report that, "Today, I explained to the patient the concept of his spinal injury and how the injury at work caused the disc herniation and the need for the treatment and the need for his work restrictions." Dr. Raskas gave Petitioner restrictions of no lifting, pushing, or pulling over 20 lbs.; no repetitive bending, stooping, or twisting at the waist; and instructed Petitioner to change his position from sitting, to

standing, to walking every 15-30 minutes. (PX 6, Dr. Raskas/St. Louis Spine Care Alliance, 10/5/11).

Petitioner received an injection from Dr. Raskas's assistant, Dr. Hurford, and returned to Dr. Raskas on November 1, 2011. Petitioner did not experience any immediate relief, but experienced relief 5 days following the injection. His symptoms abated for 2-3 days, but began to steadily increase thereafter. He reported low back pain at 5 out of 10 on the pain scale and weakness in his left thigh despite modest improvement from physical therapy sessions held 3 times per week. Dr. Raskas recommended that Petitioner continue physical therapy and ordered a new MRI of his lumbar spine. Petitioner remained on restrictions. (PX 6, Dr. Raskas/St. Louis Spine Care Alliance, 11/1/11; PX 8, St. Louis Spine and Orthopedic Surgery Center, 10/11/11).

On November 16, 2011, Petitioner returned to Dr. Raskas for follow-up after his MRI. Petitioner still reported lower back pain now radiating into his shoulders despite the brief improvement after the injection and 50% improvement in strength and flexibility from physical therapy. Petitioner still reported pain as 5 out of 10. Review of the MRIs showed a diffuse disc bulge at L4-L5 producing bilateral foraminal stenosis, worse on the left, and bilateral hypertrophic changes at the L4-L5. The study also showed a diffuse bulge at L3-L4, but it did not seem to produce foraminal stenosis. Dr. Raskas's assessment was a herniated nucleus pulposus at L4-L5. He continued Petitioner's physical therapy and restrictions. (PX 6, Dr. Raskas/St. Louis Spine Care Alliance, 11/16/11).

Petitioner returned on December 12, 2011. Dr. Raskas noted that he recommended more physical therapy, but workers' compensation ceased paying for physical therapy. Since Petitioner was unable to undergo physical therapy, his condition worsened. Petitioner eventually resumed physical therapy shortly before the office visit and experienced some minor improvement, but he experienced an increased return of his pain in his back with permanent pain down into his leg. Petitioner reported pain as 4 out of 10. Dr. Raskas recommended continued physical therapy for another 4 weeks. If Petitioner did not improve, the doctor advised that he would consider discography. (PX 6, Dr. Raskas/St. Louis Spine Care Alliance, 12/12/11).

Petitioner reported to Dr. Raskas on January 11, 2012, with continued back pain. Dr. Raskas noted that Petitioner had more pain with extension than flexion. He re-reviewed Petitioner's MRI scan. Petitioner had multi-level disc dehydration but he could not see a definite disc herniation; however, the MRI did not have any axial sections in it. Petitioner did not improve much with physical therapy. Petitioner's pain rating was 4-5 out of 10. Dr. Raskas recommended that Petitioner undergo bilateral facet blocks at L4-L5 and L5-S1 to alleviate his symptoms. (PX 6, Dr. Raskas/St. Louis Spine Care Alliance, 11/11/12). Petitioner received the injections on January 26, 2012 and February 2, 2012. Petitioner did not experience any improvement following these injections; his pre-injection and post-injection pain ratings were identical on both occasions. (PX 8, St. Louis Spine and Orthopedic Surgery Center, 1/26/12, 2/2/12).

When Petitioner returned on February 17, 2012, his condition was significantly worse. Normal activities of daily living caused Petitioner pain. Any time Petitioner did any type of rotational movement, even picking up a plate out of the dishwasher, he experienced significant

back pain. When Petitioner engaged in any type of back movement, his pain would escalate from a 3-4 out of 10 to an 8-9 out of 10. Dr. Raskas recommended a discogram. He stated that the need for the discogram was directly attributable to his work injury. (PX 6, Dr. Raskas/St. Louis Spine Care Alliance, 2/17/12).

Petitioner underwent a lumber discogram with a post-discogram CT on March 15, 2012. Petitioner described low back pain immediately upon the injection. The discogram demonstrated a posterior annular tear at L4-L5, which the contrast injection immediately extravasated through, with radiation down the left leg. Administration of intradiscal lidocaine did not alleviate Petitioner's symptoms. The radiologists' impressions included a classic positive discogram with an annular tear at L4-L5, and degenerative changes at L5-S1 with leakage of contrast either iatrogenic or through a small annular tear with some degenerative changes corresponding to discogram findings. (PX 9, Excel Imaging, 3/15/12).

Petitioner's immediate pain during the procedure escalated in severity even though he was on Tramadol, and Petitioner was hospitalized on March 22, 2012, with suspicion of an infection. He reported to the emergency room and attempted an outpatient trial of pain management with narcotic medication; however, this failed and the pain reoccurred. He experienced spasms and was unable to walk, so he was brought back via EMS and was admitted for pain control. It was noted that Petitioner attempted to reach Dr. Raskas when the Tramadol failed to control his symptoms. Petitioner was given several courses of various narcotic medications in an attempt to control his pain. Petitioner demonstrated positive straight leg rising bilaterally. Petitioner's exam was limited by his pain and inability to move. Obvious spasms on the paraspinal region on his left were noted. Review of his imaging studies showed that he had a mild disc bulge and bilateral facet arthritis at L3-L4 and a disc bulge eccentric to the left side at L4-L5 with severe left neuroforaminal narrowing and moderate right neuroforaminal narrowing. Petitioner's assessment was intractable back pain secondary to disc herniations and radiculopathy; acute on chronic back pain. Petitioner was placed on a Medrol dose pack and given oral Percocet. He was instructed to increase his activity very slowly and limit his activity until he could see his doctor for pain control. The attending physician attempted to contact physical therapy to provide Petitioner with an assistive device to make it easier for Petitioner to move around. (PX 4, Greenville Regional Hospital, 3/22-23/12).

Petitioner returned to Dr. Raskas on March 26, 2012. His pain rating was 10 out of 10. Petitioner constantly braced himself on the examination table throughout evaluation. Dr. Raskas noted that Petitioner was unable to stand and walk on his own without assistance and he had been having night sweats. Dr. Raskas opined that Petitioner needed to be admitted to the hospital and worked up for discitis. He stated that the need for the admission was directly related to Petitioner's work injury. (PX 6, Dr. Raskas/Orthopedic Sports Medicine & Spine Care Institute, 3/26/12).

Petitioner presented to Missouri Baptist Medical center for the evaluation. (PX 10, Missouri Baptist Medical Center). Petitioner was hospitalized for discitis at the L4-L5 level. (PX 6, Dr. Raskas/Orthopedic Sports Medicine & Spine Care Institute, 4/25/12). Petitioner was in severe acute pain as a result of a staph epidermis. Petitioner was on antimicrobial therapy and antibiotic therapy. *Id.*; (PX 11, Dr. Gutwein/St. Louis Infectious Diseases). Petitioner was down

to taking 4 Percocet a day and 1-2 Valiums when he returned to Dr. Raskas on April 25, 2012. He continued to walk with the use of a walker to control his pain. Dr. Raskas wished Petitioner to continue with conservative management as long as x-rays did not show any severe destruction to the point of instability. (PX 6, Dr. Raskas/Orthopedic Sports Medicine & Spine Care Institute, 4/25/12).

On May 30, 2012, Petitioner followed-up and demonstrated improvement with antibiotic treatment. Dr. Raskas started Petitioner on more physical therapy 3 times per week for 6 weeks. (PX 6). On July 11, 2012, Petitioner reported severe pain in his back and further reported that his activities of daily living were significantly limited. Dr. Raskas recommended fusion at the L4-L5 level. He stated that Petitioner would remain temporarily and totally disabled until the procedure was completed. He stated that Petitioner's need for surgery is directly related to Petitioner's work injury, not his discitis entirely. Petitioner's discitis was related to the work injury because the test that was used to treat the work injury caused the discitis. (PX 6, Dr. Raskas/Orthopedic Sports Medicine & Spine Care Institute, 7/11/12).

On May 1, 2012, Petitioner was examined by Dr. Keith Wilkey at the request of Respondent. He noted that Petitioner ambulated with the assistance of a walker and that his lower back pain was aggravated by activities of walking, bending, or twisting. After reviewing Petitioner's history and radiological exams, his assessment was internal disc derangement at L3-L4 and L4-L5, discitis, and probable discogenic back pain. He noted that Petitioner "obviously" could not return to work full-duty in his current condition. He stated that if non-steroidal medication, physical therapy and work hardening failed, surgery may be indicated. Dr. Wilkey opined that Petitioner's current diagnosis is directly and causally related to his work injury. (PX 14, Dr. Wilkey/IME, 5/1/12).

Petitioner testified that he desires to undergo the recommended surgery soon, due to the pain he experiences. (AT, p. 42). He testified that he experiences pain with any activity, accompanied by radiating pain and swelling into his private parts and legs. (AT, p. 42-43).

Regarding Petitioner's wage, Petitioner's supervisor, Mr. Howard, testified that Petitioner customarily made $34.25 an hour. (AT, pp. 11-14). Mr. Howard testified that Petitioner customarily worked a 40-hour week unless the weather was inclement or work was slow. (AT, pp. 10-11). This corroborated Petitioner's testimony. (AT, pp. 38-39). While Mr. Howard testified that Petitioner customarily made $34.25 an hour, he indicated that there had since been a raise that would make his figure off by up to $1-2. (AT, pp. 11-12). The payroll history reviewed by Petitioner's supervisor does not show Petitioner's hourly rate. (AT, p. 31). Respondent paid Petitioner benefits based on an average weekly wage of $1,440.00, $36 per hour times 40 hours per week. (AT, p. 5). This was the average weekly wage indicated on Petitioner's Application for Adjustment of Claim. (AX 2).

CONCLUSIONS OF LAW

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

The Arbitrator finds that Petitioner met his burden in proving that his current condition of ill-being is causally related to his undisputed work accident of July 5, 2011.

Accidental injury need not be the sole causative factor, or even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 797 N.E.2d 665, 672-673 (2003).

Following his undisputed work accident, Petitioner had immediate physical limitations and multiple objective signs of injury and disability that are verified by his physicians and documented in his medical records. Since the accident, Petitioner has been unable to work. Every physician who has treated Petitioner has attributed his physical condition to his work injury. Dr. Raskas opined that Petitioner's current condition of ill-being and all the treatment acquired as a consequence thereof is causally related to his work accident. Respondent's examiner under Section 12 of the Act, Dr. Wilkey, stated the same in his report.

Petitioner candidly reported that he treated with Dr. Althardt prior to the accident, and the medical records show that he did so in early 2005, over seven years prior to the accident. Dr. Raskas took note that any former back injuries sustained by Petitioner were insignificant and did not have any impact on Petitioner's ability to work. (PX 6, Dr. Raskas/St. Louis Spine Care Alliance, 10/5/11).

The Arbitrator notes that Dr. Wilkey's opinions are consistent with those of Dr. Raskas. There are no contrary opinions contained in the record. Consequently, the Arbitrator finds that Petitioner met his burden of proof in establishing causation.

Issue (G): What were Petitioner's earnings?

The Arbitrator finds that Petitioner's average weekly wage is $1,440.00. Petitioner's supervisor, Mr. Howard, testified that Petitioner customarily worked a 40-hour week unless the weather was inclement or work was slow. This corroborated Petitioner's testimony. Mr. Howard also testified that Petitioner customarily made $34.25 an hour, but indicated that there had since been a raise that would make his figure off by up to $1-2. The payroll history reviewed by Petitioner's supervisor does not show Petitioner's hourly rate. (AT, p. 31). The payroll sheet also does not show the number of days Petitioner worked during the work week; wage and days worked are key variables in determining the average weekly wage of a claimant in a profession with a varying work schedule such as construction. *See Sylvester v. Industrial Comm'n*, 197 Ill.2d 225, 765 N.E.2d 822 (2001). Therefore, the Arbitrator finds Mr. Howard's testimony concerning what Petitioner's average weekly wage was based on the payroll summary, or "what he had in front of him," to carry little weight. (AT, p. 32). Additionally, it is a well-known fact that computation of the average weekly wage for employees in the construction business can often result in a windfall to the claimant when the hours such an employee works is often variant on certain conditions. *Sylvester v. Industrial Comm'n*, 197 Ill.2d 225, 765 N.E.2d 822 (2001). Since Respondent failed to provide documented evidence of Petitioner's wage and number of days worked, the Arbitrator relies on the testimony in the record concerning the number of hours worked, i.e., 40.

With regard to Petitioner's hourly wage, Respondent chose to pay Petitioner benefits based on an average weekly wage of $1,440.00, $36 per hour times 40 hours per week. (AT, p. 5). This wage is supported by the testimony of Petitioner's supervisor, who stated that Petitioner's income after the raise would be around the same amount. (AT, pp. 11-12). Based upon the foregoing, the Arbitrator finds that Petitioner's average weekly wage is $1,440.00.

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): Is Petitioner entitled to any prospective medical care?

The Arbitrator finds that the medical care and treatment provided to Petitioner was reasonable and necessary, and Petitioner is entitled to past and prospective medical care.

Petitioner is entitled to recover reasonable medical expenses that are causally related to the accident and that are required to diagnose, relieve, or cure the effects of his injury, and such care is unlimited under the Act. *F & B Mfg. Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (1st Dist. 2001); *Efengee Electrical Supply Co. v. Industrial Comm'n*, 36 Ill.2d 450, 223 N.E.2d 135 (1967).

Petitioner has undergone exhaustive physical therapy and injections, and has tried numerous prescription and non-prescription steroidal/non-steroidal medications in an attempt to alleviate his symptoms, to no avail. Dr. Raskas has recommended surgery. Even Respondent's expert, Dr. Wilkey, stated that if non-steroidal medication, physical therapy, and work hardening failed, surgery may be indicated. Therefore, the Arbitrator finds that Petitioner is entitled to further care under the Act. Since all of Petitioner's treatment has been sought in order to diagnose, relieve, or cure the effects of his injury, Respondent shall be liable for all of the medical bills contained in Petitioner's Exhibit 1, totaling $110,666.50, and subject to the medical fee schedule, Section 8.2 of the Act. If Petitioner's group health carrier requests reimbursement, Respondent shall indemnify and hold Petitioner's harmless.

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

The Arbitrator finds that Petitioner is entitled to temporary total disability (TTD) benefits of $960/week for 65 1/7 weeks, commencing July 6, 2011 through October 3, 2012 (the date of accident to the date of hearing), as no physician at any time released Petitioner back to work. Respondent is entitled to a credit for all amounts previously paid.

This award in no instance shall be a bar to a further hearing for determination of a further amount of temporary total compensation, medical benefits and/or compensation for permanent disability.

Issue (O): Did Petitioner exceed his choice of physicians under Section 8(a) of the Act?

The Arbitrator finds that Petitioner did not exceed his choice of physicians under Section 8(a) of the Act. Petitioner's first choice of physician was Dr. David Raskas.

The Arbitrator finds Petitioner to be a credible witness. Petitioner consistently and unequivocally testified that his supervisor, Mr. Howard, chose to take him to Dr. Althardt, and that he felt that he was required to do as his boss instructed. Petitioner testified that he specifically requested to go to the Greenville Hospital Emergency Room, and his supervisor replied, "let's go here," meaning Althardt Chiropractic Clinic. Petitioner's supervisor, however, initially testified that Petitioner did not specifically state where he wanted to go for treatment, but he later testified that Petitioner is the one who decided to go to the chiropractor. The Arbitrator places more weight on the testimony of Petitioner in this regard, and finds that Dr. Althardt was not Petitioner's choice of physician.

The Arbitrator also finds that Petitioner's treatment at Greenville Regional Hospital constituted emergent care. Petitioner testified that he felt nearly paralyzed with pain following the accident, and that Dr. Althardt's treatment provided no relief. Thus, Petitioner went to Greenville Hospital Emergency Room 3 days after his accident, which resulted in an MRI being performed 3 days later. Normally, an emergency room visit on or near the date of injury is not considered a choice of treatment. *See Catron v. RA-CO Security Services*, 01 IIC 494 (2001); *Sorto v. Yellow Transportation*, 09 IWCC 668 (2009). In *Sorto*, the Commission considered the claimant's visit to the emergency room two days following the date of accident to be his first choice of physicians under Section 8(a)'s "Two Physician Rule" because no evidence was provided that this visit to the emergency room was for emergent care. In the case at bar, the evidence indicates that Petitioner was not getting relief from the chiropractic care, and presented to the emergency room three days post-accident because his pain became "worse."

Although the emergency room is not the first facility in which Petitioner received treatment, there is no stipulation in the Act that such care is only considered emergent when it is the first or primary place of treatment; the Act provides that employers are liable for "all first aid *and* emergency treatment." 820 ILCS 305/8(a). (emphasis added). *See also Bonin v. Airline Towing, Inc.*, 09 IWCC 1194 (2009) (holding both of the claimant's separate visits to different emergency rooms to constitute emergent care and not choices under the Act). Dr. Sola also does not constitute a choice of physician, since Petitioner was referred to him by the emergency room. (AT, p. 42; PX 4, Greenville Regional Hospital, 7/8/11 [prescription slip]). The Commission held in *Winfield v. Charter Communications*, 12 IWCC 0321 (2012), that emergency room referrals are not classified as choices. Consequently, even if Petitioner had chosen to see Dr. Althardt, Petitioner's treatment with Dr. Raskas would only constitute his second choice, and not his third. All subsequent providers were referrals from Dr. Raskas, and thus within Petitioner's choices allotted within the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☐ 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 Down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Loren D. Pettit,

Petitioner,

vs. NO: 12 WC 42976

Springfield Police Department,

14IWCC0020

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of the amount of compensation awarded to Petitioner for disfigurement under §8(c) of the Act 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. At arbitration, Petitioner testified that on November 9, 2012, his left forearm was lacerated during a struggle with a perpetrator. Petitioner's left forearm bore a narrow scar measuring approximately three and a half inches in length. The parties did not request a written decision to include the Arbitrator's findings of fact and conclusions of law. On June 27, 2013, the Arbitrator awarded eleven weeks of disfigurement benefits under §8(c). Respondent subsequently sought review of the amount of compensation and on December 18, 2013 the parties appeared at oral arguments and Petitioner's left forearm scar was examined by the Commission. After considering the entire record and the seriousness of Petitioner's disfigurement, the Commission hereby modifies the award of the Arbitrator and finds that Petitioner is entitled to six weeks of compensation under §8(c) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $712.55 per week for a period of six weeks, because Petitioner's injuries caused disfigurement under §8(c) of the Act.

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

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: JAN 17 2014
RWW/plv
o-12/18/13
46

Ruth W. White

Charles J. DeVriendt

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PETTIT, LOREN D
Employee/Petitioner

Case# **12WC042976**

SPRINGFIELD POLICE DEPT
Employer/Respondent

14IWCC0020

On 6/27/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

1157 DELANO LAW OFFICES LLC
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1 S E OLD STATE CAPITOL PLZ
SPRINGFIELD, IL 62701

0332 LIVINGSTONE MUELLER ET AL
DENNIS S O'BRIEN
P O BOX 335
SPRINGFIELD, IL 62705

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

☐ 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
NATURE AND EXTENT ONLY

LOREN D. PETTIT
Employee/Petitioner

Case # 12 WC 42976

v.

14IWCC0020

SPRINGFIELD POLICE DEPT.
Employer/Respondent

The only disputed issue is the nature and extent of the injury. 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 **Brandon J. Zanotti** , Arbitrator of the Commission, in the city of **Springfield**, on **June 13, 2013**. By stipulation, the parties agree:

On the date of accident, **November 9, 2012**, Respondent was operating under and subject to the provisions of the
Act.

On this date, the relationship of employee and employer did exist between the Petitioner and Respondent.

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

Timely notice of this accident was given to the Respondent.

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

In the year preceding the injury, Petitioner earned **$66,812.72**; and the average weekly wage was **$1,284.86**.

At the time of injury, the Petitioner was **38** years of age, ***single*** with ***one*** dependent child.

Petitioner did not require any medical treatment as a result of this injury.

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**.

Because the parties did not request a decision with findings of fact and conclusions of law, the Arbitrator is issuing a short decision form, pursuant to Section 19(b) of the Act.

ORDER

Respondent shall pay Petitioner the sum of $712.55/week for a further period of 11 weeks, as provided in Section 8(c) of the Act, because the injuries sustained caused the disfigurement of the arm.

Respondent shall pay Petitioner compensation that has accrued from November 9, 2012 through June 13, 2013, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected 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

06/19/2013
Date

JUN 27 2013

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☐ 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

PATRICK FLANNIGAN,

Petitioner,

14IWCC0021

vs.

NO: 12 WC 03832

CITY OF SPRINGFIELD,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary total disability and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner has worked for Respondent for 14 years, the last 12 as a Utility Meter Reader. He reads water and electricity meters. Some water meters are in water pits with a metal cover. The metal cover weighs between a couple of pounds and 15-20 pounds. Petitioner must get down on one knee, bend over and open the covers with a pit wrench. The pit wrench looks like a miniature pick axe and weighs a couple of pounds. The older covers have rust or are stripped and can require more force to open. Some meters can be as far as 10 feet down in the pit.

2. Petitioner works 8 hours a day, 5 days a week. He reads 400-600 meters daily, with 250-300 being water meters in pits.

3. Petitioner presented at Urgent Care on November 29, 2011 with complaints of left lower

back pain for the first time. He stated that he does a fair amount of walking and bending at work. For a week leading up to that date, he felt a burning sensation down his left hip and leg. He denied any specific injury leading to this. X-rays revealed mild degenerative changes at L4-5. He was diagnosed with low back pain, was prescribed medication and referred to Dr. Western.

4. On December 5, 2011 Petitioner returned to Urgent Care with the same symptoms and stated he was unable to perform his work duties. On December 6th, Dr. Western recognized that Petitioner's left leg problem was separate from his right leg issue. A lumbar MRI was performed and Petitioner was diagnosed with a herniated disc. At that point he realized he had suffered a work-related injury.

5. On January 26, 2012, Dr. Payne noted that Petitioner's symptoms were significantly better following the epidural injection, and that Petitioner would like to return to work.

6. Petitioner underwent conservative care through March 30, 2012. On that date he indicated to Dr. Payne's Nurse Practitioner that he was doing well. He was assured that as long as his symptoms were improving and he had no constant pain, his body was healing.

7. Petitioner now has no more left leg or low back complaints and continues to work full duty. He occasionally feels low back discomfort after a lot of walking, bending and stooping.

The Commission affirms the Arbitrator's rulings on the issues of accident, medical expenses and temporary total disability.

However, the Commission modifies the Arbitrator's ruling regarding nature and extent. The Arbitrator awarded Petitioner benefits to the extent of a 7.5% loss of use of his person as a whole. The Commission views the evidence slightly different; pointing out that Petitioner's pain complaints have subsided and that he has been able to return to full duty work. Accordingly, the Commission modifies the award down to a 5% loss of use of his person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner is entitled to an award of 4 weeks of temporary total disability benefits (12/30/11-1/26/12) at a rate of $812.63 per week under §8(b) of the Act. The total temporary total disability amount equals $3,250.52.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 per week for a period of 25 weeks, for the reason that Petitioner suffered a 5% loss of use of his person as a whole, as provided in §8(d)(2) of the Act. The total permanent partial disability amount equals $17,394.50.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to an award of $2,888.00 for reasonable and necessary medical expenses under §8(a) of the Act.

14IWCC0021

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall reimburse Petitioner $120.00 for out of pocket expenses.

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. Respondent shall indemnify and hold Petitioner harmless for any subrogation claim asserted by any providers of services for which Respondent is receiving said credit.

No bond is required for removal of this cause to the Circuit Court by Respondent. 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: JAN 17 2014
O: 11/21/13
DLG/wde
45

David L. Gore

Mario Basurto

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FLANNIGAN, PATRICK
Employee/Petitioner

Case# **12WC003832**

14IWCC0021

CITY OF SPRINGFIELD
Employer/Respondent

On 4/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

2217 SHAY & ASSOCIATES
TIMOTHY M SHAY
1030 S DURKIN DR
SPRINGFIELD, IL 62704

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

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ 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

14IWCC0021

PATRICK FLANNIGAN
Employee/Petitioner

v.

CITY OF SPRINGFIELD
Employer/Respondent

Case # 12 WC 3832

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **March 7, 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 _____

14IWCC0021

FINDINGS

On **December 12, 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 **$63,384.88**; the average weekly wage was **$1,218.94**.

On the date of accident, Petitioner was **42** 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 **$443.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner's outstanding medical bills, as set forth in Petitioner's Exhibit 9 (outstanding bills totaling $2,888.00), directly to the medical providers, pursuant to Section 8(a) of the Act and subject to the medical fee schedule, Section 8.2 of the Act. Respondent shall receive a credit in the amount of $443.00 for all medical bills paid by Healthlink. Respondent shall indemnify and hold Petitioner harmless for any subrogation claim asserted by Healthlink. Respondent shall also pay Petitioner $120.00 as reimbursement for out-of-pocket medical expenses paid by Petitioner.

Respondent shall pay Petitioner temporary total disability benefits of $812.63/week for 4 weeks, commencing December 30, 2011 through January 26, 2012, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $695.78/week for 37.5 weeks, because the injuries sustained caused the 7.5% loss of use to the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

Signature of Arbitrator

03/27/2013
Date

APR 5- 2013

STATE OF ILLINOIS)
)SS
COUNTY OF SANGAMON)

14IWCC0021

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

PATRICK FLANNIGAN
Employee/Petitioner

v. Case # 12 WC 3832

CITY OF SPRINGFIELD
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Patrick Flannigan, is claiming a repetitive trauma injury to his back with a manifestation date of December 28, 2011 while employed by Respondent, the City of Springfield. (See Arbitrator's Exhibit 2).

Petitioner has been employed by Respondent for fourteen years. For the past twelve years, he has been in his current position as a utility meter reader. Specifically, Petitioner reads water meters. Petitioner testified that in the City of Springfield, the water meters are kept underground in "water pits" that have to be opened and read. Petitioner testified that he works five days per week, eight hours per day and that he reads an average of 250 to 300 water meters per day.

The water pits are covered with metal covers. Petitioner testified that there are two types of covers for the water pits. Photographs of the two types of meter covers are entered into evidence as Petitioner's Exhibit 10. Petitioner testified that the first photograph depicted the larger meter covers, which weigh approximately fifteen to twenty pounds. (Petitioner's Exhibit (PX) 10). He testified that the second photograph depicted the smaller meter covers usually found in front of residences. (PX 10). He testified that the second type of meter cover only weighs around two pounds, and that the larger cover weighs approximately fifteen to twenty pounds. Petitioner testified that both types of meter covers are closed with one metal nut. (See also PX 10).

Petitioner testified that some of the meter covers are decades old. He testified that he has to get down on one knee, bend over every time, and open it with a tool called a pit wrench. The pit wrench weighs about two pounds and looks like a miniature pick axe. Petitioner testified that he wedges the narrow end underneath the lid to open the meter. The wider end fits around the nut. Petitioner testified that some of the older nuts have rusted and that sometimes the nuts are stripped, requiring him to use more force to open the meter cover.

Petitioner testified that when he approaches each water pit, he bends over it, gets on his knees, and uses the pit wrench to unlock the pit nut, and then lifts the lid, reads the meter and enters the readings into his hand held computer. He then places the lid back down and locks the nut. Petitioner testified that he uses his right hand to unlock the nut and open the meter. Petitioner further testified that some of the meters are further down the pit than others. He testified that at some businesses, the meter could be ten feet down the pit. He testified that he frequently has to reach into shallower pits to clear the meter of mud or snow in order to make it readable.

Prior to his presentation for treatment of his back, he visited his primary care physician at Springfield Clinic on August 2, 2011, with complaints of right leg pain down to the ankle. (PX 4). He testified that the pain felt like shin splints and that he could not move his ankle well. He testified that he did not suffer any back pain at that time.

Petitioner was subsequently referred to Dr. Gary Brett Western in the Athletic Care Management department at Springfield Clinic. Petitioner presented to Dr. Western on September 14, 2011. Dr. Western diagnosed Petitioner with right foot drop, which he indicated appeared to be a peripheral issue. As a result of Petitioner's presentation, Dr. Western ordered an EMG. (PX 4). The EMG, which took place on September 26, 2011, indicated Petitioner's right leg pain was caused by axonal type right peroneal neuropathy with denervation and moderate reinnervation. The EMG report further states, "[t]here is no electrophysiologic evidence for an alternate neurogenic lesion including a right lumbar radiculopathy or lumbosacral plexopathy." (PX 11). Petitioner testified that prior to the EMG, he had no symptoms in his lower back or left leg.

On November 29, 2011, Petitioner returned to Springfield Clinic with complaints of left lower back pain that had been troubling him "over the last week or so." (PX 4). He testified that he had burning down his left leg through his hip. He testified that this left leg burning was unrelated to his previous right leg pain. He was examined by Dr. Mary Campbell, who diagnosed Petitioner with low back pain. X-rays revealed some mild degenerative changes at L4-L5, but were otherwise unremarkable. Petitioner was prescribed Skelaxin and re-referred to Dr. Western. (PX 4).

Petitioner returned to Springfield Clinic on December 5, 2011, and was seen by Dr. Melody Schniepp. He complained of pain in the left hip that radiated down the left upper leg. Petitioner indicated that he was a meter reader and was unable to perform his job. He indicated that walking exacerbated the pain; however rest did not alleviate it. Upon examination, Dr. Schniepp indicated that she believed Petitioner's pain had gotten worse since his November 29, 2011 presentation, and that he had developed sciatica symptoms. Dr. Schniepp restricted Petitioner from work as of December 1, 2011 up to December 6, 2011 (days he had already missed plus the next day). (PX 4).

On December 6, 2011, Petitioner presented to Dr. Western. Dr. Western testified via evidence deposition on October 23, 2012. (PX 8). He testified that his practice is 100% orthopedics. (PX 8, p. 6). At his December 6, 2011 office visit, Petitioner indicated that the foot

drop on the right side was getting better, but he had a new problem involving left-sided buttock and leg pain. Dr. Western indicated the pain appeared to be in the L4 distribution, down the anterior thigh, through the knee, and into the lower leg. Petitioner indicated that he had suffered no new injury. Dr. Western examined Petitioner and reviewed his November 29, 2011 x-ray report. He confirmed that Petitioner had degenerative disc changes at L4-L5 and indicated it included end plate spurring and disc space narrowing. Dr. Western diagnosed Petitioner with left lower extremity radiculopathy apparently from the L4 distribution and right peroneal neuropathy, unresolved, with the possibility of a component of L4 radiculopathy on the right side. He ordered an MRI of the lumbar spine on this date. (PX 4).

Petitioner underwent a MRI of his lumbar spine on December 8, 2011. The MRI revealed a left central through subarticular disc protrusion at L3-L4 completely effacing the left lateral recess and proximal neural foramen with impression on the left L3 nerve root. (PX 12).

Petitioner returned to Dr. Western on December 12, 2011 to review his MRI results. Dr. Western indicated that the MRI results were consistent with his L4 radiculopathy. (PX 4). He testified that Petitioner had a fairly large disc herniation and that part of the disc was extruded. (PX 8, p. 19). Dr. Western further opined that it was an acute disc herniation because there was an extruded portion of the disc, meaning the central part of the disc was pushed out of the disc, which indicates an acute process. (PX 8, pp. 19-20). Dr. Western testified this definition of an "acute injury" was one that occurs within a few weeks. (PX 8, p. 35). Dr. Western restricted Petitioner from work until December 27, 2011, and referred him to physical therapy. (PX 4). Petitioner testified that it was at this December 12, 2011 visit with Dr. Western that he realized he suffered a work related injury.

On December 29, 2011, Petitioner returned to Dr. Western. He indicated that he had attempted to return to work, but the long walks, bending, and stooping aggravated his pain. (PX 4). Dr. Western testified that he discussed Petitioner's work activities more during this visit than before because, prior to this visit, he was doing very well. (PX 8, p. 23). At this time, Dr. Western recommended an epidural steroid injection. (PX 4). Petitioner subsequently received an epidural steroid injection from Dr. Western on January 5, 2012. (PX 5).

Petitioner returned to Dr. Western on January 16, 2012, indicating that the epidural steroid injection helped his left leg pain quite a bit, but that he was experiencing numbness and a "pins and needles" sensation of the anterior left thigh. He also complained of some weakness and instability with standing and walking. Physical examination confirmed instability with ambulating with the left leg. Based on his continued complaints, Dr. Western referred Petitioner for consultation with a spine surgeon. He also restricted Petitioner from work until he saw the spine surgeon, Dr. William Payne. (PX 4).

Petitioner presented to Dr. Payne on January 26, 2012, and was also seen by nurse practitioner Jennifer Nichelson. Petitioner indicated that repetitive motion aggravated his pain. Petitioner indicated that he was doing a lot better after his epidural steroid injection, but that he was left with weakness that was improving over time and some aggravating numbness, tingling, and occasional burning, with activity. After reviewing his MRI and x-rays, Ms. Nichelson

indicated that Petitioner had a disc herniation on the left side at L3-L4 which "exactly correlates" with his symptoms. Ms. Nichelson indicated that Petitioner may require a microdiscectomy in the future if his symptoms return or worsen, but that such procedure was not necessary at that time. She instructed Petitioner to resume his normal activities, returned him to work, and advised him to return if his symptoms worsened. (PX 4).

On February 3, 2012, Petitioner presented to Venturini Chiropractic Clinic. Petitioner continued to receive chiropractic and massage treatment from this clinic until February 20, 2012. (PX 6).

On March 30, 2012, Petitioner returned to Dr. Payne's office and was again seen by Nurse Nichelson. Petitioner indicated that a week prior to this visit, he woke up in the middle of the night and his left leg was numb, tingling, and weak. He indicated that this resolved within half an hour. He also indicated that occasionally when he worked hard he experienced some burning in his left leg. Petitioner indicated he had returned to ensure he was not causing any permanent nerve damage. Ms. Nichelson assured Petitioner that as long as his symptoms were improving and he did not develop a constant pain, his body was healing itself. (PX 4).

Dr. Western testified regarding the cause of Petitioner's pain. (PX 8, pp. 23-25). He testified that Petitioner's disc herniation at L3-L4 could be caused by Petitioner's having worked for Respondent since 1997, reading up to 600 meters per day, walking throughout an eight hour day, bending down and opening anywhere from 300 to 400 water pits per day by bending, stooping, and opening the meters with a pit wrench. (PX 8, pp. 23-25). Dr. Western further indicated that if Petitioner continues his job with Respondent as a meter reader, he may be at risk for further aggravations and exacerbations of his condition. (PX 8, p. 31).

Dr. Western further testified that most herniated discs, given time, over multiple months, will become resorbed by the body. (PX 8, p. 30). He testified, however, that it was impossible to know whether a disc has actually resorbed without a MRI. (PX 8, p. 31). He further opined that if the disc does not resorb and the herniation remains large enough to put pressure on the nerve, it is possible for Petitioner to have periodic exacerbations of the problem. (PX 8, p. 31). Dr. Western testified that symptoms of an exacerbation include radiating leg pain, numbness, tingling, burning, and weakness. (PX 8, p. 31). Dr. Western further testified that all of the treatment that he provided to Petitioner was reasonable and necessary. (PX 8, p. 32).

Petitioner testified that he has returned to full duty employment as a meter reader with Respondent. He testified that he no longer has left lower back pain or radiating discomfort in his left leg. He testified that he does have episodes where he feels some left lower back discomfort after a lot of walking, bending, or stooping, which he is frequently required to do at work. He testified that his pain tends to come on towards the end of the work week. However, he testified that the pain was not as severe as before; before his treatment his pain was an 8-9 out of 10, and now it is a 1-2 out of 10.

Petitioner noted that on the four days he returned to work at the end of November 2011, he had indicated on his time sheets that he had not suffered an injury at work. These time sheets

were entered into evidence as Respondent's Exhibit 1. However, Petitioner testified that, to his understanding, the question on the time sheets related to single episode traumas, and that he did not mark that he had suffered an injury because he never suffered a single episode trauma.

Respondent called Don Ott, Petitioner's supervisor, to testify. Mr. Ott testified that he has been the maintenance supervisor for Respondent for approximately eight years and was Petitioner's supervisor for the relevant time period. He testified that the first time he became aware that Petitioner was claiming a work related back injury was on December 30, 2011. Mr. Ott testified that Petitioner filled out required forms at that time.

Mr. Ott testified that Petitioner had given a fair and accurate description of his job. He also confirmed that in order to read the meters, Petitioner has to get on the ground, and that sometimes the meters need to be manually cleaned off before they are read. He testified that there is no ergonomically perfect way to perform the job, and that Petitioner encounters various terrains, holes in the ground, and uneven surfaces.

Petitioner entered into evidence a series of medical bills he claims are for treatment rendered resulting from his alleged work accident. The total medical bills equal $3,451.00. A total of $443.00 was paid or adjusted by Healthlink (Respondent's insurance carrier), and $120 was paid out-of-pocket by Petitioner. The outstanding bill balance for Petitioner's treatment at Springfield Clinic is $2,777.00, and the outstanding balance at Advanced Center for Pain & Rehab (Venturini Clinic treatment) is $111.00, making the total outstanding medical bills owed $2,888.00. (See PX 9).

CONCLUSIONS OF LAW

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

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

After a review of the totality of the evidence, the Arbitrator finds that on December 12, 2011, Petitioner suffered the manifestation of a repetitive trauma injury arising out of and in the course of his employment with Respondent. Relying on the testimony of Petitioner and Mr. Ott, the Arbitrator finds that Petitioner has worked as a meter reader for twelve years, working five days per week and eight hours per day. During this time, he has been required to read an average of 250 to 300 water meters per day. For each meter he reads, he must bend over, get on his knees, use the pit wrench to unlock the pit, and lift the metal lid. Often he must reach into the pits to clear meters of debris.

Relying primarily on the testimony and medical records of Dr. Western, the Arbitrator finds that Petitioner's lower back and left leg pain and herniated disc at L3-L4 were causally connected to his work-related repetitive trauma injury. Petitioner's December 8, 2011 MRI revealed a left central through subarticular disc protrusion at L3-L4 completely effacing the left lateral recess and proximal neural foramen with impression on the left L3 nerve root. (PX 12). Dr. Western indicated in his records that the disc protrusion at L3-L4 was consistent with

Petitioner's symptoms of L4 radiculopathy. (PX 4). Further, Dr. Western testified that Petitioner suffered an acute disc herniation, meaning that the injury occurred over a period of a few weeks or less, because the central part of the disc was pushed out of the disc. (PX 8, pp. 19-20).

Furthermore, when presented with a description of Petitioner's work requirements, including reading up to 600 meters per day, walking through an eight hour day, bending down and opening anywhere from 300 to 400 water pits per day by bending, stooping and opening the meters with a pit wrench, Dr. Western testified that those types of activities could cause a disc herniation at L3-L4. (PX 8, pp. 23-25).

Based on the foregoing, the Arbitrator finds that Petitioner sustained a work related repetitive trauma injury with a manifestation date of December 12, 2011, and that his current condition of ill-being is causally related to his work-related repetitive trauma injury. The Arbitrator notes that Arbitrator's Exhibit 1 (the Request for Hearing form) and Arbitrator's Exhibit 2 (Petitioner's Application for Adjustment of Claim) both indicate a manifestation date of December 28, 2011. However, based on the facts set forth as discussed, *supra*, the appropriate manifestation date would have actually been December 12, 2011, when Petitioner reviewed his MRI results with Dr. Western and testified that it was then that he learned he suffered a work related injury.

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?

Dr. Western testified that all of Petitioner's treatment was reasonable and necessary to treat the repetitive trauma injury to his back. (PX 8, p. 32). Therefore, the Arbitrator finds that all of Petitioner's treatment was reasonable and necessary for treatment of his work-related injuries.

Respondent shall pay the outstanding medical bills, as set forth in Petitioner's Exhibit 9, directly to the medical providers pursuant to the medical fee schedule, Section 8.2 of the Act. The Arbitrator further orders Respondent to reimburse Petitioner in the amount of $120.00 for out-of-pocket medical expenses paid by Petitioner. Respondent shall be given a credit in the amount of $443.00 for all bills paid by Healthlink and will indemnify and hold Petitioner harmless for any subrogation claim asserted by Healthlink.

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

Petitioner missed four weeks of work from December 30, 2011 through January 26, 2012. He was restricted from work by Dr. Western from January 16, 2012 through January 26, 2012. (PX 7). Furthermore, from December 30, 2011 through January 4, 2012 Petitioner was awaiting his epidural steroid injection. (PX 4). He received the epidural steroid injection on January 5, 2012. (PX 5).

The Arbitrator awards Petitioner temporary total disability benefits of $812.63 per week for 4 weeks for the time period of December 30, 2011 through January 26, 2012.

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

Petitioner suffered a work-related injury to his lower back. The MRI revealed a left central through subarticular disc protrusion at L3-L4 completely effacing the left lateral recess and proximal neural foramen with impression on the left L3 nerve root. Petitioner underwent conservative treatment, including an epidural steroid injection.

Petitioner has returned to work full duty as a meter reader with Respondent. While Petitioner no longer has constant left lower back pain that radiates into his left leg, he does still have episodes of left lower back discomfort. This lower back discomfort comes on towards the end of the week and is brought on by his work activities of walking, bending, and stooping. His pain can be at a 1-2 out of 10 after a week of work.

Petitioner's date of accident falls after September 1, 2011, and therefore Section 8.1b of the Act shall be discussed concerning permanency. It is noted when discussing the permanency award being issued that no permanent partial disability impairment report pursuant to Sections 8.1b(a) and 8.1b(b)(i) of the Act was offered into evidence by either party. This factor is thereby waived.

Concerning Section 8.1b(b)(ii) of the Act, the Arbitrator notes that the evidence shows that Petitioner's occupation as a meter reader requires him to engage in repetitive physical activity, including a lot of bending and stooping. The Arbitrator concludes that Petitioner's permanent partial disability will be larger based on this regard than an individual who performs lighter intensity work.

Concerning Section 8.1b(b)(iii) of the Act, the Arbitrator notes that Petitioner was 42 years of age on the date of accident. (See Arbitrator's Exhibit 1). At the time of trial, Petitioner was 44 years of age. (See Arbitrator's Exhibit 2). Petitioner likely has some years of work ahead of him, and the Arbitrator has considered Petitioner's age, and gives some weight to this factor.

Concerning Section 8.1b(b)(iv) of the Act, no real evidence was presented to indicate what Petitioner's future earning capacity would be. Therefore, the Arbitrator places no weight on the factor of future earning capacity when determining the permanency award.

Concerning Section 8.1b(b)(v) of the Act, the Arbitrator finds that the medical records corroborated Petitioner's testimony concerning his injury, treatment and permanency. The Arbitrator places great weight on this factor.

Based on the foregoing, the Arbitrator finds that Petitioner has sustained a 7.5% loss of use to the person as a whole pursuant to Section 8(d)2 of the Act. Respondent therefore shall pay Petitioner permanent partial disability benefits in the amount of $695.78 per week for 37.5 weeks.

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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jerry Carpenter,

Petitioner,

14IWCC0022

vs.

NO: 11 WC 17136

State of Illinois, Big Muddy River Correctional Center,

Respondent.

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 accident, temporary total disability, causal connection, medical expenses, notice, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 2, 2012 is hereby affirmed and adopted.

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.

DATED: JAN 17 2014

David L. Gore

Michael J. Brennan

Mario Basurto

DLG/gal
O: 11/20/13
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CARPENTER, JERRY
Employee/Petitioner

Case# **10WC042957**
11WC017136

SOI/BIG MUDDY RIVER CORRECTIONAL CENTER
Employer/Respondent

14IWCC0092

On 11/2/2012, 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 0.16% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

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

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
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SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
AARON L WRIGHT
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0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD IL 62794-9208

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

NOV 2 2012

KIMBERLY B. JANAS 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 14IWCC0022

Jerry Carpenter
Employee/Petitioner

v.

State of Illinois/Big Muddy River Correctional Center
Employer/Respondent

Case # 10 WC 42957

Consolidated cases: 11 WC 17136

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 **Herrin**, on **8/16/12**. 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 (for the accident date of 11/24/10)?
D. ☒ What was the date of the accident (for the accident date of 11/24/10)?
E. ☒ Was timely notice of the accident given to Respondent (for the accident date of 11/24/10)?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)?
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? (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)
K. ☒ What temporary benefits are in dispute? (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury? (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other ___

FINDINGS

14IWCC0022

On **3/13/10 & 11/24/10**, 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 3/13/10, Petitioner *did* sustain an accident that arose out of and in the course of employment. Petitioner did not sustain an accident on 11/24/10.

Timely notice of the 3/13/10 accident *was* given to Respondent.

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

In the year preceding the injury, Petitioner earned **$67,248.00**; the average weekly wage was **$1,293.23**.

On the date of accident, Petitioner was **58** 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 **$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 Petitioner permanent partial disability benefits of **$664.72**/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 pay reasonable and necessary medical services limited to treatment for Petitioner's left shoulder condition, 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. If Petitioner's health carrier should request reimbursement, Respondent shall indemnify and hold Petitioner harmless.

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

10/29/12
Date

NOV - 2 2012

Findings of Fact

Petitioner is a 58 year old Food Service Supervisor II at the Big Muddy Correctional Center, a position he has held since 2000. Prior to this he was employed as a correctional officer at Menard Correctional Center. He is alleging two accidents. The first claim stems from an incident on March 13, 2010 involving a singular trauma to Petitioner's left shoulder under case number 10 WC 42957. Petitioner's second claim is from an alleged accident date of November 24, 2010, involving repetitive trauma to Petitioner's left hand, arm and elbow under case number 11 WC 17136. Respondent is only disputing the first claim on the issue of whether Petitioner's cardiac condition is causally connected to that accident. Respondent is disputing the second claim on the issues of accident, notice, causation, medical expenses and TTD.

On March 13, 2010 the Petitioner was moving a carton of milk and suffered an injury to his left shoulder. At no point was injury to the Petitioner's arms or elbows, i.e. carpal and cubital tunnel syndrome mentioned or included in a form 45, report of injury to the Petitioner's employer. This claim was approved by Petitioner's employer and the Petitioner began a regiment of treatment with a local surgeon Dr. Dennon Davis lasting from March thru May of 2010. [PX 3]. He then began treatment with Dr. Paletta on November 18th 2010, after being sent there by his attorney,[TX 56] and the record reflects numbness and tingling in the hands and the note also mentions a carpal tunnel diagnosis of 6-7 years prior. [PX 6] Additionally he was given a diagnosis at that time of possible SLAP tear and AC joint degenerative changes.

On November 24th, 2010 the Petitioner had an EMG conducted by Dr. Philips and read by Dr. Paletta. The Petitioner was found to have left cubital syndrome as well as left wrist carpal tunnel syndrome. Additionally at that time, Dr. Paletta indicated in his note that he could do the carpal, cubital syndromes surgeries concomitant with the shoulder surgery. The doctor stated in his record that this could be done to minimize the Petitioner's recovery time. There is no mention in the record with regard to conducting the surgeries concurrently due to the Petitioner's heart condition.

At trial Petitioner testified that he had been diagnosed with carpal tunnel syndrome in 2006, while he was working at Big Muddy. At that time his treatment included wearing a splint at night. He further testified that he did not know it was work related. When asked about his prior medical treatment, Petitioner stated on cross-examination the following:

> *"Well, the treatment that the doctor prescribed for me in 2006, it improved greatly, and he told me at that time that all I was doing was postponing the inevitable in five to six years is what he told me at that time. He said we can't fix this problem without cutting on you." [TX 55-56] emphasis added.*

Respondent called as a witness Barbara Cooksey; she is in charge of the Dietary section of Big Muddy and is Mr. Carpenter's supervisor. She testified clearly that she was notified by the Petitioner he was going to have surgery for his shoulder but was NOT notified about any problems with either carpal or cubital tunnel syndrome.

Dr. Paletta performed surgery in January 4th of 2011.Dr. Paletta was in the middle of performing Surgery to the hands and arms when the Petitioner went into cardiac arrest and the surgery had to be halted. Shoulder surgery was never performed. [TX 18, 19]. During his deposition Dr. Paletta testified he was not provided with the Medical records from Dr. Davis, the Petitioner's earlier treating physician for carpal tunnel syndrome.

Dr. Sudekum conducted an IME on Nov. 25, 2011 and his deposition was taken on December 2nd 2011. He had reviewed records provided to him and there was mention of carpal tunnel syndrome as far back as **2002.** [R. Ex 1, P 35] He further went on to state the note was from the Petitioner's cardiologist and that surgery was discussed at that time and turned down by the Petitioner. Dr. Sudekum went on to opine that "his job duties at Big Muddy Correctional Center did not cause or aggravate his left carpal...cause or aggravate his left cubital tunnel syndrome..."

Respondent had the Petitioner examined by a board certified cardiologist, Dr. Stephen Schuman. The Petitioner's attorney did not have a cardiologist examine the Petitioner nor did he offer any evidence from a Cardiologist. Dr. Schuman opined that:

a. The infarction actually occurred after minor parts of the surgery, the carpal and cubital tunnel release, done for numbness and tingling in the left fingers, NOT RELATED TO THE SHOULDER INJURY OF 3/13/10 ACCORDING TO DR. PALETTA.
b. The procedure on the shoulder **had not begun yet.**
c. An important prerequisite for an intraoperative MI was his underlying coronary artery disease. [R. Ex. 3] emphasis added.

With regard to his shoulder, Petitioner did not have surgery and has readjusted his life to use his right shoulder. He has weakness, loss of strength, and pain in his left shoulder.

Based on the foregoing, the Arbitrator makes the following conclusions:

1. Petitioner sustained an injury to his left shoulder as a result of the accident on March 13, 2010. Petitioner failed to prove that he sustained an accident on November 24, 2010. The evidence clearly shows that the Petitioner had been having problems with carpal tunnel for years, going back to 2006, when he was diagnosed with this condition and was advised of the possible need for surgery. Dr. Paletta's diagnosis of carpal tunnel syndrome on November 24, 2010 only confirmed what Petitioner already knew 4 years prior.

2. Based on the Arbitrator's findings regarding accident, the Arbitrator finds that there is no causal connection between Petitioner's employment and his left hand and elbow conditions. Furthermore, there is no causal connection between the Petitioner's cardiac arrest and his employment. This finding is based on the fact that the Petitioner's cardiac arrest occurred during his surgery for the carpal tunnel and cubital tunnel procedure. The Arbitrator finds Dr. Schuman's opinions persuasive in this regard.

3. As a result of Petitioner's accident from March 13, 2010, Petitioner sustained injuries to the extent of 15% loss of use of the man as a whole.

4. Based on the Arbitrator's findings regarding accident and causation with regards to Petitioner's alleged claim from November 24, 2010, all other issues for that claim are rendered moot and benefits claimed from that accident are denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JERRY CARPENTER,

Petitioner,

14IWCC0023

vs.

NO: 10 WC 42957

STATE OF ILLINOIS, BIG MUDDY RIVER CORRECTIONAL CENTER,

Respondent.

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 accident, notice, causal connection, temporary total disability, medical expenses and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner is a Dietary Correctional Food Service Supervisor II for Respondent. He has worked for Respondent since 2000.

2. On March 13, 2010, Petitioner was moving a carton of milk from one cooler to another room. The cartons were stacked on top of one another. While pulling one cart, he noticed that a stack of milk that was 6 cases high was falling. As he reached to catch it, the stack continued falling and yanked his left shoulder.

3. An MRI performed on May 3, 2010 revealed bursal surface fraying of the distal supraspinatus, infraspinatus tendons and acromioclavicular joint arthritis.

4. In November of 2010, Petitioner was still having left shoulder issues. On November 17, 2010 Petitioner told Dr. Paletta that his shoulder was still weak and unstable. Cortisone shots and therapy did not help. Petitioner also complained of numbness and left shoulder pain. An Arthrogram revealed evidence of a partial thickness bursal side tear of the supraspinatus and infraspinatus. After diagnostic testing surgery was recommended on his hand, elbow and shoulder.

5. Subsequent to the November 2010 diagnostic tests, Petitioner completed a workers' compensation packet in order to have his claim on file with the State. This was completed within 45 days of receiving the diagnostic results. He also notified his supervisor that he was taking off work for surgery in January of 2011.

6. As a result of Petitioner sustaining injuries to his elbow and wrist as well (11 WC 17136), it was decided that it was in his best interests to undergo surgery in all three locations contemporaneously.

7. During the latter part of his elbow and wrist surgeries, Petitioner suffered a heart attack. Since he is considered high risk, he has yet to undergo his shoulder surgery. He has readjusted his life in order to have use of his right shoulder.

8. Dr. Paletta was present at the time of the heart attack during surgery. He opined that Petitioner's heart attack was a result of the physical stress of the surgery. The anxiety Petitioner felt prior to the surgery, along with elevated blood pressure and the potentially elevated heart rate all placed stress on his heart.

9. Respondent's physician, Dr. Schuman, also opined that the stress of the surgery was a significant factor in the acute heart attack.

10. After the surgery, Petitioner was off work until September 1, 2011. He was restricted from doing overtime work and was prohibited from lifting over 25 pounds. Currently, he is full duty with no restrictions.

11. Subsequent to the heart attack, Petitioner now notices he has less endurance. He does not ride motorcycles as often as he once did, no longer golfs or attends cookouts, and needs much more sleep than he used to. He also takes ambien to help fall asleep nightly due to his ongoing shoulder issues.

12. Dr. Paletta last saw Petitioner on March 4, 2011. At that time, his heart condition still prohibited his necessary shoulder surgery, however.

13. Barbara Cooksey, Respondent's Public Service Administrator, is also Petitioner's Supervisor. She corroborated Petitioner's testimony, stating that he called and notified her of the date of his January 2011 surgery, and told her that he was going to be off of work due to the workers' compensation claim he had.

14IWCC0023

The Commission affirms the Arbitrator's finding that Petitioner's shoulder injury arose out of and was in the course of his employment.

The Commission, however, modifies the Arbitrator's ruling regarding causal connection to the heart attack suffered by Petitioner during surgery. The Commission views the evidence slightly different; pointing out that both Petitioner's physician (Dr. Paletta) and Respondent's physician (Dr. Schuman) opined that the heart attack was significantly caused by the stress of surgery. Thus, since Petitioner incurred his heart attack in the midst of surgeries including the one to be done on his shoulder, Petitioner's heart attack was secondary to his work related shoulder condition. Furthermore, since Petitioner would have undergone shoulder surgery regardless of his elbow and wrist issues, it follows that the stress of the shoulder surgery significantly contributed to his heart attack.

As a result of this modification, the Commission also remands this case to the Arbitrator for a determination on permanent partial disability.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's heart attack was secondary to his work-related shoulder injury.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for a determination on permanent partial disability.

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: JAN 17 2014
O: 11/20/13
DLG/wde
45

David L. Gore

Mario Basurto

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CARPENTER, JERRY
Employee/Petitioner

Case# **10WC042957**

11WC017136

14IWCC0023

SOI/BIG MUDDY RIVER CORRECTIONAL CENTER
Employer/Respondent

On 11/2/2012, 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 0.16% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

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

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
AARON L WRIGHT
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

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

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD IL 62794-9208

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

NOV 2 2012

KIMBERLY B. JANAS 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 14IWCC0023

Jerry Carpenter
Employee/Petitioner

v.

Case # 10 WC 42957

Consolidated cases: 11 WC 17136

State of Illinois/Big Muddy River Correctional Center
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Herrin**, on **8/16/12**. 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 (for the accident date of 11/24/10)?
D. ☒ What was the date of the accident (for the accident date of 11/24/10)?
E. ☒ Was timely notice of the accident given to Respondent (for the accident date of 11/24/10)?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)?
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? (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)
K. ☒ What temporary benefits are in dispute? (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury? (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other ___

FINDINGS

14IWCC0023

On **3/13/10 & 11/24/10**, 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 3/13/10, Petitioner *did* sustain an accident that arose out of and in the course of employment. Petitioner did not sustain an accident on 11/24/10.

Timely notice of the 3/13/10 accident *was* given to Respondent.

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

In the year preceding the injury, Petitioner earned **$67,248.00**; the average weekly wage was **$1,293.23**.

On the date of accident, Petitioner was **58** 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 **$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 Petitioner permanent partial disability benefits of **$664.72**/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 pay reasonable and necessary medical services limited to treatment for Petitioner's left shoulder condition, 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. If Petitioner's health carrier should request reimbursement, Respondent shall indemnify and hold Petitioner harmless.

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

10/29/12
Date

NOV - 2 2012

Findings of Fact

Petitioner is a 58 year old Food Service Supervisor II at the Big Muddy Correctional Center, a position he has held since 2000. Prior to this he was employed as a correctional officer at Menard Correctional Center. He is alleging two accidents. The first claim stems from an incident on March 13, 2010 involving a singular trauma to Petitioner's left shoulder under case number 10 WC 42957. Petitioner's second claim is from an alleged accident date of November 24, 2010, involving repetitive trauma to Petitioner's left hand, arm and elbow under case number 11 WC 17136. Respondent is only disputing the first claim on the issue of whether Petitioner's cardiac condition is causally connected to that accident. Respondent is disputing the second claim on the issues of accident, notice, causation, medical expenses and TTD.

On March 13, 2010 the Petitioner was moving a carton of milk and suffered an injury to his left shoulder. At no point was injury to the Petitioner's arms or elbows, i.e. carpal and cubital tunnel syndrome mentioned or included in a form 45, report of injury to the Petitioner's employer. This claim was approved by Petitioner's employer and the Petitioner began a regiment of treatment with a local surgeon Dr. Dennon Davis lasting from March thru May of 2010. [PX 3]. He then began treatment with Dr. Paletta on November 18th 2010, after being sent there by his attorney,[TX 56] and the record reflects numbness and tingling in the hands and the note also mentions a carpal tunnel diagnosis of 6-7 years prior. [PX 6] Additionally he was given a diagnosis at that time of possible SLAP tear and AC joint degenerative changes.

On November 24th, 2010 the Petitioner had an EMG conducted by Dr. Philips and read by Dr. Paletta. The Petitioner was found to have left cubital syndrome as well as left wrist carpal tunnel syndrome. Additionally at that time, Dr. Paletta indicated in his note that he could do the carpal, cubital syndromes surgeries concomitant with the shoulder surgery. The doctor stated in his record that this could be done to minimize the Petitioner's recovery time. There is no mention in the record with regard to conducting the surgeries concurrently due to the Petitioner's heart condition.

At trial Petitioner testified that he had been diagnosed with carpal tunnel syndrome in 2006, while he was working at Big Muddy. At that time his treatment included wearing a splint at night. He further testified that he did not know it was work related. When asked about his prior medical treatment, Petitioner stated on cross-examination the following:

> *"Well, the treatment that the doctor prescribed for me in 2006, it improved greatly, and he told me at that time that all I was doing was postponing the inevitable in five to six years is what he told me at that time. He said we can't fix this problem without cutting on you." [TX 55-56] emphasis added.*

Respondent called as a witness Barbara Cooksey; she is in charge of the Dietary section of Big Muddy and is Mr. Carpenter's supervisor. She testified clearly that she was notified by the Petitioner he was going to have surgery for his shoulder but was NOT notified about any problems with either carpal or cubital tunnel syndrome.

Dr. Paletta performed surgery in January 4th of 2011.Dr. Paletta was in the middle of performing Surgery to the hands and arms when the Petitioner went into cardiac arrest and the surgery had to be halted. Shoulder surgery was never performed. [TX 18, 19]. During his deposition Dr. Paletta testified he was not provided with the Medical records from Dr. Davis, the Petitioner's earlier treating physician for carpal tunnel syndrome.

Dr. Sudekum conducted an IME on Nov. 25, 2011 and his deposition was taken on December 2nd 2011. He had reviewed records provided to him and there was mention of carpal tunnel syndrome as far back as **2002.** [R. Ex 1, P 35] He further went on to state the note was from the Petitioner's cardiologist and that surgery was discussed at that time and turned down by the Petitioner. Dr. Sudekum went on to opine that "his job duties at Big Muddy Correctional Center did not cause or aggravate his left carpal…cause or aggravate his left cubital tunnel syndrome…"

Respondent had the Petitioner examined by a board certified cardiologist, Dr. Stephen Schuman. The Petitioner's attorney did not have a cardiologist examine the Petitioner nor did he offer any evidence from a Cardiologist. Dr. Schuman opined that:

a. The infarction actually occurred after minor parts of the surgery, the carpal and cubital tunnel release, done for numbness and tingling in the left fingers, NOT RELATED TO THE SHOULDER INJURY OF 3/13/10 ACCORDING TO DR. PALETTA.
b. The procedure on the shoulder **had not begun yet.**
c. An important prerequisite for an intraoperative MI was his underlying coronary artery disease. [R. Ex. 3] emphasis added.

With regard to his shoulder, Petitioner did not have surgery and has readjusted his life to use his right shoulder. He has weakness, loss of strength, and pain in his left shoulder.

Based on the foregoing, the Arbitrator makes the following conclusions:

1. Petitioner sustained an injury to his left shoulder as a result of the accident on March 13, 2010. Petitioner failed to prove that he sustained an accident on November 24, 2010. The evidence clearly shows that the Petitioner had been having problems with carpal tunnel for years, going back to 2006, when he was diagnosed with this condition and was advised of the possible need for surgery. Dr. Paletta's diagnosis of carpal tunnel syndrome on November 24, 2010 only confirmed what Petitioner already knew 4 years prior.

2. Based on the Arbitrator's findings regarding accident, the Arbitrator finds that there is no causal connection between Petitioner's employment and his left hand and elbow conditions. Furthermore, there is no causal connection between the Petitioner's cardiac arrest and his employment. This finding is based on the fact that the Petitioner's cardiac arrest occurred during his surgery for the carpal tunnel and cubital tunnel procedure. The Arbitrator finds Dr. Schuman's opinions persuasive in this regard.

3. As a result of Petitioner's accident from March 13, 2010, Petitioner sustained injuries to the extent of 15% loss of use of the man as a whole.

4. Based on the Arbitrator's findings regarding accident and causation with regards to Petitioner's alleged claim from November 24, 2010, all other issues for that claim are rendered moot and benefits claimed from that accident are denied.

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	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bradley D. Crabtree,

Petitioner,

vs.

14IWCC0024

NO: 10 WC 34685

Pella Corporation,

Respondent.

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 issue of 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 16, 2012 is hereby affirmed and adopted.

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.

No bond is required for removal of this cause to the Circuit Court by Respondent. 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: JAN 17 2014

David L. Gore

Michael J. Brennan

Mario Basurto

DLG/gal
O: 11/20/13
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CRABTREE, BRADLEY D
Employee/Petitioner

Case# **10WC034685**

08WC020479

14IWCC0024

PELLA CORPORATION
Employer/Respondent

On 8/16/2012, 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 0.14% 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:

0834 KANOSKI & ASSOCIATES
CHARLES EDMISTON
129 S CONGRESS
RUSHVILLE, IL 62681

0264 HEYL ROYSTER VOELKER & ALLEN
CRAIG S YOUNG
124 S W ADAMS ST SUITE 600
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

☐ 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 14IWCC0024

BRADLEY D. CRABTREE,
Employee/Petitioner

v.

PELLA CORPORATION,
Employer/Respondent

Case # 10 WC 34685

Consolidated cases: 08 WC 20479

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 Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **7/19/12**. 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 _____

14IWCC0024

FINDINGS

On **10/23/07**, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned **$24,846.06**; the average weekly wage was **$517.63**.

On the date of accident, Petitioner was **37** years of age, *single* with **1** dependent child.

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 **$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 Petitioner no permanent partial disability benefits because the injuries sustained caused petitioner no permanent partial disability as provided in 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

8/14/12
Date

ICArbDec p. 2

AUG 16 2012

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 37 year old packout laborer, alleges he sustained an accidental injury that arose out of and in the course of his employment by respondent on 10/22/07. On that day petitioner was lifting a window from the line and felt a sharp pain in his chest. He testified that he dropped the window and immediately went to the nurses' station after telling his fellow workers what happened.

Petitioner testified that he was sent to the emergency room by the nurse because they thought it might be related to his heart based on his symptoms. The medical records from the Emergency Department at McDonough District Hospital reflect that petitioner presented on 10/23/07 at 8:38 am with chest pain for three days. He gave a history of pain in the middle substernal area on Sunday that was improving. He also reported that he did not notice it much at work the day before. However, on 10/23/08 it bothered him a little. He gave a history of lifting windows weighing approximately 100 pounds intermittently. He indicated that this is what recreated the pain. He described it as sharp on his left side without radiation. He stated that he saw a nurse prior to coming to the emergency room and she was the one that recommended an evaluation to make sure he did not have a heart problem. Petitioner reported some heart damage due to chemotherapy following a bone cancer diagnosis 17 years ago. He also reported that he had an ultrasound a year later that demonstrated that the heart wall motion and ejection fraction were within normal limits.

The "monitor questionnaire" completed by Nurse Bartlett Lynn included a history of petitioner having sharp upper left sided chest pain that started that morning at 7:30 am. Following an examination, labs and chest x-ray that did not demonstrate any infiltrate or effusion, he was assessed with chest pain, likely secondary to musculoskeletal issues. He was given two days off with no heavy lifting. He was discharged on an as needed basis.

On 10/23/07 petitioner presented to Dr. O'Neill after leaving the emergency room. Dr. O'Neill examined petitioner and assessed a fairly controlled hypertension, and noted that petitioner had been off his meds for 7-10 days. He also assessed a possible sleep apnea. He advised petitioner to stop smoking and gave him directives for his unrelated problems.

On 10/27/08 petitioner followed-up with Dr. O'Neill for his preexisting left arm condition that is unrelated to this alleged accident. He complained of continued pain in the left upper chest muscles. He stated that he strained his chest lifting 100 pound windows for Pella. He reported that he went to the emergency room because of left chest pain that was found to be a muscle strain. He reported that it was slowly getting better, but lifted up a child weighing 27 pounds over the weekend and was now having

significant pain again. Dr. O'Neill examined petitioner and assessed a muscle strain. He said it would take a couple weeks to heal. He placed petitioner on light duty for 3 weeks and prescribed Skelaxin and Celebrex, and gentle stretching. Petitioner was instructed to follow-up in a week, but showed up late and was not seen. He had a follow up appointment scheduled for 11/6/07, but did not show. Petitioner has had no further treatment for his muscle strain.

On 11/10/11 petitioner underwent a Section 12 examination performed by Dr. Hauter, at the request of the respondent. Petitioner stated that on 10/22/07 he felt some pain in the anterior chest and left upper arm when he ran a machine for putting cardboard around double hung windows, and he stretched to pick up a window and felt the pain gradually increase. He stated that the pain resolved in two weeks.

Petitioner testified that he gets occasional muscle cramps in the left chest area, maybe once or twice a week. He testified that the cramps last about 5 minutes and when they go away he has an uncomfortable feeling.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

Petitioner claims that on 10/22/07 while lifting a 100 pound window for respondent he felt a sharp pain in his chest wall. Petitioner presented to the company nurse who sent him to the emergency room. At the emergency room the first accident history was completed by Nurse Bartlett Lynn. This history indicated that petitioner was having sharp upper left sided chest pain that started that morning at 7:30 am.

The emergency room report of Dr. Mario contained a slightly different history. Dr. Mario noted that petitioner presented on 10/23/07 at 8:38 am with chest pain for three days. He gave a history of pain in the middle substernal area on Sunday that was improving. He also reported that he did not notice it much at work the day before. However, on 10/23/08 it bothered him a little. He gave a history of lifting windows weighing approximately 100 pounds intermittently. He indicated that this is what recreated the pain. He described it as sharp on his left side without radiation. He stated that he saw a nurse prior to coming to the emergency room and she was the one that recommended an evaluation to make sure he did not have a heart problem.

Based on the above, as well as the credible record, the arbitrator finds the petitioner did in fact sustain a muscle pull while lifting windows at work, and reported it to the nurse, before being sent to the emergency room for treatment. The arbitrator sua sponte changes the date of accident from 10/22/07 to

10/23/07 to conform to the credible evidence. Both histories include a statement that petitioner was sent to the emergency room by respondent's nurse after lifting windows at work.

The arbitrator finds the petitioner sustained an accidental in jury that arose out of and in the course of his employment by respondent on 10/23/07.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issue of accident and incorporates them herein by this reference.

As a result of the accident on 10/23/07 petitioner was diagnosed with a muscle strain. He followed-up with Dr. O'Neill that same day for his preexisting left arm condition that is unrelated to this alleged accident. He also complained of continued pain in the left upper chest muscles. He stated that he strained his chest lifting 100 pound windows for Pella. He reported that he went to the emergency room because of left chest pain that was found to be a muscle strain. He reported that it was slowly getting better, but lifted up a child weighing 27 pounds over the weekend and was now having significant pain again. Dr. O'Neill examined petitioner and assessed a muscle strain. He said it would take a couple weeks to heal. He placed petitioner on light duty for 3 weeks and prescribed Skelaxin and Celebrex, and gentle stretching. Petitioner was instructed to follow-up in a week, but showed up late and was not seen. He had a follow up appointment scheduled for 11/6/07, but did not show. Petitioner has had no further treatment for his muscle strain.

Petitioner told Dr. Hauter on 11/10/11 that his pain resolved in two weeks after 10/22/07. Petitioner has subjective complaints of occasional muscle cramps in the area that last 5 minutes, and feels uncomfortable afterwards. Petitioner has not seen any doctor for these complaints.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner's current condition of ill-being is not causally related to the accident he sustained on 10/23/07. At most, the arbitrator finds the petitioner sustained a muscle strain that had resolved by 11/6/07.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issues of accident and causal connection and incorporates them herein by this reference.

Petitioner was diagnosed with a muscle strain as a result of the accident on 10/23/07. Petitioner had two follow-up visits with Dr. O'Neill on 10/23/07 and 10/28/07. Thereafter petitioner never followed-up with Dr. O'Neill for this condition . Petitioner has subjective complaints of occasional

muscle cramps in the area that last 5 minutes, and feels uncomfortable afterwards. Petitioner has not seen any doctor for these complaints. He also told Dr. Hauter that his pain had resolved two weeks after the injury.

Based on the above, the arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that he sustained any permanent partial disability as a result of the accident on 10/23/07.

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 accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRADLEY CRABTREE,

Petitioner,

14IWCC0025

vs.

NO: 08 WC 20479

PELLA CORPORATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, prospective medical care and temporary total disability, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

Findings of fact and conclusions of law

The Commission finds:

1. Petitioner's job title with Respondent was Pack Out. He was hired by Respondent in March of 2006. He worked there for approximately 2 years. His duties included inspecting manufactured windows for defects and placing wooden slats on them for depth if need be. He also put weather stripping on the outside of the window, wrapped it in cardboard to prevent scratches and wrapped that in plastic to be shipped. The windows were moved from station to station on rollers. The windows had to be lifted a little to be placed on the rollers at each station. If a defect was found, Petitioner would lift the window entirely off of the assembly line and carry it 10-12 feet away to another station for repair. Windows weighed from 25 to 150 pounds. The majority of them weighed 75 pounds and were 3 feet by 5 feet. He would lift 40 windows per 8 hour shift for repair. In total he would work on 100-200 windows per shift.

2. On November 6, 2007 Petitioner worked, went home, showered, had dinner and watched television before going to bed. The following morning he woke up but was unable to move due to back pain. He called off work, and told Respondent he was having back problems. An agent of Respondent told him to keep in touch.

3. Petitioner initially treated with Dr. Osborn, a chiropractor. On November 8, 2007 he presented with complaints of low back pain in the L3-5 region. Dr. Osborn noted normal range of motion in all ranges with mild pain on flexion and extension. Motor, sensory and reflexes were all normal.

4. Petitioner then treated with his family doctor, Dr. Arnold, who took him off work. On November 19, 2007 Petitioner indicated that he had experienced pain in his low back and left leg since November 7, 2007. A lumbar x-ray revealed no acute abnormality, some transitional lumbosacral segment and tiny calcifications over the region of the right kidney.

5. Petitioner kept in touch with Respondent's nurse and HR department while off work. On November 27, 2007, after 3-4 weeks of therapy, Petitioner was sent back to work full duty, despite telling Dr. Arnold that he was not ready. 2 hours into his first shift, he was unable to lift anything, and thus could not do his job.

6. A DVD depicting Petitioner's job duties revealed little repetitive activity, including the lifting of windows.

7. Petitioner initially told Respondent that the injury in question was not work related because he assumed it was just a pinched nerve that would subside. Instead of completing workers' compensation paperwork, he elected to complete paperwork for short term disability on December 31, 2007. He did not report the November 2007 injury as a work-related injury until after conservative care was unsuccessful.

8. Petitioner was referred to Dr. Schierer, an orthopedic doctor, who performed a lumbar MRI and epidural injection. Petitioner requested a less physically demanding job from Respondent in January 2008, but was denied. He never returned to work for Respondent.

9. In late January 2008 Petitioner began working for NTN Bower in a less physically demanding role. He worked in the grinding department, which required him to place bearings onto a machine, push a button, and have the bearings shaved down. The most he lifted was 25 pounds. Petitioner continued treating with Dr. Schierer, and underwent another epidural injection in March of 2009. This is all the treatment he had for his low back.

10. During an Independent Medical Examination (IME) with Dr. Hauter on November 10, 2011, Petitioner specifically denied any work-related accident in November 2007. He stated that he simply slept wrong one night and woke up in pain.

11. Prior to the accident in question, on August 23, 2006, Petitioner complained of low back pain after moving furniture around to vacuum 2 days prior. Petitioner stated that he woke up on this date with intense back pain and was diagnosed with a muscle spasm and lumbar sacral strain. Petitioner treated for this injury until 9/21/06.

14IWCC0025

Based on the medical records in evidence, the Commission reverses the Arbitrator's rulings on the issue of accident. Although Petitioner offered testimony regarding the repetitive lifting he performed while working for Respondent, his statements and actions in evidence contradict any inference that his work duties caused his back injury.

Prior to the accident in question, Petitioner complained of low back pain on August 23, 2006 after moving furniture around to vacuum 2 days prior. Additionally, Petitioner failed to categorize the alleged accident as work-related, opting instead to file for disability benefits. Finally, Petitioner's own words during an IME with Dr. Hauter refute his own claim. During said IME, Petitioner specifically denied any work-related accident in November 2007. He stated that he simply slept wrong one night and woke up in pain.

Accordingly, since Petitioner is unable to sufficiently prove that a work-related accident occurred in November of 2007, the Commission reverses the Arbitrator's ruling and finds that Petitioner failed to prove he incurred a work-related accident.

With a finding of no accident, the remaining issues of causal connection, medical expenses, prospective medical care, temporary total disability and permanent partial disability are moot, and thus vacated.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner failed to prove he sustained an accident arising out of and in the course of his employment with Respondent on November 7, 2007.

IT IS FURTHER ORDERED BY THE COMMISSION that no medical expenses, prospective medical care, temporary total disability benefits or permanent partial disability benefits be awarded to Petitioner.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $5,100.00. 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: JAN 17 2014
O: 11/20/13
DLG/wde
45

David L. Gore

Mario Basurto

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CRABTREE, BRADLEY D
Employee/Petitioner

Case# **08WC020479**

10WC034685
14IWCC0025

PELLA CORPORATION
Employer/Respondent

On 8/16/2012, 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 0.14% 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:

0834 KANOSKI & ASSOCIATES
CHARLES EDMISTON
129 S CONGRESS
RUSHVILLE, IL 62681

0264 HEYL ROYSTER VOELKER & ALLEN
CRAIG S YOUNG
124 S W ADAMS ST SUITE 600
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

☐ 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 14IWCC0025

BRADLEY D. CRABTREE,
Employee/Petitioner

v.

PELLA CORPORATION,
Employer/Respondent

Case # 08 WC 20479

Consolidated cases: 10 WC 34685

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 Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **7/19/12**. 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

- ☐ 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 **11/7/07**, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned **$24,846.06**; the average weekly wage was **$517.63**.

On the date of accident, Petitioner was **37** years of age, ***single*** with **1** dependent child.

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 **$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 Petitioner temporary total disability benefits of $345.09/week for 9-1/7 weeks, commencing 11/17/07-12/11/07 and 12/17/07-1/24/08, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services as outlined in Section J of this decision, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner no permanent partial disability benefits because the injuries sustained caused petitioner no permanent partial disability as provided in 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

8/14/12
Date

AUG 16 2012

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 37 year old packout laborer, alleges he sustained an accidental injury due to repetitive work activities that arose out of and in the course of his employment by respondent and manifested itself on 11/6/07. Petitioner has worked for respondent for about two years.

Petitioner testified that he would receive a window after it had been put together and would put extensions on it. He would then make sure the window had no defects. Petitioner would then put on the weather stripping, and cardboard around the window to prevent scratches. Lastly plastic wrapper would be put around the window and it would be shipped. Petitioner testified that the windows were on rollers and may have to be lifted and taken off the line if something was wrong and taken to another station for repair.

Petitioner testified that he had to lift windows all day long. He testified that if he got behind he had to pull windows off the line in order to keep the line moving. Petitioner testified that the windows he lifted weighed from 25-150 pounds each. On average the windows weighed about 75 pounds each. In any given day petitioner lifted about 40 windows.

Petitioner testified that on 11/6/07 he finished working his shift and went home. He took a shower, made dinner, watched television and went to bed. When he woke up the next day he could not move due to the pain in his back. Petitioner called respondent that morning and reported that he would not be in that day because there was something wrong with his back. Petitioner testified that he did notice anything the day before other than aches in his shoulders from lifting windows.

On 11/8/07 petitioner presented to Dr. Daren Osborn, D.C. with complaints of low back pain in the L3-L5 region with radicular signs/symptoms into the lower left extremity. He reported the date of onset as 11/6/07 and insidious. Petitioner reported that his work for Pella and at the foundry "has been real hard on his back" with heavy lifting over the years. Petitioner reported that he had seen Dr. O'Neill for this condition and was told that he had "collapsed vertebrae in his back" at L4-L5. He stated that Dr. O'Neill gave him prescription medication. Dr. Osborn examined petitioner and noted normal range of motion in all ranges with mild pain on flexion and extension; lower extremity motor and sensory, and reflexes were within normal limits; normal heel and toe walk; mild to moderate lumbar myospasms at L3-L5 bilaterally, and mild to moderate left gluteal spasms. Dr. Osborn told petitioner that he could not treat him with chiropractic treatment if he has a collapsed vertebrae. He performed therapy. On 11/12/07 petitioner reported that his pain was slightly better, but still there. He reported new pain between his shoulder blades. Dr. Osborn did chiropractic treatment in this area and therapy on the low back.

On 11/15/07 petitioner presented to Dr. Arnold. Petitioner gave a history of having back pain with left sided sciatica intermittently for the last couple of weeks. He stated that he had been to a chiropractor on several occasions. This Tuesday he went to work and had a lot of trouble. Wednesday he worked too, but was really getting bad and Thursday and today he just could not really do anything due to back spasms. He reported occasional tingling in his left foot, that was worse yesterday than today. He reported back problems in the past, but not this bad. Following an examination Dr. Arnold diagnosed low back strain with left sided sciatica. Dr. Arnold referred petitioner for a course of physical therapy and changed his medications. He continued petitioner off work.

On 11/19/07 petitioner presented to Advanced Rehab and Sports Medicine Services for pain in his lower back and left leg. He identified the date of injury as 11/7/07. Petitioner gave a history of waking up on Wednesday morning (11/7/07) and could hardly walk. An x-ray of the lumbar spine revealed no acute appearing abnormality; transitional lumbosacral segment; and tiny calcifications over the region of the right kidney. On 12/10/07 petitioner still had tenderness at L3-L1. Also noted was a light left foot drop from a previous back surgery. Petitioner was making good progress and was able to lift 20 pounds.

On 11/26/07 and 12/31/07 petitioner completed a Disability Application Form. The nature of his disability was identified as pain in the back. He stated that he last worked 11/6/07 and 11/14/07 on the form dated 11/26/07, and 12/11/07 on the form dated 12/31/07.

Petitioner was released to light duty work and continued in physical therapy. Petitioner never returned. Petitioner was discharged on 1/15/08 because he had not shown up since 12/10/07.

On 11/27/07 petitioner followed-up with Dr. Arnold and stated that he was doing better, but was still not ready to return to work. Dr. Arnold was of the opinion that physical therapy did not think he was ready to return to work and neither did he. On 12/10/07 Dr. Arnold released petitioner to light duty work on 12/11/07 with restrictions on lifting more than 20 pounds. He also indicated that petitioner could return to full duty as of 12/17/07. He reiterated this full duty release to work on 12/5/07. Dr. Arnold was of the opinion that petitioner walks with a limp at times due to a history of bone cancer and radiation to his leg, and that this can really throw off the hip, knee and back.

On 12/12/07 petitioner called Dr. Arnold and reported that he had worked for three hours and had back spasms and increased pain. Petitioner was referred to Dr. Schierer, an orthopedic specialist. Petitioner had a follow-up appointment scheduled for 1/10/08 which was rescheduled for 1/14/08, but did not show.

On 12/17/07 petitioner presented to Dr. Schierer. Petitioner complained of low back pain on the left side into his left buttock. He reported that he was told last year that he had a couple of collapsed vertebrae, but never had an MRI done. He stated that he has had his complaints for 1 month. He stated that he woke up for work one morning and could hardly stand. Petitioner gave a history of osteogenic sarcoma in 1990 and left foot drop and numbness of the left foot following surgery on his left lower extremity. Petitioner reported that he does a lot of heavy lifting on the job. He reported increased pain with Valsalva. He described his pain as constant, moderate to severe, worse with activity and relieved somewhat with rest. Dr. Schierer had petitioner undergo an x-ray of the lumbosacral spine that was within normal limits. Dr. Schierer assessed a possible herniated disc lumbosacral spine. He ordered an MRI of the lumbar spine and authorized petitioner off work.

On 12/27/07 petitioner returned to Dr. Schierer and reported that his back and leg pain were continuing to bother him. Dr. Schierer reviewed the MRI scan and was of the opinion that it showed a degenerative bulging disc with an annulus fibrosis tear and facet joint arthropathy at L5-S1. He recommended epidural steroid injections. He continued petitioner off work.

On 1/4/08 petitioner underwent another epidural steroid back injection. Petitioner was scheduled to follow-up with Dr. Schierer on 1/23/08 but was a no show.

Petitioner testified that in early 2008 he had talked with respondent about returning to work in a less physical job, but his request was denied. Petitioner testified that he went to work for NTN Bower in the grinding department. His job was putting bearings on a machine and pushing buttons. Petitioner testified that he lifted about 25 pounds performing this job.

On 7/7/08 petitioner underwent an epidural steroid injection. He reported improvement of his back pain. He was instructed to increase his activities. On 3/20/09 petitioner underwent a repeat injection.

On 10/27/10 Dr. Schierer drafted a medical report opining that petitioner's condition was either caused, aggravated, or accelerated by the heavy lifting that the petitioner did at his job for respondent. He opined that his job at least partially caused and certainly aggravated his condition. This was drafted at the request of petitioner's attorney.

On 11/10/11 petitioner underwent a Section 12 examination by Dr. Hauter at the request of the respondent. Petitioner stated that while sleeping at home he awoke with pain in his back. He denied an injury at work. He stated that he felt that he had just slept wrong. Petitioner told Dr. Hauter that after being returned to work he was unable to perform the job due to continued pain. He again denied an

injury or re-injury at work. Dr. Hauter noted no disc herniation or nerve root impingement on the lumbar spine MRI. He also noted that there was no evidence of any vertebral compression on the MRI or x-rays of the lumbar spine.

Petitioner told Dr. Hauter that due to his back pain with certain movements he decided to change jobs. He stated he now works a job that requires less lifting and gets along very well. He reported occasional pain that comes and goes, but overall he has no impairment. He stated that he is able to perform all activities except swimming. He reported that he was working without restrictions. He stated that he has occasional pain in the lower back that is increased with prolonged sitting. Petitioner told Dr. Hauter that he was not treating for his back and was at baseline.

Dr. Hauter noted a past medical history of osteogenic sarcoma of the left leg in 1990 for which he has had several surgeries and undergone chemotherapy at age 19. He also developed a drop foot of the left leg after surgery and chemotherapy, for which he used a brace in the past. He also reported chronic back pain. He reported a history of awakening with pain on 8/23/06 after moving furniture. He stated that pain recurs with certain positioning. He gave a history of anxiety that is controlled with medication. Following an examination, Dr. Hauter's impression was chronic back pain that has been present on and off since 2006 when he had an injury at home. Petitioner gave a history of awakening with pain since that injury as documented in the medical records of 8/23/06. Dr. Hauter was of the opinion that the onset of pain on 11/14/07 (sic) was similar to the onset of pain in the past.

Dr. Hauter was unable to relate petitioner's back pain to any injury at work. He was also of the opinion that he could find no evidence of aggravation caused by the type of work reviewed from Pella Corporation. Dr. Hauter also diagnosed degenerative disc disease of the lumbar spine that has been long standing. He noted that the MRI did not demonstrate any structural cause or demonstrate any acute findings. He saw no evidence of any nerve root syndrome. He opined that petitioner's back condition is not related to the injury at work and there was no evidence of aggravation.

Dr. Hauter opined that there is no evidence of a work related injury to cause the onset of back pain as described. He further opined that petitioner's chronic pain is not a medical problem caused by repetitive work, and his back pain is not a work related problem but a chronic condition.

Dr. Hauter also was of the opinion that petitioner had post operative neuropathy in the left leg that led to a foot drop and an altered gait since the age of 19. He was of the opinion that this is the most likely cause the degeneration of the lumbar spine and chronic back pain.

Prior to the alleged accident on 11/6/07 petitioner was examined by Dr. McEntyre on 1/23/06 complaining of mid to upper back pain after heavy lifting yesterday. He denied any prior problems with his back. Petitioner was examined and assessed with musculoskeletal back pain. Petitioner was prescribed Toradol and Flexeril. A lumbar x-ray performed 8/28/06 revealed transitional lumbar segment, no acute appearing abnormality and tiny calcifications over the region of the right kidney.

On 8/23/06 petitioner presented to Dr. Reeves at Family Practice Associates with a history that he woke up that morning with intense low back pain and difficulty moving. He denied a history of back problems. He reported that he was vacuuming and moving furniture around and did not notice any symptoms at that time. He stated that the pain was not radiating to his legs, and he had no numbness or tingling. He stated that he works at Pella and lifts windows all day after they have been packaged and he usually has no problems with his back. He was examined and assessed with a muscle spasm and low back lumbar sacral strain. Petitioner was given medication and taken off work for three days. By 9/1/06 petitioner stated that he was 90-95% better. The doctor noted that he reviewed an x-ray of petitioner and noted that it did show that he had a fairly significant injury back in 1999. However, petitioner did not recall any injury. Petitioner last followed-up for this injury 9/21/06.

Petitioner testified that currently he cannot do any heavy lifting. He also testified that if he sits for too long a period his leg falls asleep. He testified that if he stands too long his back hurts. Petitioner no longer plays golf or softball due to his back pain. He also testified that when he lifts heavy things he gets pain down his left leg. Petitioner has not sought any treatment for these complaints.

Respondent offered into evidence a video of the Pella production line. The petitioner testified that the video showed all the work being done at the same station, but he did the work at different stations. Petitioner testified that there were 2 people on one station and only one on the other two stations. Because the one person stations may get behind those individuals working those stations may have to pull windows from the line in order to keep it moving. The window would be pulled from a rack 1 ½ feet off the ground, put upright and then he would carry it to another area. Petitioner testified that he never had a day where they did not get behind. Petitioner identified the three stations as extension, cardboard and wrapping.

Petitioner testified that he worked from 7:00 am – 3:00 pm per day and handled between 100-200 windows a day. Petitioner testified that the cardboard was put on at the 2nd station. Petitioner testified that when they were not running behind, the only place petitioner would physically lift the window would be at the end of the line. The rest of the time the windows were on roller and he would lift the corner to

get it to the next set of rollers. Petitioner testified that 5 of the 8 hours he worked he would have to take windows off the line. On his best day he would have to take off 5-10 windows. On his worst day he would have to remove 25-30 windows from the line. The most windows petitioner ever removed from the line in one day was 40-50 windows. Petitioner testified that he would work each station each day. Change in jobs usually occurred at break time.

With regards to defective windows, petitioner testified that on average he would process about 30 of them a day. He testified that he would remove defective window from the staging area and then put it back on the rollers after the defect was corrected. On an average day he would remove and replace about 30 windows from the line.

Petitioner testified that he thought the pain he had on 11/6/07 was a pinched nerve that would resolve if he could go to the chiropractor and undergo some physical therapy. He did not want to report a work injury because his pains had always resolved in the past. Petitioner did not want to claim it as a work injury because he did not want it to come back on the company, and did not want to abuse the system. When his complaints did not improve petitioner decided that he would report a work injury, but since it was after 45 days following the accident, he claims he was told by respondent that he could not file a workers' compensation claim. That is when petitioner decided to claim non-occupational benefits.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

Petitioner is alleging an accidental injury due to repetitive work activities that manifested itself on 11/6/07. Petitioner testified that he handled anywhere from 100-200 windows a day. Petitioner worked three stations every day. These stations included a station where extensions were put on, one where the cardboard is put on, and another where the wrapping was put on and then sent to shipping. In the course of a day if the line was running without any problems the windows were normally on rollers, moved from station to station, and were only handled and lifted by hand at the end of the day.

Petitioner presented unrebutted testimony that this was not the normal course of operation. Petitioner testified that he was required to work all three stations a day. He testified that 100-200 windows were processed a day. These windows weighed between 25-100 pounds, and were on average 75 pounds each.

On a normal day petitioner testified that they would get behind because one station had two people on it and the others only had one. When this would occur petitioner would have to manually lift the window and remove it from the line, and then lift and replace it to the line when they were caught up. On the best day he

may have to remove and replace 5-10 windows, and on the worse day he would have to take off and replace 25-30 windows to the line.

In addition to removing windows from the line due to a back up, petitioner would also have to remove defective windows. On average petitioner would handle 30 defective windows a day. After removing them he would replace them to the line once they were repaired. If petitioner was working the wrapping station, he would remove the window from the line after it was wrapped so that it could be shipped.

Petitioner testified that after doing this job for two years he woke up on 11/7/07 and could not move due to his back pain. Petitioner did not attribute this pain to a specific injury, but claimed that it was due to the repetitive lifting of the windows over the past two years.

Based on the above, as well as the credible evidence the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that he sustained a repetitive injury to his back that arose out of and in the course of his employment by respondent and manifested itself on 11/7/07. The arbitrator, sua sponte changes the accident date from 11/6/07 to 11/7/07, the date petitioner first sought treatment for his injury, and the date of the onset of his symptoms.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issue of accident and incorporates them herein by this reference.

Having found the petitioner has proven by a preponderance of the credible evidence that he sustained a repetitive injury to his back that arose out of and in the course of his employment by respondent and manifested itself on 11/7/07, the next issue is whether or not the petitioner's current condition of ill-being is causally related to the accident on 11/7/07.

It is unrebutted that prior to 11/7/07 petitioner had a history of chronic low back pain that was previously aggravated by specific lifting incidents, with the most recent being on 8/23/06, when he awakened with pain after moving furniture. At that time petitioner was diagnosed with chronic degenerative disc disease of the lumbar spine. Dr. Hauter was of the opinion that petitioner's lumbar MRI at that time did not show any structural problems or acute findings.

Dr. Schierer opined that petitioner's condition of ill-being as it relates to his low back was either caused, aggravated, or accelerated by the heavy lifting that the petitioner did at his job for respondent. Dr. Schierer opined that the petitioner's job at least partially caused and certainly aggravated his condition.

Dr. Hauter noted that petitioner had chronic back pain that had been present on and off since 2006, when he was injured at home. Dr. Hauter was of the opinion that the onset of pain in November of 2007 was very similar to the onset of pain in the past and was unable to relate petitioner's back pain to any injury at work. Dr. Hauter also opined that he could find no evidence of aggravation cause by the type of work reviewed from Pella Corporation. Dr. Hauter was of the opinion that petitioner's chronic pain is not a medical problem caused by repetitive work, and his back pain is not a work related problem but a chronic condition. Dr. Hauter opined that the cause of the degeneration of the lumbar spine and chronic back pain was petitioner's post operative neuropathy in his left leg that led to a drop foot and an altered gait since he was 19 years old.

The arbitrator adopts the opinions of Dr. Schierer and finds the accident did not cause petitioner's chronic degenerative condition, but his repetitive work for respondent, that included a lot of repetitive lifting of heavy windows, did aggravate his pre-existing degenerative lumbar spine condition.

The arbitrator further finds, based on the records of Dr. Hauter dated 11/10/11 that the petitioner's aggravation of his preexisting degenerative condition was temporary and resolved by that date based on petitioner's history to Dr. Hauter. The petitioner told Dr. Hauter that he has occasional pain that comes and goes, but overall he has no impairment. He also reported that he was working without restrictions, was not treating, and was back to baseline.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner sustained a temporary aggravation of his preexisting degenerative condition that resolved by 11/10/11.

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?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issues of accident and causal connection and incorporates them herein by this reference.

Based on the findings that the petitioner sustained an accidental injury to his back on 11/7/07 and he sustained a temporary aggravation of his preexisting degenerative condition that resolved by 11/10/11, the arbitrator finds the respondent shall pay the following unpaid bills pursuant to Section 8(a) and 8.2 of the Act. The arbitrator further finds that the respondent shall get credit for any bills already paid.

- McDonough District Hospital –services rendered 3/20/09 in the amount of $780.95
- McDonough District Hospital –services rendered 31/4/08 in the amount of $394.52;
- Dr. Rajan Mullangi –services rendered 1/4/08 in the amount of $600.00

- Reimbursement to petitioner for co-payments made to Dr. Daren Osborn for treatment rendered 11/8/07 and 11/12/08 in the amount of $48.00
- Galesburg Orthopedic Services Ltd – services rendered 7/7/08 in the amount of $51.00

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issues of accident and causal connection and incorporates them herein by this reference.

Petitioner is alleging he was temporarily totally disabled from 11/15/07 through 1/24/08. Respondent claims petitioner was not temporarily totally disabled as the result of any work related accident.

The arbitrator finds Dr. Arnold authorized petitioner off work on 11/17/07. On 12/10/07 Dr. Arnold released petitioner to light duty work. Petitioner attempted work on 12/12/07, but stopped after three hours because of increased pain. Dr. Arnold referred petitioner to Dr. Schierer. On 12/17/07 Dr. Schierer authorized petitioner off work. On 1/24/08 petitioner began working for NTB Bower.

Based on the above, the arbitrator finds the petitioner was temporarily totally disabled from 11/17/07 -12/11/07, and 12/17/07 through 1/24/08, a period of 9-1/7 weeks.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issues of accident and causal connection and incorporates them herein by this reference.

Having found the petitioner sustained a temporary aggravation of his preexisting degenerative condition that resolved by 11/10/11, the arbitrator finds the petitioner sustained no permanent partial disability as a result of the accident on 11/7/07. The arbitrator bases this opinion on the fact that on 11/10/11 petitioner told Dr. Hauter that he has occasional pain that comes and goes, but overall he has no impairment. He also reported that he was working without restrictions, was not treating, and was back to baseline.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☒ 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

Hugh McCord,

Petitioner,

14IWCC0026

vs.

NO: 11 WC 44641

Diocese of Joliet,

Respondent.

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 accident, temporary total disability, causal connection, medical expenses, prospective medical expenses, notice, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 3, 2013 is hereby affirmed and adopted.

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.

No bond is required for removal of this cause to the Circuit Court by Respondent. 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: JAN 2 1 2014

DLG/gal
O: 1/16/14
45

David L. Gore

Michael J. Brennan

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

McCORD, HUGH
Employee/Petitioner

Case# **11WC044641**

14IWCC0026

DIOCESE OF JOLIET
Employer/Respondent

On 6/3/2013, 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:

1357 RATHBUN CSERVENYAK & KOZOL
LUIS MAGANA
3260 EXECUTIVE DR
JOLIET, IL 60431

1739 STONE & JOHNSON CHTD
PATRICK DUFFY
200 E RANDOLPH ST 24TH FL
CHICAGO, IL 60601

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
ARBITRATION DECISION 14IWCC0026

Hugh McCord
Employee/Petitioner

v.

Diocese of Joliet
Employer/Respondent

Case # **11** WC **44641**

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 **George Andros**, Arbitrator of the Commission, in the city of **New Lenox**, on **04/08/2013**. 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 _____

14IWCC0026

FINDINGS

On **07/15/2011**, 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 not* sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned **$49,141.00**; the average weekly wage was **$945.02**.

On the date of accident, Petitioner was **53** 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 **$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

- Petitioner did not sustain an accident arising out of his employment.
- Benefits under the Act are denied.

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

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

#01 George J Andros
Signature of Arbitrator

May 31, 2013
Date

JUN -3 2013

Findings of Fact 11 WC 44641

Petitioner is a maintenance supervisor for the Diocese of Joliet. He reports to work each day at the pastoral center in Romeoville. He is in charge of maintenance and upkeep of the pastoral center's buildings and grounds and four other buildings within the Diocese. There are three employees who work under his supervision during the day and two who work under his supervision at night.

His duties include custodial (housekeeping) work and maintenance. With respect to housekeeping his tasks are limited to training employees. Maintenance consists of repairs and preventive maintenance. He agreed that most of his duties were of a supervisory nature. He did not use power tools on a daily basis. He testified that he used power tools two or three days per week. (On cross-examination, he said that he used power tools one or two times per week.) His supervisor, Chris Nye, testified that Petitioner used tools occasionally; i.e., one day per week. When Petitioner did use power tools, Petitioner testified that he would use them for two or three hours per day. Petitioner identified the various tools that he used. His other duties include checking lockers and moving beds in the retreat center. He uses a computer about one hour per day to send emails, check estimates, and check employees' time sheets. It is not an ergonomic keyboard. He agreed that his time on the keyboard was not constant typing.

Petitioner reviewed the Diocese's job description (RX 2), and agreed that it was generally accurate. He disagreed that it was complete. He cited his use of power tools in addition to the job description's reference to using a computer and driving a truck. He added that he needed to use hand tools in an awkward position.

He started with the Diocese in 1996. He had no problem with his hands prior to 1996. He has been a supervisor since 2005. He testified that he first noticed problems in his hands between Christmas and New Years in 2010. He was breaking up a floor in a church at the pastoral center. He noticed numbness in his hands and then noticed pain. In February 2011 there was a blizzard in the area, and he spent two days removing snow from the grounds. He used a plow on a truck, a plow on a tractor, and a snow blower. He noticed increased numbness while operating the truck. Petitioner agreed that he never told any of his physicians that the onset of symptoms was related to breaking up the floor or snow removal. Following the snow removal in February 2011, he noticed numbness while using a screw gun and other power tools. He identified no hobbies that would cause carpal tunnel syndrome.

On cross-examination, Petitioner agreed that his job was primarily one of supervising and coordinating workers. When he uses the computer, it is not for significant typing. He agreed that the Diocese's job description is generally accurate.

He first sought medical treatment at the Pain Center of Chicago/Dr. Orbegozo on July 15, 2011. He complained of bilateral symptoms with the symptoms in the left hand being half as bad as the symptoms in the right. After he told Dr. Orbegozo about his job duties, Petitioner concluded the job duties were a cause of his symptoms.

Petitioner's primary purpose for presenting to the Pain Centers of Chicago on July 15, 2011 was to address chronic low back pain. Petitioner reported that his back had been more bothersome lately and that he had been relying on Dilaudid a lot. Petitioner also complained of bilateral hand pain with numbness that was becoming worse. Petitioner thought he had carpal tunnel syndrome, but had never been worked up for it before. Petitioner's hand pain was located in the third and fourth digits. Petitioner also stated that he would occasionally use a splint for his right hand at night, but that it was old and not effective anymore. Petitioner was then examined and diagnosed with lumbar disc disease, lumbosacral spondylosis, and facet syndrome. He was also diagnosed with bilateral hand pain and ordered to undergo an EMG. Petitioner was also given orders for bilateral hand splints and re-fills for his prescriptions. (Px 5).

Petitioner underwent the EMG on July 21, 2011 at Provena Saint Joseph Medical Center. Prior to the exam he reported a several month history of numbness, tingling, and burning sensation in the right second, third, and fourth digits. His symptoms often occurred with nocturnal paresthesias, while driving, and while using his right hand. Petitioner's left hand symptoms were not as prominent. The results of the EMG revealed moderately to markedly severe right carpal tunnel syndrome and mildly to moderately severe left carpal tunnel syndrome. (Px 2).

Petitioner then presented to Dr. Alan H. Chen, plastic surgeon, on September 9, 2011 and complained of bilateral numbness and tingling in his hands. Dr. Chen's examination of Petitioner was positive bilaterally for Tinel and Phalen's tests. Dr. Chen diagnosed Petitioner with bilateral, right greater than left, carpal tunnel syndrome, synovitis, and trigger finger. Dr. Chen then recommended that Petitioner undergo surgical intervention for same. (PX 4).

Surgery to the right hand was performed on September 16, 2011 and to the left hand on December 23, 2011. Following the September 16, 2011 surgery, he took one week of vacation and then returned to full duty. Following the second surgery, he took a week off, but this was the week between Christmas and New Years and their facility was closed.

Currently, he notices dropping things, mostly with his right hand. He also notices cramping in winter. He has worked full duty since his return to work following the second surgery. He has not seen a physician for treatment since Dr. Chen in January 2012.

Petitioner's supervisor, Chris Nye, testified. Nye is the Director of Buildings and Properties for the Respondent and has been for 4-1/2 years. Petitioner is the maintenance supervisor for the pastoral center. Petitioner works under Nye's direct supervision. Nye described Petitioner's duties as supervising the maintenance and upkeep of the pastoral center and four buildings in Joliet. Nye identified Respondent's Exhibit 2 as the Job Description for the Petitioner. It truly and accurately depicts Petitioner's job duties.

The machines and tools identified in Exhibit 2 include a computer and driving a truck. Nye added that occasionally Petitioner had to use hand tools. He estimated that this was one day per week. On cross-examination, Nye testified that it is incorrect that Petitioner used power tools two or three hours per day, two or three days per week. He agreed that on occasion Petitioner performs the work rather than delegating the work to his employees. He knows Petitioner to be truthful and honest. He sees Petitioner about one-half hour per day.

On August 29, 2011 Petitioner presented for a Section 12 examination with Dr. Atluri. Dr Atluri authored a September 1, 2011 report and reports on September 27 and September 29, 2011. At the August 29, 2011 examination, Petitioner provided a history of an onset of symptoms in the one or two months preceding the IME. He attributed the symptoms to his usual job duties. Petitioner described his job as a working supervisor. Dr. Atluri's diagnosis included bilateral carpal tunnel syndrome. He reviewed a job description provided by the employer and noted the discrepancy between the duties as described by Petitioner and the duties provided by the Respondent. With respect to causal connection, Dr. Atluri stated as follows:

> "If the patient's usual work duties involve frequent forceful gripping, heavy lifting, awkward positioning as described by the patient, then his bilateral carpal tunnel syndrome would be considered related to his work activities. If, however, the exposure to these type of duties is varied, infrequent and limited, then this patient's carpal tunnel syndrome would be considered a chronic degenerative condition not related to his work activities." (RX 3).

Dr. Atluri reviewed the Diocese's job description, RX2, and generated his September 27, 2011 Addendum. (RX 4). He concluded that Petitioner's carpal tunnel syndrome is not related to his job duties. After reviewing additional medical records, Dr. Atluri maintained his opinion of no causal connection. (RX 5).

Petitioner offered into evidence Dr. Alan Chen's July 11, 2012 narrative report. (PX 6). Dr. Chen summarized his treatment of Petitioner. With respect to causal connection, Dr. Chen offered the following:

> "I believe given the description of his work, as described by the patient, of eight or more hours per day using power tools, drills, hammers, saws, leaf blowers and snow plows, all of which involves forceful gripping and awkward positions, the development of carpal tunnel syndrome with flexor tenosynovitis and triggering of his right middle finger would be considered related to his work activities."

Conclusions of Law 11 WC 44641

(C) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
(F) Is Petitioner's Condition of ill-being causally related to the accident?

It is Petitioner's burden to prove that his injury arose out of his employment. In this case it appears that Petitioner has a two pronged theory to establish that his carpal tunnel condition and his right middle finger triggering is related to his employment.

First, Petitioner testified that the initial onset of symptoms occurred while breaking up a floor in a church between Christmas and New Years in 2010 and then again while removing snow in February 2011. The accuracy of Petitioner's testimony is not persuasive due to the absence of any corroborating evidence in his medical records that associates the onset of symptoms with these activities. Moreover, there is no probative nor persuasive medical opinion that either of these activities would cause or contribute to carpal tunnel syndrome or trigger finger.

Second, Petitioner asserts that his usual job duties were a cause of his carpal tunnel syndrome. Petitioner testified to having a supervisory job but having to use power tools two or three days per week, two or three hours per day, and having to use a computer one hour per day. Petitioner's supervisor, Chris Nye, disputes that Petitioner's duties were as physical as described by Petitioner.

Regardless of whether Petitioner's description or Nye's description is accurate, Petitioner's supporting medical opinion from Dr. Chen is premised on Petitioner using various power tools eight or more hours per day. Although unstated in Dr. Chen's report, it is implied that his opinion is premised on Petitioner performing these duties five days per week. Petitioner testified to using power tools two or three times per week for two or three hours per day. There is no evidence that these duties with this level of frequency are a cause of Petitioner's carpal tunnel syndrome or trigger finger. Consequently, there is insufficient evidence to support Petitioner's claim.
Moreover, the arbitrator finds most persuasive Dr. Atluri's comment that if Petitioner's usual duties require frequent forceful gripping, heavy lifting, and awkward positioning, then the job duties would be a cause of Petitioner's injuries. In this case the evidence does not establish that Petitioner's job duties included frequent forceful gripping, heavy lifting, or awkward positioning.
Based upon a totality of the evidence the Arbitrator concludes as a matter of law and fact Petitioner did not sustain an accident arising out of his employment. Moreover, concludes Petitioner's injuries are not causally related to his job duties. Therefore, benefits under the Act are denied. (4)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Leonard Schaller,

Petitioner,

vs.

NO: 10 WC 16068

14IWCC0027

St. James Hospital,

Respondent.

DECISION AND OPINION ON §19(h) AND §8(a) PETITION

Petitioner filed a Petition under §19(h) and §8(a) of the Workers' Compensation Act requesting additional medical expenses and alleging a material increase in his disability since the Commission's Decision and Opinion on Review dated April 12, 2012, in which Petitioner was found to have permanently lost 27.5% of the use of his left arm, 69.57 weeks. The issues on Review are whether Petitioner's permanent disability has materially changed for his left shoulder condition of ill-being since the last arbitration hearing on August 26, 2011 and whether Petitioner is entitled to reasonable and necessary medical expenses. In his brief, Petitioner additionally requested an award for his right shoulder, arguing that his right shoulder condition of ill-being was due to overcompensation for his left shoulder injury and restrictions. The Commission, after considering the entire record, grants Petitioner's §19(h) Petition for the left shoulder condition, finding that Petitioner's permanent disability has materially increased to the extent of an additional 12.5% loss of the use of his left arm and has now permanently lost 40% of the use of his left arm and grants Petitioner's §8(a) Petition for reasonable and necessary medical expenses for left shoulder treatment in the amount of $480.81. However, the Commission denies any permanent disability for the right shoulder condition of ill-being and denies any medical expenses for treatment of the right shoulder for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Arbitration was held on August 26, 2011. In her Decision filed with the Commission September 14, 2011, Arbitrator Pulia noted that the parties stipulated to the following: accident arising out of and in the course of Petitioner's employment on February 2, 2010, causal

connection, Respondent agreed to accept liability for medical expenses, TTD from June 23, 2010 through July 6, 2010, two weeks, and Respondent paid $1,829.94 in TTD benefits. On the sole issue of nature and extent of permanent disability, Arbitrator Pulia awarded 32.5% loss of use of the left arm, 82.225 weeks at $664.72 per week.

At the arbitration hearing, Petitioner testified that on February 2, 2010, as he lifted a 100 pound steri-scope washer with co-worker, he felt something rip in his left shoulder. Petitioner treated with Respondent's Occupational Health, Dr. Aribindi and Dr. Mehl. Petitioner underwent treatment consisting of physical therapy, prescribed medications and cortisone injections. Dr. Mehl performed surgery on June 23, 2010 consisting of a left shoulder arthroscopy, subacromial decompression, debridement of a partial rotator cuff tear and repair of a complete anterior labral tear. Petitioner attended post-operative physical therapy. On January 7, 2011, Petitioner reported to Dr. Mehl he had improvement with his last injection. Petitioner complained of aching pain and swelling. His motion improved to 165°, flexion and abduction were significantly improved and there was mild swelling. Dr. Mehl's impression was improved left shoulder inflammation. Dr. Mehl discharged Petitioner from his care, prescribed medications and released Petitioner to return to work at full duty. On January 11, 2011, Petitioner was seen at Respondent's Occupational Health. It was noted that on examination, there was no swelling or redness, there was mild tenderness over the anterior aspect and full range of motion. Petitioner was released to full duty without restrictions and he was to be seen as needed. Petitioner testified that he noticed some numbness and difficulty lifting with his left arm at times. His fingers would go numb if he lifted more than 20 pounds. He had difficulty with overhead lifting and painting. When his left hand/arm got numb, Petitioner would shake it. He only slept 2 to 3 hours at a time. He had some loss of strength. His left shoulder froze when doing overhead work. At work Petitioner would get help lifting monitors overhead. He had numbness when waxing his car and turning a screwdriver. Petitioner did not seek any further treatment and believed his left arm was "as good as it would get."

2. Respondent reviewed on the sole issue of nature and extent of permanent disability. Oral arguments were held on February 9, 2012. In its April 12, 2012 Decision and Opinion on Review, the Commission modified the Arbitrator's Decision finding that Petitioner permanently lost 27.5% of the use of his left arm (69.57 weeks) and affirmed all else.

3. Neither party filed an appeal and the Commission's April 12, 2012 Decision and Opinion on Review became final.

4. Petitioner filed this §19(h) and §8(a) Petition on November 9, 2012. Hearing on the §19(h) and §8(a) Petition was held before Commissioner Basurto on June 19, 2013.

5. At the June 19, 2013 hearing on the §19(h) and §8(a) Petition, Petitioner testified that after the August 26, 2011 arbitration hearing, he continued treating with Dr. Mehl. He saw Dr. Mehl in the fall of 2011 and explained to him how he was doing (Tr 6). At that point Petitioner was doing okay. He had undergone a second surgery and was having a little bit of problems. Dr. Mehl gave him a cortisone injection in November 2011 into his left shoulder (Tr 7). Into

2012, Petitioner continued to work full time at the same job he had before (Tr 7). Petitioner saw Dr. Mehl in January 2012 and he recommended some additional surgery (Tr 7-8). He awaited approval for the surgery from Respondent's workers' compensation insurer (Tr 8).

Subsequently, approval was given and Petitioner underwent repeat left shoulder surgery on February 14, 2012 by Dr. Mehl at St. Francis (Tr 8). Dr. Mehl had Petitioner off work for a little under a week post-op and then released him to return to work at light duty. For the 6 days Petitioner was off work, he received TTD benefits (Tr 8). Dr. Mehl gave Petitioner work restrictions which Respondent accommodated (Tr 9). He was wearing a sling and had restrictions of no use of his left arm (Tr 9). Petitioner was able to do light duty work provided by Respondent during the spring and summer of 2012 (Tr 9). He periodically saw Dr. Mehl and underwent some physical therapy at Mett Therapy at St. James in March and April 2012 (Tr 9). In May 2012, Petitioner's restrictions were changed to no lifting over 20 pounds with the left arm and Respondent accommodated those restrictions (Tr 10). As spring turned into summer, Petitioner continued with physical therapy and followed-up with Dr. Mehl and his associates (Tr 10).

Petitioner testified that in the spring of 2012, he also had complaints of his right shoulder (Tr 10). He testified that he felt something weird in his right shoulder and told Dr. Mehl, who referred him to Dr. Nikkel. Petitioner saw Dr. Nikkel, who ordered a CT scan and MRI. After the results of these diagnostic tests, Dr. Nikkel told Petitioner there was a slight tear in his right shoulder (Tr 10-11). Petitioner continued to work light duty during the summer of 2012 (Tr 11). In June 2012, Petitioner received some injections into his left shoulder (Tr 11). In early June 2012, Dr. Mehl released Petitioner to return to work at full duty (Tr 11). At that point, Petitioner returned to his regular job (Tr 11). His last visit with his treating physician was in the summer of 2012 (Tr 11). He still works his full-duty job with Respondent, with the same job title and same duties as before the February 2, 2010 injury (Tr 12). His salary increased due to raises. At Respondent's request, in May 2013 Petitioner saw Dr. Romeo for a medical examination (Tr 12).

In conjunction with his treatment, Petitioner was given various bills by the medical providers (Tr 13). Px2 is a compilation of those bills. The vast majority of those bills have been paid by Respondent (Tr 13). There are a few bills that are disputed as to the right shoulder (Tr 13). There are a few balances outstanding (Tr 14). Between the last arbitration hearing on August 26, 2011 and this hearing, Petitioner has not had any other accidents or injuries at work or at home and no motor vehicle accidents (Tr 14).

Petitioner testified he notices that he only sleeps 3 or 4 hours a night and his left shoulder wakes him up. His left fingers are going numb and he cannot put his left hand over his head for very long because it starts hurting (Tr 14). He takes over the counter Naprosyn. He puts ice on his left shoulder because it swells up (Tr 15). Petitioner used to be able to lift over his head and hold, like take a monitor down by himself, but now he has to have somebody else help him do it (Tr 15). Petitioner's job requires him to move monitors and equipment around the facility (Tr 16). Petitioner has a little bit of a problem if he needs to reposition a monitor that is chest or shoulder height or above his head (Tr 16). When he goes over his head, his left shoulder locks up. His left shoulder pops every once in awhile when he brings it down. Once his left arm is down, his left fingers will go numb, and then once he puts his left arm down to his side, the

finger and shoulder numbness goes away (Tr 16). He has a hard time sleeping and sleeps about 3 hours a night because his left shoulder keeps waking him up. If he lays on his left shoulder, it wakes him up, then he has to go back out on the couch and tries to sleep (Tr 17).

On cross-examination, Petitioner acknowledged that he testified at the August 26, 2011 arbitration hearing that he had difficulty putting a shirt on, that his left shoulder would go numb, that he could not lift his left shoulder over his head, that his left hand went numb when he attempted to lift his left arm, that his left shoulder kept swelling up, that he had neck tingling, that he had difficulty sleeping 2 to 3 and more than 3 hours a night, that he felt he had lost strength in his left shoulder, that he had to use his right arm to lift more than 10 to 15 pounds, that his left shoulder freezes up, that his left shoulder went numb when he attempted to wash and wax his car and that he took Naprosyn and Vicodin (Tr 18-21). Petitioner acknowledged he received an award after the arbitration hearing. When Petitioner saw Dr. Romeo in May 2013 for an examination at Respondent's request, he told Dr. Romeo he no longer had any complaints referable to his right arm (Tr 21). The job description for his job at Respondent was shown to him by his attorney and he testified that the job description was fairly accurate (Tr 22). When Petitioner went to see various treating physicians for his complaints of developing right shoulder pain, he did not provide them with any written job description as he did not have one with him (Tr 22).

On re-direct examination, Petitioner testified that the problems that he had back in 2011 still bother him (Tr 23). At the August 26, 2011 arbitration hearing, Petitioner had left shoulder numbness and this is about the same now (Tr 23). His difficulty with overhead range of motion is a little bit worse now (Tr 24). Back in 2011, the numbness was in his biceps and he did not have any numbness in his hands (Tr 24). He still has left shoulder swelling, about the same as before (Tr 24). Petitioner has tingling in the left side of his neck and down the top of his left shoulder (Tr 25). In 2011, the sleeping problem was caused by biceps numbness (Tr 26). His sleeping problem now is if he lays on his left side, he gets numbness from the biceps all the way down to his left fingers. He did not have this before (Tr 26). Petitioner still washes and waxes his car and gets finger numbness (Tr 27). Respondent never provided him with a written job description before this hearing (Tr 27). Petitioner told his doctor that he worked in bio-med and that he fixed equipment; that was all his doctor asked (Tr 28). Everything else he told his doctor was how he was feeling and what was happening (Tr 28).

On re-cross examination, Respondent's attorney read from p.15 and p.16 from the arbitration transcript of Petitioner's testimony: "Question. What you need to do is give her examples of what you do and what you physically notice about yourself when you try to do certain activities: Lifting, moving the arm and the leg. Answer. If I try to lift over my head and do what I need to do, my hand goes numb?" (Tr 28). Petitioner did not deny that that was his testimony in 2011 (Tr 29).

6. WellGroup Health Partners records, Px3, indicate Petitioner saw Dr. Mehl on September 19, 2011. Dr. Mehl noted that Petitioner underwent a left shoulder arthroscopy, labral repair and debridement of partial rotator cuff tear on June 23, 2010. Dr. Mehl indicated he last saw Petitioner on December 3, 2010 and gave him a cortisone injection, which did help. The records indicate that Dr. Mehl actually last saw Petitioner on January 7, 2011. Petitioner

reported he started recently having increasing pain and stiffness. Respondent had approved Petitioner come back for treatment. On examination, Dr. Mehl noted some tightness and stiffness with scar tissue formation present. Active motion was limited by pain to only 110 degrees, flexion was to 140 degrees, abduction to 130 degrees with pain and motor, skin and sensation were intact. Dr. Mehl's impression was 1) status post left shoulder arthroscopy and 2) recurrent left shoulder inflammation and scar tissue. Dr. Mehl recommended a cortisone injection into the subdermal space and physical therapy, but Petitioner wanted to work this on his own. Dr. Mehl opined that if Petitioner continued to have limitations due to this problem, he might require a repeat surgery for scar tissue debridement and to inspect the labral repair. Dr. Mehl prescribed medications and continued full duty work. On November 7, 2011, Petitioner reported he continued to have significant pain from the scar tissue. On examination, Dr. Mehl found tightness and stiffness with scar tissue. Motion was passively limited to only 130 degrees flexion and abduction. Dr. Mehl's impression was the same. Dr. Mehl opined Petitioner had failed conservative treatment. Dr. Mehl recommended arthroscopic surgery for scar tissue debridement and to inspect the labral repair. He noted that this needed workers' compensation approval. On January 6, 2012, Petitioner reported continuing persistent pain and the prior cortisone injection had not helped. Dr. Mehl noted that the workers' compensation insurer approved the proposed surgery. On examination, Dr. Mehl found positive impingement sign, pain with stressing of the anterior labrum which was repaired, motion limited to 140 degrees flexion and abduction due to pain. Dr. Mehl's impression was 1) recurrent left shoulder impingement with scar tissue and 2) status post left shoulder arthroscopy. Surgery was scheduled for February 14, 2012 pending medical and cardiac clearance.

7. According to Dr. Crevier's cardiac records, Px4, Petitioner was seen on February 6, 2012 by physician's assistant Mark Ambrose. In describing the left shoulder, Mr. Ambrose noted, "Shoulder pain details; the location of the pain is deep, anterior, and posterior. The apparent precipitating event was work related trauma. He describes it as severe, constant, and sharp. Related symptoms include shoulder stiffness, warmth, swelling, and crepitus. To have surgery." A stress test was performed and it was negative. Petitioner was cleared for surgery.

In his February 14, 2012 Operative Report, Px5, Dr. Mehl noted a pre-operative diagnosis of 1) left shoulder recurrent pain; 2) scar tissue; 3) possible recurrent labral tear. Dr. Mehl performed the following procedures: 1) left shoulder arthroscopy; 2) repair of anterior labrum, excision of scar tissue. On February 17, 2012, Dr. Mehl noted that during surgery, Petitioner was found to have a recurrent anterior labral tear which was re-repaired and he had small partial rotator cuff and partial labral tears debrided and there was a significant amount of subacromial scar tissue present which was thoroughly excised. He did not require further bony decompression. The shoulder immobilizer that was dispensed was much too large and he was given a different size. Petitioner was prescribed medications and he was to follow-up in a week for suture removal. Dr. Mehl noted that Petitioner may return to work in the following week with absolutely no use of his left arm and he was to begin physical therapy in 2 weeks. Dr. Mehl wrote a slip which stated Petitioner was to return to work on February 20, 2012 with no use of his left arm.

Petitioner saw Dr. Mehl on February 24, 2012 and reported he had returned to work at light duty that week. Dr. Mehl removed the sutures, continued light duty work with no use of his left arm and prescribed medications. Petitioner was to begin physical therapy on February 28, 2012. On examination March 16, 2012, Dr. Mehl found stable motion to 90 degrees flexion and abduction, which was not further stressed, swelling and tenderness over the course of the biceps tendon, which was common with a labral repair. Petitioner was to continue physical therapy and to not use his left arm. On April 13, 2012, Petitioner reported he was attending physical therapy and working light duty with no use of his left arm. He still required pain medications. Petitioner reported he was having difficulty sleeping as well. On examination, Dr. Mehl found good active motion to 130 degrees flexion and 120 degrees abduction, passive motion to 150 flexion and abduction, strength was still weak at 70% as expected and anterior soft tissue swelling. Petitioner was to continue physical therapy and light duty with no use of the left arm. Dr. Mehl prescribed pain medications and a sleep aid. (Px3).

8. In the May 10, 2012 Physical Therapy Report, Px6, the therapist noted that Petitioner had attended 27 sessions from March 1, 2012 through that date. The therapist noted weakness with overhead use. The therapist noted continued gains in active range of motion and that Petitioner displayed weakness with more than 120 degrees elevation. Petitioner reported increased pain with overhead activities. There was no mention of Petitioner's right shoulder.

On May 14, 2012, Petitioner reported to Dr. Mehl that he was still having pain and swelling. Dr. Mehl noted that in physical therapy, Petitioner was doing 30 pound lifting, but was having difficulty with that. Dr. Mehl recommended a cortisone injection into the subacromial space of the left shoulder for pain. Dr. Mehl changed restrictions to continuing light duty with lifting up to 20 pounds with the left arm and limited reaching above shoulder level. Petitioner was to continue medications.

9. According to the records of Bone & Joint Physicians, Px7, Petitioner saw Dr. Nikkel on May 23, 2012 on referral from Mark Ambrose, the Physician Assistant to Dr. Crevier. Dr. Nikkel noted that he had not seen Petitioner for a little over 3 years. Petitioner complained of right shoulder pain. The Commission notes that this was the first time it is noted in the medical records Petitioner's complaints of right shoulder pain since the February 2, 2010 accident. Dr. Nikkel noted a 2007 right shoulder arthroscopy and Type II SLAP repair. Dr. Nikkel noted that Petitioner's complaints were in the AC joint region and posterior region of his right shoulder. Dr. Nikkel noted the following: "He denies any injury. Apparently he had multiple surgeries on his left shoulder by Dr. Mehl, for whatever reason, with revision because of inadequate repair and failure of repair. He believes he may have injured it. He may also have issues with overcompensation." On examination of the right shoulder, Dr. Nikkel found full flexion and abduction, good strength, mildly positive impingement, reduced external rotation, the arc of motion was reduced with both external rotation and internal rotation, acute tenderness in the AC joint region, posterior acromion and no instability. X-rays of the right shoulder revealed some mild degenerative changes of the AC joint along with Type II acromion. Dr. Nikkel's impression was internal derangement of the right shoulder and Type II acromion with degenerative changes of the AC joint. Dr. Nikkel recommended a CT arthrogram because Petitioner could not undergo an MRI due to stents.

10. Mett Physical Therapy records, Px6, indicate Petitioner attended physical therapy through June 5, 2012. The Commission notes that there was no mention of Petitioner's right shoulder in those records.

On June 6, 2012, Dr. Mehl noted Petitioner was given a cortisone injection, but reported he still had pain and swelling. On examination, Dr. Mehl found full passive motion to 150 degrees flexion and abduction; active motion was limited to 135 degrees flexion and 120 degrees abduction. Dr. Mehl recommended left shoulder manipulation under anesthesia. Petitioner was to continue physical therapy. Dr. Mehl changed restrictions to continuing light duty with lifting up to 30 pounds with left arm. Dr. Mehl prescribed medications and noted that workers' compensation approval was needed for the manipulation. Dr. Mehl noted that after the manipulation and 5 weeks of additional physical therapy, he would declare Petitioner at maximum medical improvement. (Px3).

In his June 8, 2012 Occupational Health Injury Report, Rx2, Dr. Mehl noted that Petitioner may return to work at full duty with no restrictions on June 11, 2012.

11. A right upper extremity CT arthrogram with contrast was performed on June 1, 2012 and was compared to an August 11, 2006 MRI. The radiologist's impression was that there was no evidence of a full-thickness rotator cuff, tendon tear or muscular atrophy. There did appear to be attenuation of the articular cartilage in the glenohumeral joint. Post-operative changes were noted in the superior glenoid. No fracture or dislocation was seen. On June 19, 2012, Dr. Nikkel reviewed the CT arthrogram and noted it showed a labral tear and the rotator cuff was intact. A cortisone injection was requested by Petitioner and was given. (Px7).

12. At Respondent's request, Petitioner saw Dr. Romeo. In his May 1, 2013 report, Rx3, Dr. Romeo noted that originally this evaluation was scheduled for Petitioner's left shoulder, but prior to the appointment, the cover letter asked questions about the right shoulder. The adjuster was contacted for clarification. The adjuster requested evaluation for Petitioner's right shoulder only at this time. Dr. Romeo noted that he understood that Petitioner's left shoulder was a work-related injury and part of this total problem. Petitioner did not bring x-ray films or MRI films with him to the evaluation. X-rays were not taken this day. Dr. Romeo noted the February 2, 2010 left shoulder injury. Dr. Romeo noted, "The question today is regarding his overuse injury of his right shoulder." Dr. Romeo noted that Petitioner was seen on February 10, 2010 by Dr. Aribindi for a left shoulder evaluation and the previous right shoulder surgery was noted, but Petitioner had no complaints of his right shoulder at that time. Dr. Romeo noted that on January 6, 2012, Dr. Mehl noted no right shoulder complaints or problems. Dr. Romeo noted that the same was true for Dr. Mehl notes on February 14, 2012 and May 14, 2012. Dr. Romeo noted Dr. Nikkel's May 23, 2012 notes regarding Petitioner's chief complaint of his right shoulder, diagnosis, diagnostic test results and treatment. Petitioner reported that currently he had no right shoulder symptoms or problems. Petitioner reported his left shoulder injury and treatment. Petitioner reported his right shoulder occasionally gets sore and has some discomfort in the anterior aspect. Petitioner reported he continued to have persistent left shoulder pain despite his treatment to date.

On right shoulder examination, Dr. Romeo found no erythema, ecchymosis or edema. There was some dystonic movement of his trapizeus with a shoulder shrug on the right side, but forward elevation with no dyskinesis was noted. Active forward flexion was to 165 degrees, abduction to 130 degrees, external rotation to 60 degrees on the left side and internal rotation to the T10 level. There was mild tenderness to palpation of his biceps tendon, no pain to palpation over his AC joint, rotator cuff strength was 5/5 without any pain, negative impingement testing and negative Jobe, Hawkins, Speed and O'Brien testing. No diagnostic imaging was obtained or reviewed for the right shoulder. Dr. Romeo opined that Petitioner most likely had a right shoulder strain and/or tendonitis that had since resolved. Dr. Romeo was asked whether the right shoulder condition was causally related to the February 2, 2010 accident either directly or by overcompensation. Dr. Romeo opined that there is no objective evidence either in the medical records or on complaint that day by Petitioner that the right shoulder condition is directly related to the February 2, 2010 work related injury. Dr. Romeo opined that Petitioner could continue working full duty and opined that no additional treatment was necessary. Dr. Romeo opined there was no permanent disability for Petitioner's right arm or shoulder. Dr. Romeo did not address Petitioner's left arm.

13. Petitioner submitted various medical bills and these were admitted into evidence as Px2. The following medical bills were for treatment of the left shoulder:
-St. James Hospital: 1-20-12 through 6-18-12: $250.57 balance due.
-cardiologist Dr. Crevier: 9-12-11 and 2-6-12: $30 co-pay by Petitioner and $200.24 balance due.
The following medical bills were for treatment of the right shoulder:
-Bone & Joint Physicians: 5-23-12: $30 co-pay by Petitioner and $171.40 balance due.
-Ingalls Memorial Hospital: 5-26-12 and 6-1-12: $1,581.64 balance due.

Respondent submitted Medical and Indemnity Payments and these were admitted into evidence as Rx4. Respondent also submitted into evidence a Job Description and this was admitted into evidence as Rx1.

Based on the record as a whole, the Commission grants Petitioner's §19(h) Petition for the left shoulder condition finding that Petitioner's permanent disability has materially increased to the extent of an additional 12.5% loss of the use of his left arm and has now permanently lost 40% of the use of his left arm and grants Petitioner's §8(a) Petition for reasonable and necessary medical expenses for left shoulder treatment in the amount of $480.81. The Commission denies Petitioner's §19(h) Petition for any permanent disability for the right shoulder condition of ill-being and denies Petitioner's §8(a) Petition for any medical expenses for treatment of the right shoulder.

The Commission finds causal connection for Petitioner's left shoulder based on Dr. Mehl's records. Medical expenses for left shoulder treatment consist of the following: St. James Hospital: 1-20-12 through 6-18-12: $250.57 balance due; Dr. Crevier: 9-12-11 and 2-6-12: $30 co-pay by Petitioner and $200.24 balance due. The total of these medical expenses is $480.81 and the Commission awards this amount. Regarding nature and extent of permanent disability for Petitioner's left shoulder, the Commission notes that on February 14, 2012, Petitioner underwent 1) a left shoulder arthroscopy and 2) repair of anterior labrum, excision of scar tissue.

Petitioner testified to his residuals, similar to his arbitration testimony. Petitioner returned to work at full duty. The Commission finds that Petitioner's permanent disability for his left shoulder has materially increased to the extent of an additional 12.5% loss of the use of his left arm and has now permanently lost 40% of the use of his left arm.

The Commission further finds that Petitioner failed to prove causal connection for his right shoulder condition of ill-being to the February 2, 2010 accident. The Commission notes that Dr. Nikkel only noted that Petitioner may have injured his right shoulder and also may have issues with overcompensation, but he does not opine causal connection. Petitioner denied any right shoulder injury to §12 Dr. Romeo. Petitioner did not mention any right shoulder complaints or problems to Dr. Mehl, his left shoulder treating doctor. Dr. Romeo was specifically asked whether the right shoulder condition was causally related to the February 2, 2010 accident either directly or by overcompensation. Dr. Romeo opined that there is no objective evidence either in the medical records or on complaint by Petitioner that the right shoulder condition is directly related to the February 2, 2010 work related injury. Dr. Romeo also opined there was no permanent disability for Petitioner's right arm/shoulder. The Commission also denies medical expenses related to treatment of the right shoulder.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's §19(h) Petition is hereby granted only for the left shoulder condition of ill-being and denied for the right shoulder condition of ill-being.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's §8(a) Petition is hereby granted only for medical expenses related to treatment of the left shoulder and denied for treatment of the right shoulder.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $664.72 per week for a period of 31.63 weeks, as provided in §8(e) of the Act, for the reason that Petitioner sustained a material increase in his disability to the extent of 12.5% loss of the use of his left arm. As a result of the accident of February 2, 2010, Petitioner now has sustained permanent loss of the use of his left leg to the extent of 40% under §8(e) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $480.81 for medical expenses under §8(a) of the Act subject to the Medical Fee Schedule.

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

14IWCC0027

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $21,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 21 2014
MB/maw
o10/31/13
43

Mario Basurto

Michael P. Latz

David L. Gore

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

Donald Bray,
Petitioner,

vs. NO. 12 WC 10132

Star Contractor Supply, Inc.,
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 January 21, 2014, having been filed by Petitioner. 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 dated January 21, 2014 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 Decision 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: APR 17 2014

Mario Basurto

Michael P. Latz

David L. Gore

MB/mam
43

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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Donald Bray,
Petitioner,

vs.

NO: 12 WC 10132
14IWCC0028

Star Contractor Supply, Inc.,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, notice, average weekly wage and prospective medical care 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 finds Petitioner failed to provide proper notice to Respondent under Section 6(c) of the Act but that the time period for providing notice was tolled by Section 8(j) of the Act and proper notice was given under Section 8(j) of the Act.

The Commission notes that Petitioner's firm has indicated that the Arbitrator's decision contains internal contradictions regarding the date of accident. Petitioner contends that specifically the Arbitrator listed both January 13, 2011 and July 30, 2011 as the accident date. In reviewing the Arbitrator's decision, the Commission finds that the Arbitrator listed two separate dates for the date of accident in the decision. However, the dates of accident stated in the Decision are August 30, 2011 and January 13, 2011. The Commission finds that only a January 13, 2011 accident date should have been contained in the Arbitrator's decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall authorize the surgery recommended by Dr. Ortinau and Respondent shall pay all reasonable and necessary prospective medical expenses related to Section 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case is remanded to the Arbitrator for a determination of further temporary total disability, if any, or of compensation for permanent disability pursuant to Thomas v. Industrial Commission, 78 Ill. 2d 327, 399 N.E.2d 322 (1980).

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.

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: APR 17 2014

MB/jm

O: 12/12/13

43

Mario Basurto

David L. Gore

Michael P. Latz

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

BRAY, DONALD
Employee/Petitioner

Case# 12WC010132

14IWCC0028

STAR CONTRACTOR SUPPLY INC
Employer/Respondent

On 5/15/2013, 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:

0293 KATZ FRIEDMAN EAGLE ET AL
CHRISTOPHER MOSE
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
MICHAEL MOORE
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

14IWCC0028

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
ARBITRATION DECISION
19(b)

Donald Bray
Employee/Petitioner

v.

Star Contractor Supply, Inc.
Employer/Respondent

Case # 12 WC 10132

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Deborah Simpson**, Arbitrator of the Commission, in the city of **Chicago**, on **February 1, 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. ☒ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **July 30, 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 **$44,560.00**; the average weekly wage was $895.38.

On the date of accident, Petitioner was **60** years of age, ***married*** with **0** dependent children.

ORDER

- Respondent shall authorize the surgery recommended by Dr. Ortinau.
  Respondent shall pay the costs of the medical treatment pursuant to the Act.

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

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

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

Deborah L. Simpson
Signature of Arbitrator

May 13, 2013
Date

ICArbDec19(b)

MAY 15 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Donald Bray,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 12 WC 10132**
	)	
Star Contractors,	)	
	)	
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on August 30, 2011 the Petitioner and the Respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. On that date the Petitioner reported to the Respondent that he had suffered a repetitive trauma injury resulting in bilateral carpal tunnel syndrome and that the injury arose out of and in the course of the Petitioner's employment with the Respondent.

At issue in this hearing is as follows: (1) Did an accident occur that arose out of and in the course of the Petitioner's employment with Respondent; (2) What is the date of the accident; (3) Was timely notice of the accident given to the Respondent; (4) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure; (5) What were the Petitioner's earnings the year prior to the accidental injury and the average weekly wage; (6) Were the medical services that were provided to the Petitioner reasonable and necessary? Has the Respondent paid all appropriate charges for all reasonable and necessary medical services; and (7) Is the Petitioner entitled to any prospective medical care?

STATEMENT OF FACTS

This case involves bilateral carpal tunnel syndrome ("CTS") which the Petitioner alleges was caused by repetitive activity while he was working for the Respondent. The attorneys for the parties completed and signed a Request For Hearing Form, which was admitted into evidence without objection as Arbitrator Exhibit #1.

The Arbitrator notes that in his Application the Petitioner alleged a date of accident of October 5, 2011. The Petitioner later filed an Amended Application in which he alleged a date

of accident of July 29, 2011. At the February 1, 2013, hearing of this case, the Petitioner asked for leave to amend his Amended Application on its face to allege a date of accident of July 30, 2011, the Respondent did not object and leave to amend was granted.

The Petitioner testified that he worked for the Respondent for about ten and one half years. He testified that at first he was employed as a welder for about three years, then he was promoted to shop supervisor or foreman, with assignment and supervisory duties. At that time he did not perform welding or door frame building on a regular basis. He testified further that for the last five to six years he has been a working foreman because the Respondent has systematically laid off individuals due to lack of work until they were down to the Petitioner and one other welder. The Petitioner stated that for the past five to six years the majority of his responsibilities has been welding and making door frames. He testified that he was laid off due to lack of work in December of 2011, and that about 1 month later the Respondent went out of business. He testified that the Respondent made metal door frames and metal doors.

The Petitioner testified that, except at the very end, he worked 8 hours a day 5 days a week for the Respondent during its last 5 to 6 years of operation. He testified that as the business slowed down in 2011, he sometimes only worked three or four days each week.

In describing his work day and responsibilities the Petitioner testified that while working as a working supervising foreman he would fabricate four door frames each hour. The Arbitrator notes that this corresponds to building one door frame every fifteen minutes. He testified that the door frame came in three pieces and that he and an assistant would put the frame onto a welding table to assemble it. He testified that he would first have to hit the frame with a hammer to make the frame tight, and then he would flip it over and do the same thing to the other side of the frame. The Petitioner testified that he was left-handed and that 80% of the time he held the hammer in his left hand and 20% of the time he held the hammer with his right hand. He testified that he spent about ten minutes hammering each door frame together. The Arbitrator notes that using a hammer ten minutes per door frame would account for forty minutes of every hour leaving the Petitioner only twenty minutes or five minutes per door frame to do all of the other tasks necessary to make a door frame.

The Petitioner testified that the next step in the door frame building process was to use a grinder to grind off the exposed rough surfaces. He testified that he would hold the grinder with both hands and move the grinder back and forth over the area that needed to be smoothed out. He demonstrated for the Arbitrator and the attorneys that he used the grinder in a downward angle of approximately 45 degrees. He testified that while using the grinder he felt vibration in his hands. He testified that he spent 45 minutes of each hour, or 11.25 minutes per door, using the grinder. Eighty-five minutes for four doors at this point.

The Petitioner testified that after grinding off the exposed rough surfaces he uses a welding unit to weld the pieces of the door frame so that the frame was tight. He used a MIG welder for this task. He stated that he welded with his left hand 100% of the time. He testified that during the hour in which he would fabricate four door frames he spent ten minutes of that time welding, which breaks down to 2.5 minutes of welding time for each door. The Petitioner testified that after the welding was done he would use the grinder again to smooth out any sharp edges. At this point we are at ninety-five minutes for the four doors.

According to the Petitioner's testimony it took the Petitioner 23.75 minutes to perform all of the individual tasks needed to assemble one door frame. This explanation did not include time to get the pieces and put them up on the table for assembly or to remove the completed door frame and put it wherever finished product was taken to next.

The Petitioner testified that at some point he began to notice that his hands would go numb while he was doing the grinding. He testified that he would shake his hands to get the numbness to stop. He thought his symptoms might be related to his work duties, but he was not sure. He sought medical treatment with his family doctor, Dr. George Georgiev at the Ottawa Regional Medical Center in 2011. Dr. Georgiev diagnosed carpal tunnel syndrome.

He testified that the second time he saw Dr. Georgiev for carpal tunnel syndrome that the doctor referred him to an orthopedic specialist at Rezin Orthopedics. He then called Rezin Orthopedics to schedule an appointment and was asked if his condition was related to his work. When he responded in the affirmative, he was told that he would have to have treatment authorized under workers' compensation. He then called the owner of Star Contracting, Alan Feldman, and reported this information to Mr. Feldman. Mr. Feldman asked Mr. Bray to see if he could obtain medical treatment under his group health insurance. When he told Mr. Feldman that they would not treat him under his group insurance, Mr. Feldman told him that he would call the doctor's office and find out. Mr. Feldman was not successful. Mr. Bray said he then completed paperwork to make a workers' compensation claim.

The medical records from Ottawa Regional Medical Center show that Petitioner became a new patient on January 13, 2011 and presented with a history of hyperlipidemia and hypertension. Dr. Georgiev performed a full exam of the skin, head, neck, eyes, ears, nose, throat, chest and lungs, cardiovascular system, abdomen, genitourinary, rectal, vascular, neurological, and musculoskeletal systems. This exam did include positive carpal compression tests and Tinel's signs. The doctor diagnosed hyperlipidemia, hypertension, COPD, benign hypertrophy of the prostate, osteoarthritis, back pain, and carpal tunnel syndrome. The recommendation for the carpal tunnel syndrome was for vitamins B1, B12, and C. (P. Ex #1).

The records also show that the Petitioner returned to see Dr. Georgiev on February 6th, March 18th, and May 2nd of 2011. There is no evidence that carpal tunnel was discussed or treated at these visits. On July 30, 2011, the Petitioner saw Dr. Georgiev for management of valvular heart disease. At that time the Petitioner told the doctor that his carpal tunnel was getting worse, that he was experiencing "burning fire like pains" in his hands at night and during the daytime when he was hammering. The doctor recommended he wear wrist splints and to consider physical therapy if he did not improve in two or three weeks. (P. Ex. #1).

On August 30, 2011, Petitioner returned to see Dr. Georgiev regarding his low back pain, and he also told the doctor that the wrist braces had not worked and there was no change in his symptoms. According to Dr. Georgiev, he did not want to undergo physical therapy but wanted a fix. Dr. Georgiev agreed to refer him to an orthopedist but wanted to wait until an MRI was done on his back so the orthopedist could also review that. On September 26, 2011, Dr. Georgiev stated he would refer Petitioner to an orthopedist for back pain and for carpal tunnel syndrome. (P. Ex. 1).

The records from Rezin Orthopedic Center show that Petitioner first saw Dr. Ortinau on October 20, 2011. A Referral Request form from Ottawa Regional Medical Center dated September 26, 2011 shows the reason for the referral to be bilateral carpal tunnel syndrome and degenerative joint disease in the thoracic and lumbar spine. A handwritten statement on the top of this form states: "9-30-11 patient said it is work related has not started a claim at work. Told patient we could not see him until he starts w/c process and gets approval. Patient stated he will call back." (P. Ex. 2).

On October 20, 2011, Dr. Ortinau diagnosed Petitioner with bilateral carpal tunnel syndrome and prescribed braces and anti-inflammatory medication. On November 17th, Dr. Ortinau again prescribed anti-inflammatories and ordered an EMG/NCV. On December 2nd, these neurodiagnostic studies revealed the presence of moderate carpal tunnel syndrome bilaterally. On December 8, 2011, Dr. Ortinau recommended surgical carpal tunnel release on the left hand followed by the right hand two to three weeks later. (P. Ex. 2).

Respondent had Petitioner examined by Dr. Michael Vender on January 19, 2012. According to Dr. Vender's report, Petitioner had a history of numbness and tingling in his hands and local discomfort which began six months earlier, and this had progressed since November or December 2011. Petitioner reported a burning sensation diffusely in his fingers greater on the right hand than the left. Dr. Vender noted that the electrodiagnostic studies demonstrated bilateral carpal tunnel syndrome. Dr. Vender felt it would be reasonable to proceed with surgery. Dr. Vender noted that Petitioner described a use of hammers and grinders, but opined that it was not clear how persistent or frequent these activities were. (R. Ex. 2).

Subsequently, on February 13, 2012, Dr. Vender issued a letter which stated that he reviewed a job description described as "Hollow Metal Shop Supervisor" which described the job as 25% putting stock away, 25% designating work to others, 25% monitoring inventory, and 25% welding frames. Dr. Vender concluded that Mr. Bray did not perform forceful activities on a regular and persistent basis and stated that his work activities would not contribute to the development of bilateral carpal tunnel syndrome. (R. Ex. 3). According to the undisputed testimony of the Petitioner, in 2011 and 2012, he was a working supervisor, spending the majority of his day making door frames as there were only two welders working for the Respondent, the Petitioner and another individual. It appears that the conclusions of Dr. Vender are not based upon an accurate account of the position that Petitioner was working in 2011 and the early part of 2012.

Dr. Ortinau issued a report regarding Petitioner's condition on June 15, 2012. Dr. Ortinau felt that Petitioner's carpal tunnel syndrome was related to his work duties of welding door frames, hammering door frames, and using hand grinders and buffers for eight hours per day. (P. Ex. 3).

CONCLUSIONS OF LAW

Courts considering various factors have typically set the manifestation date on either the date on which the employee seeks medical treatment for the condition or the date on which the

employee can no longer perform work activities. *Durand v. Industrial Comm'n*, 224 Ill.2d 53, 72, 862 N.E.2d 918 (2006).

An employee who suffers a repetitive trauma injury must meet the same standard of proof under the Act as an employee who suffers a sudden injury. See *AC & S v. Industrial Comm'n*, 304 Ill.App.3d 875, 879, 710 N.E.2d 837 (1st Dist. 1999)

An employee suffering from a repetitive trauma injury must still point to a date within the limitations period on which both the injury and its causal link to the employee's work became plainly apparent to a reasonable person. *Williams v. Industrial Comm'n*, 244 Ill.App.3d 204, 209, 614 N.E.2d 177 (1st Dist. 1993)

When the injury manifested itself is the date on which both the fact of the injury and the casual relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. See *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524 505 N.E.2d 1026 (1987).

Section 6(c) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(c) (2) states that "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." *820 ILCS 305/6(c)*

The purpose of the notice provisions is to enable the employer to investigate promptly and to ascertain the facts of the alleged accident. *City of Rockford v. Industrial Commission*, 214 N.E.2d 763 (1966) The giving of notice under the Act is jurisdictional and a prerequisite of the right to maintain a proceeding under the Act. However, the legislature has mandated a liberal construction on the issue of notice. *S&H Floor Covering v. The Workers Compensation Commission*, 870 N.E.2d 821 (2007)

(1) Did an accident occur that arose out of and in the course of the Petitioner's employment with Respondent? And (4) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure?

Petitioner's work as a welder required him to constantly work with his hands while welding door frames. His unrebutted testimony shows that he frequently grasped tools such as a hammer, a power grinder, and a welding gun. His grinding and buffing with the power grinder also exposed him to vibration on a frequent basis. He used these tools constantly while welding steel frames over the course of his eight-hour work day. Although the Petitioner testified that he made four frames per hour, and in breaking down how much time it took for each task he described a 95 minute time frame for assembling four doors, the unrebutted testimony of the Petitioner is that a majority of the time he is using the grinder to either grind or buff the frame, exposing him to a significant amount of vibration in his arms and hands each day.

The Arbitrator adopts the opinion of Dr. Ortinau that Petitioner's carpal tunnel syndrome is causally related to his work for Respondent. The Arbitrator rejects the opinion of Dr. Vender, who relied upon a job description that the Petitioner would only engage in welding for 25% of his work day and spent the rest engaged in supervisory duties. The evidence at trial demonstrated that Petitioner was only one of two welders left working for Respondent and spent his day welding, and using vibrating tools.

Based upon the above, the Arbitrator finds that the Petitioner's current condition of ill-being, namely his bilateral carpal tunnel syndrome, is causally connected to an accident which arose out of and in the course of his employment.

(2) What is the date of the accident?

The Arbitrator notes that in his Application petitioner alleged a date of accident of October 5, 2011. Petitioner later filed an Amended Application in which he alleged a date of accident of July 29, 2011. At the February 1, 2013, hearing of this case, petitioner was granted leave to amend his Amended Application on its face to allege a date of accident of July 30, 2011.

Petitioner testified that in 2011 while using a grinder his hands would get numb and that he would have to "shake them" out before this numbness would subside. Petitioner testified that after this numbness did not go away he saw Dr. Georgiev for this problem, and that Dr. Georgiev told him that he probably had carpal tunnel syndrome. Petitioner testified that he was not sure when this took place, but that he thought that it was in June or July of 2011. The Arbitrator notes that the medical records evidence that Dr. Georgiev saw the Petitioner for the first time, as a new patient on January 13, 2011, conducted a complete physical examination and diagnosed Petitioner with bilateral CTS at that time. On January 13, 2011, he prescribed vitamins for treatment of the CTS. Petitioner first testified that he knew, and later testified that he suspected, that his bilateral CTS was work-related when it was diagnosed by Dr. Georgiev.

In *Peoria County*, the Illinois Supreme Court held that determining the manifestation date is a question of fact and that the onset of pain and the inability to perform one's job are among the facts which may be introduced to establish the date of injury. The Illinois Supreme Court in *Peoria County* determined that the manifestation date/date of accident in that case was the date that petitioner's pain, numbness, and tingling in her hands and fingers was so severe that she sought medical treatment.

The manifestation date is not the date on which the injury and its causal link to work became plainly apparent to a reasonable physician, but the date on which it became plainly apparent to a reasonable employee. *Durand*, 224 Ill.2d at 72. A formal diagnosis, of course, is not required. Id. In *General Electric Company v. Industrial Comm'n*, 190 Ill.App.3d 847, 857, 546 N.E.2d 987 (4th Dist. 1989), the appellate court held that the employee's injury and its connection to her employment would have been plainly apparent to a reasonable person on the date she noticed a "sharp pain" in her shoulder while working, not on the subsequent date when a physician opined that the employee's condition and her work were causally related.

In *Consuelo Castaneda v. Industrial Comm'n*, 231 Ill.App.3d 734, 596 N.E.2d 1281 (3rd Dist. 1992), the petitioner first began noticing hand problems in April 1985 when performing wiring and soldering for the respondent. On April 26, 1985, the petitioner saw Dr. Subbiah complaining of numbness in the hands and told Dr. Subbiah that she related her symptoms to work. The petitioner missed some work and then returned to work and continued to complain of soreness and stiffness of her wrists and hands until June 19, 1987, when her position was discontinued and she was unable to perform other positions offered because of her hand condition. On September 8, 1988, Dr. Delacruz issued a neurological report indicating right CTS. The petitioner filed her claim with the Industrial Commission on September 26, 1988. The arbitrator found that the petitioner's manifestation date/date of accident was June 19, 1987, and awarded benefits. The Commission reversed the arbitrator, finding that the Petitioner's injury had manifested itself on April 26, 1985, and that the petitioner's claim filed on September 26, 1988, was barred by the three-year statute of limitations. The Circuit Court and the Appellate Court affirmed the Commission's decision.

Courts considering various factors have typically set the manifestation date on either the date on which the employee seeks medical treatment for the condition or the date on which the employee can no longer perform work activities. *Durand.*

In the instant case, Petitioner's bilateral CTS never progressed to the point that he was no longer able to perform his work activities; in fact, Petitioner was kept on full duty by his treating physicians even after they diagnosed Petitioner with bilateral CTS. Petitioner testified that he first noticed CTS symptoms in 2011 when he had numbness in his hands while using a grinder, and that he saw Dr Georgiev for this. Petitioner sought medical treatment from Dr. Georgiev for the first time on January 13, 2011, when the CTS was first diagnosed. On January 13, 2011, when Petitioner was seen by Dr. Georgiev, it was as a new patient. Dr. Georgiev conducted a complete physical examination and as part of his notes he diagnosed petitioner with bilateral CTS at that time, the only treatment recommended was B vitamins. It is not clear from the medical notes whether the Petitioner made any complaints about symptoms relating to his hands at the time. The medical records show several appointments with Dr. Georgiev and Petitioner between the January 13, 2011, visit and the July 30, 2011, visit wherein it is documented that Petitioner is complaining about the pain and numbness in his hands.

Petitioner admitted that he "knew" that his CTS were work-related when Dr. Georgiev diagnosed him with it. He later testified that he just "suspected" his CTS was work-related when Dr. Georgiev first diagnosed him with it.

Based upon the testimony and the evidence admitted at trial, the Arbitrator finds that January 13, 2011, is the "manifestation date," and thus the date of accident, for Petitioner's bilateral CTS. On that date Dr. Georgiev gave petitioner a complete physical examination, Dr. Georgiev performed tests on Petitioner for bilateral CTS, the tests were positive bilaterally, and Dr. Georgiev diagnosed Petitioner with paresthesia and bilateral CTS. The Arbitrator notes that petitioner testified that he at least suspected, if not knew, when he was diagnosed with bilateral CTS on January 13, 2011, that it was work-related.

(3) Was timely notice of the accident given to the Respondent?

The Arbitrator finds that petitioner's January 13, 2011, manifestation date/date of accident for his bilateral CTS would require Petitioner to notify Respondent by February 27, 2011, that he had bilateral CTS and that it was work-related. At trial Petitioner and Respondent stipulated that Petitioner first reported his alleged work accident to respondent on August 30, 2011. Consequently, the Arbitrator finds that petitioner did not report the January 13, 2011, work accident to respondent within the 45 days required by the Act.

In the instant case, the Petitioner notified the Respondent of the injury roughly seven months after the time required by the Act. Unlike the Petitioner in *Castaneda*, whose notification was made after the statute of limitations on the injury ran, the Petitioner in this case notified the Respondent within the statute of limitations for the injury. The courts have consistently applied the notification requirement liberally (*S&H Floor Covering*). Section 6(c) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(c) (2) states that "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." *820 ILCS 305/6(c)*

The purpose of the notice provisions is to enable the employer to investigate promptly and to ascertain the facts of the alleged accident. (*City of Rockford*). The Respondent did not provide any evidence that they were prejudiced in any way by the defect in notice. The unrebutted testimony of the Petitioner is that the owner of the company actually tried to get the doctor's office to bill the group insurance rather than making it a worker's compensation case but was unable to do so. A court should decline to penalize an employee who diligently worked through progressive pain until it affected his or her ability to work and required medical treatment. (*Durand*) Absent a showing that the Respondent was unduly prejudiced, the timing of the notice given by the Petitioner is not a bar to receiving benefits.

Additionally, the Arbitrator notes that Section 8(j) of the Act tolls the time for giving notice where Petitioner receives benefits under Respondent's group health plan. This Section provides that where an injured employee receives benefits, including medical benefits under any group plan covering non-occupational disability benefits contributed to by the employer, then the time period for the giving of notice and the filing of an application for adjustment of claim does not commence to run until the termination of such payments.

Although the bills from Rezin Orthopedics were paid by Respondent under its workers' compensation plan (P. Ex. 2), the bills from the Ottawa Regional Medical Center were paid under Respondent's group health policy with Blue Cross (P. Ex. 1). According to the bills from the Ottawa Regional Medical Center, Petitioner's appointment with Dr. Georgiev on July 29, 2011 was paid by Blue Cross on August 10, 2011, the visit on August 30, 2011 was paid by Blue Cross on September 13, 2011, and the appointment on September 26, 2011 was paid by Blue Cross on October 12, 2011.

Section 8(j) of the Act tolls the time for giving notice where Petitioner receives benefits under Respondent's group health plan. This Section provides that where an injured employee receives benefits, including medical benefits under any group plan covering non-occupational

disability benefits contributed to by the employer, then the time period for the giving of notice and the filing of an application for adjustment of claim does not commence to run until the termination of such payments.

Based upon the above, the last payment by Respondent's group health plan was October 12, 2011. This is the date that Petitioner's 45 day period to provide notice began to run under Section 8(j) of the Act. The 45 day period would end on November 26, 2011. His first appointment with Dr. Ortinau was on October 20, 2011. Given his testimony that he had to report his condition as work related and have his appointment with Dr. Ortinau pre-approved under workers' compensation before he could see Dr. Ortinau, it is clear that he provided notice within the time required under Section 6(c) and Section 8(j).

(5) What were the Petitioner's earnings the year prior to the accidental injury and the average weekly wage?

The Petitioner failed to provide any evidence of his earnings during the year prior to his injury, based upon his proposed injury date of July 29, 2011 or July 30, 2011 or for any time before or after the injury.

The Respondent maintains that the Petitioner's date of injury was January 13, 2011, however the information provided by the Respondent regarding the Petitioner's pay begins approximately in September of 2010, (R. Ex. 1, which cuts of the number corresponding to the month the check was recorded) and goes through 9/29/11, rather than beginning in January of 2010 and ending in January of 2011, which would corresponds to the Respondent's proposed date of injury.

The Petitioner did testify that up until the last few months of 2011, when business started slowing down, he worked five days per week. R. Ex. 10 shows that from September 2010 until January of 2011, the Petitioner worked 80 hours and received $1940.00 for the time period. There were 80 hour work periods during 2011, wherein the Petitioner received $1940.00, as well. Assuming that rate of pay for the whole year before January 13, 2011, the Petitioner earned $46,560.00. The average weekly wage would be $895.38.

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

Petitioner failed to provide any evidence of unpaid medical bills. The Respondent entered a general denial of liability for any medical bills. Consequently no medical bills are awarded at this time.

(7) Is the Petitioner entitled to any prospective medical care?

Dr. Ortinau has recommended Petitioner undergo surgery to treat his bilateral carpal tunnel syndrome. Dr. Vender agrees that is reasonable for Petitioner to undergo surgery, although he disagrees as to the issue of causation.

Having found in Petitioner's favor on the issue of causation and notice, the Arbitrator therefore finds that Petitioner is entitled to prospective medical care.

ORDER OF THE ARBITRATOR

The Arbitrator therefore orders Respondent to authorize Petitioner's surgery with Dr. Ortinau of Rezin Orthopedics and to pay the costs of the medical treatment pursuant to the Act.

Deborah L. Simpson — Signature of Arbitrator

May 13, 2013 — Date

STATE OF ILLINOIS)
) SS.
COUNTY OF MC HENRY)

☒ 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

Debbie Beelart,

Petitioner,

14IWCC0029

vs.

NO: 12 WC 34259

Johnsburg District #12,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b-1) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, causal connection, prospective 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 June 5, 2013 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.

14IWCC0029

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.

No bond is required for removal of this cause to the Circuit Court by Respondent. 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: JAN 2 1 2014

DLG/gal
O: 1/16/14
45

David L. Gore

Michael J. Brennan

Mario Basurto

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

BEELART, DEBBIE
Employee/Petitioner

Case# **12WC034259**

14IWCC0029

JOHNSBURG DISTRICT #12
Employer/Respondent

On 6/5/2013, 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:

0247 HANNIGAN & BOTHA LTD
RICHARD D HANNIGAN
505 E HAWLEY ST SUITE 240
MUNDELEIN, IL 60060

0863 ANCEL GLINK
TIFFANY NELSON-JAWORSKI
140 S DEARBORN ST SUITE 600
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF McHenry)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0029

Debbie Beelart
Employee/Petitioner

v.

Johnsburg District # 12
Employer/Respondent

Case # 12 WC 34259

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Woodstock**, on **5/3/2013**. 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. ☒ 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 14IWCC0029

On the date of accident, **5/1/2012**, 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 **$24,652.16**; the average weekly wage was **$474.08**.

On the date of accident, Petitioner was **54** 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 **$9,165.45** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $.

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

ORDER

- The respondent shall pay temporary total disability benefits of $316.05/week for 29 weeks, from 5/1/2012 through 11/19/2012, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner, the disabling condition is temporary and has not yet reached a permanent condition, pursuant to Section 19(b) of the Act.

- The respondent shall pay $2,606.85 for medical services, and authorize the right cubital tunnel release with possible anterior ulnar nerve transposition and right carpal tunnel release, as provided in Section 8(a) of the Act.

- The respondent shall pay $-0- in penalties, as provided in Section 19(k) of the Act.
- The respondent shall pay $-0- in penalties, as provided in Section 19(l) of the Act.
- The respondent shall pay $-0- in attorneys' fees, as provided in Section 16 of the Act.

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

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

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

Carl Lee
Signature of Arbitrator

5/30/13
Date

ICArbDec19(b)

JUN - 5 2013

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0029

Debbie Beelart
Employee/Petitioner

v.

Johnsburg District # 12
Employer/Respondent

Case # 12 WC 34259

Consolidated cases:

The petitioner has filed an 8(a) Petition seeking an order directing the respondent to authorize surgery as prescribed by Dr. Patel on March 12, 2013. The specific surgery is a cubital tunnel release with possible anterior ulnar nerve transposition and also a right carpal tunnel release (Px. 2 pg.78-79). The respondent disputes the causal relationship between the need for this treatment based upon a lack of complaints of numbness and tingling that respondent believes were not documented until November 29, 2012 when Dr. Patel states, "The patient comes in with a new complaint of numbness and tingling" (Px.2 pg.82). The petitioner is also seeking payment of related medical expenses and penalties for failure to authorize treatment.

Finding of Facts

The petitioner is employed by the respondent as a janitorial custodian. On May 1, 2012, the petitioner tripped over a mop and fell on her out stretched right arm and wrist. This occurred just before midnight. She went to Northern Illinois Medical Center. She was diagnosed as having a fracture of the right distal radius and a strain of the right elbow. She was then referred to McHenry County Orthopedics. She saw Dr. Patel at McHenry County Orthopedic on May 3, 2012. His assessment was a right radial neck fracture and right wrist sprain. On May 17, 2012 x-rays of the right elbow revealed a proximal radial neck fracture. Physical therapy was prescribed and began on May 24, 2012. On September 25, 2012, Dr. Patel's records indicate that she had shaking in the right hand and she was concerned she may have a nerve injury. The doctor was not sure as to why she was having those problems five months after the injury. November 29, 2012, Dr. Patel noted she continued to have tingling and numbness, a positive Tinel sign at the

cubital tunnel as well as positive Phalen and Durkan's compression test over the carpal tunnel on the right. An EMG/NCV was prescribed and performed on February 6, 2013. The history noted right shoulder, elbow and hand pain following a fall and fracture of the right elbow. The test revealed mild right ulnar neuropathy at the elbow, right cubital tunnel and mild right carpal tunnel syndrome. (Px.3 pg.5) On February 12, 2013, Dr. Patel noted that there was intrinsic atrophy in thumb webspace. On that date she received a cortisone injection into the carpal tunnel. (Px.2 pg.80-81) On March 12, 2013, Dr. Patel's diagnosis was a right radial head neck fracture, healed right wrist sprain, right carpal tunnel syndrome, and right cubital tunnel syndrome. Symptoms include numbness and tingling diffusely in the hands including the small finger which wakes her up at night and when she holds a coffee cup she drops it and cannot feel what she is holding. When she is doing sweeping in her normal duties at work as a janitor she has diffuse pain that goes into the forearm and up into the shoulder region. It has gotten to the point that she cannot do her daily activities at work or at home. It is the doctor's belief that she exhausted conservative therapy and was a candidate for cubital tunnel release with possible anterior ulnar nerve transposition and also carpal tunnel release. The petitioner is desirous of this surgery.

The respondent had a Section 12 examination with Dr. Biafora on August 31, 2012. He noted improvement in the elbow pain and indicated she stated her right wrist pain was essentially resolved (petitioner denied she said that at trial). Dr. Biafora was of the opinion she would benefit from an additional three weeks of physical therapy to include strengthening. He indicated she could work with restrictions and that her treatment was work related.

On November 6, 2012, the petitioner had another section 12 evaluation with Dr. Biafora. He noted that she had been released to return to work without restriction but was in work hardening four hours per day and working four hours per day. He noted that the pain and subjective weakness had been improving. She still complained of soreness at the elbow and occasionally her wrist toward the end of work activities. His assessment was right radial neck fracture that is healed with right wrist pain resolved (again petitioner denied this). He felt she was at maximum medical improvement but anticipated some mild

improvement over the next couple of months. The work hardening evaluation of November 19, 2012 indicated that she could do bilateral lifting of 30 pounds, bilateral shoulder lifting of 25 pounds, and frequent bilateral lifting of 20 pounds. She demonstrated the ability to perform 87.9% of her physical demand of her job. She could work at the light medium level.

All of Dr. Patel's records indicate that the petitioner's onset of symptoms began May 1, 2012.

Time Line

April 24, 2001: Dr. Meletiou notes that she had suffered from a nondisplaced right distal radius fracture and she was discharged from the doctor's care at that time.

May 3, 2012: the petitioner indicates on the intake form that she has swelling, tingling, weakness, and instability with decreased range of motion. (Px.2 pg.13)

May 17, 2012: "in the wrist she also complains of some diffuse numbness and tingling." (Px. 2 pg.10) x-rays of the right elbow demonstrate a radial neck fracture with acceptable alignment. (Px.2 pg.18)

July 3, 2012: "she does not have numbness and tingling at night but with activities"

July 27, 2012: "the patient states that she has a numbness in her fourth and fifth fingers that increases with an increase in activity or with manual work" (Px.2 pg.55)

August 24, 2012: "the patient states that her right shoulder hurts from her anterior shoulder down to the wrist, the pain in her shoulders increases when she reaches overhead, behind her back".... "The patient reports that she has numbness in her fourth and fifth digits and a pulling sensation on the anterior right elbow that increases with elbow extension" (Px.2 pg.54)

August 31, 2012: Dr. Biafora indicated that she had sustained a radial neck fracture without significant angulation or displacement. He was of the opinion that the right wrist sprain had resolved. She was not at maximum medical improvement at that time.

September 25, 2012: "the patient states she does not have any numbness or tingling at rest." "I also suggested that she talk to her case manager in see if a second opinion is warranted." (Px.2 pg. 6-7)

November 6, 2012: Dr. Biafora indicates that she denied numbness and tingling when at rest.

November 7, 2012: "the patient reports that at times it feels as though her third, fourth and fifth digits feels like it is getting shut in a door. The patient reports that the muscle spasms have decreased when trying to write or do other fine motor skills although they are present about 25% of the time." Px. 2 pg.98)

November 29, 2012: "Patient comes in with a new complaint of numbness and tingling." The doctor's assessment was right radial neck fracture, right wrist sprain and right carpal tunnel syndrome. At that time he prescribed an EMG/NCV. The purpose of the EMG/NCV was to rule out cubital tunnel and carpal tunnel syndrome. (Px2 pg.94)

February 6, 2013: the petitioner reports pain in the right shoulder, elbow and hand following a fall in fracture of the right elbow. The petitioner had her EMG/NCV which was positive for right ulnar neuropathy at the ulnar groove and right median neuropathy that is typically seen in carpal tunnel syndrome. (Px2 pg.83)

February 12, 2013: Dr. Biafora opined that the petitioner did not need an EMG and it would not be work related.

March 12, 2013: Dr. Patel fills out the work status report for the workers compensation carrier and indicates that she has a right radial neck fracture, right wrist pain, right carpal tunnel syndrome and right cubital tunnel syndrome. He indicates that the treatment plan is surgery. (Px. 2 pg. 74) The patient still refers to this as "diffuse pain that goes into the

forearm and up to the shoulder region. She states that it is gotten to the point that she cannot do her daily activities at work nor at home." (Px.2 pg.78)

Conclusion

Contrary to the respondent's position, the petitioner did, in fact, indicate she suffered from tingling when she first saw Dr. Patel on May 3, 2012. While Dr. Patel indicated on November 29, 2012 that she had a new complaint of numbness and tingling this is not true. On May 17, 2012, Dr. Patel specifically finds diffuse numbness and tingling. While Dr. Biafora stated on November 6, 2012 that there was no numbness or tingling this is not consistent with the November 7, 2012 report that her third fourth and fifth digits feel like they were being shut in a doo, nor is it consistent with the physical therapy reports of numbness and tingling. While billing procedures are not indicative of causal connection, it is noted that Dr. Patel billed Sedgwick for the November 29, 2012 treatment. (Px.2 pg.72) While Dr. Biafora's physical examinations of the petitioner states she denied numbness and tingling it should be noted that on July 27, 2012 she reported to her therapist numbness in her fourth and fifth fingers which increases with activity. August 24, 2012, there is documentation of numbness in the fourth and fifth digits with a pulling sensation in the elbow. She then saw Dr. Biafora on August 31, 2012 he reports she denies numbness and tingling but in her testimony she denies that she told him that she had no numbness and tingling. September 25, 2012, there is documentation that she does not have numbness or tingling at rest. On November 6, 2012, Dr. Biafora indicates that she denied numbness and tingling yet on November 7, 2012 she reported that she had the feeling as if her third fourth and fifth digits were getting shut in a door. The treating records substantiate the petitioner's testimony that she did in fact have numbness and tingling and did not say that to Dr. Biafora.

The arbitrator notes that there is no evidence that the petitioner suffered from any numbness or tingling or any of her symptoms from the date she was hired by the respondent through May 1, 2012. As it pertains to her right upper extremity, she was in good health. Illinois courts have long held that, in workers' compensation proceedings, proof of prior good health and a change immediately following and continuing after an

injury may establish that an impaired condition was due to the injury. Waldorf v. Industrial Commission, 303 Ill. App. 3d 477, 708 NE 2d 476 (1999. As should be noted in the instant case, the chain of events herein indicates that the petitioner was able to perform her job without lost time or complaints prior to her work injury, that after the work injury she was ultimately unable to perform her job with symptoms only beginning post injury but continuing to date.

The Supreme Court of Illinois has stated on numerous occasions that one need not even present medical evidence in order to prove causal connection. *International Harvester v Industrial Commission* 93 Ill. 2d 59, 442 N.E.2d 908, 66 Ill.Dec. 347 the Supreme Court held:

> "This court has held that medical evidence is not an essential ingredient to support the conclusion of the Industrial Commission that an industrial accident caused the disability. A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. (Martin Young Enterprises, Inc. v. Industrial Com. (1972), 51 Ill.2d 149, 155, 281 N.E.2d 305.) In Union Starch & Refining Co. v. Industrial Com. (1967), 37 Ill.2d 139, 144, 224 N.E.2d 856, this court said, "We know of no case requiring a doctor's testimony to establish causation and the extent of disability, especially where, as here, the record contains the company doctor's report and hospital records showing findings of the employee's personal physician which are consistent with the employee's testimony." When the claimant's version of the accident is uncontradicted and his testimony unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. Thrall Car Manufacturing Co. v. Industrial Com. (1976), 64 Ill.2d 459, 463, 1 Ill.Dec. 328, 356 N.E.2d 516."

Based upon the totality of the evidence, petitioner's exhibits one through four, and the testimony the petitioner, it is a finding of the arbitrator that there is a causal connection between the petitioner's injury of May 1, 2012 and her subsequent need for a cubital tunnel release with possible anterior ulnar nerve transposition and carpal tunnel release the right upper extremity. The respondent is ordered to authorize said treatment with Dr. Patel.

Based upon the finding of causal connection the respondent is ordered to pay the medical expenses as listed in petitioner's exhibit number seven in the amount of $2,606.85.

While the arbitrator finds in favor of the petitioner and against the respondent; the respondent's denial was based in good faith upon the report of Dr. Biafora and therefore penalties are denied.

Edward Lee

Arbitrator Edward Lee

5/30/13

Date

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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Elizabeth Nieves,

Petitioner,

14IWCC0030

vs.

NO: 12 WC 34273

Church's Chicken,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b-1) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, prospective medical expenses, temporary total disability, causal connection, wage rate, 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 August 26, 2013 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.

14IWCC0030

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 $33,200.00. 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: JAN 2 1 2014

DLG/gal
O: 1/16/14
45

David L. Gore

Michael J. Brennan

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b-1) DECISION OF ARBITRATOR

NIEVES, ELIZABETH
Employee/Petitioner

Case# **12WC034273**

CHURCH'S CHICKEN
Employer/Respondent

14IWCC0030

On 8/26/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

Unless a party does the following, this decision shall be entered as the decision of the Commission:

1) Files a Petition for Review within 30 days after receipt of this decision; and

2) Certifies that he or she has paid the court reporter $ 634.78 for the final cost of the arbitration transcript and attaches a copy of the check to the Petition; and
3) Perfects a review in accordance with the Act and Rules.

If the Commission reviews this award, interest of 0.07% 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:

0293 KATZ FRIEDMAN EAGLE ET AL
MARIA BOCANEGRA
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
JEFF RUSIN
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
ARBITRATION DECISION
19(b-1)

14IWCC0030

ELIZABETH NIEVES
Employee/Petitioner

v.

CHURCH'S CHICKEN
Employer/Respondent

Case # 12 WC 34273

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. Petitioner filed a *Petition for an Immediate Hearing Under Section 19(b-1) of the Act* on 5/17/13. Respondent filed a *Response* on 5/31/13. The Honorable Cronin, Arbitrator of the Commission, held a pretrial conference on 6/4/13, and a trial on 6/19/13, 6/21/13, in the city of Chicago. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS 14IWCC0030

On the date of accident, 9/22/12, 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.

Petitioner average weekly wage is $231.00.

On the date of accident, Petitioner was 37 years of age, *single* with 0 dependent children.

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

ORDER

Respondent shall pay Petitioner temporary total disability (TTD) benefits of **$220.00**/week for **36** weeks, commencing **10/13/2012** through **6/21/2013**, as provided in Section 8(b) of the Act. Respondent shall be given a credit of for the temporary total disability benefits that have been paid.

Respondent shall pay the charges of **$25,203.94** for the reasonable and necessary medical services rendered to Petitioner, as provided in Section 8(a) and subject to Section 8.2 of the Act.

Respondent shall authorize and pay the reasonable cost of the right shoulder arthroscopic surgery that Dr. Silver has recommended, pursuant to Section 8(a) and subject to Section 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 1) files a *Petition for Review* within 30 days after receipt of this decision; and 2) certifies that he or she has paid the court reporter $ or the *final* cost of the arbitration transcript and attaches a copy of the check to the *Petition*; and 3) 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

August 22, 2013
Date

AUG 26 2013

Statement of Facts

Testimony of Elizabeth Nieves

The parties stipulated that Elizabeth Nieves, Petitioner, was an employee of Church's Chicken, Respondent, on September 22, 2012, and that she sustained an accident on that date for which notice was given. (Ax1).

On Saturday, September 22, 2012, Petitioner slipped and fell on a watery, oily substance. She was still holding the tray of chicken. The impact of her right arm with the floor produced pain in the arm that traveled up into her shoulder. (T.9-10). She also landed on her knees. Petitioner completed her shift in pain.

On September 23, 2012, Petitioner received a call from Veronica Herrera, a shift manager who asked her to work. Petitioner notified Veronica of her fall the night before. Petitioner thought that Veronica may have been completing an accident report during the conversation over the phone that Sunday.

Petitioner testified that she did not fill out the Report of Injury and that the information contained in it is not correct. (Px2). Specifically, the time of the accident was not correct. Moreover, she did not mention anything about an empty chicken bag and further, she did not only mention an injury to her knee.

On September 24, 2012, Petitioner began treating with Concentra (Ashland), where she had x-rays taken of the right shoulder and knee. (Px7). She was prescribed physical therapy, medications and light-duty work. Petitioner testified that she did not tell them she injured her left arm or that she slipped on an empty chicken bag. (T.17-18).

On October 23, 2012, she began treating with Dr. Westin of Concentra (Lake). (Px8). Dr. Westin prescribed medication, light-duty work and continued therapy at the Ashland location.

Petitioner testified she did not tell him that she injured her left arm or that she slipped on an empty chicken bag. Dr. Westin also ordered MRIs of the right knee and right shoulder.

On December 6, 2012, Petitioner began treating with Dr. Michael Foreman. (Px9). Dr. Foreman prescribed a right wrist brace, a TENS unit, medication, therapy and advised Petitioner to remain off of work. She was off of work per Dr. Foreman from 12/6/2012 – 1/3/2013. Petitioner testified that during her time with Dr. Foreman, she noticed improvement in the right knee, but felt that her right shoulder was not progressing and was getting worse.

In January 2013, Petitioner was seen by Dr. Ronald Silver at the request of Dr. Foreman. (Px10). Dr. Silver administered a shoulder injection for which Petitioner stated she felt only temporary relief. Dr. Silver recommended that Petitioner continue therapy and medication and advised her to stay off of work. Petitioner has been off of work per Dr. Silver since January 3, 2013. The records show that Dr. Silver is recommending a right shoulder arthroscopy for Petitioner.

Petitioner testified that she did not go back to Doctors Foreman and Silver because she has no income and no transportation. She testified that she experiences pain in her right arm/shoulder and has difficulty completing tasks at home. Regarding her right wrist, Petitioner testified that it feels better. Regarding her right knee, Petitioner testified that it feels better but that it is still painful to touch. She testified that prior to September 22, 2012, she had no problems, injuries or symptoms to any of the aforementioned body parts. She has not reinjured her arm/shoulder since September 22, 2012. Petitioner wants to undergo the surgery that Dr. Silver has recommended.

Petitioner testified she applied for work with Respondent in July 2012 at the 47th/Wood location. (T. 29-36). There, she completed a job application, interview and reviewed job

description forms with a shift manager named Olga Vieira. They discussed a training period of 28 days and that after, Petitioner would get her hours. Petitioner testified that Olga told her that after her training, she would have the same hours as the other employees. Petitioner took that to mean full time. Petitioner testified she was never told by Olga that she would be a part-time employee and that she reviewed her job description with Olga thinking it to be full time with an eight-hour work shift. Petitioner stated she was told by Olga her schedule was based on Monday thru Sunday workweek.

Petitioner transferred to the location where she slipped and fell. She was not re-interviewed. She did not re-apply. At the new location, she was not told she would be a part-time employee. From July 24, 2012 through September 21, 2012, Petitioner worked a total of 11 shifts, which ranged from 1.50 hours a shift to 7.86 hours a shift.

Testimony of Veronica Herrera

Veronica Herrera testified on the second date of trial on behalf of Respondent. She testified she was and is the General Manager of the Church's Chicken where Petitioner was injured.

She testified that part-time cooks generally work anywhere from 28 to 32 hours per week. She testified Petitioner was not hired full time, but on cross-examination, admitted that she did not interview or hire Petitioner.

Regarding light-duty work and scheduling, Ms. Herrera testified that she makes out the work schedule and that employees call on Sundays to obtain their work schedules for the upcoming week. Ms. Herrera testified that when Petitioner worked light-duty, she trained as a cashier and may have completed cleaning duties such as mopping. On cross-examination, she

admitted that Petitioner attempted to call her to obtain her work schedule and that Ms. Herrera told Petitioner she was too busy to help her and to call back. (T.27-28).

Petitioner testified she attempted to call to get the schedule but Herrera did not return her calls.

Ms. Herrera testified that she did not know if Church's Chicken had a formal, light-duty program for injured employees.

Regarding the accident report, Ms. Herrera testified that Petitioner told her she injured her knee and did not mention her shoulder. Later, Petitioner brought Ms. Herrera paperwork that mentioned her shoulder. On cross-examination, Ms. Herrera agreed that Petitioner told her she had slipped and fallen and that Petitioner did not tell her she had slipped and fallen on an empty bag of chicken. (T.20-21). Ms. Herrera stated she did not review the accident report with Petitioner. On re-direct examination, Petitioner clarified that Ashley was present at the time of the slip-and-fall accident, but did not actually witness it as her back was turned to Petitioner. Petitioner testified that Ashley spun around to face Petitioner when Ashley heard the loud noise from the fall.

Testimony of Vicki Blancett

Vicki Blancett testified via telephonic deposition on behalf of Respondent. She testified she is Human Resource Manager for Falcon Holdings, LLC. Falcon Holdings, LLC, owns approximately 150 Church's Chicken locations. She testified that all non-managerial employees are hired part-time only as a company-wide policy and that Petitioner was part-time. She testified that each new hire goes through training and that training schedules must be flexible and vary widely on a case-by-case basis. She testified that she coordinated a light-duty schedule with

Veronica Herrera for Petitioner but never directly spoke with Petitioner about that light-duty work.

Conclusions of Law

(F) Is Petitioner's Current Condition of Ill-Being Causally Related to the Injury?

The parties stipulated to the issues of employee-employer relationship, accident and notice. The issue at arbitration concerns whether Petitioner's current conditions of ill-being, primarily of her right shoulder, are causally related to the September 22, 2012 slip-and-fall accident. For the reasons that follow, the Arbitrator finds that Petitioner's right knee, right wrist and right shoulder conditions are causally related to her slip-and-fall accident of September 22, 2012.

Petitioner credibly testified that she slipped and fell on September 22, 2012 while carrying a metal tray of chicken from the walk-in cooler at work. She testified that she landed on "four", which the Arbitrator takes to mean "all fours." Petitioner stated that her right arm made contact with the floor. She stated that the tray of chicken weighed 50 lbs. and stayed in her arms as she fell. Her arms impacted the floor. She stated that she felt a pain go up her arm.

The Arbitrator finds Petitioner's testimony consistent with her treating medical records. The Arbitrator disregards the reference to a left arm in Concentra as a clerical/scrivener's error. Petitioner complained immediately to her treaters of pain the right wrist, right shoulder and right knee. Concentra diagnosed contusions of all three initially.

Regarding the accident report, the Arbitrator places less weight on the accident report that Veronica Herrera completed. In it, Ms. Herrera only identifies Petitioner's knee as the injured body part. Veronica acknowledged she also obtained information with regard to the accident from the witness Ashley.

Petitioner sought timely and reasonable treatment for the right wrist and right knee.

Regarding the right shoulder, the medical records indicate that Petitioner was initially diagnosed with a contusion. Dr. Westin (Concentra) diagnosed a persistent right shoulder strain. He believed the fall created the scapulothoracic sprain.

Petitioner eventually underwent her shoulder MRI while under the care of Dr. Foreman. The MRI showed a partial thickness undersurface tear with tendinopathy.

Petitioner continued conservative measures and her medical records document no significant improvement in the right shoulder.

Petitioner underwent a subacromial injection under the care of her current treating physician, Dr. Silver. She received only temporary relief. Dr. Silver recommended a right shoulder arthroscopy following failed conservative care.

Petitioner was seen by Dr. Kevin Walsh at the request of Respondent. Dr. Walsh opined Petitioner's right shoulder tear was degenerative in nature. Petitioner was also seen by Dr. Kevin Tu, at the request of Petitioner's Counsel. Dr. Tu opined that her mechanism was consistent with acute tear. Dr. Tu agreed with Dr. Silver and the need for surgery.

After carefully reviewing the medical record and reports, the Arbitrator assigns more weight to the opinions of Petitioner's treating doctors. The Arbitrator assigns greater weight to the opinions of Dr. Tu than he does to those of Dr. Walsh.

The Arbitrator finds Dr. Walsh's opinion with regard to the issue of causation to be far from compelling given the mechanism of injury, the chain of events, the MRI results, Petitioner's age, her lack of prior symptoms of, or treatment for, right shoulder pain and her lack of other risk factors.

The Arbitrator finds that Petitioner's current condition of ill-being of her right shoulder is causally related to her September 22, 2012 slip-and-fall accident and further, that Petitioner's need for right shoulder arthroscopy is directly related to her September 22, 2012 accident.

(J) Were the Medical Services Provided to Petitioner Reasonable and Necessary? Has Respondent Paid All Appropriate Charges for All Reasonable and Necessary Medical Services?

As he has found in favor of Petitioner on issue of causation, the Arbitrator awards Petitioner all outstanding medical bills outlined in the Request for Hearing form (Ax1) and in Petitioner's bill summary (Px13), pursuant to Section 8(a) and subject to Section 8.2 of the Act. The Arbitrator specifically finds the bills to be reasonable, necessary and related to Petitioner's medical care with each of her treaters as a result of the September 22, 2012 slip-and-fall accident.

(K) Prospective Medical Care

The Arbitrator awards the right shoulder arthroscopy that Dr. Ronald Silver has recommended. The medical records support Petitioner injury to her right shoulder when her arm struck the floor. Petitioner has undergone extensive conservative care from which she has experienced minimal, temporary relief.

Based upon the medical records, the opinions of Dr. Tu and the opinions of Dr. Silver, the Arbitrator finds the right shoulder arthroscopy to be necessary to relieve or cure Petitioner of her current condition of ill-being.

(L) Temporary Total Disability Benefits

As the Arbitrator has found in favor of Petitioner on the aforementioned issues, the Arbitrator awards Petitioner TTD benefits from October 13, 2012 through June 21, 2013.

Ms. Herrera testified that sometime after Petitioner sustained the slip-and-fall injury, she did not show up for her scheduled work. She testified that Petitioner told her that she did not have any money to come to work.

Ms. Herrera admitted that she told Petitioner she was too busy to talk to Petitioner when Petitioner called. She also admitted that she did not return Petitioner's call and inform her of her work schedule. Ms. Herrera stated she did not send any light-duty job offer letters via mail to Petitioner. Ms. Herrera was not aware of a formal light-duty program at Church's Chicken.

In rebuttal, Petitioner testified that after her last date worked, October 12, 2013, she had difficulty communicating effectively with Ms. Herrera regarding her light-duty work schedule.

During Petitioner' rebuttal, the following exchange took place:

Q: And towards the end of the last time that you worked there, were you able to ever get ahold of whatever your schedule was?

A: When I was calling her.

Q: Did she tell you what the schedule was?

A: No.

Q: Did she ever write you a letter giving you whatever the schedule was?

A: No, never. When I was showing up to work, I was going in person. Like I mentioned before, I was giving her in person the restriction order from the doctor; but when I was trying to call her, like she just mentioned, she told me, I don't have no time to talk to you, call me later. When I decided to call later, she never answered or called me back and I was leaving messages.

The Arbitrator finds Petitioner's testimony to be credible.

The Arbitrator notes Petitioner's resume', which is included in her personnel records. (Px3).

The medical records show that beginning on December 6, 2012, Petitioner was taken off of work by her treating physicians. She has remained off of work as of the dates of trial.

(G) What were Petitioner's Earnings? (O) Other – Average Weekly Wage (AWW) Calculation

The parties differ as to the proper method of calculating Petitioner's average weekly wage ("AWW") under Section 10. In Ax 1, Petitioner asserted an AWW of $400.00 and Respondent asserted an AWW of $44.48. (Ax1).

Section 10 of the Act provides, in part, that the AWW shall be calculated based on the *last full pay period preceding* the work injury. The evidence shows Petitioner earned gross wages from 7/24/12 – 9/9/12 in the amount of $274.07. This was earned over a total of 11 shifts. Since workweeks ran from Monday to Sunday, the records show Petitioner worked these 11 shifts over 6 separate workweeks.

The evidence show that for much of her time with Respondent, Petitioner was in a training program. As such, she worked reduced hours. She also switched restaurant locations.

In Sylvester v. Indus. Comm'n, 197 Ill. 2d 225, 756 N.E.2d 822 (2001), the Supreme Court reiterated the four different methods for calculating average weekly wage for which Section 10 of the Act provides. With regard to the fourth method, the Court wrote: "Finally, if the employment has been of such short duration or the terms of the employment of such casual nature that it is 'impractical' to use one of the three other methods to calculate average weekly

wage, 'regard shall be had to the average weekly amount which during the 52 weeks previous to the injury, illness or disablement was being or would have been earned by a person in the same grade employed at the same work for each of such 52 weeks for the same number of hours per week by the same employer.'

The Court addressed the employer's "windfall" argument and found such argument to be unpersuasive.

The Court found Senator Bruce's comment regarding the calculation of average weekly wage for a part-time employee to be of little relevance.

Near the end of their decision, the Court opined:

> **The point of the fourth method is clearly to allow an employer to demonstrate how much an established employee would have earned, when the petitioner's work situation does not provide a sufficiently reliable basis so to find.**

Based upon the wages submitted into evidence in the case at bar, the Arbitrator finds it impractical to utilize these earnings records for the purposes of calculating average weekly wage. The records demonstrate Petitioner worked sporadic hours and changed stores. Vicki Blancett testified that training hours usually were for four-hour shifts, but that a schedule varied due to sales, scheduling discretion and training and was set on a case-by-case basis. The Arbitrator further finds that Petitioner's total length of employment spanned only 11 shifts.

Vicki Blancett testified that part-time employees can work eight-hour shifts for three days per week, or four days per week at most.

Respondent witness Veronica Herrera testified that newly hired cooks go on to work normal hours of anywhere between 24 to 32 hours.

During Vicki Blancett's deposition, Exhibit 1 was submitted into evidence that showed work schedules for several employees for pay period 11/5-11/18. (Rx4, Ex. 1). Each work schedule was broken down by date and by the number of hours for each employee. Those records show that Petitioner's co-workers worked 6.5 hours up to 8 hours per day, thereby corroborating Respondent's witness' testimony that following training, Petitioner would have gone on to work anywhere from 24 - 32 hours per week. For example, co-worker Nisha was scheduled for at least 35.5 hours during that time. Co-worker Reyna was scheduled for at least 41 hours that period. Co-worker Eddie was scheduled for 37 hours that period. Co-worker Yvette was scheduled for at least 34 hours that period.

Petitioner testified that Olga Vieira, her first manager, told her that after her training, she would have the same hours as the other employees. Petitioner further testified that her rate of pay at the time she was hired was $8.25/hour.

Thus, based upon the facts and the law, the Arbitrator concludes that the fourth method of calculating the AWW is the appropriate method. Consequently, the Arbitrator finds that Petitioner's AWW at Church's Chicken was $231.00 (= 28 hours per week x $8.25/hour).

(M) Should penalties or fees be imposed upon Respondent?

The Arbitrator declines to impose penalties and fees against Respondent since Respondent had a reasonable basis to dispute the amount of TTD owed based upon the foregoing issues of AWW. Moreover, Kevin Walsh, M.D., Respondent's Section 12 examiner opined that the proposed right shoulder surgery is not necessary.

Despite the weight the Arbitrator gives to Dr. Walsh's opinions, i.e., little or none, Respondent *did* have Dr. Walsh examine Petitioner on March 26, 2013 and Dr. Walsh *did* opine

that this 37-year-old Petitioner's right partial-thickness rotator cuff tear, as shown on the MRI, was more likely than not a degenerative condition and not a post-traumatic condition.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☒ 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

Norma Martinez,

Petitioner,

14IWCC0031

vs.

NO: 11 WC 33823

Paramount Staffing,

Respondent.

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 medical expenses, prospective medical expenses, temporary total disability, causal connection, 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 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 May 24, 2013 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.

14IWCC0031

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: JAN 2 1 2014

David L. Gore

Michael J. Brennan

Mario Basurto

DLG/gal
O: 1/16/14
45

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

MARTINEZ, NORMA
Employee/Petitioner

Case# **11WC033823**

14IWCC0031

PARAMOUNT STAFFING
Employer/Respondent

On 5/24/2013, 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:

2553 McHARGUE, JAMES P LAW OFFICE
MATTHEW C JONES
100 W MONROE ST SUITE 1112
CHICAGO, IL 60603

4696 POULOS & DIBENEDETTO LAW PC
JEFFREY TRAVIS
850 W JACKSON BLVD SUITE 300
CHICAGO, IL 60607

STATE OF ILLINOIS)
)SS.
COUNTY OF kane)

☐ 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

19(b)

14IWCC0031

Case# 11 WC 33823

Norma Martinez
Employee/Petitioner

v.

Consolidated cases: **NA**

Paramount Staffing
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 **George Andros** Arbitrator of the Commission, in the city of **Geneva**, on **September 11, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0031

FINDINGS

On the date of accident, **July 22, 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 **$18,558.80**; the average weekly wage was **$356.90**.

On the date of accident, Petitioner was **40** years of age, single with **0** dependent child.

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

Respondent shall be given a credit of **$1,066.68** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$1,066.68**.

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

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $ 237.93 per week for 54 6/7 weeks, commencing August 25, 2011 through September 11, 2012, as provided in Section 8(b) of the Act.

Medical benefits

Respondent is liable for reasonable and necessary medical services of: Marque Medicos, $23,292.12; Medicos Pain and Surgical, $44,072.40; American Ctr. for Spine and Neurosurgery, $7,000.00; Specialized Radiology, $55.00; Archer Open MRI, $1,617.75; Industrial Pharmacy Mgmt., $528.64; Metro Anesthesia, $4,409.64; Naperville Medical Imaging, $1,931.00, as provided in Section 8(a) of the Act. All amounts to be awarded pursuant to the applicable IWCC Fee Schedule.

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.

Prospective Medical Care

Respondent shall authorize and pay for the L4-5 to L5-S1 lumbar fusion as recommended by Dr. Robert Erickson pursuant to section 8(a). Dr. Erickson's opinion is adopted as much more persuasive and thorough than the opinion of Dr. Lami. The Arbitrator underscores Dr. Erickson's Px. 6 office visit opinion of 5/11/12 fourth paragraph in total as the concise tipping point opinion. He cited Dr. Lami ignoring the discogram along with the supporting findings of MRI, neurophysiologic studies and clinical examination over a reasonable period of time. His testimony is also adopted per Px.1. Dep Ex.1 shows this accomplished medical author is an associate professor of neurological surgery at the University of Chicago. He is affilicated with the American Center for Spine & Neurosurgery in Libertyville along with two other neurosurgeons.

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.

01 George J Andros
Signature of Arbitrator

Date 5-21-13

ICArbDec19(b)

MAY 24 2013

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sherlie Smith,

Petitioner,

vs. NO: 11 WC 39449

14IWCC0032

Bridgeview Healthcare,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total 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 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 February 15, 2013, 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.

14IWCC0032

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.

DATED: JAN 2 3 2014
TJT:yl
o 1/14/14
51

Thomas J. Tyrrell

Kevin W. Lamboth

Daniel R. Donohoo

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

SMITH, SHERLIE
Employee/Petitioner

Case# **11WC039449**

BRIDGEVIEW HEALTHCARE
Employer/Respondent

14IWCC0032

On 2/15/2013, 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 0.12% 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:

0491 SOSTRIN & SOSTRIN PC
NEIL WISHNICK
33 W MONROE ST SUITE 1510
CHICAGO, IL 60603

0208 GALLIANI DOELL & COZZI LTD
ROBERT COZZI
20 N CLARK ST SUITE 1800
CHICAGO, IL 60602

14IWCC0032

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
ARBITRATION DECISION
19(b)

Sherlie Smith
Employee/Petitioner

v.

Bridgeview Helathcare
Employer/Respondent

Case # 11 WC 39449

Consolidated cases: ----

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **May 15, 2012** and **August 20, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0032

FINDINGS

On the date of accident, **January 11, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned an average weekly wage was **$158.00**.

On the date of accident, Petitioner was **55** years of age, *single* with **0** dependent child.

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

Respondent shall be given a credit of $ **615.12** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$615.12**.

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

ORDER

- The Arbitrator finds that the petitioner failed to prove that a causal connection exists between her current condition of ill-being and her work accident; therefore, the petitioner's claims for temporary total disability benefits and prospective medical care are denied.

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

February 14, 2013
Date

ICArbDec19(b)

FEB 15 2013

Statement of Facts

14IWCC0032

Petitioner reported an accident to her right shoulder on January 11, 2011 after she tripped over a scale. This is unrebutted and confirmed by Zelma Daniels (p. 88).

Petitioner treated at the company clinic, Concentra Medical Center, on January 12, 2011. She reported pain in the anterior aspect of the right knee and pain in the anterior aspect of her right shoulder. X-rays were taken of Petitioner's right knee and right shoulder; shoulder x-rays were negative for fracture or dislocation. Upon examination, Dr. Garces found the following for Petitioner's right shoulder: "No bruising. No ecchymosis. Shoulder shows no deformity. No tenderness present. Full active Range of Motion, including abduction, forward flexion, extension, adduction, internal and external rotation. Normal rotator cuff motion. Tenderness of the anterior aspect of. Speed negative. Supraspinatus negative. Hawkins impingement negative. Apprehension test negative. Drop test negative." Physician's assessment was knee contusion and shoulder. Ibuprofen and a home exercise program was prescribed. Petitioner was released to return to regular-duty work.

Petitioner testified that she returned to work in pain. She noticed that lifting made the pain worse. Petitioner testified that she told her co-workers about the pain in her right arm and shoulder. (pp. 21-22, 25). Petitioner continued to work and took over-the-counter medication. Eventually, the medication this did not help her pain and she couldn't handle her job (p. 33).

Petitioner testified that she did not seek a doctor for her right shoulder between January 2011 and August 2011 because she had "no insurance." She testified that she found out about workers' compensation and talked to the administrator (p. 33-34). This was three months after the accident (p. 34). She talked with Zelma occasionally and she would get someone to help her lift patients. (p. 38-39).

The medical records show that Petitioner treated at Aunt Martha's Health Center on March 22, 2011. The medical professional listed a history of various medical conditions. No history of right arm or right shoulder pain or of a fall at work was listed. Petitioner voiced no complaints of right arm or right shoulder pain at that time. The medical professional wrote: "Needs refill on her anxiety meds & something for dermatitis. Ø other symptoms or complaints … appears well … good mood …" Upon examination, the medical professional found that her EXTREMITIES (range of motion, arms, legs, gait) were within normal limits. (Px.5)

Respondent transferred Petitioner to the fourth floor on a permanent basis in July 2011. Respondent sent her back to Concentra for right shoulder treatment. Concentra referred her to Dr. Kevin Tu, an orthopedic surgeon. She first saw Dr. Tu on September 28, 2011. Dr. Tu ordered an MRI and later gave Petitioner a cortisone shot. The MRI revealed supraspinatus tendinosis with no evidence of a tear, type II acromion process and moderate AC joint arthropathy. Dr. Tu later prescribed that Petitioner undergo a right shoulder arthroscopic subacromial decompression, possible rotator cuff repair and distal

clavicle excision. Dr. Tu causally related the Petitioner's current condition of ill-being of her right shoulder to her work injury of January 11, 2011. Dr. Tu issued a narrative report. (Px.6) None of Dr. Tu's treating records were offered into evidence.

Petitioner also saw Dr. Gregory P. Nicholson, an orthopedic surgeon. Dr. Nicholson authored a report that is dated October 26, 2011. After taking a history and physical, Dr. Nicholson diagnosed Petitioner with right rotator cuff tendinitis. He found the MRI to be of poor quality. He recommended a cortisone injection and a soft-tissue physical therapy program. He released Petitioner to return to light-duty work. Dr. Nicholson noted that Petitioner has had six months of shoulder pain and opined that Petitioner's shoulder condition was "incurred in the fall." (Px.3)

The Petitioner was seen at the request of the Respondent by orthopedic surgeon, Dr. Kenneth Schiffman, on December 23, 2011. She localized the pain in the trapezial and medial axillary regions. She also complained of radiation of the pain down the arm. His physical examination revealed tenderness in the trapezius muscle; no scapular winging; negative Hawkins sign; full elevation; non-tender AC joint; abduction and internal and external rotation were grade 5. He concluded that her pain was diffuse, not consistent with the diagnosis of rotator cuff pathology and more typical of a cervical radicular problem. He indicated that her subjective complaints are not related to the injury in January of 2011. He found that she did not require any additional medical treatment as a result of the work injury. Specifically, she should not undergo a right shoulder surgical procedure. (Rx.1) Dr. Schiffman issued a supplemental report in which he indicated that he specifically reviewed the note of January 12, 2011, which did not change any of the opinions in his original report. He also indicated that he treats shoulder problems and performs shoulder surgery. (Rx.2)

Zelma Daniels testified that she was employed by the respondent as a LPN and was the Petitioner's supervisor when she worked on the third floor. When the Petitioner fell on January 11, 2011, she heard the noise and went to help the Petitioner. She told Petitioner to fill out an accident report. Ms. Daniels testified that on subsequent occasions, the Petitioner complained of shoulder pain. However, Ms. Daniels could not specify when Petitioner voiced such complaints. Ms. Daniels told her that she would have to go to Aasta James, the Director of Nursing, for any of her complaints or worker's compensation issues.

Ms. Daniels never went to Aasta James herself to advise her that the Petitioner was complaining of shoulder pain. Ms. Daniels is no longer working for the Respondent. In October of 2011, she received two disciplinary warnings regarding job performance issues and resigned for health reasons.

Aasta James testified that Respondent has employed her for nineteen years. For the past four years, she has been the Director of Nursing for the Respondent. Her job duties include staffing, hiring CNA's, LPN's and RN's, and enforcing the implementation of policies and procedures at the facility. She is overall in charge of all CNA's LPN's and

RN's. If an individual under her charge is injured at work, she has the responsibility of handling the situation.

The Respondent has employed the Petitioner as a CNA since 2010. Petitioner was one of the people that Ms. James supervised. The Petitioner worked the 3:00 – 11:00 P.M. shift and Ms. James worked a later shift, but there was a shift overlap of a few hours each day. She would see Petitioner at the facility on a daily basis.

In January of 2011, Aasta James became aware that the Petitioner had hurt herself. She had a conversation with the Petitioner on the day after the accident when she received the incident report. Ms. James sent her for medical treatment at the Concentra facility, a nearby occupational health clinic. After that visit, the Petitioner continued to work her normal job duties from January 12, 2011 through August 30, 2011. According to Ms. James, the Petitioner never complained of any physical problems with her shoulder until August of 2011. Furthermore, Ms. James testified that the Petitioner did not appear to be in any pain while she performed her normal job duties. Ms. James further testified that between January 12, 2011 and August 30, 2011, the Petitioner neither told her that she needed to work light duty because of a problem with her shoulder nor indicated to her that she needed assistance in performing her regular job duties. Prior to August 30, 2011, the Petitioner did not ask for permission to seek medical attention. Towards the end of August of 2011, Ms. James became aware that the Petitioner was having a problem with her shoulder. She instructed the Petitioner to go to the Concentra facility.

On cross-examination of Aasta James, the following exchange took place:

Q: Well, what did you talk about in August?

A: We had gotten a call to find out if Sherlie had been complaining prior about being in pain, that was a conversation in August.

Q: And said you got a call about that?

A: Yes.

Q: Who called you?

A: Well, no one called me directly, the person Christine Michaels who handles our Workman's Comp cases, asked me to find out if this was true.

Q: That Sherlie was complaining about her arm?

A: That she had been complaining prior, yes.

Q: Prior to August, right?

A: Yes.

Q: And you talked to Zelma about that, right?

A: Yes.

Q: And you talked to - - what is the other lady's name again?

A: Jean.

Q: Jean about that, correct?

A: Correct.

Q: And did both of them tell you about her arm?

A: Both of them said she had complained from time to time that she was still sore or different days was having pain.

Q: Now, as I understand it, the gist of your testimony, regarding Sherlie complaining about her arm, she was complaining about her arm being sore between January and August of 2011, is that right after the accident occurred?

A: I was asking them of resent, they didn't give a date.

The Petitioner's supervisors were trained that if one of the workers reports an inability to perform her job because of a physical problem, that supervisor is to report it to Ms. James. Ms. Daniels resigned in 2011 because she was not following policies and procedures. She received disciplinary warnings and counseling, but Ms. Daniels claimed that the counseling was affecting her health so she resigned.

When Ms. James talked to Jean Meko, Jean told her in August of 2011 that the Petitioner started complaining of her shoulder a month or couple of weeks earlier. The Petitioner worked on both the third and fourth floor. When she worked the third floor, Ms. Daniels was her supervisor. When she worked the fourth floor, Jean Meko was her supervisor. Neither Ms. Daniels nor Ms. Meko told her that the Petitioner was having difficulty doing her work.

Jean Meko testified that the Respondent has employed her as an LPN for sixteen years. She oversees and cares for the residents, makes assignments to the CNA's, monitors medication and makes sure that the residents are fed. In 2011, the Petitioner was one of the CNA's that she supervised. In July of 2011, she became aware of the Petitioner's shoulder complaints. Between January 11, 2011 and July 2011, she did not see the Petitioner every day, but frequently worked with her. The Petitioner worked on the fourth floor under the supervision of Ms. Meko approximately 60% of the time. The other 40% of the time, Petitioner would be on the third floor under the supervision of Ms. Daniels.

Ms. Meko testified that the Petitioner did not complain of shoulder problems until July of 2011. She never requested that she be given light-duty work prior to July of 2011. She never requested additional help in doing her work during that period of time. Ms. Meko further testified that while she was working between January and July of 2011, the Petitioner did not appear to be in pain.

Conclusions of Law

With respect to issue (F) "Is the petitioner's current condition of ill-being causally related to the injury?" the Arbitrator concludes as follows:

The Arbitrator finds that the Petitioner has failed to prove that her current condition of ill-being with respect to the right shoulder is causally related to her accident of January 11, 2011. The Arbitrator bases this finding on the following factors:

Although the Petitioner contends that she experienced ongoing problems with her shoulder from January 12, 2011 through the time she went for medical attention on August 30, 2011, substantial evidence indicates to the contrary. The history contained in the records of the Concentra Medical Center (Rx.3) for the visit of August 30, 2011 reflect that the Petitioner had pain in her shoulder only for three – four months prior to that visit, which means that it began in May or June of 2011.

Moreover, the records of the Aunt Martha's Medical Center (Px.5) reflect that the Petitioner was seen at that facility on March 22, 2011 and did not complain of shoulder problems. There is an undated Aunt Martha's record, which was apparently recorded after August 30, 2011, since it refers to treatment at Concentra. Such record refers to left shoulder pain and right shoulder pain.

Additionally, two credible witnesses, Aasta James and Jean Meko, both testified that they observed the Petitioner between January 12, 2011 and August 30, 2011. They testified that she did not appear to be in pain and did not report having any shoulder problems until July of 2011.

The Petitioner acknowledged that the Concentra doctor told her on January 12, 2011 that she was to return to him if she had any more problems, but that she chose not to do so. Her explanation that she had no insurance is not credible since she never received a bill from Concentra.

Although Zelma Daniels indicated that the Petitioner complained of shoulder pain, she could not be specific with respect to the dates (or even the months) on which Petitioner complained.

The Arbitrator notes that when Dr. Nicholson issued his causation opinion, he had not reviewed any treatment records because none were provided to him.

Moreover, none of Dr. Tu's treating records were offered into evidence and there is no statement in his narrative report to indicate that he had reviewed any records from Concentra Medical Center or Aunt Martha's Medical Center.

The Arbitrator accepts the opinion of Dr. Schiffman that there is no causal connection between her right shoulder condition of ill-being, about which she complained in late August of 2011, and her fall 8-1/2 months earlier.

The Arbitrator places a great deal of weight on the March 22, 2011 record of Aunt Martha's Medical Center and on the August 30, 2011 record of Concentra Medical Center.

With respect to issue (K) "Is Petitioner entitled to prospective medical care?" the Arbitrator concludes as follows:

The Petitioner seeks an order that the Respondent authorize the surgery prescribed by Dr. Tu to the right shoulder to address her diagnosed condition of impingement syndrome. The Arbitrator denies the Petitioner's request for the following reasons. Neither Dr. Kenneth Schiffman nor Dr. Gregory Nicholson has endorsed the proposed surgery. Dr. Nicholson indicated that the MRI was not diagnostic and no clinical decision should be based on the MRI. He also noted that all of the impingement signs were negative when he performed his physical examination. He felt that her pain was myofascial in nature. Dr. Schiffman bases his opinion on the fact that the Petitioner's complaints were diffuse and not consistent with rotator cuff pathology. As with Dr. Nicholson's exam, Dr. Schiffman also found negative impingement signs in his physical examination. The objective medical evidence does not support the Petitioner's request for surgical intervention.

With respect to issue (L) "What temporary benefits are in dispute?" the Arbitrator concludes as follows:

Based on the Arbitrator's finding with respect to causal connection, the Petitioner's request for temporary total disability benefits is denied.

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sylvia Brooks-Clausell,

Petitioner,

vs.

NO: 07 WC 39619

14IWCC0033

Capitol Cement,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, benefit rates, medical expenses, wage differential, penalties, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 16, 2012, is hereby affirmed and adopted.

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.

14IWCC0033

Bond for 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: JAN 2 3 2014
TJT:yl
o 12/17/13
51

Thomas J. Tyrrell

Kevin W. Lamborn

Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CLAUSELL, SYLVIA BROOKS-
Employee/Petitioner

Case# **07WC039619**

CAPITOL CEMENT
Employer/Respondent

14IWCC0033

On 11/16/2012, 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 0.14% 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:

0274 HORWITZ HORWITZ & ASSOC
MITCHELL HORWITZ
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

1872 SPIEGEL & CAHILL PC
CHRISTINA H BAWCUM
15 SPINNING WHEEL RD SUITE 107
HINSDALE, IL 60521

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

14IWCC0033

☐ 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

Sylvia Brooks-Clausell
Employee/Petitioner

v.

Capitol Cement
Employer/Respondent

Case # **07** WC **39619**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **October 4 and 5, 2012**. 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 _____

14IWCC0033

FINDINGS

On **May 15, 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 **$68,952.00**; the average weekly wage was **$1,326.00**.

On the date of accident, Petitioner was **48** 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 **$93,417.31** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$93,417.31**. Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $884.00/week from May 16, 2007 through August 31, 2009, a period of 119 6/7 weeks, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner maintenance benefits of $884.00/week from September 1, 2009 through January 31, 2010, a period of 21 6/7 weeks, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits in the amount of $646.67 per week from February 1, 2010 through May 31, 2012, a period of 121 4/7 weeks, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits in the amount of $660.00 per week beginning June 1, 2012 and for the duration of Petitioner's disability, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

Respondent shall pay Petitioner the stipulated fee schedule charges set forth in PX 31, subject to the exceptions discussed in the attached conclusions of law.

Respondent shall pay to Petitioner Section 19(k) penalties of **$50,186.58**, Section 16 attorney fees of **$20,074.63** and Section 19(l) penalties in the maximum statutory amount of **$10,000.00**.

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 Molly C Mason

11/16/12
Date

NOV 16 2012

Sylvia Brooks-Clausell v. Capitol Cement
07 WC 39619

14IWCC0033

Arbitrator's Findings of Fact

Petitioner, who was born on May 21, 1958, testified she stopped attending high school in 1977, after completing her sophomore year. She obtained her GED in 1982. T. 13-14.

Petitioner testified she attended a six-month EMT training course in 1983. She never worked as an EMT because she scored 78% rather than the requisite 80% on the final examination. T. 15.

In 1983 and 1984, Petitioner took classes in child development, English and psychology at Prairie State College. She did not obtain a degree at that time. T. 15-16.

In 1989, Petitioner began working in the asbestos removal trade after attending a one-week training course. She continued performing this work for three to four years. The job required her to wear a HAZ-MAT suit and a 30-pound oxygen tank. She testified she routinely lifted loads of wood weighing up to 60 pounds. T. 17. She received a "supervisor's license" at the end of the one-week training course, as did the other attendees, but never actually worked as a supervisor. She testified she stopped working as an asbestos remover because of the potential health hazards associated with the job. T. 19.

Between 1994 and 2000, Petitioner worked for Motorola, packing call towers into boxes. Petitioner testified she routinely lifted packed boxes weighing sixty to eighty pounds. T. 20. Her job consisted solely of manual labor. She had no management duties. T. 20-21.

Under cross-examination, Petitioner acknowledged that the application she submitted to Motorola reflects a typing speed of 65 words per minute. She testified she based this on a score she received following a high school typing test. T. 138. After she stopped working at Motorola, she took a typing test at a temporary agency and was told she scored only 35 words per minute. T. 138. She acknowledged the typing score she listed on her Motorola job application was probably not accurate as of the date she completed the application. T. 138-139.

Petitioner testified she last worked for Motorola at the end of 1999. T. 139. Motorola moved the plant's operations to Texas. Motorola offered job placement services to the displaced workers. Petitioner testified she availed herself of these services, and even traveled to Texas at Motorola's expense in an effort to find work, but did not receive any offers.

Petitioner testified she attended Columbia College, an "open enrollment" college, while she worked for Motorola. Motorola paid her tuition expenses. The $40,000 salary listed in her Motorola records does not represent her actual earnings, which totaled $21,000. The $40,000 figure includes tuition as well as those earnings. T. 139. Petitioner maintained a GPA of 3.1

and graduated from Columbia in 2000 (with an interdisciplinary degree in marketing and journalism) but testified she would not have been able to achieve this GPA and graduate without the help of tutors. She met with tutors three to four times weekly while attending Columbia College.

Respondent offered into evidence Petitioner's official transcript from Columbia College. This transcript reflects that, on admission, Columbia accepted 31.00 transferred hours from Prairie State and Lewis Colleges. It also reflects Petitioner received a "C" in an English composition class she took at Columbia in the spring of 1995, a "D" in an introductory media writing class she took in the fall of 1995 and a "C" in a journalism independent project class she took in the spring of 2000. Petitioner graduated from Columbia on June 3, 2000 with a cumulative GPA of 3.021 and a Columbia GPA of 3.2. RX 6.

In 2001, Petitioner paid $200 in order to attend a seminar sponsored by Primerica Insurance. During the seminar, Petitioner learned techniques for selling term life insurance. After the seminar, Petitioner, accompanied by a Primerica employee, tried selling insurance to friends and relatives but met with little success. She abandoned her efforts after six months. She testified she earned only $300 to $400 during that period. She denied any subsequent employment in the insurance industry.

Between 2001 and 2003, Petitioner lived in a 36-unit cooperative building on South Ellis in Chicago. Petitioner was president of the co-operative. Petitioner testified the building was in receivership due to code violations. As president, Petitioner was allowed to live for free in the building in exchange for appearing at court on a weekly basis in an ultimately unsuccessful effort to "save" the building. Petitioner denied receiving any other compensation for her efforts. T. 36.

Petitioner testified that, in 2001 or 2002, she briefly worked for SBC through a temporary agency. She was fired after about a month. She also did temporary work for a video company, putting VHS movies into cases. She earned about $8 per hour while performing this work. T. 37.

At a friend's recommendation, Petitioner applied to work as a substitute teacher for the Chicago Board of Education in November of 2004. Petitioner testified she did not have a teaching certificate when she applied. The application process consisted solely of submitting to fingerprinting and passing a background check. Records offered into evidence by Respondent reflect that Petitioner completed and signed a "Chicago Public Schools Employment Application" on October 15, 2004. Petitioner applied to work as a teacher. The portion of the application requesting information as to "state certificates held" is blank. RX 6.

Petitioner began working as a substitute teacher in late 2004. Petitioner testified she did not undergo any training before beginning to work in this capacity. She earned $82 to $89 for each day she worked.

In 2006, Petitioner began an apprenticeship program with the Cement Masons' Union. Petitioner testified that she typically performed cement finishing "up and down highways." She would work on her knees much of each day, using booms and "floats." She also unloaded wood from trucks.

The parties agree Petitioner was injured on May 15, 2007, while working as a cement finisher for Respondent. Arb Exh 1. Petitioner testified that Respondent was aware of her concurrent substitute teaching job. T. 41-42.

Petitioner denied having any problems with her lower back, left leg or left ankle prior to the May 15, 2007 accident. T. 43.

Petitioner testified that, immediately prior to the accident, she was standing in a trench while talking with a co-worker who was inside a Bobcat truck. The trench was 22 inches deep and Petitioner was standing on top of "stones layered with dirt." The Bobcat was 7 feet high and about 60 to 70 inches long. The driver of the Bobcat caught sight of a stone truck that looked as if it was about to fall over. The stone truck was behind Petitioner. The Bobcat driver gave a quick warning to Petitioner and almost simultaneously drove off. As the driver sped away, the Bobcat knocked Petitioner down, running over Petitioner's left leg in the process. T. 46.

After the accident, Petitioner underwent treatment at the Emergency Room at Mercy Hospital. The "initial assessment" notes reflect that Petitioner complained of 10/10 pain in her left leg from her knee to her foot secondary to a Bobcat running over her "foot/ankle/leg." An accompanying diagram shows abrasions on the left shin and a contusion on the dorsum of the left foot. Left foot X-rays showed "no evidence of acute fracture or dislocation." The attending physician diagnosed an "ankle/foot contusion." Petitioner received Motrin and Vicodin for pain. The Emergency Room physician applied an Ace wrap to Petitioner's left leg and instructed Petitioner to rest, apply ice, use crutches and follow up with her primary physician or employee health. PX 10. RX 5.

Petitioner followed up at MercyWorks Occupational Medicine on May 17, 2007. Dr. Sheth's note of that date sets forth a detailed and fully consistent history of the May 15, 2007 work accident. The doctor noted that, after the Bobcat driver "took off," Petitioner "found herself on the ground and sustained injury to her left ankle, left foot, left leg and left side of the lower back."

Dr. Sheth noted complaints of 9/10 pain and swelling over the left foot and ankle and 3/10 pain in the left leg and left side of the lower back. Petitioner indicated she was taking the pain medication prescribed at the Emergency Room and relying on crutches to walk.

On examination of Petitioner's left foot and ankle, Dr. Sheth noted "diffuse moderate swelling over the entire dorsum of the foot and bimalleolar ankle area" and an area of ecchymosis measuring 7 cm x 5 cm over the dorsolateral ankle. On examination of Petitioner's

left leg, Dr. Sheth noted "mild swelling over posterolateral leg and two areas of ecchymosis (measuring 7 cm x 5 cm and 5 cm x 2 cm) with abrasion over the mid and distal part present." On examination of Petitioner's left knee, Dr. Sheth noted no swelling, deformity or ecchymosis, no point tenderness, no effusion, no instability and a full range of motion. On examination of Petitioner's lumbar spine, Dr. Sheth noted no swelling, deformity or ecchymosis, mild tenderness at the left paraspinal lumbar area, forward flexion to the ankle, a full range of lateral motion with mild pain and straight leg raising to 70 degrees without pain.

Dr. Sheth diagnosed a crush injury to the left foot and ankle, abrasions and contusions to the left leg and a lumbosacral muscle strain. Dr. Sheth administered an injection, prescribed Ibuprofen and Hydrocodone and instructed Petitioner to stay off work, apply ice and then heat, elevate the left leg as much as possible, continue using the crutches and gradually resume bearing weight on the left leg as tolerated. PX 13.

Petitioner returned to MercyWorks on May 24, 2007 and saw Dr. Marino. The doctor noted complaints of pain in the left ankle, left foot and left lower back. He also noted continued swelling and tenderness in the lateral left foot and ankle. He kept Petitioner off work and instructed Petitioner to continue the medication and ice/heat application. PX 13.

Respondent offered into evidence a two-page ESIS "injury report for workers' compensation." This document appears to bear Petitioner's handwriting and signature. It is dated May 26, 2007. It reflects that Petitioner injured her "ankle, foot, leg, back – all left side" on May 15, 2007. RX 5.

Petitioner saw Dr. Marino again on May 31, 2007 and indicated her back pain was better but the Ibuprofen was not helping. Dr. Marino noted increased pain on all motion of the left foot and ankle. He kept Petitioner off work and prescribed Naproxen and Vicodin. PX 13.

On June 7, 2007, Petitioner saw Dr. Ali at MercyWorks, with the doctor noting a left-sided limp but improvement of the back pain. The doctor prescribed therapy and continued to keep Petitioner off work. PX 13.

On June 12, 2007, Petitioner returned to MercyWorks and saw Dr. Sheth. The doctor noted that "physical therapy was not called for approval until today." He also noted that Petitioner was still limping and requested a consultation with a "foot specialist." Dr. Sheth prescribed Hydrocodone, referred Petitioner to Dr. Perns and continued to keep Petitioner off work. PX 13.

Petitioner first saw Dr. Perns on June 13, 2007. Dr. Perns is a podiatrist associated with Midland Orthopedic Associates. Petitioner completed a "medical history" form describing her problem as "back – mainly foot crushed." Under cross-examination, Petitioner acknowledged she did not mention any knee problems on this form. T. 109. Petitioner also completed a form entitled "work-related injury." On this form, Petitioner identified "ESIS" as the "contact person or nurse specialist managing [her] claim." PX 4.

Dr. Perns' initial note sets forth a consistent history of Petitioner's May 15, 2007 work accident and subsequent treatment. Dr. Perns noted Petitioner was continuing to experience "intense pain to the entire left foot, ankle and lower leg as she began to walk on this over the last week." He described Petitioner's past medical history as unremarkable. Petitioner also complained of recent high blood pressure and lack of sensation when applying warm compresses to her affected left leg.

On initial examination, Dr. Perns noted mild edema of the left leg, a "great deal of discomfort and pain on light touch and palpation of the medial and lateral ankle ligament as well as the rearfoot and midfoot region, a positive Tinel's sign along the deep and superficial peroneal and sural nerve regions and a good range of motion of the ankle joint. He reviewed the X-rays taken at the Emergency Room and was unable to find any fracture or subluxation. His impression was: "1) crush injury with contusion on the left; and 2) neuritis on the left." He administered an anesthetic block into the left leg, placed Petitioner in an Unna boot, instructed Petitioner to bear weight and walk normally while using the boot and recommended therapy. PX 4.

Petitioner also saw Dr. Sheth on June 13, 2007, with the doctor keeping Petitioner off work and recommending "continue[d] management as per Dr. Perns." PX 13.

Petitioner returned to Dr. Perns on June 20, 2007 and indicated she experienced total pain relief following the injection, but only for eight to ten hours. Petitioner indicated the pain then "came back and felt like it was a hot poker stabbing her." Petitioner also complained of swelling toward the end of the day.

After Dr. Perns removed the Unna boot, he noted mild edema to the left leg, a "great deal of discomfort on light touch" and a positive Tinel's sign on percussion of the superficial and deep peroneal nerve regions of the left foot. He administered another "total ankle block" with "three injections to the left ankle." He instructed Petitioner to remain off work, wear a tube grip during the day and apply ice to her foot at night. He prescribed Ultram. PX 4.

When Petitioner next saw Dr. Perns, on June 27, 2007, she reported "more relief from the last injection" but again complained of a burning-type pain to the top of the foot extending around the outside of the ankle into the rearfoot. On examination, Dr. Perns noted a good range of ankle motion, very minimal edema and a positive Tinel's sign. He administered a third total ankle block and encouraged Petitioner to ice her ankle at night. He indicated Petitioner was going to start therapy the following week. PX 4.

Petitioner also saw Dr. Sheth at MercyWorks on June 27, 2007. Dr. Sheth described Petitioner's gait as follows: "still dragging her left foot with crutches." He described Petitioner's lumbar spine as unchanged since the last examination. He instructed Petitioner to start therapy, follow up with Dr. Perns and remain off work. PX 13.

Petitioner underwent an initial physical therapy evaluation at Mercy Hospital on July 10, 2007. The evaluating therapist, whose signature is not legible, indicated Petitioner was taking measurements of an excavation at a jobsite on May 15, 2007 when a Bobcat ran over her left foot and leg. The therapist described Petitioner as "ambulating independent with on crutch posture." The therapist described Petitioner's ambulation as "fair due to back pain." The therapist noted numbness, tingling and hypersensitivity of the dorsal aspect of the left foot. The therapist rated Petitioner's left foot and ankle pain at 7/10 and her low back pain at 4/10. PX 4. Petitioner attended therapy thereafter on July 12, 16, 18, and 19, 2007. PX 13.

Petitioner returned to Dr. Perns on July 23, 2007 and indicated she obtained relief from the last injection but was still experiencing "radiating tingling pain to the top of her left foot." On examination, Dr. Perns noted moderate edema to the forefoot and midfoot regions on the left foot. He also noted a positive Tinel's sign. He started Petitioner on Lyrica and recommended she perform range of motion exercises in warm water each morning and in ice a night. PX 4.

Petitioner also saw Dr. Sheth at MercyWorks on July 23, 2007. The doctor described Petitioner's gait as "normal with cane." He indicated Petitioner described her low back as "a lot better." He noted minimal to no swelling of the left ankle and foot. He indicated Petitioner "still jumps on slightest touch." He kept Petitioner off work and recommended she continue therapy and follow up with Dr. Perns. PX 13. Petitioner continued attending therapy on a regular basis thereafter. On July 30, 2007, the therapist noted improvement, with Petitioner describing her low back as 80% better and her left foot as 50% better. On August 1, 2007, the therapist recorded the following: "states rt knee is giving her problem and going up the stair knee gives out. Going to see doctor." The following day, the therapist indicated Petitioner was experiencing weakness and a "giving way" sensation in her right knee. PX 12. On August 16, 2007, the therapist discharged Petitioner from care, noting 90% improvement with respect to the low back and 80% improvement with respect to the left ankle and foot. In the discharge summary, the therapist indicated Petitioner was ambulating independently. The "assessment" portion of the discharge summary reads as follows:

> "Patient has reached max potential. Rt [sic] foot ankle function. No pain low back. Going next week to see specialist Dr. Maday for lt knee evaluation due to knee pain and lt knee gives out."

PX 4.

On August 20, 2007, Petitioner returned to Dr. Perns. The doctor noted improvement but indicated Petitioner was still experiencing "a little bit of discomfort to the outside of the ankle." He also indicated Petitioner denied further complaints. On examination, he noted mild residual edema to the left leg, a very good range of ankle and subtalar joint motion and "slight numbness to the distal tip of the fibula." He recommended that Petitioner continue her home exercises for a couple of weeks and return to work on September 4, 2007. He prescribed Lyrica and Tramadol and instructed Petitioner to return to him in a couple of months. PX 4.

On August 22, 2007, Petitioner saw Dr. Maday, another physician associated with Midland Orthopedic Associates. Petitioner completed new "medical history" and "work related injury" forms on August 22, 2007. The "medical history" form reflects that Dr. Perns referred Petitioner to Dr. Maday, that Petitioner had not yet undergone any knee treatment, that the knee problem had been "overlooked" at MercyWorks and that the problem was aggravated by using stairs. On the "work related injury" form, Petitioner provided the following response to the question: "describe why this is work-related":

> "Because when the Bobcat ran over my leg, I took a hard fall on stone, rock, etc. At the time, the pain was so very severe in my foot that it (the foot) seem [sic] to have been the doctor [sic] main focus. But other pain (or problem) surface[d] soon after."

[emphasis in the original]. Petitioner identified "Pat Galvin" as the "contact person or nurse specialist managing" her claim. PX 4.

Dr. Maday noted that Petitioner complained of bilateral knee pain and "originally injured her knees in a work-related incident which occurred on 5/5/07 [sic]." Dr. Maday described Petitioner as twisting and falling that day after a small vehicle drove over her left foot. He noted that Petitioner was currently undergoing treatment for her ankle "because this was deemed the most severe symptomatic injury." He indicated Petitioner complained of catching and popping in her knees, as well as "episodes of giving out, especially on the right knee." He described Petitioner's right knee as more symptomatic than her left. He also noted that Petitioner denied any previous history of knee problems.

On examination, Dr. Maday noted a full range of motion and negative McMurray's in both knees. Apparently referring to the right knee, he noted 1 to 2+ anterior medial and 1+ anterior lateral joint line tenderness and no other positive findings. Specifically referring to the left knee, he noted 1+ anterior medial and 1+ anterior lateral joint line tenderness and no other positive findings. He described X-rays as "essentially within normal limits." He assessed "possible meniscal pathology, status post fall" and recommended MRI scanning. PX 4.

At Respondent's request, Petitioner submitted to a Section 12 examination by Dr. Pinzur on August 21, 2007. Dr. Pinzur is a board certified orthopedic surgeon. He performs reconstructive foot and ankle surgery at Loyola University Medical Center. He has published extensively concerning foot and ankle conditions. RX 2, Pinzur Dep Exh 1. At his deposition, Dr. Pinzur described Petitioner as having sustained a crush injury to her left foot while working on May 15, 2007. Dr. Pinzur also indicated Petitioner had undergone "serial localized ankle blocks with some degree of temporary success." RX 2 at 8-9. He testified that, if Petitioner complained of knee pain, he did not note this in his report. RX 2 at 9.

When Dr. Pinzur examined Petitioner on August 21, 2007, he noted a "dynamic flat foot," mild swelling, diffuse tenderness without any localizing signs, "reasonable motion of the ankle and foot" and no neurological or vascular abnormalities. RX 2 at 9.

Dr. Pinzur's impression was that Petitioner was experiencing "delayed effects of a crush injury with neurogenic pain." He testified that Petitioner exhibited some of the characteristics of reflex sympathetic dystrophy. RX 2 at 10. He recommended an evaluation by a specialist in pain management and a sympathetic nerve block "to determine whether this process can be reversed." He indicated Petitioner should undergo a functional capacity evaluation if the nerve block failed to provide sufficient relief to enable Petitioner to resume working. He indicated that Petitioner "might be a reasonable candidate for an implanted spinal stimulator" if she had a "reasonable response to the sympathetic nerve block." He did not feel that continued local nerve blocks would provide any long term relief. Based on Petitioner's current condition, he found Petitioner "only capable of working at the United States Department of Labor sedentary or sedentary-light work levels." RX 2.

Petitioner resumed therapy at Mercy Health on August 22, 2007. Petitioner reported that Dr. Perns gave her a "new script to continue PT" for the left foot and ankle. Petitioner also reported that Dr. Maday prescribed MRI scanning. The therapist noted Petitioner was ambulating with a straight cane. PX 12.

On August 23, 2007, Petitioner returned to Dr. Sheth at MercyWorks, with the doctor indicating Dr. Perns sent Petitioner to Dr. Maday for bilateral knee pain. Dr. Sheth noted: "[Petitioner] states her right and left knee gave away 2 wks ago while going up stairs at home." Dr. Sheth also indicated Petitioner's knees had bothered her "since then." He noted Petitioner "was allowed to see Dr. Maday by Patrick Galion." RX 5. He described Petitioner's gait as "slow, favoring left side." He noted a full range of motion and no effusion or tenderness in both knees. He noted Petitioner was scheduled to undergo bilateral knee MRI scans.

On direct examination, Petitioner testified she began experiencing popping in her left knee "probably a few weeks after [she] started going to MercyWorks," while she was "on the crutches." Petitioner denied experiencing any popping in her left knee before the May 15, 2007 work accident. T. 97. Petitioner attributed her right knee pain to "the weight of bearing down" while using crutches. T. 50. Under cross-examination, Petitioner did not recall telling a physical therapist in August of 2007 that her knees had given way two weeks earlier while going up some stairs. Petitioner did, however, recall her knees giving way while climbing stairs. She attributed this to using crutches and/or knee pain. T. 112. She denied falling on stairs. T. 111-114.

On September 4, 2007, Petitioner filed an Application for Adjustment of Claim alleging a work-related injury of May 15, 2007 involving the "body as a whole." Arb Exh 2.

On September 5, 2007, the therapist at Mercy Health noted that "ins approved MRI" and that Petitioner's foot was improving.

On September 10, 2007, Petitioner underwent bilateral knee MRIs at AMIC. The left knee MRI demonstrated an "oblique tear of the posterior horn of the medial meniscus extending to the superior articular surface." The right knee MRI demonstrated a small joint effusion and mild medial and lateral chondromalacia. PX 7.

Petitioner returned to Dr. Maday on September 12, 2007. After reviewing the MRI results and re-examining Petitioner's knees, Dr. Maday diagnosed a medial meniscal tear of the left knee. He addressed causation as follows:

> "The patient's mechanism of injury, findings on examination and MRI are consistent with tear of the posterior horn of the medial meniscus. The patient did also note a knee injury at the time of her original injury and apparently this was documented on her chief complaint through the emergency room. Therefore, I believe this is directly a result of her work-related injury."

Dr. Maday discussed various treatment options, with Petitioner opting for surgery. Dr. Maday recommended that Petitioner stay off work pending the meniscal repair. PX 4.

Petitioner returned to Dr. Perns on October 1, 2007, with the doctor noting left foot and ankle improvement but continued complaints of tingling and some stiffness. The doctor indicated that Petitioner "states more of her problem is with the knee." On examination of Petitioner's left foot, Dr. Perns noted no real erythema or edema, "pretty good motion," a slight Tinel's sign and good strength. He described Petitioner's left foot and ankle condition as "resolving." He recommended that Petitioner "increase her activity level in regards to her foot." He released Petitioner from care with respect to the foot, noting Petitioner was still seeing his partner, Dr. Maday, for her knee. PX 4.

PX 4 contains a prescription slip bearing Dr. Perns' signature. The slip appears to be dated November 19, 2007. It states: "Sylvia can return to work as of 10/2/07." PX 4. There is no evidence suggesting Petitioner returned to work at this point.

Petitioner returned to Dr. Perns on December 3, 2007, with the doctor recording the following history:

> "Sylvia presents today and is still complaining of this burning pain to her left foot, ankle and lower leg. She states it is worse when she ties her shoes on tight or does long periods of standing and walking especially if she is carrying anything over 5 to 10 pounds. She denies any further complaints."

On examination, Dr. Perns noted "pain and discomfort to light touch and palpation to the plantar aspects of the entire left foot and medial and lateral midfoot region." Dr. Perns indicated he reviewed notes from Drs. Pinzur and Mercier. [No notes from Dr. Mercier are in evidence]. Dr. Perns prescribed EMG/NCV testing and instructed Petitioner to return to him as needed. PX 4.

Petitioner also saw Dr. Sheth at MercyWorks on December 3, 2007, with the doctor instructing Petitioner to remain off work and return to him after the EMG/NCV. PX 13.

On December 27, 2007, Petitioner underwent a consultation and EMG/NCV testing with Dr. Arayan of Health Benefits. Dr. Arayan obtained a consistent history of the May 15, 2007 work accident and subsequent treatment. Dr. Arayan noted the following complaints: 1) burning and tingling in the left anterior and lateral foot; 2) left leg weakness; 3) left knee pain; 4) lower back pain radiating down to the left knee and occasionally to the left foot; 5) occasional sweating and discoloration of the left foot; and 6) nail color changes in the left foot. Petitioner indicated these symptoms increased with walking, sitting and heat.

On examination, Dr. Arayan noted increased pain with lumbar spine flexion, decreased sensation in the left foot, slight left lateral foot edema, a positive slump test on the left and 5-/5 ankle plantar flexion on the left.

Dr. Arayan performed sensory and motor nerve conduction studies of both lower extremities. He rated the test results as "abnormal," noting "electrodiagnostic evidence of a chronic left L4-L5 lesion suggestive of a radiculopathy." He indicated that, along with this diagnosis, "one may want to consider complex regional pain syndrome as an additional diagnosis." He instructed Petitioner to follow up with Dr. Perns. PX 1.

Petitioner returned to Dr. Arayan on March 6, 2008. Petitioner complained of occasional pain in her left posterior knee and lower back. She also complained of more significant pain in her left ankle and foot, radiating up her left leg, and increased sweating in the left foot. She indicated her pain had increased since the preceding Sunday "with no inciting incident."

Dr. Arayan noted Petitioner had been off work since the accident and was "very anxious to get back to work." He also noted that Petitioner had been told she might need surgery for a left knee meniscal tear.

On examination, Dr. Arayan noted left paraspinal tenderness, decreased sensation in the left lateral leg, positive slight edema and increased sensitivity in the left foot and positive posterior knee fullness. He refilled Petitioner's Ultram prescription, started Petitioner on Lidoderm patches (to be applied to the left knee, ankle and foot), prescribed MRIs of the left foot and ankle and recommended Petitioner "follow up with orthopedic surgery for left knee medial meniscus tear." He instructed Petitioner to stay off work and return to him after undergoing the foot and ankle MRIs. PX 1.

Petitioner underwent the recommended MRI scans on March 15, 2008. She returned to Dr. Arayan on March 20, 2008, with the doctor describing the left ankle MRI as negative and the left foot MRI as showing "chondromalacia involving the first metatarsophalangeal joint with subchondral edema." Petitioner reported some improvement secondary to the Lidoderm patches. She complained of lower back pain radiating to her left leg and numbness and tingling in her left foot. She had not yet followed up with Dr. Maday for her left knee. Dr. Arayan recommended that continue the Ultram and Lidoderm patches, undergo lumbar spine X-rays, stay off work and seek follow-up care for her left knee. PX 1.

Petitioner underwent the recommended lumbar spine X-rays on March 31, 2008. She returned to Dr. Arayan on April 10, 2008, with the doctor interpreting the X-rays as showing mild anterior osteophytes at L1 and L4 and no acute fracture or subluxation. Petitioner indicated she had not yet seen Dr. Maday in follow up for her left knee. Petitioner complained of pain in her low back, left knee and left foot. Dr. Arayan reviewed the EMG and prescribed a lumbar spine MRI to evaluate Petitioner's radicular symptoms. He started Petitioner on Lyrica and refilled her other medications. He again recommended that Petitioner seek follow-up care for her left knee. He instructed Petitioner to return to him following the lumbar spine MRI. PX 1.

Petitioner underwent the recommended lumbar spine MRI on April 23, 2008. On April 28, 2008, Petitioner saw Dr. Watson, a pain management physician affiliated with Health Benefits. Dr. Watson obtained a consistent account of the work accident and reviewed the EMG and lumbar spine MRI. On examination, she noted a decreased range of lumbar spine motion and decreased sensation to light touch in the left L4, L5 and S1 distribution. She prescribed Vicodin and recommended transforaminal epidural steroid injections at L4-L5 on the left. She instructed Petitioner to remain off work. She administered the injection on May 1, 2008. PX 1.

On May 15, 2008, Dr. Watson administered a second epidural injection at L4-L5 on the left. She directed Petitioner to stay off work and prescribed physical therapy three times weekly for four weeks.

Petitioner returned to Dr. Arayan on May 21, 2008. On that date, Dr. Arayan interpreted the lumbar spine MRI as showing a small central disc protrusion at L5-S1 and a herniated disc at L4-L5, with "disc material extending into the neural foramen bilaterally, left greater than right." Petitioner complained of pain in her lower back radiating into her left leg. She also complained of pain in her left knee, ankle and foot. She reported some improvement secondary to the prescribed medication.

Dr. Arayan recommended a left L4-L5 selective nerve root block. He told Petitioner to stay off work and continue her medications. PX 1.

Petitioner returned to Dr. Watson on May 29, 2008. The doctor noted that the first two injections provided "good pain relief" but that Petitioner was still experiencing intermittent dull aches in the lower back and occasional pain and numbness in the left leg. On examination, Dr. Watson noted positive straight leg raising on the left. Dr. Watson administered a third epidural injection at L4-L5 on the left. She recommended that Petitioner see her primary physician for "new onset diabetes mellitus."

On June 11, 2008, Petitioner returned to Dr. Watson and reported that the third injection provided "approximately 85% to 90% pain relief." Straight leg raising was negative bilaterally. Dr. Watson instructed Petitioner to remain off work. PX 1.

Petitioner returned to Dr. Arayan on June 12, 2008 and reported about 85% improvement secondary to the three injections. Petitioner complained of 3/10 lower back pain, associated numbness in the left leg and foot and occasional giving way of the left knee. Dr. Arayan instructed Petitioner to discontinue the Vicodin. He refilled the other medications and again recommended orthopedic follow-up for the left knee. He prescribed therapy and continued to keep Petitioner off work. PX 1.

Petitioner saw Dr. Newman, an orthopedic surgeon affiliated with Midwest Orthopedics. Dr. Newman's history reflects that a Bobcat ran over Petitioner's left leg on May 15, 2007, with Petitioner being "knocked to the ground in an awkward position." The history also reflects that Petitioner complained of her left knee as well as other body parts at the Emergency Room the same day.

Dr. Newman noted that, while Petitioner was still experiencing some pain in the left side of her lower back and the lateral aspect of her left foot, her "main complaint" was her left knee, "which now buckles on occasion, particularly when she goes up stairs." Dr. Newman also noted intermittent left knee swelling.

On examination of Petitioner's left foot, Dr. Newman noted a complaint of tenderness on the lateral aspect but no discoloration or obvious swelling. On examination of Petitioner's lumbar spine, Dr. Newman noted some discomfort at end range of motion. On examination of Petitioner's knees, Dr. Newman noted exquisite tenderness along the medial joint line and a positive McMurray test in the left knee.

Dr. Newman addressed causation as follows:

> "In my opinion, the complaints that [Petitioner] has today are causally related to the incident that occurred on May 15, 2007. I think she sustained a strain of her lumbar spine, a crush injury to the left foot and ankle and a twisting injury to her left knee."

He described the foot and back treatment to date as appropriate. With respect to the left knee, he suspected a torn medial meniscus. Based on the MRI and the fact Petitioner complained of her left knee on the day of the accident, he found the left knee condition to be "directly related to the May 15, 2007 incident." He indicated Petitioner to be a candidate for arthroscopic surgery and recommended she stay off work. PX 6.

On August 15, 2008, Dr. Newman performed a partial medial meniscectomy and chondroplasty of the patella and trochlea. In his operative report, he noted a flap tear of the anterior horn of the medial meniscus. PX 6. T. 55.

At the first post-operative visit, on August 19, 2008, Dr. Newman noted no effusion and no evidence of infection. He prescribed physical therapy and instructed Petitioner to remain off work.

Petitioner testified that the knee surgery helped with the popping and pain. T. 55.

Petitioner returned to Dr. Arayan on August 21, 2008. Petitioner reported improvement in her knee condition secondary to the recent surgery. She also reported improvement in her back pain secondary to therapy. The doctor instructed Petitioner to continue the back therapy, start therapy for her knee, continue taking medication and stay off work. PX 1.

On September 9, 2008, Dr. Newman re-examined Petitioner's left knee. He noted a minimal effusion, a full range of motion and some crepitation. He instructed Petitioner to continue therapy and remain off work. PX 6.

On September 18, 2008, Dr. Arayan recommended that Petitioner undergo a neurosurgical evaluation for low back pain. He continued to keep Petitioner off work. PX 1.

On September 23, 2008, Dr. Newman issued a letter addressed "to whom it may concern" indicating that, while Petitioner could probably resume some restricted duties "as far as her knee is concerned," she needed to remain off work due to her lumbar spine issues. PX 6.

Petitioner saw Dr. Cerullo, a neurosurgeon associated with CINN, on October 1, 2008. T. 56.

Petitioner returned to Dr. Arayan on October 16, 2008. The doctor noted that Dr. Cerullo did not have access to Petitioner's lumbar spine MRI when he evaluated her. He also noted Dr. Cerullo's EMG recommendation He arranged to have both the MRI disc and the 2007 EMG report sent to Dr. Cerullo. He started Petitioner on Percocet and prescribed an electrical stimulation unit for home use. He instructed Petitioner to remain off work. PX 1.

On October 21, 2008, Petitioner returned to Dr. Newman. Dr. Newman noted only "very minimal anterior pain" in Petitioner's left knee. He discharged Petitioner from care with

respect to the knee but noted Petitioner was still off work and undergoing treatment for her back. PX 6.

On November 13, 2008, Dr. Cerullo prescribed a lumbar discogram. T. 57. Petitioner testified she was continuing to experience low back pain and radicular left leg pain at that time. T. 57.

On December 17, 2008, Petitioner and her then husband were involved in a motor vehicle accident. Following this accident, Petitioner went by ambulance to the Emergency Room at St. Bernard Hospital. Emergency Room personnel noted complaints relative to the back, head, right side of the neck and left shoulder. They also noted a history of "chronic pain, L4-L5 disc." RX 4, p. 3. Petitioner underwent X-rays of her cervical spine, chest, pelvis and left shoulder. There is no indication she underwent lumbar spine X-rays. RX 4, pp. 17-18. Petitioner received an injection of Toradol for pain. She was discharged from the hospital with a prescription for Ultram and instructions to seek follow-up care. RX 4.

Petitioner testified she again sought care at a hospital on December 19, 2008 due to nausea and pain. T. 58. Records in evidence show that Petitioner went to the Emergency Room at Mercy Hospital on December 29, 2008 and complained of nausea, vomiting, dizziness and lower back pain. Petitioner indicated her "meds [were] not working for pain." The Emergency Room records contain the following history:

> "The patient is a 50-yr-old female who presents with vomiting/diarrhea x 2 days and back pain since 12/17 after MVC. Pt states hasn't eaten in 24 hrs because of the vomiting . . . Back pain is severe after truck rear-ended her. H/o herniated disc. Worsened after accident. Denies LE weakness/numbness. + Myalgias."

RX 12, p. 47. The records also reflect that Petitioner provided a "hx herniated L4 & L5 from work injury" and was "also in MVA on 12/17." RX 12, p. 50. The Emergency Room physician, Dr. Trigger, diagnosed "viral syndrome with vomiting/diarrhea + exacerbation of chronic pain. Not c/w acute neurologic injury." RX 12, p. 46. Dr. Trigger administered an injection of morphine and ordered blood and urine testing. Petitioner subsequently reported improvement and was discharged with prescriptions for Vicodin and Zofran. She was instructed to seek follow-up care. RX 12, p. 50.

On direct examination, Petitioner testified that the December 17, 2008 motor vehicle accident caused only transient worsening of her back and leg pain. She also testified it took her about two weeks to heal from the accident. T. 58. Under cross-examination, Petitioner took issue with part of the history set forth in the Emergency Room records. The vehicle she was in was sideswiped, not rear-ended, by a semi. T. 119, 122. The back pain she complained of at the Emergency Room stemmed from being strapped to, and transported on, a wooden board. Petitioner testified that hospital personnel would not take her off this board until the

Emergency Room physician arrived to examine her. T. 120. Petitioner acknowledged telling hospital personnel that the motor vehicle accident caused her pre-existing back pain to worsen. T. 123. Initially, Petitioner denied being made a party to a lawsuit in connection with the motor vehicle accident. Ultimately, she acknowledged she was involved in a lawsuit to the extent her now ex-husband brought a claim against her automobile insurance. T. 124-125.

On January 29, 2009, Petitioner returned to Dr. Newman, with the doctor obtaining a history of the December 2008 motor vehicle accident. Dr. Newman indicated that a speeding truck jack-knifed, striking first the rear and then the passenger door of the car in which Petitioner was riding. The doctor also indicated that, following the second impact, the car "spun around and ended up facing in the opposite direction on the median." He noted Petitioner was transported to St. Bernard Hospital, where she complained of pain in her right knee and leg, head, neck, left clavicle and upper back. He also noted that Petitioner saw her primary care doctor on one occasion thereafter and had rested for three weeks after the accident so as to be well enough to take a pre-planned trip to the January 2009 inauguration. He described Petitioner's present complaints as limited to her neck, head, right knee and leg and left thumb. He noted no perceptible limp. On examination, he noted some feeling of stiffness in the neck, negative straight leg raising, no abrasions and tenderness along the lateral joint line as well as a positive McMurray test in the right knee. He ordered a right knee MRI and expressed concern "about a tear of the lateral meniscus." PX 6.

Petitioner returned to Health Benefits on February 3, 2009. She saw Dr. Rosania on that date, with the doctor noting Dr. Arayan had left the practice.

According to Dr. Rosania, Petitioner reported that "some of her medical care has been compromised by a recent motor vehicle accident sustained in December of last year which required evaluation at St. Bernard Hospital for right lower extremity discomfort." Petitioner indicated she remained off work and had recently completed her back and knee therapy.

On examination, Dr. Rosania noted positive seated straight leg raising bilaterally and "some trace left dorsiflexion weakness." He rewrote an order for a discogram "per Dr. Cerullo's recommendation." He indicated Petitioner might be a candidate for a repeat EMG. He renewed the Percocet and Flector patch prescriptions and continued to keep Petitioner off work. PX 1.

Petitioner underwent a three-level lumbar discogram on February 12, 2009. T. 59. Dr. Cha of Health Benefits performed this study. He noted "strong concordant pain" at L4-L5 "with reproducible radicular symptoms down the leg" at this level. He also noted concordant pain at L5-S1 "without the radicular symptoms." He noted only some degeneration at L5-S1. PX 1.

On March 27, 2009, Petitioner returned to Dr. Rosania and indicated she was having difficulty obtaining her medication "secondary to authorization issues." She also indicated she was having difficulty obtaining a copy of her 2008 lumbar spine MRI. Dr. Rosania reviewed the discogram results and recommended that Petitioner obtain the MRI films and return to Dr.

Cerullo to discuss surgery, stating: "it appears that the patient has exhausted conservative management for her condition." He renewed Petitioner's medications. PX 1.

On May 8, 2009, Petitioner returned to Dr. Rosania. The doctor noted Petitioner remained symptomatic but was "very motivated to return to work in some capacity if possible." On examination, he noted that straight leg raising now showed decreased hip range in flexion but no radicular pain. He renewed Petitioner's medications. He indicated Petitioner was still a surgical candidate but he released her to light duty on a trial basis, with no lifting over 20 pounds, no prolonged sitting and a "transition to part time duties." He instructed Petitioner to not take Percocet while at work. PX 1.

At Respondent's request, Dr. Ghanayem conducted a Section 12 examination of Petitioner on June 19, 2009. Dr. Ghanayem is director of the division of spine surgery at Loyola University Medical Center. He achieved board certification in orthopedic surgery in 1997. RX 1 at 5. He testified concerning his examination findings and opinions at a deposition conducted on May 17, 2010. RX 1.

Dr. Ghanayem noted Petitioner walked "with decreased stance phase on the left leg," meaning that Petitioner limped. RX 1 at 8. On lumbar spine examination, Dr. Ghanayem noted minimal discomfort at the base of the spine, 20 degree of extension, 60 degrees of flexion, no motor deficits, decreased sensation in the left leg from the mid-thigh down, normal reflexes and negative straight leg raising bilaterally. RX 1 at 8.

Dr. Ghanayem reviewed Petitioner's treatment records, lumbar MRI film and discogram results. He interpreted the MRI as showing degenerative disc disease at L4-L5. RX 1 at 10. He interpreted the discogram as "positive at a radiographically abnormal level and a radiographically normal level." RX 1 at 12, 15.

Dr. Ghanayem opined that the work accident caused a crush rather than a radicular-type injury and nerve damage to Petitioner's left leg. The nerve damage resulted in pain, sensory problems and a limp. RX 1 at 11. Dr. Ghanayem further opined that the limp resulted in some mechanical back pain, "hence the muscular findings on examination." He found Petitioner's condition to be appropriate for the stated mechanism of injury, i.e., having a machine run over her leg. He characterized Petitioner's leg problem as permanent and resulting in the need for work restrictions. RX 1 at 11, 17. He indicated Petitioner's leg problem prevented her from being able to resume working as a cement finisher. RX 1 at 17. He recommended that treatment be focused on the leg. He recommended against a spinal fusion, based on the discogram results. He testified that the "discogram report predicts a bad outcome from a fusion." RX 1 at 12.

While Dr. Ghanayem recommended physical therapy and possibly trigger point injections and/or orthotics for Petitioner's mechanical back pain, he also testified that Petitioner had achieved maximum medical improvement. RX 1 at 16-17.

Under cross-examination, Dr. Ghanayem testified that the work accident caused a soft tissue injury to Petitioner's back. RX 1 at 19. He also testified that he uses discograms in his practice. The discogram that Petitioner underwent was performed properly. RX 1 at 20. He disagreed with the radiologist's interpretation of the April 23, 2008 lumbar spine MRI to the extent that the radiologist characterized the abnormality at L4-L5 as a herniation. RX 1 at 21. Dr. Ghanayem viewed this abnormality as "more of a degenerative disc disease picture." RX 1 at 25, 30. Petitioner's left leg pain was circumferential, not radicular. He acknowledged, however, that the EMG was indicative of a radiculopathy in the left leg. RX 1 at 22-23. Drs. Cerullo and Onibokun diagnosed an L5 radiculopathy but "when you have a foraminal encroachment from a disc herniation at L4-L5, you don't pinch the L5 nerve root; you pinch the nerve that is in the foramen, which is the L4 nerve root." RX 1 at 24, 37. In order for the EMG to be consistent with the MRI, the EMG would have had to show an L4 radiculopathy. RX 1 at 24. With respect to Petitioner's discogram, the L5-S1 level produced concordant pain but was radiographically normal. It is this inconsistency that makes it inappropriate to recommend a fusion. RX 1 at 27. It is only if you interpret the discogram incorrectly that you could view L4-L5 as the pain generator. RX 1 at 31. Given that Petitioner is over the age of 40, the chance that L4-L5 is radiographically abnormal and not a pain generator is quite high. RX 1 at 35.

Dr. Ghanayem testified he did not review the case with an eye toward any malpractice issues. Thus, he could not comment as to whether it would be malpractice to proceed with a fusion. RX 1 at 33. If Petitioner does not have surgery, it would appropriate for her to undergo physical therapy for her back pain. RX 1 at 34. It is an "educated guess" on his part that Petitioner will not be able to resume working as a cement finisher. He believes a functional capacity evaluation would support that conclusion. RX 1 at 34.

Dr. Ghanayem testified that Petitioner's left leg condition falls into the category of reflex sympathetic dystrophy or complex regional pain syndrome. RX 1 at 38. The only precipitating event for this condition was the work accident of May 15, 2007. RX 1 at 38. If Petitioner undergoes a valid functional capacity evaluation and the evaluator determines Petitioner needs work restrictions, those restrictions would stem from the work accident. RX 1 at 39.

On redirect, Dr. Ghanayem testified that Petitioner might need chronic long-term medication for pain, along with monitoring. Dr. Ghanayem acknowledged he does not specialize in foot or ankle surgery. Dr. Pinzur is such a specialist. Dr. Ghanayem testified he would defer to Dr. Pinzur's opinions concerning Petitioner's foot condition. He refers patients with foot and ankle problems to Dr. Pinzur. RX 1 at 40.

Petitioner testified she decided against undergoing back surgery because she was afraid of ending up like her father, who is confined to a wheelchair. T. 60.

Petitioner testified she received temporary total disability benefits until the time of Dr. Ghanayem's Section 12 examination. T. 60.

At Dr. Rosania's recommendation, Petitioner underwent a functional capacity evaluation at Premier Physical Therapy on July 27, 2009. The evaluator, Ahmed Hassan, P.T., M.S., obtained a history of the work accident and subsequent treatment. He noted complaints of 4/10 lower back pain radiating to the extremities. He noted that these complaints increased with prolonged sitting, driving and repetitive activities. He noted positive straight leg raising on the left and an antalgic gait pattern favoring the left leg.

Hassan rated the evaluation as valid. He described Petitioner's overall performance level as "consistent throughout the evaluation." He found Petitioner capable of working at a light physical demand level, with a maximum of 15 pounds lifting shoulder to overhead, 18 pounds waist to shoulder and 18 pounds floor to waist. He noted that Petitioner was able to carry a maximum of 25 pounds for 20 feet but indicated that this weight was handed to Petitioner at waist level. He found it appropriate for Petitioner to participate in a rehabilitation program to address her physical deficits. PX 3.

Following the functional capacity evaluation, Petitioner returned to Dr. Rosania on August 31, 2009. Dr. Rosania released Petitioner to work within the limits of the evaluation.

Petitioner testified she began looking for alternative work on August 31, 2009. T. 62. She identified PX 20 as a compilation of the contacts she made with prospective employers. The first group of "employer contact sheets" in PX 20 covers the period August 31, 2009 through February 5, 2010. On these sheets, Petitioner documented approximately five or six job contacts per week. The first documented contact was with Chicago Public Schools. Petitioner testified she was "kicked out of" the Chicago Public Schools computer system as a result of being off work and drawing workers' compensation benefits for an extended period. Petitioner denied working as a substitute teacher at any point during the two years following her work accident. T. 64. When she contacted Chicago Public Schools in late August 2009, she was told no one was being hired. T. 64. Over the next few months, she contacted many cement finishing contractors looking for a flagging job, which she believed would be within her restrictions. She also made an unsuccessful attempt to obtain a clerical job at the office of her union local. T. 67. In late November 2009, she switched gears and began seeking work outside the cement finishing trade. The records in PX 20 reflect she contacted a variety of businesses looking for a cashier or clerk position. No one was hiring. T. 67-70.

Petitioner testified she began substitute teaching again in January of 2010. At this point, she earned $125 per day from Chicago Public Schools. T. 71. She primarily worked at Power House High School on South Homan. Initially, she worked only a few days per week. Over time, the school grew to appreciate her services and started asking her to substitute every day. As a substitute teacher, she is assigned to different classrooms, depending on teacher absences. She could be assigned to an English class one day and a geometry class the next. T. 75. She is not required to be up to speed on any particular subject. She does not develop lesson plans. She simply uses the assignments left by the regular teacher and presents those assignments to the class. She does not grade papers. She leaves completed coursework in the

regular teachers' mailboxes and the regular teachers "do their own grading." At times, she also worked as a hall monitor. T. 74.

Petitioner testified that, since January of 2010, she has not worked in any capacity other than as a substitute teacher. T. 76.

Petitioner testified she completed the third year of her cement mason apprenticeship and achieved journeyman status "in the academic sense" by attending three weeks of union-sponsored classes. T. 76-77. The union gave her a certificate of completion at the end of the three weeks. T. 76-77. After her work accident, she never again performed the physical duties of a cement mason. As of the accident, she was a second-year apprentice and fully intended to complete her training. T. 77. If she were currently working as a journeyman cement mason, her hourly wage would be $42.34. Assuming a 40-hour work week, her weekly wage would be $1,694.00. If she were currently performing both jobs, i.e., the cement mason job and a part-time substitute teaching job, her current weekly wage would be $1,694.00 plus $286.00. T. 78.

Petitioner testified that workers' compensation never interviewed her or provided her with vocational rehabilitation or job search assistance. T. 79. In 2010, she reviewed the labor market survey that Julie Bose conducted. At her attorney's direction, she contacted the employers identified in this survey and inquired about positions. One such employer asked her how she obtained their phone number and told her they have not hired in twenty years. That employer only had three employees. T. 81. Farmers Insurance, one of the employers identified in the survey, declined to interview her because she could not be an agent since she had filed for bankruptcy. T. 81. The Chicago Children's Museum, another listed employer, was not hiring. T. 82. The American Medical Association, another listed employer, was looking to hire a "director of clerk development," not a clerk. A job with American Global Life would have required her to relocate to Memphis. T. 82-83. In order to work at "Have Dreams," another listed employer, she would have needed a master's degree in marketing. T. 85. Adams Harris, another listed employer, was looking to hire someone to perform accounting, not marketing management. T. 85. She has no background in accounting. T. 86. Nielson required not only a master's degree but at least five years' experience in marketing. T. 86. Futurity First and Crump Insurance were not hiring. She contacted the listed insurance companies but was told she lacked experience to work in management. T. 86-89.

Petitioner testified that, after she contacted the employers identified in Julie Bose's labor market survey, she resumed looking for work on her own. She contacted McDonald's and Burger King. She also went "store to store" in two malls: Ford City and North Riverside. T. 91. She also dropped off resumes at different schools, looking for security-related jobs. T. 91. She also applied to work as an assistant to handicapped children who go to school by bus. T. 91. She also applied to work in the brain injury program at SEIU. She was familiar with this program because her handicapped son attended the program. She was not offered a job. T. 92.

Petitioner testified she could not resume asbestos removal because that job exceeds her restrictions. T. 92

Petitioner testified she last worked in July 2012. She was still looking for work as of the hearing. She met with Susan Entenberg, a vocational counselor, at her attorney's request. T. 93.

Petitioner testified she still experiences lower back pain that intermittently "shoots down" her leg. This pain is a "constant." Her left knee and left foot are "better." T. 97. Since she is a parent, she has to perform certain activities such as cooking and taking her son to doctors' appointments. Certain activities, such as sitting, bending and lifting, increase her symptoms. She takes Tramadol for pain at times. She also performs home exercises and uses a prescribed TENS unit. T. 95. She avoids wearing shoes with heels because doing so causes back pain. T. 96. Her pain affects her sleep. She tries to live within her restrictions. T. 96-97.

Under cross-examination, Petitioner testified she began working for Respondent in 2006. She was a second-year apprentice at the time of the accident. T. 99. When she went to the Emergency Room on the day of the accident, she complained of back pain but no one recorded this complaint. T. 100. She did not undergo any back X-rays at the Emergency Room. T. 101-102. She was diagnosed with foot and ankle contusions. T. 102. While she was undergoing treatment at MercyWorks, she asked to see a knee specialist. T. 106. She could not recall when she made this request. T. 107. She could not recall asking to see a back specialist. T. 108. When she completed a form at Midland Orthopedic Associates on June 13, 2007, she mentioned her back and foot but not her knee. T. 109. RX 9. She did not recall telling Dr. Sheth her back was "a lot better" in July of 2007. T. 110-111. Her knees gave way while she was climbing stairs but she did not fall on stairs. T. 112, 114. She complained of her knee in the Emergency Room on the day of the accident. T. 113. It was not the giving way on stairs that prompted her to complain of her knees. She complained of "clicking" in her left knee. T. 114. Dr. Perns released her from care with respect to her foot and ankle in October 2007. T. 115. She complained of low back and radiating leg pain before she saw Dr. Arayan on December 27, 2007 but no one recorded this complaint. T. 116-117. She has not undergone any left knee treatment since Dr. Newman released her on October 21, 2008. T. 117. She was involved in a motor vehicle accident on December 17, 2008. This accident occurred on 57. She was sideswiped, not rear-ended, by a semi. The impact caused her car her spin around. The car ended up in the median, facing the opposite direction. T. 119. The motor vehicle accident was bad enough that she went to the hospital via ambulance the same day. T. 119. She complained of back pain at the hospital. The back pain stemmed from being placed on, and strapped to, a wooden board while being transported to and waiting to be seen at the hospital. This worsened the back problem she already had. T. 120. She complained about the board at the hospital. T. 121. On December 29, 2008, she went to Mercy Hospital and complained of severe back pain. If the Mercy Hospital records state she was rear-ended by a truck on December 17, 2008, the records are incorrect. T. 122. She told the doctors at Mercy Hospital she had previously herniated a disc in her back and her back symptoms worsened after the motor vehicle accident. T. 123. Her ex-husband was in the vehicle with her at the time of the accident. She initially testified she was never named as a defendant in any lawsuit stemming from this accident. She then acknowledged that her ex-husband brought a claim against her auto insurance due to the accident. T. 124. Dr. Onibokun first recommended a fusion in March

of 2009. This is the first time any doctor recommended back surgery. T. 126. She could not recall whether she told Dr. Ghanayem about the motor vehicle accident. T. 128. She took two years of nursing classes but never received a nursing degree. T. 131. She would not have passed the courses she took at Columbia College had she not obtained tutoring. She saw a tutor three or four times per week. The tutor corrected her papers. She was able to graduate from Columbia College. T. 133. When she applied to work for Chicago Public Schools in 2004, she indicated she could communicate to some extent in Spanish and Japanese. She also indicated she had computer skills. T. 135-136. She further indicated she worked for Primerica Insurance from January of 2000 through January of 2003 but that was not correct. T. 136-137. When she applied to work for Motorola, she completed a form indicating she could type 65 words per minute but she cannot type at that speed now. T. 138. In completing the form, she relied on a typing score she received when she was a sophomore in high school. T. 138. After leaving Motorola in late 1999, she took a typing test at a temporary agency and scored only 35 words per minute. T. 138-139. She recently went online and reapplied to Motorola to work in management. She has not followed up on this. T. 141. She completed the coursework required of a third-year cement mason apprentice. The union website states that an apprentice must complete 6,000 hours in the field in order to become a journeyman. She did not put in these hours. Nobody did. T. 143. She is still paying union dues. T. 144. She did not tell Susan Entenberg she completed her apprenticeship. It could be that she was still taking classes through the union when she met with Entenberg. T. 145. Her attorney gave her job search forms to complete. Those forms are in PX 20. T. 145-146. She could physically perform the duties of a flagger. T. 147. In 2009, she applied to work as a manager at McDonald's. If the form states she applied to work as a flagger at McDonald's, the form is incorrect. T. 147-148. She relied on a union booklet when applying to work as a flagger. The booklet lists all of the mason contractors. T. 149. She applied to some, but not all, of the prospective employers identified in Julie Bose's labor market survey. T. 150. Some of the job contacts she made are not reflected in the documents in PX 20. She had a lot of job search records and some check stubs in her car. One day she cleaned out her car and set these documents down. Someone walked off with them. T. 151. Her normal workday as a cement finisher began at 7:00 AM and lasted until 3:30 PM. Her hours as a substitute teacher are from 8:30 AM until 2:30 or 3:30 PM. She would not be able to perform each of these jobs on the same day. T. 153-154. She was paid for a 40-hour work week during her apprenticeship. T. 154. No doctor has restricted her from working as a substitute teacher. T. 154. She last saw Dr. Rosania in 2010, at which point he told her to return to him on a monthly basis. Between her last visit to Dr. Rosania and 2011, she periodically went to doctors and hospitals to get morphine shots for pain. She does not have any of those records available. T. 155-156.

On redirect, Petitioner testified that it was her right knee that gave way when she climbed stairs. She was at home, using two crutches, when this happened. T. 157-159. She did not get hurt at that time. T. 159-160. She recalled using crutches for about two months after the work accident. T. 158. Her back pain waxed and waned. It never fully resolved. T. 160. In November of 2008, about a month before the motor vehicle accident, Dr. Cerullo ordered a discogram and told her she was a candidate for back surgery. T. 161. The motor vehicle accident did not result in any serious low back injury. T. 162. Dr. Ghanayem spent about five

minutes with her. He told her he was in a hurry and had to leave. T. 162. No professional helped her with her job search. She used her friends and relatives as resources. T. 168.

Under re-cross, Petitioner testified that there is only limited work available in the construction industry because unemployment is so high. T. 169-170.

In addition to the evidence previously summarized, Petitioner offered Dr. Cerullo's deposition of May 17, 2012. PX 19. Dr. Cerullo testified he is a board certified neurosurgeon. He has practiced neurosurgery in Illinois since 1977. PX 19 at 5. He no longer operates but did perform spine surgery for forty years. PX 19 at 5.

Dr. Cerullo testified he first saw Petitioner on October 1, 2008. Dr. Arayan referred Petitioner to him. Petitioner told him she was well until May 2007, when a Bobcat rolled over her left leg at work. PX 19 at 6. She injured her knee in the accident. She complained of back pain as well but her knee problem overshadowed her back problem. PX 19 at 6. She did not undergo a lumbar spine MRI until August of 2007. The MRI showed degenerative disc disease at L4-L5 and L5-S1. Petitioner underwent both therapy and epidural steroid injections but "both aggravated her symptoms." PX 19 at 7.

On October 1, 2008, Petitioner complained of back and leg pain as well as left leg tingling. She reported taking Lyrica, Vicodin and Tramadol. PX 19 at 7. On examination, Dr. Cerullo noted a moderate degree of paralumbar spasm but a fairly good range of motion of the back. PX 19 at 7-8. Straight leg raising was limited to 60 degrees bilaterally. PX 19 at 8. The examination indicated Petitioner had a combination of mechanical low back syndrome and sciatica. PX 19 at 8. He recommended a repeat lumbar spine MRI and EMG/NCV testing of the left leg. PX 19 at 8. At the next visit, on November 13, 2008, he reviewed an MRI and EMG/NCV test results. The EMG was "positive for radiculopathy" and the MRI showed degenerative disc disease with narrowing of the foramen at L4-L5. He felt that the L4-L5 disc "probably should be treated surgically" but, in order to "cement" a diagnosis, he ordered a discogram. PX 19 at 9. The examination, MRI and EMG constituted objective evidence supporting Petitioner's complaints. PX 19 at 9-10. Petitioner subsequently underwent the discogram, which was "physiologically and radiographically concordant at L4-L5 and questionably physiologically concordant at L5-S1." Dr. Cerullo testified that the discogram "cemented in [his] mind that the L4-L5 disc was the culprit." He referred Petitioner to one of his partners, Dr. Onibokun. Dr. Onibokun subsequently evaluated Petitioner and found her to be a candidate for an instrumented posterior lateral fusion at L4-L5 as well as a discectomy at L4-L5. PX 19 at 12.

Dr. Cerullo opined, within a reasonable degree of medical and surgical certainty, that the work accident of May 15, 2007 caused Petitioner's previously asymptomatic degenerative disc disease to become symptomatic. PX 19 at 12-13. Petitioner had two choices. She could either live with her pain or undergo surgery. PX 19 at 13. Dr. Cerullo further opined that the need for the surgery recommended by Dr. Onibokun stems from the work accident. PX 19 at 13. If Petitioner opted not to undergo the recommended surgery and instead underwent a

functional capacity evaluation, that would be reasonable. PX 19 at 13-14. If the evaluation was valid and indicated the need for restrictions, he would find the evaluation reliable. PX 19 at 14.

Dr. Cerullo testified he disagreed with Dr. Ghanayem's opinion that the work accident caused only a muscular or soft tissue back injury. He disagreed because Petitioner had positive symptoms which were appropriate for her pathology and she failed to improve with conservative measures. PX 19 at 14-15. Dr. Cerullo also disagreed with Dr. Ghanayem's opinion that Petitioner's leg pain was not radicular in nature. Petitioner's leg pain was "anatomically correct and corroborated by electrophysiologic study." PX 19 at 15.

Dr. Cerullo testified he reviewed the actual MRI film and not just the report. PX 19 at 15.

Under cross-examination, Dr. Cerullo clarified that, on November 13, 2008, he reviewed an EMG performed in December of 2007 and an MRI taken on April 23, 2008. PX 19 at 17. After he reviewed the EMG and MRI, he concluded that Petitioner was suffering from an L5 radiculopathy on the left, secondary to a herniated disc and degenerative disc disease at L4-L5. PX 19 at 17. He ordered but did not actually perform a discogram. PX 19 at 17-18. The discogram results could be consistent with degenerative changes or with an impact from a motor accident. PX 19 at 18. He referred Petitioner to Dr. Onibokun because he no longer operates. PX 19 at 20. He last saw Petitioner almost three years ago. He relied on Petitioner's history in formulating his opinions. Petitioner did not inform him she was involved in a subsequent motor vehicle accident. PX 19 at 20.

Petitioner also offered into evidence deposition testimony taken from Susan Entenberg on May 10, 2010 (PX 17) and April 7, 2011 (PX 18). On May 10, 2010, Entenberg testified she has worked as a vocational rehabilitation counselor since 1977. About half of her practice involves working in the workers' compensation arena. PX 17 at 4-5. She also works as a consultant for the Social Security Administration on a contract basis. PX 17 at 5-6. At the request of Petitioner's counsel, she met with Petitioner and issued a report on March 3, 2010. PX 17 at 6-7. Entenberg Dep Exh 2. Based on her meeting with Petitioner, the functional capacity evaluation and Dr. Arayan's imposition of restrictions consistent with the evaluation, Entenberg opined that Petitioner cannot resume her former occupation as a cement mason. PX 17 at 8. A cement mason's job is heavy and Petitioner is restricted to light demand work. PX 17 at 9. At her recommendation, Petitioner went back to the Chicago Board of Education, reintroduced herself and secured work as a substitute teacher. PX 17 at 10.

Entenberg testified that Petitioner obtained EMT certification but would not be able to work as an EMT due to the heavy physical demands of that job. For the same reasons, Petitioner would not be able to resume working in the asbestos removal trade. PX 17 at 10-11. Petitioner obtained a degree in television broadcast journalism in 2000 but has never worked in that field. Given Petitioner's age and lack of work experience in the field, it would be "next to impossible" for her to break into the world of journalism. PX 17 at 12. It would also be very difficult for Petitioner to work in marketing. She lacks the background for this. PX 17 at 12.

Entenberg testified that, of all of Petitioner's former occupations, substitute teaching is the one to fall back on. PX 17 at 13. Entenberg did not recommend any additional training because Petitioner is working. Further training would not increase Petitioner's earning power as a substitute teacher. PX 17 at 13. Any transferable skills Petitioner has at this point stem from her substitute teaching background. PX 17 at 13-14. Petitioner is currently earning between $15.50 and $16.00 per hour. Petitioner has experienced a wage loss because, if she were currently working as a cement mason, she would be earning $43.00 per hour. PX 17 at 14. Petitioner's current earnings are "very reasonable given her background, her work experience, her age and her education." PX 17 at 14.

Entenberg testified that, to her knowledge, Respondent has not offered Petitioner any vocational rehabilitation. PX 17 at 15.

Under cross-examination, Entenberg testified that she met with Petitioner on October 28, 2009. She had several telephone conversations with Petitioner after that date. PX 17 at 16. She did not generate a report until March of 2010 because she wanted Petitioner to return to the Chicago Board of Education first. PX 17 at 17. Petitioner did not need help preparing a resume. Since Petitioner has a bachelor's degree, she assumes that Petitioner is able to read, write and perform math at a high school level, at a minimum. PX 17 at 17. Petitioner is "personable, communicative and assertive." Petitioner did not require help with interview skills. PX 17 at 18. Entenberg testified she charged Petitioner's attorney $720 for her consultation. PX 17 at 18. She is charging $150 per hour for her deposition testimony. PX 17 at 19. Petitioner attended Columbia College, not Columbia University. The two schools are very different. PX 17 at 20. Petitioner received an asbestos removal supervisor's license in 1992 but, if Petitioner was a working supervisor, her job would not have been light. PX 17 at 21. When Petitioner worked for Primerica between 2000 and 2002, she sold life insurance "door to door." PX 17 at 23. Petitioner is familiar with Word and E-mails. She could perform entry-level clerical work. A typing score of 65 words per minute is "average to high average for a professional typist." PX 17 at 24. When Petitioner worked for Motorola between 1994 and 2000, she worked on an assembly line. She was a lead person on the line by the end of that employment. Entenberg testified she did not contact Motorla to inquire about openings because Motorola has been downsizing for years. PX 17 at 25. Entenberg testified she did not have a good feel for the type of work Petitioner performed for the Ellis Corporation between 2002 and 2004. PX 17 at 25. Before October 28, 2009, Petitioner had submitted about 25 resumes and had tried to get on some contractors' lists. PX 17 at 26.

At her second deposition, on April 7, 2011, Entenberg testified she reviewed a report and labor market survey prepared by Respondent's vocational consultant, Julie Bose, and issued a letter on April 4, 2011, setting forth her opinions concerning Bose's conclusions. PX 18 at 4. Entenberg did not view teaching as a reasonable career path for Petitioner. Petitioner has no education credits and no teaching certificate. It would take Petitioner a couple of years to return to college and obtain certification. PX 18 at 5. Additionally, lots of young graduates are currently looking for teaching jobs, which are "few and far between." PX 18 at 9. Entenberg

opined that marketing management is not a realistic option for Petitioner because Petitioner has never worked in the marketing field. PX 18 at 6. There is no stable labor market for Petitioner to work as an insurance salesperson. Petitioner is not currently licensed to sell insurance. She was last licensed in 2002 and has no current customer base. PX 18 at 6-7. It would be appropriate for Petitioner to work as an administrative assistant. The Department of Labor statistics reflect that the starting wage for an administrative assistant is $17.60 per hour. PX 18 at 7-8. Petitioner is still working as a substitute teacher and still earns $125 per day. PX 18 at 8. Substitute teaching is reasonable for Petitioner. She has been performing this work and the work falls within Petitioner's physical restrictions. PX 18 at 8. Entenberg disagreed with Bose's opinion that Petitioner has not lost earning capacity. That opinion is based on the earnings of insurance sales managers and marketing managers. PX 18 at 10.

Under cross-examination, Entenberg testified that, in most jobs, earnings are based on skill sets. From a statistical point of view, the fact that Petitioner has a bachelor's degree puts her in the upper percentage of the United States population. PX 18 at 11. The fact that Petitioner has a college degree does not mean that she has good writing skills. PX 18 at 12. Petitioner has more transferable skills than an individual who began working as a cement mason right after high school. PX 18 at 13. Entenberg testified that, to her knowledge, Petitioner and her husband operated Ellis Corporation. The job Petitioner performed for this corporation was not full-time. PX 18 at 14. Entenberg acknowledged she did not contact any prospective employers. She conceded it is possible Petitioner would qualify for an entry-level marketing position. PX 18 at 15. She assumes there is a high rate of unemployment in the construction trade at the present time. PX 18 at 16. She has acted as a consultant in two other cases being handled by Petitioner's attorney. PX 18 at 16.

Petitioner also offered into evidence a certificate issued by the United States Department of Labor, Office of Apprenticeship, indicating Petitioner completed an apprenticeship for the occupation of cement mason on August 17, 2009, under the sponsorship of the Cement Masons' Local 502 in Bellwood, Illinois and "in accordance with the basic standards of apprenticeship established by the Secretary of Labor." PX 21. Respondent did not object to the admission of this certificate into evidence.

Petitioner also offered into evidence wage scale documents from the Cement Masons' Union, Local 502, dated May 16, 2009 (PX 27), July 23, 2010 (PX 28), May 23, 2011 (PX 29) and May 16, 2012 (PX 30). Respondent did not object to any of these exhibits. PX 27, 28 and 29 reflect that a cement mason journeyman's hourly wage was $41.85 as of June 1, 2009, August 1, 2010 and June 1, 2011. PX 30 reflects that, as of June 1, 2012, a cement mason journeyman's hourly wage was $42.35.

Petitioner also offered into evidence fifty-six paychecks from Henry Ford Academy – Power House High. PX 32. These checks were issued during three intervals: February 11, 2010 through June 15, 2010, October 21, 2010 through June 16, 2011 and August 25, 2011 through June 21, 2012. They reflect total earnings of $49,450.40. Notations on the checks show that

Petitioner was paid for substitute teaching, tutoring and, on one occasion, security-related work. The Arbitrator notes that both the pay periods and earnings are irregular. During some months in 2010, Petitioner was paid only twice. In February of 2010, the checks total $1,625.00 whereas in October 2010 the checks total $500.00. The checks issued in 2011 total $24,604.40. The checks issued in 2012 (through June 21, 2012) total $11,048 and are particularly erratic in terms of issuance dates and amounts. In January and April of 2012, the checks totaled $227.50 and $450.00, respectively. By May of 2012, checks were being issued almost weekly and the payments were significantly larger. In May of 2012, checks were issued in the following amounts: $845.50, $750.00, $562.50 and $2,500.00. The following month, checks were issued in the following amounts: $1,025.00, $1,087.50, $1,050.00 and $300.00.

Respondent offered into evidence the deposition of Julie Bose, a certified vocational rehabilitation counselor. RX 3 at 6. Bose owns and operates MedVoc Rehabilitation. RX 3 at 5. Bose Dep Exh 1. She obtained a master's degree in rehabilitation from the Illinois Institute of Technology and has taught classes at the same institution as an adjunct professor. RX 3 at 5.

Bose testified she reviewed Petitioner's transcript from Columbia College along with the functional capacity evaluation and employment records from Motorola and Chicago Public Schools. RX 3 at 7. Based on the functional capacity evaluation, she opined that Petitioner was unable to return to her former cement mason trade. RX 3 at 9.

Bose testified she prepared a report on August 16, 2010, at which point Petitioner was working part-time as a substitute teacher. RX 3 at 9. Bose also prepared a labor market survey.

Bose described Petitioner as a "very well-educated individual who has a very varied work background." Bose testified that Petitioner has no readily transferable skills from her cement mason job. In her opinion, Petitioner's best vocational alternative would be to either "take additional classes to become certified in teaching" so as to "perhaps work as a full-time teacher" or utilize her previous education and work experience and obtain as job as a marketing manager, an insurance sales manager or an administrative assistant. RX 3 at 11.

Bose testified that Petitioner's earning capacity would vary depending on which of these avenues she pursued. If Petitioner obtained her teaching certificate and found a job as a teacher, she could anticipate earning $47,000 to $62,000 per year. RX 3 at 11-12. If Petitioner opted to become an administrative assistant, she could anticipate entry-level earnings ranging from $14.00 to $22.00 per hour. The mean entry level wage would be $17.60 per hour. RX 3 at 13. Bose opined that Petitioner would be capable of earning more than the entry level wage because "it's atypical for an administrative assistant to have a bachelor's degree." RX 3 at 14. If Petitioner secured a job as a marketing manager, she could anticipate earning $26.40 per hour in an entry-level position. In the insurance management industry, Petitioner's earning capacity could range widely from $21.87 to $31.30 per hour. RX 3 at 12.

Bose testified she surveyed only non-teacher positions because teachers' wages are a

matter of public record. RX 3 at 13. While conducting the survey, she contacted several prospective employers and advised them of Petitioner's educational background, work experience and physical limitations. The prospective employers who agreed to respond to the survey indicated that Petitioner "has the background they would be looking for in marketing management." These employers quoted various starting hourly wages. The mean wage was $26.40. RX 3 at 15. Bose also contacted employers to inquire about starting wages for sales managers. She primarily contacted employers "in the insurance arena" because of Petitioner's "experience at Primerica and Ellis Corporation in insurance sales and management." Each of the employers she contacted indicated that Petitioner had the experience and education necessary to be considered for employment. The starting entry level hourly wage varied from $16.80 to $40.87, with a mean of $31.30. RX 3 at 15-16.

Under cross-examination, Bose acknowledged she never met with Petitioner. Bose did not know the extent of Petitioner's computer skills. It was her understanding that Petitioner's job at Ellis Corporation primarily involved sales management. RX 3 at 19. She did not know whether Petitioner received a salary from Ellis Corporation. RX 3 at 20. When she completed the labor market survey, she told prospective employers that Petitioner had a bachelor's degree and experience in insurance sales. RX 3 at 19. Petitioner lacks a teaching certificate but she was "trained to be a substitute teacher." Chicago Public Schools requires substitute teachers to go through a formal training program to learn how to create lesson plans and conduct classes. RX 3 at 21. Bose testified she lacks "specific statistics" concerning the current job market for teachers. RX 3 at 22. Petitioner performed a marketing internship at Columbia College and got an "A" in this course. Petitioner also "worked as a district lead for Primerica, which utilizes marketing skills." RX 3 at 23. When Bose talked with prospective employers, she told them Petitioner had a marketing degree but no marketing experience. RX 3 at 24-25. Each of these employers told Bose they "had hiring needs." They also told Bose that Petitioner "had the appropriate education, work background and physical capabilities" to obtain a marketing management position. RX 3 at 25. Bose acknowledged Petitioner obtained her marketing degree over a decade ago. RX 3 at 26. Bose also acknowledged Petitioner is no longer licensed to sell insurance. Insurance sales are commission-based but insurance sales managers typically receive both commissions and wages. RX 3 at 26-27. Even though Petitioner has not been involved in insurance sales for a significant period, it is not impractical to think she could start out earning $31 per hour in this industry. RX 3 at 27. To say that Petitioner could immediately earn $31 per hour is to speculate. Petitioner would have to "go and interview, be offered a job and work that job successfully." RX 3 at 30. Most of the classes Petitioner took at Columbia College were "interpersonal-based." RX 3 at 29. Petitioner's current substitute teaching job is appropriate in terms of Petitioner's physical needs and work history but it is "underemployment." RX 3 at 29.

On redirect, Bose clarified that she contacted five prospective employers concerning a marketing manager job. RX 3 at 30-31.

Respondent also offered into evidence a document that was apparently downloaded

from the Cement Masons' Local 502 website. RX 13. This document reflects that "the term of apprenticeship shall be 6,000 hours (3 years) of work experience and 144 hours of related instruction, per year during apprenticeship term." The document also reflects that apprentices "start at 70% of the journey workers' hourly wage rate, increasing progressively to 100% by graduation." Petitioner raised no objection to the admission of RX 13 into evidence.

Arbitrator's Credibility Assessment

For the most part, Petitioner was an engaging and likeable witness. She became somewhat defensive under cross-examination, particularly when being questioned about her claimed knee condition and the December 2008 motor vehicle accident, but did not lose her composure.

There were some discrepancies between Petitioner's testimony and her medical records. There were also discrepancies between Petitioner's testimony as to her daily wage as a substitute teacher and the earnings reflected in the paychecks in PX 32. On the whole, however, the Arbitrator found Petitioner to be credible.

Arbitrator's Conclusions of Law

Did Petitioner establish a causal connection between her undisputed work accident of May 15, 2007 and her various claimed conditions of ill-being?

The parties agree that Petitioner sustained an accident while working for Respondent on May 15, 2007. Petitioner claims that this accident resulted in injuries to her left foot, ankle, knee, leg and lower back. At the hearing, Petitioner described her left foot, ankle and knee conditions as improved. Her most significant problem is the pain that radiates from her lower back down her left leg. T. 96-97.

The Arbitrator finds that Petitioner established causation with respect to her left foot and ankle conditions of ill-being. Petitioner testified that a Bobcat ran over her left foot and leg. Emergency Room personnel noted contusions and abrasions to the left foot and ankle on the day of the accident. They also noted that Petitioner was having difficulty bearing weight on her left foot. Petitioner left the hospital wearing a boot and relying on crutches. Two days later, Dr. Sheth at MercyWorks noted moderate swelling over the entire dorsum of the left foot and bimalleolar ankle area. He also noted ecchymoses and abrasions. He diagnosed a crush injury. PX 13. Petitioner's left foot and ankle problems persisted thereafter. While Dr. Sheth initially suggested she gradually resume bearing weight on the left foot, she was still limping on June 12, 2007 and asked to see a foot specialist. Dr. Sheth referred her to Dr. Perns, a podiatrist, who placed her in a wrap and performed a number of injections. On June 27, 2007, Dr. Sheth described Petitioner as "still dragging her left foot with crutches." Almost a month later, Petitioner was still relying on a cane. While Petitioner's physical therapist noted steady improvement and discharged Petitioner on August 16, 2007, at which point the attention turned to Petitioner's knees, Petitioner was still complaining of her left foot and ankle when she saw Respondent's first Section 12 examiner, Dr. Pinzur, on August 21, 2007. Dr. Pinzur diagnosed neurogenic pain stemming from a crush injury. He also found some of Petitioner's symptoms compatible with reflex sympathetic dystrophy. He did not find Petitioner to be at maximum medical improvement. Instead, he recommended a consultation with a pain management specialist. Petitioner did not see such a specialist until late December 2007, when

she came under the care of Dr. Arayan. Like Dr. Pinzur, Dr. Arayan viewed reflex sympathetic dystrophy (also known as complex regional pain syndrome) as a possible additional diagnosis. He prescribed MRI scans and an EMG. It was after the EMG that Petitioner's back became the focus of attention but Petitioner continued to complain of numbness and tingling in her left foot. Dr. Pinzur re-examined Petitioner on March 3, 2009. While he noted inconsistencies, he also noted subjective pain complaints relative to the left foot and ankle. He found it "very difficult to separate out" Petitioner's foot complaints from her back complaints. RX 2 at 16. In June of 2009, Dr. Ghanayem found that the work accident resulted in a crushing injury to Petitioner's left lower leg. Like Drs. Pinzur and Arayan, he found some of Petitioner's symptoms compatible with complex regional pain syndrome.

Based on the mechanism of injury, the treatment records and the opinions of Drs. Perns, Arayan, Pinzur and Ghanayem, the Arbitrator finds that Petitioner's undisputed work accident resulted in a crushing injury involving the left foot and ankle. While Petitioner described her left foot and ankle condition as "better," she did not indicate this condition has fully resolved.

The Arbitrator also finds that Petitioner established causation as to a left knee condition of ill-being that ultimately required surgery in August of 2008. In so finding, the Arbitrator relies in part on the mechanism of injury, with Petitioner being struck by a moving vehicle and falling onto a stony surface. Dr. Maday noted that Petitioner twisted when she fell and Dr. Newman noted that Petitioner landed in an awkward position. The Arbitrator also relies on the fact that Petitioner complained of her left knee on the day of the accident. The Emergency Room records reflect that Petitioner complained of pain in her left leg "from foot to knee." Dr. Sheth also noted complaints relative to the left knee two days after the accident, although he focused primarily on the left foot and ankle. Petitioner testified that she began noticing "popping" in her left knee thereafter but that her foot and ankle condition took precedent. The Arbitrator finds this testimony credible. The Arbitrator also notes that, in June and July of 2007, Petitioner was relying on devices (first crutches and then a cane) to walk and thus was likely not "testing" her left knee to the extent she would have been had she been fully weight bearing. The Arbitrator notes that it was in early August 2007, when Petitioner was increasing her activity level, that knee problems were documented. To be sure, those problems were described as bilateral, with Petitioner's therapist initially mentioning the "rt," or right knee, and later mentioning the "lt," or left, knee. Those problems were also linked with stair usage, with the therapist noting Petitioner's knees were giving way when she climbed up stairs. When Petitioner was confronted with the therapy notes under cross-examination, she acknowledged the "giving way" with stair usage but denied any fall or other specific trauma after the initial work accident. The Arbitrator finds this denial credible. The Arbitrator acknowledges that, on August 22, 2007, when Petitioner first sought an orthopedic consultation with Dr. Maday specifically for her knee problems, the doctor described her right knee as more symptomatic than her left. However, it was only the left knee that was found to have meniscal pathology on MRI. The right knee MRI showed no such pathology. Petitioner, perhaps inadvertently, claimed some medical expenses relative to the right knee, but is not claiming any current right knee condition of ill-being.

In analyzing causation with respect to the left knee, the Arbitrator also notes that Petitioner's initial care was overseen by a medical case manager and that this manager, whose name was apparently Pat Galvin, gave the go-ahead for the visit to Dr. Maday. Dr. Maday was not a physician of Petitioner's selection. Rather, he was a partner of Dr. Perns, to whom Petitioner was referred by MercyWorks, the occupational health clinic. While authorization of care is not an admission of liability, the Arbitrator finds it significant that Respondent facilitated knee-related treatment in August of 2007. Respondent did later seek out a Section 12 opinion from Dr. Mercier regarding the knee condition (see Exhibit A attached to RX 8) but the Arbitrator assigns no weight to this opinion. The Arbitrator notes that, when Dr. Mercier examined Petitioner's left knee, he documented pain to palpation over the mid medial joint line. The Arbitrator also notes that Dr. Pinzur, who specializes in lower extremity injuries, elected to stay silent on the issue of whether the work accident resulted in a left knee condition. RX 2 at 23-25. In finding causation as to the left knee, the Arbitrator relies on Dr. Maday's and Dr. Newman's opinions. Of these two opinions, the Arbitrator relies predominantly on that of Dr. Newman since Dr. Newman reviewed the earliest treatment records and had a better grasp of the chronology. PX 6.

The Arbitrator also finds that Petitioner established causation as to her lower back and left leg condition of ill-being. While Petitioner was involved in a motor vehicle accident on December 17, 2008, and reported an increase in back pain thereafter, Dr. Cerullo had recommended a discogram a month before that accident. PX 2. Based on the December 29, 2008 Emergency Room records, which reflect an "exacerbation of chronic pain" rather than any acute neurologic injury, along with Dr. Newman's note of January 29, 2009, which supports Petitioner's testimony that she recovered from the motor vehicle accident after a period of rest, the Arbitrator finds that the motor vehicle accident caused only a temporary worsening of Petitioner's work-related lumbar spine condition. See, e.g., Vogel v. Industrial Commission, 354 Ill.App.3d 780, 789 (2nd Dist. 2005). Dr. Mercier diagnosed an acute lumbar strain on October 25, 2007. RX 8, Exh A. Dr. Pinzur described Petitioner's March 3, 2009 back examination as abnormal (RX 2 at 13, 15, 20, 23-25). He limited his return-to-work opinions to Petitioner's foot and ankle condition. RX 2 at 16. Dr. Ghanayem found causation as to a lumbar spine condition, albeit not the same condition Drs. Cerullo and Onibokun diagnosed. The Arbitrator relies primarily on the objective testing and the testimony of Dr. Cerullo in finding that Petitioner established causation as to a surgical lumbar spine condition of ill-being.

Is Petitioner entitled to reasonable and necessary medical expenses?

Having found that Petitioner established causation as to her left foot and ankle, left knee and lower back/left leg conditions of ill-being, the Arbitrator further finds that the treatment Petitioner underwent for these conditions was reasonable and necessary. Respondent's examiners took no issue with the treatment rendered prior to their respective examinations. Dr. Ghanayem advised against the recommended spinal fusion. Petitioner decided to forego this surgery, as was her right.

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Petitioner claims the following medical expenses:

Provider	Date(s) of Service	Total Original Charges	Fee Sched. Amt. Due
Advocate Lutheran General	3/31/08-Dr. Noren	$ 210.00	$ 210.00
AMIC	9/10/07-knee MRIs	$ 2,790.00	$ 2,353.30
Chicago Central EP	5/15/07-ER phys.	$ 235.00	$ 196.11
CINN (Dr. Cerullo)	10/1/08-4/13/09	$ 781.00	$ 606.29
Dr. Pavlovic	10/4/07 (LS X-rays)	$ 43.00	$ 43.00
Health Benefits	12/27/07-10/2/12 (EMG, injections and discogram)	$ 35,833.30	$ 27,094.42
Illinois Bone and Joint (Dr. Newman)	7/1/08-4/9/09	$ 14,603.00	$ 8,218.33
Illinois Pharmacy Management	3/11/08-10/2/12	$ 26,067.80	$ 26,067.80
Illinois Physicians Network	3/15/08-10/2/12	$ 19,643.66	$ 14,486.02
Injured Workers Pharmacy	3/3/10-7/21/10	$ 1,256.57	$ 866.79
Jackson Park Hosp.	3/31/08-5/29/08	$ 13,286.92	$ 8,872.95
Lincoln Park Anesthesia	8/15/08-L knee surg.	$ 900.00	$ 885.78
McHenry Laboratory Services	4/28/08-5/29/08	$ 42.00	$ 42.00
Midland Orthopedic	5/28/08-Dr. Sheth	$ 96.98	$ 96.98
Radiological Physic.	5/17/07-X-rays	$ 59.00	$ 59.00
St. Joseph Hospital	8/7/08-8/15/08 (pre-op and left knee surgery)	$ 7,955.50	$ 6,034.19
The Friedell Clinic	5/1/08-5/29/08 (lumbar injections)	$ 1,104.00	$ 1,104.00
Total Rehab	7/10/08-11/18/08 & 3/31/09-4/16/09	$ 9,262.40 (total for both therapy periods)	$ 8,979.01
Universal Radiology	12/17/08 (X-rays of chest, neck, pelvis, etc.)	$ 164.00	$ 164.00
	TOTAL:	$ 134,334.13 TOTAL:	$ 106,379.97

PX 31. The fee schedule amounts listed above are based on a stipulation submitted by the parties after the hearing. The stipulation provides that, if the Arbitrator awards the foregoing bills, the fee schedule amount owed is the amount stated in the right hand column on the preceding page.

The Arbitrator, having reviewed the bills in PX 31, the treatment records and the arguments set forth in Respondent's proposed decision, declines to award the bills from Advocate Lutheran General Hospital, Dr. Pavlovic and Universal Radiology. The bills from Advocate Lutheran General Hospital and Dr. Pavlovic are not supported by any treatment records. The bill from Universal Radiology stems from Emergency Room treatment Petitioner underwent following her motor vehicle accident of December 17, 2008. With respect to the bill from AMIC [Advanced Medical Imaging Center], for bilateral knee MRIs performed on September 10, 2007, the Arbitrator awards only the charges relating to the left knee MRI. A collection letter in PX 31 reflects that those charges totaled $1,395.00 and that workers' compensation paid $613.95 toward those charges. The parties have stipulated that the fee schedule charges for bilateral knee MRIs total $2,353.30. Fifty percent of this amount is $1,176.65. Thus, with respect to the AMIC charges, the Arbitrator awards $1,176.65, with Respondent receiving credit for the $613.95 it paid. With respect to the bill from Total Rehab, the Arbitrator awards only the charges stemming from therapy performed between July 10, 2008 and November 18, 2008. The Arbitrator declines to award the charges relating to the therapy Petitioner underwent at Total Rehab from March 31, 2009 through April 16, 2009. Petitioner offered into evidence only those records from Total Rehab that relate to the therapy she underwent in 2008. PX 14.

While Petitioner claims an outstanding balance of $96.98 from Midland Orthopedic Associates (Dr. Sheth), the bill from that facility shows a zero balance. Accordingly, the Arbitrator awards no expenses associated with the care rendered by Midland Orthopedic Associates.

Subject to the exceptions discussed in the preceding two paragraphs, the Arbitrator awards the stipulated fee schedule charges enumerated in the right hand column on the preceding page.

Is Petitioner entitled to temporary total disability and/or maintenance?

At the hearing, Petitioner claimed temporary total disability benefits running from May 16, 2007 through January 31, 2010 while Respondent claimed benefits running from May 16, 2007 through October 1, 2007. The parties agreed Respondent paid benefits totaling $93,417.31 prior to hearing. Arb Exh 1. In her proposed decision, Petitioner clarified that she is seeking temporary total disability benefits through August 31, 2009, the date on which Dr. Rosania imposed permanent restrictions per the functional capacity evaluation, and maintenance thereafter through January 31, 2010, shortly before she resumed working for Chicago Public Schools. PX 32.

Based on Petitioner's testimony, the treatment records and Dr. Ghanayem's opinions, and in reliance on Interstate Scaffolding, Inc. v. IWCC, 236 Ill.2d 132 (2010), the Arbitrator finds that Petitioner was temporarily totally disabled from May 16, 2007 through August 31, 2009, a period of 119 6/7 weeks. On May 15, 2007, the date of the accident, Petitioner was discharged from the Emergency Room with a boot, crutches and instructions to remain off work. Dr. Sheth of MercyWorks continued to keep Petitioner off work thereafter. Dr. Sheth subsequently referred Petitioner to Dr. Perns, who treated Petitioner's left foot and ankle condition. On August 20, 2007, Dr. Perns released Petitioner to work as of September 4, 2007. On August 21, 2007, Respondent's examiner, Dr. Pinzur, recommended a consultation with a pain management specialist and found Petitioner capable of only sedentary to sedentary-light duty. RX 2. The recommended consultation did not take place at that time. On August 22, 2007, Dr. Perns' partner, Dr. Maday, addressed Petitioner's knee problems and recommended MRIs. The left knee MRI demonstrated a meniscal tear, which Dr. Maday linked to the work accident. On September 12, 2007, Dr. Maday recommended a meniscal repair. On October 1, 2007, Dr. Perns released Petitioner from care with respect to her foot and ankle but noted Petitioner was still seeing Dr. Maday for her knee problems. On November 19, 2007, Dr. Perns wrote out a slip indicating Petitioner could return to work as of October 2, 2007 but, again, that was a release relative to the foot. The meniscal tear had not yet been repaired. On December 3, 2007, Dr. Perns recommended EMG/NCV testing. Dr. Arayan performed this testing on December 27, 2007. PX 1. Petitioner followed up with Dr. Arayan on March 6, 2008 and reported having been off work since the May 15, 2007 accident. Dr. Arayan began to treat Petitioner's back and leg complaints and also noted Petitioner might need a meniscal repair. Petitioner subsequently saw Dr. Newman for her left knee and he performed the meniscal repair on August 15, 2008. Petitioner saw Dr. Cerullo for her back and leg pain on October 1, 2008. Dr. Newman found Petitioner to be at maximum medical improvement with respect to her left knee on October 13, 2008 but noted Petitioner needed to remain off work with respect to her back condition. Dr. Cerullo continued treating Petitioner's back thereafter. Following a concordant discogram, he referred Petitioner to Dr. Onibokun, who found Petitioner to be a surgical candidate. On June 19, 2009, Respondent's examiner, Dr. Ghanayem, opined that Petitioner would not benefit from surgery. It is at this point that Respondent stopped paying temporary total disability benefits. The Arbitrator notes, however, that, while Dr. Ghanayem did not recommend spinal surgery, he did recommend back-related therapy and ongoing pain management for Petitioner's left leg condition. He did not find Petitioner capable of resuming her former trade. In the Arbitrator's view, Petitioner did not reach maximum medical improvement until August 31, 2009, at which point Dr. Rosania (Dr. Arayan's replacement) imposed permanent restrictions in accordance with the valid July 27, 2009 functional capacity evaluation. PX 3.

Based on Petitioner's testimony and the job search records in PX 20, the Arbitrator further finds that Petitioner is entitled to maintenance from September 1, 2009 through January 31, 2010, a period of 21 6/7 weeks. Petitioner testified she performed a self-directed search for employment during this period. The records in PX 20 support this testimony. Petitioner had no alternative but to look for work on her own since Respondent did not 1) offer Petitioner restricted duty; 2) complete a written assessment, as required by Rule 7110.10 of the

Rules Governing Practice Before the Workers' Compensation Commission; or 3) provide vocational assistance. Even after the valid functional capacity evaluation of July 27, 2009 confirmed Dr. Ghanayem's opinion that Petitioner would be unable to resume her former trade, Respondent took no action other than to retain Julie Bose, who confined her activities to performing a labor market survey.

(cont'd next page)

Is Petitioner entitled to wage differential benefits?

Petitioner seeks wage differential benefits in the amount of $693.03 per week from February 1, 2010 through May 31, 2012 and in the amount of $706.39 per week from June 1, 2012 forward and for the duration of her disability. Respondent, in reliance on its causation defenses, the opinions expressed by Julie Bose and the union document marked as RX 13, maintains that Petitioner is not entitled to a wage differential award. Respondent argues, in the alternative, in favor of a permanency award under either Section 8(e) or Section 8(d)(2).

Section 8(d)1 of the Act provides, in relevant part:

> "If, after the accidental injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall . . . receive compensation for the duration of his disability . . . equal to 66 2/3% of the difference between the average amount he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident."

In the instant case, there is no real dispute that Petitioner is "partially incapacitated" from pursuing her previous trade, i.e., cement masonry, as a result of the work accident of May 15, 2007. RX 1. Respondent's examiner, Dr. Ghanayem, admitted as much and a valid functional capacity evaluation placed Petitioner at a light work demand level. Nor is there any dispute that Petitioner was in the second year of a three-year apprenticeship when the accident occurred. Disputes exist, however, as to whether the employment Petitioner returned to in February of 2010, i.e., substitute teaching, constituted "suitable employment" and whether "full performance" earnings for Petitioner are the earnings of an apprentice or a journeyman.

The Arbitrator has carefully considered Petitioner's testimony as well as the earnings records in PX 31 and the opinions of Susan Entenberg and Julie Bose. Petitioner clearly took pleasure and pride in the work she performed for Chicago Public Schools between February of 2010 and June 2012. Although Petitioner was classified as a "substitute," it appears her job performance was such that one particular high school began to give her assignments on a very regular basis. Entenberg found substitute teaching to be "suitable employment" for Petitioner. Bose agreed that substitute teaching met Petitioner's needs and fit well with her pre-accident work background. Nevertheless, she opined that Petitioner was "under-employed" as a substitute teacher. She recommended that Petitioner return to school to obtain her teaching certificate. The Arbitrator notes, however, that there is no evidence Respondent offered to pay for any additional schooling. The Arbitrator also notes that some of the grades Petitioner received in writing-related courses at Columbia College call Bose's certification

recommendation into question.

Bose also found Petitioner capable of working in other capacities and earning a very significant starting wage. Entenberg agreed that Petitioner was not limited to substitute teaching but opined that Petitioner would not earn much more if she changed occupations.

The Arbitrator places no stock in Bose's opinion that Petitioner could secure work in a management position in sales, insurance or marketing and start out earning $31.30 or more per hour. Bose never met with Petitioner and did not have an accurate understanding of her actual work history or her very limited experience with the insurance industry.

The Arbitrator elects to rely on Bose's and Entenberg's shared opinion that Petitioner could work as an administrative assistant and that the mean starting wage for such work is $17.60 per hour, or $704.00 per week. The Arbitrator views such an occupation and wage as realistic for Petitioner. The Arbitrator acknowledges that a wage of $704.00, paid 52 times per year, exceeds the somewhat irregular earnings Petitioner derived from substitute teaching between 2010 and 2012. Nevertheless, the Arbitrator views this wage and work schedule as more fairly representative of Petitioner's earning capacity. No physician has restricted Petitioner from working year-round.

The Arbitrator next addresses the issue of the average amount Petitioner could be earning in the "full performance" of her former cement mason duties. Petitioner maintains that, by virtue of completing the coursework required of a third-year apprentice and receiving a "Certificate of Completion of Apprenticeship" (PX 21) in 2009, she would have earned $41.85 per hour, or $1,674.00 per week, as a journeyman from February 1, 2010 through May 31, 2012 (PX 27-29) and $42.35 per hour, or $1,694.00 per week, as a journeyman from June 1, 2012 forward and for the duration of her disability. Respondent argues that it would be speculative to award wage differential benefits based on the journeyman wage scale, citing RX 13 and Deichmiller v. Industrial Commission, 147 Ill.App.3d 66 (1st Dist. 1986).

The Arbitrator views the facts of Deichmiller as distinguishable from those of the instant case. Deichmiller involved a claimant who was injured while working for Zonca Plumbing in April of 1980, a year after being admitted to Local 130 a "temporary journeyman plumber." At trial, Zonca's vice president testified that, if the claimant had continued paying union dues, he would have become eligible to sit for a journeyman examination in November 1981 and, based on his skills, would likely have passed the examination. The claimant acknowledged that he never actually took the examination. The Commission found it would be "merely speculation" to assume the claimant would have become a journeyman plumber. The Commission calculated wage differential benefits by "subtracting the average amount which the claimant actually earned after the accident from the amount he would have earned as a fourth-year apprentice plumber." The Circuit Court affirmed, as did the Appellate Court, reasoning as follows:

> "We conclude that the Commission properly determined that it would have been 'mere speculation' to assume that claimant would have become a journeyman plumber. The record indicates that claimant never took the union examination. In fact, claimant did not testify that he ever intended to take the examination. It is axiomatic that liability under the Act cannot be based on speculation or conjecture but must be based solely on the facts contained in the record." [citations omitted]

147 Ill.App.3d at 73-74. In the instant case, in contrast, Petitioner not only finished the required union coursework but also received a Department of Labor document in 2009 certifying she completed her apprenticeship. PX 21. Therefore, the Arbitrator does not have to engage in speculation to conclude that Petitioner would have been paid at a journeyman's rate had she been physically able to resume working as a cement mason in February of 2010.

Based on the foregoing analysis, the Arbitrator awards Petitioner wage differential benefits in the amount of $646.67 per week from February 1, 2010 through May 31, 2012. This amount represents 2/3 of the difference between $1,674.00 and $704.00, or 2/3 of $970.00. The Arbitrator awards Petitioner wage differential benefits in the amount of $660.00 per week beginning June 1, 2012 and continuing for the duration of her disability. This amount represents 2/3 of the difference between $1,694.00 and $704.00, or 2/3 of $990.00.

(cont'd on next page)

Is Respondent liable for penalties and fees?

Petitioner seeks penalties and fees on awarded unpaid medical expenses, awarded unpaid temporary total disability and maintenance and awarded unpaid wage differential benefits.

Initially, the Arbitrator addresses Petitioner's claim for penalties and fees on awarded unpaid medical expenses. A number of those expenses stem from treatment Petitioner underwent for her left knee. On this record, the Arbitrator cannot conclude that Respondent acted unreasonably or vexatiously in disputing causation as to this body part. Petitioner complained of her left leg, "from foot to knee," on the date of the accident but no additional knee complaints were documented for some time thereafter. As for the remaining awarded medical expenses, there is no evidence in the record indicating Petitioner demanded payment of those expenses from Respondent prior to hearing. Petitioner did file several petitions for penalties and fees in 2009 and 2010 (PX 23-26) but those petitions only generally allege non-payment of medical expenses. The petitions do not specifically reference any of the bills enumerated in PX 31. There is evidence, however, indicating that four of the providers whose bills the Arbitrator has awarded, namely Health Benefits Physicians Services (Drs. Arayan, Watson and Rosania), Illinois Pharmacy Management (medication prescribed by Drs. Cerullo and Rosania), Illinois Physicians Network (lumbar spine testing and treatment plus FCE) and Injured Workers Pharmacy (medication prescribed by Dr. Rosania), repeatedly and unsuccessfully billed Respondent's carrier, ESIS, over an extended period beginning in January of 2008. PX 31. The Arbitrator finds that Respondent failed to meet its burden of proving that it acted in an objectively reasonable manner, under all of the existing circumstances, in refusing to pay the bills of these four providers. Dr. Pinzur, who examined Petitioner on behalf of Respondent in August of 2007, recommended a consultation with a pain management specialist. This consultation did not take place until late December 2007, when Petitioner saw Dr. Arayan. In the interim, Dr. Mercier diagnosed Petitioner with an acute lumbar strain. RX 8, Exh A. Dr. Arayan worked up both the foot/ankle complaints and the lumbar spine/radicular complaints. He eventually referred Petitioner to Dr. Cerullo, who went on to refer Petitioner to Dr. Onibokun. Drs. Cerullo and Onibokun recommended surgery following a concordant discogram. Respondent did not obtain a Section 12 examination concerning Petitioner's lumbar spine condition until June 19, 2009. RX 1. While Respondent's spine examiner, Dr. Ghanayem, disagreed with Dr. Cerullo's and Dr. Onibokun's interpretation of the discogram and surgical recommendation, he found causation as to a back condition and did not take issue with any of the back-related treatment rendered to date. RX 1. Dr. Ghanayem was apparently unaware of the intervening motor vehicle accident but, for the reasons previously stated, the Arbitrator does not view this accident as providing Respondent with a valid causation defense. Respondent did not submit any utilization review evidence.

The parties have stipulated that the fee schedule charges of Health Benefits, Illinois Pharmacy Management, Illinois Physicians Network and Injured Workers Pharmacy are $27,094.42, $26,067.80, $14,486.02 and $866.79, respectively. These amounts total

$68,515.03. The Arbitrator awards Section 19(k) penalties in the amount of $34,257.52, representing 50% of $68,515.03. The Arbitrator awards Section 16 attorney fees in the amount of $13,703.01, representing 20% of $68,515.03. The Arbitrator awards Section 19(l) penalties at the rate of $30.00 per day and in the statutory maximum amount of $10,000.00 based on the substantial delay in payment since the early part of 2008.

The Arbitrator also awards penalties and fees on the unpaid portion of the awarded temporary total disability and maintenance benefits. Those benefits total $125,275.43 ($884/week x 141 5/7 weeks) with Respondent receiving a stipulated credit for the $93,417.31. Arb Exh 1. in benefits it paid prior to hearing. The awarded unpaid balance equals $31,858.12. Respondent discontinued the payment of temporary total disability benefits as of Dr. Ghanayem's Section 12 examination of June 19, 2009, despite the fact that Dr. Ghanayem found causation as to a back condition, indicated more back therapy might be needed and opined that Petitioner would likely be unable to resume cement masonry, pending a functional capacity evaluation. RX 1. Respondent did not reconsider its position even after a valid functional capacity evaluation performed on July 27, 2009 showed that Petitioner was capable of only light physical demand work. PX 3. As discussed earlier, Respondent never prepared a written assessment in accordance with the Rules and failed to provide vocational rehabilitation. The Arbitrator awards Section 19(k) penalties in the amount of $15,929.06, representing 50% of $31,858.12, and Section 16 attorney fees in the amount of $6,371.62, representing 20% of $31,858.12. The Arbitrator has already awarded the maximum penalty under Section 19(l).

The Arbitrator declines to award penalties or fees on the awarded wage differential benefits. While there is no dispute that Petitioner's work accident prevented her from resuming her former trade, and while the Arbitrator does not agree with many of the opinions expressed by Respondent's vocational consultant, Julie Bose, the task of determining the appropriate wage differential benefit in this case has been daunting, both in terms of the "full performance" analysis and the "suitable post-accident employment" analysis. Given the limited information transmitted to Respondent via PX 26 (the petition seeking penalties and fees based on wage loss), the widely varying amounts Petitioner received from Chicago Public Schools after January 31, 2010, the debate as to the requirements of apprenticeship completion, the conflicting opinions of Entenberg and Bose and representations set forth in RX 8 [Respondent's Response to Petitioner's penalties/fee petition(s)], the Arbitrator finds that a valid controversy existed as to the amount of the benefit that was due.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LAVERNE WILLIAMS,

Petitioner,

vs.

NO: 08 WC 24676

14IWCC0034

CHAMPAIGN COUNTY NURSING HOME,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary disability and permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

We modify the Arbitrator's award of temporary total disability benefits. In the Arbitrator's order, he awarded temporary total disability benefits for 235-5/7 weeks. However, the time period from May 11, 2008, through November 21, 2012, is 236-4/7 weeks. Further, in the body of his decision, the Arbitrator stated that Petitioner is entitled to temporary total disability benefits beginning March 11, 2008. We clarify that Petitioner is entitled to and awarded temporary total disability benefits beginning May 11, 2008, through November 21, 2012, for a period of 236-4/7 weeks.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is modified as stated herein.

14IWCC0034

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $281.78 per week for a period of 236-4/7 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 $441.93 per week for life, beginning November 22, 2012, as provided in §8(f) of the Act, for the reason that the injuries sustained caused Petitioner to become permanently and totally disabled.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $91,427.68 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.

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: JAN 2 3 2014
TJT: kg
O: 11/25/13
51

Thomas J. Tyrrell

Daniel R. Donohoo

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WILLIAMS, LAVERNE
Employee/Petitioner

Case# **08WC024676**

CHAMPAIGN COUNTY NURSING HOME
Employer/Respondent

14IWCC0034

On 3/6/2013, 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 0.12% 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:

2934 JOHN V BOSHARDY & ASSOCIATES
1610 S SIXTH ST
SPRINGFIELD, IL 62703

0522 THOMAS MAMER & HAUGHEY LLP
BRUCE E WARREN
30 MAIN ST SUITE 500
CHAMPAIGN, IL 61820

14IWCC0034

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

- ☐ 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

Laverne Williams
Employee/Petitioner

Case # **08** WC **24676**

v.

Champaign County Nursing Home
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 **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Springfield**, on **February 4, 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 present 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 **May 10, 2008** , 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 $ **21,973.64** ; the average weekly wage was $ **422.57** .

On the date of accident, Petitioner was **49** years of age, *single* with **1** dependent children.

Petitioner ***has not*** 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 for $**51,512.69** for TTD, $_____ for TPD, $_____ for maintenance, and $_____ for other benefits, for a total credit of $**51,512.69**.

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

ORDER

Respondent shall pay Petitioner temporary total/ maintenance disability benefits of $ **281.78**/week for **235 & 5/7** weeks, commencing **May 11, 2008** through **November 21, 2012** , as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner $ **441.93**/week beginning **November 22, 2012** for **life** , because the injuries sustained caused **Petitioner to become permanently and totally disabled** as provided in Section 8(f) of the Act.

Respondent shall pay Petitioner compensation that has accrued from **May 10, 2008** through **February 4, 2013** , and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay $ **91,427.68,** for medical services, as provided in Section 8(a) of the Act. Respondent is entitled to credit for any actual related medical expenses paid by any group 8(j) health provider and Respondent is to hold Petitioner harmless for any claims for reimbursement from said group health insurance provider and shall provide payment information to Petitioner relative to any credit due. Respondent shall pay any unpaid, related medical expenses according to the fee schedule and shall provide documentation with regard to said fee schedule payment calculations to Petitioner.

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.

D. Dyla McCarthy
Signature of arbitrator

Feb. 27, 2013
Date

MAR 6 - 2013

IN support of the Arbitrator's findings on the issue of **(F) Is the Petitioner's present condition of ill-being causally related to the injury?,** the Arbitrator finds the following facts:

The findings of fact stated in other parts of this decision are adopted and incorporated by reference here.

Petitioner and Respondent stipulated that Petitioner sustained an accidental injury which arose out of and occurred in the course of her employment on May 10, 2008. On that date, the Petitioner was employed as a Certified Nurses Assistant (CNA) and had been so employed by the Respondent since January of 2006. On May 10, 2008, Petitioner and another nurse came to the aid of another CNA who was in the process of lifting a resident using a Hoyer lift. The resident was stuck in the air and was falling out of the Hoyer lift. Petitioner and the other nurse grabbed a hold of the resident. Petitioner stated that she used both arms to grab the resident around the waist. The other nurse complained that she had a problem with her back and let the resident go. Petitioner supported the full weight of the resident and tried to ease the resident into the bed. The bed was not secured and rolled away and the resident fell forward pulling the Petitioner with her. The Petitioner estimated the resident to weigh approximately 260 pounds.

Petitioner felt immediate neck pain that went to the right shoulder and up her head, back pain, and numbness in her arms. Petitioner notified her supervisor and was sent to Provena Covenant Medical Center. (P.X. 3) The emergency room records note the accident as described above and that the Petitioner complained of pain on the right side of her neck and going all the way down her back. (P.X.3) Petitioner was diagnosed with a cervical and lumbar sprain, given medications, removed from work, and advised to follow-up with occupational medicine. (P.X.3)

Petitioner was seen at the Department of Occupational Medicine-Workers' Compensation of Carl Clinic in Urbana, Illinois. (P.X.4) Petitioner was first examined by Dr. Philbert Chen on May 12, 2008 at which time the Petitioner again advised the doctor of the work accident. (P.X.4) On examination, Dr. Chen noted pain over the right trapezius, neck pain to the right, and tenderness in the lumbar spine. (P.X. 4) Dr. Chen issued light duty work restrictions, ordered a TENS unit, and referred the Petitioner to physical therapy. (P.X.4)

On May 16, 2008 Petitioner returned to Dr. Walter MacGuire, who was filling in for Dr. Chen, who noted that the "pain is still in the neck and right shoulder." (P.X.4) The treatment plan remained the same. (P.X.4) Petitioner underwent extensive physical therapy at Carle Clinic Physical Therapy beginning on May 19, 2008. (P.X.5)

On May 27, 2008 the Petitioner returned to Dr. Chen and noted the Petitioner was not improving and was still having "...pain in the neck and the right shoulder area...with radicular pains down the right arm." (P.X.4) Dr. Chen diagnosed the Petitioner with a right sided cervical strain and ordered an MRI. (P.X.4)

The MRI of the cervical spine was taken on June 10, 2008 and showed a disk protrusion at C2-3, C3-4, and C5-6 disk protrusions which effaced the thecal sac causing mild canal stenosis, and C6-7 central disk osteophyte complex causing asymmetric moderate spinal canal stenosis. (P.X.4)

On June 11, 2008 Petitioner reported to Dr. Chen that her physical therapy would help for a couple of hours but the pain would return. (P.X.4)

Petitioner reported to Dr. Chen on June 11, 2008 that she had constant pain from below both of her elbows extending to both shoulders, shooting pain from the posterior neck to the upper paraspinal and upper chest area and both shoulders. (P.X.4) On examination, Dr. Chen noted tenderness over both shoulders, mostly below the acromium. (P.X.4) Dr. Chen referred the Petitioner to Dr. Hurford of the Spine Institute for further evaluation. (P.X.4)

Petitioner was seen by Dr. Hurford on June 20, 2008, noting the Petitioner's work accident and that she had neck pain, trapezial pain, some shoulder pain, low back pain, and right thigh pain. (P.X.4) Dr. Hurford reviewed the MRI study and examined the Petitioner. (P.X.4) Dr. Hurford did not recommend surgery but noted she should continue doing therapy for neck and back pain. Dr. Hurford also suggested a right shoulder evaluation. (P.X.4)

Petitioner returned to Dr. Thomas Sutter, who is also with Carle Clinic Department of Occupational Medicine, where he noted that Petitioner had continued low back pain, some neck soreness, and right shoulder pain. (P.X.4) Dr. Sutter reviewed Dr. Hurford's report and ordered a right shoulder MRI. (P.X.4)

The MRI was taken on July 3, 2008 and showed a "tiny rotator cuff tendon tear near the insertion. (P.X.4)

Dr. Chen reviewed the MRI with the Petitioner on July 10, 2008 and noted that any movement to abduct the right arm increased the Petitioner's pain and Petitioner had impingement symptoms. (P.X.4) Dr. Chen added "right shoulder injury, to rule out rotator cuff tear" to Petitioner's diagnosis of cervical low back strain. (P.X.4)

Dr. Chen referred the Petitioner to aqua therapy for her neck and low back and to orthopedics. Dr. Chen also stated that he would consider further work-up for Petitioner's lower back strain depending on her symptomology. (P.X.4)

Petitioner was seen by Dr. Robert Gurtler on July 29, 2008 at which time he was advised of the work accident, reviewed the MRI, and noted the Petitioner's complaints of right shoulder and neck pain. On this date the Petitioner advised Dr. Gurtler that she had no symptoms with her left shoulder. Dr. Gurtler recommended an arthrogram to determine the extent of the rotator cuff tear. The arthrogram was performed on August 5, 2008. (P.X. 4)

Dr. Gurtler interpreted the arthrogram as revealing a full thickness rotator cuff tear and recommended rotator cuff repair. (P.X.4)

On September 14, 2008, the Petitioner sought treatment from Carle Hospital complaining of left arm and shoulder pain. (P.X.6) The nursing notes indicate the pain was in the left elbow, however, the admission registration form indicates that the Petitioner was admitted with complaints of left shoulder and arm pain and related the facts of the work accident and her other medical care on the right arm. (P.X.6, p. 12)

Before proceeding with surgery, the Petitioner returned to Dr. Sutter complaining of continued pain in the left elbow and shoulder and requested that her left shoulder be evaluated. (P.X.4) Dr. Sutter asked her to discuss her left elbow and shoulder with Dr. Chen. (P.X.4) Petitioner saw Dr. Chen the next day where he stated that the Petitioner had been noticing increasing discomfort in the left elbow area. (P.X.4) Dr. Chen diagnosed the Petitioner with left lateral epicondylitis. (P.X.4)

Dr. Gurtler performed an open rotator cuff repair, distal clavicle resection, and subacromial decompression on September 19, 2008. (P.X.7) Petitioner stated that after surgery her arm was immobilized and strapped to her waist for two weeks. Petitioner used her left arm and hand for all of her activities. Dr. Gurtler started the Petitioner on passive range of motion exercises on September 30, 2008. (P.X.4)

On October 7, 2008, Petitioner returned to Dr. Chen in follow-up of her right shoulder surgery and advised Dr. Chen that her left shoulder as well as her left elbow had continued to bother her "...but with the increasing limitation on the right side, she has had to do more with the left arm and that has aggravated her symptoms. (P.X.4) Dr. Chen did not examine the right shoulder deferring it due to her sling and recent surgery. Dr. Chen examined the left shoulder and noted discomfort with abduction. (P.X. 4) Dr. Chen noted mild impingement symptoms, as well as tenderness over the AC joint and bicipital tendon with discomfort over the medial epicondyle. (P.X.4) Dr. Chen added the diagnoses of left shoulder impingement and lateral epicondylitis. Dr. Chen was unsure of how the "insurance would view the left shoulder" and referred the Petitioner to Dr. Zimmerman in Orthopedic Sports Medicine for further evaluation. (P.X.4)

Petitioner was seen by PA Danny McFarlin on October 14, 2008, at which time the Petitioner relayed the history of her work accident and her prior treatment to her right shoulder, neck, and back. (P.X.4) PA McFarlin noted that the Petitioner's left shoulder pain had increased since her right shoulder surgery and that she had been receiving physical therapy for her left shoulder. PA McFarlin examined the right shoulder and recommended that the Petitioner begin physical therapy on the right shoulder with passive range of motion for four weeks and thereafter active range of motion. (P.X.4) On examination of the left shoulder PA McFarlin noted a strongly positive impingement sign and pain on palpation of the shoulder joint. PA McFarlin deferred further treatment of the shoulder "...due to the fact that Worker's Compensation is involved." (P.X.4)

On October 24, 2008, Dr. Chen noted the Petitioner's course of treatment with her left elbow pain from before the surgery, her continued left shoulder symptoms, and that Petitioner's request for treatment of the left shoulder had been denied by the insurer. (P.X.4) Dr. Chen noted that the Petitioner was convinced that the left

shoulder was related to the work accident, and did have health insurance, but that she wanted to let it lapse. (P.X.4) Dr. Chen suggested an Independent Medical Examination and advised her to pursue treatment of her left shoulder using her health insurance if the same was not approved by workers' compensation. (P.X.4)

On November 4, 2008, Dr. Chen referred the Petitioner to Dr. Zimmerman for further treatment of her left shoulder. (P.X.4)

Petitioner was seen by Dr. Jerrad Zimmerman for left elbow and shoulder pain on December 1, 2008. (P.X.4) Dr. Zimmerman examined the Petitioner and diagnosed her with left lateral epicondylitis and left shoulder impingement. Dr. Zimmerman injected the Petitioner's left shoulder with a corticosteroid. (P.X.4) Petitioner returned to PA McFarlin on January 2, 2009 for her right shoulder noting worsening symptoms recently without any new injury. PA McFarlane administered a corticosteroid injection into the subacromial space of the right shoulder. (P.X.4)

Dr. Zimmerman noted improvement in the left shoulder that he had injected on January 7, 2009 and released the Petitioner to return on an as needed basis. (P.X.4)

On January 12, 2009, Dr. Chen entered a clarification note in his records documenting that the right shoulder injury was a non disputed workers' compensation claim. Dr. Chen also noted that the Petitioner had been seen for left shoulder impingement and tendonitis and stated that any previous notes suggesting that the left shoulder was not related to the workers' compensation injury did not represent his opinion regarding whether the left shoulder was related to Petitioner's original work accident. (P.X.4) Dr. Chen went on to state that it "...would be reasonable to have those symptoms come on either as a result of the original injury or secondarily to overcompensation using the left side because of the inability to do activities on the right side. (P.X.4)

It was noted on January 30, 2009 that Petitioner continued to experience right shoulder pain and had decreased range of motion in all planes. (P.X.4) Petitioner was referred back to Dr. Gurtler for further evaluation. (P.X.4) Dr. Gurtler ordered another arthrogram. (P.X.4)

On February 12, 2009 Dr. Chen referred Petitioner back to Dr. Zimmerman for continued elbow pain. (P.X.4)

A right shoulder arthrogram performed on February 18, 2009 revealed a small, full thickness rotator cuff tear with extension of contrast outside the joint space. (P.X.4)

Petitioner was seen by Dr. Zimmerman on February 23, 2009, where it was noted that Petitioner returned due to left epicondylitis pain, had a recent right shoulder arthrogram showing a recurrent tear, and that she was having more pain in the left shoulder as her right arm was causing her more difficulties. (P.X.4) Dr. Zimmerman injected the Petitioner's lateral epicondyle. (P.X.4)

Dr. Gurtler reviewed the arthrogram results on March 3, 2009 and admitted that he did not completely seal the tear in the previous surgery. (P.X.4) Dr. Gurtler recommended a second repair of the right shoulder and after obtaining workers' compensation authorization Petitioner underwent an arthroscopic rotator cuff repair with fibrin clot reinforcement, a stem cell therapy on April 10, 2009. (P.X.4) Dr. Gurtler's operative report notes that he had some difficulty finding the Petitioner's rotator cuff intra-operatively, and had to review the arthrogram again to locate the tear. On further palpation Dr. Gurtler found the "weak" area and over-sewed the area and sewed in two fibrin clots. (P.X .4, P.X.8)

Petitioner continued with physical therapy at Carle Therapy Services. (P.X.5) Petitioner received follow up care from Dr. Gurtler and Dr. Chen through July and August of 2009. (P.X.4)

On September 10, 2009, Dr. Chen noted the Petitioner had worsening left epicondyle symptoms and that she had three injections into the left lateral epicondyle and referred her back to Dr. Zimmerman for evaluation of her left elbow. (P.X.4)

On September 25, 2009, PA McFarlin noted the Petitioner continued to experience left shoulder pain as well. (P.X.4)

Dr. Zimmerman evaluated the Petitioner on September 28, 2009 and noted she had left lateral epicondyle problems and "...had no other current issues or concerns." Dr. Zimmerman examined only the left elbow and injected the left lateral condoyle. (P.X.4)

On October 30, 2009, Petitioner returned to Dr. Thomas Sutter for continued right shoulder pain. Dr. Sutter injected the right shoulder with a cortico steroid. A third arthrogram of the right shoulder was ordered by Dr. Gurtler on November 10, 2009 and was performed on December 8, 2009. The arthrogram showed extensive post-operative changes along the anterior and superior aspect of the shoulder, particularly within the deltoid and supraspinatous. A "tiny" defect was noted in the supraspinatous tendon measuring 2mm in size. (P.X.4)

Dr. Gurtler viewed the arthrogram, noted its findings but did not think that further surgery was warranted. Dr. Gurtler referred the Petitioner back to Occupational Medicine for return to work issues. (P.X. 4)

On December 15, 2009, work hardening was ordered to be followed by a functional capacity evaluation. (P.X.4) Petitioner had a functional capacity evaluation (FCE) performed on January 11, 2010. (P.X. 9) The FCE noted pain in Petitioner's bilateral upper extremities, which was part of the reason for limitations of lifting from floor to waist. The FCE declared Petitioner gave consistent performance and a good faith effort. (P.X.9)

Petitioner was released by Dr. Chen with permanent restrictions of no lifting over 20 pounds, handle 10 to 15 pounds on an occasional basis, and most of her activities should be below shoulder level. (P.X.4) Dr. Chen noted that her permanent restrictions would not allow her to return to her previous occupation. (P.X.4)

On January 20, 2010, the Petitioner slipped on some ice and fell, injuring her neck and lower back. (P.X.10) On January 27, 2010, Petitioner sought further care for her left elbow with Dr. Zimmerman, who

suggested a fourth injection. (P.X.4) Petitioner returned to Occupational Medicine complaining of right shoulder and left elbow pain. (P.X.4) Further physical therapy was recommended. (P.X.4)

On April 26, 2010, the Petitioner sought treatment from her primary care physician, Dr. M. Lennie Baisa for pain that started from the left side of her neck down her left arm to her elbow. (P.X.11) The Petitioner told Dr. Baisa about the work accident at issue here and her prior medical care for the right shoulder from Occupational Medicine. Petitioner also told Dr. Baisa that she had mentioned her left shoulder symptoms to Occupational Medicine but was told that she had waited too long to address the left shoulder. (P.X.11) Petitioner advised Dr. Baisa that since her right shoulder hurt more than the left she did not complain about the left shoulder as often. (P.X.11)

Dr. Baisa examined the Petitioner and diagnosed Petitioner with neck, shoulder, and upper arm pain and felt the symptoms could be related to cervical radiculopathy and lateral epicondylitis or a rotator cuff tear. (P.X.11) Dr. Baisa recommended C-spine, left shoulder, and elbow x-rays. (P.X.11)

On April 27, 2010, Petitioner saw Dr. Chen for continued complaints of right shoulder and left elbow pain. Dr. Chen suggested that Petitioner have imaging studies done on her left elbow if workers' compensation would approve it and also noted the Petitioner's efforts at obtaining further medical care from her family doctor. (P.X.4)

On May 14, 2010, Dr. Baisa re-evaluated the Petitioner and noted that the cervical spine x-ray showed degenerative disk disease. Dr. Baisa ordered an MRI of the left shoulder. (P.X.11)

MRI of the left shoulder performed on May 19, 2010 revealed moderate left acromioclavicular arthritis. (P.X. 11)

On May 27, 2010 Dr. Chen saw the Petitioner where it was noted that workers' compensation had ceased authorizing further medical care. Dr. Chen suggested that the Petitioner obtain a denial of liability letter from the workers' compensation insurance company and seek further treatment using her health insurance. (P.X.4)

On June 24, 2010 Dr. Baisa interpreted the MRI of May 14, 2010 as showing a partial thickness rotator cuff tear. (P.X. 11) Also on June 24, 2010, Dr. Baisa referenced that she had problems in her right shoulder for which Dr. Gurtler performed surgery in 2009 which were related to a motor vehicle accident. The Arbitrator finds that this notation is a mistake by the doctor as the Petitioner had advised Dr. Baisa of her work accident in her first visit and there is no other mention of any auto accident in any of the records other than the auto accident the Petitioner testified to sustaining four years before the work accident here. (P.X.11)

Dr. Baisa recommended physical therapy on the left and right shoulder which was performed at Christie Clinic beginning July 19, 2010. (P.X.11)

On July 23, 2010, Petitioner advised Dr. Baisa that the physical therapy had not helped and she did not want any further injections. Dr. Baisa referred the Petitioner to Dr. Love for further evaluation of her shoulder.

Dr. Love also noted that she received a history of the work accident catching a falling patient on "May 9, 2008". (P.X.19, p. 6) Dr. Love had no records of her previous treatment. (P.X.19, p. 6-7) Dr. Love examined the Petitioner's left shoulder and noted Petitioner had a positive impingement sign, decreased strength throughout, and good range of motion of her elbow. (P.X.19, p. 6-7) Dr. Love diagnosed the Petitioner with a left shoulder rotator cuff syndrome with a partial rotator cuff tear secondary to impingement. (P.X.19, p. 6-7) Dr. Love recommended decompression of her shoulder which would include distal clavicle resection, acromioplasty, subacromial bursectomy, and possible rotator cuff repair. (P.X.19, p. 8)

Dr. Love performed the surgery on August 26, 2010. (P.X.16) Dr. Love did not find a rotator cuff tear, just fraying, and made a post-operative diagnosis of acromio-clavicular arthritis with impingement, left rotator cuff syndrome with impingement, and subacromial bursitis. (P.X.19, p. 9) Dr. Love saw Petitioner in follow-up where she noted the Petitioner continued to experience pain in her neck, shoulders, and low back. (P.X.19, p. 11-12) Dr. Love ordered aggressive physical therapy. (P.X.19, p. 13) Petitioner developed a frozen left shoulder and Dr. Love recommended continued aggressive physical therapy. (P.X.19, p. 14)

Dr. Love stated that it was her opinion that impingement arises from overuse and post-traumatic. (P.X.19, p. 17) Dr. Love admitted that she did not have any other details of any car accident history. (P.X.19, p. 20) Dr. Love stated that if the Petitioner caught a falling patient, injured her right shoulder, and had been using her left arm more because of the right shoulder injury, these facts would increase the likelihood that Petitioner would develop left shoulder impingement. (P.X.19, p. 21) It is clear, however, from Dr. Love's testimony that she could not state with any degree of medical certainty that the accident itself could have either caused the left shoulder impingement, or produced an aggravation of any pre-existing condition to that shoulder. (PX 19, p.19-21)

Dr. Love released the Petitioner with a permanent restriction of no lifting over 5 pounds with respect to the left shoulder on July 12, 2011. (P.X.27)

Dr. Stephen Weiss examined the Petitioner at the request of the Respondent on March 3, 2011 and noted that the Petitioner injured her right shoulder, neck, and upper back. (R.X.2) Dr. Weiss was of the opinion that there was no causal relationship between the work accident of May 10, 2008 and the left shoulder condition based on his interpretation of a four month delay between the accident and the onset of any left shoulder complaints, the initial pain diagram which did not show the left shoulder as being symptomatic and the fact that the Petitioner told Dr. Gurtler on July 29, 2008 that her left shoulder was fine. (R.X.2, R.X.1, p. 15)

Dr. Weiss also disagreed with Dr. Love's opinion that Petitioner's overuse of her arm after her right shoulder surgery could have caused her condition to become aggravated. (R.X.3) Dr. Weiss felt that such overuse would not be the case unless the activities that Petitioner was doing were overly provocative such as

overhead activities, overhead lifting on a frequent basis, and were doubling the amount of repetitions. (R.X.1, p. 18)

Dr. Weiss did not consider the medical records concerning Petitioner's right shoulder injury and symptoms immediately after her work accident in assessing work relatedness of the left shoulder impingement Petitioner developed since he examined her only for her left shoulder since the right shoulder was accepted and conceded to be work related. (R.X.1, p. 25-6) Dr. Weiss admitted that he did not note Dr. Chen's record of May 27, 2008 wherein Dr. Chen noted that Petitioner's functional range of motion across the right shoulder was limited. (R.X.1, p. 26-27)

Dr. Weiss also admitted that he did not note or recognize that Dr. Chen stated in his records on June 11, 2008 that Petitioner had tenderness over the right and left shoulder mostly below the acromion because he missed that notation. (R.X.1, p. 27-31) Dr. Weiss admitted that these complaints of pain were well before September of 2008. (R.X.1, p. 31-32)

Dr. Weiss also admitted that he had the record from Dr. Sutter dated September 15, 2008 at which time the Petitioner saw Dr. Sutter and requested that her left elbow and shoulder be more fully worked up and Dr. Sutter referred the Petitioner back to Dr. Chen suggesting that Dr. Chen might want to wait until after the right shoulder surgery and rehabilitation before working on the opposite extremity. (R.X.1, p. 43)

On February 14, 2011 the therapist at the Christie Clinic Department of Physical Therapy obtained a history that Petitioner's back flared up the previous day. (P.X.11) On April 3, 2012 the Petitioner returned to Dr. Baisa complaining of her lower back with radiation down the leg, left more than right. (P.X.11) Petitioner began a course of treatment for the lumbar spine which included epidural steroid injections. (P.X.11)

Petitioner acknowledged that she had been involved in a car accident a few years before this event which caused some lower back problems. She stated that she was not experiencing any lower back problems immediately before the work accident. The Petitioner stated that prior to the work accident here she did not have any injury nor did she have any problem with either of her shoulders.

The Arbitrator notes that there was no evidence the Petitioner had any preexisting problems with either shoulder before May 10, 2008. The Arbitrator finds that the accident of May 10, 2008 caused a right rotator cuff tear, which was treated surgically by Dr. Gurtler on two occasions, and which continues to have radiographic evidence of a tiny supraspinatus defect. (PX 4, 12-9-09 O.V.)

With respect to the left shoulder, the Petitioner first mentioned it to a doctor on June 11, 2008 when treating with Dr. Chen. She was at that time and until September 19, 2008 having substantial functional problems with her dominant right arm as referred to in the office visits referenced above. She again complained about her left shoulder just prior to her right shoulder surgery on September 14, stating that her symptoms increased after her right arm was completely immobilized, as evidenced by her history to Dr. Chen on October

7, 2008. A week later, Dr. Gurtler's P.A. noted strong signs of impingement, and that diagnosis continued through her visit with Dr. Zimmerman on February 23, 2009.

The Respondent argues that her left shoulder complaints basically ended at that time, and as such presumably broke the chain of causation. The Arbitrator does not agree with that argument. While the Petitioner did not seek treatment for the left shoulder after February, she was treating aggressively for her right shoulder, with her second surgery taking place on April 10, 2009. She followed up much as she did with the first surgery, with immobilization followed by therapy, making it perfectly reasonable and logical that she defer her left shoulder care until later that year. She complained about it to her doctors at Carle in September 2009, but it was not treated as she was released from that facility and had to establish care with doctors within the Christie Clinic system. When she finally saw Dr. Love in mid-2010, surgery was performed confirming the condition of shoulder impingement originally diagnosed when her right shoulder was immobilized.

With those facts the Arbitrator concludes that the Petitioner has established, through a timeline of no prior symptoms, an accident which caused serious injuries to a dominant arm, and impingement after periods of obvious overuse, a causal relationship with the left shoulder. The Arbitrator rejects Dr. Weiss' theory that overuse must involve extra repetitive overhead activity when the facts show the Petitioner could not use her right arm at all immediately before and after her first surgery.

The Arbitrator finds that the accident caused an aggravation to a preexisting cervical degenerative disk disease and lumbar spine strain. The Arbitrator further finds that the Petitioner's cervical and lumbar spine conditions after January 20, 2010 are not causally related to the work accident as she did not seek medical care for same until after she sustained an intervening accident on January 20, 2010 when she slipped and fell. Further, there is no medical opinion connecting her work accident of May 10, 2008 to the medical care she subsequently received to her lumbar spine after April 3, 2012.

ATTACHMENT J

In support of the Arbitrator's findings on the issue of **(J) Were the medical services that were provided to the Petitioner reasonable and necessary?**, the Arbitrator finds the following facts:

The findings of fact stated in other parts of this decision are adopted and incorporated by reference here.

The Arbitrator finds the medical treatment related to the neck and lumbar spine is causally related to the work accident through January 20, 2010. All treatment related to the cervical and lumbar spine thereafter is related to either an underlying preexisting degenerative disk disease, or a fall that occurred on January 20, 2010. (P.X.10)

The Arbitrator finds that medical expenses related to the right and left shoulder, and left elbow, are causally related to the work accident at issue here and orders Respondent to pay the medical expenses related to same pursuant to the Fee Schedule and shall further hold Petitioner harmless from any subrogation claims made by any 8(j) health care insurer for payment of said expenses. Respondent is ordered to pay the related medical expenses follows:

Provena Covenant Medical Center, 5/10/08	$ 3,257.80
Lakeland Radiologists, 5/10/08	$ 155.00
Carle Clinic, 7/3/08-5/27/10	$ 3,196.80
Carle Hospital, 5/19/08-5/30/08	$ 1,182.50
Carle Hospital, 6/2/08-6/20/08	$ 1,399.00
Carle Hospital, 7/15/08-7/31/08	$ 1,196.00
Carle Hospital, 8/5/08	$ 196.00
Carle Hospital, 10/7/08-10/30/08	$ 2,162.00
Carle Hospital, 11/4/08-11/25/08	$ 2,984.00
Carle Hospital, 11/5/08-11/25/08	$ 1,529.00
Carle Hospital, 12/2/08-12/30/08	$ 2,456.00
Carle Hospital, 5/7/09-5/28/09	$ 2,074.00
Carle Hospital, 6/1/09-6/25/09	$ 2,050.00
Carle Hospital, 7/8/09-7/30/09	$ 1,416.57
Carle Hospital, 8/4/09-8/27/09	$ 1,260.00
Carle Hospital, 9/1/09-9/29/09	$ 1,470.00
Carle Hospital, 10/1/09-4/19/11	$ 1,890.00
Carle Hospital, 11/3/09	$ 185.00
Carle Hospital, 9/14/08	$ 715.85
Christie Clinic, 4/26/10-1/20/10	$30,057.00
Eastern IL Emergency Physicians, 5/10/08	$ 356.00

Illini Open MRI, 5/19/10	$ 1,920.00
Provena Covenant Medical Center, 8/26/10-8/27/10	$26,113.63
Provena Covenant Medical Center, 8/31/10	$ 576.40
Lakeland Radiologists, 8/27/10	$ 29.13
Premiere Anesthesia, 8/26/10	$ 1,275.00
Shemauger, 8/31/10	$ 325.00
Total:	**$91,427.68**

Respondent shall pay $91,427.68 for medical services, as provided in Section 8(a) of the Act. Respondent is entitled to credit for any actual related medical expenses paid by any group 8(j) health provider and Respondent is to hold Petitioner harmless for any claims for reimbursement from said group health insurance provider and shall provide payment information to Petitioner relative to any credit due. Respondent shall pay any unpaid, related medical expenses according to the Fee Schedule and shall provide documentation with regard to said payment calculations to Petitioner.

ATTACHMENT K

In support of the Arbitrator's findings on the issue of **(K) What amount of compensation is due for Temporary Total Disability?**, the Arbitrator finds the following facts:

The findings of fact stated in other parts of this decision are adopted and incorporated by reference here.

Petitioner was removed from work by Provena Hospital emergency room physician on May 10, 2008 until released by Occupational Medicine. (P.X.3)

Petitioner testified and the records confirm that Dr. Philbert Chen, and other Occupational and Orthopedic Medicine Physicians at Carle Clinic, kept the Petitioner on light duty restrictions from May 12, 2008 through January 14, 2010 when Dr. Philbert Chen released Petitioner with permanent restrictions with respect to her right shoulder injury. (P.X. 4)

Petitioner testified that she advised Lou Anne Myers of her light duty work restrictions after her initial injury at which time she was advised that Respondent did not have light duty work. This testimony was un-rebutted and as such is taken as true.

On July 10, 2010, the Petitioner met with Elizabeth Skyles of Skyles Vocational Consulting. Skyles was hired by the Respondent to implement vocational services and assist the Petitioner in locating employment with the permanent work restrictions outlined by the Functional Capacity Evaluation performed on January 11, 2010. (P.X.14) Ms. Skyles prepared a resume for Petitioner and Petitioner began a job search. (P.X.14) Ms. Skyles provided the Petitioner with job leads. (P.X.14) On July 15, 2010, Petitioner met with and informed Ms. Skyles that of the six job leads provided none had any open positions. (P.X.14) Petitioner also contacted ten prospective employers on her own. (P.X.14)

Petitioner advised Ms. Skyles on August 12, 2010 that she was scheduled to have left shoulder surgery. (P.X.14) Vocational assistance ended after the Petitioner underwent left shoulder surgery with Dr. Love.

Petitioner continued to receive medical care for her left shoulder and was removed from work after August 26, 2010 while receiving care from Dr. Baisa and Dr. Love at the Christie Clinic. (P.X. 11, P.X.19, p. 10) On July 12, 2011, Petitioner was released with a five pound lifting restriction on the left arm. (P.X.27)

Respondent offered no evidence that it ever offered the Petitioner a temporary position within her restrictions until December 19, 2012.

Petitioner performed a job search after Dr. Love released the Petitioner from her care with permanent restrictions.

Having found the left shoulder condition to be causally related to the accident, the Arbitrator finds that the Petitioner was temporarily and totally disabled from March 11, 2008 through July 12, 2011, the date that Dr. Love placed permanent work restrictions on Petitioner's left arm. The Arbitrator further notes that Petitioner was engaged in a good faith and diligent job search from shortly after July 12, 2011 through December 19, 2012 and finds that Petitioner was entitled to maintenance benefits from July 13, 2011 through November 21, 2012, the date upon which Jim Ragains opined that a stable labor market did not exist within which Petitioner might find suitable employment. (P.X.22)

ATTACHMENT L

In support of the Arbitrator's findings on the issue of **(L). What is the nature and extent of the injury?**, the Arbitrator finds the following facts:

The findings of fact stated in other parts of this decision are adopted and incorporated by reference here.

The Petitioner sustained serious injuries which were causally related to her accident of May 10, 2008. She sustained a full thickness tear of her rotator cuff on her dominant right side. While the tear was described as small by Dr. Gurtler, he was not able to completely repair the tendon. After performing two surgeries, an MRI performed in late 2009, some eight months after the second surgery and after a long course of physical therapy was completed, revealed a "tiny joint sided supraspinatus defect". (PX 4) Dr. Gurtler decided that no additional surgery was indicated and referred the Petitioner to occupational physicians to consider restrictions. Those restrictions, established by a functional capacity evaluation and subsequent examination by Dr. Chen, left the Petitioner with permanent restrictions,which in and of themselves and prevent her from returning to her prior occupation.

The Petitioner's left shoulder injury consisted of a partial thickness rotator cuff tear, along with an impingement. Dr. Love treated the condition surgically on August 26, 2010, and again therapy was performed. The Petitioner developed a frozen shoulder, had subsequent therapy with aggravations of the condition and was released with a permanent restriction of no lifting over 5 pounds with the left arm and instruction to do primarily right-handed work. (PX 27)

The Respondent at that time did not offer the Petitioner any type of work. Instead they elected to resume providing vocational help which they had briefly provided prior to the Petitioner's left shoulder surgery. Between July 12, 2011 and November 2012, the Petitioner met with and followed the advice of two vocational rehabilitation providers. The evidence showed that she followed up on countless job leads provided by both the rehabilitation specialists and ones that she found herself. No jobs were produced as a result of that job search. The parties agree that the job search was done in good faith. Mr. Morgan, the second vocational specialist hired by the Respondent, noted on October 1, 2012 that "Ms. Williams continues to supply documentation of her job search efforts and in meeting her goals for employers contacts outlined in the rehabilitation plan." (PX 24)

The Reliance Elevator decision, which the parties cite on the issue of whether a subsequent job offer by the Respondent amounted to a sham, also contains an excellent analysis of the requirements in proving odd-lot

permanent and total disability. First, the Petitioner's medical condition should be not so severe as to make her obviously unemployable. Such is the case with the Petitioner. She then has the burden of showing that she is so handicapped that she cannot be regularly employed in any well-known branch of the labor market. The Appellate Court said that this element could be shown by the diligent, but unsuccessful job search. Reliance Elevator Company v. The Industrial Commission, 309 Ill. App. 3d 987 (1999). The Petitioner sustained this burden of proof through the vocational rehabilitation reports and her own job logs. (PX 14,20,24)

The burden, the Court explained, then shifts to the employer show that suitable work is regularly and continuously available to the claimant. Id. at 991. In order to meet that burden, the Respondent, on December 19, 2012, offered the Petitioner a job. The issue is simply whether that job offer satisfied the Respondent burden in this case. If so, the claim should be compensated under either Section 8 (d) (1) or 8 (d) (2). If not, the Petitioner would qualify for permanent and total disability under Section 8 (f) of the Act.

The Petitioner was offered a position in the Respondent's laundry department, where she had never worked. The job was entitled "Linen Service Worker." (RX6) The job description showed a requirement of physical abilities exceeding those set forth in the Petitioner's permanent job restrictions. It called for lifting laundry bags up to 35 pounds in weight, pushing or pulling laundry carts weighing up to 140 pounds, and loading and unloading up to 150 pounds of laundry in one hour's time. Accordingly, job would have to be modified in order for the Petitioner to perform it. Tracy Harris, the Respondent's HR Director, testified about the job modifications. She said the job required one to load and unload clothing into and out of a washer and dryer. The clothing would then have to be sorted and folded. Harris said that the Petitioner could perform the job without having to lift over 5 pounds with her left arm. She did not explain how the job could be performed while also limiting right arm lifting no more than 10 pounds to the waist and 7 1/2 pounds to the head, all on an occasional basis. She said that the Petitioner could use carts to move the laundry around and that she can basically work at her own pace, lifting whatever amounts and weights of clothing that she felt she could handle. She did, however, acknowledge that the job required Petitioner to use her arms throughout the entire work day.

James Ragains, a well credentialed vocational expert familiar with jobs in the central Illinois region, also testified about the job offer. He was familiar with the job of linen service worker said that he did not believe that the job could be modified so that the Petitioner could perform it on a regular basis. He wrote that the job, if modified,would not be one that existed in the open job market. (PX 26)

In looking at the restrictions imposed upon the Petitioner, the job description for linen service work and the substantial accommodations suggested by Ms. Harris, the Arbitrator does not believe that the job offered satisfied the Respondent's burden of proof set forth in the Reliance case. The Arbitrator does not feel that the Petitioner could be reasonably expected to perform the job for any length of time. The Petitioner would likely not be able to fold, sort and handle wet and dry clothes and linens throughout the course of a normal workday. The restriction from Dr. Chen requires that she lift only occasionally. In addition, the job described by Ms. Harris represents a huge deviation from the Linen Service Worker job, which is a regular job for the Respondent. There is very little chance that the modified job would represent "regular and continuously available" work. Reliance at 991. The law simply does not allow an employer to come in at the eleventh hour, and offer a worker a made up position in order to meet the standard set forth by the Court.

Respondent further argued that the surveillance video taken of the Petitioner December 2012 showed that she would be able to perform the job. The video however does not show the Petitioner doing anything with her arms and really is not probative on any issue before the Arbitrator. The Arbitrator also notes Respondent did not call any of its vocational experts to testify as to the appropriateness of the job offered and that neither expert identified the Linen Service Worker as being open and within the Petitioner's residual functional ability.

The Arbitrator finds Ragains' testimony more credible in that the position offered could not reasonably be accommodated to fit the Petitioner's permanent restrictions, and such a position does not exist on the open labor market and, therefore, is not continuously available.

The Arbitrator finds the Petitioner has carried her burden of proving that she falls into the odd-lot category of permanent and total disability, which shifted the burden to establish evidence that suitable employment was continuously available in some well known branch of the labor market and the Respondent failed to satisfy this burden of proof.

The Petitioner is entitled to receive the minimum permanent and total disability benefit in effect at the time of her accident, $441.93, commencing November 22, 2012, the day after Ragains' vocational rehabilitation evaluation and report was issued.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
CHAMPAIGN

☐ 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

NANCY WATKINS,

Petitioner,

vs.

NO: 12 WC 17286

14IWCC0035

MASTERBRAND CABINETS,

Respondent.

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 issue of permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator awarded Petitioner 7.5% loss of use of each hand. We modify the Arbitrator's decision to award Petitioner 12% loss of use of each hand.

After considering the five factors as required by the Act, the Commission increases the Petitioner's permanent partial disability award to 12% loss of use of the right hand and 12% loss of use of the left hand. The five factors we considered are: (1) the reported level of impairment as assessed pursuant to the current edition of the AMA "Guides to the Evaluation of Permanent Impairment"; (2) the occupation of the injured employee; (3) the age of the employee at the time of the injury; (4) the employee's future earning capacity; and (5) evidence of disability corroborated by the treating medical records.

The first factor is the AMA impairment rating. Respondent sent Petitioner to be evaluated by Dr. Benson for an impairment rating. Overall, Dr. Benson found Petitioner's impairment to be only 1% of the arm and person as a whole, after rounding up. Dr. Benson considered that Petitioner had to slightly modify her usual work technique because of the injury to her hands. He also noted Petitioner only has minor or mild issues with daily living activities, such as opening a tight jar or cutting food with a knife. Based on Petitioner's minor ongoing issues and the impairment rating, Dr. Benson found Petitioner's impairment to be 1% of the arm and the person as a whole.

The second factor is the employee's occupation. Petitioner works as an auditor for a cabinet manufacturer. She is required to use her hands to lift cabinets and make any necessary repairs to the cabinets, which involves using tools. Petitioner has returned to work full time and full duty for Respondent and appears to no longer be working a second job at a convenience store, per her testimony. Petitioner's occupation requires her to use her hands for fine manipulation on a regular basis throughout the work day. Petitioner also testified she notices some soreness in her palms after work.

The third factor is the employee's age at the time of the injury. Petitioner was 46 years old and no evidence was presented about how her age might affect her disability.

The fourth factor is the employee's future earning capacity. Petitioner returned to her employment full time and full duty at Respondent. She makes the same rate of pay or more as she did before the injury. She did not present evidence as to how her injury may affect her future earning capacity and it does not appear it will have an impact.

The final factor is the evidence of disability corroborated by treating medical records. Petitioner's records are clear that she developed bilateral carpal tunnel syndrome through repetitive use of her hands at work. Petitioner sought appropriate treatment for her symptoms, including an EMG which showed evidence of carpal tunnel syndrome. She eventually underwent bilateral carpal tunnel release, followed by a course of therapy. Petitioner's treatment appears appropriate and the medical records support her complaints.

We further note that Petitioner voices minor continuing complaints from her repetitive trauma injury. She testified that she has good and bad days depending on how often she has to use her hands and on a bad day she will experience tenderness and tingling in her hands. Petitioner does not continue to treat for her carpal tunnel syndrome and does not take any medications for it.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $451.45 per week for a period of 9-5/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

14IWCC0035

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $406.31 per week for a period of 49.2 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 12% loss of use of the right hand and 12% loss of use of the left hand.

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 $21,400.00. 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: JAN 2 3 2014
TJT: kg
O: 1/14/14
51

Thomas J. Tyrrell

Daniel R. Donohoo

DISSENT

I respectfully dissent from the decision of the majority. I would affirm and adopt the Arbitrator's decision, and would specifically note that the majority upon making the same findings as the Arbitrator modified and increased Petitioner's award. Arbitrator Lindsay's award was both thorough and in compliance with the Act as recently reformed. The majority does not appear to modify or take issue with any findings set forth by the Arbitrator and as such does not present itself with a basis to disturb the award of the Arbitrator. I would affirm and adopt this decision in its entirety.

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WATKINS, NANCY
Employee/Petitioner

Case# **12WC017286**

MASTERBRAND CABINETS
Employer/Respondent

14IWCC0035

On 7/11/2013, 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 0.07% 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:

1979 LAW OFFICE OF MICHAEL M WOJITA
308 W STATE ST
SUITE 402
ROCKFORD, IL 61101

5153 DUGAN & VOLAND
CAROL M WYATT/MOLLY E CZERNIK
3388 FOUNDERS RD SUITE A
INDIANAPOLIS, IN 46268

14IWCC0035

STATE OF ILLINOIS)
)SS.
COUNTY OF Champaign)

☐ 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

Nancy Watkins
Employee/Petitioner

v.

Masterbrand Cabinets
Employer/Respondent

Case # 12 WC 17286

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Urbana**, on **May 15, 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 _____

FINDINGS

On **11/18/2011**, 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 **$35,213.79**; the average weekly wage was **$677.18**.

On the date of accident, Petitioner was **46** years of age, ***single*** with **1** dependent child.

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 **$3,074.19** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** in non-occupational disability benefits, and **$0** for other benefits for which credit may be allowed under Section 8(j) of the Act.

Respondent is entitled to a credit of **$0** in medical bills paid through its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

RESPONDENT SHALL PAY PETITIONER TEMPORARY TOTAL DISABILITY BENEFITS OF $451.45/WEEK FOR 9 5/7 WEEKS, COMMENCING 6/21/2012 THROUGH 8/27/2012, AS PROVIDED IN SECTION 8(B) OF THE ACT.

RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY BENEFITS OF $406.31/WEEK FOR 28.5 WEEKS, BECAUSE THE INJURIES SUSTAINED CAUSED THE 7.5% LOSS OF THE EACH 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

July 8, 2013
Date

JUL 11 2013

Nancy Watkins v. Masterbrand Cabinets, 12WC17286

The issues in dispute are temporary total disability benefits and the nature and extent of Petitioner's injuries. Witnesses testifying before the Arbitrator included Petitioner, Cheryl Ryan, and Grant Roehrs.

In support of the Arbitrator's Decision, the Arbitrator finds as follows:

Respondent is a manufacturer of kitchen and bathroom cabinetry. Petitioner testified she has worked for Respondent since March of 2004 as an auditor. As an auditor Petitioner would use a hand drill/screw gun, hammer, pliers and other hand tools to perform a portion of her duties. In November of 2011 Petitioner began to notice pain and numbness in both hands as well as a loss of grip strength. She notified her employer of her symptoms and was enrolled in Respondent's Wellness Center to treat her symptoms. The parties stipulated that Petitioner sustained a repetitive trauma injury to her hands on November 18, 2011. (AX 1)

Because Petitioner's symptoms were not responding to treatment at the Wellness Center Petitioner was referred to Dr. Hartman on February 20, 2012. An EMG performed on February 23, 2012 revealed moderately severe bilateral carpal tunnel syndrome, more so on the right than the left. (PX 1)

Dr. Hartman referred Petitioner to Dr. Naam for a surgical consultation. Dr. Naam examined Petitioner on May 1, 2012 and recommended Petitioner undergo a surgical release of her carpal tunnels in both of her wrists. (PX 2) Dr. Naam noted Petitioner had more complaints with regard to her left hand than her right (dominant) hand.

Petitioner continued working for Respondent until June 18, 2012, shortly before her first surgery. (PX 2)

On June 21, 2012 Dr. Naam performed a left carpal tunnel release at the Effingham Ambulatory Surgery Center. (PX 4) The operative report notes Petitioner's left median nerve was moderately congested. (PX 4) Following surgery Petitioner experienced bleeding from the wound and she returned to surgery where bleeding from muscle tissue was noted and controlled. Petitioner's numbness and tingling in her left upper extremity subsided after surgery. (PX 2,4)

According to Dr. Naam's notes, Petitioner remained off work as of June 28, 2012. (PX 2)

Petitioner's sutures were removed on July 3, 2012 and no signs of infection were noted. Petitioner was then referred for scar massage and active range of motion therapy. Dr. Naam's office notes indicate Petitioner reported that no light duty was available at work so he instructed her to remain off work for two more weeks. (PX 2)

On July 16, 2012, Dr. Naam noted Petitioner was doing very well and she was very happy with the operative results. Dr. Naam released Petitioner to return to one-handed duty for one week, if it was available. (PX 2)

Cheryl Ryan, Respondent's safety associate, testified that light duty is typically available. Ms. Ryan further testified that Respondent has a light duty policy whereby employees with work-related restrictions are accommodated in a light duty position for up to ninety days. Ms. Ryan testified that Petitioner came in on July

16, 2012 with a paper and reported she was going to be going to be off work in a few days as she was going to be undergoing another surgery. Petitioner was told not to return to work between July 16, 2012 and July 23, 2012 because Petitioner would be going back off work on July 23rd due to her second surgery.

A right carpal tunnel release was performed on July 23, 2012. (PX 6) The operative report indicated a moderately congested median nerve. (PX 6) Petitioner was kept off work for one week. (PX 2)

Following the carpal tunnel release surgery Petitioner underwent removal of her sutures followed by physical therapy at Working Hands through October 2, 2012. (PX 2, 7)

On August 7, 2012 Petitioner returned to see Dr. Naam and his notes indicate light duty work was unavailable with Respondent. He kept her off work for two weeks. (PX 2)

Petitioner received temporary total disability benefits between June 24, 2012 and August 6, 2012. (AX 1) Petitioner did not receive any further temporary total disability benefits after August 6, 2012.

Dr. Naam re-examined Petitioner on August 28, 2012. Both scars had completely healed; a slight degree of tenderness to them was noted. Active range of motion was examined. Petitioner had 60 degrees extension and 60 degrees flexion on the right with 63 degrees extension and 55 degrees flexion on the left. Petitioner's grip strength was 24 lbs. on the right; 36 lbs. on the left. Her lateral pinch was 6 lbs. on the right and 11 lbs. on the left. Palmar pinch was 6 lbs. on the right and 11 lbs. on the left. Petitioner was told to continue scar massage and active range of motion exercises. Petitioner was released with light duty restrictions (no lifting over five pounds) if available. (PX 2)

Respondent did accommodate Petitioner's restrictions and she returned to work in a light duty capacity on August 29, 2012.

Petitioner's medical records indicate that as of September 18, 2012 Petitioner's scars were completely healed with minimal tenderness over the scars. Petitioner was doing very well and grip strength and active range of motion were continuing to improve. Petitioner was released to unrestricted duty as of September 19, 2012. (PX 2)

Petitioner was last seen at Working Hands on October 2, 2012. At that time she reported increased bilateral tenderness although she noted decreasing tenderness with use of a "gel shell." Petitioner also reported "crampiness" and aches on the ulnar aspect of her palm as well as the ring and small finger after use. Measurements for active range of motion and strength were taken. Both measurements reflected functional limits with strength measurements for the right upper extremity being described as "slightly decreased." (PX 7)

Dr. Naam released Petitioner from his care on October 2, 2012 to return as needed. At that time, Petitioner denied any further tenderness over her scars and she reported she was doing "very well." His office notes contain no mention or discussion of future medical care, including the need for any ongoing pain medications. Active range of motion and grip strength had continued to improve. (PX 2) Petitioner has not returned to Dr. Naam regarding her hands since then.

Petitioner has returned to her regular job for Respondent. She earns the same or more than she did pre-injury. Petitioner has not required any accommodation of her job duties for Respondent nor has she complained of any problems or pain in performing her job duties for Respondent since receiving her full duty release from care.

Petitioner's supervisor, Grant Roehers, testified that he has not observed Petitioner having any difficulty with the performance of her job duties. Petitioner testified that she has not lost any seniority as a result of her injury.

Petitioner testified that she has good and bad days and that she experiences some numbness and tingling when reaching into tight spots and/or awkward positions.

Petitioner acknowledged that she did not check with Ms. Ryan or anyone else at Respondent regarding whether her restrictions could be accommodated at that time. Since the doctor did not believe any light duty work was available he kept Petitioner off work.

Petitioner acknowledged that she has also held a part-time position as a cashier at a local convenience/gasoline store while working for Respondent. Petitioner works/worked[1] there approximately five hours per week.

Petitioner was evaluated by Dr. Benson on November 28, 2012 for the assignment of an AMA permanent partial impairment rating pursuant to the 6th Edition of the AMA Guides to Impairment. (RX C) On examination, Dr. Benson found no evidence of weakness in her hands or thenar atrophy. Petitioner's neurovascular function was intact. Petitioner had well-healed scars of approximately 1.5" in length on the palms of her hands. She complained of some occasional soreness in that area. Petitioner displayed normal digit motion and normal wrist motion bilaterally. Based on the Petitioner's responses to the QuickDash report and her examination, Dr. Benson issued a 1% upper extremity rating which he converted to a 1% whole person impairment based on the Guides. (RX C)

In the QuickDash Report, Petitioner indicated that at the time of evaluation, and within the previous week, her hand problem had not interfered at all with her social activities, sleeping, or work or regular daily activities. (RX B) B) She noted moderate difficulty opening a jar, and mild difficultly in a few activities such as recreational activities requiring impact or force in the hands, pain, and using a knife to cut food. (RX B)

Ms. Ryan testified that light duty work was available as of August 7, 2012 and Petitioner's restrictions could have been accommodated.

Ms. Ryan further testified that on July 16, 2012, Petitioner was told Respondent would accommodate her restrictions when she received them again.

Cheryl Ryan further testified that Petitioner has the ability to bid into a higher pay grade for other positions, such as an Assistant Team Leader position, a position which would not require additional education. Petitioner's income potential has not been impacted by her injury according to Ms. Ryan.

Petitioner was born on December 5, 1964. (AX 2)

The Arbitrator concludes:

1.Temporary Total Disability (TTD).

Petitioner is entitled to TTD benefits from June 21, 2012 through August 28, 2012. Petitioner underwent bilateral carpal tunnel releases on June 21, 2012 and July 23, 2012. Dr. Naam restricted Petitioner from returning to work completely following the June 21, 2012 surgery through July 16, 2012,

[1] Petitioner testified she "gave notice." The Arbitrator is unclear if Petitioner still works there or not.

and allowed Petitioner to return to work on a light duty basis through July 23, 2012. (PX 3) Petitioner testified she presented Respondent with the light duty restrictions on July 16, 2012, but Respondent did not accommodate the restrictions at that time. Safety director, Cheryl Ryan's testimony confirms that Petitioner presented Dr. Naam's July 16, 2012 restriction note to Respondent and Respondent did not offer a position within the restrictions at that time.

Following her surgery on July 23, 2012 Dr. Naam again restricted Petitioner from returning to work through August 7, 2012. On August 7, 2012 Petitioner informed Dr. Naam her employer did not have light duty work available at that time. As before, Dr. Naam continued to restrict Petitioner from work. On August 28, 2012 Dr. Naam allowed Petitioner to return to work with light duty restrictions until September 18, 2012 after which time she was released to return to work without restrictions. (PX 3)

Dr. Naam kept Petitioner off work after her second surgery just as he had after the first surgery. Petitioner was under the impression no light duty was available on July 3rd and reported as much to the doctor. He kept her off work. Respondent paid TTD benefits while Petitioner remained off work during that time and said nothing to Petitioner or her attorney to suggest Petitioner had misunderstood the availability of light duty at that time (July 3, 2012). Dr. Naam imposed restrictions on July 16, 2012 and while the Arbitrator believes Respondent could have accommodated her at that time Respondent chose to have Petitioner remain off work due to her upcoming surgery. Respondent kept Petitioner off work due to her upcoming second surgery. While Ms. Ryan testified Respondent "typically" accommodates restrictions, Petitioner had no restrictions imposed on her after the second surgery until August 28, 2012. Respondent's conduct with Petitioner after her first surgery left Petitioner under the reasonable impression she was correct when she told the doctor on July 3, 2012 that no light duty was available. Accordingly, Petitioner was not acting unreasonable when she informed Dr. Naam on August 7, 2012 that her employer did not have light duty work available as, for whatever reason, she was under the impression in early July of 2012 that light duty work was unavailable.

2. Nature and Extent.

Pursuant to Section 8.1b of the Workers' Compensation Act, the following criteria and factors must be considered in assessing permanent partial disability:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment 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.

(b) Also, the Commission shall base its determination on the following factors:

(i) the reported level of impairment as assessed pursuant to the current edition of the 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.

The Act provides that no single enumerated factor shall be the sole determinant of disability. With respect to these factors, the Arbitrator notes:

1. The reported level of impairment under the AMA Guides.

With regard to the AMA impairment rating, the Arbitrator takes into account Dr. Benson's impairment rating of 1 % total body impairment. When evaluated by Dr. Benson, Petitioner was one and one-half months post MMI. She reported no difficulty in the majority of all activities and no difficulty in sleeping, working or social activities of daily living. Moderate difficulty opening a jar was noted as well as mild difficulty with using a knife to cut food and certain recreational activities. Dr. Benson was also aware of Petitioner's occasional soreness in the palm of her hand. Petitioner reported mild difficulty using her "usual technique" at work and performing her usual work activities.

2. The occupation of the injured employee.

Petitioner's current occupation is that of an auditor in a manufacturing environment. Petitioner returned to that position and has continued performing it full-time and full duty. Petitioner also works/worked as a part-time cashier for a convenience store. No evidence was presented indicating any problems performing cashier duties or that Petitioner may have quit that job due to her injuries. She uses her upper extremities in both occupations. Petitioner repairs and inspects cabinets before they are shipped. She uses hand tools. As a cashier she stocked, swiped, and mopped. Petitioner has returned to her usual and customary occupation, albeit she notices some occasional soreness when working.

3. The age of the employee at the time of the injury.

At the time of her accident, Petitioner was 46 years old. No evidence was presented as to how Petitioner's age might affect her disability.

4. The employee's future earning capacity.

No evidence regarding Petitioner's earning capacity was presented by Petitioner. Respondent produced evidence indicating Petitioner's injury has not adversely impacted her current wage rate with Respondent nor does it appear that it will impact her future earning capacity. No evidence suggests a diminishment in Petitioner's future earning capacity as a result of her injury.

5. Evidence of disability corroborated by the treating medical records.

Petitioner developed bilateral carpal tunnel syndrome due to her work activities with Respondent. She underwent surgical carpal tunnel releases to repair her injuries. Petitioner testified she continues to experience tenderness to both hands with some activities. Petitioner was prescribed "gel shells" bilaterally to wear as needed during functional activities, including work. (PX 7) While the shells have helped decrease tenderness during hand usage, she reported "crampiness" and aching in the ulnar aspect of her palm as well as her ring and small fingers after use. The Arbitrator recalls no testimony being elicited at arbitration to indicate if she continues to use the shells and, therefore, draws no inferences therefrom. Petitioner takes no medications. She has no permanent restrictions.

Petitioner's medical records note active range of motion and strength within functional limits and complete healing over the incision sites. Petitioner's complaints are corroborated by Dr. Naam's records and the therapy records. Petitioner's testimony was credible and forthright.

Overall, the evidence supports an award of permanent partial disability. Petitioner had surgery and her strength and range of motion, while in the functional range, have been diminished. After considering all of the above factors, the Arbitrator concludes that Petitioner has sustained permanent partial disability of 7.5% of each hand ((190 weeks x 7.5% x 2) x $406.31).

****

STATE OF ILLINOIS)
) SS.
COUNTY OF)
MADISON

☐ 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

JACKIE DUBREE,

Petitioner,

vs.

NO: 09 WC 33652

14IWCC0036

VILLAGE OF LIVINGSTON,

Respondent.

DECISION AND OPINION ON REVIEW

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

We modify the Arbitrator's order with respect to mileage reimbursement and temporary total disability benefits. The Arbitrator awarded Petitioner mileage reimbursement but failed to include that in his order. The Commission modifies the Arbitrator and only awards Petitioner mileage for her out of state treatment, specifically her visits to Dr. Boutwell, Dr. Gornet and Dr. Gross.

Further, we clarify the Arbitrator's temporary total disability award. The Arbitrator awarded Petitioner temporary total disability benefits for 45 weeks, from February 6, 2002 through December 13, 2013. We clarify that Petitioner is awarded temporary total disability benefits from February 6, 2012, through December 13, 2012, for a total of 44-4/7 weeks.

14IWCC0036

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $261.83 per week for a period of 44-4/7 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 authorize and pay for further medical treatment to the Petitioner, including but not limited to orthopaedic and neurosurgical evaluation, physical therapy, therapeutic injections, and/or cervical surgery, and/or fusion, if necessary, and temporary total disability benefits associated with such treatment.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $33,993.91 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall reimburse Petitioner for out of state mileage through October 2012.

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.

DATED: JAN 2 3 2014
TJT: kg
O: 11/26/13
51

Thomas J. Tyrrell

Daniel R. Donohoo

Kevin W. Lamborn

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

DUBREE, JACKIE
Employee/Petitioner

Case# **09WC033652**

VILLAGE OF LIVINGSTON
Employer/Respondent

14IWCC0036

On 2/20/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

4730 BOLLWERK & RYAN LLC
FRANK J CARRETERO
10525 BIG BEND BLVD
ST LOUIS, MO 63122

0299 KEEFE & DEPAULI PC
TOM KUERGELEIS
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

14IWCC0036

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

- [ ] 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)

JACKIE DUBREE
Employee/Petitioner

v.

VILLAGE OF LIVINGSTON
Employer/Respondent

Case # **09** WC **033652**

COLLINSVILLE (Lee)

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 **Collinsville**, on **12/13/2012**. 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. [ ] 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. [x] Other **Section 8 (a) prospective medical care**

14IWCC0036

FINDINGS

- On the date of accident, **10/16/08**, 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 injuries that arose out of and in the course of employment.
- Timely notice of this accident *was* given to Respondent.
- In the year preceding the injury, Petitioner earned **$20,423.52**; the average weekly wage was **$392.76**.
- On the date of accident, Petitioner was **39** years of age, ***single*** with **2** dependent children.
- Necessary medical services have not been provided by the respondent.
- To date, $33,816.06 has been paid by the respondent for TTD and/or maintenance benefits.
- THE RESPONDENT IS ENTITLED TO CREDIT OF $6,716.75 UNDER 8(J) OF THE ACT.

ORDER

- The respondent shall pay the petitioner temporary total disability benefits of $261.83/week for 45 weeks, from 2/6/2002 through 12/13/2013, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner, the disabling condition is temporary and has not yet reached a permanent condition, pursuant to Section 19(b) of the Act.
- The respondent shall pay $33,993.91 for medical services, as provided in Section 8(a) 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.

****Respondent shall authorize and pay for further medical treatment to the Petitioner, including but not limited to orthopaedic and neurosurgical evaluation, physical therapy, therapeutic injections, and/or cervical surgery and/or fusion, if necessary, pursuant to Section 8(a). The Respondent shall also pay such temporary total disability benefits as may be associated with such treatment.**

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 of 0.13 % 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.

Edwd Lee
Signature of Arbitrator

2/16/13
Date

ICArbDec19(b)

FEB 20 2013

Jackie Dubree v. Village of Livingston (IWCC Case #: 09 WC 33652)

The Arbitrator finds the following facts regarding all disputed issues:

Petitioner/Employee Jackie Dubree (hereinafter, "Jackie" or "Employee") on or about October 16, 2008, was employed by the Village of Livingston, Illinois, (hereinafter, "Employer" or "Respondent") as a laborer. The employee and employer were operating under the Illinois Workers' Compensation or Occupational Disease Act. As a laborer, he along with his fellow employees in the department, were essentially responsible for water, sewer, streets and vehicle maintenance for the Village of Livingston.

On October 16, 2008, employee was using a sledgehammer and disposing of pieces of concrete in a bin when while unloading a bin of concrete he felt a "pop" in his back and severe pain between his shoulder blades (Pet. Ex. 1). On the day of the accident, Jackie was taken to Community Memorial Hospital where he complained of and was diagnosed with "upper back pain" (Exhibit 3-1). Jackie was examined and treated. He was given prescription medication for the pain and referred to Dr. Manish Mathur at the Staunton Clinic, (Pet. Ex. 7-1).

At the Staunton Clinic, Dr. Mathur diagnosed Jackie with a "probable acute lower cervical disc prolapsed with significant pain and radiculopathy" and recommended that Jackie undergo an MRI of the cervical spine. The cervical MRI taken on October 21, 2008 revealed a posterior disc bulge at C6-7 (Pet. Ex. 7-1). On October 28, 2008, Dr. Mathur stated that Jackie was miserable, with severe pain in neck and muscle spasms and requested a neurosurgical opinion and took him off work (Pet. Ex. 7-1).

Jackie was referred to Dr. Andrew Youkilis, a neurosurgeon. On December 18, 2008, Dr.Youkilis evaluated Jackie and stated that "presently, Jackie has neck and intrascapular pain without significant radicular symptoms or findings." Dr. Youkilis recommended, smoking cessation, cervical traction and an epidural steroid injection and a follow-up in two months and stated that, "should his symptoms be persistent at that time, we will discuss a C6-7 anterior cervical discectomy and fusion at his next visit." (Pet. Ex. 9-1).

On January 15, 2009, Jackie saw Dr. Anne Christopher, a pain management specialist at the Brain and Spine Center. Dr. Christopher performed an epidural steroid injection at the C6-7 level (Pet. Ex. 9-1). Jackie reported no relief from the procedure and Dr. Christopher documented minimal reduction in pain (Pet. Ex. 9-1). On January 17, 2009, Jackie returned to Dr. Mathur complaining of severe neck pain. Dr. Mathur prescribed Toradol, Vicodin and Flexeril. (Pet. Ex. 7-1).

On March 30, 2009, at the request of the Respondent/Insurance carrier, Jackie was referred to Dr. Steven C. Delheimer for an independent medical evaluation examination (Pet. Ex. 4-1). Jackie complained of pain in the neck and between the shoulder blades and pain that shoots down his arms. The pain was 7 out of 10. He also had headaches. Dr. Delheimer's opined that Jackie "suffered, at most, a soft tissue injury as a result of the incident of October 16, 2008 ... I consider him capable of returning to work without restrictions and in need of no further treatment or diagnostic studies" (Pet. Ex. 4-1).

His primary care physician, Dr. Mathur, continued to treat Jackie due to his complaints of neck and upper back pain. On April 15, 2009, Dr. Mathur stated that Jackie is to stay off work and recommended a repeat MRI (Pet. Ex. 7-1). The MRI taken on April 21, 2009, at Anderson Hospital showed a disc bulge at C6-7 and "mild to moderate bilateral neural foraminal stenosis" according to Dr. Mathur (Pet. Ex. 7-1). Due to Jackie's persistent neck and upper back pain, on August 07, 2009, Jackie was referred to Dr. Kristina Naseer.

On October 23, 2009, Jackie saw Dr. Naseer. Dr. Naseer eventually performed three injections, the first was apparently a midline epidural steroid injection followed by a C7-T1 extra-foraminal injection. The first one helped, the last 2 did not. Jackie was still having shooting, aching, sharp, burning pain that was constant. Jackie was also using a tens unit that was giving him some temporary relief. Dr. Naseer opined that Jackie still had stiffness and some limitation with ROM of cervical spine and that it was "likely his pain will be chronic and he will have to deal with some degree of pain for the rest of his life." (Pet. Ex. 5-1).

The employer refused to provide Jackie with further medical treatment and benefits. On December 30, 2009, Employee filed his first request for a 19b hearing. Before the 19b hearing was to be heard, Employer authorized an evaluation with a neurosurgeon, Dr. James J. Coyle. Dr. Coyle saw Jackie on January 19, 2010 for an evaluation. Dr. Coyle reviewed Jackie's medical history and concluded that "It is my impression within a reasonable degree of medical certainty that Dr. Mathur was correct when he initially diagnosed Mr. Dubree several days after his work injury. At that time he felt that [the] neck pain was due to a lower cervical problem. Mr. Dubree is now over year out from his injury and is still very symptomatic. I do not think that this is a soft tissue problem; it is consistent with discogenic pain and cervical radiculopathy" (Pet. Ex. 9-1). Dr. Coyle wanted an up-to-date advanced cervical MRI with sedation and stated that at this time Jackie could not work and has not reached MMI (Pet. Ex. 9-1).

On May 4, 2010, Jackie had an advanced cervical MRI with sedation. On May 12, 2010, Jackie returned to Dr. Coyle who interpreted the MRI as showing a "disc prolapse at C6-7 which is causing foraminal impingement which the radiologist referred to as, 'Bilateral moderate to moderately severe foramina stenosis.' There is a small disc protrusion at C5-

C6" (Pet. Ex. 9-2). Dr. Coyle opined that Jackie's work injury of October 16, 2008, was a substantial cause of his current radiculopathy and symptoms and need for treatment. He further stated, "At this point, appropriate treatment for him would be an anterior cervical discectomy and arthrodesis. I recommend confining surgery to the C6-C7 level because the finding at C5-C6 is relatively subtle" (Pet. Ex. 9-2).

On August 23, 2010, Jackie underwent surgery which included an "anterior cervical microscopic discectomy, bilateral foraminotomy at C6-C7, anterior interbody arthrodesis at C6-C7...and anterior cervical plate" (Pet. Ex. 9-3). Jackie's follow-up with Dr. Coyle on September 9, 2010, he had residual posterior neck pain; October 12, 2010; November 22, 2010, he had complaints of left upper extremity pain localized around the shoulder and left trapezius with tingling in the left hand; January 11, 2011, also complaints of continued pain in the right arm and shoulder blade; and on March 8, 2011, he complained of continued left upper extremity pain (Pet. Ex. 9-3).

On April 6, 2011, Jackie continued to complain of left shoulder pain and tenderness over the trapezius muscle. "Pain is precipitated by internal rotation of the shoulder and abduction of the shoulder against resistance. He states that his entire arm is hurting." (Pet. Ex. 9-3). Nevertheless, Dr. Coyle stated that Jackie had reached "maximum medical improvement from the cervical decompression and arthrodesis" and that he "would not place any restrictions on him from the standpoint of his cervical spine, but he will need to have the left shoulder evaluated. I do not have any information regarding causation of his left shoulder symptoms" (Pet. Ex. 9-3). Employee testified that he requested additional treatment for his complaints to his neck and shoulder and was denied further treatment by the employer/insurance carrier.

After April 6, 2011, Jackie returned to work but continued to have significant pain to the thoracic area and left arm pain which he described as 10/10 in pain scale. On April 19, 2011, after only several hours working, he went to Community Memorial Hospital emergency room with complaints "of severe back pain between his shoulders....that he has had since he had surgery on his C7 disk. Patient also complains of pain in his left shoulder" (Pet. Ex. 3-2). Jackie testified that after returning to work he worked sporadically and often had to take off work or leave early from work because of his pain.

Because of the employer's failure to provide medical treatment and Jackie's continued complaints, on August 23, 2011, he sought treatment from the Rademacher Chiropractic Clinic (Pet. Ex. 8-1). Dr. Rademacher provided chiropractic therapy from August 23 – December 2, 2011. Due to Jackie's continuing neck and upper back complaints, Dr. Rademacher referred Jackie to a neurosurgeon, Dr. Matthew F. Gornet (Pet. Ex. 9-1) and (Pet. Ex. 1-1).

Employee initially saw Dr. Gornet on October 3, 2011, at the Orthopedic Center of Saint Louis. Jackie's complaints included neck pain, headaches, pain in both trapezius, particular

left shoulder, down the left arm into the hand with numbness. He also has some pain in the left scapular region of hi mid back" (Pet. Ex. 1-1). Dr. Gornet discussed with Jackie a "potential structural problem in his spine". Dr. Gornet believed that the fusion at C6-C7 was solid, but recommended a high quality CT with better imaging to make a further determination. He also recommended a thoracic MRI to evaluate the scapular pain and a nerve conduction test to determine whether there was any residual nerve damage which could cause persistent symptoms (Pet. Ex. 1-1). Dr. Gornet also opined that, "Based on the history I have available, I do believe his current symptoms are casually connected to his original work injury of 2008 lifting the concrete" (Pet. Ex. 1-1).

On December 5, 2011, Jackie returned to see Dr. Gornet and noted that the CT-scan confirmed a solid fusion at the C6-7 area that Dr. Coyle operated on, but "it does also reveal a larger disc herniation at C5-C6 which has progressed from the original scan of 5/4/2010" (Pet. Ex. 1-1). Dr. Gornet also noted that the C5-C6 lesion was definitely present prior to Dr. Coyle's surgery, but it was not as significant as it is now and that "it appeared to be a progression of his original work injury that was treated by Dr. Coyle" (Pet. Ex. 1-1).

Jackie returned to see Dr. Gornet on February 6, 2012. The MRI taken December 5, 2011, of the cervical spine and thoracic spine showed a disc herniation at C5-C6 which was not present on his original film. Dr. Gornet opined that, "that this was a progression of his original work-related injury and subsequent fusion...a fusion is known to place significant adjacent level forces to the level above and below." Dr. Gornet believes that because Jackie has already tried conservative treatment like injections, that "his next option is really surgical treatment including revision surgery with a disc replacement at C5-C6" (Pet. Ex. 1-1). At this time, Dr. Gornet determined that Jackie was temporarily totally disabled and placed him off work from February 6, 2012 to May 6, 2012 (Pet. Ex.1-1). Jackie returned to see Dr. Gornet for a follow-up on April 16, 2012 and noted that he was still waiting for approval for treatment and that Jackie remained temporarily totally disabled (Pet. Ex. 1-2).

On July 16, 2012, Jackie returned to see Dr. Gornet. Dr. Gornet reviewed Dr. Coyle's IME report and felt that because "often shoulder and scapular pain can emanate from more than one source" and due to Jackie's continued shoulder and scapular pain, that an evaluation of the shoulder was appropriate, "although it does not change my opinion that his disc herniation at C5-C6 is causing a portion of his neck and shoulder symptoms" (Pet. Ex. 1-2). Dr. Gornet phrased the issue simply as, "does a cervical fusion at C6-C7 which has been successful at treating a problem, contribute to adjacent level failure and progression of what was a small central disc protrusion in 2010 to a more frank disc protrusion as seen in 2011. The answer in this situation from my opinion is obviously, yes" (Pet. Ex. 1-2). Dr. Gornet opined that cervical operations have a known adjacent level failure associated with them (Pet. Ex. 1-2). Dr. Gornet referred Jackie to Dr. Lyndon Gross for a shoulder evaluation, and stated that Jackie remained temporarily totally disabled (Pet. Ex. 1-2).

Jackie saw Dr. Lyndon B. Gross, an orthopedic surgeon specializing in shoulders, on July 16, 2012 (Pet. Ex. 2-1). (Pet. Ex. 2-1). Dr. Gross treats complex problems of the shoulder and elbow. He examined Jackie due to the fact that Dr. Coyle thought that the problem might still be related to his shoulder and not his neck (Pet. Ex. 2-1). Dr. Gross took a patient history and then performed physical exam and noted that Jackie had "minimal findings with respect to the shoulder...he appears to continue to have pain in the trapezius and scapular region, but it is not significantly changed by my examination of his shoulder which makes me believe that this is probably not related to an intrinsic problem to the shoulder" (Pet. Ex. 2-1). Dr. Gross recommended an MRI arthrogram to determine whether there is any pathology in his shoulder which would be consistent with causing his complaints of left shoulder pain.

On July 26, 2012, Jackie returned to see Dr. Gross after his MRI Arthrogram. The MRI Arthrogram of showed a rotator cuff tendinopathy and a small tear of the superior labrum and some degeneration of the acromioclavicular joint (Pet. Ex. 2-1). Dr. Gross believes that those finding are preexisting more degenerative in nature. Dr. Gross stated that his examination was not consistent with having "rotator cuff tendinopathy, degenerative joint disease, or even a superior labral tear. His pain is in his neck" (Pet. Ex. 2-1). Furthermore, Dr. Gross opined that Jackie's pain extended into the upper back area and down his arm which would be more consistent with a radicular type problem than a problem to his shoulder (Pet. Ex. 2-1).

Based upon the forgoing and in consideration of all evidence, the Arbitrator finds and rules as follows:

1. Employee sustained a herniated disc at the C5-C6 level as a result of a compensable, work related accident dated October 16, 2008, that occurred while in the course and scope of his employment with the Employer.
2. Based on the Employee's testimony, a review of the medical records and Dr. Coyle's opinion that the work accident of October 16, 2008 was a substantial cause of his current radiculopathy and symptoms and need for treatment.
3. Employee's work injury of October 16, 2008, was a substantial cause of his current radiculopathy and symptoms and need for treatment at C5-6 as evident by Dr. Coyle's May 2010 admission, based on his reading of the MRI, there was a disc protrusion at C5-6 and that the "...appropriate treatment for him would be an anterior cervical discectomy and arthrodesis. I recommend confining surgery to the C6-C7 level because the finding at C5-C6 is relatively subtle" (Pet. Ex. 9-2). Dr. Gornet also opined that, "Based on the history I have available, I do believe his current symptoms are casually connected to his original work injury of 2008 lifting the concrete" (Pet. Ex. 1-1).

4. That based on the employee's testimony, after the C6-7 cervical discectomy and arthrodesis, he was released to return to work by Dr. Coyle but due to his continued neck pain, left shoulder pain which extended down the left arm into the hand with numbness, he had difficulty in performing his work duties or working a consistent 40 hour work week. He requested additional medical care which the Employer denied.
5. That after the Employer denied him benefits and further treatment, Employee sought treatment on his own and saw a Dr. Rademacher, a chiropractor, who eventually referred Jackie to a neurosurgeon, Dr. Matthew F. Gornet.
6. That Employee's continued complaints to the neck and shoulder are not related to the shoulder, but rather to his neck (Pet. Ex. 1-2).
7. Employee proved causation between the need for additional medical treatment including further orthopedic and neurosurgical evaluation, cervical surgery and/or fusion, physical therapy, therapeutic injections and his work related accident dated October 16, 2008, by his own testimony, as well as a review of the medical records of Dr. Coyle, Dr. Gornet and Dr. Gross, as well as the reasonable inferences drawn from the same.
8. Employer shall authorize and pay for further medical treatment to Employee's neck, including but not limited to orthopedic and neurosurgical evaluations, cervical surgery and/or fusion, physical therapy, therapeutic injections, if necessary, pursuant to Section 8(a).
9. Employer shall also pay such temporary total disability benefits as may be associated with such treatment.
10. Employee has not reached maximum medical improvement.
11. Employer shall pay the employee Temporary Total Disability benefits $261.83/week for 45 days, from 2/6/2012 through 12/13/2013, as provided by Section 8(a) of the Act, because the injuries sustained caused the disabling condition of the employee, the disabling condition is temporary and has not yet reached a permanent condition pursuant to Section 19(b) of the Act.
12. Employer shall pay $33,993.91 for medical services, as provided in Section 8(a) of the Act and in accordance with the Illinois Medical Fee Schedule (Pet. Ex. 12-1, 13-1, and 14-1).
13. Employer shall reimburse Employee for Mileage through October 2012 (Pet. Ex. 15-1).

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

☐ 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

BRETT LITTRELL,

Petitioner,

vs.

NO: 09 WC 19838

14IWCC0037

ALM,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary disability and permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

We modify the Arbitrator's award of medical expenses. In his order, the Arbitrator awarded Petitioner $22,717.79 in medical expenses. However, in the body of his decision, the Arbitrator awarded $14,573.95 in medical expenses and denied $5,070.74. We modify the Arbitrator's order to reflect that Petitioner is only awarded $14,573.95 in medical expenses. The Arbitrator denied the following medical expenses, with which we agree: bills from St. Mary's Hospital and Dr. DePhillips totaling $2,085.00; prescription medications from Kroger pharmacy after November 7, 2010, totaling $2,723.74; and bills from St. James Radiology that reflect service dates after November 7, 2010, totaling $262.00. Petitioner is awarded the remaining medical expenses of $14,573.95.

14IWCC0037

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $460.14 per week for a period of 106-6/7 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 $161.05 per week for a period of 2-4/7 weeks, that being the period of temporary partial disability for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $414.12 per week for a period of 150 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the 30% loss of use of a person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $14,573.95 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 $63,200.00. 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: JAN 2 3 2014
TJT: kg
O: 11/25/13
51

Thomas J. Tyrrell

Daniel R. Donohoo

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

LITTRELL, BRETT
Employee/Petitioner

Case# **09WC019838**

ALM
Employer/Respondent

14IWCC0037

On 2/5/2013, 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:

0400 LOUIS E OLIVERO & ASSOC
DAVID W OLIVERO
1615 4TH ST
PERU, IL 61354

0358 QUINN JOHNSTON HENDERSON ETAL
CHRIS CRAWFORD
227 N E JEFFERSON ST
PEORIA, IL 61602

14IWCC0037

STATE OF ILLINOIS)
)SS.
COUNTY OF LASALLE)

- [ ] 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

BRETT LITTRELL,
Employee/Petitioner

v.

ALM,
Employer/Respondent

Case # **09** WC **19838**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robret Falcioni**, Arbitrator of the Commission, in the city of **Ottawa, IL**, on **12/27/12**. 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] What temporary benefits are in dispute?
[x] TPD [ ] Maintenance [x] TTD
L. [x] 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 _____

14IWCC0037

FINDINGS

On **04/17/09**, 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 **$35,890.92**; the average weekly wage was **$690.21**.

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

Petitioner ***has not*** 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 **$48,455.77** for TTD, **$161.05** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$48,616.82**.

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

ORDER

Respondent shall pay petitioner temporary total disability benefits of $460.14/week for 106-6/7 weeks, commencing 04/21/09 through 05/08/11, as provided in Section 8(b) of the Act.

Respondent shall pay petitioner temporary partial disability benefits of $161.05 for 2-4/7 weeks, commencing 05/19/11 through 05/27/11, as provided in Section 89b) of the Act.

Respondent shall pay petitioner permanent partial disability benefits of $414.12/week for 150 weeks, as provided in Section 8(d)(2) of the Act, because of the injuries sustained caused a 30% loss of use of a person as a whole.

Respondent shall pay petitioner compensation that has accrued from 04/17/09 through 12/27/12, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay petitioner reasonable and necessary medical services, pursuant to the medical fee schedule, of $22,717.79, as provided in Sections 8(a) and 8.2 of the Act.Respondent to receive credit for all sums previously paid hereunder.

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.

Robert E Mac — Signature of Arbitrator

January 4, 2013 — Date

FEB - 5 2013

ILLINOIS WORKERS COMPENSATION COMMISSION
OTTAWA SETTING

BRETT LITTRELL	)	
	)	
	)	No. 09 WC 19838
v.	)	
	)	
	)	Arbitrator Robert Falcioni
ALM	)	
	)	
	)	

RESPONDENT'S PROPOSED DECISION AND ARBITRATOR'S FINDINGS OF FACT

ISSUES IN DISPUTE

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

J. Were the medical services provided to petitioner reasonable and necessary? Has Respondent paid all appropriate charges for reasonable and necessary medical services ?

K. What temporary benefits are in dispute ?

L. What is the nature and extent of the injury ?

N. Is Respondent Due any credit ?

ARBITRATOR'S FINDINGS OF FACT

Brett Littrell testified that he first began working for respondent in 2004 as a welder. He claimed that he was in a normal state of good health prior to April 17, 2009. Petitioner testified that his back began to hurt so bad at work that he could barely walk. Petitioner was seen at the St. Mary's Hospital Emergency Room on April 19, 2009. (Px. 1). He went to see Dr. Pal who later referred him to Dr. Sinha. (Px 3).

Petitioner told Dr. Sinha that his pain started at the end of March and became progressively worse. Dr. Sinha ordered a lumbar MRI which revealed multiple degenerative changes. (Px 3). Dr. Sinha restricted the petitioner to light duty work as of May 5, 2009 of no lifting beyond 20 pounds and no repetitive bending. (Rx 3).

Petitioner was referred to Dr. DePhillips. Petitioner was referred by a current patient. Petitioner gave a history of his back pain gradually worsening until he was required to go to the emergency room in April of 2009. Dr. DePhillips reviewed the MRI and diagnosed petitioner as suffering from degenerative disc disease at L4-5 and L5-S1. Petitioner had annular tears at each of these levels. Dr. DePhillips restricted the petitioner from working, he was prescribed physical therapy and ordered to undergo some injections.

Petitioner next followed up with Dr. DePhillips on July 20, 2009 He was referred for two lumbar injections.

Petitioner was examined by Dr. Heim on July 22, 2009 at the request of respondent. (Rx 1, Dep Ex. 2). Dr. Heim had concluded earlier that petitioner had suffered an aggravation of his degenerative disc disease. He recommended against epidural steroid injections and instead recommended physical therapy. (Rx 1, Ex 3). After examining the petitioner on July 22, 2009 his opinions did not change. Petitioner did report radiating symptoms into his posterior thigh. (Rx 1, Ex 2).

He was restricted to 10-15 pounds lifting and a four hour work day. Petitioner returned on August 31, 2009 having undergone one injection with some relief. A second injection was recommended. Petitioner returned to Dr. DePhillips on October 5, 2009

having undergone a second injection at L3-4. This did not provide him relief. Dr. DePhillips recommended lumbar discography. (Px 6).

Petitioner followed up on December 7, 2009 and a lumbar interbody fusion at L4-5 and L5-S1 was recommended by Dr. DePhillips. Petitioner followed up on Febraury 24, 2010. Petitioner had a repeat MRI scan. The scan showed severe degenerative disc disease at the L4-L5 and L5-S1 levels with facet arthropathy and mild foraminal stenosis on the right side. The L5 nerve root was compressed. Petitioner was scheduled for a lumbar fusion for February 26, 2010. (Px 4 and Px 6).

Petitioner followed up on March 8, 2010. He complained of soreness at the incision site. He did not report any radicular symptoms into his lower extremities. He was to follow up in three weeks. He was restricted from all work.

Petitioner followed up on April 19, 2010 complaining of occasional back pain. He complained of tingling and numbness in the back of his thighs. He was prescribed Norco and Flexeril.

He saw Dr. DePhillips again on May 17, 2010. He complained of radiating pain into the back of his thighs. He had back pain that was constant and waxed and waned in severity. (Px 6).

Petitioner followed up on June 7, 2010. He reported that the shooting pain into his lower extremities was gone. The interbody cages were in a good position upon reviewing the x-rays. Petitioner reported mechanical low back pain. (Px 6). He was restricted from working.

On June 28, 2010 petitioner advised that he did not have any radicular symptoms. Physical therapy had improved his pain. He rated it a 7 out of 10 versus a previously reported 8 out of 10.

Petitioner followed up on August 3. 2010 stating he had back pain. Physical therapy was recommended. He was given a 10 pound lifting restriction, alternating sitting and standing and no one position for more than 1 to 2 hours.

Petitioner followed up on August 30th, 2010. He completed physical therapy and now work hardening was being prescribed. (Px 6). He saw Dr. DePhillips again. Three weeks of work hardening was recommended followed by a FCE. (Px 6).

Petitioner underwent a FCE on October 12, 2010. (Px 5). Petitioner failed 7 out of 15 performance criteria. It was determined he could work an 8 hour day, five days a week lifting between 26.5 and 35 pounds occasionally, 23.5 to 31.5 frequently and constant of 12-15 pounds. Carrying was limited to 30 pounds occasionally, 15 pounds frequently and 8 pounds constantly. He could push occasionally at 65 pounds while being frequent at 32.5. He could pull occasionally at 78 pounds and frequent at 39 pounds. He was restricted to occasional bending, reaching, climbing, kneeling and crawling. (Px 5).

Petitioner returned to see Dr. DePhillips on October 18, 2010. Dr. DePhillips was unwilling to release the petitioner at MMI pending review of the CT scan. No radicular symptoms were reported. Petitioner was seen again on November 1, 2010 he claimed to have reviewed the CT scan and observed that the interbody fusions had not consolidated. Work conditioning was recommended. No radicular symptoms were reported.

On November 8, 2010, petitioner visited with Dr. DePhillips explaining that he was recently moving chairs in his kitchen and felt a pop in his back. He experienced pain into his left buttock and front of his thigh. (Px 6).

Petitioner saw Dr. DePhillips again on November 15, 2010. Petitioner reported that he opened his door to let his dogs out on November 14, 2010. The wind caught the door and he fell down two steps. X-rays were reviewed and the fusions were consolidating well. Dr. DePhillips restricted the petitioner from working.

Petitioner testified at trial and acknowledged these subsequent events. He also acknowledged that he had been offered light duty work by respondent following the FCE some time in the beginning of November. He testified that he did not return to work for respondent at that time.

Petitioner saw Dr. Heim again on November 17, 2010. Petitioner did not tell Dr. Heim about the incidents at home on November 8 and November 14. Dr. Heim acknowledged that the FCE showed less than full participation. Petitioner claimed that his back pain was worse now than it was pre-operatively. Dr. Heim reviewed the CT scan, but stated that he could not tell whether the fusion was solid. He recommended continued use of the bone stimulator. (Rx 1, Ex. 6).

Petitioner returned to see Dr. DePhillips on December 6, 2010. He reported back pain and posterior thigh pain. The CT scan was reviewed. It was unremarkable. The hardware was intact. The fusion was progressing. Physical therapy was recommended.

Petitioner returned to Dr. DePhillips on January 31, 2011. He complained that his lower back pain had worsened. He saw Dr. DePhillips again on March 21, 2011 complaining of front sided thigh pain consistent with a L3-4 nerve root distribution.

Petitioner explained that his pain had decreased six months following the surgery. Then the pain returned because of physical therapy and an event at home. (Px 6).

Dr. Heim authored an addendum report on March 25, 2011. He acknowledged the two events reported by petitioner that occurred on 11/08/10 and 11/14/10. Dr. Heim did not feel the first incident was significant enough to represent an intervening accident. However, the second event did represent and intervening event and an entirely new injury. Dr. Heim observed that Dr. Phillips' report dated March 21, 2011 noted a change in the dermatomal pattern. (Rx 1, Ex. 8). Dr. Heim authored a final addendum stating that petitioner's current symptoms are not related to the underlying event. He believed they were related to the November events that occurred at home. (Rx 1, Ex 9).

Petitioner saw Dr. DePhillips again on May 9, 2011 noting he had returned to work. A MRI was also taken showing the petitioner had disc dehydration and bulging at L3-4. Dr. DePhillips stated this was due to adjacent disc disease and not the at home event that occurred in November of 2010.

Petitioner next saw Dr. DePhillips on May 31, 2011. He complained that working up to six hours a day increased his pain. Dr. Phillips reluctantly agreed he could work six hours a day. As of July 11, 2011, Dr. DePhillips released the petitioner to an 8 hour work day.

He returned to see Dr. DePhillips in September and December of 2011. As of December 12, 2011 petitioner reported no radicular symptomatology and therefore was asked to wean off Cymbalta. He was taking Mobic and 1 to 2 Norco per day. Petitioner returned in March of 2011 where it was recommended he return for periodic pain

management. On May 15, 2012 Dr. DePhillips noted that petitioner's back pain remained unchanged. Dr. DePhillips recommended against any further surgical evaluation.

Petitioner returned to Dr. DePhillips on August 28, 2012. He reported increased pain. He denied any additional stress on his back claiming the only explanation for the increased back pain was a requirement of increased overtime.

Petitioner testified at trial that he was arrested in August of 2012 for a domestic disturbance. He testified that he broke three windows in his truck with a baseball bat. He also stated that when he was being placed under arrest the police offers knelt on his back. He told them to take it easy because he had undergone prior back surgery. It is clear from the August 28, 2012 record that petitioner did not make Dr. DePhillips aware of this event which likely caused "stress" on petitioner's back.

Petitioner presented a note from Dr. DePhillips dated December 8, 2012. It stated petitioner could work eight hours a day, 40 hours a week and eight hours on Saturday.

Dr. Heim testified at trial. He stated that following his July 22, 2009 exam, he felt petitioner had exacerbated his underlying degenerative lumbar condition as a result of an event that occurred on March 22, 2009. (Rx 1, p. 14). He acknowledged seeing the petitioner again in November of 2010. He recommended a repeat CT scan. As of January 20, 2011 the CT scan had been performed. Dr. Heim stated the fusions were intact. (Rx 1, p. 29). He also testified that he authored an addendum dated March 25, 2011. He had reviewed the FCE. He stated the petitioner could likely perform work at a higher higher level than that determined by the FCE. (Rx 1, p. 33). He also testified that the injuries of November 8, 2010 and November 14, 2010 represented new injuries which resulted in a distinct change in petitioner's symptoms. (Rx 1, p. 35). Finally, Dr. Heim authored a

April 15, 2011 note where he placed the petitioner at MMI and recommended he return to medium-light duty work. (Rx 1, p. 36).

Dr. Heim also testified regarding the healing course following a fusion. He testified that it was typical that patients would not need narcotic pain medications after a period of six months following the surgery. (Rx 1, p. 39). Petitioner still takes narcotics.

Dr. DePhillips also testified. He acknowledged that the was nothing anatomically depicted on the MRI films, X-rays or CT scans that was caused by petitioner's reported incident. (Px 7, p. 37). Dr. DePhillips also testified that he felt the November events were insignificant and resulted in temporary aggravations of pre-exisiting conditions. (Px 7, p. 37). However, he acknowledged that he has testified in the past that a petitioner hearing a "pop" could signify an annular tear in a disc. He acknowledged that such a description could represent an injury to the disc itself. He also stated that such a description could provide evidence of a causal relationship between work and an injury in certain circumstances. He acknowledged that he might be in a position to provide a causal relationship opinions on a back injury in a work setting if a worker reported falling down steps. There is no evidence in the record that any of the these things occurred in the present case.

Dr. DePhillips acknowledged that it was not until after November 2010 that the L3-4 spinal level become involved. (Px 7, p. 30). He also acknowledged that prior to the surgery L3-4 did show degenerative changes, but this level was not symptomatic. It was not rendered symptomatic until after November 2010. (Px 7, p. 31).

Petitioner concluded his testimony stating that he returned to work as a fabricator, not a welder as he had worked previously. He returned to work on May 9, 2011working

reduced hours. He returned to full capacity work as of May 28, 2011. He claimed his new job did not require him to engage in the amount of lifting required of a welder. He testified that he was earning the same pay. He was performing his job without incident.

He claims that he still takes two Vicodin per day, one in the morning and one in the evening. He periodically sees Dr. DePhillips. No other treatment is being recommended for him other than prescriptions for pain medication.

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

K. What temporary benefits are in dispute ?

N. Is respondent due any credit ? (TTD/TPD).

The Arbitrator finds the petitioner sustained injuries as a result of an incident at work on April 17, 2009. Petitioner underwent a two level fusion after conservative measures failed. He underwent this surgery on February 26, 2010. Thereafter, he engaged in physical therapy. The records show that he reported improvement. While his pain level reports remained high, his radicular symptomatology improved. As of June 28, 2010 petitioner reported no radicular symptoms. Those symptoms waxed and waned, but were not present on visits in October or November 1, 2010.

The completion of petitioner's recovery was evidenced by the ordering of and Dr. DePhillips acquiescence to a FCE on October 12, 2010. Petitioner gave a poor effort on the FCE.

The radicular symtoms did return, but only after petitioner was involved in the November events that occurred at home. Dr. DePhillips acknowledged first acknowledged that these events were a cause of increased symptoms in the petitionerbut that they were only temporary exacerbations or muscular strains and did not affect the status of the underlying fusion. He also explained that the adjacent segment syndrome was something that was aggravated both by the incidents at home and the fact of the underlying fusion, which was related to Petitioner's accident as alleged herein.. He also attributed the increased symptoms to petitioner's participation in physical therapy.

Indeed, petitioner had claimed that he did well six months following the surgery and then the pain returned while he participated in the physical therapy. Thereafter, he had temporary exacerbation events at He later explained in his May 2011 note that petitioner's new symptoms and L3-4 dermatomal pattern were attributable to adjacent disc disease. The November events were minor in nature according to Dr. DePhillips. This conclusion by Dr. DePhillips is credible. In fact Dr. Dephillips warned Petitoner prior to surgery that one of the likely side effects of the surgery he was undergoing was adjacent segment syndrome. It is clear that while the incidents at home in November of 2010 played some role in advancing this syndrome temporarily, the underlying fusion surgery was the main culprit in the development of the syndrome itself, and that according to the unrebutted testimony of Dr. Dephilips, the L3-4 segment would have been weakened initially by the surgery and this would lead to excarbations or symptomatic incidents with almost any activity Petitioner undertook. The law is clear in stating that the accident alleged need not be the sole cause of Petitioner's condition of ill being, but only need be "a" cause of the condition in order to render the condition compensable. The Arbitrator, based on the record as a whole, finds that the fusion surgery that Petitioner underwent was such "a " cause, and that therefore any treatment or TTD periods occasioned by the syndrome are compensable. The Arbitrator therefore orders that Respondent shall pay petitioner temporary total disability benefits of $460.14/week for 106-6/7 weeks, commencing 04/21/09 through 05/08/11, as provided in Section 8(b) of the Act and that Respondent shall pay petitioner temporary partial disability benefits of $161.05 for 2-4/7 weeks, commencing 05/19/11 through 05/27/11, as provided in Section 8(b) of the Act.

Were the medical services provided to petitioner reasonable and necessary? Has Respondent paid all appropriate charges for reasonable and necessary medical services ?

N. Is respondent due any credit ? (Medical)

Respondent is ordered to pay causally related medical bills with dates of service between April 17, 2009 and November 7, 2010 pursuant to the fee schedule. Respondent is due a credit of $283,743.91 in medical bills. Reviewing Respondents Exhibit 3 it appears those figures include a $1,100 payment for a IME. That is being excluded from the credit awarded respondent.

Petitioner submitted several medical bills. The bills from St. Mary's Hospital (Px 9), outstanding balances from Dr. DePhillips totaling $2,085.00 are denied (Px 13) and

payments for prescription medications after November 7, 2010 totaling $2,723.74 are denied (Px 14). There are bills that were submitted from a Kroger pharmacy. The Arbitrator cannot determine the dates of service on those prescriptions. To the extent the balances reflected are incurred after November 7, 2010, those bills are denied.

Respondent is ordered pay the bill from Provena St. Joseph (Px 10) pursuant to the fee schedule. The outstanding balance appears to be a balance bill and that practice is disallowed under the Act. Respondent is ordered to pay the medical bill from Joliet Radiological Services (Px 11) totaling $224.00 pursuant to the fee schedule.

Respondent is ordered to pay $646.00 of the outstanding balance to St. James Radiology (Px 12) pursuant to the fee schedule. Balances totaling $262.00 are denied (Px 12) as they reflect dates of service after November 7, 2010.

L. What is the nature and extent of the injury ?

The last comment on petitioner's permanent restrictions was from Dr. DePhillips from December of 2012. He stated petitioner could work 8 hours a day, 5 days a week and 8 hours a day on Saturday. Dr. Heim testified that petitioner could perform work beyond limitations reflected in the October 12, 2010 FCE. The only definitive statement available on petitioner's work restrictions is the last note authored by Dr. DePhillips.

Petitioner underwent a two level fusion on February 26, 2010. He completed his recovery and returned to work. He continues to take Narcotic pain medications. He claims he continues to have aches and pains. However, he still demonstrated the physical ability to break three car windows and become involved in an altercation with his partner such that the police were called upon to arrest him while kneeling on his back. Given this, petitioner's demonstrated ability to return to work, generous work restrictions

allowing petitioner to work beyond a 40 hour work week and the invalid FCE which undercuts petitioner's claims of disability, the Arbitrator finds petitioner has suffered impairment of 30% loss of use of the whole person pursuant to section 8(d)(2).

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

Taranne Becker,

Petitioner,

14IWCC0038

vs.

NO: 10 WC 14532

Decatur Memorial Hospital,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, permanent partial disability and medical expenses and being advised of the facts and law, reverses the Decision of the Arbitrator. In so doing, the Commission finds discrepancies in the evidentiary record that leads it to conclude Petitioner failed to prove that her injuries arose out of and in the course of her employment.

The first discrepancy relates to the purported onset date of accident. Though Petitioner did not provide a definite onset date, she twice testified that the onset of her bilateral carpal tunnel syndrome occurred either in late 2008 or early 2009. Only two explicit references to when Petitioner began experiencing her bilateral carpal tunnel syndromes were found in Petitioner's medical records. The first record, authored by Petitioner's primary care physician, Dr. Newcome, on March 6, 2009, recorded Petitioner experiencing bilateral tingling of her hands, numbness to her fingers and thumbs and "electric shocks" from her elbows to her hands that had been present for two years. The second record was made less than two weeks later when Petitioner presented for an EMG/NCV study on March 17, 2009. The clinical history that was recorded at the time of the study noted Petitioner presented with a one to two year history of tingling, numbness and achy pain in her upper extremities. A third record, a record review report written by Dr. Greene, a physician retained by Petitioner, noted Petitioner's symptoms presented in 2007. Whenever the onset date, or more appropriate, timeframe, of Petitioner's carpal tunnel

syndrome symptoms is found in her medical records, it is consistently a time earlier than to when Petitioner testified it occurred. Given this, the Commission does not find Petitioner's testimony to be as credible as did the arbitrator and finds Petitioner's carpal tunnel syndrome symptoms presented themselves at time earlier that Petitioner claims.

The second apparent discrepancy relates to the claim that her carpal tunnel syndrome symptoms being exacerbated by her work activities. Petitioner initially testified that she experienced her hands cramping, of experiencing a snapping feeling inside her palm and of her fingers going numb when she typed. She testified further that she did not experience these incidents outside of work. Again, Petitioner's medical records conflict with her testimony. Petitioner's March 6, 2009, visit to Dr. Newcome resulted in him recording that her symptoms were made worse with computer work, indicating that she was also symptomatic when not engaged in computer work. On May 15, 2009, Dr. Weber, with whom Petitioner eventually underwent bilateral carpal tunnel release, recorded a history of Petitioner's pain being present when she worked, when she drove and at night as she slept. Dr. Weber, on November 17, 2009, noted Petitioner's pain was worse at night and when driving. Dr. Greene, the physician who performed the record review, also noted Petitioner's records indicate her pain was worse when both typing and driving. The Commission finds the record mixed as to whether Petitioner's work actually exacerbated her carpal tunnel syndrome symptoms as Petitioner stated to Dr. Newcome that it did, but, to Dr. Weber, with whom she had treated with more recently, she was recorded being more symptomatic outside the workplace. It is this record, of Petitioner being more symptomatic when she drove and at night undercuts her claim that she was not symptomatic outside of her work environment. Again, the Commission does not find Petitioner's testimony to be as credible as did the arbitrator.

Lastly, the Commission questions the finding that Dr. Greene was credible with respect to his assessment that Petitioner's work activities aggravated her symptoms. The Commission notes Dr. Greene had no personal interaction with Petitioner but, nevertheless was aware, without explaining how, that she performed 90% keyboarding over a 10-hour and, upon reviewing her job description, stated Petitioner was "required to lift, push, pull, 5-20 pound [sic] frequently, with constant repetitive motion of arms, hands and wrists [and] is also required to use precise hand and arm positions." It is unclear to the Commission how Dr. Greene became aware of the extent of Petitioner's keyboarding or if he knew which of the activities in her job description, if any, she actually performed and, if so, how often. Without being provided further information, the Commission is reluctant to find Dr. Greene's assessment to be sufficiently credible as to rely upon it.

Petitioner made statements at her arbitration hearing that in conflict with statements she made to her treating physicians concerning the onset of her carpal tunnel syndrome symptoms and what activities aggravate said symptoms. Her testimony was that she became symptomatic in late 2008 or early 2009 and also that she only experienced her symptoms while at work. Her medical records document her claiming the onset of her carpal tunnel syndrome symptoms, at the latest, in early 2008, with others noting the onset occurred in 2007. Her medical records also document that she was not asymptomatic outside of her workplace as she claimed. But for these discrepancies, the Commission would have found Petitioner to be credible. As such, however, the Commission does not and finds Petitioner failed to prove accident as contemplated in the

14IWCC0038

Act. Accordingly, all benefits awarded under the June 14, 2013, Decision of the Arbitrator are vacated.

IT IS THEREFORE ORDERED BY THE COMMISSION that all benefits awarded to Petitioner pursuant to the June 14, 2013, Decision of the Arbitrator are vacated as Petitioner failed to prove her accidental injuries arose out of and in the course of her employment.

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: JAN 2 3 2014
KWL/mav
O: 12/5/13
42

Kevin W. Lamborn

Daniel R. Donohoo

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0038

BECKER, TARANNE M
Employee/Petitioner

Case# 10WC014532

DECATUR MEMORIAL HOSPITAL
Employer/Respondent

On 6/14/2013, 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:

0834 KANOSKI BRESNEY
CHARLES EDMISTON
129 S CONGRESS
RUSHVILLE, IL 62681

0481 MACIOROWSKI SACKMANN & ULRICH
ROBERT E MACIOROWSKI
10 S RIVERSIDE PLZ SUITE 2290
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OFSANGAMON)

☐ 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

14IWCC0038

Taranne M. Becker
Employee/Petitioner

v.

Decatur Memorial Hospital
Employer/Respondent

Case # 10 WC 14532

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Springfield**, on May 13, 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

FINDINGS

On **March 17, 2009** , Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**21,980.48**; the average weekly wage was $**422.71**.

On the date of accident, Petitioner was **37** years of age, married with **one** dependent child.

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

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

Respondent is entitled to a credit of $**774.68** under Section 8(j) of the Act for disability payments made.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $281.81/week for 5 5/7 weeks, commencing 7/27/09 through 8/13/09 and 12/14/09 through 1/6/10, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $22,491.40, subject to the medical fee schedules as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be entitled to 8J credit for payments by Consociate, the employer sponsored health insurance.

Respondent shall pay Petitioner permanent partial disability benefits of $253.63/week for 51.25 weeks, because the injuries sustained caused 12.5% loss of use of each 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.

D. Dyl Mc Cuy
Signature of Arbitrator

Date June 10, 2013

JUN 14 2013

In considering the disputed issues in this claim, the Arbitrator considers the following evidence:

Petitioner testified that she was employed as a unit secretary in the surgery department of Decatur Memorial Hospital from July 2001 through her date of accident in 2009. Petitioner testified that her job keyboarding 80 to 90 percent of her day, and she was also involved in answering phones. Petitioner testified that she normally worked 10 hours per day and 40 hours per week, but acknowledged that the wage information submitted as Respondent's Exhibit 2 was probably a correct statement of her hours worked during the year prior to her date of manifestation. Those records showed that the Petitioner worked most often between 25 to 35 hours per week. Petitioner testified that in the course of her work activities in early 2009, she began to experience pain, numbness and tingling in her hands. She testified that these symptoms were brought on by the repetitive work activities of her job and were relieved when she was off work for a few days. She acknowledged that her keyboarding activities were not like those of a typist doing transcriptions, describing her keyboarding as involving five minute projects where she used both the keyboard and mouse.

Petitioner sought medical care first from her family practitioner, Dr. Kristin Newcombe, on March 6, 2009. (Pet. Ex. 3, pp. 88-89) Treatment notes for that date indicate that Petitioner presented with complaints of bilateral hand tingling with numbness in her 4th and 5th fingers of both hands and thumbs, and feelings of electric shocks from her elbow to her hands. Notes indicate that Petitioner complained of pain when making a fist and difficulty holding objects as her hands felt weak. Petitioner reported to the doctor that she works as a unit secretary and that her symptoms were worsened by computer work. The history indicates that her symptoms have been present for 2 years but had become worse over the previous 4 months. On examination, Dr. Newcombe noted no thenar wasting but found positive Phalen's and Tinel's signs. Petitioner was diagnosed with paresthesias and bilateral EMG/NCV tests were ordered. Petitioner underwent that testing on March 17, 2009, by Dr. Zaheer Ahmed, at Decatur Memorial Hospital. (Pet. Ex. 2, p. 409) In the history provided for that examination, Petitioner reported a 1-2 year history of tingling, numbness and achy pain involving her upper extremities which would often awaken her at night. Examination showed mild weakness in her grips bilaterally. Petitioner reported tingling to sensory stimuli. The electrodiagnostic study was abnormal, showing evidence of median nerve compression at both wrists consistent with bilateral carpal tunnel syndrome. Dr. Ahmed noted that Petitioner would benefit from surgical evaluation.

Petitioner was then referred to Dr. Stephen Weber whom she saw initially on May 15, 2009. (Pet. Ex. 1, pp. 2-4) Petitioner gave a history of numbness, tingling and pain predominantly in her third, fourth and fifth fingers but also described numbness in her thumb. She reported that these sensations would awaken her at night and would also bother her at work where she did a lot of keyboarding. Petitioner also described pain while driving. She reported that her symptoms were worse in her left hand. Dr. Weber noted that the NCV study showed evidence of bilateral carpal tunnel syndrome without ulnar involvement. On examination, Dr. Weber noted that Petitioner had a positive Tinel's sign in her left median nerve. Dr. Weber diagnosed Petitioner with carpal tunnel syndrome and recommended surgery on her left hand first. Petitioner underwent a left carpal tunnel release on July 27, 2009 at Decatur Memorial Hospital. (Pet. Ex. 1, p. 13) Petitioner was taken off work at the time of surgery. (Pet. Ex. 1, p. 11) Petitioner followed up with Dr. Weber on August 21, 2009, and he noted she was doing well though she could not quite touch her thumb to her small finger. (Pet. Ex. 1, pp. 16) Her numbness and pain was relieved and Dr. Weber recommended that she be seen in physical therapy for hand exercises. Petitioner was released to return to work on August 24, 2009. (Pet. Ex. 1, p. 17) Petitioner returned to Dr. Weber on November 17, 2009, reporting that her symptoms had resolved in her left hand but that her right hand symptoms were worsening. (Pet. Ex. 1, pp. 19-21) Petitioner reported that her symptoms were in her first few digits and a little bit in the fourth. Petitioner reported dropping things and that her pain was

worse at night and while driving. Dr. Weber opined that the Petitioner would do well with a right carpal tunnel release as she had on the left, and scheduled surgery. Petitioner underwent a right carpal tunnel release on December 14, 2009 at Decatur Memorial Hospital. (Pet. Ex. 1, p. 29) Petitioner was taken off work at the time of surgery. (Pet. Ex. 1, p. 26) Petitioner returned to Dr. Weber in followup on December 22, 2009, reporting that she felt that she was recovering quicker from this surgery than on the left side. (Pet. Ex. 1, pp. 31-33) Dr. Weber released her from care to return as needed. Petitioner was released to return to work on January 5, 2010. (Pet. Ex. 1, p. 34)

Petitioner offered the expert testimony of Dr. Mark Greene by evidence deposition. (Pet. Ex. 4) Dr. Greene testified that he performed a records review of the records outlined above as well as the Petitioner's job description. (Pet. Ex. 4, pp. 7-8) Dr. Greene testified that the medical records confirmed that the Petitioner was suffering from median neuropathy in her upper extremities and that the treatment rendered was appropriate. (Pet. Ex. 4, p. 9) Based upon the job description and a further hypothetical question regarding the Petitioner's work activities, Dr. Greene opined that the Petitioner's work activities were an aggravating factor in the development of her condition. (Pet. Ex. 4, pp. 9-10) He seemed to place a lot of importance in the fact that her symptoms occurred while she was at work, which is the same thing she reported to Dr. Newcome at her first treatment visit. (Pet. Ex. 4, p. 10) Dr. Greene opined that it has been shown that repetitive use of the hands can aggravate a median neuropathy. (Pet. Ex. 4, pp. 10-11)

Respondent offered the evidence deposition of Dr. Craig Phillips who had performed a records review for Respondent's worker's compensation carrier. (Resp. Ex. 4, p. 8) Dr. Phillips opined that the Petitioner's work activities, based upon the written job description, did not cause or aggravate her carpal tunnel syndrome. (Resp. Ex. 4, p. 12) Dr. Phillips testified that though in the past it was accepted that typing activities as those pursued by the Petitioner were a cause of carpal tunnel syndrome, current research disputed that conclusion. (Resp. Ex. 4, p. 13-14) Dr. Phillips acknowledged though that the Petitioner's other risk factors such as obesity and smoking were mild and would not put her at direct risk for development of the condition. (Resp. Ex. 4, p. 16-17) Dr. Phillips speculated that Petitioner had some anatomical abnormality to explain her getting carpal tunnel syndrome. He said that her carpal canals were congenitally small, gleaning that from the operative reports. (Resp. Ex. 4, pp. 19,20, 30) Dr. Phillips said that carpal tunnel was related to heavy activities involving force and posture. Dr. Phillips also said that tenosynovitis could develop as a result of less strenuous activities, and also cause carpal tunnel. He said this could happen when a person notes symptoms such as limited motion, pain and swelling which abate when they change their activities, only to have the symptoms return when the same activities are resumed. (Resp. Ex. 4, p. 16) He did not give an explanation as to why the Petitioner reported an increase in symptoms when performing her job which abated when she left the job, nor why keyboarding for 80 to 90 % of the work day could not cause tenosynovitis.

The Arbitrator notes that among the documents provided in Respondent's Exhibit 1 is a document entitled "Position Description". On page 3 of that document under the "Physical Demands" of the job it is noted that "The employee's duties include constant repetitive motion of the arms, hands and wrists".

Petitioner testified that she continues to experience an occasional cramping pain in her hands. She testified that once or twice each work day she has to pull away from the keyboard due to cramping pain. She also testified that her grip strength is weaker and she has difficulty opening jars and stirring food.

Based upon the foregoing facts, the Arbitrator makes the following findings on the disputed issues:

1. **Accident and causation:** Based upon the Petitioner's credible testimony regarding her work activities and the onset and exacerbation of pain and numbness in her hands associated with those activities, the more credible opinion of Dr. Greene and the corroboration in the Respondent's job description that Petitioner's job requires constant repetitive motion of her hands and wrists, the Arbitrator finds that the Petitioner's bilateral carpal tunnel syndrome is causally related to her repetitive work activities for Respondent.
2. **Temporary total disability:** Respondent did not dispute the duration of temporary total disability but only its causal relationship to the Petitioner's work activities. Having found accident and causation in Petitioner's favor, the Arbitrator awards 5 5/7 weeks of TTD for the periods claimed by Petitioner.
3. **Medical expenses:** Based upon the Petitioner's testimony, Dr. Greene's opinion and the medical records and bills submitted in to evidence, the Arbitrator finds the medical bills submitted to be reasonable and necessary and causally related to the Petitioner's work activities for Respondent. Respondent is ordered to pay the outstanding bills subject to the medical fee schedules, and reimburse Petitioner's husband's health insurance for payments made on said bills. Respondent will receive credit for payments made by Consociate subject to the obligation in Section 8J to hold Petitioner harmless from any claim for reimbursement.
4. **Nature and extent:** The Petitioner was diagnosed with mild carpal tunnel syndrome bilaterally, based upon her nerve conduction studies. (Pet. Ex. 4) Dr. Weber provided very little post operative treatment, and the Petitioner reported that she was doing very well when released from care on December 22, 2010. She has performed her regular job without treatment since that date. She does report symptoms, referenced above. As a result of her accidental injuries, the Arbitrator finds permanent partial impairment to the extent of 12.5% of each of the Petitioner's hands.

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

DENNIS FRETTS,

Petitioner,

vs.

14IWCC0039

NO: 09 WC 16718

ABF FREIGHT SYSTEMS, INC.,

Respondent.

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 nature and extent of permanent disability, penalties and attorney fees, maintenance benefits, and vocational rehabilitation, and being advised of the facts and law, clarifies and corrects 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.

On page 14 of Arbitrator's decision, the Commission corrects the Arbitrator's statements with regard to Petitioner's job search. On page 14, paragraph one, sentences seven and eight, the Commission strikes "Neither was there evidence presented of a self-directed search. The Arbitrator has not been presented with any evidence of a search, diligent or not;" To the contrary, a review of the record reveals Petitioner did submit a set of job search records, PX17. However, in so finding, the Commission affirms and adopts the Arbitrator's conclusion that Petitioner failed to present evidence of a diligent job search. The documents contained within PX17 fail to support Petitioner's testimony that he engaged in a diligent job search. A review of the documents within PX17 reveals that none of the job search records submitted by Petitioner pertained to any actual posted job openings, and instead it appears Petitioner merely called or walked into businesses without identifying opening, and merely inquired if the businesses were hiring. The records submitted fail to indicate that Petitioner completed any job applications, submitted any resumes, and little if any follow up on any of his alleged inquiries.

On page 15, paragraph one, sentence two of the Arbitrator's decision, the Commission strikes "25% of the right arm or," and finds that because Petitioner's undisputed work injury involves his shoulder, the permanency is properly awarded under Section 8(d)2 of the Act, and Petitioner has established permanent partial disability to the extent of 12.65% loss of use of the person as a whole. See Will County Forest Preserve District v. IWCC, 2012 Ill.App.3d 110077WC, 970 N.E. 2d 16, 361 Ill.Dec. 16, where Appellate Court held that the shoulder is distinct from the arm and that permanency awards in such cases should be made pursuant to Section 8(d)(2) of the Act rather than Section 8(e).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 8, 2012, as corrected and clarified herein, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $693.98 per week for a period of 53-4/7 weeks, for the period of December 7, 2007 through December 15, 2008, and the sum of $841.77 per week for a period of 54-2/7 weeks, for the period of May 12, 2009 through May 25, 2010, 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 $624.58 per week for a period of 63.25 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of use to the person as a whole to the extent of 12.65%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $17,683.48 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's request for penalties and attorney's fees is denied.

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 to or on behalf of Petitioner on account of said accidental injury, including Respondent's payment of $98,158.06 for temporary total disability benefits paid, $7,045.68 for temporary partial disability benefits paid, and $10,512.60 for a permanent partial disability advance.

14IWCC0039

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $6,800.00. 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: JAN 2 3 2014
KWL/kmt
O- 12/17/13
42

Kevin W. Lamborn

Thomas J. Tyrrell

Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0039

FRETTS, DENNIS
Employee/Petitioner

Case# **09WC016718**

09WC026492

ABF FREIGHT SYSTEMS INC
Employer/Respondent

On 11/8/2012, 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:

0274 HORWITZ HORWITZ & ASSOC
MARK WEISSBURG
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

2965 KEEFE CAMPBELL & ASSOC LLC
JOSEPH F D'AMATO
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

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
ARBITRATION DECISION

14IWCC0039

Dennis Fretts
Employee/Petitioner

Case # 09 WC 16718

v.

Consolidated Case: 09 WC 26492

ABF Freight Systems, Inc.
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 **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on August 27, 2012. 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 **Workers' Compensation fraud, ppd advance**

14IWCC0039

FINDINGS

On 5/8/09, 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 $28,991.22; the average weekly wage was $1,262.65.

On the date of accident, Petitioner was 52 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 $ 98,158.06 for TTD benefits paid, $7,045.68 for TPD benefits paid, $0.00 for maintenance benefits paid to date and $10,512.60 for a PPD advance for a total of $115,715.34.

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 $693.98 per week for 53 &4/7 weeks commencing December 7, 2007 through December 15, 2008, as provide in Section 8(b) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $841.77/week for 54 & 2/7 weeks, commencing May 12, 2009 through May 25, 2010, as provided in Section 8(b) of the Act.

Respondent shall pay to the medical service providers reasonable and necessary medical services up to $17,683.48 or the balance of the expenses, pursuant to this decision, as provided in Section 8(a) of the Act.

Respondent shall have credit for any and all medical services, temporary total disability and temporary permanent disability previously paid pursuant to sections 8(a) and 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $624.58 per week for 63.25 weeks because of injuries sustained caused 25% loss of the right arm as provided in Section 8(e) of the Act or 12.65% loss of the whole person, a provided by Section 8(d)(2) of the Act.

No penalties or attorney's fees are awarded.

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

November 7, 2012

NOV - 8 2012

14IWCC0039

The disputed issues in the matter of 09 WC 16718 are: 1) causal connection; 2) temporary total disability; 3) temporary permanent disability; 4) medical bill payments; 5) penalties; 6) attorney's fees; 7) nature and extent; and 8) determination of workers' compensation fraud. *See,* AX1

The disputed issues in the matter of 09 WC 26492 are: 1) causal connection; 2) temporary total disability; 3) temporary permanent disability; 4) medical bill payments; 5) penalties; 6) attorney's fees; 7) nature and extent; 8) determination of workers' compensation fraud; 9) wage differential period; 10) maintenance; and 11) permanent partial advances. *See,* AX2.

In case number 09 WC 16718, the date of accident was December 1, 2007. Petitioner testified he was employed by ABF Freight Systems (hereinafter referred to as "Respondent") on December 1, 2007, and May 8, 2009, as a truck driver. Petitioner stated he drove semi-point double trailers loaded with freight from Chicago Heights to other terminals around the country. Petitioner also testified that the other physical aspects of the job included dropping, hooking and setting trailers. He noted that his job did not include loading or unloading the trailers. *See,* Tr. at 24-25. On December 1, 2007, Petitioner testified that it was an icy day and he slipped attempting to get into his truck. His right arm was forced into a forward flexed position as he fell. He testified that he felt a pulling sensation and pain in his right shoulder.

On December 10, 2007, he had x-rays taken at Concentra Medical Center which showed osteopenia and a degenerative spur formation. On December 28, 2007, Petitioner underwent an MRI study for the right shoulder at Provena Health Center which showed severe supraspinatus tendinosis with a superimposed low grade partial-thickness tear of the mid-fibers; moderately severe acromioclavicular osteoarthritis; and severe glenohumeral osteoarthrosis. There was an abnormal signal in the anterior labrum suspicious of a tear and the technician also suspected a degenerative condition.

On January 12, 2008, Dr. Corcoran diagnosed the petitioner as having right shoulder osteoarthritis, rotator cuff tendonitis and impingement syndrome. Petitioner was taken off work for four (4) weeks and prescribed physical therapy ("PT") three (3) times per week for four (4) weeks. Dr. Corcoran also prescribed 200 mgs of Celebrex and administered an injection of Kenalog and Marcaine.

On January 15, 2008, Petitioner started PT and continued PT until March 6, 2008, with the

doctor stating that Petitioner had an exacerbation of existing glenohumeral arthropathy and also had impingement syndrome. On March 31, 2008, Petitioner underwent a right shoulder arthroscopy; a chondroplasty of glenoid and humerous; an arthroscopic Bankart repair; debridement of an undersurface rotator cuff tear; a subacromial decompression consisting of CA ligament excision; and an acromioplasty with arthroscopic distal clavicle re-section. He was placed on PT and taken off of work until further notice.

On August 20, 2008, Petitioner started a work conditioning assessment at AthletiCo and on September 29, 2008, the therapist noted that he was reporting right shoulder pain. It was noted that scar tissue was limiting his range of motion ("ROM") and tissue massage was prescribed through September of 2008; and chiropractic treatment was prescribed through October 2, 2008.

On November 4, 2008, Petitioner completed a valid functional assessment at ATI Physical Therapy and demonstrated an ability to function at the medium to heavy physical demand level. It should be noted that Petitioner's truck driving occupation was described as requiring a medium physical demand level.

On November 11, 2008, Dr. Corcoran noted this demand level and stated that Petitioner had some concerns about whether he could work overhead and move dollies to pull dual trailers. Upon physical examination, the doctor observed that Petitioner lacked ten (10) degrees of forward flexion and external rotation. He continued Petitioner off of work for another four (4) weeks then on December 3, 2008, released him to work with the following restrictions: 1) no overhead lifting; 2) ground level work only; and 3) no lifting over thirty (30) pounds.

On December 15, 2008, Dr. Corcoran commented on Petitioner lack of ROM, i.e. twenty (20) degrees of forward flexion on the right and fifteen (15) degrees of external rotation on the right side compared to the left. Petitioner was released to return to work in a full duty capacity.

Petitioner continued treating with Dr. Corcoran, i.e. having a cortisone shot on January 26, 2009 and upon a March 6, 2009 examination, Dr. Corcoran observed that the petitioner lacked twenty (20) degrees of forward flexion and ninety (90) degrees of abduction and fifteen (15) degrees of external rotation. He stated that Petitioner had lost some ROM and was going to have some chronic disability and diffused degenerative changes, exacerbated by his work injury.

On May 8 2009, Petitioner had a second accident. He testified that he was at work, hooking up a double trailer, pulling a gear chain to connect to the trailer, when he jarred his right shoulder. His relevant duties as an over-the-road driver, at the time of this accident, consisted of (1) driving a semi-point double trailer; (2) being able to hook and unhook an approximately three hundred (300) pound converter gear; (3) being able to maneuver it which according to one of Respondent's witness, took approximately five to ten pounds of force for five seconds, and (4) being skilled in driving a double tractor-trailer rig.

On May 12, 2009, Petitioner went to Concentra Medical Centers and was seen by Dr. Knight who ordered an MRI; then released him to return to work with restrictions of no lifting, pulling or pushing; and limited use to the right arm. Respondent accommodated Petitioner's restrictions.

On May 22, 2009, Petitioner underwent an MRI of the right shoulder at Provena St. Mary's Hospital which showed severe, chronic-appearing degenerative changes of the glenohumeral joint with remodeling of the articular surface of the humeral head; and glenoid consistent with a chronic labrum tear. A full-thickness tear of the supraspinatus tendon was noted with a possible loose body in the anterior aspect of the joint space. The supraspinatus tendon finding appeared to be new when compared to diagnostic testing performed on December 28, 2007. The glenoid labrum changes appeared more advanced. On May 27, 2009, Dr. Knight released Petitioner to return to work in a full duty capacity, without restrictions.

On May 29, 2009, Petitioner was seen by Dr. Anthony Romeo at Midwest Orthopaedics. His

diagnosis was a possible acute right shoulder rotator cuff tear with an underlying diagnosis of glenohumeral osteoarthritis. Dr. Romeo noted Petitioner's original work injury to the right shoulder on December 1, 2007 and his recent work injury to his shoulder on May 8, 2009. He noted that the petitioner now had increased symptoms of pain and a new MRI that revealed obvious degenerative changes of the glenohumeral joint; and a full-thickness tear of the supraspinatus tendon; which was distinct from his previous MRI. He restricted Petitioner to sedentary duty and no work above shoulder level; maximum lifting of ten pounds at or below waist level; and he recommended surgery for rotator cuff repair.

On July 31, 2009, Petitioner underwent a second right shoulder surgery performed by Dr. Romeo at Rush Oak Park Hospital. The operation performed was a right shoulder arthroscopy debridement with a capsular release. Petitioner testified he attended PT and eventually underwent a functional capacity evaluation ("FCE") in April of 2010. *See*, Tr. at 30-33. After reviewing the results of the FCE, Dr. Romeo returned Petitioner to work with the following restrictions: medium duty capacity from floor to waist, light medium capacity from waist to shoulder and light duty above the shoulder level on the right; and he ordered a floor to waist lifting restriction of fifty (50) pounds; from waist to shoulder of thirty-five (35) pounds; and above the shoulder with no more than twenty (20) pounds. Dr. Romeo felt that the restrictions were permanent. *See*, RX14, pg 17.

On August 12, 2009, Dr. Romero prescribed aqua therapy for three months and in October, 2009 he ordered six (6) weeks of PT. In December of 2009, Dr. Romero prescribed PT to treat the capsular release and in January of 2010, ordered Petitioner to be off work for another six (6) weeks for more PT.

On April 8, 2010, Petitioner took an FCE at ATI which was deemed valid however; the petitioner consistently reported anterior and posterior shoulder pain with lifting. The therapist recommended a course of work hardening which the doctor ordered. From April 19, 2010 through May 14, 2010, Petitioner attended a course of work hardening.

On May 26, 2010, Petitioner was released to return to work with the following restrictions:

1) light duty above the shoulder level and lifting a maximum of twenty (20) pounds occasionally and not more than ten (10) pounds frequently; 2) medium to light work from waist to shoulder, lifting a maximum of thirty-five (35) pounds occasionally and not more than twenty (20) pounds frequently; and 3) medium work from floor to waist, lifting no more than a maximum fifty (50) pounds occasionally and not more than twenty-five (25) pounds frequently. Dr. Romero considered petitioner to be at maximum medical improvement ("MMI") and discharged him from his care.

On July 26, 2010, Petitioner presented to Dr. William Vitello, at Respondent's request, for an independent medical examination ("IME"). A report was generated by the doctor, dated July 28, 2010, in which he noted that at the time of examination, Petitioner's complaints were right shoulder pain, lack of ROM and difficulty lifting. There was no symptom magnification and based on the doctor's view of the medical records, his diagnosis of Petitioner's condition was moderate to severe right shoulder glenohumeral arthritis. Dr. Vitello did not believe that the petitioner could work in a full duty capacity, at that time, and he concurred with the permanent work restrictions imposed by Dr. Romero. He went on to state that he agreed with Petitioner's medical treatment and thought that it was reasonable and necessary and that Petitioner's current condition of ill-being was causally related to both the December 1, 2007 and May 8, 2009 accidents, based on a reasonable degree of medical and surgical certainty. And that Petitioner had some degree of pre-existing glenohumeral arthritis, prior to the first accident. *See*, RX28.

On August 13, 2010, Petitioner met with David Patsavas, a certified vocational rehabilitation consultant, at the request of his counsel. A summary of his report is as follows:

> Based on Mr. Fretts' overall transferable skills, prior work history, completion of a high school diploma, and being released to return to work by his treating physician, it is this consultant's professional opinion as a certified rehabilitation consultant that he is a candidate for Vocational Rehabilitation Services. Mr. Fretts could benefit from job readiness and job seeking skills coordination through a certified rehabilitation consultant.

> Additional exploration such as educational training and/or on-the-job training, as well as direct job placement services would be beneficial for Mr. Fretts' return back to gainful employment. It is this consultant's professional opinion that Mr. Fretts' potential earning at this time would be between $10.00 to $15.00 an hour.

On February 2, 2012, Dr. Mash testified, at Respondent's request, that he had performed a records review and had also reviewed surveillance video of the petitioner and he opined that Mr. Fretts is capable of exceeding the restrictions placed upon him by Dr. Romeo. On cross examination, Dr. Mash admitted he did not know what type of truck Mr. Fretts drove for Respondent. He admitted that lifting weights and staying active is helpful after suffering a shoulder injury. He agreed that Dr. Romeo is well respected in the field of shoulder surgery. *See,* RX14 pgs. 25-29.

On February 27, 2012, the parties took the deposition of Ms. Mary Szczepanski, a certified case manager, over Petitioner's attorney's objection that Ms. Szczepanski is not a certified vocational rehabilitation counselor and is not qualified pursuant to section 8(a) of the Workers' Compensation Act, (the "Act"). The case manager rendered a vocational opinion and produced a report regarding the petitioner.

At trial, Petitioner testified that while working, he had stayed within his prescribed restrictions and that he had attempted to return to work with Respondent but that even driving a straight truck and a pick-up truck proved difficult. He testified that he had only worked a few days for Mr. Havner and denied requesting more jobs from Havner Enterprises. He testified that agents of Respondent told him, after his release from Dr. Romeo, that Respondent would not take him back. *See,* Tr. Pgs. 37-40, 162.

Respondent called four witnesses, Christopher Havner, Keith Coffel, Dean Gluth and Stephen Evener.

Christopher Havner's testimony

Mr. Havner testified that he is the owner of Havner Enterprises ("Havner") and that he paid Mr. Fretts $500.00 to drive a flat-bed truck of products to Louisiana and $700.00 to drive a pick-up truck to the East Coast. *See,* Tr. Pg. 182. The petitioner testified that to test whether his shoulder was in condition to return to work, he drove a trip for Havner on August 11, 2011; and it took him twenty (20) hours to drive from Illinois to Louisiana. He further testified that he was under permanent restrictions imposed by Dr. Romeo when he made this trip; that the trip aggravated his shoulder condition; that he was paid $500.00 for making the trip; and that he was still collecting temporary total disability ("TTD") from Respondent at that time, i.e. $800.00 in TTD payments. The petitioner further testified that two months later he drove a second trip for Havner Enterprises in October of 2011, traveling from Illinois to several states on the East Coast in a pick-up truck to deliver lawn mowers; and that he was paid $700.00 for this trip. Mr. Havner's testimony confirmed these trips and the payments.

Keith Coffel testimony

Mr. Coffel testified that he has known Mr. Fretts for twenty (20) years and met him at the gym and that Mr. Fretts told him about the two trips he took for Mr. Havner. Mr. Coffel testified that he warned Petitioner that he might get in trouble for working while receiving TTD benefits. Mr. Fretts told Mr. Coffel that he didn't know if he was going to be able to return to work for Respondent as it depended on the mobility of his shoulder after rehabilitation and his doctor's restrictions. Mr. Coffel testified that he never saw Petitioner lifting weights with his shoulders. *See,* Tr. Pgs. 204-214.

Dean Gluth's testimony

On January 5, 2011, Dean Gluth from Infomax Investigations entered Riverside Health Facility, a private gym in Bourbonnais, Illinois with a video camera and captured video footage of Petitioner exercising and lifting weights. *See,* Tr. Pgs. 249-253. Petitioner was not aware that he was being videotaped. *Id.* pg. 99. Mr. Gluth testified he stood approximately twenty (20) feet from Petitioner while Petitioner was lifting weights and pretended to exercise while conducting surveillance on Petitioner. *See,* Tr. pg. 256. Mr.

Mr. Gluth stated he captured video surveillance using what he termed a "covert camera encased in an ID badge lanyard." *Id.* at 254. This video footage, labeled as Respondent's Exhibit 6, was shown several times during trial and claimant admitted on cross-examination, that the video accurately depicted him exercising at that location on January 5, 2011. *Id.* pgs. 87-88. The parties essentially agreed Petitioner was lifting weights at the gym on January 5, 2011; and they agreed that he was engaged in the following exercises: dumbbell bench presses, push-ups and incline dumbbell bench presses. *See,* Tr. pgs. 83-107. The Arbitrator viewed the video and makes the following factual determinations regarding the movements captured:

- dumbbell bench press: Petitioner was laying on a flat bench pressing dumbbells from his chest outward, using his arms, shoulder and chest for at least eleven (11) repetitions at a time;
- push-ups: Petitioner was in a prone position, face down to the floor, pushing his body weight up and lowering it, using his arms, shoulders and chest for at least 10 repetitions at a time; and
- incline dumbbell bench press: Petitioner was seated on an inclined bench pushing dumbbells from chest movement straight out from his chest using his chest, arms and shoulders for at least eleven (11) repetitions at a time.

The Arbitrator did not discern any evidence of claimant being in discomfort while engaging in the aforementioned activities. The Arbitrator further witnessed Petitioner changing dumbbells frequently, opting for larger and presumably heavier weights during each new set of repetitions.

Petitioner testified none of the weights he lifted on January 5, 2011, were greater than twenty (20) pounds. *See,* Tr. pg. 86. Claimant also testified that at times, he could not recall how much weight he was lifting. *Id.* at 113.

Mr. Gluth testified that the dumbbells Petitioner lifted while doing dumbbell bench presses ranged from forty (40) to fifty-five (55) pounds. *Id.* pgs. 261-272. He testified that he wrote down the weights of the dumbbells lifted by claimant in a spiral notebook while conducting

surveillance. *Id.* at 256-257. At times, Mr. Gluth is visible on the video, examining the dumbbells used by Petitioner at the conclusion of various exercises. *Id.* pgs. 266-267.

On the particular issue of how much weight petitioner was lifting, the Arbitrator finds the testimony of Mr. Gluth to be more reliable than the testimony of claimant. Mr. Gluth's sole purpose for being in the gym was to record Petitioner's activities, while Petitioner's sole focus, presumably, was exercising and lifting weights. Additionally, Mr. Gluth can be seen in Respondent's Exhibit 6, recording the weight of the dumbbells used by claimant. The Arbitrator finds Mr. Gluth's testimony to be more credible and accurate and further finds claimant lifted weights ranging from 40 to 55 pounds in the gym on January 5, 2011. The Arbitrator notes the evidence of claimant lifting dumbbells weighing between 40 and 55 pounds is relevant to the nature and extent of his injuries however it is also noted that the petitioner did not lift the weights overhead but in a lateral motion; pushing out from his chest.

On cross-examination, Mr. Gluth testified that he was not concerned about whether he was violating the rules of the gym by taking covert video on the premises. He could not see the weight printed on the dumbbells while Mr. Fretts was working out, rather, he had to get up and go to the rack where the weights were placed after Mr. Fretts finished exercising; which was some distance away. He admitted it would have been a problem if the people running the gym had seen him videotaping. And he testified that as a private investigator, he is not allowed to obtain video of a person in a tanning salon, hotel room, bathroom, or locker room which the Arbitrator notes that the gym is none of these. *See,* Tr. pgs. 290-309.

Stephen Evener's testimony

Mr. Evener testified that he is currently a supervisor for Respondent, but was a dispatcher at the time of Petitioner's accidents. On direct examination he testified that the job of an over-the-road truck driver required "minute positioning of equipment" that entailed pushing a three hundred pound object. It also requires over-the-head lifting. He later testified that a driver might have to push the converter gear for five to seven (5-7) seconds, and that the gearbox weighs three hundred (300) pounds. He testified that a driver might

need to exert a brief hundred pound pull to pull down an empty trailer door and that this action would require reaching up to grab a fabric strip and pulling down. *See,* Tr.pgs. 323-330.

On cross-examination, Mr. Evener testified he had never driven a double trailer truck and that pushing the converter gear was the hardest part of the job; and that that maneuver is not depicted in the job description video submitted into evidence by the respondent. He testified that moving the converter gear could put the worker at risk of injury and that getting into and out of the truck requires having the right hand extended over one's head; and holding onto a bar on the right side of the driver's door. He stated that the job requires hooking and unhooking overhead cables, which requires some force. He further testified that if someone can't get their hands above shoulder level, that would be a problem in terms of performing the job. He testified that the converter gear weighed approximately five hundred pounds and that it might actually be three thousand pounds or greater. He admitted it would take one to two hundred pounds of exertion to push the converter gear and that climbing in and out of a tractor could occur up to twenty (20) or thirty (30) times on an average work shift. *See,* Tr. Pgs. 349-371.

On rebuttal, Mr. Fretts testified that the job performance video, shown during the trial, depicted "ideal circumstances, a perfectly leveled blacktop driveway, during the daylight." He stated that his job consisted of working in the middle of the night in dark lots with gravel and uneven potholes. He testified that in a lot that was uneven, one had very little room to maneuver and one would have to position the conversion gear manually. He further testified that he would have difficulty pulling himself up into the truck using his right hand, as depicted in the video. He testified that he was told specifically by Jim Keller, an agent of Respondent's, that they would not hire him back after he received permanent restrictions from Dr. Romeo; as he is not physically able to perform the job as he had performed it in 2007 and 2009. *See,* Tr. Pgs. 384-409 & RX5.

CONCLUSIONS OF LAW

F. Was Petitioner's condition resulting from the first accident causally related to the injury?

Doctor Corcoran's notes confirm a causal connection for the 2007 accident, and there is no medical evidence disputing that conclusion. Based upon the testimony and evidence of record, the Arbitrator finds that Petitioner sustained a work related injury on December 1, 2007, and that his condition of ill being and all treatment recited above, was a result of that work accident.

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

Although Respondent disputes causation, Respondent has presented no evidence calling causation into question. There is a clear causal connection based not only on the facts of the case but Respondent's own IME examiner, Dr. Vitello. The opinion of Dr. Mash related to petitioner's current abilities, not causation. Dr. Romeo noted that the new MRI that was performed on May 22, 2009, revealed a full-thickness tear of the supraspinatus tendon, which was different from his previous MRI. Based upon the petitioner's release to work before the 2009 accident with permanent restrictions, the traumatic accident he suffered at work on May 8, 2009; and the subsequent new findings on diagnostic testing, the Arbitrator finds a causal connection between his subsequent condition of ill being, need for treatment and the new work accident.

In regards to Petitioner's current condition of ill-being, the Arbitrator finds that the petitioner's testimony, that he aggravated his shoulder condition on the over-the-road trip he took to Louisiana on behalf of Havner Enterprises, in August of 2011, should be noted; and that he took an additional over-the road-trip in October. While there apparently was no intervening accident, obviously, neither trip was helpful in the recovery of Petitioner right shoulder condition and should be taken into account when determining the nature and extent of Petitioner's injuries. The Arbitrator finds that the petitioner's current condition of ill-being is causally related to the May 8, 2009 accident.

J. Were the medical services provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary services?

The Arbitrator finds that the respondent is liable under Section 8(a) for all medical bills incurred as a result of the accident of December 1, 2007, based upon the evidence in the record. According to evidence presented by Respondent, these bills have been paid and Respondent shall receive credit for said payments. The Arbitrator also finds that the respondent is liable under Section 8(a) for the medical bills incurred for the accident of May 8, 2009; as stated in Petitioner's exhibit 14, which is attached to AX2; i.e. Midwest Orthopedic at Rush, with a balance in the amount of $1,903.65 and Rush Oak Park Hospital, with a balance in the amount of $15,779.83. The Arbitrator adopts Drs. Romeo and Vitello's opinions and further finds, based upon the treatment records, that all treatment was reasonable and necessary to cure petitioner of his condition of ill being. The Arbitrator notes that all of the medical services for this second accident were tendered prior to the petitioner's two trips for Havner. The respondent confirms payment to Midwest Orthopedics, leaving a $1,903.65 balance and a payment to Rush Oak Park Hospital in the amount of $13,771.89. The respondent shall receive a credit for all medical expenses paid and shall pay the remaining balance of these expenses, if any.

K. What temporary total benefits are in dispute?

The parties disagree on the dates for which TTD was payable for the December 1, 2007 accident. Having heard the testimony and reviewed the evidence, the Arbitrator finds Petitioner's request of TTD is consistent with the record of the periods of time he was kept off work, in this matter. *See,* PXs 2-12. The petitioner testified specifically to those dates he was off work and the two dates on which he returned to work in a light duty capacity for Respondent. *See*, Tr. Pg. 57. Respondent shall pay Petitioner temporary total disability benefits of $693.98/week for 53 4/7 weeks, commencing December 7, 2007 through December 15, 2008, as provided in Section 8(b) of the Act.

A review of the medical records of the second accident indicates that Petitioner was kept off work or given restrictions that would prevent the full performance of his job from May 12,

2009 through May 25, 2010; when he was found to have reached MMI and given permanent restrictions by Dr. Romeo. During that time, he testified to working light duty for Respondent on May 27, 2009 and July 4, 2009. *See,* Tr.58.

Petitioner testified that the two trips previously discussed, were the only trips made for Havner Enterprises between his dates of accident and the time of trial. *See, Tr.* at 75-76; 187. Petitioner testified he never contacted Mr. Havner in order to request additional employment opportunities. However, Mr. Havner testified Petitioner called him on more than one occasion, subsequent to the trips to Louisiana and the East Coast, requesting additional work from Havner Enterprises. *Id.* at 197. Mr. Havner testified he could not offer claimant additional trips because none were available. *Id.* at 197. Petitioner testified that after he was released to return to work with restrictions, he advised the respondent of his release and was asked what his restrictions were and upon relaying them to a Mr. Jim Keller, on or about May 25, 2010, he was told that the company could not take him back because his physical condition did not meet the job description. *See,* Tr. pgs. 407-8. Petitioner testified that the respondent did not offer him assistance in finding other work. *Id.* at 59, therefore he performed a job search on his own. Based upon the medical records and testimony in this matter, the Arbitrator orders that Respondent shall pay Petitioner temporary total disability benefits of $841.77/week for 54 2/7 weeks, commencing May 12, 2009 through May 25, 2010, as provided in Section 8(b) of the Act.

Maintenance

Pursuant to 50 Illinois Administrative Code, Chapter II Section 7110.10, (the "Code") the employer, or its representative has the burden to consult with the injured worker and his representative; and craft a written assessment of the course of medical care and if appropriate, rehabilitation required to return the injured worker to employment when 1) (s)he is unable to resume the regular duties in which (s)he was engage in at the time of the injury or 2) when the period of total incapacitation for work exceeds 120 continuous days; which ever comes first. The injured worker may also initiate and complete this process. There has not been presented, by a preponderance of the evidence that neither party pursued this process. Petitioner testified that he met with David Patsavas, a certified

vocational rehabilitation consultant, on August 13, 2010, at the request of his counsel. Petitioner was declared to have reached MMI on May 26, 2010 and from that time to the date of trial, on August 27, 2012, Petitioner has claimed to be unable to find work that exists in a stable labor market, despite a diligent search. Although a vocational expert, David Patsavas, was hired by Petitioner and testified that Mr. Fretts is currently capable of earning from $10 to $15 per hour, if he were able to find stable work; and he further opined that Mr. Fretts is a candidate for vocational rehabilitation services; no such services were established pursuant to the Code. *See,* PX16. There was no testimony or evidence presented that Petitioner worked with this counselor in instituting the process of vocational rehabilitation and that there was the authorization and implementation of a plan to return the petitioner to gainful employment, pursuant to the Code. Neither was there evidence presented of a self-directed search. The Arbitrator has not been presented with any evidence of a search, diligent or not; and as Petitioner is claiming a period of maintenance for 117 6/7 weeks, the importance of presenting evidence of such a search is paramount. Therefore, Petitioner has not been proven, by a preponderance of the evidence, that he participated in a diligent job search and no maintenance benefits or wage differential benefits, are awarded, pursuant to the Act.

L. What is the nature and extent of the injury?

The Arbitrator takes notice that the petitioner testified that the twenty (20) hour trip to Louisiana, and that is presumably one-way, aggravated his right shoulder condition. Then the petitioner took a second trip to the East Coast, delivering lawn mowers at various locations. As the petitioner claims that he cannot return to work for the respondent because of the condition of his shoulder, one can only surmise that the second trip, while putting funds in his pocket, also did not help to improve the condition of his shoulder and in fact may have exacerbated it. Prior to these trips, Petitioner sustained an injury to his right shoulder; and his medical examinations noted a right shoulder Bankart lesion; and grades 3 and 4 chondromalacia throughout both the humerus and glenoid; as well as undersurface tearing of the rotator cuff; dense thickened hypertrophic bursal tissue; as well as acromioclavicular arthropathy which was end-stage. He underwent surgery by Dr. Corcoran, who performed a right shoulder arthroscopy, chondroplasty of glenoid,

chondroplasty of humerus, arthroscopic Bankart repair, debridement of undersurface rotator cuff tear, subacromial decompression consistent of CA ligament excision, and an acromioplasty with arthroscopic distal clavicle re-section. Therefore, the Arbitrator finds that the nature and extent of petitioner's injuries, resulting from these two accidents to be 25% of the right arm or 12.65% loss of the person as a whole and awards 63.25 weeks of permanent partial disability.

M. Should penalties or fees be imposed upon Respondent?

Petitioner has filed a petition for penalties and attorneys' fees under §19(k), §19(l) and §16 of the Act. The Arbitrator declines to award penalties or fees in this matter. Respondent's conduct does not rise to the level of vexatious and unreasonable or actions taken in bad faith.

N. Is Respondent due a credit?

Respondent alleges a credit of $98,158.08 in temporary total disability and $7,045.68 for temporary partial disability, as well as $10,512.60 in permanent partial disability advances; for a total of $115, 716.36. Respondent's exhibit 3 shows payments from May 21, 2009 through December 28, 2011 totaling this amount paid as temporary total disability, temporary partial disability, and permanent partial disability advances. The Arbitrator awards this total amount of $115,716.36, as delineated by Respondent.

O. In regards to the issue of workers' compensation fraud

Two questions arise concerning the work Petitioner performed for Mr. Havner. First, would it affect Petitioner's right to temporary total disability for those days he work for Mr. Havner and second, Respondent alleges that the trip in October of 2011 constitutes workers' compensation fraud in that Petitioner received temporary total disability while also collecting a salary from a different employer. The resolution of both issues turns on an examination of the case law.

In keeping with the remedial nature of the Workers' Compensation Act and relevant case law, a claimant's earning of occasional wages does not preclude a payment of TTD. This is consistent with the law in several cases indicating that an employee does not have to be reduced to a state of total physical and mental incapacity before TTD can be awarded.

In *J. M. Jones Co. v. Industrial Commission*, 71 Ill.2d 368, 375 N.E.2d 1306, 17 Ill. Dec. 22 (1978), the Supreme Court held that the fact that the claimant was capable of driving as a school bus operator for approximately one hour in the morning and one hour in the afternoon did not preclude awarding TTD. "For the purposes of section 8(f) [section 19(b)], a person is totally disabled when he cannot perform any services except those for which no reasonably stable labor market exists." 71 Ill. 2d 353, 361-62, quoted with approval in *Zenith v. Industrial Commission*, 91 Ill.2d 278 (1982). In *Zenith*, the Supreme Court noted that the fact that the claimant occasionally sold hot dogs from a truck for a few hours per day did not bar him from TTD entitlement. The *Zenith* court also addressed whether this activity amounted to self-employment, finding that it did not.

In *Mechanical Devices v. Industrial Commission*, 344 Ill.App.3d 752, 800 N.E.2d 819, 279 Il 1. Dec. 531 (4th Dist. 2003), the appellate court again found TTD entitlement when the claimant earned occasional wages. Consistent with the court's findings in *J. M. Jones* and *Zenith*, the *Mechanical Devices* court found that a machinist who suffered an arm and back injury and returned to work as a bus driver, averaging 10 to 15 hours per week, was still disabled. The claimant's treatment was ongoing and his condition had not stabilized; therefore, the claimant was entitled to TTD benefits.

In the subject case, the entirety of Petitioner's work for Mr. Havner, during the period of time he was also receiving TTD benefits, was a few days. It is debatable whether or not this work constituted a reasonably stable labor market in that Petitioner testified that he was unable to obtain other work. Because the few days of work driving a flat-bed and pick-up truck did not establish a stable labor market and because Petitioner continued to have restrictions from his doctor, his entitlement to TTD for that period was not interrupted by the work he did for Mr. Havner in August of 2011. Likewise, the days worked light duty for Respondent did not constitute a light duty accommodation.

SECTION 25.5 OF THE ACT STATES IN PERTINENT PART:

(a) It is unlawful for any person....or entity to:
(1) Intentionally present or cause to be presented any false or fraudulent claim for

the payment of any workers' compensation benefit.
(2) Intentionally make or caused to be made any false or fraudulent material statement or material representation for the purpose of obtaining or denying any worker's compensation benefit.
(3) Intentionally make or caused to be made any false or fraudulent statements with regard to entitlement to workers' compensation benefits with the intent to prevent an injures worker from making a legitimate claim for workers' compensation benefits.

For the purposes of paragraphs (2), (3), (5), (6), (7), and (9), the term "statement" includes any writing, notice, proof of injury, bill for services, hospital or doctor records and reports, or X-ray and test results.

Respondent failed to show any statement by Petitioner that was both intentional and fraudulent regarding his working for Havner Enterprises while collecting TTD. If there was a question of Petitioner's entitlement to TTD during the days that he worked for Mr. Havner; there is a lack of evidence that he lied about this work. According to case law, Petitioner could collect TTD during the limited time that he worked for Mr. Havner. In addition, the Arbitrator notes the distinction between the trucks Petitioner drove for Havner and the trucks driven for Respondent, i.e. a flat-bed and pick-up truck versus double trailers which have to be hooked to a cab. Respondent has not proven by a preponderance of the evidence, that the petitioner committed a fraudulent act.

Lastly, Respondent attempted to admit, over Petitioner's objection, a report and deposition testimony of Ms. Mary Szczepanski. She is not a certified rehabilitation counselor. She testified that she is a certified case manager. She does not possess an appropriate certification, pursuant to the Act, that designates her as qualified to render opinions relating to vocational rehabilitation. Therefore, the Arbitrator did not admit Respondent's exhibits 11 and 12.

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 Kao,
Petitioner,
vs.

14IWCC0040
NO: 06 WC 6270

Insight Enterprises,
Respondent.

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 disability, permanent partial disability, penalties and fees and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 14, 2013 is hereby affirmed and adopted.

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 $58,800.00. 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: JAN 2 3 2014
KWL/vf
O-12/17/13
42

Kevin W. Lamborn

Daniel R. Donohoo

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0040

KAO, JAMES
Employee/Petitioner

Case# 06WC006270

INSIGHT ENTERPRISES
Employer/Respondent

On 1/14/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0786 BRUSTIN & LUNDBLAD LTD
CHARLES E WEBSTER
100 W MONROE ST 4TH FL
CHICAGO, IL 60603

1109 GAROFALO SCHREIBER HART & STORM
DAN GRANT
55 W WACKER DR 10TH FL
CHICAGO, IL 60601

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
ARBITRATION DECISION 14IWCC0040

James Kao
Employee/Petitioner

v.

Insight Enterprises
Employer/Respondent

Case # 06 WC 006270

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Chicago**, on **November 27, 2012**. 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 **January 26, 2006**, 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 $**21,657.75**; the average weekly wage was $**434.77**.

On the date of accident, Petitioner was **61** 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.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $260.86/week for 225 weeks, because the injuries sustained caused the45% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Petitioner's claim for additional TTD benefits is denied.

Petitioner's claim for Penalties and Attorneys fees pursuant to §19(k), §19(l), and §16 is denied.

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

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

Signature of Arbitrator

01-14-13
Date

JAN 14 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

James Kao,	)	
	)	14IWCC0040
PETITIONER,	)	
	)	
vs.	)	NO: 06 WC 6270
	)	
Insight Enterprises,	)	
	)	
RESPONDENT.	)	

MEMORANDUM OF DECISION

This MEMORANDUM OF DECISION is attached to the IWCC ARBITRATION DECISION and is made a part thereof as though fully set forth therein. The issues in dispute at the November 27, 2012 hearing were as follows:

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

K. Is the Respondent liable for temporary total disability benefits to the Petitioner?

L. Nature and Extent of the Petitioner's Injuries.

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

I. FINDINGS OF FACT

A. ACCIDENT:

The Petitioner was employed by Insight Enterprises as a picker/packer. His duties included filling orders, which involved him using an electronic hand-held device to identify orders, locate various items on shelves throughout the warehouse, placing those items in boxes, and then shipping the boxes containing the items. The Petitioner testified that the boxes weighed up to 50 to 75 pounds. On January 26, 2006, the Petitioner sustained injuries to his neck, and low back, when a pallet fell from a shelf approximately 40 feet above his head, striking him in the head and knocking him unconscious.

B. MEDICAL CARE:

Following the accident in question, the Petitioner was taken to Central DuPage Hospital wherein he reported a consistent history of injury. A CT of his head was obtained that demonstrated scalp swelling and contusions. X-rays taken of the cervical spine revealed normal alignment, but bone spurs at C5-6 and C6-7. X-rays taken of the thoracic spine were normal. X-rays taken of the lumbar spine suggested a possible fracture at the L2 vertebral body. The petitioner was inpatient at Central DuPage Hospital for approximately eight days.

After the Petitioner was discharged from Central DuPage Hospital, he was transported to Marian Joy Rehabilitation Hospital on February 16, 2006, and he was inpatient at Marian Joy through February 21, 2006.

After being discharged from Marian Joy, the Petitioner was examined by Dr. Trelka on March 9, 2006, relating to his neck and back pain. Dr. Trelka recommended the Petitioner secure an EMG/NCV of the upper extremities. On March 10, 2006, the Petitioner underwent an EMG that was essentially found to be normal.

On March 13, 2006, the Petitioner was examined by Dr. Levin reporting neck pain, bilateral shoulder tingling and tightness, and dizziness at times, as well as back pain. Dr. Levin opined that the Petitioner had suffered a L2 compression fracture, and recommended MRI's of the cervical and lumbar spine.

On March 21, 2006, the Petitioner underwent MRI's of the lumbar and cervical spine. The MRI of the lumbar spine revealed a compression fracture at the L2 vertebral body. It also documented degenerative changes at the L3-4 disc, and degenerative changes at L4-5 and L5-S1 without disc herniations noted.

With respect to the cervical spine, the MRI revealed a broad-based central disc protrusion at C6-7, and some bulges at C4-5 and C5-6.

On April 27, 2006, the Petitioner came under the care of Dr. Lin. Dr. Lin referred the Petitioner to Dr. Citow for evaluation and treatment.

On May 10, 2006, the Petitioner was examined by Dr. Citow. Dr. Citow diagnosed the Petitioner with a L2 fracture, and opined that vertebroplasty may be an option.

On June 26, 2006, the Petitioner was examined by Dr. Patzik on a referral basis from Dr. Citow. Dr. Patzik recommended the Petitioner undergo a vertebroplasty, and the same was scheduled for July 6, 2006.

On July 6, 2006, the Petitioner underwent a successful vertebroplasty. It revealed a traumatic compression fracture, low back pain, and noted failure of conservative treatment.

On July 21, 2006, the Petitioner followed up with Dr. Patzik. Dr. Patzik noted the Petitioner was doing quite well following the surgery, that his low back pain had completely resolved, and that his range of motion activity level had increased significantly. Dr. Patzik discharged the Petitioner from care at that time, and noted he was to follow up on an as needed basis. The Petitioner was not provided with any work restrictions at that time.

On September 11, 2006, the Petitioner secured a script for physical therapy from Dr. Citow. The medical records do not document an examination on that date.

On October 6, 2006, the Petitioner followed up with Dr. Citow reporting a two-month history of bothersome neck pain extending into the head. He recommended a repeat MRI of the cervical spine, which was performed on October 10, 2006. The MRI revealed significant disc protrusions touching the spinal cord and narrowing the neural foramina from C3 through C7.

The Petitioner continued under the care of Dr. Citow, and participated in a course of physical therapy and injections.

On March 21, 2007, the Petitioner underwent a functional capacity evaluation at WCS at the direction of Dr. Citow. The FCE indicated that the Petitioner was functioning at the medium to heavy physical demand level.

Following the functional capacity evaluation, the Petitioner did not return to work, and instead continued to receive epidural injections at the direction of Dr. Marquardt, and also continued to treat with Dr. Citow. At no time during this period of time was the petitioner authorized off work by either Dr. Marquardt, or Dr. Citow.

On August 22, 2008, the Petitioner followed up with Dr. Citow. Dr. Citow indicated that Petitioner was able to return to work full duty.

On December 23, 2008, the Petitioner underwent an independent medical examination at the direction of petitioner's attorney with Dr. Blonsky. Dr. Blonsky opined that the Petitioner was totally disabled at that time, as was determined by Social Security. He did not believe the Petitioner was capable of returning to work, or any activities that would require the Petitioner's neck to be in a position other than neutral. Dr. Blonsky did note that he did not have all the records, including the functional capacity evaluation.

On February 20, 2009, the Petitioner followed up with Dr. Citow again. Dr. Citow recommended additional physical therapy, and additional injections.

On September 18, 2009, the Petitioner underwent a repeat MRI of the cervical spine. The MRI revealed worsening of cervical spondylosis, most prominent at the C5-6 level.

Following the MRI, the Petitioner continued under the care of Dr. Citow, and underwent another series of cervical epidural injections.

On February 22, 2010, the Petitioner underwent an anterior cervical discectomy, and fusion from C4 through C7. The postoperative diagnosis was C4-6 spondylosis and disc herniation with cord compression. Surgery was performed by Dr. Citow.

Following surgery, the Petitioner continued under the care of Dr. Citow. On March 19, 2010, Dr. Citow authored a report to Dr. Lin wherein he indicated that the petitioner could attempt to return to normal work three weeks from that date.

Subsequently, the Petitioner followed up with Dr. Citow on July 28, 2010. The Petitioner reported occipital neck pain without radicular symptoms. He noted that he had not returned to work. Dr. Citow recommended additional physical therapy followed by work conditioning, which would hopefully allow him to return to work. The Petitioner participated in physical therapy and work conditioning at the direction of Dr. Citow through October of 2010.

On September 14, 2010, the Petitioner was seen at The Geneva Pain Clinic by Dr. Lu on a referral basis from Dr. Lin, complaining of upper neck and back pain. Dr. Lu diagnosed the Petitioner with a possible suboccipital ligament injury to his neck, and discogenic low back pain. He recommended trigger point injections at that time.

On October 13, 2010, the Petitioner underwent an independent medical examination with Dr. Bauer. Dr. Bauer opined the Petitioner should be able to return to work, as delineated pursuant to a functional capacity evaluation. Dr. Bauer further indicated that the Petitioner could have returned to work in March based upon Dr. Citow's March 19, 2010 correspondence, and further opined the Petitioner was capable of returning to work at that time. Dr. Bauer opined the Petitioner had reached maximum medical improvement.

On October 28, 2010, the Petitioner underwent a functional capacity evaluation at AthletiCo. It was noted the Petitioner gave a full effort, and performed at the medium physical demand level with some components of the heavy physical demand level throughout the evaluation. The therapist opined that, based upon the employer's job description, that the physical requirements of the job would be rated at the medium physical demand level. Therefore, the Petitioner performed at the physical demand level required to perform his job at

the time of the functional capacity evaluation. If he returned to work, it was recommended that he would be given a modified schedule with breaks in order to transition the Petitioner into full time work.

On November 12, 2010, the Petitioner received a cervical epidural injection with Dr. Lu. The Petitioner was not provided with any work restrictions on that date.

On November 19, 2010, the Petitioner was last seen by Dr. Citow. Dr. Citow opined the Petitioner was able to return to work full duty as of November 22, 2010, pursuant to the functional capacity evaluation, which allowed work at the medium level.

On November 22, 2010, the Petitioner secured an off work slip from Dr. Lu. There is no corresponding medical record accompanying the off work slip.

On December 3, 2010, the Petitioner secured a referral for epidural injections from Dr. Citow. The Petitioner admitted at trial that he did not see Dr. Citow that day, but merely saw his office staff, and requested the same. On December 16, 2010, the Petitioner received an off work slip from Dr. Citow's office indicating that he was unable to return to work pending his epidural injections. The Petitioner again admitted that he did not see Dr. Citow on this date, and merely secured a disability slip from Dr. Citow's office staff.

On January 3, 2011, the Petitioner secured a disability slip from Dr. Lu indicating that he was only able to work three hours per day. There was no indication as to whether this was a permanent restriction, or a temporary restriction. There is no documentation that the Petitioner was actually seen by Dr. Lu on this date. The Petitioner admitted at trial that he did not seek treatment with Dr. Lu again after that time, as Dr. Lu became ill and stopped treating patients.

On February 10, 2011, Dr. Bauer authored an addendum to his independent medical examination. In his addendum, he noted that he reviewed recent documents, including the functional capacity evaluation and the job analysis. Dr. Bauer opined that the Petitioner was able to return to work full duty without restrictions in his position as a picker/packer for Insight Enterprises.

Subsequently, the petitioner came under the care of Lake County Millennium Pain Center. He received his first of a series of injections on February 14, 2011, and received injections at the direction of Lake County Millennium Pain Center through May of 2012.

On October 5, 2011, Dr. Citow authored a report to petitioner's attorney regarding this matter. Dr. Citow reviewed the Petitioner's medical records in

their entirety. Dr. Citow noted that he last examined the Petitioner on November 19, 2010, and at that time it was his opinion that the Petitioner was able to return to work at the level delineated in the functional capacity evaluation. In terms of future medical care, Dr. Citow noted that the Petitioner would require injections and nerve blocks as needed to control his chronic pain related to his situation. Dr. Citow related the need for injections to the accident in question.

On February 15, 2012, Dr. Citow authored another letter to petitioner's attorney regarding this matter. Dr. Citow opined that the petitioner's need for nerve blocks and injections was related to the work injury in question. Dr. Citow did not provide any additional work restrictions at that time.

C. TESTIMONY

1. Testimony of Petitioner:

The Petitioner testified that he has never returned to gainful employment since the January 26, 2006 accident in question. He admitted that he had been released to return to work following the vertebroplasty on July 6, 2006, and did not return to work because he simply thought he could not perform the job. He further admitted that, notwithstanding the fact that Dr. Citow had released him to return to work on a number of occasions, that he did not return to work simply because he did not personally believe that he could perform the job. When questioned why he never attempted to return to work following the March 21, 2007 functional capacity evaluation, the Petitioner again indicated that, although the therapist that performed the functional capacity evaluation indicated that he had met the physical demands to do his job, that he simply did not think he could do the job. The Petitioner reiterated his position with respect to his lack of any effort to return to work following his cervical fusion in 2010, and after the October 26, 2010 functional capacity evaluation at AthletiCo. Instead, the Petitioner is now attempting to rely upon the restrictions as outlined by Dr. Lu on January 5, 2011, which restricted him to three hours of work only.

In terms of his complaints, the Petitioner testified that he was only able to stand for approximately one hour, drive a car for two hours, and sit for approximately one hour. The Petitioner admitted that these were his self-imposed limitations, and that neither any of his treating physicians, nor the examining physician, has provided him with these restrictions.

With respect to the job video, the Petitioner testified that the same was inaccurate because it did not document all the different types of products that they were required to lift, and he also was of the opinion that it did not document the size of some of the products. The Petitioner indicated that some of the

products weighed between 50 and 75 pounds, which he did not feel were properly documented in the video.

2. *Deposition Testimony of Dr. Blonsky*

Dr. Blonsky testified via a deposition on June 9, 2009. He opined that the Petitioner was able to return to work on a sedentary basis. (R. 26) However, Dr. Blonsky admitted that he had not reviewed the March 21, 2007 functional capacity evaluation. (Px. 22, p. 34) He further indicated that he had not been provided with the current medical records from Dr. Citow, which released the Petitioner to return to work full duty. (Px. 22, p. 33) In terms of his credentials, Dr. Blonsky testified that he was board certified in neurology and pain management, but that he was not a surgeon, and that the only surgery that he had ever participated in was when he was an intern. (Px. 22, p. 38

3. *Deposition Testimony of Dr. Citow*

Dr. Citow testified via a deposition on January 9, 2009. Dr. Citow noted that he began treating the Petitioner on May 10, 2006 due to his cervical and lumbar complaints. Dr. Citow indicated that the Petitioner could require a cervical fusion in the future, but did not recommend surgery at that time. With respect to the Petitioner's ability to return to work, Dr. Citow indicated that as of the date of the deposition, that he had not provided the Petitioner with any work restrictions. He further testified that when he last examined the Petitioner on August 22, 2008, that he had again recommended that he return to work full duty. (Px. 23, p. 19)

4. *Testimony of Joseph Belmonte*

Mr. Belmonte, who is a certified vocational counselor, testified that he had been retained by petitioner's attorney to render an opinion regarding that Petitioner's ability to secure employment in the open labor market. Mr. Belmonte provided two different opinions. If Dr. Lu's restrictions of January 3, 2011 were controlling, which limited the Petitioner to 3 hours of work per day, then it was his opinion that the Petitioner was not a candidate for vocational rehabilitation pursuant to *National Tea*, that a stable labor market did not exist for the Petitioner, and that he was permanently and totally disabled from gainful employment. If the restrictions from Dr. Citow on November 19, 2010, which relied upon the October 28, 2010 functional capacity evaluation finding that the Petitioner was able to return to work in the medium to heavy physical demand category of work, were controlling, then it was his opinion that the Petitioner would be capable of securing gainful employment paying in the range of $11.00 per hour.

In terms of the Petitioner's former job as a picker/packer for the Respondent, Mr. Belmonte testified that he reviewed the job video, and rated the job requirements to be in the light to medium category of work. Mr. Belmonte did not provide an opinion regarding whether the Petitioner was able to return to work to that job.

5. *Testimony of Carlos Alvarez*

Mr. Alvarez testified that both the job description and job video were accurate depictions of the Petitioner's job requirements of a picker/packer position. He further testified that, at most, the boxes that the Petitioner would have been required to maneuver weighed 60 pounds, and that even then, if the box was too heavy, the employees lifted boxes together so as to avoid injury.

II. CONCLUSIONS OF LAW

The Arbitrator notes that the main issues in this case involve, whether the Petitioner's condition of ill-being is causally related to the accident in question, whether the Petitioner is entitled to additional TTD benefits, the nature and extent of the Petitioner's injuries, and whether penalties and attorneys fees are warranted.

1. Law

It is axiomatic that the Petitioner bears the burden of establishing, by a preponderance of credible evidence, all of the elements of his claim. *Illinois Institute of Technology vs. Industrial Commission,* 68 Ill. 2d 236 (1977). The requirement that the Petitioner prove by "preponderance of the evidence" all elements of his claim, means that he must present evidence which is more credible and convincing to the mind; and, when viewed as a whole establishes the fact sought to be proved as more probable than not. *In Re: K.O.,* 336 Ill. App. 3d 98 (2002). It is the duty of the arbitrator to view the evidence in it's entirety and determine, objectively and reasonably, whether witness testimony is credible, that is, "worthy of belief," based on the totality of the evidence. *Thorson v. Carlson Roofing Company,* 01 I.I.C. 0251.

Credibility is dependent upon corroboration, not in isolation on subjective intangibles such as how a witness looked or sounded. In order to properly evaluate credibility, it is necessary to consider five classic tests to the evidence: (1) witness' demeanor, (2) interest or motivation of the witness, (3) probability or improbability of the witness' version, (4) internal inconsistencies in the witness' testimony and conduct and (5) external inconsistencies when the witness' testimony is compared to other evidence, both direct and circumstantial. These sound, logical, reasonable principles are consistent with the principle of law that

uncorroborated testimony will support an award for benefits only if a consideration of all the facts and circumstances supports that decision. *Thorson v. Carlson Roofing Company,* 01 I.I.C. 0251, citing *Gano Electric Contracting v. Industrial Commission* (1994), 260 Ill. App.3d 92; *Gallantine v. Industrial Commission,* 147 Ill. Dec. 353; *Caterpillar v. Industrial Commission,* 73 Ill. 2d 311.

In support of the Arbitrator's Decision relating to whether the Petitioner's present condition of ill-being is causally related to the alleged work injury, the Arbitrator finds the following facts:

The parties stipulated that the Petitioner sustained injuries to his low back and neck as a result of the accident in question. As such, the first issue in this case is whether the Petitioner's condition of ill-being, if any, in his low back and neck is causally related to the accident in question. In terms of treatment, the records indicate that the Petitioner has not treated since May of 2012. His treatment over the last 2 years has consisted almost entirely of various injections to his low back and neck. In support of his contention that his condition of ill-being is causally related to the accident in question, the Petitioner offered his own testimony, as well as the opinion of his neurosurgeon, Dr. Citow. In rebuttal, the Respondent offered the independent medical examination report of Dr. Bauer.

In terms of the Petitioner's testimony, he testified that he has pain in his low back, and his neck, which requires periodic injections to address the same. He further testified that the injections have provided him with significant relief of his symptoms, but wear off with time. In terms of other injuries, the Petitioner denied any prior, or subsequent injurious to his low back or neck. No evidence was introduced by the Respondent to refute this contention.

In terms of the medical opinions regarding the issue of causal connection, Dr. Citow opined that the Petitioner's condition of ill-being, and the resulting need for the injections relates to the accident in question. Dr Bauer, the Respondent's §12 examining physician opined that the Petitioner had reached maximum medical improvement, and required no additional medical care including any additional injections or prolotherapy. However, Dr. Bauer did not address the issue of causal connection. Therefore, Dr. Citow's opinion regarding causal connection is unrebutted. As such, the Arbitrator adopts the opinion of Dr. Citow, and finds that the Petitioner's condition of ill-being in his neck and low back is causally related to the accident in question.

In support of the Arbitrator's Decision relating to the Nature and Extent of the Petitioner's Injuries, the Arbitrator finds the following facts:

The Arbitrator notes that the Petitioner is claiming that he is permanently and totally disabled. In support of this contention, he presented the testimony of Joseph Belmonte, a certified vocational counselor to testify regarding whether a stable labor market existed. The Petitioner also testified regarding his limitations as he notes them, and presented the January 3, 2011 disability slip of Dr. Lu in an attempt to establish permanent work restrictions.

With respect to the testimony of Mr. Belmonte, he testified that the issue of whether there was a stable labor market for the Petitioner depended on his restrictions. If the restrictions put in place by Dr. Lu on January 3, 2011, which restricted the Petitioner to only working 3 hours per day, were found to be the Petitioner's actual work restrictions, then it was his opinion that a stable labor market did not exist for the Petitioner and that he was permanently and totally disabled from gainful employment. However, if the restrictions from the October, 28, 2011 functional capacity evaluation were the appropriate restrictions, which allowed the Petitioner to return to work in the medium to heavy physical demand, and only recommended that the Petitioner be allowed a few extra breaks initially, then it was his opinion that there was a stable labor market for the Petitioner, and he would have been capable of earning $11.00 per hour in the open labor market. Mr. Belmonte did not provide an opinion as to whether the Petitioner was able to return to his former position with the Respondent. The Arbitrator notes that Mr. Belmonte's opinions and testimony were unrebutted by the Respondent. Given the unrebutted testimony of Mr. Belmonte, which the Arbitrator finds to be credible, regarding the existence of a stable labor market, the Arbitrator notes that the controlling facts involve the petitioner's work restrictions.

With respect to the petitioner's work restrictions, the Arbitrator notes that there are vastly different opinions. In support of the petitioner's contention that he is permanently and totally disabled, the Petitioner offered his own testimony regarding his limitations, and the January 3, 2011 disability slip from Dr. Lu. With respect to the Petitioner's limitations, he testified that he can drive a car for approximately 2 hours, can walk for a half hour to an hour, and can sit for an hour or 2 before he needs to lie down. The Petitioner admitted that these were his self-imposed limitations, and that his physicians did not provide him with these restrictions. The Arbitrator questions that veracity of the Petitioner's alleged limitations relating to his ability to sit. The trial on November 27, 2012 took 3 ½ hours to complete, and the Petitioner did not ask to lie down, stand up, or change positions. With respect to the other alleged limitations, that Arbitrator has no way to verify the same, but again notes that these were neither provided by a licensed medical provider, nor even mentioned in any of the voluminous treating records.

With respect to the findings of Dr. Lu, he indicated in his January 3, 2011 disability slip that the Petitioner was only able to work 3 hours per day. However,

the Arbitrator notes that Dr. Lu only treated the Petitioner on 2 occasions, never treated the Petitioner after January 3, 2011 because Dr. Lu stopped treating patients due to a personal health condition, and the records from Dr. Lu do not reflect that the Petitioner was even examined by him on January 3, 2011. There is also no indication in the disability slip that these restrictions were permanent, and Dr. Lu provided the petitioner with no additional restrictions whatsoever. The Arbitrator finds the disability slip from Dr. Lu to be unreliable, and therefore provides little weight to the same.

In support of the Respondent's contention that petitioner is able to return to work in either in his former position as a picker/packer, or is able to secure gainful employment in the open labor marker, the Respondent relied upon the October 28, 2010 functional capacity evaluation, the opinion of Dr. Citow, who was the Petitioner's treating neurosurgeon, and Dr. Bauer, the Respondent's Section 12 examining physician, who is also a neurosurgeon. The October 28, 2010 functional capacity evaluation indicates that the petitioner was able to return to work in the medium to heavy physical demand level. The therapist who performed the FCE opined that the petitioner was able to return to his former position with the Respondent, but recommend some extra breaks. Dr. Citow, reviewed the FCE on November 19, 2011 and opined that petitioner was able to return to work per the FCE. Although Dr. Citow's office subsequently provided petitioner with an off work slip on December 16, 2011, the Petitioner admitted at trial that he did not see Dr. Citow on that date, and that he merely secured the slip from Dr. Citow's office staff. As such, the Arbitrator provides no weight to this disability slip. Dr. Bauer also reviewed the functional capacity evaluation the detailed job description, and the job video. After reviewing all of those pieces of evidence, he opined that the Petitioner was able to return to work full duty for the Respondent. Dr. Citow subsequently authored a report to petitioner's attorney dated October 5, 2011. In that report, Dr. Citow reiterated his opinion that the Petitioner was able to return to work per the functional capacity evaluation. The Arbitrator finds the opinions of Dr. Citow and Dr. Bauer to be well reasoned, and supported by the only objective evidence admitted into trial regarding the Petitioner's functional capabilities, that being the October 28, 2010 functional capacity evaluation.

After weighing the conflicting opinions regarding the Petitioner's ability to return to work, the Arbitrator rejects the finding of Dr. Lu on January 3, 2011 limiting the Petitioner to 3 hours of work per day, and adopts the findings of Dr. Citow and Dr. Bauer who relied upon the October 28, 2010 findings that the Petitioner was able to return to work in the medium to heavy physical demand level. To rely upon a single disability slip of Dr. Lu would require this Arbitrator to speculate as to whether the 3 hour per day restriction was temporary, or permanent, and disregard the fact that the records from Dr. Lu do not reflect any type of an examination on January 3, 2011 and that he never examined the Petitioner again. Further, the Arbitrator would have to ignore the results of the

functional capacity evaluation on October 28, 2011, the opinion of Dr. Citow, and also the opinion of Dr. Bauer, who all opined that the Petitioner was able to return to work per the functional capacity evaluation. Further, notwithstanding the fact that the Petitioner continued to treat with different physicians through May of 2012, which is almost a year and a half after his treatment ended with Dr. Lu in January of 2011, the Petitioner did not introduce a single disability slip from the providers who have treated him since that period of time. Instead, the Petitioner admitted that his pain management physicians were relying on the restrictions from Dr. Citow, who has again opined that the Petitioner is able to return to work per the October 28, 2010 functional capacity evaluation. Therefore, the Arbitrator finds that the Petitioner is able to return to work at the medium to heavy physical demand level.

The next issue involves whether the Petitioner is able to return to work in his former position for the Respondent. The Petitioner testified that he is unable to perform the tasks associated with his old job. He claims that the job requires lifting up to 75 pounds. The Petitioner also claims the job video that the Respondent introduced at trial was inaccurate as it did not document the amount of walking required to perform the job, and also did not accurately depict how the jobs are assigned to the staff. The Arbitrator would note that neither Mr. Belmonte, nor any of the Petitioner's medical providers weighed in on the issue of whether he could return to work full duty for the Respondent.

In support of the Respondent's contention that the Petitioner's restrictions allow him to return to work full duty as a picker/packer, the Respondent relied upon a detailed written job description, a job video, the testimony of Carlos Alvarez, and the independent medical examination and subsequent addendum from Dr. Bauer. Mr. Alvarez testified that the detailed job description and video job analysis accurately depicted the duties and physical requirements of the picker/packer position for the Respondent. The Petitioner did not question the veracity of the written job description, and limited his inquiry into the veracity of video by only questioning the amount of walking required to perform the job, and the lifting requirements. Mr. Alvarez testified that job sometimes required lifting up to 60 pounds, but that the Respondent practiced group lifting where the employees would assist each other to lift heavy objects.

With respect to Dr. Bauer's opinion regarding the Petitioner's ability to return to work, he noted that reviewed his independent medical examination report, the October 28, 2010 functional capacity evaluation, the written job description, and the job video. After reviewing these pieces of evidence, he opined that the Petitioner was able to return to work full duty. The Arbitrator would note that Dr. Bauer is the only physician who provided any type of an opinion regarding the Petitioner's ability to return to work in his former position. Dr. Bauer was also the only physician who reviewed a written job analysis and a job video. As such, the Arbitrator finds Dr. Bauer's findings to be persuasive.

The final piece of evidence relating to this issue is the Petitioner's efforts to return to work. The Petitioner admitted that he never returned to work for the Respondent. He further admitted that since his accident in 2006, that Dr. Citow had released him to return to work full duty on numerous occasions, and that he still made no attempt to return to work in any capacity. Moreover, the Petitioner admitted that he made no attempt to return to work after being discharged from care by Dr. Citow on November 19, 2010, which was after he completed the final functional capacity evaluation. The Arbitrator finds the Petitioner's refusal to even make an attempt to return to work troubling at best.

After considering all of the evidence relating to the Petitioner's functional capabilities, and the requirements of his former position with the Respondent, the Arbitrator finds that the Petitioner was able to return to work full duty as a picker/packer for the insured. The Arbitrator further finds that the Petitioner sustained a 45% industrial loss of use of the man as a whole pursuant to §8(d)(2) of the Act.

K. TEMPORARY TOTAL DISABILITY BENEFITS

In support of the Arbitrator's, Decision as to whether the Respondent is liable for the temporary total disability benefits claimed by the Petitioner, the Arbitrator finds the following facts:

The parties stipulated that the Respondent paid TTD benefits from January 27, 2006 through July 22, 2006; February 22, 2010 through April 9, 2010; and from July 28, 2010 through November 23, 2010. The Petitioner claims that he is entitled to TTD benefits from January 27, 2006 through November 27, 2012, the date of trial. These claims result in 3 distinct periods of TTD benefits in dispute. The periods in dispute are: July 23, 2006 through February 21, 2010; April 10, 2010 through July 27, 2010, and November 24, 2010 through November 27, 2012.

With respect to the period from July 23, 2006 through February 21, 2010, the Arbitrator notes that the only physician that provides any kind of support to the Petitioner's contention that he is entitled to TTD benefits for this time frame was Dr. Blonsky, who was an independent medical examining physician for the Petitioner. Although Dr. Blonsky opined at the time of his deposition that the Petitioner was only capable of sedentary work, he admitted in both his report and his deposition that he did not review the March 2007 functional capacity evaluation, or any of the records from the Petitioner's treating neurosurgeon, Dr. Citow. Thus, Dr. Blonsky's opinion was not supported by any current treatment records at the time of his examination, and was not supported by the functional capacity evaluation, the findings of which are undisputed.

In support of the Respondent's decision to deny TTD benefits for this period of time, the Arbitrator would note that notwithstanding the fact that the Petitioner was treating with Dr. Citow, along with a number of other medical providers, the Petitioner did not have a single off work slip for even a portion of that period of time. Specifically, the Arbitrator would note that Dr. Patzik, who performed the Petitioner's vertebroplasty in July of 2006, discharged him from care on July 21, 2006, and did not provide Petitioner with any work restrictions. The Petitioner was examined by Dr. Citow on numerous occasions during this time and did not receive a single off work slip. Dr. Citow admitted in his deposition that he was not aware of issuing any kind of an off work slip for this period of time. In fact, Dr. Citow opined on August 22, 2008 that the Petitioner was able to work full duty. Finally, the Petitioner underwent a functional capacity evaluation on March 21, 2007, that indicated that he was able to return to work full duty. Based upon the lack of a valid off work slip from any of the Petitioner 's treating physicians from July 23, 2006 through February 21, 2010, the Arbitrator denies TTD for this time frame. Even if the Arbitrator was to adopt the finding of Dr. Blonsky, the Arbitrator notes that even Dr. Blonsky opined that Petitioner was able to return to work on a sedentary basis, and the Petitioner provided no evidence that he made any attempt to work during that period of time on a restricted basis.

With respect to the TTD in dispute from April 10, 2010 through July 27, 2010, the Arbitrator would again note that the Petitioner does not have any type of an off work slip from any of his providers for this period of time. On March 19, 2010, Dr. Citow re-examined the Petitioner and authored a report to Dr. Lin. In his report, Dr. Citow indicated that the Petitioner could attempt to return to his normal work activities three weeks from that date. Three weeks from March 19th was April 20, 2010. The Petitioner testified that he made no attempt to return to work at that time, and again did not introduce a valid off work slip until July 28, 2010. Therefore, the Arbitrator denies TTD benefits from April 10, 2010 through July 27, 2010.

With respect to the TTD in dispute from November 24, 2010 through November 27, 2012, the Arbitrator would note that the only evidence to support the Petitioner's claim for benefits for this period of time is the January 3, 2011 disability slip of Dr. Lu. As was previously noted, this slip is questionable at best. There is no evidence that the Petitioner treated with Dr. Lu that day, and no evidence that this was a permanent restriction as the Petitioner never saw Dr. Lu again.

In support of the Respondent's position that Petitioner is not entitled to TTD from November 23, 2010 through November 27, 2012, the Arbitrator would note that the Respondent is relying upon the October 28, 2010 functional capacity evaluation, the findings of Dr. Citow, and the findings of Dr. Bauer. For

the reasons discussed below, the Arbitrator finds that the Petitioner is not entitled to TTD benefits for this period of time.

The Arbitrator would begin by noting that the therapist who performed the FCE on October 28, 2010 opined that the Petitioner was able to return to work full duty. Next, the Petitioner was released to return to work per the functional capacity evaluation by Dr. Citow on November 19, 2010, but he admitted that he made no attempt to return to work at that time. Instead, he subsequently secured an off of work slip from Dr. Citow's office on December 16, 2010, but as noted previously, he admitted at trial that he did not see Dr. Citow on that date. Instead, he simply spoke with Dr. Citow's office staff, who provided him with the off work slip he requested. Third, Dr. Bauer reviewed the functional capacity evaluation along with the job description and job video, and opined that Petitioner had reached maximum medical improvement and was able to return to work full duty. Fourth, on October 5, 2011 Dr. Citow authored a narrative report wherein he reaffirmed his opinion that the Petitioner was able to return to work per the functional capacity evaluation. Finally, although it is disputed as to the Petitioner's functional capabilities, the Petitioner provided no evidence that he made any attempt to return to work for the Respondent pursuant to either the October 28, 2010 functional capacity evaluation, or the findings of Dr. Lu.

After considering all the facts germane to this period of time, the Arbitrator finds that the Petitioner is not entitled to TTD benefits. The Arbitrator adopts the findings of Dr. Citow and Dr. Bauer, and finds that Petitioner was able to return to work per the functional capacity evaluation after November 19, 2010, and reached maximum medical improvement at that time as well.

In support of the Arbitrator's Decision relating Penalties and Attorneys fee, the Arbitrator finds the following facts:

The Arbitrator adopts the findings of fact and conclusions of law as set forth in the preceding sections of this Decision as though fully set forth herein. Consequently, since this Arbitrator found that the Petitioner is not entitled to any additional TTD benefits, and that the Petitioner is not permanently and totally disabled, the Arbitrator further finds that the Respondent's decision to deny benefits was reasonable, any therefore an award of penalties and attorneys fees is not warranted.

CONCLUSION

In conclusion, the Arbitrator finds the following:

- **The Petitioner's current condition of ill-being is causally related to the January 26, 2006 accident in question;**

- **The Petitioner sustained a 45% loss of use of the man as a whole.**
- **The Petitioner's claim for additional TTD benefits is hereby denied.**
- **The Petitioner's claim for Penalties and Attorney's fees is hereby denied.**

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

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

Honorable Kurt Carlson

01-14-13
Date

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

Brian Boland,
Petitioner,
vs.

14IWCC0041
NO: 01 WC 13908

City of Chicago,
Respondent.

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 issue of 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 11, 2013 is hereby affirmed and adopted.

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.

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: JAN 2 3 2014
KWL/vf
O-1/14/14
42

Kevin W. Lamborn

Daniel R. Donohoo

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0041

BOLAND, BRIAN
Employee/Petitioner

Case# 01WC013908

CITY OF CHICAGO
Employer/Respondent

On 6/11/2013, 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:

0146 CRONIN PETERS & COOK
JOHN J CRONIN
221 N LASALLE ST SUITE 1454
CHICAGO, IL 60601

0766 HENNESSY & ROACH PC
JOSEPH A ZWICK
140 S DEARBORN 7TH FL
CHICAGO, IL 60603

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
ARBITRATION DECISION

14IWCC0041

Brian Boland
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # 01 WC 13908

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 **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **March 15, 2013 and April 12, 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 **Section 5(b)**

14IWCC0041

FINDINGS

On **January 25, 2001**, 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 **$60,103.68**; the average weekly wage was **$1,155.84**.

On the date of accident, Petitioner was **44** years of age, *married* with **no** dependent children.

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

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

Respondent shall be given a credit of **$486,028.43** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$486,028.43**.

Respondent is entitled to a credit of **as agreed by the parties** under Section 8(j) of the Act. *See* AX1.

ORDER

Medical Benefits

Respondent shall pay reasonable and necessary medical services from the University of Chicago contained in Petitioner's Exhibit 1 as provided in the Act.

Respondent shall be given a credit for such 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.

Permanent Partial Disability

Respondent shall pay Petitioner permanent partial disability benefits of $516.15/week for 200 weeks, because the injuries sustained caused the 40% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $516.15/week for 66.5 weeks, because the injuries sustained caused the Petitioner 35% loss of use of the left hand, as provided in Section 8(e) of the Act.

Credit

As explained in detail in the Arbitration Decision Addendum, Respondent is entitled to a credit pursuant to Section 5(b) of the Act totaling $15,630.53.

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

June 11, 2013
Date

JUN 11 2013

14IWCC0041

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Brian Boland
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **01** WC **13908**

Consolidated cases: **N/A**

FINDINGS OF FACT

The only issues in dispute are whether Respondent is liable for one medical bill, the nature and extent of Petitioner's injury, and whether Respondent is entitled to any credit under Section 5(b) of the Act in relation to a third party settlement agreement. Arbitrator's Exhibit ("AX") 1. The parties have stipulated to all other issues. AX1.

Background

Petitioner testified that he worked for Respondent as an operating engineer. His responsibilities included operating and maintaining heavy equipment including anything from changing parts to making repairs. On the date of injury, Petitioner was driving a front end loader and climbed up a ladder to check fuel levels and the oil when the ladder broke. Petitioner testified that he fell onto a pile of bricks and busted up his left arm and low back. He testified that he was in a lot of pain and that the bone was sticking out of his left arm.

The Arbitrator notes that the facts regarding Petitioner's medical care as a result of his injury at work are essentially undisputed.

Medical Treatment

Petitioner testified that he went to the Christ Hospital emergency room where he received pain medication and was told that he needed to see an orthopedic surgeon. The next day, Petitioner went to Mercy Works at Respondent's request where he was referred to Dr. Heller. PX2. Petitioner concurrently followed up with physicians at MercyWorks while receiving his primary medical care elsewhere through February 16, 2006. PX2.

Petitioner's left arm was casted on January 30, 2001 through March 16, 2001 when Dr. Heller ordered occupational therapy. PX2. On April 16, 2001, Dr. Heller recommended an arthroscopy and debridement of the left wrist. *Id.* On May 2, 2001, Dr. Heller performed the recommended surgery and Petitioner then underwent postoperative occupational therapy. *Id.* Petitioner complained of continued symptomatology in the back and left wrist and requested a second opinion.

On April 6, 2001, Petitioner saw Dr. Daley at Hinsdale Orthopedics who diagnosed him with a left distal ulnar shaft fracture healing with distal radial ulnar joint symptoms, possible TFCC tear. PX3. Dr. Daley referred Petitioner to his partner, Dr. Lorenz, for the back. *Id.* Petitioner saw Dr. Lorenz on June 21, 2001, who diagnosed him with radicular complaints with low back pain secondary to his fall. *Id.*

On July 9, 2001, Dr. Lorenz referred the Petitioner to Dr. Schiffman for follow up treatment for his left wrist. *Id.* Following an August 15, 2001 left wrist MRI, Petitioner came under the care of Dr. Schiffman who recommended various surgical options. *Id.*

Petitioner returned to Dr. Schiffman on October 17, 2001 who agreed with Dr. Fernandez's recommendations. PX3. Petitioner underwent a second left wrist surgery on November 8, 2001 with a preoperative diagnosis of left wrist pain, rule out maybe carpal instability. *Id.* Dr. Schiffman performed a left wrist stress exam under anesthesia and diagnostic left wrist arthroscopy and diagnosed him postoperatively with left wrist pain. *Id.*

Petitioner continued follow up with Dr. Schiffman through December 26, 2001, at which time he referred Petitioner to Dr. Mass at the University of Chicago for a second opinion prior to scheduling a mid carpal fusion surgery. *Id.* On January 21, 2002, Dr. Mass examined Petitioner, administered an injection which gave Petitioner some side-to-side pain relief, and recommended a scaphoid excision and mid carpal fusion or a PRC. PX5. On April 4, 2002, Petitioner underwent a third left wrist surgery with a preoperative diagnosis of left wrist mid carpal instability. PX3. Specifically, Dr. Schiffman performed a left wrist mid carpal fusion with scaphoid excision. *Id.* Petitioner continued to follow up with Dr. Schiffman and underwent occupational therapy. *Id.*

On August 14, 2002, Dr. Schiffman referred Petitioner back to Dr. Lorenz for his low back pain complaints. *Id.* Petitioner saw Dr. Lorenz on August 28, 2002. *Id.* Dr. Lorenz diagnosed Petitioner with L4-5 and L5-S1 annular tear with S1 radiculopathy bilaterally. *Id.* He ordered an updated MRI and, on September 19, 2002, he recommended an epidural steroid injection. *Id.*

On October 2, 2002, Dr. Schiffman placed Petitioner at maximum medical improvement and recommended a functional capacity evaluation ("FCE") with regard to Petitioner's left hand. *Id.* On the same date, Dr. Lorenz concurred and recommended holding off on a second epidural steroid injection until after the FCE. *Id.*

Petitioner underwent the recommended FCE on November 11, 2002, which was deemed valid and recommended a work conditioning program. *Id.* Dr. Lorenz noted that upon completion of the recommended work conditioning program, he would entertain recommendation of the discogram, post-discogram CT and possible surgery to Petitioner's low back. *Id.*

On December 17, 2002, Petitioner reported a stabbing pain in his back, which the physical therapists noted was not a symptom at his last work conditioning session on December 13, 2002. *Id.* Petitioner was given the option to continue work conditioning, stop work conditioning and return to work with restrictions, or undergo a discogram. *Id.* Dr. Lorenz performed the discogram on January 24, 2003 and Petitioner returned for follow up on February 4, 2003 at which time he diagnosed Petitioner with L4-5 and L5-S1 annular tear with left radiculopathy. *Id*; PX4. Dr. Lorenz recommended a L4-L5 and L5-S1 interbody fusion with posterior spinal fusion with instrumentation and iliac crest bone graft. PX3.

On April 4, 2003, Petitioner returned to Dr. Schiffman who released him to work with a permanent restriction of no lifting over 20 pounds and noted that he might have possible problems with heavy moving. *Id.* He instructed Petitioner to return as needed. *Id.*

On March 25, 2003, Petitioner saw Dr. Andersson at Midwest Orthopedics at Rush for a second opinion regarding his back. PX4. Dr. Andersson recommended a second epidural steroid injection prior to undergoing a multilevel fusion and discectomy. *Id.* Petitioner underwent the injection in April, but it did not help. *Id.* Petitioner also saw Dr. An on May 20, 2003 at Dr. Andersson's referral, who prescribed an intradiscal

electrothermal therapy ("IDET") procedure at L4-5 and L5-S1 to treat Petitioner's back pain. *Id.* The medical records reflect that, after extensive consideration and discussion with Dr. An as of September 9, 2003, Petitioner did not proceed with the IDET procedure. *Id.* Petitioner also testified that he decided not to undergo the recommended low back surgery due to an unrelated immunological disease that greatly decreased his chances of surviving surgery.

On December 10, 2003, Petitioner underwent an FCE which placed him at a sedentary to light duty functioning level with a maximum of 10 pounds lifting from waist to overhead, 15 pounds of lifting from waist to chest, no lifting below the waist level, recommended changing positions every 15 minutes, and to avoid stairs. *Id.* On December 18, 2003, Petitioner returned to Dr. Andersson who agreed with the limitations noted Petitioner's FCE results, but referred Petitioner to a pain management clinic and for acupuncture (as a possible pain relief alternative) for his low back. *Id.* Petitioner testified that he does not believe that he underwent any pain management treatment. *But see* PX5 (Petitioner reported that after he was placed at maximum medical improvement, he continued to see Dr. Ficaro, a chiropractic orthopedist specializing in pain management), PX2 (Petitioner reported going to pain management twice per week and for acupuncture in 2008), and PX7 (Petitioner reported to Ms. Entenberg that he underwent acupuncture with Dr. Ficaro in 2012).

Petitioner testified that he received a letter dated February 6, 2004 and told that someone would contact him about job placement. Then, he received a letter from Respondent's personnel department dated February 2, 2005 and on February 10, 2005 he met with someone from the personnel department to fill out forms and they discussed possible jobs. Petitioner testified that he did not hear back from them.

Petitioner returned to MercyWorks several times between 2005 and 2008. PX2. On February 7, 2005 he was examined, diagnosed with lumbar degenerative disc disease and status post three left wrist surgeries, placed at maximum medical improvement, and released to limited duty work including no repeated bending/stooping/squatting, ground level work only with no ladders/heights, minimum walking/climbing/use of stairs, no operating hazardous or fast moving machines, and sedentary work only allowing for a position change every 15 minutes. *Id.* On April 16, 2006, Petitioner's work restrictions were amended to include no prolonged standing, no repeated bending/stooping/squatting, and no lifting over 10 pounds. *Id.* On March 2, 2007, Petitioner's work restrictions were amended to include no repeated bending/stooping/squatting, minimal walking/climbing/use of stairs, and no lifting over 10 pounds. *Id.*

On October 23, 2007, Petitioner received another such letter and on October 29, 2007, he met with Ashley Pak where they discussed a watchman position. Petitioner testified that he told Ms. Pak that this job, which required him to work 16 hour shifts and to walk, was contrary to his restrictions. On May 21, 2008, Petitioner testified that he was instructed to report to the Jardine water plant for a security position. *See also* PX5. He testified that he only made it 12 hours into the 16 hour shift and could not work any further despite prescription use of Vicodin for pain at the time.

Petitioner returned to MercyWorks on March 18, 2008 at which time his work restrictions were amended to include seated duty if available, ability to alternate position as needed, no prolonged walking/standing, no repeated bending/stooping/squatting/pushing/jerking/twisting, ground level work only with no ladders/heights, and no lifting over 10 pounds. *Id.*

Petitioner submitted to an independent medical evaluation at Respondent's request on May 1, 2008 with Dr. Walsh. RX1. Dr. Walsh diagnosed Petitioner with lumbar degenerative disc disease and status post 4-corner fusion in the left wrist. *Id.* He concluded that there was no clear evidence of a causal relationship between

Petitioner's low back condition or mid carpal instability and his accident at work, however, he also opined that the accident did likely cause the distal ulnar fracture. *Id.*. Dr. Walsh noted that the medical records reflected a low back contusion and that, if Petitioner's degenerative disc disease was aggravated by the injury at work, it would have resolved 6-8 weeks thereafter. *Id.* Dr. Walsh further opined that Petitioner should be capable of performing the job duties of a watchman and that Petitioner's permanent restrictions were likely the result of the underlying degenerative condition and not related to the accident at work. *Id.*

On June 3, 2008, Petitioner saw Dr. Andersson who noted that he continued to be symptomatic from his severe degenerative disc changes with foraminal stenosis, central bulge and annular tear. PX4. Dr. Andersson issued permanent work restrictions limiting Petitioner to lifting no more than 10 pounds during an eight hour work day resulting in an "essentially sedentary" job. *Id.*

In a letter to Petitioner's counsel dated June 26, 2008, Dr. Andersson reiterated that while he believed Petitioner had severe degenerative disc disease in March of 2003, his accident in 2001 was serious enough to aggravate his underlying condition and cause the problems that he had since experienced. *Id.*

On July 7, 2008, Petitioner suffered an injury to his right wrist and was thereafter treated by Dr. Fernandez. RX2. Shortly thereafter, Petitioner was also diagnosed with complex regional pain syndrome. *Id.* Petitioner testified, and the medical records reflect, that this injury was not work-related.

Vocational Rehabilitation & Continued Medical Treatment

At Respondent's request, Petitioner met with David Pastavas ("Mr. Patsavas") of Independent Rehabilitation Services on November 26, 2008. PX6. Mr. Patsavas completed an initial vocational assessment report dated February 18, 2009 in which he opined that Petitioner was a candidate for vocational rehabilitation services, Petitioner needed additional training, and that he would work with Petitioner and Respondent to attempt to find job placement with Respondent. *Id.*

Mr. Patavas re-opened his file on August 21, 2009 and issued a report thereafter dated October 30, 2009. *Id.* Mr. Patsavas met with Petitioner on three more occasions. *Id.* Mr. Patsavas developed a resume for Petitioner, identified appropriate computer classes and skills training classes for him, noted that he would provide Petitioner with job leads, and noted that Petitioner was confident he could work in some positions with Respondent but was less optimistic regarding his employability elsewhere. *Id.*

The medical records reflect that Petitioner reported various physical activities and abilities while he saw Dr. Fernandez for treatment of his unrelated right hand condition. RX2. On cross examination questioning, Petitioner could not recall aggravating his symptoms or performing the activities as described in the medical or physical therapy records as follows:

- On September 9, and October 6, 2009, Petitioner reported to Dr. Fernandez and a physical therapist at Southwest Hand Rehab that he had attempted to chase or fight off three young men that were " 'robbing his [elderly] neighbor's house' " when he tripped and fell and landed with both hands outstretched resulting in bilateral wrist pain (worse on the right). *Id.*
- On September 23, 2009, Petitioner reported to a physical therapist that he had increased symptoms in the right hand "while running on a treadmill at the gym for approximately 1 hour[,]" that he "continued to run until he achieved his time goal[,]" and that his symptoms decreased after he stopped running. *Id.*

- On October 29, 2009, Petitioner reported "making gains in activity tolerance and returning to regular activity such as going to the gym." *Id.* He also reported that, on October 27, 2009, he "'may have overdone it' when he helped a friend erect a flagpole." *Id.* The physical therapy record goes on to reflect that "[Petitioner] dug the hole and opened heavy gravel bags, using his fingers to tear thick plastic. He has not been able to use his Right hand since that episode...."
- On November 3, 2009, Petitioner reported that "he performed heavy yard work and symptoms were exacerbated, especially during and following the task of pruning branches." *Id.*

Mr. Patsavas issued two more progress reports dated January 15, 2010 and March 21, 2010. *Id.* Petitioner underwent recommended computer training classes and continued to meet with Mr. Patsavas through March 11, 2010. *Id.* Petitioner had never worked with a computer prior to his training and used the "hunt and peck" typing method during training, for which the instructor recommended additional practice at home for Petitioner to become familiar with the computer and keyboard. *Id.* Petitioner was enrolled at Daley College for computer classes and scheduled to meet with Respondent's human resource office on March 15, 2010 to create an online job profile through Respondent's online job application system. *Id.*

After completing the computer training and additional meetings and with Mr. Patsavas, he issued a final report dated April 30, 2010. *Id.* Mr. Patsavas noted that, despite Petitioner's extensive work history in the field of engineering with Respondent, he had not been gainfully employed as an engineer for the past 10 years which could be a major barrier to returning to work as an engineer in any capacity. *Id.* Petitioner testified that he never received any job offers while searching for work.

Petitioner returned to Dr. Andersson on August 5, 2010, August 20, 2010 and September 28, 2010 at which time he again recommended a two-level fusion surgery, but noted that Petitioner's treating physician (Dr. Flaherty) recommended that Petitioner hold off on the surgery due to his unrelated immune system disorder. PX4; RX5. Petitioner declined the surgery. *Id.*

On June 30, 2011, Petitioner submitted to an independent medical evaluation with Dr. Butler at Respondent's request. PX8. Dr. Butler diagnosed Petitioner with lumbar degenerative disc disease, spinal stenosis and a lumbar strain. *Id.* He opined that these conditions were related to Petitioner's work accident of January 25, 2001. *Id.* He also opined that Petitioner required ongoing restrictions and that a FCE was not medically necessary at the time given that Petitioner's symptom level was too high to justify undergoing such a test. *Id.*

In a letter to Petitioner's counsel dated January 19, 2012, Dr. Andersson reiterated his belief that Petitioner's 2001 injury aggravated Petitioner's underlying degenerative disc disease and caused a disc herniation. PX4.

On April 18, 2012, Petitioner was evaluated by Susan Entenberg at Petitioner's counsel's request. PX7. Based on Petitioner's subjective reports, unidentified medical and rehabilitation records, an operating engineer job description, and as otherwise explained in her report, Ms. Entenberg concluded that Petitioner was not a vocational rehabilitation candidate, he sustained a reduction in earning capacity, and no stable labor market exists for Petitioner. *Id.*

Additional Information

Petitioner and his wife filed a three-count complaint (two counts by Petitioner and one count by Petitioner's wife) in the Circuit Court of Cook County, Illinois against Hyundai Construction Equipment U.S.A., Inc. on September 17, 2001 in connection with injuries sustained on January 25, 2001. RX3. The complaint notes that

Petitioner reported injuries of a personal and pecuniary nature whereas his wife alleged loss of consortium. *Id.* An unsigned settlement statement reflects a distribution of $40,000.00 total proceeds paying $20,000.00 to Petitioner and $20,000.00 to his wife. *Id.*

Regarding his current condition, Petitioner testified that he has no energy, lives in pain, cannot do the things that he used to do with his kids, and he sleeps during the day a lot; he is a whole different person now.

ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made a part of the Commission's file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

In support of the Arbitrator's decision relating to Issue (J), whether the medical services that were provided to Petitioner were reasonable and necessary, and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following:

The only medical bill in dispute involves Petitioner's treatment at University of Chicago with Dr. Mass, who provided a second opinion regarding Petitioner's left hand/wrist condition. Respondent does not dispute causal connection with regard to Petitioner's left hand/wrist condition as a result of Petitioner's January 25, 2001 work accident. The Arbitrator finds that the bill is for reasonable and necessary medical care incurred by Petitioner and submitted in Petitioner's Exhibit 1 and orders such bill to be paid by Respondent as provided by the Act. Petitioner stipulated at trial that Respondent is entitled to a credit for any payment it made related to this bill.

In support of the Arbitrator's decision relating to Issue (L), the nature and extent of Petitioner's injury, the Arbitrator finds the following:

It is undisputed that Petitioner sustained an accident at work which resulted in three surgeries to the left hand, a recommended two-level low back fusion and discectomy, which Petitioner refused due to the increased risk of death presented by an unrelated medical condition, and permanent sedentary work restrictions. Petitioner contends that he is permanently and totally disabled as a result of his work accident. The Arbitrator views the evidence differently.

Given the totality of this record, the Arbitrator is not persuaded by the opinion of Petitioner's vocational rehabilitation expert, Ms. Entenberg, regarding Petitioner's lack of employability. Ms. Entenberg opined that Petitioner was wholly unemployable, that no stable labor market exists for him, and that he was not a good candidate for vocational rehabilitation services. Her opinions, however, are based largely on Petitioner's subjective complaints and recitation of his condition. Ms. Entenberg's report is devoid of the contradictory evidence submitted at this trial which reflects that Petitioner's physical capabilities were beyond that which he reported to Ms. Entenberg or, indeed, about which he testified at trial. To wit: Petitioner was unable to recall on cross examination whether he engaged in physical activities including helping install a flagpole, performing heavy yard work, running on a treadmill for an hour, and helping to "chase down" three men attempting to rob his elderly neighbor. Recitation of these acts are conspicuously absent in Dr. Andersson's records and indicate a higher level of physical capability than that of an individual as limited as Petitioner would have the Arbitrator believe he is based on his testimony at trial.

Petitioner's treating physicians and Respondent's Section 12 examiners, alike, opine that Petitioner is capable of at least performing sedentary work up to eight hours per day. Petitioner's one unsuccessful attempt to return to work for Respondent on May 21, 2008 as a watchman was closely followed by permanent work restrictions limiting him to sedentary work 8 hours per day or less and extensive vocational rehabilitation efforts. There is no evidence that Petitioner searched for any employment other than during the period of time when he worked with Mr. Patsavas and Petitioner's motivation, or lack thereof, to find employment is notable given that Petitioner has a college degree and taken in conjunction with discrepancies between his testimony at trial and reports to Ms. Entenberg compared to medical records. While Petitioner certainly needs accommodations for his physical condition, the Arbitrator finds the opinion of Mr. Patsavas that Petitioner is employable to be persuasive.

Based on the record as a whole, and as explained in detail above, the Arbitrator finds that Petitioner has established permanent partial disability to the extent of 40% loss of use of the person as a whole pursuant to Section 8(d)(2) and 35% loss of use of the left hand pursuant to Section 8(e) of the Act.

In support of the Arbitrator's decision relating to Issue (O), Section 5(b) credit, the Arbitrator finds the following:

Petitioner and his wife filed a three-count complaint against a third party (Hyundai) and settled the case for $40,000 with $20,000 paid to Petitioner and $20,000 paid to Petitioner's wife. Petitioner did not testify about the lawsuit, settlement or otherwise provide any evidence in contravention of Respondent's Exhibit 3. Respondent asserts that it is entitled to a credit based on the proceeds of this settlement.

Section 5(b) of the Illinois Workers' Compensation Act ("Act") provides that where a claimant sustains a compensable injury under circumstances creating legal liability for damages on the part of a third party, the claimant may take action to recover such damages against the third party. 820 ILCS 305/5(b). If the action against the third party results in a judgment "obtained and paid, or settlement is made with such [third party], either with or without suit, then from the amount received by such employee or personal representative there *shall be paid to the employer* the amount of compensation paid or to be paid by him to such employee or personal representative including amounts paid or to be paid pursuant to paragraph (a) of Section 8 of this Act." *Id* (*emphasis added*). Section 5(b) also states that "[i]n such actions brought by the employee or his personal representative, he *shall forthwith notify his employer* by personal service or registered mail, of such fact and of the name of the court in which the suit is brought, filing proof thereof in the action." *Id* (*emphasis added*). Thereafter, the employer may join in the action. *Id.*

In *Scott v. Industrial Commission*, the Illinois Supreme Court held that an employer may make a claim for credits on completion of the third party suit without having obtained a lien in that proceeding and that the employer does not waive its "ability to claim credits under section 5(b)." *Scott*, 184 Ill.2d 202, 216-17, 703 N.E.2d 81 (1998). The Court further noted that the Commission "is the proper place to determine whether an employer or its insurer is entitled to credits for amounts received by an employee in a third-party proceeding when lien rights have not been adjudicated by the circuit court." *Id.*

Since its decision in *Scott*, the Court has addressed the purpose of Section 5(b) of the Act in various circumstances. In *Taylor v. Pekin*, the Court reiterated its prior holding regarding the legislative purpose of Section 5(b), which it stated was enacted to allow both the employer and employee "'an opportunity to reach the true offender while preventing the employee from obtaining a double recovery.'" *Taylor*, 231 Ill.2d 390, 397, 899 N.E.2d 251 (2008) (*citing In re Estate of Dierkes*, 191 Ill. 2d 326, 331-32, 730 N.E.2d 1101, 246 Ill. Dec.

636 (2000), *quoting J.L. Simmons Co. ex rel. Hartford Insurance Group v. Firestone Tire & Rubber Co.*, 108 Ill. 2d 106, 112, 483 N.E.2d 273, 90 Ill. Dec. 955 (1985)). The Court went on to explain the 25% fee provision contained in Section 5(b) holding that it was added to the Act to ensure that both the employer and employee shared in the necessary costs of an employee's recovery against a third party. *Taylor*, 231 Ill.2d at 397.

The Illinois Supreme Court also addressed the propriety of allocating a portion of a third-party settlement for loss of consortium, among other issues, in *Glenn v. Johnson*. 198 Ill.2d 575, 579-80, 764 N.E.2d 47 (2002). In its analysis of facts not entirely applicable in Petitioner's case, the Court ultimately found that "the amount recovered for loss of consortium is for [the surviving spouse's] exclusive benefit and not subject to the workers' compensation lien of the decedent's employer." *Id.*, at 583.

In this case, Petitioner failed to notify Respondent as required by Section 5(b) of the Act about the lawsuit or settlement involving the accident occurring on January 25, 2001 and failed to pay Respondent its portion of the settlement money allocated to him minus costs. While Petitioner's failure to inform Respondent of his and his wife's lawsuit against a third party is unseemly and resulted in a $20,000 recovery for loss of consortium—an equal amount apportioned to Petitioner for his personal injuries—the Arbitrator finds that such recovery is exclusively for Petitioner's wife's benefit and not subject to the Act. *See Glenn*, 198 Ill.2d at 583. Such conduct may move employers and insurers to continually track publicly available records to ensure that their 5(b) rights are fully adjudicated when such claims are filed by injured workers against third parties.

Based on all of the foregoing, the Arbitrator finds that Respondent shall have a credit of $15,630.53 ($20,000 – $3,750 (75% of the $5,000 attorney's fees) – $619.47 (75% of the $825.96 costs)) pursuant to Section 5(b) of the Act commensurate with Petitioner's third party recovery of $20,000.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☒ 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

Kenneth Johnson,
Petitioner,
vs.

14IWCC0042
NO: 12 WC 28643

G & D Integrated,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of meical expenses, UR non-certification and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 31, 2013 is hereby affirmed and adopted.

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 $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: JAN 2 3 2014
KWL/vf
O-11/25/13
42

Daniel R. Donohoo

Thomas J. Tyrrell

DISSENT

I respectfully dissent from the decision of the majority. I would find Petitioner failed to meet his burden of proof. I would reverse the Arbitrators decision. Upon a thorough review of the record, the objective evidence is that Petitioner has documented evidence of multilevel stenosis at C3-4, C4-5 and C5-6. There is no objective evidence that any nerve root is impacted by the stenosis. It is only Dr. O'Leary speculative conclusion that one, the C5 nerve root, could be contacted. Given the lack of any evidence of cervical impingement at any level, I would reverse Arbitrator Mathis' finding of a causal connection and of his awarding of the surgery proposed by Dr. O'Leary.

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0042

JOHNSON, KENNETH
Employee/Petitioner

Case# 12WC028643

G & D INTEGRATED
Employer/Respondent

On 5/31/2013, 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:

1004 BACH, ROBERT W
110 S W JEFFERSON ST
SUITE 410
PEORIA, IL 61602

0264 HEYL ROYSTER VOELKER & ALLEN
BRAD INGRAM
124 S W ADAMS ST SUITE 600
PEORIA, IL 61602

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

- ☐ 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

14IWCC0042

Kenneth Johnson
Employee/Petitioner

v.

G & D Integrated
Employer/Respondent

Case # **12** WC **28643**

Consolidated cases: **None**

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 Mathis**, Arbitrator of the Commission, in the city of **Peoria**, on **March 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 **Prospective Medical and UR non-certification**

14IWCC0042

FINDINGS

On **July 11, 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 **$32,936.28**; the average weekly wage was **$633.39**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **1** dependent children.

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

Respondent ***has in part*** 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 $ under Section 8(j) of the Act.

ORDER

Respondent is ordered to provide and pay for future medical costs including surgery as prescribed by Dr. O'Leary, including all ancillary medical costs concerning same and all periods of temporary total and/or temporary partial disability incurred for treatment resulting from these procedures.

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

ST Mathis

Signature of Arbitrator **STEPHEN MATHIS**

5-23-2013

Date

MAY 31 2013

FACTS

Petitioner, age 46, has been employed by Respondent assembling track links for Caterpillar tractors for approximately 10 years. On July 11, 2012 he was reaching back while facing forward to lift two 8 lb. track links onto a conveyor belt when he felt a pop in his right shoulder. He testified he noticed a sharp pain in the shoulder, locating it in the right upper back/trapezius area.

Petitioner's supervisor immediately sent him to IWIRC, the company doctor. He was seen there by Dr. Dru Hauter who noted that Petitioner complained of "a constant ache in his right shoulder and behind his right shoulder..." (Respondent's Exhibit 6).

Dr. Hauter put Petitioner on a 10 lb. weight restriction for his right arm, started him in physical therapy, prescribed Naproxen, and ordered an MRI of the right shoulder.

Petitioner testified he continued to have pain in his right shoulder/trapezius and arm weakness. When his symptoms did not improve, Dr. Hauter referred him to Midwest Orthopedics where he was seen on August 1, 2012 by Dr. Brent Johnson. Dr. Johnson noted that his primary complaint was "back pain". Petitioner testified that he was experiencing pain which he located in the right upper back. Dr. Johnson reviewed the MRI of the right shoulder which showed a labral tear and a cyst. Dr. Johnson did not feel these findings explained the "global weakness" in Petitioner's right arm and ordered an EMG study.

The EMG showed carpal tunnel, cubital tunnel and denervation encompassing C5, C6 and C7 nerve roots. It was felt that cervical radiculopathy was less likely and an upper trunk brachial plexus lesion more likely the cause of these findings.

Dr. Johnson referred Petitioner to his partner, Dr. Patrick O'Leary, a board certified spine specialist. Dr. O'Leary examined Petitioner on September 25, 2012 and noted a positive Spurling maneuver and profound weakness of the right arm in the biceps, wrist extension and deltoid. Left arm strength was normal.

Dr. O'Leary noted that an MRI of the cervical spine done on September 20, 2012 showed significant neuroforaminal stenosis at C4-C5, C5-C6 and to a lesser extent C3-C4 on the right. He recommended an MRI of the brachial plexus on the right to rule out a lesion. Based upon his objective examination findings, Dr. O'Leary felt Petitioner's injury was an aggravation of the degenerative arthritis and stenosis in his cervical spine. However, before recommending surgery, he wanted an MRI of the brachial plexus to rule out a lesion.

The brachial plexus MRI was performed on February 13, 2013 and was normal. Dr. O'Leary recommended an anterior cervical discectomy with fusion the next day.

Respondent sent Petitioner for an Independent Medical Examination to Dr. Morris Soriano on January 8, 2013. Dr. Soriano concluded that Petitioner's description of his injury could not have caused or aggravated the preexisting cervical spurring and neuroformainal narrowing shown on the MRI of September 20, 2012 at the

C3-C4, C4-C5, and C6-C7 levels. He further opined that Petitioner was most likely suffering from a "viral inflammation of the brachial plexus" which would heal in three to six months.

Dr. O'Leary's evidence deposition, taken on December 13, 2012, was introduced as Petitioner's Exhibit 3. He testified that he was board certified and restricted his practice to spinal surgery, estimating that he had performed 500 such surgeries in the past two years. Dr. O'Leary stated that it was not uncommon for patients with neck, shoulder and trapezius pain to undergo a number of studies to properly diagnose their problem. He stated that he regularly saw people who complained of shoulder problems that turned out to be cervical or neck related (p. 33, 29) and it was "incredibly common" to see patients where it is initially unclear whether they were suffering from neck or shoulder pathology (p.40). In summary, Dr. O'Leary stated that if the MRI of the brachial plexus was normal, that he would opine for the record that:

> "...this injury aggravated an underlying condition in his neck, and it is likely the responsible culprit for his arm weakness..." (p. 67).

In his note of February 26, 2013, he recommended a three level anterior discectomy with fusion at C3-C4, C5-C6, and C6-C7, and placed Petitioner under a 10 lb. weight restriction (Petitioner's Exhibit 1).

Dr. Soriano authored a second report dated March 13, 2013, in which he expressed the opinion that injury to the cervical spine was not consistent with Petitioner's description of the accident. In fact, he expressed the opinion that it:

> "...would have taken a fall from several stories, a massive car accident, or a crushing injury to the spine to have created an acute aggravation of three degenerative...levels."

Dr. Soriano reiterated his "brachial plexitis" diagnosis.

Dr. O'Leary authored a follow up report dated February 26, 2013 in which he reiterated that he had no doubt that the injury on July 11, 2012 aggravated Petitioner's cervical disc osteophyte complexes contributing to the stenosis shown on the cervical MRI and producing nerve root level symptoms in his right arm. He disagreed with Soriano's opinion as to the trauma necessary to aggravate the cervical pathology. He responded to Dr. Soriano's "viral plexitis" theory, stating there was no evidence to support such a finding, and noting that such a condition would be expected to improve over time. Petitioner testified he has had no improvement in his symptoms since the injury.

Dr. O'Leary concluded that:

> "...It is impossible to determine the exact etiology of the patient's symptoms, but given his overall clinical history, his examination is consistent with neck pain and a Spurling maneuver which reproduces cervical pathology and nerve root level symptoms which correlate with his exam, I believe the patient would benefit from the 3-level anterior cervical discectomy and fusion as I described..." (Petitioner's Exhibit 2, pg. 2)

At the hearing, Petitioner testified that prior to July 11, 2012, he had never suffered an injury to his right arm, right shoulder, or neck and had never been treated for any condition of ill-being in those areas. He had never missed work due to any right upper extremity problems, was not under treatment for a chronic condition of any kind, and was taking no medication prior to the injury on that date.

FINDINGS WITH RESPECT TO DISPUTED ISSUES:

With regard to (F) Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator makes the following findings:

The Petitioner has carried the burden of showing that his current condition of ill-being is causally connected to the injury of July 11, 2012. The undisputed evidence is that Petitioner had no prior injury or treatment to his right arm, shoulder or neck areas. Following the injury on July 11, he has been consistently treated by doctors selected by his employer or by the company doctor for symptoms which are objectively shown to be present in his right arm, especially profound weakness.

Petitioner's treating doctor, Dr. Patrick O'Leary is a surgeon who explained at great length on cross examination in his evidence deposition that he frequently encounters patients with symptoms which require multiple tests to diagnose and often include both neck and shoulder complaints.

Petitioner's treating doctors have by the process of elimination and through the use of three MRI examinations, one CT scan, numerous x-rays, and an EMG, determined that Petitioner's symptoms are the result of an injury to the cervical spine.

The only alternative explanation offered by the Respondent is Dr. Soriano's assertion that Petitioner may be suffering from a viral inflammation of the brachial plexus. However, Dr. Soriano believes that this condition would improve and/or heal within three to six months. Petitioner testified at the hearing on March 27, 2013, almost eight and a half months after his symptoms began, that his symptoms had not improved and remained constant since the date of accident.

With regard to (J) Were the medical services that were provided to Petitioner reasonable and necessary? And (O) Prospective Medical and Utilization Review – Non-Certification, the Arbitrator makes the following finding:

Respondent's Exhibit 3 is a Utilization Review and Non-Certification of the surgery recommended by Dr. O'Leary. It has been rebutted by the totality of the medical evidence as set forth above, including Midwest

Orthopedics records of treatment, Dr. O'Leary's evidence deposition, and Dr. O'Leary's supplemental report of February 26th.

The Utilization Review Report of March 7, 2013 from Dr. James York gives as his reasons for denying approval that there has been no trial of injections or other conservative measures and that:

"...At present it is unclear regarding the origins of the claimant's neurologic dysfunction..."

In his supplemental report, Dr. O'Leary specifically states that it is his opinion that Petitioner is suffering from cervical pathology which he intends to address surgically. In addition, Dr. O'Leary testified during his evidence deposition that if the MRI of Petitioner's brachial plexus was negative, it would be his conclusion that the injury aggravated Petitioner's cervical condition and caused his symptoms.

Further, the medical evidence in this case, taken as a whole, demonstrates that Petitioner's treating doctors have determined the source of his symptoms to be an injury to the cervical spine. As to the election to proceed with surgery rather than injections, Dr. O'Leary explained this decision by stating in his February report:,

"...I think that further delaying surgery at this point is detrimental to him..."

This judgment by Petitioner's doctor is entitled to substantial weight in deciding whether the proposed surgery is reasonable and necessary and should be ordered in spite of non-certification. Petitioner is not required to undergo further non-surgical treatment if doing so would endanger his health.

For these reasons, the anterior cervical discectomy and fusion surgery is found to be reasonable and necessary treatment to address Petitioner's injury of July 11, 2012 and Respondent is ordered to approve and pay for such surgery and related treatment.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☒ 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

Scott Darby,

Petitioner,

14IWCC0043

vs.

NO: 12 WC 25344

Armon, Inc. (F.E. Moran),

Respondent.

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, medical expenses, prospective medical care, 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 March 26, 2013 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.

No bond is required for removal of this cause to the Circuit court by Respondent. 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: JAN 2 3 2014

Michael J. Brennan

Mario Basurto

David L. Gore

MJB:bjg
0-1/16/2014
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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0043

DARBY, SCOTT
Employee/Petitioner

Case# 12WC025344

ARMON INC (FE MORAN)
Employer/Respondent

On 3/26/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

2277 PATRICOSKI, MARK G PC
1755 S NAPERVILE RD
SUITE 206
WHEATON, IL 60189

2284 LAW OFFICES OF LAWRENCE COZZI
ASHLEY C VONAH
27201 BELLA VISTA PKWY STE 410
WARRENVILLE, IL 60555

STATE OF ILLINOIS)
)
COUNTY OF)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(B)

14IWCC0043

Scott Darby
Employee/Petitioner

Case # 12WC25344

v.

Armon, Inc (F.E. Moran).
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 **Gregory Dollison**, Arbitrator of the Commission, in the city of **New Lenox, Illinois**, on December 10, 2012. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **July 13, 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 **$124,437.73**; the average weekly wage was **$2,393.03**.

On the date of accident, Petitioner was **50** years of age, ***single*** 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 **$7772.82** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of **$7772.82**.

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

ORDER

Respondent shall authorize the surgical procedure recommended by Dr. Gunderson.

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

3/25/13
Date

ICArbDec19(b)

MAR 26 2013

FINDINGS OF FACT:

Petitioner testified that he is a 501 Aurora Union welder. Over the last ten years, he has worked for 50 – 60 employers. In June, 2012, he was sent to work for F.E. Moran (Respondent) at Larkin High School in Elgin, Illinois. He was assigned to work in a tunnel welding pipes. He testified that he worked in a tunnel that was 4 ½ feet tall. The tunnel had a 200 foot straight away, made an 'S' turn for 30 feet, then was straight for another 100 to 200 feet. The pipes were 20 feet long and weighed 18.5 pounds per foot. Petitioner worked with one other person installing pipe during the first week in the tunnel. Petitioner worked with two other people installing pipe during the second week in the tunnel. Petitioner testified that he had to "shoulder" the pipe, meaning he had to lift and rest it on his shoulder, prior to placing it in the hangers. He testified that every day after working in the tunnel, he felt very sore and iced his shoulders at night. He worked in the tunnel for approximately two-and-a-half weeks, or through July 11, 2012.

Upon completing work in the tunnel, Petitioner worked in the mechanical room. He testified that on July 13, 2012, two co-workers, Andy and Dave, asked him to assist lifting a large piece of pipe. The pipe was 10 feet long and weighed between 240 and 260 pounds. It rested on a jack stand approximately 36 to 40 inches off of the ground. Petitioner lifted it by positioning the pipe on his shoulder with his knees bent. Andy, Dave and Petitioner lifted the pipe at the same and carried it 60 to 70 feet to its destination. Petitioner testified that he lifted the pipe overhead to place it on a stand. When he pushed it overhead, Petitioner testified that he felt a burn in his left shoulder. Petitioner testified that after work on July 13, 2012, he informed his supervisor that he was sore and would not be working on the weekend/Saturday. He did not mention the burn to anyone at the work site.

Respondent has sign-out forms for employees with a line that asks, "did I get injured today?" Petitioner wrote "no" on the sign-out forms (See RX 2) during the timeframe he was working in the tunnel. Petitioner testified that he "was never advised to put on form when experiencing sprain/strain." Petitioner indicated that as in past, he presumed it was an ache/ pain which was not unusual for this line of work and it would resolve over the weekend. Petitioner testified that he "had no intention of seeking medical attention, he had every intention of returning to work Monday."

Petitioner testified that after work on July 13, 2012, his shoulder pain got progressively worse. By Saturday, his shoulder was so stiff that he could not move it. He called KSB Hospital in Dixon, IL. He was scheduled to see Dr. Gunderson.

Petitioner presented to Dr. Gunderson on July 16, 2012. At that visit, Petitioner completed a "Patient History Intake Form" indicating that his injury occurred "2 weeks ago" and was "possibly" job related. Petitioner wrote, "Excessive strenuous work resulting in shoulder soreness – persistently getting worse." After performing an examination and obtaining x-rays, Dr. Gunderson assessed left shoulder rotator cuff tear, full thickness. A MRI was ordered and Petitioner was advised to return to activities gradually, as tolerated and "as per limitations and restrictions discussed." It should be noted that the "Subjective" portion of Dr. Gunderson's notes show, "Workers-comp related (shldr): no." (PX 1)

Petitioner returned to Dr. Gunderson on July 20, 2012 after getting an MRI. Per Dr. Gunderson, the MRI revealed a partial thickness rotator cuff tear. At that time, Dr. Gunderson administered a subacromial space injection. Again, Petitioner was advised to return to activities gradually, as tolerated and "as per limitations and restrictions discussed."

Petitioner testified that after receiving the MRI, he spoke with "Ray and the safety guy." He reportedly informed them that he had a rotator cuff injury and required surgery. Petitioner indicated that he later learned that he was supposed "to write on sheet about any injury." Petitioner provided that he was never told to prepare any additional documents regarding an accident.

Petitioner followed up with Dr. Gunderson on August 22, 2012. Records from this visit show Dr. Gunderson noted that Petitioner's left shoulder problem was work related. Petitioner reported worsening shoulder complaints. Physical therapy was ordered. Dr. Gunderson noted that if therapy failed, surgery would be considered. Again, Petitioner was advised to return to activities gradually, as tolerated and "as per limitations and restrictions discussed." (PX 1)

On August 22, 2012, Dr. Gunderson authored a statement indicating that "...while I was not clear that there was a specific injury that occurred at work that his type of job would be the kind of job that would be certain to elicit or exacerbate symptoms such as his with the chronic overhead lifting and activities which are the highest risk factors for rotator cuff pathology." The doctor further stated, "In my opinion, it is at least as likely as not that his injury was caused by his repetitive overhead lifting work, especially given the temporal relationship of his symptoms and his recent episode of overuse at work..." The doctor also felt there was a "likelihood" Petitioner would require surgery. (PX 1)

Petitioner testified that his treating physician, Dr. Gunderson, did not provide him with documentation in the form of Out of Work slips indicating that he could not work or disability slips indicating he had work restrictions. Petitioner admitted that he did not provide the employer with any type of Out of Work slip or disability slip. Petitioner obtained light duty work in Dallas, Texas from a former employer, Application Services, Inc. He worked six weeks at the same rate of pay.

Christopher Lee Wright testified on behalf of Respondent. He has been employed by F.E. Moran since July, 2012 and worked with Petitioner for one week while in the tunnel. He is an apprentice plumber and pipefitter and his duties included installing pipe in the tunnel. Mr. Wright described the conditions in the tunnel, and the various tools available to assist in lifting pipe into the hangers. He testified that in order to lift the pipe into the hangers at the top of the tunnel, one person would push down on one end of the pipe, causing the other end to rise into the air. The raised end was slid into a hanger, which supported the pipe as the other end was placed into the adjacent hanger. This method allowed the employees to lift pipe without having to do it all manually. Mr. Wright also testified that working in the tunnel required working on your knees and in a squatting position. Lastly, Mr. Wright testified that soreness and stiffness is part of the job. He provided that unless he experiences "severe pain [he] would not check the box."

Ray Lavery testified on behalf of Respondent. He was the Project Superintendent and supervised the project at Larkin High School. He testified that he learned of Petitioner's injury on July 17, 2012 after receiving a phone call from Petitioner. Petitioner informed Mr. Lavery that he had gone to a doctor because he hurt his shoulder. X-rays were taken but Petitioner stated that he needed an MRI. Mr. Lavery asked Petitioner what happened, and Petitioner did not give a specific answer and did not say that the injury was work-related. Mr. Lavery informed Petitioner that he had to come in and fill out an accident report. Petitioner never returned to the work site to fill out an accident report nor did he provide disability slips or work restrictions.

On cross-examination, Mr. Lavery was asked if he explained the Safety Sign-In Sheet to Petitioner. Mr. Lavery responded affirmatively, indicating that on the first day Petitioner arrived at the project site, he informed Petitioner that if he had a cut or bruise to let the employer know. Mr. Lavery also indicated that an employee would not mark "yes" on the sheet if they experienced stiffness or soreness.

Jason Galoozis testified on behalf of Respondent. He has been employed as the Corporate Safety Director for F.E. Moran since August 18, 2010. He is knowledgeable about the "restrictive duty program" which is a program used by Respondent to accommodate employees with work restrictions. Through the program, Respondent has brought back to work 95-97% of injured workers at their regular rate of pay in a light duty capacity while injured. In order for an employee to be placed in the program, the employee must be seen at Concentra, provide documentation of work restrictions and pass a drug screen. Mr. Galoozis testified that Petitioner was never seen at Concentra and never provided documentation of work restrictions. To Mr. Galoozis' knowledge, Petitioner had no contact with Respondent after his call to Ray Lavery on July 17, 2012. Petitioner did not inform Respondent of the name of his treating physician. Given the nature of Petitioner's injury, Mr. Galoozis believed Respondent could have accommodated a light-duty work restriction from a physician. Mr. Galoozis could not confirm that Respondent provided Petitioner with safety training or orientation.

Petitioner testified that prior to the instant claim, he had no previous Worker's Compensation or injury claims (other than a burn injury in the 80's) and had never made previous shoulder complaints or sought/obtained medical attention for shoulder injuries.

At Respondent's request, Petitioner underwent a Section 12 examination with Dr. Nikhil Verma on November 29, 2012. In addition to performing an examination Dr. Verma obtained a history and reviewed the medical records generated by Dr. Gunderson. In his report, Dr. Verma noted that he also reviewed witness statements from Dennis Johnston, Jr., Raymond Lavery and Christopher Wright. Dr. Verma diagnosed left shoulder AC joint arthrosis with mild impingement. Also noted was degenerative rotator cuff tear with degenerative arthropathy. Dr. Verma opined that Petitioner's condition was not work related. The doctor explained that Petitioner's history was not consistent with acute trauma. He provided that the witness reports do no indicate that any specific acute traumatic event occurred. Dr. Verma noted that the patient intake form indicated that he had onset of symptoms over two weeks and that it was possibly related to work, but provided no distinct history of injury or trauma. Dr. Verma felt the surgical recommendation was appropriate but same was related to degenerative condition and not related to Petitioner's work activities. (RX 1)

With regard to issue (C) whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner sustained an accidental injury that arose out of and in the course of his employment with Respondent on July 13, 2012. The Arbitrator notes that there was no evidence of any pre-existing left shoulder complaints of pain and/or medical treatment by Petitioner prior to employment with Respondent. There was no dispute that for approximately 3 weeks prior to the injurious occurrence on July 13, 2012, Petitioner was engaged in extensive and heavy lifting of piping material in a small tunnel for Respondent. The work performed by Petitioner required extensive overhead lifting as well as resting heavy piping on his shoulder prior to installation. Additionally, Petitioner assisted in lifting, carrying and overhead work of oversized piping on July 13, 2012.

Petitioner's unrebutted testimony demonstrate that he was subjected to repetitive and extensive overhead lifting while working in the tunnel for Respondent which resulted in soreness in his shoulders on each day. He also testified to experiencing a burning sensation in his left shoulder while manipulating oversize piping on July 13, 2012.

With respect to Respondent sign-out form wherein Petitioner wrote "no" in the area that asks, "did I get injured today?", Petitioner credibly testified that he "was never advised to put on form when experiencing sprain/strain." Petitioner indicated that as in past, he presumed it was an ache/pain which was not unusual for

this line of work and it would resolve over the weekend. Petitioner testified that he "had no intention of seeking medical attention, he had every intention of returning to work Monday." However, by Saturday, his shoulder was so stiff that he could not move it. At that point Petitioner sought medical attention. Petitioner's testimony is buttressed by the testimony of Mr. Wright who testified that soreness and stiffness is part of the job and that unless he experienced "severe pain [he] would not check the box." Also Mr. Lavery also indicated that an employee would not mark "yes" on the sheet if they experienced stiffness or soreness.

With regard to issue (F) whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

The evidence in this case demonstrates that Petitioner has performed welding services for many years and has worked with 50 to 60 different employers. Prior to the instant claim, he had no left shoulder complaints nor had he seen a medical provider for same. During the three weeks prior to the date of accident, Petitioner was involved in continuous and extensive overhead lifting of heavy piping equipment. Additionally, on July 13, Petitioner testified that he assisted in lifting oversized heavy piping that resulted in a burning sensation to his left shoulder which was subsequently diagnosed by the treating physician as a rotator cuff tear requiring surgery. Petitioner's testimony is consistent with the work injury. Dr. Gunderson's diagnosis is also consistent with the work. During Petitioner's initial examination, medical notes indicated that the injury was possibly job related. Dr. Gunderson ordered an MRI and concluded a rotator cuff tear injury. On August 22, 2012, Dr. Gunderson wrote, "...while I was not clear that there was a specific injury that occurred at work that his type of job would be the kind of job that would be certain to elicit or exacerbate symptoms such as his with the chronic overhead lifting and activities which are the highest risk factors for rotator cuff pathology." The doctor further stated, "In my opinion, it is at least as likely as not that his injury was caused by his repetitive overhead lifting work, especially given the temporal relationship of his symptoms and his recent episode of overuse at work..."

Relying on Petitioner's credible testimony, the sequence of events and the records from Dr. Gunderson, the Arbitrator finds that Petitioner's left shoulder condition of ill-being is causally related to his employment with Respondent on July 13, 2012.

With regard to issue (K) whether Petitioner is entitled prospective medical care, the Arbitrator finds as follows:

Having found the requisite causal connection, the Arbitrator finds that Respondent shall authorize the surgery as prescribed by Dr. Gunderson.

With regard to issue (L) whether Petitioner is entitled to TTD, the Arbitrator finds as follows:

Although the Arbitrator finds that Petitioner sustained a compensable accident that resulted in left shoulder pathology, there is insufficient evidence to substantiate an award of any temporary total disability to date. Dr. Gunderson examined Petitioner on July 16, 2012, July 20, 2012 and August 22, 2012 and with respect to restrictions, indicated that Petitioner could "return to activities gradually, as tolerated, and as per limitations and restrictions discussed today." Dr. Gunderson did not indicate that Petitioner was temporarily totally disabled or restricted from work. Petitioner testified that he was never provided with Out of Work slips or documentation that he was unable to work, and in turn, never provided any Out of Work slips to Respondent. Also, in Dr. Gunderson's narrative report on August 22, 2012, there is no indication that Petitioner was unable to or restricted from work.

In order for a Petitioner to be awarded TTD benefits, he must show not only that he did not work, but also that he was unable to work. *Shafer v. Illinois Workers' Compensation Commission*, 976 N.E. 2d 1 (2011).

The record does not contain any medical documentation to support Petitioner's allegation that he is entitled to TTD benefits.

Additionally, it is undisputed that Petitioner did not provide disability documentation to Respondent. Had he done so, based on Jason Galoozis' testimony, it is likely that Respondent would have been able to accommodate Petitioner's work restrictions at his regular rate of pay. Mr. Galoozis testified that through the "restrictive duty program," Respondent can accommodate 95 – 97% of employees with work restrictions.

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 Causal connection	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

HERMELINDA NEVAREZ,

Petitioner,

14IWCC0044

vs.

NO: 04 WC 16155

SLOANE VALVE COMPANY,

Respondent.

DECISION AND OPINION ON REMAND FROM THE CIRCUIT COURT

This matter comes before the Commission on Remand from the Circuit Court of Cook County. In the Order and Memorandum of Decision and Judgment dated March 15, 2012, the Honorable Robert Lopez Cepero vacated the Decision of the Commission entered on May 5, 2011. Judge Cepero ordered the Commission to enter an Order finding medical causation of the right shoulder injury for the accident date of February 13, 2004. The Court further ordered the Commission to determine the amount due for permanent partial disability, temporary total disability and the amount due for medical bills.

This matter was tried before Arbitrator Kurt Carlson on May 2, 2006. The issues in dispute were causal connection between the accident and the right hand and right shoulder condition. In his Decision dated July 17, 2006, the Arbitrator found causal connection between the accident of February 13, 2004 and the Petitioner's right hand condition. An award of two percent loss of use of the right hand was entered. The Arbitrator found no causal connection between the accident and the right shoulder injury. Temporary total disability benefits, medical expenses and permanent partial disability benefits were denied.

The Petitioner filed a timely review. The Commission affirmed and adopted the Decision of the Arbitrator on February 11, 2008.

The Petitioner filed a timely summons to the Circuit Court of Cook County. The Honorable Elmer Tolmaire, III entered an Order dated April 29, 2009 vacating the Decision of the Commission. The Court remanded the case back to the Commission to address factual issues raised in its April 29, 2009 Order.

The Commission reviewed the entire record and issued its Decision and Opinion on Remand on May 5, 2011. The Commission addressed each factual issue raised by the Honorable Tolmaire, III. The Commission issued a thorough Decision and cited facts that are replete in the record in support of its Decision. Based on its review of the record, the Commission affirmed and adopted the Decision of the Arbitrator.

The Petitioner filed a timely summons to the Circuit Court of Cook County. Judge Cepero entered a new Order on March 15, 2012 vacating the Decision of the Commission. Judge Cepero ordered the Commission to enter an Order finding medical causation of the right shoulder injury for the accident date of February 13, 2004. The Court further ordered the Commission to determine the amount due for permanent partial disability, temporary total disability and medical bills.

The Respondent filed a timely summons to the Appellate Court. In its Order dated August 23, 2012, the Appellate Court found that it lacked jurisdiction to hear the appeal. Therefore, the Appellate Court dismissed the appeal for want of jurisdiction.

Solely due to the Order from Judge Cepero, the Commission finds Petitioner's right shoulder injury is casually related to the work accident of February 13, 2004. The Petitioner is entitled to TTD from March 5, 2004 through January 21, 2005, representing 46 weeks of disability. The Commission notes that the Respondent stipulated to the TTD period in the Request for Hearing dated May 2, 2006. Further, the Commission awards the Petitioner medical expenses in the amount of $51,213.59. As a result of the accident, the Commission finds that the Petitioner sustained a partial thickness tear of the right rotator cuff representing 12.5% loss of use of the person-as-a-whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on July 17, 2006 is reversed in part as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $405.06 per week for the period of 46 weeks, from March 5, 2004 through January 21, 2005, which is the period of temporary total disability for which compensation is payable.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the Petitioner the sum of $364.56 per week for a further period of 62.5 weeks, as provided by

Section 8(d)(2) of the Act, because the injuries sustained caused 12.5% loss of use of the person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the Petitioner the sum of $364.56 per week for a further period of 3.8 weeks, as provided by Section 8(e) of the Act, because the injuries sustained caused 2% loss of use of the right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner medical expenses pursuant to Section 8(a) of the Act not to exceed $51,213.59 with Respondent entitled to a credit in the amount of $50,933.59 pursuant to Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the remainder of the Decision of the Arbitrator filed on July 17, 2006 is affirmed and adopted.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have a 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 $43,100.00. 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: JAN 2 3 2014

Michael J. Brennan

Mario Basurto

David L. Gore

MJB/tdm
O: 1-16-14
052

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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Liza Enriquez,

Petitioner,

14IWCC0045

vs.

NO: 04 WC 50147

City Colleges of Chicago & Truman College,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on Remand from the Illinois Appellate Court. On November 5, 2012, Justice Hoffman reversed the Commission's finding that Petitioner was entitled to temporary total disability benefits after October 11, 2006, and remanded the matter back to the Commission for entry of an award of temporary total disability benefits from February 17, 2006 to October 11, 2006. The remainder of the Commission Decision was otherwise affirmed.

In accordance with and pursuant to the order from the Illinois Appellate Court, the Commission hereby awards temporary total disability benefits from February 17, 2006 to October 11, 2006.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $576.03 per week for a period of 33-6/7 weeks, from February 17, 2006 to October 11, 2006, 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 $518.43 per week for a period of 81 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 20% loss of use of Petitioner's left hand, 20% loss of use of Petitioner's right hand, and 20% loss of use of Petitioner's right ring finger.

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.

DATED: JAN 2 3 2014
MJB/ell
o-01/16/14
52

Michael J. Brennan

David L. Gore

Mario Basurto

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☒ 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

Robert E. Cook,

Petitioner,

14IWCC0046

vs.

NO: 11 WC 40283

Illinois Department of Healthcare & Family Services,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, permanent partial disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 31, 2013 is hereby affirmed and adopted.

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.

DATED: JAN 3 1 2014

David L. Gore

Mario Basurto

Daniel R. Donohoo

DLG/gal
O: 1/23/14
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

COOK, ROBERT E
Employee/Petitioner

Case# **11WC040283**

14IWCC0046

IL DEPT OF HEALTHCARE & FAMILY SERVICES
Employer/Respondent

On 5/31/2013, 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:

1590 SGRO HANRAHAN DURR & RABIN LLP
ELLEN C BRUCE
1119 S 6TH ST
SPRINGFIELD, IL 62703

0499 DEPT OF CENTRAL MGMT SERVICES
MGR WORKMENS COMP RISK MGMT
801 S SEVENTH ST 6 MAIN
PO BOX 19208
SPRINGFIELD, IL 62794-9208

4993 ASSISTANT ATTORNEY GENERAL
ANDREW SUTHARD
500 S SECOND ST
SPRINGFIELD, IL 62706

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

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

MAY 31 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

☐ 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 141WCC0046

Robert E. Cook
Employee/Petitioner

Case # 11 WC 040283

v.

Consolidated cases: _____

Illinois Department of Healthcare & Family Services
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 **D. Douglas McCarthy**, Arbitrator of the Commission, in the city of **Springfield**, on **May 6, 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 _____

FINDINGS 14IWCC0046

On **August 24, 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 **$37,455.15**; the average weekly wage was **$736.44**.

On the date of accident, Petitioner was **43** 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 $2916.51 for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of $2916.51.

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

ORDER

The Arbitrator finds as follows:

1. Petitioner's injuries arose out of the course of employment.
2. Petitioner's injuries are causally connected to his work injury.
3. Petitioner has been temporarily totally disabled and was unable to work from December 12, 2011 to January 6, 2012.
4. Respondent is responsible for Petitioner's medical invoices related to the August 4, 2011 work related injury as set forth in Petitioner's Exhibits, except those which pertain to treatment of the Petitioner's left trigger thumb.
5. The nature and extent of the injury is 25% of the left arm.

Having considered the evidence and testimony before the Commission the following is ordered:

1. The Respondent shall pay the reasonable and necessary medical services, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act, for treatment of the Petitioner's injuries, as described above.
2. The Respondent has paid TTD in the amount of $2,916.51 which represents December 12, 2011 through January 6, 2012 and is entitled to a credit for said payments.
3. Furthermore, the Respondent shall pay the Petitioner permanent partial disability benefits of $441.86 per week for 63.25 weeks, as the injury sustained caused a 25 % loss of the left arm, 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

May 22, 2013
Date

MAY 31 2013

ROBERT E. COOK v. ILLINOIS DEPARTMENT OF HEALTHCARE & FAMILY SERVICES

2011-WC-040283 Springfield, IL

FINDINGS OF FACT

On August 24, 2011, Petitioner was employed as an Office Specialist for Respondent. Petitioner began his employment with Respondent in 2005 as an Office Clerk and was promoted to Office Specialist in 2008. (Rx. Ex. 1). Petitioner worked 8 ½ hour days with a 15 minute break in the morning, 1 hour for lunch, and another 15 minute break in the afternoon. His office is located in Springfield, Illinois.

The Petitioner testified that as an Office Specialist, his job responsibilities were to answer approximately 100-120 telephone calls a day on a Medicaid hotline and respond to, or direct these telephone calls to the appropriate individual. The Petitioner would manually enter codes into the keypad on his telephone that sat to the left of his computer to document the type of telephone call he received. Each telephone call lasted anywhere from five to seven minutes, depending on the needs of the caller. Petitioner also entered data regarding the telephone calls on his computer using a keyboard and mouse.

Petitioner testified, and exhibits were entered showing Petitioner's workstation (Rx. Ex. 3). Petitioner discussed these exhibits during his testimony and indicated that his filing cabinet was placed to the left of his desk and that his work station was consistent with the set-up shown in the exhibits with the telephone being in the upper left hand area of the desk and a filing cabinet to the left, with a computer and keyboard in the center of the desk. There was limited space on Petitioner's desk to move his telephone closer to the front of his desk. A box connected to Petitioner's telephone on the left side of the desk was for volume and muting. Petitioner was not authorized to move electronics. Petitioner testified that he was not allowed to move computer equipment and that was the IT Department's responsibility to make changes to the computer and telephone equipment at his workstation.

Petitioner began experiencing pain in his left arm and hands in March of 2011 when he was at work, including when trying to answer the telephone. Petitioner experienced pain in reaching, as well as tingling and numbness when leaning on his cabinet at his workstation. The pain worsened and Petitioner sought medical treatment from his primary care physician, Joseph Townsend, MD. After meeting with his

primary care physician Petitioner was referred to Edward Trudeau, MD. Petitioner was seen by Dr. Trudeau on August 24, 2011. (Px. Ex. 3). Dr. Trudeau found that the electro-diagnostic studies showed a very significant "ulnar nerve lesion at the left elbow." As such, Dr. Trudeau concluded that Petitioner suffered from ulnar neuropathy of the left elbow, severe in electro neurophysiologic testing terms consistent with the clinical assessment of Dr. Townsend. (Px. Ex. 3).

Petitioner saw Dr. Greatting on October 12, 2011. Dr. Greatting performed an extensive interview of Petitioner . Petitioner described that he has done his work with the Department of Healthcare & Family Services, "for about 3 ½ years. With his left hand, he will do various activities to answering the phone and transferring phone calls. With his right hand he will use a mouse. He will use both hands to do keyboard activities. He answers over 100 calls per day. He describes being very busy during work and doing frequent activities with his elbows, wrists and hands. He also describes resting his left elbow on a file cabinet next to his desk. He has developed numbness and tingling in the ring fingers and small fingers of his left hand. This was initially intermittent . . . He does describe getting increasing symptoms while doing his work activities during the day." (Px. Ex. 2).

Petitioner reported to Dr. Greatting that he is right-hand dominant and that he does have insulin-dependent diabetes mellitus and hypertension. (Id.). During the exam Dr. Greatting reported that the Petitioner had a positive Tinel's over his ulnar nerve in his left elbow and a negative Tinel's over his ulnar nerve in the left wrist and left carpal tunnel. Additionally, Dr. Greatting noted Petitioner had diminished sensation to light touch in the ulnar nerve distribution of his left hand, as well as significant weakness and atrophy in the ulnar innervated muscles in his left hand. Otherwise, it was reported that Petitioner had no weakness or atrophy in the radial and median nerve distributions. Dr. Greatting's impression was that Petitioner suffered from severe left cubital tunnel syndrome. Dr. Greatting stated in his plan that:

> I do think based on his history, his work activities have caused, contributed to, or aggravated the development of this condition. I did suggest to him that he try not to rest his arm on a hard surface. He would, in the future, benefit from his work place or station being evaluated and ergonomically modified as necessary. I think based on the severity of his left cubital tunnel syndrome he should undergo surgical treatment. This would consist of a release of his left ulnar nerve at the elbow. (Id.).

Dr. Greatting performed left ulnar nerve release surgery on December 12, 2011. Petitioner was also diagnosed with left trigger thumb which is not attributed to the work-related incident. Dr. Greatting indicated that, "The patient had history exam and EMG/Nerve Conductive Study findings consistent with left cubital tunnel syndrome." (Id.). Following his surgery, Petitioner was paid TTD from December 12, 2011 through January 6, 2012. (Rx. Ex. 4). Petitioner testified that although it was recommended that an ergonomic evaluation of his workstation be done and that he completed a form requesting the same, no evaluation was ever performed. Petitioner also testified that he was not given a gel pad for his computer keyboard or his mouse until after his surgery in December of 2011. Petitioner was not aware prior to his injury and surgery that gel pads or pull out keyboard were available.

Petitioner was seen on one occasion by James Williams, MD for a Section 12 Medical Examination. Dr. Williams drafted a report dated August 15, 2012. (Rx. Ex. 2). In his report, he wrote that following his examination of Petitioner and reviewing Petitioner's medical records, that Petitioner could have further improvement. Petitioner was suffering from a significant loss of sensation and strength on the left side, noting significant atrophy of the hypothenar eminence and the first dorsal interosseous. Dr. Williams felt the loss of sensation and strength on the left side was due to cubital tunnel syndrome. Dr. Williams recommended that Petitioner demonstrated ulnar nerve subluxation at the time of the visit and that he could be helped by an anterior transposition of the nerve. (Id.). Dr. Williams also wrote:

> I do not feel specifically his work duties, being the typing or the punching of the keys of which he did on his telephone to enter in what type of phone call it was or whether he was going on a personal break or work break or what type of job duty he was performing are significant, but if indeed he did rest his left arm on a file cabinet that obviously could be an aggravating factor in his development of cubital tunnel but would have been an activity which he did, one that work did not required him to do. That would be the only way I could see possibly that this could be an aggravation from his work. (Id.).

Dr. Williams stated in his report that Petitioner had non-work related risk factors for nerve entrapment, including obesity, hypertension, insulin dependent diabetes, and the fact that he found an additional muscle present at the time of surgery.

Petitioner testified he did not fully recover following the surgery and sought treatment with Dr. Greatting on February 20, 2013. Petitioner stated at the hearing that he took a copy of Dr. Williams' report recommending an anterior transposition of the nerve to his appointment with Dr. Greatting. According to Petitioner's records for February 20, 2013, it appears that Dr. Greatting reviewed the report, including Dr. Williams' recommendation, and concluded that, "I do not think there is much chance that any further surgery on his ulnar nerve, including subcutaneous or sub-muscular transposition would have a very high chance of success as far as improving the numbness or the weakness and atrophy. I told him I would basically recommend leaving things as is and would be doubtful that any further surgery would be beneficial to him. He will be seen back on an as needed basis." (Px. Ex. 2).

Petitioner testified that he lacks in dexterity and strength in his left arm. Six months following treatment his hand had not fully improved. In order to accommodate his condition, a special code was set up on his telephone for outgoing telephone calls with a speed dial number to call certain frequently dialed long numbers because his lack of dexterity caused him to misdial the numbers. After his injury was reported and he complained he was having this difficulty because of the injury and making error in keying these numbers, an accommodation was made. Petitioner was told to not inform other employees of this special coding that was done on his telephone.

Petitioner testified that following surgery he returned to work and that after the diagnosis of cubital tunnel syndrome his telephone was switched to the right side of his desk, there was a work restriction of no movement of his left elbow and Petitioner was able to perform his duties right-handed. After he returned to work, the left elbow was not aggravated because he was using his right for answering the telephone and typing to compensate for his left hand. Petitioner testified that from January, 2012 to August, 2012 he only worked right-handed and did not use his left hand for anything, even typing, because that is what his boss told him to do. In terms of activities of daily living, Petitioner said that his elbow hurts the most at work, but that he also experiences shooting pain in his arm when he folds laundry at home.

CONCLUSIONS OF LAW

1. The accident arose out of and in the course of Petitioner's Employment with Respondent and was causally connected to Petitioner's Employment with Respondent.

It is uncontradicted that the Petitioner answered and processed approximately 100 phone calls a day in his position as an office specialist, a position he has held since 2007. On each call, he had to reach to his left and make entries on the telephone keypad using his left upper extremity. He testified that he performed this activity while leaning on his left arm, which was on top of a file cabinet located next to his chair.

Respondent's Exhibit 3, photographs of the Petitioner's work station, clearly show that he worked in a typical cubicle with his phone located to his left. In order to reach its keypad, he had to rest his left arm on something. The file cabinet certainly could have been used for that purpose. Alternatively, the Arbitrator believes the Petitioner could have rested his left arm on his desk top, but again, he would have been leaning on it in order to reach his phone keypad. Based upon the photographs, the Arbitrator does not believe the Petitioner had any other alternatives, with the work station constructed as it was.

Both Dr. Greatting and Dr. Williams said that leaning on his elbow could have caused or aggravated the Petitioner's condition. (PX 2, 10-12-11 O.V.; RX 2)

Based upon this evidence, the Petitioner's repetitive accident clearly arose out of his employment, and his condition of ill being was causally related to said accident.

The case cited by the Respondent; Purtscher-Kulik v. LaHood Construction, 3 IIC 781 (2003), is clearly distinguishable. First of all there was conflicting testimony as to the frequency at which the Petitioner, a clerk, answered the phones each day. Secondly, the Petitioner did not tell either her primary care physician or her surgeon that in taking her phone calls she was forced to lean on her elbow. The Commission denied the claim based on the lack of medical testimony on causation. Here, as stated above, the Petitioner described how he leaned on his elbow to perform his job to all of the doctors who saw him for treatment or examination purposes.

2. Petitioner was entitled to Total Temporary Disability benefits.

Petitioner was temporarily totally disabled and was unable to work from December 12, 2011 to January 6, 2012. Petitioner received TTD benefits from Respondent for this period of time, and the evidence supports the fact that he was entitled to those benefits.

3. Petitioner's medical services are reasonable and necessary.

Section 8(a) of the Illinois Workers' Compensation Act requires the employer to pay for all medical services rendered by an employee who was injured during the course of employment. Petitioner has unpaid medical bills arising from his injury that need to be paid. Respondent is responsible for Petitioner's medical bills related to the August 24, 2011 work-related injury as set forth in Petitioner's exhibit submitted at Arbitration and shall reimburse Petitioner for any payments made by the Petitioner toward medical bills submitted at Arbitration.

Respondent is not however, liable for any of the charges related to treatment of the Petitioner's left trigger thumb. As stated above, there is no testimony to support a causal connection between that condition and the petitioner's work duties.

4. Nature and Extent.

Both Dr. Trudeau and Dr. Greatting characterized the Petitioner as having severe left cubital tunnel syndrome prior to surgery. Upon exams, he exhibited diminished sensation and significant strength loss with atrophy. Following surgery to release the entrapment, his condition has shown any significant improvement. Both Dr. Greatting and Dr. Williams found ongoing deficits of strength and sensation. Dr. Greatting's office note of Feb. 13, 2013, some fourteen months after surgery, shows the Petitioner with significant atrophy and weakness. Because of the persistence of severe symptoms and the fact that the Petitioner is an insulin dependent diabetic, Dr. Greatting felt that further surgery would not likely provide any relief. Dr. Williams' exam, performed nine months after surgery, revealed significant atrophy in the left hand and wrist and a subluxation of the ulnar nerve at the elbow. He concluded that the Petitioner had a significant loss of both strength and sensation.

The Petitioner described in a credible manner how he had to modify his job in order to continue to perform it. Given the above evidence, it does not appear that his condition will improve as time goes by.

Based upon the above evidence, the Arbitrator awards the Petitioner a 25% loss of use of his left arm for his accidental injuries.

Dated and Entered May 22, 2013

D. Douglas McCarthy, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

☒ 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

Paul Rico,
Petitioner,

vs. NO. 10 WC 43931

AGS Staffing,
Respondent.

14IWCC0047

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Petitioner herein and notice given to all parties, the Commission, after considering, the issues of temporary total disability, medical expenses, and penalties and attorney's fees 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 on February 19, 2013 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.

14IWCC0047

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 $2,500.00. 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: JAN 28 2014

Daniel R. Donohoo

o-12/17/13
drd/wj
68

Kevin W. Lamborn

Thomas J. Tyrrell

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

RICO, RAUL
Employee/Petitioner

Case# **10WC043931**

14IWCC0047

A S G STAFFING
Employer/Respondent

On 2/19/2013, 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 0.12% 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:

4220 LULAY LAW OFFICES
MICHAEL B LULAY
2323 NAPERVILLE RD SUITE 220
NAPERVILLE, IL 60563

1401 SCOPELITIS GARVIN LIGHT ET AL
VICTOR P SHANE
30 W MONROE ST SUITE 600
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF DUPAGE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

RAUL RICO,
Employee/Petitioner

v.

A.S.G. STAFFING,
Employer/Respondent

Case # 10 WC 43931

14IWCC0047

Consolidated cases: NONE.

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 **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Chicago**, on **January 25, 2012.** And in the city of **Wheaton,** on **March 8, 2012.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0047

FINDINGS

On the date of accident, **October 11, 2010**, 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 in part* causally related to the accident.

In the year preceding the injury, Petitioner earned **$23,400.00**; the average weekly wage was **$436.00**.

On the date of accident, Petitioner was **28** years of age, *single* with **three** dependent children.

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

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

Respondent shall be given a credit of $ **6,229.64** for TTD, $ **0.00** for TPD, $ **0.00** for maintenance, and $ **0.00** for other benefits, for a total credit of $ **6,229.64**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$319.00**/week for **27-1/7** weeks, commencing **October 19, 2010** through **April 26, 2011,** as provided in Section 8(b) of the Act.

The Arbitrator finds that Respondent shall pay to Petitioner the reasonable and necessary medical services of **Nuestra Clinica de Aurora** in the amount of **$1,429.39**, of **Midwest Neurosurgery & Spine Specialists** in the amount of **$582.95**, of **Elite Physical Therapy** in the amount of **$6,337.52**, of **The Center for Surgery** in the amount of **$13,597.92**, of **Dr. Kwang Hwang** in the amount of **$6,540.37**, of **Fox Valley Imaging Center** in the amount of **$2,701.90**, as provided in Section 8(a) and 8.2 of the Act.

The Arbitrator denies Petitioner's demands to order Respondent to provide and pay for future medical costs in the form of surgery as prescribed by Dr. Ross, including all ancillary medical costs concerning same and all periods of temporary total and/or temporary partial disability periods incurred for treatment resulting from these procedures, as this prescription for future care represents unreasonable and unnecessary medical care and treatment that is not causally related to this particular accidental injury.

The Arbitrator further denies Petitioner's demands for attorneys fees and penalties in accordance with Sections 16, 19(k) and 19(l) of the Act.

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

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

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

Signature of Arbitrator JOANN M. FRATIANNI

February 8, 2013
Date

ICArbDec19(b)

FEB 19 2013

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

Petitioner testified was an employee of a temporary employment agency on October 11, 2010. On that date, he was assigned to the Midwest Warehouse in Aurora. His job duties included operating a gas powered riding forklift to load and unload food, juices and canned goods, including some manual lifting to shift and arrange loads on forks and the floor. Petitioner had been assigned to that job and that location for 2-3 months full time.

On October 11, 2010, Petitioner was driving his forklift from the dry room to the cold room and had to pass through a dirty plastic curtain that he could not see through. His forks were set 6 inches above the ground. As he entered the curtain he honked and continued through it at around 8 miles per hour. At the same time, Mr. Rudy Duran was operating another gas powered forklift loaded down with product 10 feet in height, so that he could not see ahead. Mr. Duran was driving at a 90 degree angle towards Petitioner's forklift to the right of Petitioner. As Petitioner's forks passed through the curtain, the two forklifts collided at their forks.

Petitioner testified that there was no damage to the forks or product, but noticed the top pallet of product on Mr. Duran's forklift had shifted and was tilted like it could fall. Petitioner drove around and took off the top pallet using his forklift and set it down. When he set down the pallet, he observed Mr. Jay Scheckel, the safety supervisor, coming towards him, so he got off his forklift to talk to him. Petitioner testified that Mr. Scheckel told him he heard a noise from the impact and came to check what happened. Mr. Scheckel asked if the load was okay, and Petitioner informed him he had taken the top load off before it fell to avoid damage. Mr. Scheckel then turned around and left the scene.

Petitioner testified that he then went to the office to report the incident to his supervisor, Mr. Abraham Burciaga. At that time he indicated he had pain in his back. Petitioner was asked if he wanted to go to the company clinic, and he initially declined.

Petitioner later that day sought treatment at Tyler Clinic.

Based upon the above, the Arbitrator finds that on October 11, 2010, Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent.

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

See findings of this Arbitrator in "C" above.

Petitioner first sought medical treatment at Tyler Clinic on October 11, 2010, where he was diagnosed with a lumbar strain. On October 13, 2010, it was noted he had the same symptoms with radiculopathy of the right lower extremity. X-rays performed revealed mild narrowing of the L4-L5 intervertebral disc space. Petitioner was prescribed physical therapy and medications. He returned to the clinic on October 18, 2010 and was discharged from care. During this period of time Petitioner continued working.

Petitioner had two prior workers' compensation claims to his back, on April 29, 2004 and July 7, 2007, resulting in lumbar spine surgery at L4-L5 and L5-S1.

After discharge from Tyler Clinic, Petitioner sought treatment at Nuestra Clinica de Aurora where he saw Dr. Rivera. He was prescribed multiple medications along with a lumbar MRI. The MRI was performed on October 23, 2010 and revealed a combination of recurrent disc protrusion and right lateral scar tissue causing spinal stenosis.

Following the MRI, Petitioner was taken off of work by Dr. Rivera on October 19, 2010 and continued under his care through November 1, 2010. At that time, Dr. Rivera referred Petitioner to see Dr. Matthew Ross, a neurosurgeon.

Petitioner saw Dr. Ross on November 3, 2010. Dr. Ross felt that Petitioner suffered a recurrent disc herniation as a result of this work injury of October 11, 2010. Dr. Ross also felt Petitioner would be a good candidate for a surgical discectomy at L4-L5. Dr. Ross offered Petitioner the alternative of continued conservative medical management including epidural cortisone injections. Petitioner declined surgery. Dr. Ross kept Petitioner off work as of his first visit.

Petitioner then returned to see Dr. Ross on January 6, 2011. Dr. Ross noted some symptomology that could not b explained on that date. On February 10, 2011, Dr. Ross prescribed work conditioning. On March 17, 2011, Dr. Ross noted Petitioner reported getting stronger, but did not experience improvement in his pain. Dr. Ross prescribed a lumbar discogram and fusion surgery. Dr. Ross indicated that the L4-L5 disc was degenerative.

Petitioner saw Dr. G. Klaud Miller for examination at the request of Respondent. Dr. Miller examined Petitioner on March 16, 2011. Dr. Miller testified by evidence deposition that he based his examination on the history provided to him by Petitioner along with certain medical records of treatment and an accident investigation report prepared by Respondent. Dr. Miller testified the report indicated there was no contact between the two forklifts, but only disrupted the materials being carried. Dr. Miller reviewed the medical records of Tyler Clinic that indicated a normal neurological examination. Dr. Miller also reviewed Dr. Ross' diagnosis that indicated recurrent disc herniation. Dr. Ross had reviewed the MRI films performed before and after this accident of October 10, 2011. Dr. Miller felt the two studies were basically the same. Dr. Miller's neurological examination was also normal. Dr. Miller testified that he did not feel there was a causal relationship between Petitioner's complaints and his injury. He based his opinion on witnesses who indicated in the accident report that it was a minor impact and the comparison of the MRI films taken before and after the accident. Dr. Miller also did not feel additional surgery would be necessary as there was no evidence of any new disc herniations and Petitioner had undergone two prior back surgeries. Dr. Miller also disagreed with Dr. Ross that a recurrent disc existed and felt it was actually scar tissue. Dr. Miller felt that Petitioner may have suffered a lumbar sprain and that he was capable of returning to work.

On April 26, 2011, Dr. Ross indicated that he did not agree with the findings and conclusions of Dr. Klaud Miller, who examined Petitioner at the request of Respondent. Dr. Ross did feel that Petitioner could attempt a return to work full duty.

Petitioner returned to see Dr. Ross on August 11, 2011 and reported he had been working at a mattress factory since his last visit of April 26, 2011. Dr. Ross felt that Petitioner's options were to proceed with surgery or to work at a less back punishing job. Petitioner indicated to him that he was looking for a less physically demanding job and hoping to avoid surgery.

The testimony of the witnesses presented before this Arbitrator as to the impact of the forklifts indicates that the contact was minimal resulting in no damage to the forklifts, pallets or product. Petitioner's supervisor, Mr. Jay Scheckel was unaware of the alleged severity of the incident as he could not even recall more than a minor incident.

Mr. Abraham Burciaga testified that he was Petitioner's supervisor on the date of accident. He first learned of the incident after the fact. He testified he spoke to both forklift drivers and further performed his own investigation of the forklift, the pallets and the products involved. Mr. Burciaga testified there was no damage to any items he inspected and the co-worker driving the other forklift did not feel it was more than a minor impact.

Based upon the above, the Arbitrator finds that at best Petitioner sustained a lumbar sprain as testified by Dr. Miller and that there is no causal connection between the current condition of ill-being of a suspected recurrent disc herniation and the injury of October 11, 2010.

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?

Petitioner introduced into evidence the following medical charges that were incurred after this accidental injury:

Name of Provider	Billed Amount	Fee Schedule Amount
Nuestra Clinica de Aurora	$ 1,489.00	$ 1,429.39
Midwest Neurosurgy & Spine Specialists	$ 596.00	$ 582.25
Elite Physical Therapy	$10,180.00	$ 6,337.52
The Center for Surgery	$17,892.00	$13,597.92
Dr. Kwang Hwang	$ 6,685.00	$ 6,540.37
Fox Valley Imaging Center	$ 2,822.00	$ 2,701.90
Totals:	$39,664.00	$31,190.05

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings the Arbitrator awards the above charges pursuant to the medical fee schedule created by the Act, as those charges represent reasonable and necessary medical care and treatment designed to cure or relieve the condition of ill-being sustained by this accidental injury.

Respondent is entitled to receive a credit as to all amounts paid by them.

K. Is Petitioner entitled to any prospective medical care?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, the Arbitrator declines to order Respondent to pay for surgery to the lumbar spine as prescribed by Dr. Ross.

L. What temporary benefits are in dispute?

See findings of this Arbitrator in "C" and "F" above.

Petitioner was initially taken off work by Nuestro Clinica on October 19, 2010 and was kept off by Dr. Ross until April 26, 2011. At that time Dr. Ross felt Petitioner could attempt full duty work.

Dr. Miller, who examined Petitioner at the request of Respondent, felt that Petitioner could return to work subsequent to March 21, 2011.

Petitioner testified that he has been working since Dr. Ross' visit of April 26, 2011 and testified to being employed at the time of trial of this matter.

In addition, Respondent admitted into evidence various periods of surveillance performed on 10 separate occasions. The first period of surveillance was from July 12-15, 2011. This showed Petitioner getting in and out of his vehicle in a normal, unrestricted fashion on each day on several occasions. On each day it was clear that Petitioner was working, a fact that Petitioner admitted during his testimony.

Another period of surveillance occurred January 16-20, 2012. Petitioner admitted he was working during this period of time as well at a warehouse in Bolingbrook. As such, the surveillance videos were of limited assistance to the Arbitrator in this matter.

Based upon said findings, the Arbitrator further finds Petitioner was temporarily and totally disabled from work commencing October 19, 2010 through April 26, 2011, the date of Dr. Ross' release, and is entitled to receive temporary total disability benefits from Respondent for this period of time.

Based further upon said findings, all other claims of temporary total disability periods and benefits made by Petitioner in this matter are hereby denied.

M. Should penalties or fees be imposed upon Respondent?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, the Arbitrator further finds that Petitioner has failed to prove that Respondent acted in a vexatious fashion in defending this claim or withholding benefits and medical expenses.

Based further upon the above, all claims made for penalties and attorneys by Petitioner in this matter are hereby denied.

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Valerie Sharkey,
Petitioner,

vs. NO. 01 WC 70782

14IWCC0048

Pioneer Concepts, Inc.,
Respondent.

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, causal connection, temporary total disability, medical expenses, prospective medical expenses, and the 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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on March 11, 2013 is hereby affirmed and adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $4,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 28 2014

Daniel R. Donohoo

Kevin W. Lamborn

Thomas J. Tyrrell

o-01/14/14
drd/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

SHARKEY, VALERIE J
Employee/Petitioner

Case# **01WC070782**

PIONEER CONCEPTS, INC
Employer/Respondent

14IWCC0048

On 4/11/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0592 LAW OFFICES OF SCOTT B SHAPIRO
218 N JEFFERSON ST
SUITE 401
CHICAGO, IL 60661

0445 RODDY LEAHY GUILL & ZIMA LTD
ROBERT J DOHERTY JR
303 W MADISON ST SUITE 1500
CHICAGO, IL 60606

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

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

CORRECTED ARBITRATION DECISION

VALERIE SHARKEY
Employee/Petitioner

Case #01 WC 70782

v.

14IWCC0048

PIONEER CONCEPTS, INC.,
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 Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on November 26, 2012, and March 19, 2013. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

A. ☐ Was the 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 the petitioner's employment by the respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to the respondent?

F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?

G. ☐ What were the petitioner's earnings?

H. ☐ What was the petitioner's age at the time of the accident?

I. ☐ What was the petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to petitioner reasonable and necessary?

K. ☒ What temporary benefits are due: ☐ TPD ☐ Maintenance ☒ TTD?

L. ☒ What is the nature and extent of injury?

M. ☐ Should penalties or fees be imposed upon the respondent?

N. ☐ Is the respondent due any credit?

O. ☐ Prospective medical care?

FINDINGS

- On December 6, 2001, the respondent was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship existed between the petitioner and respondent.
- On this date, the petitioner sustained injuries that arose out of and in the course of employment.
- Timely notice of this accident was given to the respondent.
- In the year preceding the injury, the petitioner's average weekly wage was $426.36.
- At the time of injury, the petitioner was 45 years of age, *single* with no children under 18.
- The parties agreed that the respondent paid $203.03 in temporary total disability benefits.
- The parties agreed that the petitioner is entitled to temporary total disability benefits from December 13 through 17, 2001.

ORDER:

- The respondent shall pay the petitioner temporary total disability benefits of $284.24/week for 7-3/7 weeks, from December 13, 2001, through December 17, 2001, and from February 21, 2002, through April 8, 2002, which are the periods of temporary total disability for which compensation is payable.
- The respondent shall pay the petitioner the sum of $255.82/week for a further period of 9.5 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused

the permanent partial disability to petitioner to the extent of 5% loss of use of her right hand.

- The respondent shall pay the petitioner compensation that has accrued from December 6, 2001, through March 19, 2013, and shall pay the remainder of the award, if any, in weekly payments.

- The medical care rendered the petitioner through November 29, 2002, was reasonable and necessary. The medical care rendered the petitioner after November 29, 2002, was not reasonable or necessary. The respondent shall pay the medical bills in accordance with the Act. The respondent shall be given credit for any amount it paid toward the medical bills, including any amount paid within the provisions of Section 8(j) of the Act, and any adjustments, and shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier.

- All claims for benefit after November 29, 2002, are denied.

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

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

Robert E. Williams

Robert Williams

4/11/13

Date

APR 11 2013

FINDINGS OF FACTS:

The petitioner, a nurse trainee, sustained an injury to her right thumb/wrist on December 6, 2001, when her right wrist was grabbed by a resident. She received immediate care at South Suburban Hospital and reported pain and swelling over the distal radius aspect of her wrist. The doctor noted pain with range of motion and no neurological deficits. X-rays were negative for fractures or a dislocation. The petitioner reported right wrist pain and swelling, and numbness and tingling in her fingers to Dr. Labana of Olympia Orthopaedic Specialists on December 7th and continued symptoms on December 17th. His diagnosis was a right wrist sprain. An EMG and NCV on December 31st were normal with no evidence of right median or ulnar neuropathy or right radial sensory neuropathy. The petitioner reported improvement on January 3, 2002, but discomfort over her 1st dorsal compartment. Dr. Labana started anti-inflammatories and a rigid thumb spica splint for De Quervains tendinitis. The petitioner had an injection in her De Quervains on January 24th. Dr. Labana noted on February 26th that the petitioner had tenderness over her TFCC, pain on ulnar deviation, some tenderness over the first dorsal compartment and a positive Finkelstein test but negative carpal tunnel symptoms. A wrist arthroscopy and first dorsal compartment release was recommended. After his Section 12 examination of the petitioner on April 8th, Dr. Vender's diagnosis was De Quervains and a possible TFCC injury. Dr. Saxena saw the petitioner on August 19th and opined a diagnosis of De Quervains.

A surveillance video of the petitioner was taken on November 29th, which showed her using both hands carrying groceries, pushing a shopping cart and opening a car door. The petitioner started chiropractic care for back, neck and shoulder pain with Dr. Regan

on December 11th after an automobile accident on December 5th. In 2003, the petitioner treated for RSD of her right upper extremity with Dr. Saxena. The Section 12 examination of the petitioner and opinion by Dr. Traycoff on April 7th was that there was no evidence of CRPS or a TFCC tear with her right upper extremity. A bone scan on June 10, 2003, did not reveal any typical features of RSD. Dr. Lubenow started treating her for CRPS of her right hand on July 18th. Dr. Lubenow opined on November 12th that the petitioner did not have CRPS in her right upper extremity.

FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:

The medical care rendered the petitioner through November 29, 2002, was reasonable and necessary. The medical care rendered the petitioner after November 29, 2002, was not reasonable or necessary.

FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner failed to prove that her current condition of ill-being with her right wrist and any RSD condition of ill-being is causally related to the work injury on December 6, 2001. A surveillance video of the petitioner on November 29, 2002, revealed her using her hands freely and easily without any guarding, hesitation or difficulty while lifting and carrying bags and a gallon of milk, picking up store merchandise and other activities. Surveillance videos on August 16 and 17, 2003, March 13, 2004, and December 14 and 15, 2007, also belie the petitioner's claim of disabilities with her right hand. It is not believable that the petitioner had De Quervains, a TFCC tear or RSD in her right hand and arm as of November 29, 2002, or thereafter. The petitioner is not believable or credible. The petitioner failed to

prove that she had De Quervains, a TFCC tear or RSD in her right hand on and after November 29, 2002. All claims for benefits after November 29, 2002, are denied.

FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:

Pursuant to Dr. Labana's advice, the petitioner stopped working on December 13, 2001, but returned to restricted work on December 17th. The petitioner was terminated on February 21, 2002, while on restricted work. Dr. Vender evaluated the petitioner on April 8, 2002, and opined that she was capable of performing her work activities. The respondent shall pay the petitioner temporary total disability benefits of $284.24/week for 7-3/7 weeks, from December 13, 2001, through December 17, 2001, and from February 21, 2002, through April 8, 2002, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner.

FINDING REGARDING THE NATURE AND EXTENT OF INJURY:

The petitioner had some pain and symptoms after her work injury, which resolved prior to November 29, 2002. The respondent shall pay the petitioner the sum of $255.82/week for a further period of 9.5 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of 5% loss of use of her right hand.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☒ 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

Harry L. Koerner III,
Petitioner,

vs. NO. 12 WC 02408

14IWCC0049

Belec Electric, Inc.,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering, the issues of accident, medical expenses and prospective medical expenses, employer-employee relationship, benefit rates and notice 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 on March 28, 2013 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.

14IWCC0049

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 $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: JAN 2 8 2014

Daniel R. Donohoo

o-12/17/13
drd/wj
68

Kevin W. Lamborn

Thomas J. Tyrrell

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

KOERNER, HARRY
Employee/Petitioner

Case# **12WC002408**

12WC001636

14IWCC0049

BELEC ELECTRICAL INC
Employer/Respondent

On 3/28/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0274 HORWITZ HORWITZ & ASSOC
MITCHELL HORWITZ
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

0210 GANAN & SHAPIRO PC
ELAINE NEWQUIST
210 W ILLINOIS ST
CHICAGO, IL 60654

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
ARBITRATION DECISION
19(b)

Harry Koerner
Employee/Petitioner

v.

Belec Electrical, Inc.
Employer/Respondent

Case # 12 WC 2408

Consolidated cases: 12 WC 01636

14IWCC0049

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 **Gregory Dollison**, Arbitrator of the Commission, in the cities of **Chicago and New Lenox, Illinois**, on **December 4, 2012 and December 19, 2012.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **January 23, 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 **$80,009.80**; the average weekly wage was **$1,465.38**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **1** dependent child.

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

Respondent shall be given a credit of **$0** 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 reasonable and necessary medical services of $272.00, as provided in Section 8(a) of the Act.

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

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

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

Signature of Arbitrator

3/27/13
Date

ICArbDec19(b)

MAR 28 2013

14IWCC0049

FINDINGS OF FACT

The arbitrator hereby incorporates and adopts the findings of fact from consolidated case number 12 WC 01636 herein.

On the issue of (A.) whether the respondent was acting under and subject to the Illinois Workers' Compensation Act on January 23, 2012, (A), the arbitrator hereby finds:

Section 3 of the Illinois Workers' Compensation Act states in relevant part, "The provisions of this Act hereinafter following shall apply automatically ... to all employers and all their employees, engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely ... Construction, excavating or electrical work." 805 ILCS 305/3(3).

Petitioner in this matter was employed by Respondent as a journeyman electrician out of Local 176. While working for Respondent at the Shorewood construction site, Petitioner performed various aspects of electrical work, such as running conduit, pulling wires and connecting/terminating wires at electrical boxes.

Based upon Petitioner's credible testimony regarding his performance of electrical work while employed by Respondent, the Arbitrator finds that Belec Electrical, Inc., for whom such electrical work was performed, was operating under and subject to the Illinois Workers' Compensation Act, pursuant to Section 3(3) of the Act.

On the issues of (B) whether an employee-employer relationship existed between the petitioner and the respondent, (C) whether an accident occurred that arose out of and in the course of petitioner's employment by respondent, (D) the date of accident, (F), and whether the petitioner's current condition of ill being is causally related to his accident, the Arbitrator hereby finds as follows:

The date of an accidental injury in a repetitive trauma compensation case is the date on which the injury manifests itself. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987). The manifestation of a repetitive trauma injury occurs when the fact of injury and its causal relationship to the claimant's employment would have become plainly apparent to a reasonable person. *Durand v. Industrial Commission*, 224 Ill.2d 53, 862 N.E.2d 918 (2006).

As the First District Appellate Court has established, "The modern rule allows compensation even when an injury occurs at a time and place remote from the employment if its cause is something that occurs entirely within the time and place limits of employment." *A.C.& S. v. The Industrial Commission*, 710 N.E.2d 837, 840; 304 Ill. App. 3d 875, 879 (1st Dist. 1999). The Court went on to explain that Illinois Supreme Court has determined that the manifestation date is important in determining the relationship between the parties, but that the Supreme Court did "not intend to give employers an additional shield by requiring the injury to be traced to employment during employment." *Id* at 841, citing *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 529; 505 N.E.2d 1026, 1028 (1987).

As detailed by the Appellate Court in *Zion-Benton Township High School District 126 v. The Industrial Commission*, 609 N.E.2d 974 ; 242 Ill. App. 3d 109 (2nd Dist. 1993), "Gradual injury stemming from repeated trauma clearly is compensable under the Workers' Compensation Act as long as the employee proves the injury is work-related and not the result of normal degenerative processes. He need not show any external violence to the body to prove an accidental injury, for compensation may be allowed whenever an employee's existing

physical structure, whatever it may be, gives way under the stress of his usual labor. The employee need only identify the date on which the injury manifested itself." *Id* at 978.

At trial on December 4, 2012, Petitioner testified that he first began to develop right hand while working for Respondent, performing tasks such as bending pipe, pulling wire and hand reaming pipes to remove burs from the their insides after cutting them. During the six months that Petitioner was employed by Respondent, he noticed pain in his right forearm and locking up in his right hand while reaming.

On December 9, 2011, Petitioner complained of right wrist pain when he first sought medical treatment with Dr. Serna. However, Petitioner's treatment at that time was focused on the pain in his abdomen, groin, and right hip. (PX 4).

On January 12, 2012, Petitioner was seen by Dr. Ghaly of Ghaly Neurological Associates. Petitioner informed Dr. Ghaly that he was having pain while performing fine motor tasks at work. Dr. Ghaly noted that Petitioner had possible carpal tunnel syndrome and had no history of trauma or injuries previously. (PX 3).

On January 23, 2012, Petitioner returned to Dr. Ghaly for an evaluation of the pain in his right hand. Petitioner explained to Dr. Ghaly that he did a lot of physical work with his right hand and it got weak sometimes with pain in the wrist and elbow. Dr. Ghaly diagnosed mild right-sided carpal tunnel syndrome and recommended use of a night splint and recommended that Petitioner undergo an EMG if the condition worsened. (PX 3).

Petitioner testified that the first time he connected his right hand symptoms to his work activities was when he was told he had carpal tunnel by Dr. Ghaly on January 23, 2012. No evidence or testimony has been submitted to rebut Petitioner's testimony regarding the first time he became aware of his carpal tunnel syndrome and its relation to work.

The Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of his employment Respondent on January 23, 2012, the first time he was informed of his right-sided carpal tunnel syndrome by Dr. Ghaly. January 23, 2012 is the date that Petitioner's injury manifested itself, as Petitioner became aware of the injury and its causal relationship to work on that date. The Arbitrator finds that a reasonable person would similarly have known of their carpal tunnel injury and its relationship to their work activities after being so diagnosed.

Respondent in this matter further contends that Petitioner's claim should be denied because an employee-employer relationship did not exist between Petitioner and Respondent at the time of Petitioner's accident in this matter. Petitioner was laid off by Respondent on December 15, 2011, but claims an accident date of January 23, 2012 for a repetitive trauma carpal tunnel injury.

There is no dispute that Petitioner was employed by Respondent in November and December of 2011, when he testified that his symptoms first began. There is also no dispute that Petitioner was employed by Respondent while his right wrist symptoms worsened with the repetitive use of tools at the worksite. A review of the records and testimony in this case, demonstrate that Petitioner's injuries occurred during his employment by Respondent in November and December of 2011.

Therefore, the Arbitrator finds that an employee-employer relationship did exist between Petitioner and Respondent in this case. The date of the accident in this case, which is the date of manifestation for Petitioner's repetitive trauma injury, is a legal technicality. The fact that the manifestation date is after Petitioner left Respondent's employ does not shield Respondent against liability for Petitioner's accident and the injury sustained while working for Belec. Although the manifestation date is January 23, 2012, the development of Petitioner's repetitive motion injury is clearly related to the time period of his employment by Respondent.

Upon review of the records and testimony in this case, the Arbitrator further finds that Petitioner's current condition of ill-being in the right wrist is causally related to his January 23, 2012 work accident.

Whether a causal connection exists between an accident and a condition of ill being may be determined from both medical and non-medical evidence. *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982). A chain of events demonstrating a prior condition of good health, an accident and a subsequent disabling condition of ill-being will suffice to establish a causal connection between the accident and the employee's injury. *Westinghouse Elec. Co. v. Industrial Comm'n*, 64 Ill.2d 244, 356 N.E.2d 28 (1976); *Plano Foundry Co. v. Industrial Comm'n*, 356 Ill. 186, 190 N.E.2d 255 (1934); *Phillips v. Industrial Comm'n*, 187 Ill.App.3d 704, 543 N.E.2d 946 (1989).

The evidence in this case reflects that Petitioner was working at full duty, with no limitations, when he began work for Respondent in July of 2011. Subsequently, after repetitive use of his right wrist in reaming pipe and performing other fine motor tasks at work, Petitioner developed pain in his right wrist and arm.

The Arbitrator finds that Petitioner's previous hand injuries, in 1990, 1996, and 2008 have no relevance to the case at bar. There is no evidence that Petitioner's previous hand injuries in any way effected his ability to work or contributed to Petitioner's carpal tunnel syndrome. The facts in evidence and the chain of events in this case clearly indicate a causal connection between Petitioner's right wrist injury and his job duties for Respondent.

On the issue of (E) whether timely notice was given by the petitioner to respondent, the Arbitrator hereby finds as follows:

Petitioner testified that after being diagnosed with carpal tunnel syndrome by Dr. Ghaly on January 23, 2012, he faxed notification of his injury and its relation to work to Respondent.

This fax was received by Roy Belluomini, Vice-President of Belec on January 23, 2012.

The fax states, "I am giving notice that on January 23, 2012 my doctor has diagnosed me with carpal tunnel syndrome in the right hand. I believe this was caused by my duties at work" and is signed from Harry Koerner. (PX 18).

There is no dispute that this notice was received by Respondent. The Arbitrator has reviewed all evidence and testimony in this matter and finds that Petitioner gave timely notice of his carpal tunnel injury to Respondent on January 23, 2012, pursuant to Section 6(c) of the Act.

On the issue of (G) petitioner's earnings, the Arbitrator finds as follows:

While working for Respondent, Petitioner worked eight hours per day, five days per week, or 40 hours per week. Petitioner further explained that if he worked 32 hours in a week, that would have been a four day work week, 37 hours would have been a five day work week, and 22 1/2 hours would have been a three day work week. From June through September of 2011, there was some lost time due to rain, which came through the ceilings of the building and flooded the floors. Petitioner also took off some personal days in October and November for duck and goose hunting. On cross-examination, Petitioner testified that he had probably missed five or six days from work with Respondent due to rain. The remainder of the days off would have been for Holidays or personal days.

Respondent's witness, Donald. Kelly testified that when it rained, he would give his guys the option to stay and work in the mud or to go home. He further stated that there would have been no weeks that Petitioner worked during which fewer than forty work hours would have been available to him.

Section 10 of the Act states, in relevant part, "Average weekly wage" which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ... divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed." 802 ILCS 305/10.

The Arbitrator has reviewed all records and testimony in this matter and has calculated Petitioner's average weekly wage as follows:

Period Ending	Gross	OT Premium	Hours	Days	Weeks	Wage
6/18/2011	$1,580.00	$0.00	40.00	5.00	1.00	$1,580.00
6/25/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
7/2/2011	$1,461.50	$0.00	37.00	5.00	1.00	$1,461.50
7/9/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
7/16/2011	$1,224.50	$0.00	31.00	4.00	0.80	$1,224.50
7/23/2011	$1,461.50	$0.00	37.00	5.00	1.00	$1,461.50
7/30/2011	$1,580.00	$0.00	40.00	5.00	1.00	$1,580.00
8/6/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
8/13/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
8/20/2011	$1,315.50	$0.00	34.00	4.00	0.80	$1,315.50
9/3/2011	$1,232.00	$0.00	32.00	4.00	0.80	$1,232.00
9/10/2011	$866.25	$0.00	22.50	3.00	0.60	$866.25
9/17/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
9/24/2011	$866.25	$0.00	22.50	3.00	0.60	$866.25
10/1/2011	$1,232.00	$0.00	32.00	4.00	0.80	$1,232.00
10/8/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
10/15/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
10/22/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
10/29/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
11/5/2011	$1,501.50	$0.00	39.00	5.00	1.00	$1,501.50
11/12/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
11/19/2011	$1,232.00	$0.00	32.00	4.00	0.80	$1,232.00
11/26/2011	$924.00	$0.00	24.00	3.00	0.60	$924.00
Totals	$30,773.00	$0.00	791.00	100.00	20.00	$30,773.00

The Arbitrator has reviewed the testimony on evidence submitted in this case and finds that Petitioner lost 15 days of work during the period he was employed Respondent. Of the 15 days, 6 days were rain outs and 4 days were Holidays (4th of July, Labor Day, and 2 days for Thanksgiving). Therefore, 10 of the days lost by

Petitioner were due to no fault of his own. The Arbitrator finds that Petitioner took 5 days off as personal days. The appropriate denominator for Petitioner's average weekly wage calculation, indicating the number of weeks and parts thereof worked by Petitioner, is 21 (100 days worked + 5 personal days taken off / 5 days in a normal work week).

Based upon the above reasoning, the Arbitrator calculated Petitioner's average weekly wage as follows:

$30,773.00 (earnings) / 21 (weeks and parts thereof worked) = $1,465.38 average weekly wage. The Arbitrator finds that Petitioner's average weekly wage, pursuant to Section 10 of the Act is $1,465.38.

On the issue of (J) payments for medical services, the Arbitrator finds as follows:

From a review of the records and bills, it is clear that the treatment sought and rendered focused primarily on Petitioner's lower back in every instance, except the January 23, 2012 appointment with Dr. Ghaly. The doctor notes in his January 23, 2012 record that Petitioner was being seen for possible carpal tunnel syndrome. Furthermore, Dr. Ghaly's January 23, 2012 bill notes carpal tunnel syndrome as a reason for the visit.

All lumbar treatment for Petitioner's consolidated case number 12 WC 01636 has been awarded or denied therein. For the instant case, the Arbitrator finds that Petitioner's January 23, 2012 appointment with Dr. Ghaly was for the diagnosis and treatment of his right wrist, which is the subject of this case. Respondent has offered no evidence or testimony to dispute the reasonableness or necessity of any of Petitioner's medical treatment.

Therefore, the arbitrator orders respondent to pay the reasonable medical services of $272.00, pursuant to Section 8(a) of the Act, which is the bill amount from Dr. Ghaly's January 23, 2012 treatment of Petitioner.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☒ 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

Harry L. Koerner III,
Petitioner,

vs. NO. 12 WC 01636

14IWCC0050

Belec Electric, Inc.,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering, the issues of accident causal connection, temporary total disability, medical expenses, prospective medical expenses, jurisdiction, benefit rates, employer-employee relationship, notice and Petitioner exceeded two choices of physicians 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 on March 28, 2013 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.

14IWCC0050

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: JAN 28 2014

Daniel R. Donohoo

Kevin W. Lamborn

Thomas J. Tyrrell

o-12/17/13
drd/wj
68

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

KOERNER, HARRY
Employee/Petitioner

Case# **12WC001636**
12WC002408

BELEC ELECTRICAL INC
Employer/Respondent

14IWCC0050

On 3/28/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0274 HORWITZ HORWITZ & ASSOC
MITCHELL HORWITZ
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

0210 GANAN & SHAPIRO PC
ELAINE NEWQUIST
210 W ILLINOIS ST
CHICAGO, IL 60654

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
ARBITRATION DECISION
19(b)

Harry Koerner
Employee/Petitioner

v.

Belec Electrical, Inc.
Employer/Respondent

Case # **12** WC **1636**

Consolidated cases: **12 WC 2408**

14IWCC0050

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 **Gregory Dollison**, Arbitrator of the Commission, in the cities of **Chicago and New Lenox, Illinois**, on **December 4, 2012 and December 19, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☒ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☒ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Section 8(a) choice of physicians**

FINDINGS

On the date of accident, **January 12, 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 **$80,009.80**; the average weekly wage was **$1,465.38.**

On the date of accident, Petitioner was **35** years of age, ***single*** with **1** dependent child.

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

Respondent shall be given a credit of **$0** 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 Petitioner temporary total disability benefits of $976.92/week for 48.29 weeks, commencing January 17, 2012 through December 19, 2012, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $324,439.77, as provided in Section 8(a) of the Act. Said

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

3/27/13
Date

ICArbDec19(b)

MAR 28 2013

Attachment to Arbitrator Decision
(12 WC 1636)

FINDINGS OF FACT

From June of 2011 through mid-December 2011, Petitioner, Harry Koerner, was employed as a journeyman inside wireman electrician by Respondent, Belec Electrical, Inc. (Belec). During that time, Petitioner was working on a construction site in Shorewood, Illinois, helping build an assisted living facility.

As an electrician, Petitioner works with various tools and materials, including conduit which ranges in size from half inch to three inches, as well as different types and sizes of wire. Petitioner testified that bundles containing ten sticks of conduit can range in weight from 30 to approximately 67 pounds. The wire that Petitioner worked with would come on rolls containing at least 2500 feet of wire, weighing 62 pounds.

Petitioner testified that while working for Respondent, he worked eight hours per day, five days per week, or 40 hours per week. Petitioner further explained that if he worked 32 hours in a week, that would have been a four day work week, 37 hours would have been a five day work week, and 22 1/2 hours would have been a three day work week. Petitioner stated that from June through September of 2011, there was some lost time due to rain, which came through the ceilings of the building and flooded the floors. Petitioner also took off some personal days in October and November for duck and goose hunting.

Petitioner testified that when he first began work for Belec in June of 2011, he was not having any difficulty with his lower back, right hip or right leg and was working at full duty. Petitioner noted that up until November of 2011, he was not experiencing any pain in his right hand, right groin or right hip. Meridian Medical records on November 7, 2011 indicate that Petitioner was suffering from a sinus infection but notes no other problems. (PX 4).

In November of 2011, Petitioner was working in the basement of the Shorewood building site for the Respondent. Petitioner provided that he was hanging racks for electrical conduit on the ceiling of the basement, then placing the conduit and pulling wires through the conduit for the basement lights. Petitioner was also installing outlets on the walls, stairwells and elevator pits.

Petitioner testified that in order to install the racks for conduit on the ceiling, he would climb a 10-12 foot ladder and use a 10-12 pound hammer drill to drill the anchors for the brackets into the ceiling. Petitioner indicated this work was performed while standing on a ladder with one arm overhead to reach the ceiling. Petitioner would first go up the ladder and drill a hole with the hammer drill. He would then come back down the ladder to get an anchor and go back up the ladder, drilling the anchor into the ceiling.

Petitioner explained that he would have to carry the conduit used in the basement from the first, second and third floors down to his basement work area. The first day that he was in the basement, he spent about half the day bringing conduit down. After that day, he would have to go upstairs and carry more conduit down each time that he ran out. The conduit carried to the basement would range from one half inch to one-and-a-quarter inches in diameter. The weights of the conduit bundles carried by Petitioner would range from 30-67 pounds. Petitioner indicated that he would cut and bend the conduit, then install it on the ceiling. Petitioner stated that bending pipe required that he place the pipe on the ground, holding one end down with his foot, and pull the other end up to bend it. Petitioner also had the option for some pipe to use the pipe bender, which allowed him to place the bender on the ground and push the pipe down over it.

Petitioner testified that after hanging the conduit on the ceiling, he hung the light fixtures. Petitioner then would pull the wire through the conduit to terminate it at the light fixtures. The wire used in this work was stored in a

lock box on the third floor of the building. Petitioner carried the rolls of wire from the third floor to the basement to use, then at the end of the day, carried the rolls back up to the third floor lock box.

Petitioner testified that he stopped working in the basement approximately two and a half weeks before he got laid off on December 15, 2011. During the final two and a half weeks of his employment, Petitioner put in light switches and performed other, lighter, "trim work" activities.

Petitioner testified that during the month of November and early December 2011, he began noticing that he was limping with his right leg. Petitioner stated that the limping began when he was pulling wire. Petitioner provided that he had been asked by his foreman, Don, to assist him in pulling a large cable for the roof. Don stood on a ladder while Petitioner pulled wires up to him. The wires being pulled at that time were large, heavy, aluminum wires that filled a three inch pipe. Petitioner stated that there was no specific episode that he recalls bringing on the limping. His limping slowly worsened as he continued to work.

Petitioner testified that he had developed right hand pain while bending pipe, pulling wire and hand reaming pipe with a hand reamer to remove burs from the inside of the pipe after each time that he cut it. Petitioner provided the reamer for the Arbitrator's inspection at hearing. The hand reamer is a screwdriver-like device that is used by holding the reamer in one hand and twisting the forearm while rotating the right wrist repetitively. Petitioner testified that he performed the hand reaming during the six months he worked for Respondent. He noticed pain in his right forearm and that his right hand would lock up.

Petitioner testified that on December 9, 2011, he began experiencing right groin and abdominal pain. As a result he sought medical treatment with Dr. Phillip Serna at Meridian Medical. Petitioner provided that as of December 9, 2011, he had been limping for about two weeks, but that the abdominal/groin pain had started that day. Dr. Serna's notes indicate that Petitioner was experiencing right hip joint, right abdominal, right wrist and right elbow pain. Petitioner was sent for right hip and right wrist x-rays, each of which came out normal.(PX 4)

Petitioner testified that when he returned to Respondent's job site on December 12, 2011, he spoke with his foreman, Don Kelly, the owner's son, R.J., and co-workers Tommy and Mark. Petitioner stated that he told that group of people that he had gone to the doctor on Friday, December 9, and that the doctor told him he pulled a muscle in his abdomen and that his right hip was hurting because he had been overcompensating for his injured muscle. Petitioner explained that he had previously feared that his abdominal pain was a sign of cancer, since his father had cancer that revealed itself with the same type of pain, and that is why he went to the doctor on December 9th.

Petitioner was laid off from the respondent on December 15, 2011.

On December 26, 2011, Petitioner was seen by Dr. Asad Cheema, a pain management specialist, who noted Petitioner's right hip and abdominal pain which was reported to be worsening. Dr. Cheema diagnosed severe osteoarthritis and placed Petitioner on pain medication. (PX 10)

On January 3, 2012, Petitioner submitted for a MRI of his right hip at Meridian Medical Associates. Petitioner followed up with Dr. Michael Murphey of Meridian Medical Associates on January 9, 2012. Dr. Murphy reviewed the MRI and noted that the previous x-rays and MRI were consistent with mild arthritis. Petitioner complained to Dr. Murphy of pain in the right hip and buttocks. Dr. Murphy diagnosed mild right hip arthritis and radiculopathy. (PX 4) Petitioner testified that as of his January 9, 2012 appointment date with Dr. Murphy, he did not think that his right hip pain was work-related. He did not know that he had a back injury at that time. Dr. Murphy wrote in his notes that he believed Petitioner should begin treatment for lumbar radiculopathy and have a MRI of his lumbar spine in conjunction with physical therapy. (PX 4).

On January 11, 2012, Petitioner began physical therapy treatment at Brightmore Physical Therapy. (PX 11).

On January 12, 2012, Petitioner underwent a MRI of the lumbar spine at Fox Valley Imaging. (PX 6). Following the MRI, Petitioner was seen by Dr. Ramsis Ghaly, a neurosurgeon, at Ghaly Neurological Associates. Dr. Ghaly noted Petitioner was frustrated because he did not know what was wrong with him. He noted Petitioner had been told that he had a hip problem, but had not been told what he had. Petitioner's main complaints were right groin pain and right buttock pain that went down to the hamstring, calf and side of the foot, marked by limping and dragging his leg. Dr. Ghaly noted the onset of Petitioner's pain while working in November of 2011 and its gradual worsening. He further noted possible carpal tunnel syndrome of Petitioner's right hand, as he was having pain while he was performing fine motor tasks at work. Petitioner was noted to have no history of trauma or injuries before. After examining Petitioner and reviewing his lumbar MRI, Dr. Ghaly diagnosed disc herniation and spondylosis at L4-5 and L5-S1 and grade 1 spondylolisthesis at L5-S1. Dr. Ghaly recommended either a microdiscectomy and removal of the herniated disc fragments at L4-5 or a laminectomy and fusion at L4-5 and L5-S1. Petitioner did not want to undergo surgery at that time and wanted to think about his options. (PX 3). Petitioner testified that this visit was the first time he found out that he had a lower back condition and realized that his injury was related to work activities at Belec.

Petitioner testified that after seeing Dr. Ghaly on January 12, 2012, he called Respondent on January 13, 2012 to report his work-related injuries. Petitioner testified that he spoke with "Ron" (who was later identified as Roy Belluomini, the Vice-President of Belec). Petitioner explained that he told Mr. Belluomini he had injured his back on the job at Alden Estates of Shorewood. Petitioner further testified that he called Respondent on January 13, 2012 because that was right after he learned that his injury was actually to his lower back. Prior to January 12, 2012, he believed that he may have had cancer or a hip injury, but he learned on January 12, 2012 that he actually had a back injury and he never connected his pain to his work until January 12th.

On January 16, 2012, Petitioner followed up with Dr. Ghaly. Dr. Ghaly again noted that Petitioner's pain began in November of 2011 and that he as walking fine with no problems prior to November of 2011. Dr. Ghaly further noted that Petitioner had a history of a pulled tendon in his right leg two years prior, but that he had gotten better from that and was having no problem performing his work prior to this injury. Dr. Ghaly recommended that Petitioner continue physical therapy and a steroid injection if his pain got too bad. Dr. Ghaly continued to recommend surgical intervention, which Petitioner did not want to pursue at that time. (PX 3).

On January 17, 2012, Petitioner was seen again by Dr. Serna. Dr. Serna stated that Petitioner wished to be seen by Dr. Cary Templin of Hinsdale Orthopedics. Dr. Serna recommended that the petitioner seek care with Dr. Templin or Dr. Ghaly. Dr. Serna further noted that Petitioner's condition arose out of his employment, pulling cable. (PX 4). On January 17, 2012, Petitioner also began physical therapy at ATI Physical Therapy. (PX 9).

On January 23, 2012, Petitioner followed up with Dr. Ghaly for an evaluation of pain in his right hand. Petitioner informed Dr. Ghaly that he did a lot of physical work with his right hand and it got weak sometimes, with pain in the wrist and up to the right elbow. Dr. Ghaly diagnosed mild carpal tunnel syndrome, L4-5 disc protrustion and L5-S1 grade I spondylolisthesis. Dr. Ghaly recommended a possible night splint and an EMG and nerve conduction study if the condition worsened. (PX 3).

After seeing Dr. Ghaly on January 23, 2012, Petitioner drafted and faxed a letter to Respondent informing them of his right hand injury. (PX 18). Petitioner explained that he was told by Dr. Ghaly for the first time on January 23, 2012 that he had carpal tunnel syndrome.

Petitioner continued to follow up with Dr. Cheema, Dr. Serna and physical therapy treatment through January, February and March of 2012.

On March 20, 2012, Petitioner was seen by Dr. Cary Templin. Petitioner testified that when he first saw Dr. Templin on March 20, 2012, he brought a job description of an inside wireman with him, which he had gotten from his union, Local 176. Petitioner gave Dr. Templin a history of problems beginning gradually with lifting, twisting bending and pulling at work. Dr. Templin diagnosed Petitioner with "a work related injury, aggravation of his preexisting spondylolisthesis and spondylolysis with a disc protrusion extending posterolaterally and into the foramen." Dr. Templin recommended L5 and S1 nerve root epidural injections and four weeks of continued physical therapy. If those did not resolve the pain, Dr. Templin recommended L5-S1 and potentially L4-5 fusion. Dr. Templin placed Petitioner on restrictions of no lifting greater than 10 pounds, limited bending, squatting and kneeling, and no overhead work. (PX 2).

Petitioner underwent L5-S1 transforaminal epidural steroid injections, performed by Dr. Samir Sharma at the Pain & Spine Institute, on April 4, 2012 and April 18, 2012. (PX 7). Petitioner also continued physical therapy at ATI Physical Therapy during that time. (PX 9).

On April 24, 2012, Petitioner followed up with Dr. Templin who noted that Petitioner's pain had improved somewhat with injections, but that he continued to have significant back and buttock pain, with some parethesias in the right leg. Dr. Templin recommended that Petitioner undergo L4-5 and L5-S1 fusion surgery. Dr. Templin placed Petitioner on restrictions of no lifting greater than 10 pounds, limited bending, squatting and kneeling, and no overhead work. Dr. Templin also drafted correspondence on April 24, 2012 in which he stated, "I do feel as though his duties as a journeyman inside wireman do have a causal relationship as the patient noted worsening of his condition. It is highly likely that the spondylolisthesis and spondylolysis at the L5 level predated these findings but were certainly aggravated during his duties as a journeyman inside wireman." (PX 2).

Petitioner continued to follow up with Dr. Sharma, Dr. Templin, and Dr. Serna through July of 2012.

On July 23, 2012, Petitioner underwent a L4-5 lateral interbody fusion, L5-S1 transforaminal lumbar interbody fusion and L5-S1 posterior lumbar fusion, with cage and instrumentation. This surgery was performed by Dr. Templin at the Center for Minimally Invasive Surgery. Dr. Templin's post-operative diagnosis was L5-S1 spondylolisthesis, L4-5 degenerative disc and L5 radiculopathy. (PX 8). Petitioner testified that following the July 23, 2012 surgery, his leg and hip pain went away and that he had only lower back pain from the surgery itself.

Following surgery, Petitioner was treated from July 24, 2012 through July 28, 2012 for a retroperitoneal hematoma at Provena St. Joseph Medical Center. (PX 13).

On September 10, 2012, Petitioner followed up with Dr. Templin who recommended that Petitioner begin physical therapy. Petitioner was kept on an off-work status. (PX 2).

Petitioner began physical therapy at ATI Physical Therapy on September 19, 2012. (PX 9).
On October 22, 2012, Petitioner was seen again by Dr. Templin, who noted that Petitioner was doing well and should continue physical therapy. Petitioner had continued pain in the lower back but none extending into the legs, with no weakness or numbness. Petitioner was placed on a 5-10 pound lifting restriction, with limited bending, squatting and kneeling and no overhead activities. (PX 2).

As of the date of hearing, Petitioner was continuing treatment with ATI Physical Therapy and had recently been referred by Dr. Templin to work conditioning. Petitioner testified that his back was still sore and weak from the surgery. He also felt that his core muscles were weak from the surgery and from compensating for his back. Petitioner was taking Oxycontin and Percocet for his pain.

On cross-examination, Petitioner testified that he had probably missed five or six days from work with Respondent due to rain. The remainder of the days off would have been for Holidays or personal days.

Petitioner denied that he had been seen for low back and hip pain in 1987 when he was ten years old. Petitioner did have three previous injuries to his right hand including a fracture in 1990, a broken knuckle in 1996 and a fracture in 2008. Petitioner did not recall any previous treatment for lower back pain in 2005. Petitioner did recall seeing Dr. Serna in 2008 with pain that he described as inside his right thigh, diagnosed as a pulled tendon. The petitioner did not miss any work because of the 2008 leg injury. Finally, Petitioner testified that he sustained a low back injury in July of 2009 after lifting a 45 pound block at work. Petitioner did not recall ever having been seen by a doctor for back pain.

Petitioner testified that when he first began working at the Shorewood construction location, there were only outside walls of the building and floors, with no stairs and no elevator. Petitioner indicated that he would have to climb from floor to floor on an extension ladder, carrying his tools and materials with him. He provided that this was the condition of the building from approximately June through August of 2011.

Petitioner testified that he first worked on the second floor of the building, then the third floor, then moved to the basement. While working on the second and third floors, he was wiring the individual rooms and common areas. During the first three months of work, while working on the second and third floors, he did not experience any problems or pain. Petitioner also provided that while working in the individual rooms, some of the work was on the ceilings and some would be on the walls.

Petitioner explained that the conduit used at the Shorewood site would come in 10 foot lengths and each piece would be cut with a handsaw. It took less than a minute to cut through one piece. After cutting the conduit, he would hand ream each piece, then place and tighten fittings onto it. Petitioner indicated that he could finish the conduit portion of each individual room on the second and third floors in approximately eight hours. He would then help stock supplies into rooms that other people were working in.

Petitioner testified that in addition to the conduit and light fixtures on the ceilings, he would install switches at about waist height and outlets, at about 16 inches off the ground, into each room. Petitioner testified that this job was the most commercial work he had ever done and the most conduit that he had ever put up on a job. He indicated however, the basic act of pulling wire through the conduit was about the same as other jobs.

Petitioner testified that by September of 2011, stairs had been installed in the Shorewood building. At that time, he moved from individual rooms into the common areas of the building. At that time he was not experiencing any symptoms in September of 2011. Petitioner also worked in the common areas in October of 2011, moving down into the basement in November of 2011.
When asked whether he had ever discussed performing side jobs with R.J. or Don Kelly, Petitioner denied that he had done any side jobs while he was working for Respondent. Petitioner admitted that he had done side jobs in the past, but none while he was working for Respondent. Petitioner indicated that he had not worked a side job since 2006-2007.

Petitioner testified that he first began feeling some pain in his hip during the last two weeks of November 2011, which lead to a limp. Petitioner explained that when he first went to Dr. Serna on December 9, 2011, he told him that his right side abdomen was hurting and that he had a little limp in his right leg, but he didn't think anything of the hip pain because he thought it was from arthritis. He also complained of pain in his right arm. Petitioner further testified that although he thought the right hip pain he had on December 9, 2011 was just from arthritis and that the right arm pain might have been arthritis as well, but he did not know what was wrong.

Petitioner testified that when he returned to work on December 12, he began doing lighter work because Don knew he was hurting after Petitioner told him when he came back. Petitioner indicated that he was doing lighter duty work for the last two weeks prior to his December 15, 2011 lay-off to finish the job up.

Petitioner testified that after being laid off, he received two weeks of unemployment benefits before he was informed that he could not receive unemployment benefits while he was unable to work. Petitioner also signed on the union book looking for work from the day after he was laid off until the date he was told that his back was injured, on January 12, 2012.

On re-direct examination, Petitioner again stated that this job was the most commercial work he has ever done. His work in the basement of the respondent's building site was also the most he had ever used a hammer drill.

On re-cross examination, Petitioner explained that he connected the back injury to work after being informed of the injury by Dr. Ghaly because work for Respondent was the only place that he did repetitive heavy lifting and bending. Petitioner stated that he had not done that same type of work for other companies, working with a hammer drill over his head or carrying 2500-foot spools of wire. It was the hardest he had ever worked at a commercial job.

Testimony of Mark Colmane

In 2011, Mark Colmane was employed as an electrician with Respondent, Belec Electrical, Inc., through Local 176. He was called as a witness for Petitioner. Mr. Colmane has been a carpenter for 21 years and worked for Respondent for approximately four months. Mr. Colmane knew Petitioner only as a co-worker and does not know him outside of the jobsite.

Mr. Colmane testified that he had the opportunity to see Petitioner perform his job duties in November of 2011. Mr. Colmane saw Petitioner working in the basement of the Shorewood building during that time. He saw Petitioner running conduit on the ceiling of the basement. Mr. Colmane also confirmed that there were 2500-foot spools of wire on the job site, which he stated weighed between 50 and 70 pounds. Mr. Colmane did not witness Petitioner lifting the spools of wire, but stated that he was sure Petitioner did because he did witness Petitioner pulling the wire in the basement.

Mr. Colmane further explained to move conduit, you throw it over your shoulder and carry it to the area that you would install it in. He did see Petitioner carry bundles of conduit down to the basement. Mr. Colmane further confirmed that he saw Petitioner working on a ladder in the basement, using a hammer drill to drill through concrete.

Mr. Colmane testified that during the month of November, he noticed Petitioner was "limping, that he was walking a little differently." Mr. Colmane indicated that he did not ask Petitioner about his limp at that time and had not noticed Petitioner limping prior to November of 2011.

On cross-examination, Mr. Colmane testified that this was a normal type of commercial job.

Mr. Colmane provided that Petitioner was already on the job site when he began working for Respondent at the end of July or beginning of August, 2011. He indicated that the two did not really work together, but would work in the same portions of the building sometimes. He would see Petitioner for minutes at a time on a regular day. Mr. Colmane indicated that he was pulling phone cables that had to go through the basement, so he saw Petitioner working in the basement while he was down there as well. He witnessed Petitioner cutting conduit,

bending conduit, working on a ladder, and working on floor level, but most of the work was on the ladder to install conduit and light fixtures in the concrete ceiling.

Testimony of Donald Kelly

Donald Kelly is an employee of Respondent, Belec Electrical, Inc., and has been employed by Respondent for 20 years. He was called as a witness for Respondent. Mr. Kelly is employed as a foreman, a position that he has been in for about 15 years for Respondent. Prior to becoming a foreman, Mr. Kelly performed journeyman electrical work.

Between June and December of 2011, Mr. Kelly was working as a foreman at the Shorewood construction site. Mr. Kelly saw Petitioner every day during the time Petitioner worked at the site. Some days he worked with Petitioner directly and some days he simply performed spot checks to see how Petitioner was doing.

Mr. Kelley testified that when Petitioner joined the job in June of 2011, the exterior walls of the building were up and the floors were poured but the brickwork was not complete, there were not stairs or elevators, and the roof was not watertight. He provided that when it rained, he would give his guys the option to stay and work in the mud or to go home. He further stated that there would have been no weeks that Petitioner worked during which fewer than forty work hours would have been available to him.

Mr. Kelly testified that in June of 2011, Petitioner's job duties involved "rough-in work," which entailed passing conduit and wire through the walls to wire electrical boxes and connecting the wires to boxes at switches and outlets. Petitioner was working in individual rooms performing these tasks and he would use a ladder when installing boxes and conduit in the ceiling. The other work could be reached from the floor.

Mr. Kelly testified that in the individual rooms, three-quarter inch conduit was used, which would be cut to size prior to installation. The conduit would also be bent to fit its place. This was performed with a horseshoe-shaped pipe bender. The person bending the pipe would stand on the back of the pipe and apply pressure to hold the pipe in place, then push down on the handle of the bender. This task could be done by either pulling up or pushing down the handle, at the user's choice.

Mr. Kelly testified that materials were brought to the upper floors of the building using a lull, which is a very large forklift, from outside the building. This is how approximately 80 percent of the conduit reached the upper floors.

Mr. Kelly testified that during the first three months Petitioner was employed with Respondent, he did not notice Petitioner having any difficulty or complaining of anything. Mr. Kelly however testified that he did notice that Petitioner would "wobble when he walked" but did not notice him favoring either side.

Mr. Kelly further explained that the process of pulling wire involved passing a fish tape, which is a long piece of flexible metal, through the conduit, then pulling the fish tape through from the other side to retrieve the wire attached to it. The wire would be placed on a wire-cart, which allowed the roll to rotate as the wire was fed through.

Mr. Kelly confirmed that Petitioner began work in the basement in November. He recalled Petitioner working in the basement for about two weeks. When asked what Petitioner's job duties in the basement were, Mr. Kelly testified, "pretty much what he said." He also explained that the lull (large forklift) would not reach the basement, so the pipe and other materials had to be carried down there. Mr. Kelly confirmed that Petitioner was working off a ladder, attaching a rack on the concrete ceiling for conduit to run across. This was overhead

work. Petitioner would use a drill, which Mr. Kelly stated was 10.1 pounds. According to Mr. Kelly, Petitioner would make a lot of trips up and down the ladder, but would work overhead drilling for approximately 30 seconds at a time.

When asked whether Petitioner reported any problems to him in November of 2011, Mr. Kelly testified "We talked. He may have mentioned that he had an ailment or a pain" but stated that he did not specifically say that he injured himself working. Mr. Kelly did recall Petitioner speaking with him about "stomach issues" on Monday, December 12, 2011, but didn't remember the specifics of his complaints. He indicated Petitioner never asked to be taken off of the job he was working on and always completed his tasks.

Mr. Kelly testified that Petitioner told him of a small, residential side job he had been working on in the City of Chicago, using similar tools and doing similar work to what they were doing on the job site. Also Mr. Kelly did not notice anything unusual or different about Petitioner in the last two weeks of the job, prior to Petitioner's layoff.

On cross-examination, Mr. Kelly agreed that Petitioner would need to work in a rapid, workmanlike fashion on the job site. Mr. Kelly also heard Petitioner's testimony as he sat in the room while Petitioner testified. When asked if he agreed with most of what Petitioner said, Mr. Kelly stated, "I believe so, yes."

Testimony of Roy Belluomini

Roy Belluomini is the vice-president of Belec Electric and is the supervising electrician. His job duties include going over job quotes, obtaining jobs, ordering material and visiting jobsites. Mr. Belluomini testified that the only notice he got of Petitioner's hand and back injuries was when he received the applications for adjustment of claim in the mail.

Mr. Belluomini testified that Petitioner never personally gave him notice of a lower back injury. He further stated that he was never advised of any problems or difficulties that Petitioner was having during his employment period with Respondent.

Mr. Belluomini went on to testify that he received a call in the middle of January from Petitioner to report an injury. Mr. Belluomini explained that when Petitioner called him, he told him that his name was Harry and that he worked for Respondent at Shorewood. He stated that Petitioner explained he was from Local 176 and that he may have hurt himself on the job. He stated that this was a short, 35 second, call. Mr. Belluomini does not recall that Petitioner told him what body part or parts he injured, but thinks that he said something about his hand. He stated that he did not ask Petitioner any questions and that Petitioner quickly hung up.

Mr. Belluomini testified that a week after the phone call, he received a "one-sentence letter" that was "hand written on a piece of note paper" stating that Petitioner had worked on Respondent's job site and had injured himself. Mr. Belluomini stated that it did not go into any further details.

On cross-examination, Mr. Belluomini agreed that the phone call he got from Petitioner would have been on January 13, 2012. Mr. Belluomini testified that he was told by Petitioner that he had injured himself on the job, after which Mr. Belluomini claims that he called his workers' compensation insurance company and filled out any paperwork. Mr. Belluomini stated that he was not aware that Petitioner was diagnosed with carpal tunnel syndrome on January 23, 2012 or that he was diagnosed with two herniated discs on January 12, 2012.

Testimony of Roy Gino Belluomini

Roy Gino Belluomini (Roy) is an electrician who has been employed by Respondent, Belec Electric, for eight years. Roy worked at the Shorewood site from December of 2010 through the end of the project in December of 2011, with some time off in the summer of 2011.

Roy worked with Petitioner on a few occasions at Shorewood. He worked some with Petitioner performing layouts and piping in the hallways. Roy testified that Petitioner told him about doing some side jobs in downtown Chicago. Roy stated that Petitioner's side jobs included work on rooftop air conditioning units. He believed that Petitioner had told him about working a side job the weekend before their conversation in November of 2011. He indicated that an air conditioner job would involve bending conduit using a hydraulic bender and working with heavier wire. Roy further testified that Petitioner "had a kind of swagger" when he walked.

On cross-examination, Roy agreed that a large air conditioning wire job in downtown Chicago would usually be a union job through Local 134. Roy had no information as to what job, if any, Petitioner was actually working on.

On rebuttal, Petitioner testified that he had never been told before that he had a swagger or a waddle, as Mr. Kelly and Roy testified to. Petitioner also denied that he had ever discussed working a side job and denied that he had performed a side job in the City of Chicago in November of 2011. Petitioner further testified that when he called Mr. Belluomini on January 13, 2012 it was to report a back injury, not a hand injury. Petitioner pointed out that he was not diagnosed with carpal tunnel in his right hand until one week after that conversation, on January 23, 2012, by Dr. Ghaly.

Medical Opinions

On December 14, 2012, Dr. Templin drafted a narrative report detailing his opinions of Petitioner's condition and its cause. The doctor's opinion was based upon his treatment of Petitioner and his review of the treatment records from other providers. At that time, Dr. Templin had the opportunity to review a job description, provided by Petitioner's attorneys. (PX 19). Dr. Templin opined as follows:

"Mr. Koerner's onset of pain in November and December appears rather straight forward as initially pain extending to the hip and buttock and then pain that eventually started extending down his left with continued activities of daily work. He noted to me that the pain was a result of repetitive activities with severe pain in early December. He saw his doctor on December 9, 2011 for right hip pain, which in hindsight was most likely related to his lumbar herniated discs, degeneration and spondylolisthesis

1. Can a herniated disk result from repetitive work activities?

Absolutely. Repetitive work activities as Mr. Koerner was doing in November or December, including lifting, twisting, bending, hoisting heavy weight overshoulder, and climbing up and down ladders can certainly result in a herniated disk especially in the face of a preexisting degenerative condition as well.

2. Can aggravation of his preexisting spondylolisthesis and spondylosis result from repetitive work activities?

Absolutely. In regards to the spondylolisthesis and spondylosis, certainly this is a condition of instability of the lumbar spine and certainly repetitive activities of this nature can lead to aggravation of the foraminal stenosis or to the mechanical nature, the pain causing increasing pain and discomfort.

3. What is your current diagnosis of Mr. Koerner's condition?

My Current diagnosis is lumbar degenerative disk disease, herniated disk, L4-5, L5-S1 spondylolisthesis, degenerative disease and foraminal stenosis with radiculopathy, status post a L4-5, L5-S1 fusion.

4. After reviewing his job, give an opinion to within a reasonable degree of medical and surgical certainty whether Mr. Koerner's current condition of ill being is causally related to his repetitive work activities in 2011.

I do feel that it is with a reasonable degree of medical and surgical certainty that it is more likely than not that his repetitive work activities did play a role in his current condition of ill being with a right-sided herniated disk and aggravation of his spondylolisthesis. Therefor I do feel that his condition of ill being is causally related to these work activities with symptoms starting in November 2011 and early December 2011. The symptoms were right hip pain and groin pain, and abdominal pain. These symptoms it was determined were related to a lumbar condition on January 12, 2012 by Dr. Ghaly, the neurosurgeon that examined him and read a lumbar MRI at that time.

5. Do you have an opinion relative to whether the above related repetitive work activity could or might have aggravate or exacerbated a preexisting condition of this patient, thereby being a cause of his current condition?

Yes, I do feel that it is more likely than not that his repetitive work activities did aggravate his preexisting condition resulting in a disk herniation at L4-5 as well as an aggravation of his spondylolisthesis at L5-S1, causing him significant lower back pain and more significantly, the radiating right leg pain that the patient had. It is well-documented that activities of repetitive lifting, bending, and twisting can aggravate degenerative conditions and can lead to disk herniation which can lead to the conditions that Mr. Koerner unfortunately has suffered from.

6. What treatment have you rendered previously and what treatment do you currently recommend for Mr. Koerner?

Mr. Koerner has undergone an L4-5 and LS-Sl fusion procedure. He has continued to progress well. My current treatment recommendation is to continue with physical therapy and progress to work conditioning and eventually a Functional Capacity Evaluation, which will hopefully place him at his previous work demand.

7. Do have an opinion whether the need for that treatment, including the spinal fusion, is causally related to Mr. Koerner's work activity?

I do, in regards to my previous answers. I feel that his condition of ill being is causally related and certainly the surgery was performed in order to help with those conditions noted above. Therefore, I feel that his spinal fusion and decompressive surgery is causally related to his repetitive work activities performed in November 2011 and early December, 2011.

8. Has all treatment that you have reviewed or administered to date been reasonable and necessary to treat Mr. Koerner's condition of ill being?

Certainly all treatment rendered to this date by myself as well as his other treaters have been reasonable and necessary. The patient and I discussed at length his options for surgery including potentially decompressive surgery. As well we had failed conservative measures in the form of injections and therapy. The patient has elected to proceed with surgical intervention as a result of his condition of ill being."

9. What current physical restrictions do you recommend for Mr. Koerner?

Currently I would have Mr. Koerner lift no more than 25 pounds and bend and twist to comfort. He should perform no overhead activities and should not be up on a ladder at this point in time. Currently I have him off of work as he continues his rehabilitation with physical therapy and work conditioning and therefore I have placed him on complete restriction from work at this point in time as he continues to perform his rehabilitation.

10. Do you have an opinion whether the current physical restrictions, if any, for Mr. Koerner are causally related to the repetitive work from 2011?

Yes, I feel that his current physical restrictions are directly related to the surgery which is causally related to the repetitive work activities of November and December, 2011, as noted above."

At Respondent's request Dr. Butler performed a records review on December 12, 2012. Dr. Butler opined that Petitioner had a preexisting condition which could have become symptomatic absent any specific work place exposure. Dr. Butler stated that Petitioner's "obesity (BMI of 36), preexisting spondylolisthesis, smoking history of 1.5-2ppd and poor fitness level contribute to the possibility of pain developing." Dr. Butler further stated that Petitioner's initial treatment with his primary care physician contained no note of a work related injury. Finally, Dr. Butler opined that Petitioner may be embellishing his workplace exposure, based upon his "historical recollection to treaters and the timing of complaints." Dr. Butler concluded that Petitioner's condition was unrelated to work. (RX 5).

On the issue of (A) whether the respondent was acting under and subject to the Illinois Workers' Compensation Act, the Arbitrator hereby finds as follows:

Section 3 of the Illinois Workers' Compensation Act states in relevant part, "The provisions of this Act hereinafter following shall apply automatically ... to all employers and all their employees, engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely ... Construction, excavating or electrical work." 805 ILCS 305/3(3).

Petitioner in this matter was employed by Respondent as a journeyman electrician out of Local 176. While working for Respondent at the Shorewood construction site, Petitioner performed various aspects of electrical work, such as running conduit, pulling wires and connecting/terminating wires at electrical boxes.

Based upon Petitioner's credible testimony regarding his performance of electrical work while employed by Respondent, the Arbitrator finds that Belec Electrical, Inc., for whom such electrical work was performed, was operating under and subject to the Illinois Workers' Compensation Act, pursuant to Section 3(3) of the Act.

On the issues of (B) whether an employee-employer relationship existed between the petitioner and the respondent, (C) whether an accident occurred that arose out of and in the course of petitioner's employment by respondent, (D) the date of accident, (F), and whether the petitioner's current condition of ill being is causally related to his accident, the Arbitrator hereby finds as follows:

The original Application for Adjustment of Claim submitted in this case contained an accident date of December 1, 2011.

The date of an accidental injury in a repetitive trauma compensation case is the date on which the injury manifests itself. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987). The manifestation of a repetitive trauma injury occurs when the fact of injury and its causal

relationship to the claimant's employment would have become plainly apparent to a reasonable person. *Durand v. Industrial Commission*, 224 Ill.2d 53, 862 N.E.2d 918 (2006).

As the First District Appellate Court has established, "The modern rule allows compensation even when an injury occurs at a time and place remote from the employment if its cause is something that occurs entirely within the time and place limits of employment." *A.C.& S. v. The Industrial Commission*, 710 N.E.2d 837, 840; 304 Ill. App. 3d 875, 879 (1st Dist. 1999). The Court went on to explain that Illinois Supreme Court has determined that the manifestation date is important in determining the relationship between the parties, but that the Supreme Court did "not intend to give employers an additional shield by requiring the injury to be traced to employment during employment." *Id* at 841, citing *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 529; 505 N.E.2d 1026, 1028 (1987).

As detailed by the Appellate Court in *Zion-Benton Township High School District 126 v. The Industrial Commission*, 609 N.E.2d 974 ; 242 Ill. App. 3d 109 (2nd Dist. 1993), "Gradual injury stemming from repeated trauma clearly is compensable under the Workers' Compensation Act as long as the employee proves the injury is work-related and not the result of normal degenerative processes. He need not show any external violence to the body to prove an accidental injury, for compensation may be allowed whenever an employee's existing physical structure, whatever it may be, gives way under the stress of his usual labor. The employee need only identify the date on which the injury manifested itself." *Id* at 978.

The courts in Illinois have found repetitive work activities can be a cause of lower back injuries. In *Zion-Benton Township*, the Appellate Court found that repeatedly unloading boxes and 55-gallon drums of maintenance supplies from a truck led to a "breakdown of the [petitioner's] physical structure" and caused a lumbar injury, requiring fusion surgery. 609 N.E.2d at 978-979. The Second District Appellate Court again found a repetitive trauma back injury where the degenerative disc disease in the petitioner's lumbar spine was caused or aggravated by the vibrations involved in driving an autohauler. *Cassens Transport Company, Inc. v. The Industrial Commission*, 633 N.E.2d 1344, 262 Ill. App. 3d 324 (2nd Dist. 1994). Similarly, the First District Appellate Court in *Reliance Elevator Company v. The Industrial Commission*, 524 N.E.2d 1022; 171 Ill. App. 3d 18 (1st Dist. 1988) found that a job which included heavy lifting "from time to time" was causally related to an aggravation of Petitioner's lumbar disc protrusion where Petitioner had returned to work from a lumbar injury which occurred approximately seven months prior and worked for nearly two months with no medical care, missing no time from work, and where medical testimony supported that the petitioner's lifting duties were the most likely cause of their present condition and the probable cause of their disability. *Id* at 1025.

Petitioner testified that he began experiencing pain in his right hip and difficulty walking in November of 2011, but was not aware that he had sustained an injury to his lower back until January 12, 2012 when he was diagnosed with two herniated discs by Dr. Ghaly. Prior to seeing Dr. Ghaly, Petitioner had been treated for stomach and groin pain by Dr. Serna, which Petitioner first feared was cancer and then thought was simply right hip pain caused by overcompensating for a pulled stomach muscle. Petitioner then treated with Dr. Cheema and Dr. Murphy, who each treated Petitioner for right hip pain.

When Petitioner saw Dr. Ghaly on January 12, 2012, Dr. Ghaly noted that Petitioner was frustrated because he had been receiving treatment for an apparent hip injury, but nobody had been able to tell him what was actually wrong with him. Dr. Murphy had suspected radiculopathy and ordered a lumbar MRI. Dr. Ghaly was the first to review the MRI of Petitioner's lumbar spine and properly diagnose his condition. After being diagnosed by Dr. Ghaly, Petitioner informed the doctor that he knew his back injury was related to work, because that is the only place he did repetitive, heavy lifting. After reviewing Petitioner's medical records, Dr. Templin also confirmed that the first physician to explain the cause of Petitioner's groin and abdominal pain was Dr. Ghaly on January 12, 2012.

Based upon Petitioner's testimony regarding when he first became aware of his injury and its relation to work, Petitioner motioned for leave to amend the Application for Adjustment of Claim on case number 12 WC 01636 to reflect an accident date of January 12, 2012. The arbitrator, after reviewing the precedent established by the Illinois Supreme Court in *McLean Trucking Co. v. Industrial Comm'n*, 96 Ill. 2d 213, 449 N.E.2d 832 (1983), which stands for the proposition that the date of accident can be changed on an application for adjustment of claim to conform to the proofs contained in the record, granted Petitioner leave to amend the date of accident.

On the issue of whether Petitioner suffered a lower back injury due to repetitive work activities during his employment with Respondent, the Arbitrator finds that he did suffer the lower back injury while employed by Belec, even though he was not aware that it was related to his work duties while he was still working for respondent. This is based upon his symptoms of groin pain, abdominal pain and limping that he experienced while performing the repetitive activities of his job as an electrician. Dr. Templin's explanation of the repetitive trauma lower back injury is most persuasive and explains its insidious onset.

The next question is when the injury manifested itself, or when the fact of injury and its causal relationship to the claimant's employment would have become plainly apparent to a reasonable person. The Arbitrator finds it quite reasonable that a person in Petitioner's situation, who had experienced abdominal, groin pain and hip pain would think that he had a hip or stomach injury, not knowing that it was actually a lower back condition that caused his pain. Even at the time Petitioner was diagnosed with a lumbar injury, he testified that he was experiencing only right hip pain. In this case, the Arbitrator finds that the repetitive trauma injury to Petitioner's lumbar spine would not have become plainly apparent to a reasonable person until January 12, 2012 when Dr. Ghaly first diagnosed lumbar disc herniations and explained that Petitioner's hip pain was radicular in nature from his lumbar injury. This discovery was confirmed by Dr. Templin as being on January 12, 2012.

Based upon the evidence and testimony in this matter, the Arbitrator finds that Petitioner did sustain an accident that arose out of an in the course of Petitioner's employment by Respondent on January 12, 2012. This date of January 12, 2012 is the date on which the condition manifested itself, thus it is the date of accident for this repetitive work activity lower back injury.

Respondent in this matter further contends that Petitioner's claim should be denied because an employee-employer relationship did not exist between Petitioner and Respondent at the time of Petitioner's accident in this matter. Petitioner was laid off by Respondent on December 15, 2011, but claims an accident date of January 12, 2012 for a repetitive work activity back injury.

There is no dispute that Petitioner was employed by Respondent in November and December of 2011, when he testified that his symptoms first began. There is also no dispute that Petitioner was employed by Respondent while his hip symptoms worsened up through December 9, 2011 when he saw Dr. Serna, complaining of hip, abdominal and right arm pain. It is clear from a review of the records and testimony in this case, that Petitioner's injuries occurred during his employment with Respondent in November and December of 2011. Therefore, the Arbitrator finds that an employee-employer relationship did exist between Petitioner and Respondent during the time the symptoms began.

The date of the accident in this case, which is the date of manifestation for Petitioner's repetitive work activity injury, is a legal technicality. The fact that the manifestation date is after Petitioner had left Respondent's employment does not shield Respondent against liability for Ptitioner's accident and injury sustained while working for Belec. Although the manifestation date is January 12, 2012, the development of Petitioner's repetitive work activity injury clearly related to the time period of his employment by Respondent.

Regarding the causal connection between Petitioner's accident and his current condition of ill being, Petitioner began his treatment with Dr. Serna at Meridan Medical Associates. On January 17, 2012, Dr. Serna opined that

Petitioner's lower back condition arose out of his work pulling cable and referred Petitioner for care with Dr. Cary Templin.

Petitioner began treatment with Dr. Templin on March 20, 2012. At that time, Dr. Templin had the opportunity to review a job description for a journeyman electrician, provided by Petitioner. On April 24, 2012, after examining Petitioner, Dr. Templin opined "I do feel as though his duties as a journeyman inside wireman do have a causal relationship as the patient noted worsening of his condition. It is highly likely that the spondylisthesis and spondylolysis at the L5 level predated these findings but were certainly aggravated during his duties as a journeyman inside wireman."

After reviewing all medical records and testimony in this case, the Arbitrator finds the causation opinion of Dr. Templin more persuasive than the opinion of Dr. Butler. Dr. Templin has been treating Petitioner since March 20, 2012, performed the surgery on Petitioner's lumbar spine on July 23, 2012 and has had the opportunity to review Petitioner's medical treatment from other providers. In contrast, Dr. Butler performed only a records review and has never seen Petitioner. Furthermore, Dr. Templin examined a thorough job description which correlates well to the job descriptions testified to by Petitioner, Mr. Kelly and Mr. Colmane. There is no indication that Dr. Butler has reviewed any job description. Additionally, Dr. Templin clearly opines that Petitioner's conditions of spondylisthesis and spondylolysis at the L5 level predated Petitioner's accident, but that Petitioner's work duties aggravated those conditions. Dr. Butler failed to address the possibility of an aggravation or acceleration of Petitioner's preexisting condition. Finally, Dr. Butler makes an accusation that Petitioner may be embellishing his workplace exposure. However, Dr. Butler does not explain his reasoning in any detail and the Arbitrator notes that no other physician involved in Petitioner's care has indicated any thought of embellishment by Petitioner.

In his December 14, 2012 report, Dr. Templin opines "I do feel that it is with a reasonable degree of medical and surgical certainty that it is more likely than not that his repetitive work activities did play a role in his current condition of ill being with a right-sided herniated disk and aggravation of his spondylolisthesis. Therefore I do feel that his condition of ill being is causally related to these repetitive work activities in with symptoms starting in November 2011 and early December 2011. The symptoms were right hip pain, and groin pain, and abdominal pain. These symptoms it was determined were be related to a lumbar condition on January 12, 2012 by Dr. Ghaly, the neurosurgeon that examined him and read a lumbar MRI at that time."

The evidence in this matter reflects that prior to November of 2011, Petitioner was working at full duty as a journeyman inside wireman and was not experiencing any lower back or hip pain. Petitioner testified that he began to limp due to right hip pain in November of 2011, which was confirmed through the testimony of Mr. Colmane. The Arbitrator notes that although Respondent's witnesses testified that Petitioner had a "swagger" or "waddle," there is nothing in Petitioner's medical history to indicate that he would have an abnormal gait, absent injury. Lastly, although Respondent has offered medical records regarding long-past treatment to Petitioner's back (1987, 2005 and 2009), there is no evidence or testimony to dispute that Petitioner was in a condition of good health and working at full duty for Respondent prior to November of 2011.

Based upon the above reasoning, the Arbitrator adopts the causation opinion of Dr. Templin and finds that the current condition of ill-being in Petitioner's lumbar spine is causally related to his January 12, 2012 accident.

On the issue of (E) whether timely notice was given by the petitioner to respondent, the Arbitrator hereby finds as follows:

The Arbitrator finds that Petitioner gave timely notice of his lumbar injury to Respondent on January 13, 2012.

Petitioner testified that after seeing Dr. Ghaly on January 12, 2012, he called Respondent and spoke with a man he identified as "Ron," whom the evidence in this matter shows to be Roy Belluomini. Petitioner stated that he told Mr. Belluomini that he had injured his back on the job at Alden Estates of Shorewood. Mr. Belluomini admits to receiving a call from Petitioner on January 13, 2012 and that Petitioner informed him who he was and that he thought he had been injured at work for Respondent. Mr. Belluomini further testified that he thought he remembered Petitioner reporting an injury to his hand during that call and that the only notice he got of Petitioner's back injury was when he received the Application for Adjustment of Claim in the mail.

On rebuttal testimony, Petitioner explained that he had spoken with Mr. Belluomini on January 13, 2012 about a back injury, not a hand injury. Petitioner pointed out that his conversation with Mr. Belluomini occurred on January 13, 2012 and that he was not diagnosed with carpal tunnel syndrome until January 23, 2012. A review of the record shows that Petitioner was in fact not diagnosed with carpal tunnel syndrome until January 23, 2012 by Dr. Ghaly. Petitioner and Mr. Belluomini agree that a phone conversation occurred between them on January 13, 2012 and that Petitioner reported that he was injured while working for Respondent at Shorewood. The dispute in their testimony only lies in whether Petitioner reported a back injury from work. The Arbitrator finds the testimony of Petitioner more credible than that of Mr. Belluomini.
Based upon the records and evidence in this matter, the Arbitrator finds that Petitioner did provide Respondent with proper notice, pursuant to Section 6(c) of the Act.

On the issue of (G) petitioner's earnings, the Arbitrator finds as follows:

While working for Respondent, Petitioner worked eight hours per day, five days per week, or 40 hours per week. Petitioner further explained that if he worked 32 hours in a week, that would have been a four day work week, 37 hours would have been a five day work week, and 22 1/2 hours would have been a three day work week. From June through September of 2011, there was some lost time due to rain, which came through the ceilings of the building and flooded the floors. Petitioner also took off some personal days in October and November for duck and goose hunting. On cross-examination, Petitioner testified that he had probably missed five or six days from work with Respondent due to rain. The remainder of the days off would have been for Holidays or personal days.

Respondent's witness, Donald. Kelly testified that when it rained, he would give his guys the option to stay and work in the mud or to go home. He further stated that there would have been no weeks that Petitioner worked during which fewer than forty work hours would have been available to him.

Section 10 of the Act states, in relevant part, "Average weekly wage" which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ... divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed." 802 ILCS 305/10.

The Arbitrator has reviewed all records and testimony in this matter and has calculated Petitioner's average weekly wage as follows:

Period Ending	Gross	OT Premium	Hours	Days	Weeks	Wage
6/18/2011	$1,580.00	$0.00	40.00	5.00	1.00	$1,580.00
6/25/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
7/2/2011	$1,461.50	$0.00	37.00	5.00	1.00	$1,461.50

7/9/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
7/16/2011	$1,224.50	$0.00	31.00	4.00	0.80	$1,224.50
7/23/2011	$1,461.50	$0.00	37.00	5.00	1.00	$1,461.50
7/30/2011	$1,580.00	$0.00	40.00	5.00	1.00	$1,580.00
8/6/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
8/13/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
8/20/2011	$1,315.50	$0.00	34.00	4.00	0.80	$1,315.50
9/3/2011	$1,232.00	$0.00	32.00	4.00	0.80	$1,232.00
9/10/2011	$866.25	$0.00	22.50	3.00	0.60	$866.25
9/17/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
9/24/2011	$866.25	$0.00	22.50	3.00	0.60	$866.25
10/1/2011	$1,232.00	$0.00	32.00	4.00	0.80	$1,232.00
10/8/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
10/15/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
10/22/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
10/29/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
11/5/2011	$1,501.50	$0.00	39.00	5.00	1.00	$1,501.50
11/12/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
11/19/2011	$1,232.00	$0.00	32.00	4.00	0.80	$1,232.00
11/26/2011	$924.00	$0.00	24.00	3.00	0.60	$924.00
Totals	**$30,773.00**	**$0.00**	**791.00**	**100.00**	**20.00**	**$30,773.00**

The Arbitrator has reviewed the testimony on evidence submitted in this case and finds that Petitioner lost 15 days of work during the period he was employed Respondent. Of the 15 days, 6 days were rain outs and 4 days were Holidays (4th of July, Labor Day, and 2 days for Thanksgiving). Therefore, 10 of the days lost by Petitioner were due to no fault of his own. The Arbitrator finds that Petitioner took 5 days off as personal days. The appropriate denominator for Petitioner's average weekly wage calculation, indicating the number of weeks and parts thereof worked by Petitioner, is 21 (100 days worked + 5 personal days taken off / 5 days in a normal work week).

Based upon the above reasoning, the Arbitrator calculated Petitioner's average weekly wage as follows:

$30,773.00 (earnings) / 21 (weeks and parts thereof worked) = $1,465.38 average weekly wage. The Arbitrator finds that Petitioner's average weekly wage, pursuant to Section 10 of the Act is $1,465.38.

On the issues of payments for medical services, (J), and Section 8(a) choice of physician, the arbitrator hereby finds:

Dr. Templin, in his December 14, 2012 report, opined that all treatment received by Petitioner, including the spinal fusion, was reasonable, necessary and causally related to the work injury. Respondent has offered no evidence or testimony to dispute the reasonableness or necessity of any of Petitioner's medical treatment in this case.

The Arbitrator has reviewed all evidence and testimony in this matter and hereby finds that all treatment received by Petitioner, as contained in Petitioner's Exhibits 1-13 has been reasonable, necessary, and causally related to Petitioner's January 12, 2012 work accident.

Respondent in this case claims that Petitioner has exceed his choice of two physicians, as provided for in Section 8(a) of the Act.

Petitioner began his treatment in this matter with Dr. Serna at Merdian Medical Associates. This constituted Petitioner's first choice. Petitioner was referred by Dr. Serna to Dr. Murphy, also at Merdian Medical. Dr. Murphy then referred Petitioner to Brightmore Physical Therapy for treatment. On January 26, 2012, Dr. Serna referred Petitioner to Dr. Templin who referred him to ATI Physical Therapy for treatment. Petitioner was referred by Dr. Templin to the Pain and Spine Institute and Dr. Sharma for pain management. Petitioner also underwent surgical treatment by Dr. Templin at the Center for Minimally Invasive Surgery. Following surgery, Petitioner was seen for additional post-surgical treatment at St. James Hospital, St. Joseph Hospital, and by Dr. Grunderson. Each of these providers fall within the first choice chain of treatment for Petitioner.

Petitioner was seen on December 26, 2011 by Dr. Cheema at the Holistic Science Pain Clinic. This constituted Petitioner's second choice of physician.

On January 12, 2012, Petitioner was seen by Dr. Ghaly. Petitioner testified at trial that he had not been referred by anyone to the doctor. Dr. Ghaly referred Petitioner for imaging services at Fox Valley Imaging. Dr. Ghaly is Petitioner's third choice of physician and the treatment from Dr. Ghaly and Fox Valley Imagine each fall outside of the two doctors permitted by Section 8(a).

Petitioner has submitted the following outstanding bills for payment as Petitioner's Exhibit 16:

Provider	Beginning	Ending	Balance	Awarded or Denied
ATI	1/17/2012	11/19/2012	$36,708.76	Awarded
Assoc Pathologists of Joliet	6/28/2012	8/11/2012	$1,408.00	Awarded
CVS	1/25/2012	9/11/2012	$2,139.60	Awarded
EMP of Will County	8/11/2012	8/11/2012	$504.95	Awarded
Fox Valley Imaging Center	1/12/2012	1/12/2012	$2,744.00	Denied
Ghaly Neuro Assoc	1/12/2012	1/23/2012	$757.00	Denied
Hinsdale Orthopaedics	7/23/2012	10/22/2012	$76,639.00	Awarded
Holistic Science Pain Clinic	12/26/2011	11/9/2012	$3,390.00	Awarded
Joliet Radiological	6/28/2012	7/25/2012	$467.00	Awarded
MD2X Anesthesia	7/23/2012	7/23/2012	$3,600.00	Awarded
Meridian Medical Associates	12/9/2011	7/10/2012	$5,131.00	Awarded
Osco Drug	1/10/2012	1/17/2012	$32.27	Awarded
Pain & Spine Institute	3/18/2012	8/3/2012	$17,062.76	Awarded
Provena St. Joseph Medical	6/28/2012	8/12/2012	$44,182.73	Awarded
St. James Hospital & Health Centers	7/23/2012	7/24/2012	$132,804.70	Awarded
Trace Ambulance	7/24/2012	7/24/2012	$369.00	Awarded
Totals			$327,940.77	

The Arbitrator has found that the all treatment represented above has been reasonable, necessary and causally related to Petitioner's January 12, 2012 injury. However, the treatment from Dr. Ghaly and Fox Valley Imaging Center fall outside of the two doctor rule and are thus excluded from any award in this matter.

The Arbitrator notes that these bills were claimed as part of the consolidated cases of 12 WC 1636 and 12 WC 2408. The arbitrator has found that all bills, other than Dr. Ghaly's January 23, 2012 bill were for treatment to Petitioner's lower back. Dr. Ghaly's January 23, 2012 bill was for treatment of Petitioner's carpal tunnel syndrome and is addressed in the Arbitrator's decision in case number 12 WC 2408.

Therefore, the Arbitrator hereby orders respondent to pay $324,439.77 in unpaid medical bills, pursuant to Section 8(a) of the Act. Said bills are to be paid consistent with the medical fee schedule

On the issue of (K) prospective medical care, the Arbitrator finds as follows:

In his December 14, 2012 report, Dr. Templin opined that Petitioner needed continued physical therapy, progressing into work conditioning and eventually a Functional Capacity Evaluation.

Based upon all evidence and testimony in the record, the Arbitrator finds that Respondent shall authorize physical therapy, work conditioning and a functional capacity evaluation, as recommended by Dr. Templin.

On the issue of (L) temporary total disability benefits, the Arbitrator finds as follows:

On January 17, 2012, Petitioner began physical therapy treatment with ATI physical therapy. It was noted in the physical therapy records that Petitioner was temporarily and totally disabled. Petitioner remained off work until he was seen by Dr. Cary Templin on March 20, 2012. At that time, Dr. Templin placed Petitioner on work restrictions of working only 8-hours per day, no lifting greater than 10 pounds, bending / squatting /kneeling modifications: to tolerance, and no overhead activities. Petitioner remained on light duty restrictions through his surgery with Dr. Templin on July 23, 2012. (PX 2). At no point was light duty work offered. Following surgery, Petitioner has been kept fully off work by Dr. Templin through the date of trial. In his December 14, 2012 report, Dr. Templin opines that Petitioner remained completely off work during rehabilitation and work conditioning.

The Arbitrator has reviewed all evidence and testimony in this matter and hereby finds that Petitioner was temporarily and totally disabled from January 17, 2012 through December 19, 2012, or period of 48.29 weeks, pursuant to Section 8(b) of the Act.

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Geneva Huneycutt,
Petitioner,

vs. NO. 12 WC 06228

14IWCC0051

ABF Freight Systems, Inc.,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering, the issues of causal connection, temporary total disability, medical expenses and prospective 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 on November 28, 2012 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.

14IWCC0051

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 $4,400.00. 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: JAN 2 8 2014

Daniel R. Donohoo

Kevin W. Lamborn

Thomas J. Tyrrell

o-12/17/13
drd/wj
68

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

HUNEYCUTT, GENEVA
Employee/Petitioner

Case# **12WC006228**

ABF FREIGHT SYSTEM INC
Employer/Respondent

14IWCC0051

On 11/28/2012, 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 0.14% 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:

0125 COHN LAMBERT RYAN & SCHNEIDER
MICHAEL SCHNEIDER
111 W WASHINGTON ST SUITE 1420
CHICAGO, IL 60654

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

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
ARBITRATION DECISION
19(b)

Geneva Huneycutt
Employee/Petitioner

v.

ABF Freight System, Inc.
Employer/Respondent

Case # **12 WC 06228**

Consolidated cases: N/A

14IWCC0051

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 **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **September 27, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **February 2, 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 **$74,104.16**; the average weekly wage was **$1,425.08**.

On the date of accident, Petitioner was **55** years of age, ***single*** 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 **$29,044.70** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$29,044.70**.

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 $950.05/week for 34 weeks, commencing February 3, 2012 through September 27, 2012, i.e. the date of the 19(b) hearing, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,040.00 to Richard Payne, M.D., of Payne & Associates, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for prospective medical care, pursuant to Section 8(a) of the Act and subject to 8.2 of the Act for the three to five day video EEG, continued appointments with psychiatrist Richard Payne, M.D. and all reasonable and necessary visits to the prescribing neurologist, Dr. Adam Fisch.

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.

L. Thompson Smith

Signature of Arbitrator

November 28, 2012

ICArbDec19(b)

NOV 28 2012

14IWCC0051

FINDINGS OF FACT

The disputed issues in this matter are: 1) causal connection; 2) prospective medical; 3) medical bills; and 4) temporary total disability.

Geneva Huneycutt ("Petitioner") has been an employee of ABF Freight Systems, Inc., ("Respondent") for approximately five (5) years; working out of the Indianapolis terminal; driving double tractor-trailers between Indianapolis and Kansas City, round-trip, three times a week. Accident and jurisdiction is undisputed inasmuch as the petitioner suffered injuries in a truck rollover on the Illinois portion of the Interstate Highway System. There is no doubt that the petitioner suffered from considerable psychological issues, i.e. depression; and a myriad of physical ailments, i.e. headaches that pre-date the subject accident date, as evidenced by Petitioner's Exhibit 1; the treatment records of the therapist, Joanne Owen. *See* PX1, pgs. 2-19. However, the petitioner was able to work, in a full duty capacity, i.e. driving double tractor-trailers; hooking and unhooking these trailers; working for Respondent, in the year prior to her accident, with the exception of the months of July and August of 2011; when she was recovering from an unrelated automobile accident. *See*, her payroll records admitted as PX21(a).

On February 2, 2012, Petitioner was airlifted from the accident scene to St. Louis University Hospital, after physical extraction from her truck. Following a two-day admission, i.e. February 2, 2012 to February 4, 2012, the petitioner was discharged from the hospital with restrictions of (1) no lifting greater than five pounds; (2) no driving while on narcotic pain medication; (3) and no vigorous activity. The hospital records also recorded a loss of consciousness. Arrangements were made for the petitioner to be seen by Concentra Urgent Care ("Concentra") when she returned to Indianapolis, Indiana. *See,* PX2 pgs 31-36, 44, 54-55.

The petitioner's first visit to Concentra was on February 6, 2012. At the February 15, 2012 visit, the clinic records state that the petitioner's concussion did not involve a loss of consciousness, which the Arbitrator finds to be an error in light of the St. Louis

hospital's records. Concentra noted multiple diagnoses of abrasions and contusions along with the concussion and an external ear laceration; they removed sutures from the ear but restricting the petitioner from doing any commercial driving as a safety precaution and prescribed a cervical collar. The petitioner was scheduled to return to the clinic on February 20, 2012 however, Ms. Joan Burton, nurse case manager for Respondent, canceled that appointment. *See,* PX5 pg.6, 30-31.

Nurse Burton sent a letter to Petitioner scheduling three appointments for her with: 1) a psychologist, Gregory Hale, 2) an ENT physician, Dr. Kluszynski; and 3) a physiatrist, Dr. Steinberg. The Arbitrator takes notes that there is no mention in the letter that any of these appointments were intended as forensic examinations under Section 12 of the Workers' Compensation Act (the "Act"). *See,* PX6.

Petitioner presented to psychiatrist Steinberg on February 8, 2012. He noted that the petitioner's last day of work was the day of the accident when she rolled her tractor-trailer onto its left side. He notes the petitioner's loss consciousness due to the accident; he did not know the length of time. And he did not have the medical records from St. Louis Hospital. He further noted that she had no recollection of the accident or its time frame only that petitioner recalls waking up in the hospital. Dr. Steinberg's physical examination noted that Petitioner affect was flat and although she was oriented to time and place, she did not know the day or the date. She had a well healing laceration along the left ear with sutures present and a laceration along the top of the cranium with a scab formation. There were multiple contusions and abrasions along the left upper extremity, bilateral hands and knees with limited range of motion ("ROM") of the left shoulder, secondary to complaints of pain. He had a lengthy discussion with Petitioner and recommended that she see an ENT specialist for further evaluation of the left ear; and recommended formal neuropsychological testing to determine if there was a closed head injury. He also prescribed Tramadol and physical therapy ("PT") for the left shoulder, left elbow, left hand and cervical area. The Arbitrator notes that CT scans of the brain, cervical, lumbar and thoracic spine were essentially normal as was the CT

scans of the abdomen, chest, right shoulder and wrist and her pelvis. *See,* PX7 pg 6-33.

On February 19, 2012, the petitioner presented to St. Francis Hospital in Morrisville, Indiana suffering from nausea, vomiting and diarrhea, which had lasted for three days; with the nausea and vomiting exacerbated by movement. The physician's clinical impression was that Petitioner was suffering from vertigo and post-concussion syndrome. The petitioner's prescribed medications, as of that visit, were extensive. *See,* PX8 pgs. 9-13, 38.

The petitioner presented to Dr. Gregory Hale, PHD, on February 21, 2012, who noted that while the petitioner could not remember events of the accident she did not lose consciousness, at the time of the accident. It is clear that the staff at St. Louis University Hospital was aware of the petitioner's loss of consciousness. Similarly, corroborating records were provided to Dr. Hale, as noted within the discharge summary from St. Louis University Hospital. While Dr. Hale states that petitioner exhibited variability in her cognitive performance he expressed an opinion that his testing was normal as it relates to any possible head injury. *See,* RX2 pgs. 4-9.

Apparently, at the insistence of petitioner's counsel, Illinois jurisdiction was subsequently accepted and the petitioner was then free to see her family physician, Dr. Midla.

On February 26, 2012, Petitioner presented to Dr. Midla. On that date, Dr. Midla's associate, Dr. McMahon, recommended that the petitioner go to the emergency room at St. Francis Morrisville for her vomiting, nausea and headache. Dr. Midla, noted that her speech was slurred and that she was stuttering quite a bit which was not normal for this patient.

On March 2, 2012, the petitioner started physical therapy ("PT") at ATI as initially recommended by Dr. Steinberg and prescribed by Dr. Midla. On March 16, 2012, Dr. Midla became aware that he could refer his patient to specialists for her injuries and referred her to JWM Neurology. Her symptoms include dizziness, room spinning in the morning and difficulty rising from a seated position, due to unsteadiness. She had difficulty with short-term memory loss, speaking and stuttering; and spoke slowly in an

attempt to counteract these symptoms. Her headaches and depression were severe. He also noted that her left leg seemed to turn inward when she walks and she had difficulty with her left eye when she looked to the left. She was afraid to drive and her family reported that she was having seizures-like events. Dr. Midla recommended that she continue to see therapist Owen. *See,* PX10 pgs. 65-66; 74, 82-82; 104. *See also,* PX11.

On March 19, 2012, Petitioner presented to Dr. Adam Fisch who noted that her chief complaints were of vertigo, memory loss, head trauma and headaches. He records head trauma with a loss of consciousness at the time of the accident. He opines that the headaches, memory problems and hyper-insomnia may be ascribed to the head trauma. As for the severe vertigo, he opines that this may be due to vestibular damage or from debris from the semi-circular canal, secondary to head trauma and recommended appropriate testing. Dr. Fisch did not want to prescribe prophylactic medication for the headaches out of concern that it would blunt her cognitive functioning. He recommended that the petitioner undergo a nystagmography as well as MRI of the brain with and without contrast. And he recommends a 24 hour video EEG to look for evidence of ongoing seizure activity as a possible cause of her memory disturbance; as the patient had starring spells and freezing episodes. She was not to drive a car until cleared by appropriate physicians and she was to return to Dr. Fisch once these various tests had been performed. The video nystagmography report of Dr. Diokno was interpreted by the myographer as abnormal. Dr. Diokno recommended canalith repositioning maneuvers. *See,* PX13 pgs. 4-8.

Petitioner again presented to Dr. Midla on April 12, 2012, who noted Dr. Fisch's prescriptions for the twenty-four (24) hour video EEG, the aforementioned MRI's of the brain, video nystagmography and canalith repositioning therapy as well as a continuing referral to a psychiatrist for depression. The neuropsychological testing data from Dr. Hale was also requested. *See,* PX10 pg. 103. In Dr. Fisch's second report to Dr. Midla, on May 29, 2012, he notes that Petitioner's memory, vertigo and headache problems continue. The canalith repositioning therapy was not successful and the 24-hour EEG

was interpreted as normal, although there was one instance during the monitoring when she had trouble speaking. Dr. Fisch's ongoing impressions included ongoing memory loss, vertigo and headaches; secondary to head trauma with loss of consciousness; and he repeatedly requested neuropsychological testing from Dr. Hale. Dr. Fisch noted that Petitioner also continued to have hyper-insomnia secondary to her head trauma, with shaking spells. He therefore recommended a prolonged video EEG to try to capture one of the discreet spells before initiating anti-epileptic drug therapy; as the patient was already cognitively blunted and he was concerned that the drug therapy would worsen those symptoms. He also referred her to a psychiatrist for her mood disturbances. The twenty-four (24) hour EEG, which actually lasted closer to twenty-six (26) hours, was interpreted as normal. The aforementioned testing was ordered on March 19, 2012. *See*, PX13 pgs. 14-20 & PX14.

At this point, any continuity in medical treatment began to stall as the respondent would not authorize the three to five day EEG or the referral to a psychiatrist and any return visits to Dr. Fisch, her neurologist. The three to five day video EEG was scheduled for June 18, 2012, but was canceled for lack of authorization. *See*, PX16.

The petitioner currently sees Dr. Richard Payne, the psychiatrist to whom she was referred by Dr. Fisch on June 6, 2012, although this treatment has not been authorized by Respondent. His psychiatric assessment of Petitioner includes slurred speech and a depressed mood. His diagnosis included major depression from post-concussive traumatic brain/head injury and additional medications were prescribed. Dr. Payne's bill for diagnostic interview and five follow-up sessions is $1,040.00. See, PX17 pgs. 44-51.

Dr. Midla again referred the petitioner to Dr. Fisch in September of 2012, as she had not been seeing him for lack of authorization. *See*, PX20.

The Arbitrator finds that on or about February 13, 2012, the character and tenor of the

petitioner's psychological and physical ailments began to show some deterioration; as evidenced by her medical records; i.e. her slow and unsteady gait; the vomiting, diarrhea and mental confusion and stuttering. *See*, PX#1 at pgs. 19-43.

The petitioner's sister, Virginia Blake, with whom the petitioner lives, testified first, out of the presence of the petitioner. She described the differences she saw in her sister, post-accident and her testimony was straightforward and credible. She testified that the petitioner now stammers when speaking and stumbles when she walks; and she stares into space sometimes for fifteen (15) to twenty (20) minutes at a time.

Petitioner also testified that the first thing she remembered, after the accident, was waking up in the hospital. She does not remember how or why the accident happened. She was driven back to Indiana by her terminal manager, after she was discharged from the hospital. She testified that she does not remember much of her medical treatment after the accident and currently she is totally dependent on others for her daily care. She currently has issues walking, talking and her right arm and shoulder still are in pain. She testified that there is now a numbness in her mouth and gums, she has a chipped tooth; and although she had headaches prior to the accident, the ones she suffers from now are more severe. She testified that her right eye is defective and she is sometimes mentally confused. She sleeps a lot and sometimes cannot recognize where she is or whom she is with.

In mid July of 2012, Petitioner presented to with Dr. Zelby, a neurosurgeon, by request of Respondent. He concluded that all of her subjective complaints pre-date the February accident. Dr Zelby opines that the petitioner has reached maximum medical improvement ("MMI") from any infirmity arising out of her February accident and that she has returned to her pre-injury base line condition. As a point of logic, if indeed that were true, it has already been established that her pre-injury base line condition involve the driving of a tractor with double trailers, an employment which is potentially dangerous not only to the petitioner but to the general public. Dr. Zelby states that the

petitioner may continue to seek treatment for her condition and her symptoms. *See*, RX1 pg. 7.

The Arbitrator takes judicial notice of the Federal Motor Carrier Safety Regulations particularly sub-section 391.41 (b) (8) which appears tangentially relevant to the issues at bar and provides in pertinent part that; a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy; or any other condition which is likely to cause the loss of consciousness, or any loss of ability to control a commercial motor vehicle.

Further, the medical expert panel and review board that advises the Department of Transportation on commercial drivers medical certification cites certain temporary and/or permanent disqualifications from commercial driving following traumatic brain injury. Those with moderately severe traumatic brain injury (TBI), defined as loss or altered consciousness over one (1) but less than twenty-four (24) hours, should be precluded from operating a commercial vehicle for three years. Subsequent clearance to return to work should be based on a detailed assessment by physicians including consideration of symptoms such as: whether the person has headaches, irritability, dizziness, imbalance, fatigue, sleep disorders, inattention, noise and light sensitivity, slow thinking, difficulty recalling new material, personality changes, difficulty starting or initiating things, difficulty sequencing information, impaired attention to details, impaired ability to benefit from experience, deficits in planning and carrying out activities, seizures and cognitive domains. Evaluation by a neurologist was felt to be required, as part of this assessment.

For those with mild TBI, defined as less than one (1) hour of loss or altered consciousness, an applicant could be medically qualified to return to commercial truck driving if the treating physician felt they were symptom free. Those taking seizure medication were recommended to be considered unqualified until fulfilling all seizure criteria.

14IWCC0051

The petitioner manifests many of the above-cited symptoms although, in terms of the duration of loss of consciousness or altered consciousness, it is unclear, at present, whether it should be characterized as moderate or mild but the Arbitrator finds that the petitioner, based upon the medical evidence, should not be released currently to return to her former occupation and that she requires further medical and diagnostic intervention.

CONCLUSIONS OF LAW

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

It is established law that at hearing, it is the employee's burden to establish the elements of her claim by a preponderance of credible evidence. *See, Illinois Bell Tel. Co. v. Industrial Comm'n.*, 265 Ill. App. 3d 681; 638 N.E. 2d 307 (1st Dist. 1994). This includes the issue of whether Petitioner's current state of ill-being is causally related to the alleged work accident. *Id.* A claimant must prove causal connection by evidence from which inferences can be fairly and reasonably drawn. *See, Caterpillar Tractor Co. v. Industrial Comm'n.*, 83 Ill. 2d 213; 414 N.E. 2d 740 (1980). Also, causal connection can be inferred. Proof of an employee's state of good health prior to the time of injury and the change immediately following the injury is competent as tending to establish that the impaired condition was due to the injury. *See, Westinghouse Electric Co. v. Industrial Comm'n*, 64 Ill. 2d 244, 356 N.E.2d 28 (1976). Furthermore, a causal connection between work duties and a condition may be established by a chain of events including Petitioner's ability to perform the duties before the date of the accident and inability to perform the same duties following that date. *See, Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 193 (1986). Based upon Petitioner's medical records the Arbitrator finds that her current condition of ill-being is causally related to the February 2, 2012 accident. The Arbitrator finds the opinions of Drs. Midla, Payne and Fisch to be more persuasive than those of Drs. Zelby and Hale.

L. What temporary benefits are in dispute?

Based upon the foregoing, the Arbitrator concludes that the petitioner remains temporarily, totally disabled from the date of accident, i.e. February 2, 2012 through the hearing date of September 27, 2012 and that the petitioner's current condition of ill-being was aggravated, if not caused by the accident.

J. Has Respondent paid all appropriate charges for all reasonable and necessary medical expense?

Based upon Petitioner's medical records, the Arbitrator finds that the respondent shall pay for the interim billing of psychiatrist Payne, in the amount of $1,040.00, subject to Sections 8(a) and 8.2 of the Act. As for any other bills incurred, the Arbitrator acknowledges the stipulation by both counsels that a determination of any other bills will be held in abeyance until resolved by the parties or until a subsequent hearing is convened. *See*, AX1.

K. Is Petitioner entitled to prospective care?

Based upon Petitioner's medical records, the Arbitrator finds that the petitioner is entitled to prospective medical care and respondent shall authorize and pay for the three to five day video EEG, and all reasonable and necessary return appointments with psychiatrist Payne and Dr. Fisch, pursuant to Sections subject to Sections 8(a) and 8.2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF MACON)

☐ 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

James Ludwig,

Petitioner,

vs.

Nos. 08WC033474
08WC033475
10WC039181
11WC000053

Caterpillar, Inc.,

Respondent.

14IWCC0052

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both parties herein in case Nos. 08WC033474, 08WC033475, 10WC039181 and 11WC000053 and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary disability and permanent disability, and being advised of the facts and law, modifies the decisions of the Arbitrator in all four cases as stated below, and otherwise affirms and adopts the decisions of the Arbitrator which are attached hereto and made a part hereof.

The Arbitrator found that the work-related injuries Petitioner sustained caused permanent partial disability to the extent of 7.5 percent of the person as a whole. The Commission views the evidence as to permanency differently and finds that the work-related injuries Petitioner sustained on all four dates of accident caused permanent partial disability to the extent of 20 percent of the person as a whole. At his September 2, 2011 evidence deposition, Dr. Coe opined that Petitioner's exposure to chemicals at Respondent's facility caused Petitioner to develop permanent changes to his respiratory tract that have caused hypersensitivity to potential irritants including metalworking fluids and exhaust fumes. Petitioner is required to have inhaled bronchodilating medication with him at all times and should avoid all potential inhaled irritants on a permanent basis. At the arbitration hearing, Petitioner testified that before 2004, his voice

ILLINOIS WORKERS' COMPENSATION COMMISSION

NOTICE OF ARBITRATOR DECISION

LUDWIG, JAMES
Employee/Petitioner

Case# **08WC033474**

10WC039181
11WC000053
08WC033475

CATERPILLAR INC
Employer/Respondent

14IWCC0052

On 2/2/2012, 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 0.07% 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:

0293 KATZ FRIEDMAN EAGLE ET AL
PHILIP A BARECK
77 W WASHINGTON 20TH FL
CHICAGO, IL 60602

2994 CATERPILLAR INC
MARK FLANNERY
100 N E ADAMS
PEORIA, IL 61629-4340

14IWCC0052

STATE OF ILLINOIS)
)SS.
COUNTY OF Macon)

☐ 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

James Ludwig
Employee/Petitioner

v.

Caterpillar, Inc.
Employer/Respondent

Case # 08 WC 33474

Consolidated cases: 08 WC 33475, 10 WC 39181, 11 WC 00053

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 **George Andros**, Arbitrator of the Commission, in the city of **Decatur**, on **November 28, 2011**. 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 _____

was not raspy and scratchy as it is now. Petitioner continues to use an Advair inhaler two times per day and uses another inhaler about three to four times per day. Additionally, Petitioner uses a breathing machine two times per day. Petitioner testified that he experiences wheezing, coughing and difficulty breathing if he does not use the inhalers and the breathing machine. Petitioner continues to treat with Dr. Woods and Dr. Gumprecht.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decisions of the Arbitrator filed on February 2, 2012, are hereby modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of $8,075.68 for medical expenses under §8(a) and §8.2 of the Act subject to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that in case No. 10WC039181, Respondent shall pay Petitioner temporary total disability benefits of $673.33 per week for 8-6/7 weeks, from August 24, 2010, through October 24, 2010, which is the period of temporary total disability for which compensation is payable.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of $606.00 per week for a period of 100 weeks, as provided in §8(d)2 of the Act, because the injuries sustained caused permanent partial disability equivalent to 20 percent loss of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall 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 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.

JAN 29 2014

DATED:
MB/db
o-12/18/13
44

Michael J. Brennan

Charles J. DeVriendt

Ruth W. White

FINDINGS

On **September 16, 2005**, 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 **$15,318.20**; the average weekly wage was **$957.39**.

On the date of accident, Petitioner was **56** 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 for **payments made by Respondent's group medical provider as reflected in Petitioner's Exhibit #7** pursuant to Section 8(j) of the Act.

ORDER

Medical benefits
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $3,256.63 as provided in Sections 8(a) and 8.2 of the Act. See Ludwig Addendum, attached.

Permanent Partial Disability: Person as a whole
THE AWARD FOR ALL CONCOLIDATED CASES IS IN 10 WC 39181 FOR THE LAST EXPOSURE/APPLICATION BEFORE THE HEARING.

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.

#01 George J. Andros
Signature of Arbitrator

January 31, 2012
Date

FEB 2 - 2012

LUDWIG v. CATERPILLAR – STATEMENT OF FACTS & CONCLUSIONS OF LAW

James Ludwig, hereinafter "Petitioner", was hired by Caterpillar, Inc., hereinafter "Respondent", in September 1974. (T. 7) In 1997, Petitioner transferred to the Decatur facility where he worked as a machinist (P. 8) From 1997 through 2000, Petitioner worked on lathe machines in Department 8322 and thereafter transferred to G&L drills as a machinist. (P. 8, 9) their existed three drills in his workstation which were approximately 15 feet high and 12 feet wide and the machines "drilled, milled and tapped parts". (P. 10) Petitioner was assigned to Machine 4710. (P. 11)

During the machining process, Petitioner stated he was approximately two feet from the machine. (P. 11) Petitioner would bolt a part to the fixture and load the fixture into the machine. (P. 11, 12) He would then push the start button and the part would go inside the machine and the "garage door" would go down. (P. 12) At that point, the program would start machining. (P. 13) this machining process took anywhere from 10-20 minutes. (P. 13) Further, there was an opening at the bottom of his machine, which caused the coolant fluid to run out of the machine to within 3 ½ to 4 feet while he was performing his machining duties. (P. 25, 26) In that phase mist and"ammonia" smell resulted from the coolant spraying the part. (P. 13, 14) When the machining process was over, the door would open and a mist would come "out on us", spraying him in the face and on his clothing. (P. 14, 15) The record shows his… "clothes would be damp at the end of the day". (P.15) The coolant would also come over the top of the machine and spray him because initially there was no top or ceiling on the machines.

Petitioner was provided glasses and eventually gloves by Respondent but never offered protective clothing, free flowing oxygen for respiratory protection, nor a charcoal filter respirator or breathing protection. (P. 17) Petitioner testified that he would have to touch the coolant and chemicals when he leaned up against the pallet to get the parts off the fixture and during this entire process he was inhaling the mists and vapors from the machining process. (P. 21) Moreover, no windows existed in his department and the ventilation system in his area was shut off. (P. 18) At the conclusion of the shift, was required to clean the inside of the machine, to clear out the metal chips, and used a hose with the coolant/chemicals to spray inside the machine. As a result of these tasks he would end up being sprayed during this clean-up process. (P. 21 – 24) The Petitioner concluded in an assertive manner he was exposed to the coolants and chemicals throughout the eight hour workday and frequently worked weekends. (P. 24, 25)

The Arbitrator notes the matter proceeded as usual in a hearing developing "facts" both on direct and cross examination in what is currently called a "linear" fashion. Nevertheless after repeated study of the totality of the lay and expert testimony and the documentary evidence after the case's conclusion, the chronology of testimony and accurate dates are overlaid by medical history, diagnostics and treatment. This second layer, if you will, of information thereby results in the developing opinions by experts in their various areas that are not at all presented in a linear fashion. In conclusion, those insightful medical opinions posited later in the case development provide clarity to those seemingly true medical "facts' etched in the sacrosanct medical record(s) years earlier. In an expression of our times" hindsight is 20-20" certainly applies in the case in a myriad of ways.

In September, 2005, Petitioner testified that he noticed his throat "started hurting" and began noticing changes with his voice. (P. 26) Therefore, Petitioner made an appointment to see Dr. Woods. On September 16, 2005, The medical records from Dr. Woods dated 9/16/2005, an Otolaryngologist, indicated the chief complaint was a voice change described as a recurrent hoarseness. (Px. 3) Dr. Woods diagnosed Leukoplakia of the vocal cord and recommended surgery, which included an esophagoscopy and microlaryngoscopy. (Px. 3)

Surgery was performed soon thereafter at Decatur Memorial Hospital resulting in post-operative diagnosis was leukoplakia of the right vocal cord. On October 17, 2005, Petitioner completed a Caterpillar accident report, which indicated that running the machine and smelling the coolants made the Petitioner's throat sore. (Px. 1, Rx. 1) The Respondent's nursing notes indicated that Petitioner reported an inhalation of the coolant causing throat irritation. (Px. 1, Rx. 1) Following surgery, Petitioner testified that he returned to his machinist duties. The Arbitrator comments as follows: the interplay of that diagnosis and the Petitioner's early complaints to the plant nurse regarding "throat irritation" lays a legal tension of two "facts" the importance and "cause" of which is hammered upon by both sides and all doctors the entire duration of the case into late 2011.

On February 4, 2008, Petitioner returned to Respondent's medical department and complained that the coolants and oils irritated his throat and caused sinus issues. According to Respondent's medical department note, the coolant smelled like ammonia and was worse in the summer months. (Px. 1, Rx. 1) Petitioner testified that Respondent gave him restrictions to avoid the company irritants and coolants for several days. (Px. 1, Rx. 1) Petitioner testified that he followed up with Dr. Elrakhawy, his family doctor. (Px. 2) On February 19, 2008 Respondent placed him back on his machining job and exposed him to the coolants. He became light-headed and struggled to breathe, at which time he was taken by an ambulance to Respondent's medical department. (P. 30, 31) Respondent's emergency response report documented that Petitioner stated that he had been exposed to hydraulic fluids and inhaled air-born droplets and developed shortness of breath and dizziness. (Px. 1, Rx. 1)

On February 25, 2008, Petitioner testified that he spoke with the Caterpillar physician and Respondent's safety agent being provided the MSD sheets of the coolants and metal working fluids he was exposed to in his department. (P. 31, 32) Petitioner testified he received Material Safety Data Sheets from Respondent which included the following: CT 972, Busan 77, 886 Biocide, Lubricant 4410, Mobile DTE 24, and Busan 1060. (P. 31, and 82) (Px. 9) Accordingly these were the metal working fluids/chemical he was exposed to during the machining process. (P. 31, 32)

On September 12, 2008, Petitioner followed up with Dr. Woods who recommended another throat surgery. Petitioner related a significant industrial exposure to fumes and his symptoms matched the effects from those fumes. (Px. 3) On December 2, 2008, Petitioner underwent a microlaryngoscopy with excision of the right vocal cord mass and was found to have a large hyperkeratotic mass on his right vocal cord. (Px. 3, 4) He was diagnosed with a right vocal cord neuplasma. (Px. 3, 4).

After surgery, Dr. Woods' records note that Petitioner's voice was raspy and the doctor again documented that his condition was consistent with the effects from the chemical exposure/fumes. (Px. 3 3/18/09; 8/5/09) Petitioner testified that he followed up with Drs. Elrakhawy and Woods for ongoing treatment. Following the second throat surgery, Petitioner testified that his voice changed and continued to be raspy and scratchy.

Mr. Ludwig continued to work as a machinist, exposed to the coolants and chemicals, and began noticing a worsening of his respiratory symptoms, which included wheezing and coughing. (P. 35) On May 13, 2010, Petitioner testified on May 13, 2010 his machine broke down four times, which necessitated that he climb into the machine to fix it. (P. 36) Inside the machine there were fluids and chemicals "all over"; Petitioner testified that the fourth time he went into the machine that day, he began getting dizzy and developed severe breathing difficulties so he called his foreman. (P. 37) Petitioner was taken to medical department at the plant and a Caterpillar Incident Report was completed which documented the exposure in the machine. (Px. 1, Rx. 2) He continued to notice breathing and coughing issues.

On August 21, 2010, he continued to do his machining duties, without restrictions, and he noticed that fumes were "outstanding". (P. 39) His throat began "hurting" and he was coughing and developed dizziness and described it as a "bad day". (P. 39) Petitioner testified that he admitted himself into the Decatur Memorial Hospital emergency room and thought he was "going to die". (P. 39) On August 22, 2010, the Decatur Memorial emergency room records indicated that Petitioner presented with difficulty breathing which had worsened over the last week including shortness of breath associated with wheezing. (Px. 4) Petitioner was diagnosed with acute dyspnea and acute bronchitis. (Px. 4)

On August 24, 2010, Petitioner was seen by Dr. Elrakhawy for the hospital discharge summary and found to have a final diagnosis of bronchial asthma exacerbation and was prescribed inhalers. (Px. 2, 4) On September 1, 2010, Petitioner followed up with Dr. Elrakhawy who noted that the bronchial asthma was "most probably secondary to occupational exposure". (Px. 2) Petitioner was taken off work.

Mr. Ludwig began treating with Dr. Gumprecht and provided doctor with the Material Safety Data Sheets that he received from Respondent. (P. 41) On September 10, 2010, Dr. Gumprecht completed the Caterpillar disability form which indicated that Petitioner suffered from an obstructive and restrictive lung disease and that there was a presumptive relationship to his metal working fluids at work. (Px. 6) On September 17, 2010, Dr. Gumprecht examined Petitioner and noted that there were occupational exposures with an airway injury and that there was a "[l]ikely contribution of problems from the irritant effects of the coolants". 9Px. 6) The doctor recommended prednisone, Zpack and follow-up. (Px. 6, Rx. 4) On October 6, 2010, Dr. Gumprecht wrote a letter indicating that Petitioner suffered from upper and lower airway inflammation with severe hoarseness and obstructive/restrictive pulmonary physiology. (Px. 6, Rx. 4) The doctor indicated that Petitioner was making progress and he could now return to work, on a trial basis, in the crib where he would not be exposed to any irritant coolants. (Px. 6, Rx. 4) On October 15, 2010, Dr. Gumprecht again documented that Petitioner could only return to a "job in assembly where there would be no exposure to coolants".
(Px. 6, Rx. 4)

On October 25, 2010 Mr. Ludwig returned to work with restrictions preventing him from working around coolants and chemicals. (P. 42) Petitioner was transferred to assembly and testified that there were no chemicals, fluids or coolants in the assembly department. (P. 43) Petitioner testified that he received the dry-environment restrictions from Dr. Gumprecht as well as the Caterpillar physicians. (Px. 6, Rx. 4, Px. 1, Rx. 1) Petitioner testified as a result of the restrictions his job classification changed resulting in sustaining a reduction in pay. (P. 43) He was earning $25.25 per hour as a machinist but was reduced to an assembler earning $24.23 per hour. (P. 43, 44) Petitioner testified at arbitration that he continued to suffer the pay loss of $1.02 per hour, or $40.80 per week, and that it was a permanent loss in pay. (P. 44). The Arbitrator finds this matter does not fall under section 8(d) 1.

Caterpillar medical records for 11/24/10 indicated that Petitioner should continue on restrictions to avoid irritants and coolants. (Px. 1, Rx. 1) On December 14, 2010, Dr. Miller, Respondent's company physician, noted in the Caterpillar medical records that he reviewed documentation including exposure sampling of Petitioner's pervious machinist work area. (Px. 1, Rx. 1) The in house company doctor noted that the metal working fluids in his machine included "mists of the concentration and dilutions [that] may cause respiratory irritation...of the mucous membranes in the nasal passages and throat". (Px. 1, Rx. 1) The doctor noted that Petitioner's machinist duties and coolant exposure contributed to the irritant potential and noted that biocide additions were made to the coolants and these biocides have "irritant potential also". (Px. 1, Rx. 1) He also stated that Busan 1060 could be a sensitizer and concluded that Petitioner's symptoms "can be consistent with chemical irritation". (Px. 1, Rx. 1)

On January 28, 2011, Petitioner testified that he saw Dr. William R. Panje at Respondent's request for an section 12 exam. Dr. Panje testified that he was a specialist in otolaryngology. Page 10 of his 6/1/10 delayed addendum report attests he is a board certified otolaryngologist. His CV cites in part (Dep.8/24/11, Ex.1) reflects that he has medical offices at Rush University Head and Neck Associates. For some time he was the professor and Chair of OT-Head and Neck Surgery at University of Chicago Pritzker School of Medicine plus Director of reconstruction and skull base surgery at Rush.

(Rx. . 4) After taking a history from Petitioner, reviewing the medical records and examination findings, Dr. Panje opined that Petitioner had chronic laryngitis secondary to scarring from his biopsy done for the diagnosis of Leukoplakia. (Rx.) The doctor went on to testify, based upon a reasonable degree of medical certainty, that his chronic leukoplakia was caused by Petitioner's prior smoking history, his evidence of gastroesophageal reflux disease, use of steroid inhalers for his asthma, and the fact that he was a diabetic-type II. (Px. . 18) The doctor opined that Petitioner needed ongoing treatment with respect to his leukoplakia to monitor the hoarseness and swallowing symptomology. (Rx. . 19) On cross-examination, Dr. Panje admitted that there was an initial report that he forwarded to Caterpillar which had been modified. (RX . 24) The doctor admitted that the following paragraph under causation had been removed:

> "Of importance to causation of Mr. Ludwig's (Leukoplakia) hyperkeratosis' of the larynx appears to be multifactorial. Dr. Woods states in his progress note of 11/30/09, 'after reviewing a handout (concerning lubricant 4410-Labelled C and Busan 770/1060 labelled B) that his (Mr. Ludwig's) problems are consistent with agent he is exposed. I (Dr. Woods) believe Mr. Ludwig's clinical course (chronic laryngeal leukoplakia) is consistent with or due to his occupational exposure". (Rx. 3, Panje #4)

Dr. Panje indicated that he did not know why that paragraph was removed from the report and that he did not ask that that paragraph be excised. The doctor further opined that he wrote a supplemental report indicating that Petitioner's work environment with inhalation of fumes "probably exacerbated his respiratory complaints". (Rx. . 25, Panje #3) In regards to the Leukoplakia condition, the doctor testified, based upon a reasonable degree of medical certainty that the steroid inhalers Petitioner used for his asthmatic condition was a cause of the condition. (Rx. . 26) The doctor further admitted Petitioner was exposed to metal working fluids which may irritate a throat, nose, larynx, pharynx condition(s) as well as various conducting airways or tubes to the lungs. (Rx. . 28)

The addendum of 6/1/11 to Dr. Panje's section 12 report of February 2011 was in response to the submission to him of the medical records of Dr. Kurt Dearnbarger. The question posed to Dr. Panje according to the intro to this document was ..."whether or not the inhalation of fumes caused Mr. James Ludwig only a temporary exacerbation of symptoms and was not the underlying cause o his leukoplakia or the need for his two surgeries." At page two , paragraph one of the addendum report Dr. Wm. R. Panje M.D. states inter alia: "Accordingly after review of Dr. Dearnbarger's medical records concerning Mr. James Ludwig is the cause of Mr. Ludwig's chronic hoarseness and luekoplakia of the glottic larynx (voice box) is probably multifactorial. The doctor then cites a propensity for infections, chronic overweight and acid reflux . As to the work environment he states: Mr. Ludwig's working environment with inhalation of fumes probably exacerbated his respiratory complaints but to the best of my knowledge is not the specific underlying cause of his leukoplakia. Mr. Ludwig's laryngeal surgery was necessary and indicated because of the presence of leukoplakia regardless of the origin."

Dr. Panje addressed the exacerbation, 2005 complaints, and work restrictions issue numerous times including those on pages 34 through 38. In pertinent part after a focused question regarding the likelihood that if he was placed back in the environment with the metal working fluids he may develop more symptomology, he replies in pertinent part at line 21 of page 38:

> "because of all these other (co-existing) conditions that can be the cause, the ultimate cause of the leukoplakia. And so the fumes is (sic) another contributing irritant to the voice box and irritation we know can lead --chronic irritation can lead to leukoplakia."

> In prequel -As shown below, Dr. Jacobs testified as follows: "I don't think the man has any permanent damage from any inhalation of any substance with which he worked at the Caterpillar".

On January 31, 2011 Dr Myron H. Jacobs M.D. FCCP with certifications in internal medicine, pulmonary disease, chest physician, critical care and occupational medicine performed a section 12 examination on behalf of the Respondent. (See Dep. exhibit 1, 8/17/11) and. (Rx. . 7)

Dr. Jacobs testified that he performed numerous very sophisticated pulmonary tests on Petitioner and diagnosed him with an abnormal respiratory function "based almost entirely upon his obesity with a probable contribution from his previous cigarette smoking." (Rx. . 21) Dr. Jacobs went on to say on direct examination that he did not believe, based upon a reasonable degree of medical certainty, that his respiratory condition was related to his work at Caterpillar. (Rx. . 21) In regard to work related restrictions, the doctor indicated that he didn't think Petitioner had work restrictions, and that he could go back into any work environment and if the "metallic cooling fluid bothered him than he should either change his job, avoid that or wear a mask of some kind." (Rx. . 22) The Arbitrator further underscores at pp 21-22 that no further medical care for pulmonary condition is needed essentially. Moreover, " I don't think the man has any permanent damage from any inhalation of any substance with which he worked at Caterpillar" (see pages 23-25 & 43 at deposition per Arbitrator)

On cross-examination, the doctor admitted that the Petitioner had not smoked for 30 years, that metal working fluids could contribute to respiratory problems, that inhalation from breathing the metal working fluids or mists or aerosols could contribute to irritation to the lungs and nose, and that in order to determine if a metal working fluids contributed to a respiratory condition, he would look at the "time relationship, such as how soon does the person become ill when he goes to work; what action is he doing when he goes to work; does removal from the work environment make him well." (Rx. . 24, 30, 31, 33)

The doctor also admitted that wheezing, lightheadedness, coughing as well as breathing difficulties are all symptoms that could be due to chemical exposure. (Rx. . 36, 37) In determining work-relatedness, the doctor indicated it is important to know the chemical the person was exposed to, the exposure to the chemical, and information concerning the history and background of the exposure, but admitted that nowhere in his report does he mention the distance Petitioner worked from the chemicals, how many hours a day Petitioner was exposed to the chemical(s) at Caterpillar, the ventilation in the department where the Petitioner worked, nor had Respondent provided this information to the doctor. The doctor also admitted that the Material Safety Data Sheets that Respondent forwarded to the doctor, as well as the MSD sheets Petitioner brought, all indicated that the chemicals were respiratory irritants.

The doctor acknowledged, based upon a reasonable degree of medical certainty that if Petitioner worked around CT 972 and had shortness of breath and coughing, the chemical would have contributed to those symptoms. (Rx. . 46) The doctor further admitted that the MSD sheets note that the exposure to such chemicals could cause nasal and lung reactions and that Petitioner's exposure on May 13, 2010, at which time he was in the machine and developed lung issues and sinus irritations while exposed to the chemicals and fluids in the machine, could be related to such chemical exposure. (Rx. . 48, 51) The doctor further testified that, based upon the medical records from Dr. Gumprecht as well the medical records from Respondent's medical department, there appeared to be an association between Petitioner's symptomotolgy and his exposure to the chemicals at work and the symptomology could be consistent with chemical irritation. (Rx. . 58). Interestingly, at page 64 the Arbitrator notes that Dr. Jacobs testifies essentially the worker has a" chemical irritation or call it asthma but he did not think it rose to a level of asthma. ...but they called it a chemical irritation and I think he has no permanent residual from it."

Dr. Jeffery E. Coe, M.D., PhD performed a section 12 examination on the Petitioner on May 18, 2011 at his attorney's request. Dr Coe graduated magna cum laude from University of Michigan, M.D. from University of Chicago and PhD in occupational medicine from University of London. Per his testimony he has an occupational medicine practice and board certified therein, teaches at UIC medical school, and is a consultant and examiner for many employers. Moreover he performs section 12 exams of which 60% are for employers and 40% for employees. His CV shows he was a consultant for Liberty Mutual Insurance Company and in house doctor for a steel company.

Based upon the history the doctor received, the medical records he reviewed, the MSD sheets he reviewed as well as the research from OSHA, Dr. Coe testified that Petitioner had several diagnoses which included an abnormality of his vocal cord, which was the Leukoplakia or hyperkeratosis, and an irritant condition of his lung - the asthmatic bronchitis or bronchial asthma with recurring lung irritant symptoms including shortness of breath, wheezing and coughing. (Px. . 35) The doctor testified, based upon a reasonable degree of medical certainty, that the chemicals in Petitioner's workplace aggravated and irritated Petitioner's upper and lower respiratory tract, causing the symptoms and abnormal findings noted in his throat and lungs. (Px. . 36) The doctor explained that the metal working fluids Petitioner was exposed to were irritant substances which were well-recognized to cause irritant effects in the upper respiratory tract affecting the vocal cords and the development of the Leukoplakia and lower respiratory tract/asthma, which manifested themselves in coughing, wheezing, chest discomfort and shortness of breath. (Px. . 37, 38. 39) The doctor found that Petitioner was stable because he was avoiding the irritant exposures at work and recommended that he continue to avoid to inhale irritant exposures but recommended he continue bronchodilating medication in the future. (Px. . 41) Dr. Coe concluded that Petitioner suffered permanent changes in the upper and lower respiratory tract. (Px. . 41). The concept of "sensitization" as permanent is at p.41: 16-24.

The Arbitrator has studied with interest and given deference to the Material Safety Data Sheets offered into evidence from CT 972, Busan 1060, Busan 77, 886 Biocide, Lubricant 4410 and Mobile DTE 24. (Px. 9) The manufacturers warn that these chemicals are known respiratory irritants and exposure, in the form of vapors or mists, can cause irritation in the nasal passage, throat, breathing difficulties, and respiratory conditions/problems. (Px. 9)

At arbitration, Petitioner testified he previously smoked, but quit in 1979. Moreover, he never had a problem or any issues with his throat/vocal/respiratory/breathing before being transferred to the Decatur plan in 1997 and being exposed to the coolants/chemicals as a machinist. His voice is permanently scratchy, raspy and hoarse and people have a difficult time understanding him. Also, he has a difficult time yelling or screaming or raising his voice and the more he talks, the worse it becomes. Duck calling via reed is problematic (P. 48) In regard to his breathing/respiratory situation, Petitioner has been diagnosed with asthma (see Dr. Jacobs discussion above) and testified that Dr. Gumprecht prescribed Advair which he takes twice a day, and he also uses the inhaler prescribed by the doctor. Petitioner testified that he uses the inhaler three to four times per day, as well as a breathing machine two times per day to help keep his lungs open. (P. 48, 49) One section 12 examiner doctor said he did not need it. Nevertheless, Mr. Ludwig continues to follow up with Drs. Elrakhawy and Gumprecht for his throat and lung conditions. Petitioner testified that if he does not get his treatments, he develops bad wheezing and coughing and reduced stamina. (P. 52) Petitioner stated that he continues to work for Respondent in a modified position as an assembler with permanent restrictions to avoid coolants and chemical exposures and has sustained a pay loss of $40.80 per week as a result. (P. 43, 44)

The totality of the evidence in this complex medical case with multifactorial medical issues highlighted in the above findings is the basis for the conclusions of law in each Award. The IWCC prior case law has also been studied in this endeavor.

The Arbitrator adopts the above findings and material facts in support of the following conclusions of law: F: Is Petitioner's current condition of ill-being causally related to the injury?

In addition to the above, the Arbitrator notes that the Petitioner testified credibly and consistent with the medical records. The record indicates that on September 16, 2005, while working as a machinist for Respondent, Petitioner had been and continued to be exposed to irritant metal working fluids and developed throat symptomology which was diagnosed as Leukoplakia. (Px. 3) Dr. Woods, the treating otolaryngologist, performed two surgeries and noted throughout his medical records that Petitioner's symptoms were consistent with the effects of chemical fumes/vapors and mists. (Px. 3) Moreover, Drs. Elrakhawy and Coe further support the causal relationship between the chemical exposure and throat surgeries and this is further collaborated by the temporal sequence which illustrates that the Petitioner's symptomotolgy exacerbated each time he had direct exposure to the coolants and chemicals. (Px. 2, 3) The Arbitrator notes that the Respondent's medical logs further support the work-relatedness and Dr. Miller, the Respondent's company physician, noted on December 14, 2010 that the chemicals had an irritant potential and recommended that the Petitioner avoid such coolants. (Px. 1, Rx. 1). The key physician to question the work relatedness was the Respondent's Section 12 examiner, Dr. Panje, who admitted on cross-examination that the inhalation of fumes/vapors/mists "probably exacerbated" the Leukoplakia and throat conditions. (Rx. 3) Dr. Jacobs opinions are noted as well.

The Arbitrator, after careful consideration of the evidence in this case, finds as a material fact and as a matter of law that Petitioner has proven by a preponderance of the evidence that his current throat condition of ill-being, as explained above, is causally related to his chemical exposure which manifested on September 16, 2005.

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?

The Arbitrator adopts his previous findings for disputed issue (F). Petitioner submitted, as a group exhibit, outstanding medical bills. The Arbitrator finds, after reviewing the medical records introduced into evidence, as well as the deposition transcripts, that the following medical bills submitted by Petitioner for payment are as a matter of fact and law reasonable and necessary under Section 8(a):

1. ENPA Institute / Dr. Woods - $2,055.00
2. Decatur Memorial Hospital - $1,201.63 which includes the bills paid out of pocket by Petitioner and the portion of the outstanding bills pertaining to the Petitioner's throat condition.

The Arbitrator notes that the Respondent has paid a portion of these bills through workers' compensation as well as through its group medical carrier and the Respondent is entitled to a credit, and shall keep Petitioner safe and harmless, from all claims or liabilities up to the extent of such credit pursuant to Section 8(j).

Therefore, the arbitrator awards a total of $3,256.63 in reasonable and necessary medical expenses as provided in Sections 8(a) and 8.2 of the Act.

WHAT IS THE NATURE AND EXTENT OF THE INJURY?

This issue is determined in the fourth of four cases based upon the last date of "accident" exposure all consolidated at bar. That last date is August 21, 2010 under 10 WC 39181.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

LUDWIG, JAMES
Employee/Petitioner

Case# **08WC033475**

10WC039181
11WC000053
08WC033474

CATERPILLAR INC
Employer/Respondent

14IWCC0052

On 2/2/2012, 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 0.07% 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:

0293 KATZ FRIEDMAN EAGLE ET AL
PHILIP A BARECK
77 W WASHINGTON 20TH FL
CHICAGO, IL 60602

2994 CATERPILLAR INC
MARK FLANNERY
100 N E ADAMS
PEORIA, IL 61629-4340

14IWCC0052

STATE OF ILLINOIS)
)SS.
COUNTY OF Macon)

☐ 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

James Ludwig
Employee/Petitioner

v.

Case # 08 WC 33475

Consolidated cases: 08 WC 33474, 10 WC 39181, 11 WC 00053

Caterpillar, Inc.
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 **George Andros**, Arbitrator of the Commission, in the city of **Decatur**, on **November 28, 2011**. 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 **February 4, 2008**, 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 **$49,702.50**; the average weekly wage was **$994.05**.

On the date of accident, Petitioner was **58** years of age, ***single*** 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 **$378.70** 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 **$605.60** under Section 8(j) of the Act.

ORDER

Medical Benefits/Permanent Partial Disability
The Arbitrator finds that the medical and permanency issues are addressed in the filing for last filed date of exposure which is August 21st, 2010 filed under 10 WC 039181.

The Statement of Facts under the first case 08 WC 033474 is adopted in this case at bar 08 WC 033475 and incorporated herein by reference.

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.

#01 George J. Andros
Signature of Arbitrator

January 31, 2012
Date

FEB 2 - 2012

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

LUDWIG, JAMES
Employee/Petitioner

Case# **10WC039181**

08WC033474
11WC000053
08WC033475

CATERPILLAR INC
Employer/Respondent

14IWCC0052

On 2/2/2012, 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 0.07% 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:

0293 KATZ FRIEDMAN EAGLE ET AL
PHILIP A BARECK
77 W WASHINGTON 20TH FL
CHICAGO, IL 60602

2994 CATERPILLAR INC
MARK FLANNERY
100 N E ADAMS
PEORIA, IL 61629-34340

14IWCC0052

STATE OF ILLINOIS)
)SS.
COUNTY OF Macon)

☐ 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

James Ludwig
Employee/Petitioner

v.

Case # 10 WC 39181

Consolidated cases: 08 WC 33474, 08 WC 33475, 11 WC 00053

Caterpillar, Inc.
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 **George Andros**, Arbitrator of the Commission, in the city of **Decatur**, on **November 28, 2011**. 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 **August 21, 2010**, 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 **$52,520.00**; the average weekly wage was **$1,010.00**.

On the date of accident, Petitioner was **61** 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 **$5,450.40** under Section 8(j) of the Act.

ORDER

The Statement of Facts in case 08 WC 33474 is adopted herein and incorporated by reference.

TTD Benefits/Credit

The respondent shall pay the petitioner temporary total disability benefits of $673.33/week for 8-6/7 weeks, from August 24, 2010 through October 24, 2010, a provided in Section 8(b) of the Act.

Respondent shall be given a credit of $5,450.40 for group disability benefits paid pursuant to Section 8(j) of the Act. Petitioner is entitled to $513.40 in TTD benefits.

Medical Benefits/Permanency Partial Disability

The Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 37.5 weeks or 7.5% disability t person as a whole. The Arbitrator underscores the IWCC recent case law under the following: 09 IWCC 0249+0021+0775+0109; 10 IWCC 0169, 0443 & 0037. Of note is the sensitization, small wage loss, Pulmonary test results, physical impairment on the job in question per plant records, and doctor's opinions on diagnoses.

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.

#01 George J. Andros

January 31, 2012

FEB 2 - 2012

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

LUDWIG, JAMES
Employee/Petitioner

Case# **11WC000053**

10WC039181
08WC033474
08WC033475

CATERPILLAR INC
Employer/Respondent

14IWCC0052

On 2/2/2012, 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 0.07% 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:

0293 KATZ FRIEDMAN EAGLE ET AL
PHILIP A BARECK
77 W WASHINGTON 20TH FL
CHICAGO, IL 60602

2994 CATERPILLAR INC
MARK FLANNERY
100 N E ADAMS
PEORIA, IL 61629-4340

14IWCC0052

STATE OF ILLINOIS)
)SS.
COUNTY OF Macon)

- ☐ 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

James Ludwig
Employee/Petitioner

v.

Case # **11** WC **00053**

Consolidated cases: **08 WC 33474, 08 WC 33475, 10 WC 39181**

Caterpillar, Inc.
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 **George Andros**, Arbitrator of the Commission, in the city of **Decatur**, on **November 28, 2011**. 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 **May 13, 2010**, 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 **$52,500.00**; the average weekly wage was **$1,010.00**.

On the date of accident, Petitioner was **61** 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

Medical Benefits

The Statement of Facts for the case at bar 11 WC 00053 is the Statement of Facts in case 08 WC 33474, which is adopted and incorporated herein by reference.

The Respondent shall pay reasonable and necessary medical services pursuant to the medical fee schedule of $4,819.05 as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for group medical benefits paid as noted in Petitioner's Exhibit #7 and Respondent shall hold Petitioner safe and harmless from all claims by any providers for which Respondent is receiving such credit as provided in Section 8(j) of the Act. Any Award for payment of medical bills duplicated in any Award is to be assigned to the Award next preceding the commencement of treatment. No duplicate bill Awards are intended in these multiple Awards.

Permanent Partial Disability:

Any award for permanent partial disability is addressed in the case 10 WC 039181. That case is for the last date of alleged exposure, August 21, 2010. No separate findings on that issue are addressed in the Award for the case at bar, 11 WC 00053.

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.

#01 George J. Andros

January 31, 2012

FEB 2 - 2012

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☐ 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

Jeffery L. Lyons, Sr.,

Petitioner,

vs. No. 11WC025984

14IWCC0053

Honeywell,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, temporary total disability and "Credit for benefits paid," and being advised of the facts and law, clarifies and corrects 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 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).

With respect to the first sentence of the first full paragraph on page 17 of the Arbitrator's decision, which states: "[t]he Arbitrator finds that the condition of ill-being present in the Petitioner's right upper extremity is directly related to the Petitioner's work injury of 7/13/10," the Commission clarifies that Petitioner's right upper extremity condition is causally related to

the undisputed July 13, 2010, accident as Petitioner's work-related left arm injury caused him to develop injuries to the right arm and shoulder as a result of compensating for his left arm.

The Commission also clarifies the last sentence on page 11 along with the first full paragraph on page 13 of the Arbitrator's decision, and finds that the December 6, 2011 utilization review did not certify the right shoulder surgery because, "ODG Guidelines only allow for surgery if there is subjective, objective findings and a failure of conservative care with proper imaging. As no MRI submitted [sic] this cannot be certified." The utilization review did not determine whether the surgery was medically necessary based on the Official Disability Guidelines because the reviewing physician did not have Petitioner's April 27, 2011, right shoulder MRI.

The Commission corrects the first full paragraph on page 13 of the Arbitrator's decision and finds that at his evidence deposition, Dr. Herrin testified that Dr. Allan Brecher, the utilization review physician, called him on December 5, 2011. Dr. Herrin did not return Dr. Brecher's telephone call that day and received a copy of the completed utilization review report the next day. The Commission also corrects the second to last sentence on page 11 of the Arbitrator's decision and finds that Ms. Bacon's testimony and letters from Sedgwick CMS show that Dr. Herrin was sent a copy of the utilization review report on December 6, 2011.

The Commission also corrects the first and second full sentences on page 15 of the Arbitrator's decision and finds that Dr. Kolb's section 12 examination report states he reviewed some of Petitioner's pre-accident medical records. The Commission notes that those records show Petitioner sustained unrelated left shoulder and neck injuries in 2004. In 2005, Petitioner continued to have neck pain and complained of bilateral shoulder pain, leading to a diagnosis of chronic myofascial pain with possible cervical spondylosis. In 2005, Petitioner sustained another unrelated neck injury and reported having chronic neck and back pain in June of 2007. The Commission finds it significant that Petitioner did not seek medical treatment for his shoulders after June 2007 and did not complain of right shoulder pain after 2005, until the date of the undisputed accident. Additionally, Petitioner has never been diagnosed with cervical radiculopathy. The Commission finds that Petitioner's pre-accident medical records do not show an alternate cause for Petitioner's present condition of ill-being and none of the above corrections or clarifications have changed the outcome of the instant case.

Lastly, the Commission finds that Respondent is entitled to a credit for the temporary total disability benefits that have been paid.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator filed on September 10, 2012, is hereby clarified and corrected as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $84,114.00 for medical expenses under §8(a) and §8.2 of the Act subject to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for prospective medical care in the form of right shoulder surgery and post-operative care as recommended by Dr. Rodney Herrin.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $552.80 per week for 55-3/7 weeks, from July 19, 2011, through August 10, 2012, which is the period of temporary total disability 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 shall 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 removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $47,300.00. 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.

Daniel R. Donohoo

DATED: JAN 29 2014
DD/db
o-12/04/13
68

Daniel R. Donohoo

Charles J. DeVriendt

Ruth W. White

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

LYONS, JEFFERY L, SR
Employee/Petitioner

Case# **11WC025984**

14IWCC0053

HONEYWELL
Employer/Respondent

On 9/10/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

1189 WOLTER BEEMAN & LYNCH
FRANCIS J LYNCH
1001 S 6TH ST
SPRINGFIELD, IL 62703

0445 RODDY LEAHY GUILL & ZIMA LTD
MICHAEL POWALISZ
303 W MADISON ST SUITE 1500
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

14 IWCC0053

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

JEFFERY L. LYONS, SR.
Employee/Petitioner

v.

HONEYWELL
Employer/Respondent

Case # 11 WC 25984

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **D. Douglas McCarthy**, Arbitrator of the Commission, in the city of **Springfield, IL**, on **8/10/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, 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 $**43,119.44**; the average weekly wage was $**829.22**.

On the date of accident, Petitioner was **37** years of age, ***single*** with **3** children under 18.

Respondent ***has*** paid all reasonable and necessary 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 $.

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

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $552.80/week for 55-3/7 weeks, commencing 7/19/11 through 8/10/12, as provided in Section 8(b) of the Act.

Medical benefits

Respondent shall pay reasonable and necessary medical services of $84,114.00 pursuant to the Fee Schedule, 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 is ordered to authorize medical care for the Petitioner's right shoulder as ordered by Dr. Rodney Herrin.

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.

D. D. McCarthy
Signature of Arbitrator

Sept. 6, 2012
Date

ICArbDec19(b)

SEP 10 2012

Jeffery L. Lyons, Sr. v. Honeywell - 11 WC 25984

Findings of Fact and Conclusions of Law

The fundamental issue in this case is whether or not the Petitioner's right shoulder condition, and medical expenses and temporary total disability associated therewith, are causally connected to the Petitioner's work injury of 7/13/10.

The parties stipulate that on that date the Petitioner was working for the Respondent as a tool and die operator. It is also stipulated that the Petitioner sustained a left shoulder injury while he was trying to pull and adjust dies in a press machine with his left arm. He advised his employer immediately. His employer took him to Midwest Occupational Health Associates MOHA) for care, treatment and evaluation and the Petitioner treated with MOHA from that date forward. Ultimately, he underwent left-sided shoulder surgery in January of 2011. The parties have agreed that the Respondent accepted the left-sided shoulder injury as compensable and paid medical bills related to that injury. The Respondent also paid temporary total disability benefits from January 19, 2011, the day of Petitioner's left arm surgery, through July 18, 2011, the date Respondent's Section 12 physician opined that the Petitioner had reached maximum medical improvement with respect to his left shoulder.

The question before the Arbitrator is whether or not, following the Petitioner's left shoulder injury, the Petitioner also sustained a related and causally connected right arm and shoulder condition as a result of compensating with his right arm for his left-sided injury.

The Petitioner was first evaluated at Midwest Occupational Health Associates (MOHA, P.Ex. 3) on July 27, 2010. He gave a consistent history of injury stating that he was pulling a mold out of a machine when he injured his left arm. The Arbitrator notes that the initial history of injury contained in the MOHA records references an injury of 7/12/10, but the date of accident, notice, and injury to the Petitioner's left arm is not disputed or at issue.

As noted in the MOHA report of 7/27/10, the Petitioner had a previous left shoulder arthroscopy and had been treating himself since the incident with over-the-counter medications. He was ordered to continue on regular duty. At his request he stayed on regular duty until his left shoulder surgery in January. On August 3, Dr. Clem at MOHA noted that the Petitioner's condition had not significantly improved but Petitioner wanted to continue at regular duty "because of the short staffing and volume at work right now." (P.Ex. 3, note of 8/3/10). He was seen again on 8/10/10 and was ordered different medications and physical therapy. He was seen again on 8/24/10

and 9/8/10 and continued to ask for regular duty so he could continue to work his 12 hour shifts on a consistent basis. He continued, however, to have ongoing problems with his left shoulder. The physician's assistant and physician noted in the office dictation of 9/8/10 that he wanted to continue to work at full-duty even though he continued to have problems.

The Petitioner described the nature of his work. His job required extensive pushing and pulling to set and adjust dies in trim and die machines. He was required move items weighing anywhere from 15 to 1500 pounds. He testified that the mold he was moving when he injured his left shoulder weighed an estimated 450 pounds. He also testified that following his injury he compensated for the pain and lack of mobility in his left arm by overusing his right.

On September 16, 2010, the Petitioner was again seen at MOHA, and at this visit began complaining of problems in his right upper extremity. The Petitioner's pain drawing dated 9/16/10 (P.Ex. 3) shows that the Petitioner noted pain in his right forearm. The progress report states:

> "He tells me he is also having some discomfort in his right forearm. He thinks this is due to using his right arm in order to compensate for his left.
>
> * * *
>
> Mr. Lyons has been on regular duty."

While most of the medical care at MOHA was related to his left shoulder, he continued to make complaints of pain in his

right. At his next visit to MOHA on 10/27/10, he completed a pain drawing that showed bilateral pain in his left and right shoulders and in his left and right arms and hands. According to his 10/27/10 progress report "He has some new pain in the right shoulder and the right hand. He thinks this is because he is using the right side more in order to compensate for his left side." His pain diagram he filled out on 11/29/10 also references continuing and increasing pain in his right side in addition to the problems with the undisputed left side injury. He continued to note both right and left upper extremity pain for the balance of his care with MOHA.

MOHA referred the Petitioner to Dr. Christopher Wottowa for his left shoulder complaints and Dr. Wottowa's Physician's Assistant, David Purves, saw him on September 10, October 22, and December 8. During his treatment with Dr. Wottowa he received an injection in the left shoulder which gave him temporary relief. He continued to work full-duty thereafter and continued to have left shoulder problems. He had an MRI which was done at Springfield Clinic on 11/26/10 and was read as being possibly positive for a labral tear. Dr. Wottowa made several recommendations to him regarding possible options and chose to proceed "to continue to use his shoulder and increase his strength through rehabilitation." He suggested surgery if continuing to use the shoulder was not effective.

proceed "to continue to use his shoulder and increase his strength through rehabilitation." He suggested surgery if continuing to use the shoulder was not effective.

After seeing Dr. Wottowa on December 8, the Petitioner returned to MOHA on 12/15/10 and was referred for a second opinion from orthopedic surgeon Dr. Rodney Herrin. Although he was referred to Dr. Rodney Herrin for problems with his left shoulder, the records from MOHA evidence continued complaints of bilateral arm pain (see pain drawing dated 12/15/10).

After the Petitioner was referred to Dr. Herrin for his left shoulder, he was again seen again on 1/4/11 at which time MOHA opened a new file regarding his right shoulder. They did note in their history of that date that the Petitioner had been complaining of right shoulder pain since October of 2010. As noted above, however, a review of the records from 9/16/10 shows that the Petitioner also complained of right upper extremity pain at that visit as well.

Dr. Herrin assumed care for the patient when he first saw him on December 20, 2010 (Records of Dr. Herrin, P.Ex. 1. Evidence dep. of Dr. Herrin, Ex. 5, pg. 7). Dr. Herrin noted that at his first visit with the Petitioner, the Petitioner complained of both left **and** right arm pain. Because of the nature of his complaints, Dr. Herrin directed most of his attention to his left arm (Ex. 5, pg. 15). He does note,

however, that while his recommendations for care and treatment were directed at the left arm, his notes of patient history do also refer to continued right arm pain. Dr. Herrin explained that because his primary complaints were with his left shoulder, he addressed the left shoulder problems at that time without specifically choosing a course of treatment for the right arm (Ex. 5, pg. 16, line 12).

Dr. Herrin operated on the Petitioner's left arm on January 19, 2011 (P.Ex. 1, Ex. 5, pg. 18). The arthroscope revealed a tear of the superior labrum and that the biceps anchor had pulled loose (Ex. 5, pg. 18 & 19). There also was a slight prominence of bone on the acromonium which was causing irritation, and in his opinion, those conditions were related to the work injury (Ex. 5, pg. 19). The labrum was repaired and the bicep tendon was released and re-attached to another anatomical part of the shoulder (Ex. 5, pg. 20). Following those procedures, the doctor did a revision of the previous decompression (Ex. 5, pg. 21). In Dr. Herrin's opinion, all of those injuries, and the treatment resulting therefrom, were the direct result of his work injury. Also, his pre-existing condition had been further aggravated as a result of the work injury (Ex. 5, pg. 23-24).

According to the Petitioner's testimony, and consistently with the records of surgery on January 19, the Petitioner's left

arm was placed in a sling after his operation. He returned to Dr. Herrin's office on 1/24/11 and at that time again noted that he was continuing to have increased problems with his right shoulder (Ex. 5, pg. 26).

During his evidence deposition, Dr. Herrin offered his opinion that the condition that had been developing in the Petitioner's right shoulder was the result of the Petitioner favoring the left shoulder and overusing the right extremity during the course of his rehabilitation from the left-sided injury (Ex. 5, pg. 26-27). It was Dr. Herrin's opinion that compensation with the right arm directly resulting from the left arm injury was "the most likely" cause of the Petitioner's right arm pathology (Ex. 5, pg. 27, line 21).

The Petitioner's left arm therapy continued, and when he was released to one-handed duty, the Respondent had closed its facility and so no restricted work was available. The parties have agreed that the Petitioner would have been temporarily totally disabled as a result of left arm injury through July of 2011.

On April 13, 2011, the Petitioner returned to Dr. Herrin and the visit was primarily focused on the right shoulder. As of that time, Dr. Herrin noted that the Petitioner had not really had any significant treatment for his right shoulder. Again, Dr. Herrin was of the opinion that his right arm injury

resulted directly from compensation for his left side work injury (P.Ex. 5, pg. 31, pg. 36). Dr. Herrin began a course of conservative therapy for the right shoulder which included an MRI scan, physical therapy, and an injection in the subacromonial space. The MRI scan suggested supraspinatus tendonitis/tendonosis and minimal degeneration around the acromial vicular joint. On 5/9/11, the Petitioner was given a series of injections into his shoulder and his elbow (P.Ex. 1, office note of 5/9/11). Subsequently, he was referred for physical therapy. The Petitioner noted immediate relief following the injections, but gradually his symptoms returned during the following weeks.

Dr. Herrin continued to refer the Petitioner for physical therapy. He saw him again on 10/31/11 and at that time again tried injections in the Petitioner's right shoulder. On October 31, 2011, Dr. Herrin noted that conservative treatment for the right shoulder had failed. He offered him another injection for purposes of temporary relief but further sought authority for right shoulder arthroscopy. Dr. Herrin's opinion was that in view of the fact that the Petitioner had failed conservative care and treatment and continued to have symptoms, right shoulder arthroscopy was the appropriate next step (P.Ex. 5, pg. 51). Dr. Herrin has continued to order the Petitioner off all but sedentary work until he has that surgery, (see work orders

and restrictions, most recently from 10/31/11, in P.Ex. 1) and the Petitioner has been off work from the date his TTD was terminated through the present. The Respondent has offered no restricted work or job placement.

It should be noted that the Petitioner's shoulder was injected in May and October of 2011. An MRI of the right shoulder was taken on 4/27/11 (R.Ex. 5, pgs. 47-8).

In denying ongoing temporary total disability benefits and further medical or surgical care for the Petitioner's right arm, the Respondent has relied on a Section 12 examination by Dr. Edward Kolb and a utilization review report performed by a utilization review service of Respondent's workers' compensation insurance company, Sedgwick CMS. The utilization review documents were introduced into evidence as Exhibits Number 1, 2, 3, 4, 5, and 6. A deposition of the utilization review server, Karona Bacon, was introduced into evidence as Respondent's Exhibit 7.

Karona Bacon described the utilization review process employed by Sedgwick. When a case is assigned, the reviewer examines the medical records that are sent with the UR request. The reviewer determines if the request for additional medical care meets official disability, or ODG guidelines (R.Ex. 7, pg. 5). If the reviewer determines that the guidelines are met, then the procedure is approved but if they are not met, the

reviewer sends the material to a group of medical doctors that specializes in reviewing those cases and asks the doctors to determine if in their medical opinion, the medical service meets the applicable guidelines (R.Ex. 7, pg. 6).

In the case of Mr. Lyons, the initial review concluded that information available to the utilization review process did not support the medical necessity of further medical care for the shoulder. The file was then referred out to a physician who concurred that the available information did not support further medical care.

The testimony from the utilization review provider establishes that both the initial reviewer and the subsequent physicians reached the same conclusion. According to those reports and the testimony at issue, medical necessity was denied through the utilization review process because the reviewers did not have the MRI that had been performed on 4/27/11 (R.Ex. 7, Pg. 28, line 9-pg. 29, line 6). The utilization review personnel knew than an MRI had been conducted but the MRI was not provided to them by Sedgwick (R.Ex. 7, Pg. 30, line 12 - Pg. 31, line 22). Ms. Bacon testified that she was asked to provide the utilization review on a "expedited basis" (R.Ex. 7, Pg. 9, Pg, 22-23) and further testified that she only conducted the utilization review based on the information provided to her by the Respondent's insurance company (See R.Ex. 7, Pg. 39, line

120Pg. 42, line 3). No one from Respondent or the U.R. service made any attempt to get the MRI films (R.Ex. 7, pg. 31, line 20). The Respondent's insurance company did not provide her or the reviewing physician with the MRI reports and, therefore, the reviewer and the physician both found that they could not certify medical necessity.

Significantly, the utilization review was conducted on 12/5/11. The date of the report was 12/6/11. (See Respondent's exhibits attached to R.Ex. 7, Bacon deposition.) By Ms. Bacon's own admission, the review was conducted on an "expedited basis" and a conclusion was reached by both the reviewer and the physician within 24 hours. The reviewer testified, and her report suggests, that they attempted to contact the treating physician, Dr. Herrin. The witness also testified that Dr. Herrin did not call them back. In his deposition Dr. Herrin testified that neither he nor his staff were notified that it was necessary for them to return a utilization review phone call (P.Ex. 5, pg. 53-4). The utilization review witness also testified, and documents support the fact, that a utilization review was sent to Petitioner's attorney but not Dr. Herrin. Furthermore, the utilization review did not address the fundamental issue of the medical necessity of shoulder care and treatment for the right shoulder surgery. Rather, the medical conclusion was based entirely on the fact that the insurance

company did not provide the utilization review service with the MRI that was conducted in April of 2011. Medical necessity was denied because although the UR service knew of the MRI, they were not provided the films and, therefore, could not confirm Dr. Herrin's interpretation of the results of that MRI.

The purpose for a utilization review is to allow the Respondent an opportunity to offer evidence of whether or not recommended medical procedures or treatment are in fact medically necessary. The testimony of Ms. Bacon supports the principle that a utilization review should determine whether or not the treating physician's care meets objective and recognized medical criteria. The purpose of a utilization review, however, is not and should not be to shift the burden of gathering evidence and providing the U.R. service information on to the Petitioner. In determining medical necessity, a Respondent should not be able to create evidence or a presumption in its favor because it does not provide its own utilization review service with adequate information.

At trial, Petitioner's counsel objected to the substance of the utilization review report as being statutorily insufficient. For purposes of admitting the report into the record those objections are overruled and the report and testimony regarding the utilization review are admitted. The Arbitrator finds, however, that the utilization review did not address the

fundamental medical necessity of Dr. Herrin's recommended treatment. It based its decision on the unavailability of an MRI report and Sedgwick CMS should not be allowed to shift the burden of providing the utilization review service with adequate information to the Petitioner.

As to the assertion that Dr. Herrin was given an opportunity to appeal the decision, the Arbitrator finds Dr. Herrin's testimony credible that he did not receive notice from the utilization review service that his procedure had been denied (P.Ex. 5, pg. 53-4). One disputed unreturned phone message one day before a U.R. report is issued is not sufficient to create a presumption in favor of the utilization review under the circumstances presented in this case.

Section 8.7 (i) (4) of the Act deals with Utilization Review. It states that if a UR determination is properly made to deny a particular treatment, then the burden shifts to the employee to show by a preponderance of the evidence that a variance from the determination is appropriate, and that the proposed treatment meets the requirements set forth in Section 8 (a) of the Act.

The facts set forth above clearly show that the utilization review performed in this case was, at best, incomplete. The treatment was denied because the UR did not consider the MRI, which it had ample opportunity to do. Dr. Herrin's

recommendations were based in large part on the MRI findings, and the lack of response to conservative treatments.

The Arbitrator holds that based upon the evidence, the employee has shown by a preponderance of the evidence that that proposed surgery to the Petitioner's right shoulder is a procedure reasonably required to cure or relieve the Petitioner from the effects of his accidental injuries.

Respondent also introduced into evidence a report of a Section 12 examination by Dr. Kolb (See R.Ex. 9). Dr. Kolb noted the onset and progress of right-sided upper extremity symptoms beginning in September of 2010. It was his opinion that those symptoms, and the current problem with the Petitioner's right upper extremity, were not the result of an upper extremity injury or compensation related to left upper extremity immobility. Rather, Dr. Kolb reached the opinion that the Petitioner's right upper extremity symptoms were the result of an unrelated cervical condition:

> "In regard to his right shoulder…he has a longstanding history of bilateral shoulder pain with radicular symptoms, likely secondary to his chronic neck condition…these symptoms are most consistent with a cervical etiology." (IME report of Dr. Kolb, Exhibit 2 to evidence deposition of Dr. Kolb. See also R.Ex. 9, pg. 17-18)

Dr. Kolb noted that an MRI had previously been conducted and a cervical steroid injection administered in 2004 (R.Ex. 9, Pg. 35-8). He also noted the Petitioner's initial complaints of

October 27, 2010 were from his elbow to his fingertips, and on that information, the IME doctor concluded that the Petitioner had a cervical condition rather than a shoulder injury (R.Ex. 9, Pg. 34-6). When he made his conclusions, the IME doctor was unaware of any history of prior cervical or radiculopathy-type complaints. He had no information other than the prior MRI of pre-existing symptomology. Additionally, the cross-examination of Dr. Kolb in his evidence deposition establishes that he was unaware that the Petitioner had undergone a series of injections in May of 2011, prior to the IME. He also was unaware of injections performed after the IME in October of 2011 (R.Ex. 9, Pg. 44, line 13 - Pg. 50, line 7).

Dr. Kolb acknowledged on cross-examination that injections such as those received by the Petitioner can be used both diagnostically and therapeutically. Therapeutically they can reduce symptomology, both temporarily and permanently. Diagnostically they help the physician locate the source of a patient's complaints, and in the case of upper extremity symptoms can help a physician determine if the source of those symptoms is the result of cervical pathology or, in the alternative, pathology in the shoulder (See P.Ex. 5, Dep. of Dr. Herrin, pg. 49-50).

The records and testimony in the case establish that Dr. Herrin did perform a series of injections, first in May and then

in October of 2011. The injections were made under ultrasound guidance and according to the Petitioner and the medical records, provided the Petitioner with some relief. Shortly after each series of injections, however, the upper extremity symptoms returned and it was after the use of those injections that Dr. Herrin offered his opinions about the source of the Petitioner's pain and his need for shoulder surgery (P.Ex. 5, pg. 49-50).

Based on the record and evidence in the case, the Arbitrator finds that the opinions and testimony offered by Dr. Herrin are more reliable and are based on a more complete and accurate knowledge of the Petitioner's medical record and history. Dr. Herrin found that the Petitioner had right-sided symptomology which was consistent, and which was refractive to conservative measures including medication, physical therapy, and injections. He found that the Petitioner's shoulder MRI was abnormal. He also gave the Petitioner injections in the shoulder which temporarily relieved the symptoms. It was his opinion that the history of the onset of the Petitioner's right-sided upper extremity symptoms was consistent with overuse compensation directly related to the Petitioner's work injury. He further was of the opinion that in light of the failure of conservative measures, arthroscopic surgery was necessitated. Finally, he restricted the Petitioner to sedentary activity.

The Arbitrator finds Dr. Herrin's opinions to be credible and based thereon finds in favor of the Petitioner.

The Arbitrator finds that the condition of ill-being present in the Petitioner's right upper extremity is directly related to the Petitioner's work injury of 7/13/10. The Arbitrator finds that in accordance with Dr. Herrin's testimony, the Petitioner has been temporarily totally disabled from further employment as a result of his right upper extremity condition from 7/18/11 through the date of arbitration. The Arbitrator finds that the Petitioner is entitled to receive $552.80 per week for 55-3/7 weeks.

The Arbitrator finds that the medical bills introduced into evidence as Petitioner's Exhibit 2 in the amount of $84,114.00 are all reasonable, necessary, and related to the Petitioner's work injury of 7/13/10. Respondent is ordered to pay those medical bills in accordance with the Fee Schedule. By agreement of the parties, Respondent is entitled to a credit for all medical bills paid.

In accordance with Section 8(a) of the Act, the Respondent is ordered to approve the medical care and treatment ordered by Dr. Herrin, including right shoulder arthroscopic surgery.

Dated and Entered Sept. 6 2012

D R Thelen, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☐ 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

Thomas Schafer,
Petitioner,

vs.

NO: 09 WC 52346

14IWCC0054

Springfield School Dist. #186,
Respondent.

DECISION AND OPINION ON SECTION 19(H)/8(A) PETITION

On October 18, 2010 Arbitrator Tobin issued an arbitration decision in which he found Petitioner sustained an accidental injury arising out of and in the course of his employment on May 19, 2008. As a result Petitioner was entitled to the medical expenses found in Petitioner's PX13 exhibit and was found to be permanently disabled to the extent of 12.5% man as a whole under Section 8(d)2 of the Illinois Workers' Compensation Act. Neither party appealed the decision and the decision became final.

On December 1, 2011, Petitioner filed a Section 19(h)/8(a) Petition claiming Petitioner has sustained a material increase in his condition and has incurred additional medical and travel expenses.

The Commission, has reviewed the entire file and record, and finds Petitioner has sustained a material increase of an additional 12.5% of a man as a whole for a total award of 25% man as a whole under Section 8(d)2 of the Act. In addition, Petitioner is entitled to additional $2,084.62 in medical expenses and $2,430.15 in travel expenses under Section 8(a) of the Act, for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. In 1992 Petitioner underwent surgery consisting of a laminectomy and discectomy at the L5-S1 level.

2. On May 19, 2008, Petitioner sustained a work accident when he stepped off a ladder while carrying a television set, stumbled, twisted and wretched his back. On November 10, 2008 Petitioner sustained a work accident when he aggravated his low back and right side while mounting solar panels on the side of a building.

3. On December 16, 2008 Petitioner's lumbar MRI showed at the L1-L2 level he had minimum anterior osteophytes, minimum facet hypertrophy and no significant canal or foraminal stenosis. At the L3-4 level he had minimum disc bulge and facet hypertrophy with ligamentus flavum thickening but no significant canal or foraminal stenosis. At the L4-5 level he has a mild to moderate diffuse disc bulge, moderate facet hypertrophy and ligamentus flavum thickening, mild circumferential canal stenosis and moderate left and mild to moderate right foraminal stenosis. At the L5-S1 level he had a right hemilaminectomy defect, a moderately diffused disc bulge. Facet hypertrophy but no significant canal stenosis. He also had mild right foraminal stenosis but no significant left foraminal stenosis.

4. On February 25, 2009 Dr. Russell opined that Petitioner's pain is discogenic in nature and he recommended a lumbar fusion.

5. On March 9, 2009 Petitioner underwent a lumbar CT that showed an annular disruption at the L3-4, L4-5 and L5-S1 levels. On March 10, 2009 the lumbar discogram showed an annular disruption at the L3-4, L4-5 and L5-S1 levels. However, only the L3-4 level elicited a pain response concordant to the patient's pre-procedural pain.

6. On March 19, 2009 Petitioner followed up with Midwest Occupational Health Associates (MOHA) for chronic low back pain. It was noted that Petitioner has been evaluated by Drs. Russell and Pineda. Dr. Pineda didn't recommend surgery at that time. He recommended a back brace and pain management. He noted that while Petitioner's discogram showed a problem at the L3-4 level, his disc was intact at the L4-5 and L5-S1 levels.

7. On May 21, 2009 Petitioner saw Dr. Lanzotti for a third opinion. Dr. Lanzotti noted that Petitioner had previously been evaluated by Drs. Russell and Pineda. He had also participated in physical therapy, work hardening and had been off of work for approximately six months. Petitioner reported that he had back pain and once in a while he had some leg symptoms. Petitioner has a history of undergoing an L5-S1 discectomy. He is here mostly because of his back pain. His prior MRI shows some mild degenerative disc disease at the L3-4, L4-5 and L5-S1 levels. His discography test showed concordant pain at the L3-4 level. Dr. Russell has opined that Petitioner might be a surgical candidate

while Dr. Pineda felt that he wasn't a surgical candidate. Dr. Lanzotti noted that on physical examination Petitioner cannot flex down past his kneecaps and forward flexion causes back pain. Dr. Lanzotti reviewed Petitioner's MRI, discogram and CT scan. Based on his review, he diagnosed Petitioner with intervertebral disc degeneration at three levels and he opined that Petitioner is not a candidate for a L3-4 fusion. He encouraged Petitioner to continue with his work hardening.

8. On June 25, 2009, Petitioner followed-up at MOHA for his chronic back pain. He stated that overall he is feeling better and he is no longer experiencing the sciatic pain he once had. He reported that he does experience bilateral numbness and tingling in his feet after certain exercises and this abates when he rests and walks around. He has been participating in work conditioning and today he is able to lift 70 pounds. He has also progressed to trying to lift 75 pounds with three repetitions and he believes he can do this within the next ten to fourteen days. Petitioner was diagnosed as having chronic low back pain with an annular tear at the L3-4 level and degenerative disc disease at the L4-5 and L5-S1 levels. He was instructed to continue with the work conditioning program and to progress to lifting 75 pounds, to continue to take his medicine and to return to his regular duties on July 13, 2009. He was not scheduled for any follow up appointments.

9. On February 11, 2010 and March 2, 2010 Petitioner was given lumbar epidural injections.

10. On March 25, 2010 Petitioner was seen by Dr. Ghanayem who noted that Petitioner's MRI shows postsurgical changes at L5-S1 on the right side. He has degenerative disc disease and facet hypertrophy at multiple levels of his lumbar. He has rather significant lateral recess stenosis at the L4-5 level on the right side. He has bilateral foraminal disease. His discogram showed a pain response at L3-4. Dr. Ghanayem opined that an operation would improve Petitioner's daily pain and functionality. He noted that the goal of the operation would to be to help with Petitioner's leg symptoms as opposed to his low back symptoms.

11. On May 13, 2010 Petitioner saw Dr. Lanzotti who noted that Petitioner presents with severe back pain and he reports he is having trouble doing tasks at work. He reported he still has pain that shoots bilaterally down his legs. He reported that he is going to see Dr. Russell again. On examination, his straight leg rising test is mildly positive and his reflexes are equal bilaterally. Dr. Lanzotti diagnosed Petitioner with chronic low back pain along with radiculopathy. He took Petitioner off of work until May 24, 2010 and then indicated he could return to work without any restrictions.

12. On May 25, 2010, Petitioner saw Dr. Russell. Dr. Russell noted that Petitioner had undergone an injection but he had no relief. Dr. Russell noted that based on his experience if Petitioner isn't having a significant amount of leg pain he is not certain that a laminectomy would benefit him. He noted that Petitioner's major complaint centers around his low back and he noted that he is not sure what there is to offer Petitioner. He noted that a multilevel fusion would provide no guarantee that Petitioner would be able to continue to work, lift or maintain himself in his present work position. He noted that he

would discuss the matter with Dr. Pineda. On June 28, 2010, Dr. Pineda noted that if Petitioner's pain is primarily back pain he would recommend nonsurgical management.

13. At the August 5, 2010 Arbitration hearing Petitioner testified that the injections had not helped. He reported that on a typical day when he sits down his low back is stiff and his legs are half numb until he stands up and moves around. He is stiff when he gets out of bed and he has to stretch to get mobile. Depending on what he is doing, his pain elevates and gets aggravated and the muscles in his back tighten up. He feels that it swells and tightens up so much that it pulls his hip around and this causes him to barely be able to walk. He reported that he doesn't have much pain in his back anymore but he still experiences a little sciatica. He takes medication for the pain. He reported that once he carries anything over twenty five pounds he is in rough shape. He bought a riding mower to use instead of a push mower, which aggravates his back. He uses an inversion table and floats in a pool to relax his back. He has back pain every day. Some days are so severe he can hardly walk. Riding a motorcycle really aggravates his back. On October 18, 2010 Arbitrator Tobin issued an arbitration decision in which he found Petitioner sustained an accidental injury arising out of and in the course of his employment on May 19, 2008. As a result Petitioner was entitled to the medical expenses found in Petitioner's PX13 exhibit as was found to be permanently disabled to the extent of 12.5% man as a whole under Section 8(d)2 of the Illinois Workers' Compensation Act. Neither party appealed the decision and the decision became final.

14. On October 22, 2010 Petitioner saw Dr. Lanzotti and indicated that he was experiencing severe intermittent back pain. He also reported that he was headed toward surgical intervention as he had exhausted every conservative avenue of treatment. Dr. Lanzotti indicated that Petitioner should not lift, carry, push or pull greater than twenty pounds at work and he should see an orthopedic surgeon. On November 23, 2010 Petitioner saw Dr. Lanzotti in a follow-up visit. At that time he reported that his back had actually improved and he has some better range of motion. On examination, he was able to flex to 45 degrees in a vertical plane and his leg pain was better since he had not performed any activities which would exacerbate this condition.

15. On December 22, 2010 Petitioner saw Dr. Ghanayem. Petitioner presented with complaints of severe low back and right leg pain. The symptoms are aggravated by prolong sitting. Petitioner is complaining of burning, numbness and tingling down the posterior aspect of his buttock, thigh and leg. He hasn't worked since October 15, 2010. His symptoms have not resolved with conservative management and the pain has limited his lifestyle. Dr. Ghanayem opined that Petitioner should undergo a lumbar laminectomy at the L4-5 level. On January 7, 2011 Petitioner underwent surgery consisting of a lumbar laminectomy with bilateral partial medial facetectomies at the L4-5 level with a foraminotomy on the right.

16. Petitioner's May 5, 2011 post-surgical physical therapy report indicated that Petitioner is rating his pain as being a 5 out of 10 on a 10 point scale. He reports that most of his symptoms are in his back and currently he just has some numbness in his legs with the left being worse than the right. He reports he had a really painful trip to his doctor in

Chicago. Dr. Ghanayem was going to place him in a work conditioning program but he did not because lifting his thirteen pound grandson increased his symptoms.

17. On August 3, 2011 Petitioner reported to the physical therapist that he didn't know if he could keep coming to therapy because he hurts so bad over the weekend. He feels after therapy that he is unable to walk again until Sunday and he is unable to place weight on the balls of his feet. He feels like he is going backwards but knows he is not in that he is able to ride a bike and perform on the treadmill for a longer period on most days. He notes that when he performs a front carry it increased his feet symptoms right away. Toward the end of the session he asked to skip a few exercises as he reports he was very tired and didn't feel he could complete them. He was able to kneel and side carry. He reports his feet have been numb but they are not burning. His back is very still. He indicated that the last time he underwent work conditioning was a year and a half ago. At that time he was sore but now he is experiencing more nerve problems. He said the doctor usually has patients in work condition for one month, three times a week but he thinks he needs another month of conditioning and it needs to occur on a daily basis. Petitioner said he wants to get back to the point where he can return to work. The therapist noted that Petitioner continues to report substantial symptoms both during and in between therapy. He continues to complete therapy and he is motivated but he expresses conflicting statements regarding therapy. The client is scheduled for therapy until the end of the week followed by a functional capacity evaluation and a follow up appointment with Dr. Ghanayem.

18. On August 8, 2011 Petitioner participated in a functional capacity evaluation. It was reported that he demonstrated maximum effort and he reported pain in his low back and feet prior to, during and following the evaluation. On August 10, 2011, Petitioner followed up with Dr. Ghanayem who released Petitioner to return to work with restrictions of lifting no more than twenty five pounds from his knee to his waist, no more than twenty pounds from his waist to above his head and carrying no more than twenty five pounds.

19. On December 1, 2011, Petitioner filed a Section 19(h)/8(a) Petition claiming he had sustained a material increase in his condition and had incurred additional medical and travel expenses. A Review hearing was held on January 24, 2013. At the Review hearing Petitioner presented additional evidence.

20. On January 9, 2012 Petitioner was evaluated by Dr. Zelby. Petitioner reported to him that he was not able to do anything beyond taking care of himself at home because otherwise the pain was too severe for days at a time. On examination, Petitioner demonstrated a normal neurological examination and a normal spine examination. Dr. Zelby opined that Petitioner was qualified to work at least at a medium physical demand level, which is lifting at least fifty pounds occasionally and twenty five pounds frequently. The video surveillance shows Petitioner can easily qualify to do this work and he has no infirmity following such activities. Dr. Zelby opined that Petitioner was not in need of any additional physical therapy or work hardening and that he has reached maximum medical improvement.

21. Petitioner participated in vocational rehabilitation with Mr. Ragains who issued a report covering the period of February 1, 2012 through February 24, 2012. Mr. Ragains noted Dr. Ghanayem's permanent work restrictions along with noting that Petitioner has been examined by Dr. Zelby, had undergone a functional capacity evaluation and had been under surveillance. He also noted Dr. Zelby's restrictions. He noted that Petitioner has verbalized a definite desire to return to work and it appears he wants to return to his former job. Thus far, he opined that Petitioner hasn't come to grips with the need to look for alternative employment. Mr. Ragains noted that his primary concern is with the disparity between the work restrictions imposed by Drs. Ghanayem and Zelby. In a follow up report for the period of February 25, 2012 through March 30, 2012, Mr. Ragains opined that Petitioner is having a difficult time reconciling himself to the fact that his work restriction precludes him from returning to work as an electrician and that the restrictions may impact his employment options. In his report covering the period of March 31, 2012 through April 30, 2012, Mr. Ragains reported that Petitioner has participated in and shown marginal cooperation with the job search activities. Thus far, he has essentially met the requirements for the number of contacts that are required in rehabilitation. However, he has only followed through with six of the thirteen job leads. He has also refused to apply for an auto sales job, which is a realistic job given his interest and knowledge of automobiles. Mr. Ragains opined that to the extent Petitioner is cooperating at this point, it appears that he is only motivated to do so in order to maintain his benefits and he believes Petitioner is not truly motivated to find a new job with a new employer.

22. On April 16, 2012 Petitioner saw Dr. Ghanayem who indicated that Petitioner wants to try an additional course of work conditioning five days a week to see if he can get his old job back.

23. Mr. Ragains' vocational reports for the periods of May 1, 2012 through May 31, 2012 and June 1, 2012 through June 30, 2012 indicated Petitioner has continued to be marginally cooperative with the rehabilitation program. He has not followed through with the job leads from the labor market survey. He was also careful to make just the minimum number of potential employer contacts which are called for in the vocational rehabilitation plan. He opined that Petitioner has not been candid in his motive to perform a job search for a new job with a new employer. Petitioner states that the purpose of his cooperation and follow through is for the purpose of maintaining his benefits rather than obtaining new employment. On June 26, 2012, Petitioner reports he was given a full release by Dr. Ghanayem to return to work with his employer starting July 2, 2012 and thus, he hasn't looked for any further work. In general, Petitioner has not been compliant with his request to update him on his status.

24. On June 22, 2012 Petitioner reported to physical therapy and reported that he was really hurting that day. He rated his pain as being a nine out of a ten on a ten point scale and stated his whole body hurt. He was scheduled for four hours of work conditioning but he only stayed for less than one hour of conditioning.

25. On June 25, 2012, Dr. Ghanayem noted that Petitioner appears to have made some progress in work conditioning but it appears he has reached a plateau. Currently, he reports that he still has some residual back pain but no leg pain. On examination, his lumbar extension was limited by pain but his flexion was good. Dr. Ghanayem opined that Petitioner could return his regular work duties but he was to use some "horse sense" in terms of when to ask for help if something was too heavy. He was released to return to work on a trial basis for four weeks and then was instructed to check back with him.

26. Mr. Ragains indicated in his report for the July 1, 2012 through July 31, 2012 period that he subsequently found out that Petitioner had been released to return to work on a trial basis, but that the Respondent would not allow Petitioner to return to work without more specifics being given to them. Since then Petitioner has been going through the motions of making a minimum diligent and cooperative job search effort. Furthermore, based on the fact that Petitioner has appealed his social security claim, he believes Petitioner is not fully invested in obtaining a new job with a new employer.

27. On August 24, 2012 Petitioner underwent a fit for duty examination. Petitioner reported at that time that he still is experiencing a pins and needle sensation along with burning and numbness in his feet and legs. He reports that he experiences pain in his hip when his back is aggravated and that he is still experiencing daily problems with his back. He reports that during his physical therapy he did not reach his goal of lifting up to seventy five pounds but that he was able to lift up to seventy pounds. He further reported that if he lifts anything over thirty five pounds it is very painful unless he has taken narcotics. He also reported that prolong sitting causes his legs to go numb and prolong walking causes him pain. He reported that he was at Walmart the other day and had to lie down in the aisle because of his severe back pain. Dr. Ghanayem's note states Petitioner can work without any restrictions. Petitioner reports that he believes the doctor said something about working as tolerated and working to the level of his ability. The reviewer noted that Dr. Ghanayem did not give a specific one hundred percent clearance for Petitioner to perform his current job and that there were no weights listed on his release. Petitioner was just supposed to have a trial return to work again before following up with the surgeon. The reviewer stated that Petitioner needs to undergo a functional capacity evaluation and due to the vague description in the surgeon's notes he is requesting clarification of Petitioner's work capability at this time.

28. Mr. Ragains indicated in his reports spanning August 25, 2012 through September 29, 2012 and September 30, 2012 through October 31, 2012 that Petitioner is still harboring hope to return to his job with his current employer. However, he indicates he doesn't believe he will be physically able to handle the job. He has been found to meet the definition of disabled under the social security standard. He has continued to exhibit sufficient cooperation and diligence in his job search effort.

29. On October 15, 2012 Dr. Ghanayem noted that Petitioner wasn't able to return to work. Some weather changes made his back feel a little worse. Petitioner showed him a job description for an electrical worker and having reviewed it, he is not sure if Petitioner can perform this job. Therefore, he has ordered an updated functional capacity evaluation and

took him off of work pending the results.

30. On November 6, 2012 Petitioner underwent a functional capacity evaluation. It was reported that Petitioner put forth maximum effort. Petitioner reported that he would like to return to his prior medium level with waist to head lifts of thirty pounds and floor to waist lifts and carrying of forty pounds.

31. Mr. Ragains indicated in his report spanning December 1, 2012 through December 21, 2012 that he believes Petitioner is employable and that there is work available within his restrictions. He does not believe Petitioner will obtain a new job with a new employer. His belief in the ability to work and a desire to do so are essential ingredients for success and he believes in this case they are lacking here.

32. Dr. Zelby was deposed on December 10, 2012. He noted that during his January 9, 2012 evaluation Petitioner demonstrated inconsistent behavior responses which were positive for diminished pain on distraction and non-anatomic sensory changes. For example, his straight leg raising test was inconsistent. The sitting and lying straight leg raising tests are the exact same tests and they should elicit the exact same response, which they didn't do during the evaluation. There was a positive response in the back only, which means there was no nerve impingement and that he just had back pain. He was limping. However, there was no objective evidence to support the same. The surveillance video footage was inconsistent with the complaints the Petitioner made at the time of the evaluation. Even absent the surveillance video, Dr. Zelby found that Petitioner's objective medical results easily showed Petitioner was capable of performing work at least at a medium physical demand level job, which is lifting at least fifty pounds occasionally and twenty five pounds frequently. He reviewed the November 6, 2012 functional capacity evaluation and found that it did not change his opinion. On cross-examination, Dr. Zelby testified that he did not base his opinion on the surveillance video but did base it on Petitioner's medical condition. At the time of the evaluation Petitioner volunteered information that he wasn't able to do anything beyond just caring for himself at home because otherwise the pain is too severe for days at a time. Dr. Zelby opined that there was a big disconnect between what Petitioner was saying and what the medical evidence showed he was capable of doing. He agreed that Petitioner could perform a lot of the tasks of a maintenance electrician but not all of the tasks. Specifically, Petitioner was required to occasionally lift up to seventy five pounds from the floor to his waist and he believes this would place Petitioner at an unnecessary risk for injury.

33. On January 7, 2013 Dr. Ghanayem said Petitioner's functional capacity evaluation was valid. He was determined to be at a light to medium demand level with lifting of thirty pounds up to the head level and occasional lifting of forty pounds from floor to waist and in a frontal carry. He noted that Petitioner has difficulty getting in and out of a crouching position and he would recommend that he avoid doing this type of movement. He indicated that Petitioner's restrictions were permanent.

34. At the January 24, 2013 Review Hearing, Mr. Baugh, the business manager for the local union testified he is familiar with Petitioner through working with him on prior jobs. He

stated that an electrician would have to lift items over fifty pounds, would have to be able to crouch or bend and would have to be able to climb ladders. He opined that someone with restrictions that would place him at a medium demand level would not be able to work as an electrician in that area.

35. A stipulation was made by Petitioner's attorney that in the year preceding the injury Petitioner earned $78,000.00 and his average weekly wage was $1,500.00 per week. If he was working in the same position today his average weekly wage would be $1,595.20 a week.

36. At the January 24, 2013 Review Hearing, Petitioner testified he is currently fifty two years old. He claimed that the post-surgery physical therapy aggravated his condition and that the work conditioning was more aggravating than the physical therapy. After the physical therapy he had to lie on ice packs just to be able to walk out of the place. On the day of the surveillance and during the gaps in filming he was in the house lying on ice packs. He tried to go back to work for Respondent but they couldn't accommodate the work restrictions issued by Dr. Ghanayem. He has not been offered a job while he participated in vocational rehabilitation although he followed up on the leads that were given to him. He graduated from high school. All of his jobs have been electrician type jobs. He does not have any special training besides electrical work. He can type with two fingers. He is not proficient in word processing. Currently, his low back feels tight and if he does anything it aggravates it. It feels like he has a softball on the left side in the kidney area. It tightens up into a big knot. His leg symptoms did not go away one hundred percent after the surgery. After the surgery, his leg symptoms got better, but if he walks too long his low back tightens up. He feels a big knot that pulls his hips so that he can hardly walk. His back stiffens so much when he is sitting in his truck that he can hardly get out of the truck and go about his business. He is currently taking medication for his back, leg pain and burning feet. He identified PX18 as a mileage chart showing his visits to and from Dr. Ghanayem's office. He saw Dr. Ghanayem because he was the one making the recommendation for the surgery. On cross-examination, he agreed that he drove a bass boat to Colorado in 2011. He also lifted his grandson and carried him on his shoulder and he identified himself as sitting with his grandson in a train at the mall.

37. Jim Ragains testified he is a vocational rehabilitation counselor. Petitioner was placed by Dr. Ghanayem at a light/medium level. Petitioner has some basis computer skills which would match up with an unskilled or low end semi-skilled position. Petitioner has knowledge of basic auto mechanics and auto parts. When he first met the Petitioner and throughout the whole process, Petitioner's sole focus was to return to his job as an electrician with Respondent. As a result, he never felt Petitioner was truly motivated to find a new job with a new employer. Petitioner told him he was only cooperating with the job search in order to keep his maintenance benefits. His aptitude tests indicated he has an interest in sales and light industrial work. He believed Petitioner could perform retail sales type work in relationship to electricity or electrical goods and services. He believed Petitioner also had the ability to go into auto sales, but Petitioner refused to apply for this type of job. Petitioner was cooperative but he wasn't fully diligent in completing what was expected of him in his job search. He found that there was a good basis for Petitioner

in retail, customer service, maintenance work or courier work. Petitioner was requested to make twelve job search contacts a week and he typically made ten contacts a week. A lot of what Petitioner did was look on websites. He didn't make personal contacts. Petitioner did not always comply with what to say about his time off or his salary expectations. Mr. Ragains' opined that there is a stable labor marked for Petitioner's services.

Based on the above, the Commission finds that Petitioner proved he is entitled to a material increase of an additional 12.5% man as a whole for a grand total of 25% man as a whole under Section 8(d)2 of the Act. The record shows that Petitioner was never found to be medically permanently and totally disabled post-surgery. At most, Petitioner was initially given a permanent restriction of light physical capacity. This was subsequently increased to light/medium or medium capacity depending on whether one accepts Dr. Ghanayem's or Dr. Zelby's opinion. These new restrictions were greater than Petitioner had at the time of the Arbitration hearing. Through performing physical therapy and work conditioning along with seeking additional work, Petitioner appears to have cooperated and put forth effort. However, there are indications from Mr. Ragains, the vocational rehabilitation counselor, along with Petitioner's own comments during physical therapy and to his doctors, that Petitioner was stuck in the mindset that he could only return to his former position and nothing else was acceptable. Furthermore, Mr. Ragains provided examples where Petitioner didn't put his best foot forward in terms of prospective potential new employers and the same resulted in a possible loss of employment. Such evidence also must be viewed in light of Petitioner's own testimony regarding his condition both at the time of the Arbitration hearing and at the subsequent Review hearing. The Commission finds that there is little, if any, difference in Petitioner's testimony regarding his physical condition from one hearing to the other. In terms of reviewing whether Petitioner's age, education and so forth weigh against Petitioner's ability to find a job within a stable labor market, the Commission finds Petitioner's age may be a hindrance to further employment. His education is somewhat limited as is his work experience. However his hobbies, aptitude test and work experience along with his physical agility demonstrated on the surveillance tapes, appear to show that Petitioner is still employable within his physical restrictions. Arguably, the evidence demonstrates that Petitioner did not put forth sufficient effort to establish that he was unemployable in a stable labor market and Petitioner didn't provide sufficient evidence that he is an "odd-lot permanent total either through his age, education, work experience and so forth. In terms of the wage differential award, there is sufficient evidence to show that Petitioner is no longer employable in his prior profession. However, there is no indication of what Petitioner's current wage is or what it could be. At best, Mr. Ragains talked about Petitioner being able to make approximately one half of what he used to make. However, this statement was based on commission sales from a potential auto sales position, which presents a significant difference of one's wage potential from week to week. As such, the Commission finds that Petitioner failed to prove the second prong necessary to prove up a wage differential award. Thus, the Commission finds that Petitioner falls within a permanent partial disability category. Having undergone additional invasive surgery and having had permanent restrictions imposed, the Commission finds Petitioner sustained a material increase in his condition to the extent of 12.5% of a man as a whole for a grand total of 25% of a man as a whole under Section 8(d)2.

Furthermore the Commission finds that Petitioner provided sufficient evidence to support his claim for travel expenses to and from Dr. Ghanayen's office and as such the Commission

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awards Petitioner an additional $2,430.15 in travel expenses. Lastly, the Commission finds that Petitioner has also proven up an additional $2,084.62 in medical expenses subject to Section 8(a) and 8.2 of the Act and allows Respondent a credit for the same so long as they hold Petitioner harmless from any claims by the provider for services for which Respondent is receiving this credit as provided in Section 8(j) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $636.15 per week for a period of 125 weeks, as provided in §19(h) of the Act, for the reason that Petitioner sustained a material increase in disability to the extent of 12.5% man as a whole. As a result of the accident of May 19, 2008 Petitioner is now permanently disabled to the extent of 25% man as a whole under Section 8(d)2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $2,084.62 for medical expenses and $2,430.15 in travel 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.

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: JAN 2 9 2014

Mario Basurto

MB/jm

David L. Gore

O: 12/19/13

Michael J. Brennan

43

STATE OF ILLINOIS)
) SS.
COUNTY OF)
CHAMPAIGN

☐ 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

JAME COLE,

Petitioner,

vs.

NO: 11 WC 24624

MASTERBRAND CABINETS,

14IWCC0055

Respondent.

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 penalties and fees, current condition of ill being and fraud and vocational rehabilitation and maintenance, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Arbitrator awarded Petitioner $8,674.83 in attorneys' fees per §16, $21,687.07 in penalties per §19(k) and $10,000.00 in penalties per §19(*l*). We modify the Arbitrator's award and decline to award Petitioner attorneys' fees and penalties.

We hold that Respondent should not be assessed penalties and fees. Respondent initially paid Petitioner's medical bills and temporary total disability benefits. On February 2, 2012, Dr. Hyers performed a §12 exam on Petitioner and opined that Petitioner had reached maximum medical improvement. Following that exam, Respondent ceased paying medical expenses and

temporary total disability benefits. While the Commission does not agree with Respondent's determinations, it was within its right to stop paying benefits as a result of a §12 exam. Respondent's actions were not unreasonable and vexatious.

Additionally, we find that Respondent did not act unreasonably or vexatiously with respect to paying Petitioner's medical expenses. Respondent paid the outstanding medical bills of which it was aware. Respondent then sent a letter to Petitioner on April 17, 2012, requesting any additional medical bills that needed to be processed. Petitioner never replied to that letter and Respondent did not receive the outstanding expenses until February 1, 2013. Respondent then submitted the bills to its payment department. At the time of the arbitration hearing, the outstanding expenses had either already been processed and paid, or were scheduled for payment. Respondent processed the medical bills in a timely manner once it received the expenses and its actions were not unreasonable. Based on the above, we hold that Petitioner is not entitled to attorneys' fees or penalties as Respondent did not act unreasonably or vexatiously.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $452.33 per week for a period of 42 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $452.33 per week for a period of 45-3/7 weeks for maintenance benefits as provided in §8(a), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $31,063.76 for medical expenses under §8(a) of the Act.

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.

14IWCC0055

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 $56,200.00. 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: JAN 29 2014
TJT: kg
O: 12/3/13
51

Thomas J. Tyrrell

Daniel R. Donohoo

Kevin W. Lamborn

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

COLE, JAME
Employee/Petitioner

Case# **11WC024624**

MASTERBRAND CABINETS
Employer/Respondent

14IWCC0055

On 4/19/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

2217 SHAY & ASSOCIATES
THPMAS R EWICK
1030 S DURKIN DR
SPRINGFIELD, IL 62704

5153 DUGAN & VOLAND
CAROL WYATT
3388 FOUNDERS RD SUITE A
INDIANAPOLIS, IN 46268

14IWCC0055

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jame Cole
Employee/Petitioner

v.

Masterbrand Cabinets
Employer/Respondent

Case # 11 WC 24624

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Urbana**, on **February 21, 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. ☒ 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: Vocational Rehabilitation; maximum medical improvement, and permanent partial disability

14IWCC0055

FINDINGS

On the date of accident, **6/10/11**, 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 **$35,282.01**; the average weekly wage was **$678.50**.

On the date of accident, Petitioner was **26** years of age, *single* 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 **$14,540.13** in TTD, **$0** in TPD, **$0** in maintenance, $0 in non-occupational indemnity disability benefits and **$0** in other benefits, for which a credit may be allowed under Section 8(j) of the Act.

Respondent is entitled to a credit for medical bills it has paid through its group medical plan for which credit is allowable under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $452.33 per week for 42 weeks, commencing June 9, 2011 through August 2, 2011, and August 15, 2011 through April 9, 2012, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $14,540.13 for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner maintenance benefits of $452.33 per week for 45 3/7 weeks, commencing April 10, 2012 through February 21, 2013, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner's unpaid medical bills listed in Petitioner's Exhibit No. 9 directly to the providers consistent with the Medical Fee Schedule established by the Commission for necessary medical services, as provided in Section 8(a) of the Act. Respondent shall reimburse Petitioner for her out-of-pocket payment made towards prescriptions medications related to her condition. Respondent shall be given a credit for medical bills that have been paid by its group health insurer, and Respondent shall hold Petitioner harmless for 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 is not liable for medical bills to St. John's Hospital, Associated Pathologists, or Dr. Crabtree (date of service 3/28/12).

Petitioner is denied prospective medical care.

Respondent is ordered to prepare a vocational assessment with Petitioner consistent with the restrictions set forth by Dr. Crabtree and Dr. Hyers.

Respondent shall pay to Petitioner attorney's fees of $8,674.83, as provided in Section 16 of the Act; penalties of $21,687.07, as provided in Section 19(k) of the Act; and penalties of $10,000.00, as provided in Section 19(l) of the Act.

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

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

14IWCC0055

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

Signature of Arbitrator

April 16, 2013
Date

ICArbDec19(b)

APR 19 2013

Jame Cole v. Masterbrand Cabinets
11 WC 24624

The Arbitrator finds:

Petitioner testified that she is 28 years old. Petitioner worked for Respondent, a manufacturer of kitchen cabinets, from May of 2010 through November 29, 2011. Petitioner first worked as a sealer/sprayer and held that position through February of 2011. That position involved sealing cabinet doors with a protective coat and spraying them with stains. Petitioner requested a transfer because she had been diagnosed with spots on her lung, a condition unrelated to her work for Respondent. When Petitioner first started working for Respondent, she did not wear a mask; however, she wore a mask when she started having breathing problems, at which time she left the sealer position. According to Petitioner, her supervisor, Zach, took her respirator from her near the end of December of 2010 stating that it needed maintenance. Petitioner did not get the respirator back and left sealing.

Petitioner then worked briefly as a run wiper and tub checker.

Petitioner testified that she worked a forty hour work week. Petitioner explained that there is lots of dust associated with the sanding process and that she worked with various types of wood including cherry, maple, oak, hickory, alder, and particle board. Petitioner had contact with these types of woods in all three positions she held.

In February 2011, Petitioner started working as a run wiper, which required her to wipe stains off of doors. Petitioner worked as a run wiper for a couple of months until she started working in the tub checker position. That position required her to place colored tags for parts on doors and drill holes for eyebolts. The drilling created dust. Petitioner stated that she often worked overtime, and when she did, she sanded doors, which also created dust.

Petitioner's Exhibit No. 7 includes material safety data sheets (MSDS). The MSDS for Auburn Oak Back Stain, under potential acute health effects, notes inhalation may irritate the respiratory system. The MSDS for Maple Coffee Vinyl Toner and New Cherry Java Toner list potential acute health effects from inhalation as cough, dizziness, fatigue, headache, nausea, vomiting, and weakness. (PX7)

Petitioner testified that prior to working for Respondent, she had never been diagnosed with asthma and was an active person who did a lot of hiking, camping and fishing. Petitioner had not experienced any past problems breathing. Petitioner stated that she quit smoking in 2010 when spots were found on her lung on a CAT scan at Decatur Memorial Hospital. Petitioner stated that in 2010, she had a CAT scan at Decatur Memorial Hospital, but following that did not have any further treatment, other than an antibiotic, until her presentation to Dr. Crabtree in June of 2011.

On June 10, 2011, Petitioner presented to Dr. Crabtree of Central Illinois Allergy & Respiratory Services in Springfield, Illinois. Petitioner reported shortness of breath and episodes of coughing dizziness, and vomiting in the work place with the worst episodes when she was

working directly with raw materials. Dr. Crabtree suspected underlying asthma and allergies along with sinusitis. A treatment regimen, including immunotherapy, was set forth and work restrictions, including "getting the patient out of that environment" were given. (PX 3)

Petitioner testified that on July 8, 2011, she presented to the emergency room of Sarah Bush Lincoln Health Center. According to the emergency room records, since attending a barbeque on July 4 where she was around hickory chips, Petitioner had been breaking out in hives and was having chest tightness. The emergency room physician recommended that she continue to take 40 mg. of Prednisone twice a day, Benadryl, and follow up with her physician. (PX3) Petitioner testified that prior to working for Respondent, she had attended cookouts, but did not have to go to an emergency room.

On July 22, 2011, Petitioner returned to Dr. Crabtree, who noted Petitioner's breathing seemed improved; however, her symptoms of cough and shortness of breath had worsened since she had stopped taking medications due to their costs. (PX1, p. 15; PX2) Dr. Crabtree issued a return-to-work slip, recommending that Petitioner return to work with a respirator on a trial and error basis to see what she could tolerate. (PX1, pp. 16-17; PX2; PX8)

Petitioner was fitted for the respirator at Sarah Bush on July 28, 2011. (PX3) She testified that it did not help. According to her, it would postpone the breathing problems, but she would still get dizzy and lightheaded.

Petitioner underwent allergy shots at Kirby Rural Medical Center in Atwood, Illinois, as recommended by Dr. Crabtree. Petitioner first presented there for allergy injections on July 22, 1011. (PX4) Petitioner testified the shots helped, and she has continued to have them up through February 13, 2013. (PX4)

Petitioner testified she returned to work for Respondent in August of 2011 wearing a respirator. She worked from August 3, 2011 through August 15, 2011. During this time, Petitioner had a reaction. Petitioner testified that Judy Porter called Cheryl Ryan who told Ms. Porter that her supervisor should take her to Kirby Medical Center if Petitioner did not get better within ten minutes.

Dr. Crabtree examined Petitioner on August 15, 2011. Dr. Crabtree recorded that while Petitioner had been feeling better she became "much worse" after going back to work. He treated Petitioner with breathing treatments and a systemic steroid burst. (PX1, p. 19) He also issued an off-work slip, taking her off of work until her follow-up appointment. (PX1, p. 19; PX2; PX8) Petitioner has not returned to work for Respondent since August 15, 2011.

Petitioner testified that she gave her first off-work slip to Cheryl Ryan, the Safety Coordinator, and the second off-work slip she gave to Barb, who worked at the front desk.

Dr. Crabtree issued another off-work slip on September 12, 2011, keeping Petitioner off work until further notice. Dr. Crabtree testified that it was at this point in time he felt Petitioner had some type of work-related worsening or provocation of her lung problem. (PX 8, PX 1, p. 21)

Petitioner was seen by Dr. Crabtree in October of 2011. (PX 2)

Petitioner was terminated by Respondent on November 29, 2011. (RX 6) Petitioner testified that she had reviewed her letter of termination, which referenced FMLA time. The letter stated she had not informed Cheryl what her work restrictions, if any, were. She testified that Cheryl had told her not to contact her until she had heard from Respondent's attorneys.

Petitioner was seen by Dr. Crabtree in January of 2012. (PX 2)

At the request of Respondent, Petitioner was examined by Dr. Thomas M. Hyers on February 12, 2012. Dr. Hyers was of the opinion Petitioner developed asthma as a result of exposures in the workplace as described in his letter and Petitioner's medical records. With removal from the workplace, Petitioner's asthma had "largely cleared." Dr. Hyers felt Petitioner was at maximum medical improvement as of the 12th and that her treatment had been reasonable and appropriate. He further opined that Petitioner could work full-time in an environment with "reasonable precautions about exposure to fumes, dusts, and extremes of temperature." (PX 6)

Dr. Crabtree re-examined Petitioner on March 2, 2012. Petitioner reported she was coughing up blood nearly every morning. Spirometry with bronchodilation was performed revealing a mild restriction. Petitioner acknowledged smoking in the past but reported having quit four years earlier. A chest CT was ordered. (PX 2)

Dr. Crabtree's deposition was taken on March 7, 2012. (PX 1) Dr. Crabtree is board certified in internal medicine, pulmonary medicine, critical care medicine, and sleep medicine. (PX1, p. 6) Initially, Petitioner complained of a "golf-ball sized" spot on her lung, burning when breathing, and difficulty breathing. (PX1, p. 7; PX2) Dr. Crabtree testified Petitioner had symptoms in different environments at work, which accompanied her changes in job tasks, and the worst of her symptoms seemed to be when she was working with raw materials. (PX1, p. 7) Dr. Crabtree commented that the process in her lung was likely a granuloma process or histoplasmosis, which is a fungal infection. (PX1, pp. 7-8) Dr. Crabtree recorded Petitioner was a finisher in a paint room for cabinets in a cabinet-making factory, where she worked with wood and paints. He also recorded that Petitioner had smoked but quit four years prior to his evaluation. (PX1, p. 9; PX2)

Dr. Crabtree ordered pulmonary function testing and an allergy work-up to look for specific allergens. (PX 1, p. 9) He ordered a complete pulmonary function study with a methacholine challenge test. (PX 1, p. 9) Dr. Crabtree testified that the skin testing demonstrated dramatic reactions to oak, maple, birch, walnut, cottonwood, and hickory. (PX 1, p. 10) Petitioner's skin testing revealed no other reactions on the panel, other than the woods. For instance, molds, weeds, pets, animals, foods, and ragweed, were all negative. (PX 1, p. 10) The methacholine test demonstrated chronic airway obstructions, likely due to a severe asthmatic type or reactive airway. (PX 1, pp. 11-13)

Initially, Dr. Crabtree diagnosed underlying asthma and allergies, which were causing Petitioner's symptoms, acute sinusitis, and a large calcified nodule, likely histoplasmosis, which was likely benign. (PX1, p. 13) He recommended that Petitioner be placed on a regimen for

allergic asthma, including Singulair, Advair, Albuterol, Allegra-D, and a Prednisone burst and taper. (PX1, p. 14; PX2) He placed her on a nasal steroid, Veramist, and Levaquin, which is an antibiotic for the sinusitis. (PX1, p. 14) He also recommended immunotherapy, allergy shots, and that Petitioner be taken out of her work environment because in his estimation at that point, it was triggering her symptoms. (PX1, pp. 14, 18)

Dr. Crabtree testified that on September 12, 2011, he diagnosed Petitioner with allergic rhinitis, asthma, bronchitis, cough, dyspnea, GERD, noting "[s]ymptoms are directly work related." (PX2) He was asked during his deposition whether he had an opinion, within a reasonable degree of medical certainty, whether Petitioner's work for Respondent with the wood was a cause in her diagnoses. He responded "I definitely at this point, felt that she had some type of work-related worsening or provocation of her lung problem." (PX1, p. 21) Dr. Crabtree was asked the basis of his opinion and replied: "Based on my discussion with the patient and the fact that she was, she had severe asthma, was, also definitely reacted to, had immunologic response in the allergy testing, as well as the blood testing to trees and wood that were present in the workplace based upon my knowledge of the workplace, which was mainly through the patient." (PX1, p. 21)

Dr. Crabtree testified that Prednisone is a systemic steroid and also serves as an anti-inflammatory drug. (PX1, p. 21) It has side effects, and therefore, Dr. Crabtree does not like to use it on a long-term basis unless absolutely necessary. He noted that as of September 12, 2011, Prednisone had been given on multiple occasions, and he therefore, must have believed the patient was severely symptomatic or the airway was severely obstructed. (PX1, p. 22) Petitioner returned to Dr. Crabtree on October 17, 2011 and January 9, 2012. Dr. Crabtree did not feel all of Petitioner's complaints in October of 2011 were attributable to her work with Respondent. (PX 1, p. 43)

Dr. Crabtree testified that on Petitioner's January 9, 2012 visit, she was stable with no acute issues. Her spirometry lines were better, in that she had almost 3 liters compared to 1.6 on previous visits. (PX1, p. 22) Dr. Crabtree discussed an allergen report from a specimen collected January 8, 2012, which was marked as Deposition Exhibit No. 5. (PX1, Deposition Exhibit No. 5) Dr. Crabtree noted that the numbers, when compared to the prior allergy testing where she had 4+ reaction to woods, were lower, which would be consistent with her having left the workplace. (PX1, pp. 24-25)

Dr. Crabtree testified that the last time he had seen Petitioner prior to his deposition was March 2, 2012. (PX1, p. 25) At that point, her breathing was not too bad, although her pulmonary function was down from where it had been. Dr. Crabtree ordered a CAT scan of her lungs, because Petitioner had complained about coughing up blood after performing a pulmonary function test with the independent medical examiner. Dr. Crabtree testified that he believed this was "something separate, and did not seem to be associated with her asthma and allergies per se,...." (PX1, pp. 25-26) On March 6, 2012, Petitioner underwent a CAT scan of her chest at Sarah Bush Lincoln Health Center which showed calcified right middle lobe nodules and calcified right hilar and subcarinal lymph nodes. (PX 3)

Dr. Crabtree testified that because of the severity Petitioner's asthma and allergies, she will be somewhat limited in what she can do. She seemed to be doing better with medications. His suspicion was that she has true occupational asthma, and generally with that, the prognosis is quite good if the individual is taken out of the situation which is causing the problem. (PX1, pp. 26-27) With respect to future treatment, he noted that at the time of his deposition, she was on steroids and anti-inflammatories, as well as Zyflo, which was a non-steroid anti-inflammatory for asthma and allergies. She would need continued immunotherapy. (PX1, p. 27) The goal is to wean her off of treatment to the point where she only needs a bronchodilator. (PX1, p. 27)

With respect to work, Dr. Crabtree testified that it was his opinion that this all seemed to be directly related to some exposure at the workplace, predicting it is the antigens, proteins in the wood, that have caused her to have a bad lung process. (PX1, pp. 27-28) He believes Petitioner should not work in that environment or any similar environment. (PX1, p. 28)

On cross-examination, Dr. Crabtree stated he was not attributing the golf ball sized spot on to her work with Respondent. (PX1, pp. 29-30) Petitioner has very little problems from this spot, and it is unlikely it is causing symptoms. (PX1, p. 31) Dr. Crabtree testified that Respondent had spoken with his nursing staff on several occasions when they tried to find a way for her to be able to maintain employment. (PX1, p. 32) The allergy testing on June 10, 2011 showed reactions to walnut, hickory, maple, and birch. (PX1, p. 33) Dr. Crabtree was asked about Petitioner's smoking. He noted her lung volumes improved with treatment which suggests the likelihood of asthma, not emphysema. (PX1, p. 38)

On cross-examination, Dr. Crabtree was asked whether Petitioner was at maximum medical improvement as of January 9, 2012. He noted that he did not know if he would say maximum. There was a pulmonary function study that day that showed airway obstruction but everything else was improved so if she was at maximum medical improvement, she has permanent reduction in her lung volumes. (PX1, p. 44) Regardless of whether she was at maximum medical improvement, she could not return to the environment at Respondent. (PX1, p. 45) It was still his opinion that Petitioner has an occupational asthma that would or could worsen with exposures to the woods. (PX1, p. 45) He would put permanent restrictions on Petitioner of not working in an environment where she is exposed to wood (wood dust, cutting of wood, or anything where she would be having contact with the woods she has been found to be allergic to). (PX1, p. 45-46) There is no amount of wood dust required to cause an allergic reaction or lead to occupational asthma. It could be immeasurable. (PX1, p. 47)

Following the deposition, Petitioner continued to treat with Dr. Crabtree. On March 28, 2012, at St. John's Hospital, Dr. Crabtree performed a bronchoscopy with transbronchial biopsy and bronchoalveolar lavage. The operative report notes Petitioner has a history of histoplasmosis and findings of severe allergic rhinitis and allergic asthma with multiple reactions to wood as well as pollens. (PX12) On April 9, 2012, Dr. Crabtree issued an off work slip, which returned Petitioner to work with the restriction that she not work around wood or trees. Dr. Crabtree described Petitioner's condition as stable. (PX 2) (PX8) On August 13, 2012, Petitioner's diagnoses included asthma, dyspnea, and pneumonia-histoplasmosis. The doctor noted Petitioner was improving on all fronts. Petitioner had done well and her histoplasmosis had shrunk fifty percent. She was to continue the Itraconazole and be rechecked monthly. (PX2) On September

10, 2012, Dr. Crabtree commented that Petitioner had a good response to the Itraconazole and would continue it another month. Petitioner's diagnosis was pneumonia and histoplasmosis. Her condition was unchanged as of October 22, 2012. (PX2)

Petitioner testified that she has not been paid any temporary total disability since February 2, 2012, the day she saw Dr. Hyers, for the Section 12 examination. Petitioner also testified that she is still receiving allergy shots and taking allergy medicine.

Petitioner testified that she has been prescribed a medication called Forenzia, but she has had problems getting it filled. In fact, she noted none of her prescriptions had been filled, although she received a prescription card in January 2013. Since receiving the prescription card, she was still unable to get her prescriptions filled, as the pharmacy has denied her prescriptions. Petitioner testified that Dr. Crabtree has referred her for blood work, and she incurred a bill from Quest Diagnostics for blood work done on October 17, 2011, at Dr. Crabtree's office. Petitioner testified she currently sees Dr. Crabtree every three to six months and has an allergy shot every month.

Petitioner testified that her medical bills remain unpaid and she still receives unpaid bills. On April 5, 2012, she filed, through her attorneys, a Petition for Penalties based upon the nonpayment of medical bills. (PX11)

Petitioner testified that Dr. Crabtree has not found her to be at maximum medical improvement. She believed she was getting better, but at the beginning of this year, she ran out of medications, and her health has decreased. Currently, she takes Allegra-D, Advair, ProAir, Flonase, and Prednisone, all prescribed by Dr. Crabtree.

On May 8, 2012, Petitioner made a formal request for vocational rehabilitation, in a letter by her attorney, which also requested that a prescription card be issued. (PX 15)

Dr. Hyers' deposition was taken on November 2, 2012. (PX 6) Dr. Hyers is board certified in internal medicine and pulmonary medicine and is licensed in Missouri and Illinois. Petitioner informed Dr. Hyers of the nature of her work in terms of working with cabinets and the woods the cabinets were made of. (PX6, p. 9) Dr. Hyers believes Petitioner has had too much steroid medication, exhibiting a Cushingoid appearance. (PX6, p. 9) Dr. Hyers ordered a chest x-ray, which demonstrated a nodule or mass about 3.2 x 3 cm. in the lateral aspect of the right middle part of the lung. (PX6, p. 11) After his examination, he obtained a film from an x-ray performed on December 17, 2008. Comparing the films, it demonstrated no change in size or appearance of the mass, and Dr. Hyers concluded it was more likely than not a benign module. (PX6, p. 12) He opined Petitioner's lung nodule was asymptomatic. (PX6, pp. 13-14) Dr. Hyers noted after his exam, he received information concerning the chemicals Petitioner was using, including Material Safety Data Sheets. (PX6, p. 15) He commented that Dr. Crabtree's skin test found Petitioner had some tree allergies. (PX6, p. 16)

Dr. Hyers testified, within a reasonable degree of medical certainty, that Petitioner developed asthma as a result of exposure in the workplace. (PX6, pp. 16-17) If Petitioner had pre-existing asthma-like symptoms, his opinion could change, in that the work exposure did not

cause the condition, but aggravated it. (PX6, p. 19) The fact that Petitioner had a reoccurrence of symptoms outside of the work site does not suggest other causes, but rather suggest she will react to certain irritants in her environment, which to the best of Dr. Hyers' knowledge, appeared to start at the work site. (PX6, p. 27)

Dr. Hyers believes Petitioner was at maximum medical improvement in February 2012, because she had been away from the irritating worksite for numerous months, reported she was stable, her pulmonary function test demonstrated if it was abnormal, it was only mildly abnormal and had stabilized. (PX6, p. 19) However, Petitioner would need her steroid dose adjusted to decrease it. (PX6, p. 20) Dr. Hyers opines Petitioner is employable, noting she probably would do much better in a setting of controlled environment, such as an office setting that is free of dust or fumes or smoke, as opposed to a setting where she worked before where she was exposed to some fumes from chemicals. (PX6, p. 25) In terms of outside an office environment, Petitioner will basically have to find out what she is capable of doing and stay away from triggers such as smoking, perfumes, and raking leaves. (PX6, p. 26)

With respect to the pulmonary function report, when he tested Petitioner on February 2, 2012, the FEV 1 was 80% of predicted. (PX1, pp. 21-22) This is at the low end of normal. (PX6, p. 22) Dr. Hyers noted that immunotherapy consists of very dilute concentrations of oak and other wood antigens being injected into Petitioner's skin in an effort to desensitize Petitioner from a possible allergy. (PX6, p. 29) Petitioner may still have episodes of worsening that may require transient Prednisone pills to get under control. (PX6, p. 34) Dr. Hyers further testified that while Petitioner is employable, she would do better in a controlled environment that is free of a lot of "dust or fumes or smoke." (PX 6, p. 25) Dr. Hyers further explained that she will have to find out where she does well and where she doesn't as she may experience aggravations from different triggers. (PX 6, pp. 26-27, 30) When asked about the cause of other environmental irritants that may affect Petitioner, Dr. Hyers testified, "To the best of my knowledge at this time it appeared to start in the work site" as she had no pre-existing conditions. (PX 6, p. 27) Dr. Hyers further testified that Petitioner has work-related sinusitis. (PX 6, p. 28)

On cross-examination, Dr. Hyers noted he did not have any records from Dr. Crabtree after July 22, 2011. He further noted that many of the agents identified in the Material Safety Data Sheets provided to him were potential respiratory irritants. (PX6, p. 26) When Dr. Hyers saw Petitioner on February 2, 2012, she was on Advair, Allegra, Zyflo, Flonase, and Prednisone. (PX6, p. 38) These medications are mostly anti-inflammatory, the purpose of which is to decrease inflammation in the lungs and the airways and improve pulmonary function. (PX6, p. 38) Petitioner's biometric findings when he saw her were still at the low end of the normal range. (PX6, p. 38) He agreed Petitioner's treatment to date had been reasonable and appropriate, with the caveat that she was getting too many steroids. (PX6, p. 3)

Dr. Hyers does not attribute any of Petitioner's symptoms to the nodule on her lungs. Symptoms of asthma include coughing, wheezing, shortness of breath, and chest tightness. (PX6, p. 40) Dr. Hyers acknowledged that when Petitioner presented to him, she completed an occupational medicine questionnaire, on which she indicated she currently experiences shortness of breath. (PX6, p. 41) It is typical of any type of asthma to come and go. (PX6, p. 41) He

believes Petitioner should come off oral Prednisone completely and be treated only with inhaled steroid medicine. (PX6, p. 44)

Dr. Hyers testified Petitioner's restrictions should include trying to avoid environments where she is exposed to a lot of dust, fumes, smoke, and extreme temperatures, meaning less than 40 degrees Fahrenheit in the winter when the air is very dry. (PX6, pp. 44-45)

On re-direct examination, Dr. Hyers noted Petitioner indicated on the intake form that she did not currently smoke. (PX6, p. 46) She indicated she smoked in high school, although minimally. (PX6, p. 46) He believes Petitioner has improved since being removed from the workplace. (PX6, p. 52)

Petitioner returned to see Dr. Crabtree on November 19, 2012 and she was "doing great" and all medications were stopped to see how she would do. (PX 2)

Petitioner returned to see Dr. Crabtree on February 18, 2013. At that time her ears were noted to be consistent with severe otitis media and her sinusitis and asthma was described as "flaring." Petitioner was given Prednisone, Flonase nasal spray, Augmentin, Advair, Proair, and Montulekast. She was to return in one month or sooner, if need be. (PX 2)

At the arbitration hearing, Petitioner testified that she still desires vocational rehabilitation. After her employment with Respondent ended on November 29, 2011, she received unemployment compensation. Petitioner identified PX 10 as job searches she has completed since receiving unemployment. She started looking for work during the week of May 20, 2012, and she noted she has maintained a steady and consistent job search since then. She has received a couple of phone calls about jobs she has applied for, but was turned down because she did not have office experience. She has only worked in factories.

Petitioner graduated from Sullivan High School in 2003 and then attended SIU in Edwardsville for one year, completing 15 hours of general education classes. At that point, she started working for ISS, a temp service, working at RR Donnelly. She worked for RR Donnelly for about a month and then started working for Ampad, following by Lender's Bagels. None of these jobs required her to do paperwork or work on a computer. For example, at RR Donnelly, she stacked catalogs onto plastic pallets. She also worked for International Paper in Shelbyville, packing lids and boxes. Next, she worked at Hydro Gear and AgriFab factories in Sullivan. She has also worked at Wolf Creek in Windsor, Illinois, which is a campground. There, she did maintenance, including mowing. She believes she has sustained a reduction in earning power and vocational rehabilitation would increase her earning capacity. Petitioner's injury has given her a loss of job security. She has no type of specialized training or specialized skills.

Petitioner testified that she currently cannot go outside in the spring without getting sick. If she cleans floors, she will get sick. If she wipes off a cabinet, she will break out. She will break out on her hands and arms if she touches wood, leaves or toilet paper. If she does anything physical, she experiences shortness of breath. After walking a half a mile, she feels like she cannot get oxygen, and her chest becomes tight. She experiences shortness of breath while walking up and down stairs. In the springtime, she may wear a respirator mask to help with

breathing and during winter, she tries to stay inside as much as possible. She often has an allergic reaction on windy days, noting her skin puffs up and she gets bags under her eyes. When she gets sick, she takes an epinephrine pen for anaphylactic allergic reactions.

On cross-examination, Petitioner stated that she quit smoking in 2010 and does not currently smoke. Petitioner testified she has not smoked since her claim has been pending (2011).

Petitioner testified that she has not re-applied for any jobs with Respondent because she cannot work there. She noted on re-direct examination that no one at Respondent contacted her to her offer her a job after she was placed on restrictions by Dr. Hyers. Respondent's offices are in the same building as where the manufacturing of the cabinets occurs. She does not have secretarial skills.

With respect to her job search, Petitioner testified on cross-examination that she has gone to places, sent her resume to employers, applied on line, and followed up with her applications' status. She has not received any interviews. She has received some calls but was told she was not qualified. When she started at Respondent her rate of pay was $12.35 per hour and when she left it was $14.83 per hour.

On re-direct examination, she noted she has posted her resume on Career Builders, Job-to-Fit, and Monster. She testified that the nicotine patches she purchased, included in the receipts within Petitioner's Exhibit No. 9, were for someone else who lives with her. On re-direct examination, she testified that she was not asking to be reimbursed for charges not related to her treatment. For example, she noted the receipt from January 15, 2012 was for a bill which totaled $172.35, but she was only asking to be reimbursed for the Allegra and allergy medicine.

Joseph McKay was called as a witness for Respondent. He conducted surveillance on Petitioner for six days. On November 18, 2012, there were no observations of Petitioner. On November 21, 2012, he observed Petitioner drive to a Casey's General Store, where she exited her car and lit a cigarette while she placed air into a car tire. She did not apply for any jobs and was not wearing a mask. On January 12, 2013, he was unable to establish surveillance. On January 19, 2013, during the evening, he observed Petitioner stand on her porch and smoke a cigarette. On February 16 and 17, 2013, he observed Petitioner smoking and did not notice her wearing a mask or coughing. The video, which is 30 minutes and 2 seconds, and his reports from the six days were entered into evidence as Respondent's Exhibits Nos. 3 and 4. On cross-examination, McKay noted he could not state what type of cigarettes Petitioner was smoking.

Jeff London testified on behalf of Respondent, noting he has been with Respondent as its safety manager since April 2010. According to London, after Petitioner complained of breathing difficulty, she completed an incident report. He initially investigated the claim in June 2011, and, at that time, Petitioner was working as a tub checker, putting color markers on raw material. There was no sanding or wood cutting involved. Respondent has a collection system to collect dust, but Petitioner's position as a tub check did not involve directly working around points of dust collection. Initially, Respondent denied the claim. However, following the deposition of Dr. Crabtree, which he attended, and the receipt of the IME report, the company changed its

position on causation and accepted the claim. He stated to his knowledge medical bills received as of April 2012 were processed for payment at that time.

London stated that Petitioner did not report any problems with her respirator between August 3, 2011 and August 14, 2011. If she had, Respondent would have tried to accommodate her with a either a full face or half face respirator mask. He disagreed with Petitioner's testimony that when she performed sanding duties, there was no type of dust collection mechanism, stating there were downdraft tables which contain vacuums to extract the dust.

On cross-examination, London stated he did not bring the incident report with him. He did not remember whether Petitioner listed sprays and sealer on the incident report in addition to wood dust. He did not know why Dr. Crabtree's bills as of September 28, 2012 remained unpaid or why Petitioner still has unpaid medical bills.

Respondent called Cheryl Ryan, its safety associate who handles risk management and workers' compensation claims, as a witness. Respondent's Exhibit No. 5 is a chronos report which documented Petitioner's hours and pertains to the time period of January 3, 2011 through November 28, 2011. Ryan testified that Petitioner went on FMLA time on or about June 9, 2011 and at some point came back with a half mask respirator. According to Ms. Ryan, when Petitioner was back at the plant with the half mask between August 3, 2011, and August 14, 2011, she did not make any complaints about not being able to work. On August 15, 2011, Petitioner gave Ryan an off-work slip and was again placed on FMLA time. Ryan tried to contact Petitioner about four times via phone to inform Petitioner her FMLA time was about to end but did not receive a call back from Petitioner. Respondent's Exhibit No. 6 is Petitioner's termination letter. Ryan stated that Respondent has positions in its front office that someone with Petitioner's educational background would be qualified to perform.

On cross-examination, Ryan acknowledged that at the time she called Petitioner about returning to work, she was aware Petitioner had not been returned to work by Dr. Crabtree. Ryan had a note from Dr. Crabtree dated September 12, 2011, taking Petitioner off of work and so Petitioner was going to be terminated regardless of whether she got a hold of her on the phone because her FMLA time was about to expire. Ryan also testified there are no receptionist positions currently available with Respondent.

Petitioner further testified that smoking negatively affects her condition and she cannot be around it – whether it is cigarette smoking or burning leaves.

Respondent offered a computer log of Petitioner's 2011work hours. (RX 5)

The Arbitrator concludes:

1. At the outset the Arbitrator addresses the video surveillance which she viewed and Respondent's contentions concerning Petitioner's credibility as reflected by Petitioner's denials of smoking and video evidence to the contrary. During arbitration Petitioner appeared credible. Petitioner admitted she once smoked and that she quit. She testified that she has not been smoking since her claim has been pending. Video surveillance showed

otherwise and Petitioner did not rebut the video surveillance. Petitioner's failure to be up-front about her smoking is troublesome; however, its impact is not clear. The Arbitrator has reviewed the medical records, especially the doctor's depositions, and while they discuss smoking generally, neither doctor was asked to address or opine regarding the impact of Petitioner's smoking in late November of 2012 or early 2013. There is no evidence she was smoking at any other time. Furthermore, Petitioner's smoking in 2013 does not negate that Petitioner's occupational exposure was a cause of her condition of ill-being nor does it mean she lied to the doctors when she saw told them at times she wasn't smoking. no. There is no evidence that smoking alone, and not the occupational asthma, is contributing to her current condition of ill-being. The Arbitrator also acknowledges that the video surveillance shows Petitioner not wearing a mask and being out of doors. However, she does not find such evidence necessarily contradictory of Petitioner's testimony. Petitioner did not testify that she always wears a mask when outside.

2. Both sides stipulated at trial that Petitioner sustained an accident which arose out of and in the course of her employment. (AX 1) Counsel for Respondent noted in opening remarks that Respondent was not disputing that Petitioner had some occupational induced asthma and further acknowledged Petitioner would continue to need allergy shots to control her condition. However, Respondent contends Petitioner reached maximum medical improvement on February 2, 2012, the day of Dr. Hyers' examination.

   At the time of his deposition, Dr. Crabtree anticipated future treatment would include steroids and anti-inflammatories, as well as Zyflo, which was a non-steroid anti-inflammatory drug for asthma and allergies. She would also need continued immunotherapy. (PX1, p. 27) Dr. Crabtree testified that the Prednisone serves as an anti-inflammatory, but the goal was to wean her off of it and the other treatment to the point where she only needed a bronchodilator. (PX1, p. 27)

   At the time of Dr. Crabtree's deposition in March of 2012 Petitioner was being seen for complaints the doctor believed were unrelated to her work injury (PX 1, p. 26). After the deposition Petitioner underwent a procedure at St. John's Hospital and visits with Dr. Crabtree thereafter included treatment for Petitioner's unrelated histoplasmosis (office visits of 4/9/12, 8/13/12, 9/10/12, 10/22/12 and 11/19/12). By November 19, 2012 the histoplasmosis appears to have resolved and Petitioner's anti-fungal Itraconazole regimen had stopped. Petitioner was "doing great" and all medications were stopped. Three months later they were re-instated due to a flare-up[1].

   Both Drs. Crabtree and Hyers agree Petitioner's asthma is work-related. Both doctors agree she needs permanent work restrictions centering around avoidance of the offending agents and that finding suitable work may be "trial and error." Both agree Petitioner will have flare-ups.

   Although Dr. Hyers believed Petitioner was at maximum medical improvement when he saw her on February 2, 1012, he acknowledged that he did not have any records from Dr. Crabtree after July 22, 2011. Perhaps more importantly, he based his opinion, in part, on

[1] Of note, this was the time period Petitioner is seen outdoors without a mask and smoking.

the fact that Petitioner's biometric findings when he saw her were in the normal range, albeit at the low end. (PX6, p. 38) However, it is noteworthy that when he saw Petitioner, she was on Advair, Allegra, Zyflo, Flonase, and Prednisone -- medications which serve to decrease inflammation in the lungs and the airways and improve pulmonary function. (PX6, p. 38)

The Arbitrator concludes that Petitioner has reached maximum medical improvement as a result of her occupationally-induced asthma and allergies and that she did so on April 9, 2012 when Dr. Crabtree described her condition as stable. He then began treating Petitioner's histoplasmosis which is unrelated and pre-existing. Thereafter, on September 10, 2012 and October 22, 2012 his diagnosis was limited to pneumonia and acute histoplasmosis. As of November 19, 2012 she was doing well with respect to all her problems, including the asthma. The visit on February 18, 2013 is viewed as a flare-up as envisioned by both doctors.

While Petitioner has reached maximum medical improvement, her current condition of ill-being is causally related to her undisputed work accident/exposure. This is based upon a chain of events and the testimony and medical records of Dr. Crabtree and Dr. Hyers. Furthermore, Respondent acknowledged that Petitioner suffered some occupationally-induced asthma.

The parties agreed that Petitioner was entitled to temporary total disability benefits from June 9, 2011 through August 2, 2011 and August 15, 2011 through February 2, 2012. (AX 1) Consistent with the above, the Arbitrator further concludes that Petitioner was also temporarily totally disabled from February 3, 2012 through April 9, 2012 and awards Petitioner temporary total disability benefits for that period of time (a period of 9 4/7 weeks). Respondent shall be given a credit of $14,540.13 for temporary total disability benefits that have been paid.

Dr. Crabtree had Petitioner completely off work until April 9, 2012, at which time he returned her to work with restrictions of not working around wood or trees. (PX8) Petitioner had been terminated by that time after her FMLA time expired. Dr. Crabtree would put permanent restrictions on Petitioner of not working in an environment where she is exposed to woods she has been found to be allergic to. (PX1, p. 45-46) Dr. Hyers opines Petitioner is employable, noting she probably would do much better in a setting of controlled environment, such as an office setting that is free of dust or fumes or smoke, as opposed to a setting where she worked before where she was exposed to some fumes from chemicals. (PX6, p. 25)

There is no evidence that work is available within Petitioner's restrictions. Petitioner requested vocational rehabilitation. None was provided and Petitioner began, in good faith, a job search from May 20, 2012 until shortly before the arbitration hearing in February of 2013. As such, Respondent is ordered to pay Petitioner maintenance benefits of $452.33 per week, commencing April 10, 2012 through February 21, 2013, a period of 45 3/7 weeks.

3. With respect to the medical services, Dr. Hyers testified that Petitioner's treatment to date has been reasonable and appropriate, with the caveat that Petitioner was getting too much steroid. (PX6, p. 3) Thus, Petitioner's bills for services rendered to Petitioner prior to Dr. Hyers' February 2012 report are awarded.

   At trial, Respondent's counsel indicated the bills in dispute are St. John's Hospital and Associated Pathologist bills. (AX 1) Those bills are not awarded as Petitioner failed to prove they were related to her work injury. Dr. Crabtree testified that the condition he was seeing Petitioner for in March of 2012 was a separate one from her asthma and allergies. The treatment at St. John's stemmed from that (ie., histoplasmosis). While Petitioner testified that Dr. Crabtree referred her for blood work, and she incurred a bill from Quest Diagnostics for blood work done on October 17, 2011, at Dr. Crabtree's office, Dr. Crabtree's office notes indicate the labs were drawn for "chronic urticaria." (PX 2) Dr. Crabtree also testified that the urticaria was not related to her work exposure.

   With the exception of the bills to St. John's Hospital, Associated Pathologist, and Dr. Crabtree's charge of $915.00 for services on 3/28/12, Respondent shall pay Petitioner's unpaid medical bills listed in Petitioner's Exhibit No. 9 directly to the providers consistent with the Medical Fee Schedule as established by the Commission for necessary medical services, as provided in Section 8(a) of the Act. Respondent shall reimburse Petitioner for her out-of-pocket payments made towards prescriptions medications related to her condition as reflected on the bill memo contained with the medical bills. Respondent shall be given a credit for medical bills that have been paid by its group health insurer, and Respondent shall hold Petitioner harmless for any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

4. During opening statements, Respondent's counsel indicated that on or about April 17, 2012, Petitioner's claim was accepted and medical bills and TTD were paid (through February 12, 2012). Respondent challenges liability for TTD benefits since February 12, 2012 based upon the report/opinions of Dr. Hyers. Counsel further stated that one day prior to the hearing, she spoke with her claims adjuster, who indicated all bills with Central Illinois Allergy and Respiratory Services, Sarah Bush Lincoln, and Kirby Medical had either been paid or was being paid by the end of the week.

   However, Petitioner testified that her bills remain unpaid. According to Petitioner's Exhibit No. 9, there remains $26,270.60 in outstanding medical bills. As indicated above, however, not all of these bills are being awarded to Petitioner. None of Dr. Crabtree's bills have been paid, even after the claim was apparently accepted following Dr. Hyers' Section 12 report. There further remain several other outstanding medical bills, including bills from Kirby Medical Center for allergy shots. (PX9) Respondent produced no proof of payment of these bills.

   There was no basis for disputing Petitioner's claims for TTD and medical bills after Dr. Hyers' report. In fact Jeff London testified that following the Dr. Crabtree's deposition and receipt of the IME report, the company accepted the claim. Although counsel for Respondent indicated in correspondence dated April 17, 2012 that the bills would be placed

in line for payment, they still had not been paid at the time of the hearing. At the time of arbitration very little was really in dispute. Dr. Hyers and Dr. Crabtree were essentially in agreement. While there was a dispute as to whether Petitioner was at maximum medical improvement or not, the resolution of that issue would not directly impact Respondent's obligations. If Petitioner was not at MMI, additional TTD would be due and owing. If Petitioner was at MMI, maintenance would be an issue.

Section 19(l) of the Act provides for the imposition of a $30.00 per day penalty "for each day that a weekly compensation payment" is withheld or refused "without good and just cause," subject to a $10,000.00 maximum. 820 ILCS 305/19(l). Section 19(k) of the Act authorizes a penalty of 50 percent "of the amount payable at the time of an award" for an "unreasonable or vexatious delay of payment or intentional underpayment of compensation ***." 820 ILCS 305/19(k). Section 16 of the Act provides for the assessment of attorneys' fees and costs when conduct contemplated by Section 19(k) occurs. 820 ILCS 305/16.

With regard to the medical bills, the Arbitrator notes Petitioner testified she never submitted any out-of-pocket expenses or receipts to Respondent for payment, either directly or through its claims administrator, prior to arbitration. The remaining bills (Crabtree, Sarah Bush, Kirby, and Quest Diagnostics) were not disputed as of February 2, 2012 or shortly thereafter. These bills total $18,496.00.

The Arbitrator concludes there was no good or just cause for Respondent to withhold compensation after February 2, 2012. Fifty five weeks, or 385 days, passed between February 2, 2012 and February 21, 2013, the day of arbitration. Thus, Respondent shall pay a penalty of $10,000.00 under Section 19(l) of the Act.

Further, the delay in paying TTD and medical expenses was unreasonable and vexatious, especially in light of Dr. Hyers' causation opinions. Petitioner is entitled to an award of $25,573.26 in penalties under Section 19(k) of the Act ($24,878.15 in TTD and maintenance benefits plus $18,496.00 in medical expenses = $43,374.15, and 50% of $43,374.15 = $21,687.07).

Finally, Petitioner is entitled to an award of $8,674.83 in attorneys' fees under Section 16 of the Act ($24,878.15 in TTD and maintenance benefits plus $18,496.00 in medical expenses = $43,374.15, and 20% of $43,374.15 = $8,674.83).

5. Petitioner is awarded a vocational assessment pursuant to Section 7110.10 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission and National Tea.

Section 8(a) of the Act requires the respondent to pay for the "physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto." 820 ILCS 305/8(a). Section 7110.10 of the Rules requires the parties to work together to prepare a written assessment of the course of medical care, and, if appropriate, rehabilitation required to return the injured worker to employment when (as here) it can be reasonably determined that the injured worker will, as a result of the injury,

be unable to resume the regular duties in which she was engaged at the time of her injury or when the period of total incapacity for work exceeds 120 continuous days, whichever comes first.

Petitioner has sustained an injury which has rendered her unable to return to work for Respondent. Petitioner has looked for work but to no avail. The doctors have indicated that finding a suitable job for Petitioner will require "trial and error." Such an endeavor will require some assistance – at a minimum an assessment of what options might be out there. Petitioner's Exhibit No. 12, the job searches, demonstrates she has applied to approximately five jobs per week since May 24, 2012. (PX12) They have consisted of a variety of jobs from gas stations, fast food restaurants, auto part stores, hardware stores, and department stores. (PX12) Petitioner's job searches have been consistent with the restrictions of Dr. Hyers and Dr. Crabtree. Despite her efforts, she has not yet found employment.

Under these circumstances, a vocational assessment is in order.

6. Both Dr. Crabtree and Dr. Hyers agree Petitioner will need future treatment due to flare-ups and exacerbations. Dr. Hyers noted that future treatment could include allergy shots. (PX6, p. 44) Dr. Crabtree agreed she would also need continued immunotherapy. (PX1, p. 27) No specific prospective medical care has been requested by Dr. Crabtree. Petitioner may return to Dr. Crabtree as she and he see fit. Petitioner's rights under Section 8(a) remain open. Prospective medical care is denied.

****

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

☐ 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

Julia Guzman,

Petitioner,

14IWCC0056

vs.

NO: 12 WC 08989

ABM Janitorial Services,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering accident, medical expenses, prospective medical care, and temporary total disability benefits, 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 notes that on February 8, 2012, Dr. Krishna Patel took Petitioner off work for one week. (PX1,RX4) The Commission further notes that Petitioner was not taken off work again until Petitioner saw Dr. Lee De Las Casas on February 24, 2012. (PX12) Neither Dr. De Las Casas nor any of Petitioner's other medical providers has released Petitioner to return to work since she was taken off work on February 24, 2012. Therefore, the Commission finds that Petitioner has established entitlement to temporary total disability benefits from February 8, 2012 through February 14, 2012 and from February 24, 2012 through March 22, 2013, the date of the Arbitration hearing.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 6, 2013, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to

the Petitioner the sum of $286.00 per week for a period of 57-1/7 weeks, from February 8, 2012 through February 14, 2012 and from February 24, 2012 through March 22, 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 Respondent pay to Petitioner the sum of $20,711.11 for medical expenses under §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorize and pay for the lumbar fusion surgery at L5-S1 recommended by Dr. Marc Lorenz and post-surgical physical therapy and any other future related, reasonable and necessary medical treatment pursuant to §8(a) of the Act.

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 $37,200.00. 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: JAN 29 2014
MJB/ell
o-01/16/14
52

Michael J. Brennan

David L. Gore

Mario Basurto

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

14IWCC0056

GUZMAN, JULIA
Employee/Petitioner

Case# **12WC008989**

ABM JANITORIAL SERVICES
Employer/Respondent

On 5/6/2013, 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:

2512 THE ROMAKER LAW FIRM
CHARLES P ROMAKER
211 W WACKER DR SUITE 1450
CHICAGO, IL 60606

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
KAREN A HAARSGAARD
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602-4195

14IWCC0056

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
ARBITRATION DECISION
19(b)

Julia Guzman
Employee/Petitioner
v.
ABM Janitorial Services
Employer/Respondent

Case # **12** WC **8989**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was tried by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Waukegan**, on **March 22, 2013**. After reviewing all of the evidence presented regarding **the February 6, 2012 accident**, 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 **Future medical pursuant to Section 8A and PPD if the arbitrator determines Petitioner is at MMI**

FINDINGS

On February 6, 2012, Respondent *was* operating under and subject to the provisions of the Act.

On February 6, 2012, an employee-employer relationship *did* exist between Petitioner and Respondent.

On February 6, 2012, 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.

During the 6 weeks preceding the injury, Petitioner earned **$2,491.00**; the average weekly wage was **$415.17.**

On the date of accident, Petitioner was **46** years of age, married with **1** dependent child.

ORDER

Temporary Total Disability:

Respondent shall pay Petitioner temporary total disability benefits commencing February 8, 2012 through the date of trial, March 22, 2013, for a total TTD awarded of 58 and 4/7ths weeks times a minimum TTD rate of $286.00 as provided in Section 8(b) of the Act, totaling **$16,710.41**. In addition, Petitioner is awarded continuing TTD to be paid from March 23, 2013 at $286.00 per week.

Medical Bills:

Respondent shall pay **$20,711.11 in medical bills after reduction for the Fee Schedule** for necessary medical expenses, as provided in Section 8(b) of the Act. (See Attached List of Medical Bills) Pursuant to Arbitrator Lee's order, Petitioner is submitting a list of the medical bills reduced to the Fee Schedule by provider. (See Attached Petitioner's Fee Schedule Reduction)

Future Medical Treatment Pursuant to Section 8A:

The Arbitrator awards Petitioner future medical treatment pursuant to Section 8A, *inter alia*, the lumbar fusion surgery at L5-S1 recommended by Dr. Marc Lorenz and post-surgical physical therapy and any other future related, reasonable and necessary medical treatment pursuant to Section 8A of the Act and supported by the medical evidence.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of compensation.

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.

Edint Lee — Signature of Arbitrator

5/6/13 — Date

MAY - 6 2013

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Julia Guzman
Employee/Petitioner
v.
ABM Janitorial Services
Employer/Respondent

Case # **12** WC **8989**

FINDINGS OF FACT

This matter was tried on March 22, 2013 and Petitioner testified on that date. The matter was tried as a 19b since Petitioner had yet to reach MMI regarding her low back condition. On March 22, 2013, Petitioner, Julia Guzman testified that she was born on April 6, 1965, was 46 years old and married with one dependent child on the date of accident, February 6, 2012. (Tr. p.12-13; Arbitrator's Exhibit 1, Request for Hearing Sheet at paragraph 6).

On February 6, 2012, Petitioner had been employed by ABM Janitorial Services for the prior six weeks. (Tr. p. 8 and Arbitrator's Exhibit 1, par. 5). The parties stipulated that Petitioner had an average weekly wage of $415.17. (*See* Arbitrator's Exhibit 1, Request for Hearing Sheet at paragraph 5). The Petitioner testified that she worked for ABM Janitorial at an office building in Deerfield as a cleaning person. (Tr. p. 9). Petitioner's job was to clean the offices and bathrooms, vacuum, take out trash, mop floors and vacuum the lobby area. (Tr. p. 9).

On February 6, 2012, Petitioner's shift was from 5:00 pm to 1:00 am. (Tr. p. 10). On that date, Petitioner had an accident at approximately 10:00 pm. (Tr. 16). Petitioner testified that she was vacuuming a carpet in the third floor lobby and the corner of the carpet got caught in the vacuum. (Tr. p. 11-12). When Petitioner attempted to pull the vacuum back to release the carpet from the vacuum, she immediately felt a sharp pain in her low back. (Tr. p. 12). As she pulled the vacuum back, Petitioner leaned backward but did not fall. (Tr. p. 13).

Petitioner testified that she continued working on February 6, 2012 and finished her shift. (Tr. p.14). Petitioner testified that when she woke up the next morning, February 7, 2012, she had trouble getting out of bed because of the severe low back pain she was experiencing. (Tr. p. 14).

On Cross-Examination, Petitioner testified that she was required as part of her job to take the garbage from the offices and put them into a large container, which she took down to the basement by elevator and was required to lift and carry to a dumping area. (Tr. p. 30-31). Petitioner also testified that on the night of the accident, February 6, 2012, she spoke with her supervisor, Juan Corona, and told him that she had hurt her low back. (Tr. p. 33-34). According to Petitioner, Juan Corona told her that "I see that you're in bad shape. You're not walking right." (Tr. p. 34). But, Juan Corona asked the Petitioner to finish her shift, which she did. (Tr. p. 34-35).

On February 7, 2012, Petitioner called in sick, telling Juan Corona that her back hurt and she was not coming into work. (Tr. p.35-36).

MEDICAL TREATMENT

Petitioner testified that on February 8, 2012, she went to see her family doctor, Dr. Krisna Patel of Midtown Physicians. (Tr. p. 17; see Petitioner's Exhibit 1). Petitioner told Dr. Patel that she hurt her low back at work while she was working with house cleaning. (See Petitioner's Exhibit 1, at 2-8-2012 Note). Dr. Patel's examination on that date was that Petitioner had tenderness over the right SI joint and was able to do 45 degrees flexion, after which she was in significant pain. (Id.). Dr. Patel noted in his 2-8-2012 office note that Petitioner's gait was antalgic with a forward bend and that Petitioner was unable to sit at 90 degrees due to pain. (Id.). Dr. Patel had a lumbar and pelvic X-ray performed on 2-8-2012 as well. (See Petitioner's Exhibit 1). On February 8, 2012, Dr. Patel prescribed Flexeril and Cataflam and placed Petitioner off work for one week. (See Petitioner's Exhibit 1, at 2-8-2012 Note).

Petitioner testified that she faxed Dr. Patel's off work note to Raul Ceja of ABM that same day, February 8, 2012. (Tr. p. 17 & 37).

On February 14, 2012, Petitioner again saw Dr. Patel. (See Petitioner's Exhibit 1, at 2-14-2012 Note). Dr. Patel noted Petitioner's low back was somewhat better, but she still had difficulties sitting for too long and thus, prescribed continuing medications and physical therapy. (Id.).

On February 21, 2012, Dr. Patel again examined Petitioner, noting that Petitioner was "feeling a little better" and had "No pain now on walking and bending". (See Petitioner's Exhibit 1, at 2-21-2012 Note). When Petitioner was asked on cross-examination if she had told Dr. Patel she was feeling no pain on 2-21-2012, she denied ever telling that. (Tr. p. 18). On 2-21-2012, Dr. Patel prescribed continued Mortin and Flexeril for pain. (See Petitioner's Exhibit 1, 2-21-2012 note).

On February 24, 2012, Petitioner was seen by Dr. Lee De las Casas at Rehab Dynamix. (See Petitioner's Exhibit 2). On that date, Petitioner gave the history of injury that she was injured at work when she flexed forward and lifted a vacuum cleaner with both her hands and felt immediate pain in her low back. (See Petitioner's Exhibit 2 at 2-24-2012 note). Dr. De las Casas noted in his 2-24-2012 report that Petitioner had informed her supervisor what had happened. (Id.). The history and notice description that Petitioner gave to Dr. De las Casas on 2-24-2012 are consistent with Petitioner's testimony in this matter. Further, Dr. De la Casas examination of Petitioner on 2-24-2012 demonstrated a positive straight leg (SLR) test with a pain score of 8/10. (Id.). On February 24, 2012, Dr. De la Casas prescribed physical therapy, referred Petitioner to pain management specialist, Dr. Jain, and placed her off work for two weeks. (Id.).

Petitioner underwent physical therapy for her low back injury at Rehab Dynamix with Dr. De La Casas on 2-27-2012, 2-28-2012, 2-29-2012, 3-5-2012, and 3-6-2012. (See Petitioner's Exhibit 2). On March 8, 2012, Dr. De las Casas performed a re-evaluation upon Petitioner. (Id. at 3-8-2012 note). On that date, Petitioner complained of lumbar pain radiating into her left lower extremity with 7/10 pain. (Id.). Petitioner still had a positive SLR test and thus, was prescribed four more weeks of physical therapy. (Id.). It was also noted that Petitioner had an appointment with Dr. Jain at Chicago Pain in the next week. (Id.). Finally, Petitioner was placed off work for an additional three weeks by Dr. de la Casas. (Id.).

On February 29, 2012, Petitioner saw Dr. Neera Jain at Chicago Pain and Orthopedic at the referral of Dr. De las Casas. (See Petitioner's Exhibit 4). Again, Petitioner gave Dr. Jain the history of lifting and pulling the vacuum on February 6, 2012 and advising her supervisor of the injury. (Id. at 2-29-2012 note). Dr. Jain's examination demonstrated a positive SLR on the left and limited range of motion of the lumbar spine with axial pain with forward flexion and extension. (Id.). Accordingly, Dr. Jain referred Petitioner for a lumbar MRI. (Id.).

On March 2, 2012, Petitioner underwent a lumbar MRI at Advantage MRI of Oak Park. (See Petitioner's Exhibit 6). The MRI findings were Grade 2 anterolisthesis of L5 on S1 and a large annular bulge at L5-S1. (Id.).

On March 14, 2012, Petitioner had a follow up appointment with Dr. Jain. (See Petitioner's Exhibit 4 at 3-14-2012 note) Dr. Jain noted on March 14, 2012 that the lumbar MRI demonstrated L4-5 and L5-S1 foraminal narrowing with left lower extremity radiating pain. (Id.). Dr. Jain prescribed L4-5, L5-S1 transforaminal epidural injections and an EMG of the lower extremities performed. (Id.) Petitioner was again ordered off work by Dr. Jain. (Id.).

Petitioner underwent further physical therapy for her low back injury at Rehab Dynamix with Dr. De La Casas on 3-12-2012, 3-13-2012, 3-14-2012, and 3-20-2012. (See Petitioner's Exhibit 2).

On March 20, 2012, Dr. De las Casas gave Petitioner a referral for a lower extremity EMG. (See Petitioner's Exhibit 2). On March 28, 2012, Petitioner underwent an EMG, which demonstrated evidence of left L4, L5 and S1 lumbar spine radiculopathy, which correlated with Petitioner's complaints. (See Petitioner's Exhibit 2, Rehab Dynamix records containing the EMG Report).

Petitioner continued physical therapy treatment with Dr. De las Casas through April 4, 2012. On that date, Petitioner had positive SLR and had reduced lumbar range of motion in extension and flexion. (See Petitioner's Exhibit 2, at 4-4-2012 note). On 4-4-2012, Dr. De las Casas placed Petitioner off work for an additional four weeks. (Id.)

On March 27, 2012, Petitioner underwent a lumbar epidural injection at L4-5 and L5-S1 by Dr. Jain at Accredited Ambulatory. (See Petitioner's Exhibit 4). On April 25, 2012, Petitioner again saw Dr. Jain at Chicago Pain & Orthopedic. On that date, Petitioner indicated that she had significant pain relief after the lumbar injection, but that the pain returned. (See Petitioner's Exhibit 4 at 4-25-2012 note). Petitioner had a positive SLR on the left with reduced lumbar range of motion. (Id.) Dr. Jain recommended a second lumbar injection and continued physical therapy with Dr. De las Casas. (Id.). Petitioner was again placed off work by Dr. Jain. (Id.).

Dr. Jain saw Petitioner again on May 23, 2012. (See Petitioner's Exhibit 4 at 5-23-2012 note). On that date, Dr. Jain noted that Petitioner had an EMG of the lower extremity that demonstrated a left sided L4, L5 and S1 radiculopathy. (Id.).

Dr. Mark Lorenz' Deposition Testimony

Petitioner testified that Dr. Jain referred her to Dr. Mark Lorenz. (Tr. p. 21). On June 14, 2012, Dr. Lorenz saw Petitioner and he took a history of her injury that Petitioner was pulling a vacuum hose

when she was injured. (See Petitioner's Exhibit 12, Evidence deposition of Dr. Lorenz at p. 7 and Petitioner's Exhibit 10 at Dr. Lorenz note of 6-14-2012). Dr. Lorenz testified that when he saw Petitioner on June 14, 2012, Petitioner's lumbar spine had a decreased range of motion with tripoding, which is when Petitioner puts her hands on her knees to straighten up her low back because she is unable to do it normally. (Petitioner's Exhibit 12 at p. 8-9). Petitioner also had a positive straight leg raise on the left, which was consistent with her left leg radiating pain complaints, as documented by all her doctors. (Id. at p. 8-9).

Dr. Lorenz' causation opinion was that Petitioner had an asymptomatic condition, spondylolythesis with spondylolysis in her low back that was made symptomatic by the work injury of February 6, 2012. (See Petitioner's Exhibit 12, Evidence deposition of Dr. Lorenz at p. 10-12). Dr. Lorenz recommended a decompression on the left side of L5 with a one level fusion at L5-S1. (Id. at p. 13).

On June 14, 2012, Dr. Lorenz recommended that Petitioner be restricted from performing any activities that involved lifting or bending and also, placed her off work. (See Petitioner's Exhibit 12, Evidence deposition of Dr. Lorenz at p. 13). Dr. Lorenz reviewed the Petitioner's EMG and stated it demonstrated abnormality in her lumbar nerve roots, which also clinically correlated with her straight leg raise on the left. (Id. at p. 15). Dr. Lorenz also reviewed the lumbar discogram performed by Dr. Jain on 8/14/2012, which showed one positive level at L5-S1, and which matched the radiographic MRI and EMG findings **perfectly**. (Id. at p. 16).

Petitioner saw Dr. Lorenz again on October 29, 2012, with similar examination and surgical recommendations. (See Petitioner's Exhibit 12, Evidence deposition of Dr. Lorenz at p. 17-18). At his deposition, Dr. Lorenz had several opinions:

1) Dr. Lorenz testified that Petitioner's low back condition he described was caused by and/or aggravated by the work accident of February 6, 2012;

2) Dr. Lorenz testified that the lumbar fusion he was recommending for Petitioner was caused by and necessitated by the work accident of February 6, 2012;

3) Dr. Lorenz testified that he placed Petitioner off work as a result of the painful and unstable lumbar spine that resulted from the work injury of February 6, 2012;

4) Dr. Lorenz testified that all the physical therapy treatment Petitioner underwent was reasonable and necessary and necessitated by the work injury of February 6, 2012; and

5) Dr. Lorenz testified that Petitioner will not be able to return to work if she does not have the lumbar fusion he prescribed ant that she should have and FCE followed by permanent restrictions.

(See Petitioner's Exhibit 12, Evidence deposition of Dr. Lorenz at p. 18-22).

On cross-examination Dr. Lorenz testified that Petitioner should have a one level fusion at L5-S1 and that she would be off work for at least six months. (See Petitioner's Exhibit 12, Evidence

deposition of Dr. Lorenz at p. 35). At trial, Petitioner testified that she did want to undergo the lumbar fusion surgery. (Tr. at p. 28).

Petitioner continued to undergo physical therapy with Dr. De las Casas until July 10, 2012, and it was suspended at that time until Petitioner had the fusion surgery prescribed by Dr. Lorenz. (See Petitioner's Exhibit 2 at 7/10/2012 Note). Dr. De las Casas placed Petitioner off work until she underwent the lumbar fusion. (Id.).

In spite of being ordered off work by Dr. De las Casas, Dr. Jain and Dr. Lorenz, Petitioner attempted to return to work on July 12, 2012 as a result of Dr. Hsu's IME report. (Tr. p 23). Petitioner testified that she went to work and her supervisor, Juan Corona, looked at her and told her that she could not work like that and thus, sent her home. (Id. at 26-27). Indeed, Mr. Corona told Petitioner, "NO", and sent her home. (Id.).

After Petitioner had the discogram in August 2012, Petitioner continued to follow up with Dr. Jain on 8/22/2012, 10/5/2012, 11/2/2012, 12/7/2012, 1/10/2013, 2/11/2013 and 3/21/2013, and each visit Dr. Jain placed Petitioner off work after examining her. (Petitioner's Exhibit 2).

Petitioner testified and Dr. Patel, Dr. De las Casas, Dr. Jain and Dr. Lorenz records all demonstrate that Petitioner was placed off work by a doctor's orders from February 8, 2012 through the trial date of March 22, 2013, and beyond. (Tr. p. 1-24 and Petitioner's Exhibits 1, 2, 3, 10 and 12).

Dr. Hsu IME and Deposition Testimony

Petitioner testified that Dr. Hsu did not examine her or touch her at the IME exam on June 27, 2012. (Tr. p. 22). Dr. Hsu testified at his deposition that Petitioner gave him a history that she was vacuuming on February 6, 2012 and there was a particular incident where she felt a pain in her low back and this led to low back pain with some buttock's pain. (Respondent's Exhibit 1, Evidence Deposition of Dr. Hsu at p. 7). Dr. Hsu testified that the medical records confirmed that her injury on February 6, 2012 occurred while she was vacuuming. (Id. p. 7). Dr. Hsu admitted that Petitioner had a limited range of motion for lumbar flexion and extension when he examined her on June 27, 2012. (Id. at p. 19). Dr. Hsu also admitted that lifting and twisting a vacuum would be a type of motion that could cause a back injury. (Id. at p. 34, L22-24). Even Dr. Hsu found that Petitioner's clinical presentation, the discogram and the EMG were all consistent with a left sided L5-S1 disc injury. (Id. p 36).

Most importantly Dr. Hsu admitted that the limited range of motion of the lumbar spine could be related to the work accident of 2/6/2012. (Respondent's Exhibit 1, Evidence Deposition of Dr. Hsu at p. 36, L24 and p. 37, L1-5). Dr. Hsu also admitted that all the medical attention Petitioner had up to 6/27/2012 would be appropriate to treat a lumbar strain. (Id. p. 37, L6-15). Dr. Hsu was not able to say if Petitioner could return to work lifting greater than 25 lbs. (Id. at p. 38, L1-18). Respondent did not give any formal job description to Dr. Hsu, but Respondent's attorney merely described what she thought the job entailed. (Id. at p. 30, L 6-23). Thus, Dr. Hsu had no basis for his opinion regarding Petitioner's ability to return to work.

Respondent's Witnesses Jose Cortez and Raul Ceja

Respondent called Jose Cortez as a witness. Jose Cortez was a supervisor who worked for ABM Janitorial for 28 years. (Tr. pp. 47-56). Mr. Cortez testified that Petitioner had to take the trash form the offices and put them in a 44-gallon bag and transport that bag to the basement. (Id. at p. 48-49). Mr. Cortez testified that the 44-gallon bags weighed between 15 and 20 lbs. (Id. at p. 51). Mr. Cortez testified regarding the carpet on the third floor where Petitioner testified she was hurt and also spoke about Petitioner's other duties for ABM. (Id. pp. 52-53).

Mr. Cortez testified that Petitioner attempted to return to work on July 12, 2012. (Tr. p. 53). Mr. Cortez was told by Juan Corona that Petitioner attempted to return to work, but that she had pain and Juan Corona told her "if you have pain, how are you coming to work." (Tr. p. 53). Petitioner told Juan Corona that the doctor (Dr. Hsu) was sending her to work. (Id.). Mr. Corona told Petitioner to go back home. (Tr. p. 54).

Again, Juan Corona did not testify and almost all of this testimony was hearsay testimony since Mr. Cortez was not present on February 6, 2012 when the accident occurred and he was not present when Petitioner attempted to return to work on July 12, 2012. (Tr. p. 56).

Respondent also called Raul Ceja as a witness. Mr. Ceja has been employed by ABM for 13 years. (Tr. p. 58). Mr. Ceja hired Ms. Guzman, and he was the manager of the building where Petitioner was injured. (Tr. p. 58) Mr. Ceja testified that he saw Petitioner in his neighborhood and they talked about her activities and Petitioner's disabled grandson. (Tr. pp. 59-62).

ISSUES

On the Request for Hearing form/ Stip Sheet, the parties indicated that the matters in dispute were accident, causal connection to current condition of ill-being, liability, reasonableness and necessity for unpaid bills, Petitioner's allegation of TTD period from February 7, 2012 through the date of hearing, March 22, 2013 and future medical pursuant to Section 8A, namely the lumbar fusion surgery prescribed by Dr. Lorenz. (See Arb. Ex. 1, Request for Hearing Form).

CONCLUSIONS OF LAW

Regarding Issue C, whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, Arbitrator holds the following:

Petitioner testified that on February 6, 2012, she started work at 5:00 pm. and at approximately 10:00 pm, she was vacuuming a rug on the third floor and the vacuum caught the corner of the rug and she pulled the vacuum back, injuring her low back. Petitioner testified she reported the accident to her supervisor, Juan Corona. According to Petitioner, Juan Corona told her "I see you are in bad shape. You are not walking right." At Mr. Corona's request Petitioner worked out her shift. Since Juan Corona did not testify at the hearing, the Petitioner's testimony is unrebutted as to the accident. Dr. Lorenz and Dr. Hsu both testified that the mechanism of injury described could cause a low back injury. Petitioner denied she injured her back previously. (Tr. p. 39).

Petitioner saw Dr. Patel on February 8, 2012. Petitioner told Dr. Patel that she hurt her low back at work while she was working. (See Petitioner's Exhibit 1). Petitioner also told Dr. Jain, Dr. Lorenz and Dr. Hsu that she injured her low back at work on February 6, 2012 while using a vacuum.

Since there is no testimony or evidence to the contrary, the Arbitrator finds that Petitioner sustained an accident which arose out of and in the course of her employment with ABM Janitorial on February 6, 2012.

Regarding Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, Arbitrator holds the following:

Petitioner testified that she worked from November 2011 to February 6, 2012 for Respondent ABM. There was no evidence she missed any work for ABM or ever complained of her low back bothering her. Petitioner testified that while vacuuming a rug, she injured her low back on February 6, 2012. The office notes of Dr. Patel, Dr. De las Casas and Dr. Jain all had a consistent history of injury. Dr. Lorenz' history was that Petitioner injured her low back while pulling the vacuum at work and she fell down. Petitioner testified that she did pull the hose, but did not fall down.

Respondent's IME doctor stated initially that he did not believe that Petitioner could have aggravated a pre-existing condition -- her spondylolisthesis -- by vacuuming or pulling the vacuum. (Respondent's Exhibit 1, Dr. Hsu deposition at p. 32, L 11-24 and p. 33, L1-2). Dr. Hsu's initial opinion was that a work accident could not have aggravated the spondylolisthesis. (Id. p. 34, L3-5) However, when asked on cross-examination whether it was his opinion that Petitioner could have suffered a low back strain, Dr. Hsu agreed that pulling and twisting of a vacuum hose could have caused a lumbar strain. (Tr. p. 34, L23-24 and p. 35, L1-4). Dr. Hsu also testified that Petitioner had reduced range of motion of her lumbar spine on flexion and extension when he examined her on June 27, 2012. (Id. p 36, L 20-23).

In addition, Dr. Mark Lorenz testified that Petitioner's spondylolisthesis and her low back condition were clearly aggravated by the work injury of February 6, 2012. (Petitioner's Exhibit 12,

Deposition of Dr. Lorenz, p. 11, L9-15 and p. 19, L 1-16).

Therefore, the Arbitrator concludes that based upon the totality of the evidence that Petitioner's current condition of ill-being relative to Petitioner's low back injury was caused by the work accident of February 6, 2012.

Regarding Issue J, whether the medical services that were provided to Petitioner reasonable and necessary, Arbitrator holds the following:

As outlined in detail above, Petitioner's lumbar condition is causally related to her work injury of February 6, 2012. Petitioner had medical treatment from February 8, 2012 with Dr. Patel, Dr. De las Casas, Dr. Jain at Chicago Pain and Dr. Lorenz and each billed for their medical services. Pursuant to Arbitrator's request, Petitioner has submitted a Fee Schedule reduction of the medical bills by provider. (See attached Fee Schedule reduction).

Petitioner's treating doctors treated her from February 8, 2012 until the day before the hearing, March 21, 2013. Respondent did not submit any Utilization Reviews regarding the reasonable and necessity of the medical treatment or charges. Respondent's IME doctor, Dr. Hsu, agreed that if Petitioner suffered a lumbar strain that al medical attention up to the date of his examination, June 27, 2012 would have been appropriate. (Respondent's Exhibit 1, Deposition of Dr. Hsu, p. 37, L 6-15)

The treatment with Dr. De las Casas was terminated on July 10, 2012 pending the lumbar fusion and as a result nearly all that treatment was admittedly reasonable per Dr. Hsu's testimony. The MRI, EMG and much of the medical treatment at Chicago Pain also occurred by the IME exam of June 27, 2012.

Thereafter, Dr. Jain gave Petitioner a discogram, which was positive at L5-S1 and which, taken together with the positive EMG and clinical presentation, all demonstrated that Petitioner had a left sided lumbar radiculopathy and pain response at L5-S1. Dr. Lorenz and Dr. Jain's testing and examinations demonstrate the ongoing problems Petitioner was suffering in her lumbar spine.

In fact, Dr. Lorenz examined Petitioner on June 14, 2012 and found a positive straight leg raise on the left and limited range of motion in flexion and extension of the lumbar spine. Dr. Hsu's examination on June 27, 2012 demonstrated similarly that Petitioner had a limited range of motion of the lumbar spine and that limited range of motion could have been related to a lumbar strain. (Respondent's Exhibit 1, at p. 37, L1-5).

Therefore, the Arbitrator finds that Respondent is liable for the all unpaid medical bills as stated in Petitioner's Exhibits 3,5,6, 8, and 9. The arbitrator orders Respondent to pay directly to Petitioner the following amounts for unpaid medical bills as reduced to the medical fee schedule as reflected in Petitioner's Fee Schedule Exhibit(*See Petitioner's Fee Schedule Reduction attached*), Rehab Dynamix $4,685.72, Chicago Pain $6,010.35, Advantage MRI $2,717.30, Accredited Ambulatory Care $6,480.91, Metro Milwaukee Anesthesia $410.00 and Hinsdale Orthopedics, $406.56, totaling $20,711.11. (Id.). The arbitrator directs Respondent to pay the sum directly to Petitioner through his attorney, The Romaker Law Firm.

Regarding Issue K, whether Petitioner is owed TTD from February 8, 2012 to the date of the trial March 22, 2013, Arbitrator holds the following:

Section 8(b) of the Act provides for temporary total disability benefits to be paid to the injured employee. 820 ILCS 305/8(b), 310/7. The period of temporary total incapacity is that temporary period immediately after the accident during which the injured employee is totally incapacitated for work by reason of the illness attending the injury. *Mt. Olive Coal Co. v. Industrial Commission*, 295 Ill. 429, 129 N.E. 103, 104 (1920). If the employee has been released to light duty but the employer does not accommodate this light duty, then the employer may is obligated to pay for benefits equal to the TTD rate. *See J.M. Jones Co. v. Industrial Commission*, 71 Ill.2d 368, 375 N.E.2d 1306, 1309, 17 Ill.Dec. 22 (1978); *E.R. Moore Co. v. Industrial Commission*, 71 Ill.2d 353, 376 N.E.2d 206, 210, 17 Ill.Dec. 207 (1978).

Petitioner was placed off work by Dr. Patel on February 8, 2012 and that off work note was faxed to Respondent. Petitioner was thereafter placed off work by Dr. Patel, Dr. De las Casas, Dr. Jain and Dr. Lorenz through March 21, 2013. In these notes Petitioner was totally incapacitated from work by reason of her low back condition caused by her work injury of February 6, 2012. Respondent's IME doctor, Dr. Hsu, stated that Petitioner was at MMI on June 27, 2012. Thus Petitioner is owed TTD at least from February 8, 2012 until June 27, 2012.

However, Dr. Hsu never saw a job description stating that Petitioner's job only required 25 lbs. lifting. (Respondent's Exhibit 1, p. 30, L 1-24 and p. 31, L 1-9). Respondent's IME doctor's opinion is thus totally speculative as to whether petitioner could return to work. In further support of this point, Dr. Hsu was asked on cross-examination if Petitioner had to lift up to 50 lbs. occasionally at work whether Petitioner could return to work and he testified he did not know. (Respondent's 1, p.37, L 21-24 and p. 38, L1-18). Dr. Hsu had no real basis as to why he opined that Petitioner could return to work full duty.

By contrast, Dr. Lorenz testified that Petitioner would not be able to return work as a result of her work injuries after seeing Petitioner on June 14, 2012, and again on October 29, 2012. Specifically, Dr. Lorenz testified that Petitioner could not return to work unless she had the lumbar fusion or had an FCE followed by restrictions. (Petitioner's Exhibit 12, p. 21, L 18-24 and p. 22, L 1-12).

Therefore, the Arbitrator awards Petitioner TTD benefits of $286.00 per week for 58 and 5/7ths, for the period of February 8, 2012 to March 22, 2013, totaling $16,710.41. In addition, Petitioner requests continuing TTD to be paid from March 23, 2013 onward until Petitioner is found to be at MMI and capable of returning to suitable employment.

Regarding Issue O, whether Petitioner should be awarded future medical Pursuant to Section 8A, the Lumbar Fusion Surgery Recommended by Dr. Lorenz, the Arbitrator holds the following:

In this case, Dr. Marc Lorenz testified that he recommended that Petitioner undergo a fusion of L5-S1 with a decompression of the S1 nerve root. (Petitioner's Exhibit 12, P. 13, L 4-6 and P. 20, L. 1-5). Dr. Lorenz based his surgical opinion on the fact that Petitioner had undergone extensive conservative care of physical therapy and injections. (Id. at p. 12, L 12-24). In addition, Dr. Lorenz based his opinion on the lumbar EMG, which showed left L4, L5 and S1 radiculopathy as well the lumbar discogram, which showed concordant pain at L5-S1, which correlated with his clinical exam findings. (Petitioner's Exhibit 12, p.14, L 10-24 and p. 15, L 1-7 and P. 16, L 2-24).

Dr. Lorenz' examinations revealed low back pain, signs of instability on range of motion and a positive straight leg test on the left. (Petitioner's Exhibit 17, L 14-22).

Respondent's IME doctor, Dr. Hsu, found Petitioner to be at MMI because he stated she had no neurological deficits yet he himself testified that she had diminished range of motion of the lumbar spine. Dr. Lorenz saw Petitioner two weeks before Dr. Hsu and found positive SLR on the left and limitations of range of motion of the lumbar spine. Dr. Hsu fails to explain why Petitioner had a positive EMG and discogram, and yet, is at MMI and could return to work.

The Arbitrator finds the reasoning of Dr. Mark Lorenz more convincing than that of Dr. Hsu, and finds that the testimony and the medical evidence, as a whole, supports the need for the lumbar fusion surgery as well as post-surgical treatment. Thus, the Arbitrator awards the lumbar fusion recommended by Dr. Lorenz and post-surgical medical treatment.

DATED AND ENTERED _____, 2013

_____

Arbitrator Edward Lee

Petitioner's Fee Schedule Reduction of Medical Bills

Rehab Dynamix, Ltd				
Date of Service	Code	Charge	FSA	POC
3/21/2012	E0745	$803.00	$427.20	POC53.2
4/2/2012	97010	$31.00	$20.31	
4/3/2012	97010	$31.00	$20.31	
4/4/2012	97010	$31.00	$20.31	
4/9/2012	97010	$31.00	$20.31	
4/16/2012	97010	$31.00	$20.31	
4/17/2012	97010	$31.00	$20.31	
4/19/2012	97010	$31.00	$20.31	
4/23/2012	97010	$31.00	$20.31	
4/25/2012	97010	$31.00	$20.31	
4/30/2012	97010	$31.00	$20.31	
5/2/2012	97010	$31.00	$20.31	
5/3/2012	97010	$31.00	$20.31	
5/7/2012	97010	$31.00	$20.31	
5/8/2012	97010	$31.00	$20.31	
5/10/2012	97010	$31.00	$20.31	
5/14/2012	97010	$31.00	$20.31	
5/15/2012	97010	$31.00	$20.31	
5/16/2012	97010	$31.00	$20.31	
5/21/2012	97010	$31.00	$20.31	
5/22/2012	97010	$31.00	$20.31	
5/23/2012	97010	$31.00	$20.31	
5/29/2012	97010	$31.00	$20.31	
5/30/2012	97010	$31.00	$20.31	
6/4/2012	98940	$45.00	$32.75	
6/4/2012	97140	$59.00	$42.65	
6/4/2012	97014	$39.00	$26.03	
6/4/2012	97545	$206.00	$154.09	
6/4/2012	97010	$31.00	$20.31	
6/5/2012	99213	$97.00	$64.92	
6/5/2012	97535	$63.00	$40.62	
6/5/2012	98940	$45.00	$32.75	
6/5/2012	97140	$59.00	$42.65	
6/5/2012	97014	$39.00	$26.03	
6/5/2012	97545	$206.00	$154.09	
6/5/2012	97010	$31.00	$20.31	
6/7/2012	98940	$45.00	$32.75	
6/7/2012	97140	$59.00	$42.65	
6/7/2012	97014	$39.00	$26.03	
6/7/2012	97545	$206.00	$154.09	
6/7/2012	97010	$31.00	$20.31	
6/11/2012	97014	$39.00	$26.03	

6/11/2012	97545	$206.00	$154.09	
6/11/2012	97010	$31.00	$20.31	
6/12/2012	98940	$45.00	$32.75	
6/12/2012	97014	$39.00	$26.03	
6/12/2012	97545	$206.00	$154.09	
6/12/2012	97010	$31.00	$20.31	
6/13/2012	97140	$59.00	$42.65	
6/13/2012	97014	$39.00	$26.03	
6/13/2012	97545	$206.00	$154.09	
6/13/2012	97010	$31.00	$20.31	
6/19/2012	97140	$59.00	$42.65	
6/19/2012	97014	$39.00	$26.03	
6/19/2012	97545	$206.00	$154.09	
6/19/2012	97010	$31.00	$20.31	
6/20/2012	97140	$59.00	$42.65	
6/20/2012	97014	$39.00	$26.03	
6/20/2012	97545	$206.00	$154.09	
6/20/2012	97010	$31.00	$20.31	
6/22/2012	97140	$59.00	$42.65	
6/22/2012	97014	$39.00	$26.03	
6/22/2012	97545	$206.00	$154.09	
6/22/2012	97010	$31.00	$20.31	
6/25/2012	97014	$39.00	$26.03	
6/25/2012	97545	$206.00	$154.09	
6/25/2012	97010	$31.00	$20.31	
6/26/2012	97140	$59.00	$42.65	
6/26/2012	97014	$39.00	$26.03	
6/26/2012	97545	$206.00	$154.09	
6/26/2012	97010	$31.00	$20.31	
6/28/2012	97140	$59.00	$42.65	
6/28/2012	97014	$39.00	$26.03	
6/28/2012	97545	$206.00	$154.09	
6/28/2012	97010	$31.00	$20.31	
7/9/2012	97014	$39.00	$26.03	
7/9/2012	97545	$206.00	$154.09	
7/9/2012	97010	$31.00	$20.31	
7/10/2012	99213	$97.00	$64.92	
7/10/2012	97535	$63.00	$40.62	
7/10/2012	97140	$59.00	$42.65	
7/10/2012	97014	$39.00	$26.03	
7/10/2012	97545	$206.00	$154.09	
7/10/2012	97010	$31.00	$20.31	
3/28/2012	99244	$349.00	$216.79	

Total Charges:	**$23,294.41**
Adjustments and Payments:	**$16,475.46**
Totals Due:	**$6,818.95**
Total Fee Schedule Amount:	**$4,685.72**

Chicago Pain & Orthopedic Institute				
Date of Service	**Code**	**Charge**	**FSA**	**POC**
2/29/2012	99203	$124.03	$115.63	
3/14/2012	99214	$105.68	$100.15	
3/27/2012	64483	$1,020.50	$533.48	
3/27/2012	64484	$724.00	$363.02	
3/27/2012	77003	$289.06	$233.51	
4/25/2012	99214	$105.68	$100.15	
4/30/2012	99358	$387.50	$147.49	
4/25/2012	80101	$212.70	$34.71	
5/23/2012	99214	$105.68	$100.15	
7/11/2012	99214	$105.68	$100.15	
8/8/2012	99214	$105.68	$100.15	
8/14/2012	62290	$614.26	$629.57	*
8/14/2012	62290	$614.26	$629.57	*
8/14/2012	62290	$614.26	$629.57	*
8/14/2012	62290	$614.26	$629.57	*
8/14/2012	72295	$818.18	$900.18	*
8/22/2012	99214	$105.68	$100.15	
10/5/2012	99204	$176.88	$159.17	
11/2/2012	99214	$105.68	$100.15	
12/7/2012	99214	$105.68	$100.15	
1/10/2013	99214	$105.68	$101.84	
2/11/2013	99214	$106.61	$101.84	
Total Charges:		**$7,267.62**		
Adjustments and Payments:		**$917.24**		
Totals Due:		**$6,350.38**		
Total Fee Schedule Amount:		**$6,010.35**		

Advantage MRI, LLC				
Date of Service	Code	Charge	FSA	POC
3/2/2012	72148	$1,750.00	$1,309.65	
3/2/2012	72195	$1,750.00	$1,407.65	

Total Charges:	**$3,500.00**
Adjustments and Payments:	**$0.00**
Totals Due:	**$3,500.00**
Total Fee Schedule Amount:	**$2,717.30**

Accredited Ambulatory Care, LLC				
Date of Service	Code	Charge	FSA	POC
3/27/2012	A4557	$18.17	$17.62	
3/27/2012	J0330	$57.76	$30.73	POC53.2
3/27/2012	J2250	$1.52	$4.53	*
3/27/2012	J3490	$90.36	$48.07	
3/27/2012	J2001	$46.70	$14.22	
3/27/2012	J0461	$2.11	$1.12	
3/27/2012	J3490	$90.36	$48.07	
3/27/2012	77003	$1,200.00	$233.51	
8/14/2012	62290	$8,797.80	$629.57	
8/14/2012	62290	$8,797.80	$629.57	
8/14/2012	62290	$8,797.80	$629.57	
8/14/2012	62290	$8,797.80	$629.57	
8/14/2012	72295	$1,700.00	$900.18	
8/14/2012	A0120	$275.00	$146.30	POC53.2
8/14/2012	62290	$748.15	$629.57	
8/14/2012	62290	$748.15	$629.57	
8/14/2012	62290	$748.15	$629.57	
8/14/2012	62290	$748.15	$629.57	

Total Charges:	**$41,665.78**
Adjustments and Payments:	**$0.00**
Totals Due:	**$41,665.78**
Total Fee Schedule Amount:	**$6,480.91**

Metro Milwaukee Anesthesia Associates				
Date of Service	Code	Charge	FSA	POC
8/14/2012	1935	$1,050.00	$74.51	
8/14/2012	A4300	$16.60	$30.16	*
8/14/2012	A4556	$12.85	$13.20	*
8/14/2012	S1015	$29.85	$11.38	

8/14/2012	J7120	$38.50	$26.27	
8/14/2012	A4649	$25.00	$13.30	POC53.2
8/14/2012	A4215	$8.20	$0.66	
8/14/2012	E0424	$5.00	$222.07	*
8/14/2012	A4206	$0.65	$0.16	
8/14/2012	A4208	$1.70	$0.31	
8/14/2012	A4209	$3.20	$0.44	
8/14/2012	A4213	$7.20	$1.31	
8/14/2012	J3490	$22.50	$11.97	
8/14/2012	J2250	$3.75	$4.53	*

Total Charges: **$1,225.00**
Adjustments and Payments: **$0.00**
Totals Due: **$1,225.00**
Total Fee Schedule Amount: **$410.27**

Hinsdale Orthopaedics

Date of Service	Code	Charge	FSA	POC
6/14/2012	99204	$276.00	$159.17	
6/14/2012	72110	$252.00	$147.24	
10/29/2012	99214	$171.00	$100.15	

Total Charges: **$699.00**
Adjustments and Payments: **$0.00**
Totals Due: **$699.00**
Total Fee Schedule Amount: **$406.56**

GRAND TOTALS:

Charges:	$77,651.81
Adjustments & Payments:	$17,392.70
Due:	$60,259.11
Fee Schedule Amount:	$20,711.11

14IWCC0056

HINSDALE ORTHOPAEDICS
PO BOX 914
LAGRANGE IL60525-0914

PHONE (800) 813-6536
FEDERAL ID #36-2671035

TO:
JULIA GUZMAN
1310 NORTH 24TH AVE

MELROSE PARK IIL 60160

ACCOUNT NO. 302459
STATEMENT DATE 04/09/13
BALANCE DUE .00

DATE	PATIENT	PROCEDURE	DESCRIPTION OF SERVICE	DIAGNOSIS	AMOUNT
06/14/12	JULIA	99204	NEW PATIENT VISIT-MODERAT MARK A LORENZ MD	738.4	276.00
06/14/12	JULIA	72110	XRAY LUMBAR AP/LAT/SPOT/2 MARK A LORENZ MD	724.2	252.00
10/29/12	JULIA	99214	ESTABLISHED PATIENT-MODER MARK A LORENZ MD	738.4	171.00

PERSONAL	INSURANCE PENDING	LITIGATION	WORKERS COMP BALANCE	ACCOUNT BALANCE
.00	.00	.00	699.00	699.00

302459 GUZMAN

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

Perry Medley,

Petitioner,

14IWCC0057

vs.

NO: 09 WC 11529
consol. 09 WC 11528

H & M International Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, temporary total disability benefits, and permanency, modifies the Corrected 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.

Regarding the medical treatment Petitioner underwent for his right knee condition, the Commission notes Respondent had Dr. Jeannette Fefles from Family Chiropractic review Petitioner's medical records. (RX5,RX6) Dr. Fefles determined that any chiropractic treatment Petitioner underwent after the first eight visits should be non-certified. (RX5) In her January 19, 2011 report, Dr. Fefles explained that she agreed "with the conservative treatment approach of ultrasound and electrical stimulation to reduce spasm and guarding with regards to a diagnosis…[of] meniscal tear" but that Dr. Todd Sinai's "notes state subjective pain findings with no clear indication of any objective findings, which should include specific range of motion tests, degrees of restriction, and clear markers for where, when and why therapies are being done. The notes do not include re-evaluations of [Petitioner's] progress or any stated treatment plan, goals, or home therapeutic plan. The reviewed bill from the office states that an extraspinal adjustment was done at each visit, however, the treatment notes do not indicate any adjustment given. Without any further clear documentation, it would be advised that 8 chiropractic visits would be clinically necessary to treat a diagnosis of…meniscal tear, any further treatment would

be deemed not medically necessary." On February 23, 2011, Dr. Fefles reviewed Petitioner's treatment after his right knee surgery and found that "[t]he right partial knee meniscectomy does not require any chiropractic post surgical intervention." (RX6)

The Commission finds that the evidence supports Dr. Fefles findings and determinations. The Commission notes that the majority of Dr. Sinai's chiropractic notes consist of repeats his prior notes and fail to mention any change in Petitioner's condition as a result of the chiropractic treatment. The Commission further notes that the Dr. Sinai fails to mention what procedures and treatments are being provided in most of his notes. Dr. Sinai also makes considerably more mention of the findings and opinions of Petitioner's other treaters than he does of his own findings and treatment of Petitioner.

Based on Dr. Sinai's failure to provide clear documentation of the effect his chiropractic treatment was having on Petitioner's right knee condition, what specific chiropractic treatments he was providing Petitioner, and the findings and opinions of Dr. Fefles, the Commission finds that the chiropractic treatment provided by Dr. Sinai beyond the first eight visits certified by Dr. Fefles were not medically reasonable and necessary. The Commission, therefore, awards first eight chiropractic sessions with Dr. Sinai, from February 18, 2009 through March 16, 2009, only.

Regarding permanency, the Commission notes that the March 13, 2009 MRI of Petitioner's right knee showed a slight irregularity of the apical free edge of the mid body of the medial meniscus, which was read by the radiologist as "probably representing a small tear." (PX3) However, the November 12, 2009 operative report reveals that what Petitioner had was a "reactive medial synovial veil (plica) which was debrided" and "a synovial flap which appeared to be acting functionally as an anterior medial meniscus tear" which was also debrided. (PX5 & PX13) The Commission finds that since Petitioner did not suffer a meniscal tear, but an aggravation of a pre-existing plica condition, Petitioner has suffered a permanent partial disability equivalent to a 12.5% loss of use of the right leg.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Corrected Decision of the Arbitrator filed on April 2, 2013, 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 $460.18 per week for a period of 97-5/7 weeks, from March 25, 2009 through February 6, 2011, 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 $414.47 per week for a period of 26.875 weeks, as provided in §8(e)12 of the Act, for the reason that the injuries sustained caused the 12.5% loss of use of the right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $63,180.44 for medical expenses under §8(a) and §8.2 of the Act.

14IWCC0057

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: JAN 29 2014
MJB/ell
o-01/16/14
52

Michael J. Brennan

David L. Gore

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

14IWCC0057

MEDLEY, PERRY
Employee/Petitioner

Case# **09WC011529**

09WC011528

H&M INTERNATIONAL INC
Employer/Respondent

On 4/2/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

4239 LAW OFFICES OF JOHN S ELIASIK
180 N LASALLE ST
SUITE 3700
CHICAGO, IL 60601

1872 SPIEGEL & CAHILL PC
KATERNINA D KYROS
15 SPINNING WHEEL RD SUITE 107
HINSDALE, IL 60521

14IWCC0057

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
CORRECTED ARBITRATION DECISION

M.B.

Perry Medley
Employee/Petitioner

v.

H&M International, Inc.
Employer/Respondent

Case # **09** WC **11529**

Consolidated cases: **09 WC 11528**

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 **Milton Black**, Arbitrator of the Commission, in the city of **Chicago**, on **October 2, 2012 and October 3, 2012**. 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] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [x] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **February 16, 2009**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$36,093.72**; the average weekly wage was **$694.11**.

On the date of accident, Petitioner was **49** years of age, ***married*** 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 have credit for all amounts, if any, to or on behalf of Petitioner on account of said accidental injury.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$460.18**/week for **97 5/7^{ths}** weeks, commencing **March 25, 2009** through **February 6, 2011**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from **March 25, 2009** through **February 6, 2011**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay reasonable and necessary medical services of **$71,984.44**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$416.47**/week for **43** weeks, because the injuries sustained caused the **20%** loss of the **right leg**, as provided in Section 8(e) of the Act.

Respondent shall have credit for all amounts, if any, to or on behalf of Petitioner on account of said accidental injury.

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.

Melissa Black

Signature of Arbitrator

April 2, 2013

Date

APR 2 - 2013

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

Perry Medley,

Petitioner,

14IWCC0058

vs.

NO: 09 WC 11528
consol. 09 WC 11529

H & M International Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering accident, notice, medical expenses, temporary total disability benefits, and permanency, modifies the Corrected 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.

After reviewing the record in its entirety, the Commission finds the opinions of Dr. Jeanette Fefles, from Family Chiropractic, persuasive regarding the amount of chiropractic treatment necessary for treating Petitioner's left medial epicondylitis. After reviewing Petitioner's medical records on January 19, 2011, Dr. Fefles found that any chiropractic treatment after the first eight visits should be non-certified. (RX5) Dr. Fefles explained that she agreed with Dr. Todd Sinai's conservative treatment via ultrasound and electrical stimulation in order to reduce spasms and guarding with regards to Petitioner's medial epicondylitis diagnosis, "however, the indication of an olecranon spur is suggestive of a degenerative change to his elbow, not something that was a result of an acute injury. Dr. Sinai's notes state subjective pain findings with no clear indication of any objective findings, which should include specific range of motion tests, degrees of restriction, and clear markers for where, when and why therapies are being done. The notes do not include re-evaluations of [Petitioner's] progress or any stated treatment plan, goals, or home therapeutic plan. The reviewed bill from the office states that an extraspinal adjustment was done at each visit, however, the treatment notes do not indicate any adjustment given. Without any further clear documentation, it would be advised that 8 chiropractic visits would be clinically necessary to treat a diagnosis of medical epicondylitis

and...any further treatment would be deemed not medically necessary." (RX5)

The Commission agrees with Dr. Fefles findings and opinion and notes that the majority of Dr. Sinai's notes are only a repeat of prior notes and fail to mention any change in Petitioner's condition as a result of the treatment. The Commission further notes that Dr. Sinai fails to mention what procedures and treatments he is providing. Dr. Sinai also makes considerably more mention of the findings and opinions of Petitioner's other treaters than he does of his own findings and treatment of Petitioner.

Based on Dr. Sinai's failure to provide clear documentation of the effect his chiropractic treatment was having on Petitioner's left elbow condition, what specific chiropractic treatments he was providing Petitioner, and the findings and opinions of Dr. Fefles, the Commission finds that the chiropractic treatment provided by Dr. Sinai beyond the first eight visits certified by Dr. Fefles were not medically reasonable and necessary. The Commission, therefore, awards first eight chiropractic sessions with Dr. Sinai, from March 2, 2009 through March 25, 2009, only.

Regarding the issue of temporary total disability benefits, the Commission acknowledges that Dr. Howard I. Freedberg, Petitioner's treating physician regarding Petitioner's left elbow injury, kept Petitioner off work from June 30, 2010 through November 4, 2010, at which time Dr. Freedberg found Petitioner had reached maximum medical improvement regarding his left elbow condition. (PX3,PX7,PX10) However, the Commission also notes that Petitioner was already off work during this period due to treatment for a right knee injury (consolidated case 09WC11529). The Commission awarded temporary total disability benefits from March 25, 2009 through February 6, 2011, in consolidated case 09WC11529, which covers the temporary total disability period for Petitioner's left elbow injury. Therefore, the Commission declines to award additional temporary total disability benefits in this case.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Corrected Decision of the Arbitrator filed on April 2, 2013, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $414.16 per week for a period of 37.95 weeks, as provided in §8(e)10 of the Act, for the reason that the injuries sustained caused the 15% loss of use of the left arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $48,337.39 for medical expenses under §8(a) and §8.2 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 $64,200.00. 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: JAN 29 2014
MJB/ell
o-01/16/14
52

Michael J. Brennan

David L. Gore

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

14IWCC0058

MEDLEY, PERRY
Employee/Petitioner

Case# **09WC011528**
09WC011529

H&M INTERNATIONAL INC
Employer/Respondent

On 4/2/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

4239 LAW OFFICES OF JOHN S ELIASIK
180 N LASALLE ST
SUITE 3700
CHICAGO, IL 60601

1872 SPIEGEL & CAHILL PC
KATERNINA D KYROS
15 SPINNING WHEEL RD SUITE 107
HINSDALE, IL 60521

14IWCC0058

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
CORRECTED ARBITRATION DECISION

m.h.

Perry Medley
Employee/Petitioner

v.

H&M International, Inc.
Employer/Respondent

Case # **09** WC **11528**

Consolidated cases: **09 WC 11529**

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 **Milton Black**, Arbitrator of the Commission, in the city of **Chicago**, on **October 2, 2012 and October 3, 2012**. 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. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [x] What was the date of the accident?
E. [x] 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] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [x] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

FINDINGS

On **October 8, 2008**, 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 **$36,093.72**; the average weekly wage was **$690.26**. m.b.

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

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 have credit for all amounts, if any, to or on behalf of Petitioner on account of said accidental injury.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$460.18**/week for **18 17th** weeks, commencing **June 3, 2010** through **November 4, 2010,** as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from **June 3, 2010** through **November 4, 2010**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay reasonable and necessary medical services of **$56,889.39**, as provided in Sections 8(a) and 8.2 of the Act. m.b.

Respondent shall pay Petitioner permanent partial disability benefits of **$414.16**/week for **50.6** weeks, because the injuries sustained caused the **20%** loss of the **left arm**, as provided in Section 8(e) of the Act.
Respondent shall have credit for all amounts, if any, to or on behalf of Petitioner on account of said accidental injury.

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.

Milton Black

Signature of Arbitrator

April 2, 2013
Date m.b.

APR 2 - 2013

14IWCC0058

STATE OF ILLINOIS)
)
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PERRY MEDLEY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	09 WC 11528
	)	09 WC 11529
H & M INTERNATIONAL,	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

As of October 8, 2008, Respondent H&M International employed Petitioner Perry Medley as a truck driver. He had been employed in this capacity with Respondent since 1999. The position entailed driving a truck in the Union Pacific rail yard, shuttling cargo containers.

Petitioner testified that on October 8, 2008, during the course and scope of his job duties, he repeatedly hit his left elbow on a bar that ran across the driver side door of the truck cab. Petitioner explained that the cab was narrow, and that the steering wheel was large and set at an angle. Because he was left handed, he would often turn the steering wheel with his left hand, hitting his left elbow on the bar running across the inside of the door.

Petitioner testified that he drove this particular truck with this configuration for a number of years, and that he hit his left elbow on the bar repeatedly. On this particular day, when he hit his left elbow again during the beginning of his shift, the pain became intolerable and he asked to leave work early to seek medical attention.

Petitioner left work and went to the emergency room at St. Alexius. (PX2, 09WC11528). The medical records from this indicate that Petitioner reported that he "hit elbow on door at work" and that he was complaining of left elbow pain. (PX2, 09WC11528). An x-ray was performed that showed an olecranon body spur. (PX2, 09WC11528). Petitioner testified that other than repeatedly hitting his elbow on the bar of the inside of the cab of his truck, he did not have any other problems with his left elbow prior to this date. Petitioner was also seen at St. Alexius Corporate Health on the same day, where he was diagnosed with a work-related elbow contusion and released to

return to work with restricted use of the left arm. (PX2, 09WC11528).

Petitioner testified that he continued to work full duty after October 8, 2008. He still had pain in his left elbow, but he just lived with the pain.

Then, on February 16, 2009, Petitioner had a second accident at work. Petitioner testified that he had stepped out of his cab to unhook some hoses at the back of the cab, a task he performed while still standing on the platform of the cab right outside the drover side door. When he turned his body and straightened out, he hit a metal latch on the driver side door with his right knee. Petitioner testified that he was in immediate and excruciating pain.

Petitioner rested on the platform for about 15 minutes. Then, when he turned again to get into the cab, he hit his right knee a second time. He testified that he sat on the ground holding his knee and crying for the next 30 minutes. Petitioner testified that during this time, his supervisor Wayne came by to see if he was alright. He reported the injury to Wayne, but he worked the remainder of his shift.

Petitioner testified that after his shift, he went to the emergency room at Glen Oaks Hospital near his home. He was examined and released.

The next day, Petitioner reported for work, but his right knee has swelled. Petitioner requested medical attention, and Respondent send Petitioner to Concentra. (PX2, 09WC11529). At Concentra, Petitioner reported hitting his right knee on the latch of the door while entering his tuck. (PX2, 09WC11529). He was given an x-ray, diagnosed with a knee contusion, given medication and released to return to work regular duty. (PX2, 09WC11529).

The next day, Petitioner went to see Dr. Sinai, a chiropractor. (PX3, 9WC11529). He reported that he was having significant pain in the right knee that was keeping him up at night, as well as locking and giving out. (PX3, 09WC11529). Dr. Sinai started Petitioner on a course of chiropractic therapy. On February 20, 2008, he referred him to Dr. Bruce Montella, an orthopedic surgeon and sports medicine specialist, for an evaluation of his right knee. (PX3, 09WC11529). He also started Petitioner on a course of physical therapy for his right knee at Rehabilitation Inc., beginning March 23, 2009. (PX10,11 09WC11529). Dr. Sinai recommended that Petitioner be off work for his right knee starting on March 23, 2009. (PX3, 09WC11529).

During the initial visit with Dr. Sinai, Petitioner also reported that he had been having pain in his left elbow since bumping it against the door of his truck on October 8, 2008. (PX4, 09WC11528). Petitioner explained that the cab of his truck is a tight environment, and that he repeatedly strikes his left elbow on the door of the truck while during the steering wheel. (PX4, 09WC11528). He reported going to St. Alexius in October for this condition, and that he continued to have pain in his elbow since that time. (PX4, 09WC11528). Dr. Sinai also started Petitioner on a course of chiropractic therapy for his elbow, and referred him to Dr. Howard Freedberg, an orthopedic surgeon. (PX4, 09WC11528).

Dr. Freedberg saw Petitioner for his left elbow on March 30, 2009. Petitioner reported the same history. (PX3, 09WC11528). Dr. Freedberg examined Petitioner, reviewed the x-rays and diagnosed him with a large olecranon spur, a small capitellar spur, left medical epicondylitis and cubital tunnel syndrome. (PX3, 09WC11528). He ordered an EMG and an MRI. (PX4, 09WC11528). He advised Petitioner to continue

chiropractic treatment for his elbow with Dr. Sinai and to continue working full duty. (PX3, 09WC11528).

Petitioner then saw Dr. Montella for his right knee on March 11, 2009. (PX4-8, 09WC11529). He reported a history of pain in the right knee following banging it on a door latch. (PX4-8, 09WC11529). Dr. Montella advised that Petitioner continue with chiropractic treatment and physical therapy. (PX4-8, 09WC11529). He prescribed an MRI of the right knee and advised Petitioner to continue to work. (PX4-8, 09WC11529).

Petitioner had the MRI of his right knee on March 13, 2009 at Lakeshore Open MRI. (PX6, 09WC11529). It revealed a possible small medial meniscal tear. (PX6, 09WC11529). Petitioner followed up with Dr. Montella on April 15, 2009, when Dr. Montella diagnosed Petitioner with a meniscal tear, took him off work. He recommended that Petitioner continue with physical therapy and chiropractic treatment (PX4-8, 09WC11529).

Petitioner continued to treat for his left elbow. He had an MRI at PRI diagnostics on March 27, 2009, which showed mild arthrosis with a tiny spur, as well as moderate to high grad chondromalacia. (PX3, 09WC11528). Petitioner also had an EMG of the elbow at Delaware Place MRI on May 22, 2009, which revealed entrapment of the left ulnar nerve at the elbow. (PX3, 09WC11528).

Petitioner returned to Dr. Freedberg on June 4, 2009 to discuss the test results. (PX3, 09WC11528). Dr. Freedberg recommended surgery for the cubital tunnel. (PX3, 09WC11528). He recommended that Petitioner continue working in regard to the elbow and getting therapy until surgery could be scheduled. (PX3, 09WC11528)

Petitioner returned to Dr. Montella from time to time. (PX4-8, 09WC11529). Dr. Montella continued to keep Petitioner off work and recommend that he get physical therapy and chiropractic treatment. (PX4-8, 09WC11529). However, Petitioner had plateaued and was showing some mild swelling in the knee. (PX4-8, 09WC11529). On September 16, 2009, Dr. Montella recommended that Petitioner consider arthroscopic surgery for the right knee. (PX4-8, 09WC11529).

Petitioner had the arthroscopic surgery to the right knee at South Chicago Surgical Solutions on November 12, 2009. (PX13, 09WC11529). Dr. Montella performed the surgery, with the assistance of Blair Rhode and Mark Bordick. (PX12-14, 09WC11529). M.B. During the course of surgery, it was discovered that Petitioner did not have a meniscal tear, but rather, a synovial flap that "appeared to be acting functionally" as a meniscal tear. This flap was debrided. (PX13, 09WC11529).

After the surgery, Petitioner continued to follow up with Dr. Montella, and went through a course of post-surgical rehabilitation with Dr. Sinai and Rehabilitation Inc. (PX3, 4-8, 10-11, 09WC11529). The records reflect and Petitioner testified that he had slow but steady improvement following his knee surgery. Eventually, on February 6, 2011, approximately a year and four months following surgery, Petitioner was discharged from care at maximum medical improvement, and he returned to work at his pre-accident position for Respondent.

During the time that Petitioner was under Dr. Montella's care for his right knee, he continued to see Dr. Freedberg for his left elbow. (PX4, 09WC11528). Dr. Freedberg continued to recommend surgery for the left elbow, as Petitioner was reporting little improvement from chiropractic treatment. (PX4, 09WC11528). On February 17, 2010,

Dr. Freedberg took Petitioner off work for his left elbow, pending surgery. (PX4, 09WC11528). Petitioner was still off work at this time for his right knee after having the knee surgery. (PX4-8, 09WC11529).

On June 30, 2010, Dr. Freedberg performed surgery on Petitioner's left elbow. (PX3, 09WC11528). He performed an ulnar nerve transposition, debridement, removal of the spur, repair of the triceps tendon, resection of the medial septum and ulnar nerve lysis. (PX3, 09WC11528).

Dr. Freedberg sent Petitioner for post-surgical rehabilitation with Dr. Sinai. (PX3, 09WC11528). He continued Petitioner off work. (PX3, 09WC11528). On November 4, 2010, Dr. Freedberg released Petitioner to return to work full duty, having reached maximum medical improvement.

Petitioner testified that he was able to return to his pre-accident job duties without difficulty. He further testified that they changed the cab of the truck in which he works, and he no longer hits his elbow. He testified that he continues to have problems with his right knee, especially with activity such as climbing in an out of the truck cab. He testified that these problems come and go, and he experience s some pain every other day. He does not current receive medical treatment for hi right knee. Petitioner testified that he currently does not have any problems with his left elbow.

Dr. Montella testified by way of evidence deposition. (PX1, 09WC11529). Dr. Montella testified that because Petitioner did not have any problems with his right knee prior to the accident of February 16, 2009, and that his complaints started immediately thereafter and persisted that his right knee condition was causally related to the accident. (PX1, 09WC11529). He further testified that the surgery, chiropractic treatment and physical therapy were reasonable treatment for the injury, because Petitioner improved and was able to return to his pre-injury occupation. (PX1, 09WC11529). He further testified that Petitioner's off work restrictions were related to the injury. (PX1, 09WC11529).

Dr. Freedberg also testified by way of evidence deposition. (PX1, 09WC11528). Dr. Freedberg testified that Petitioner's left elbow condition and the need for surgery was related to the October 8, 2008 incident. (PX1,09WC11528). Dr. Freedberg testified that Petitioner reported striking his elbow many time over the course of years, but that on that particular occasion, it was the "straw hat broke the camel's back". (PX1, 09WC11528). Dr. Freedberg testified that the olecranon spur would have developed over time, but was aggravated by the bumping mechanism. (PX1, 09WC11528). He testified that Petitioner's complaints were mainly related to the ulnar nerve entrapment. (PX1, 09WC11528). He testified that this injury is consistent with the mechanism described by Petitioner of hitting the back of his elbow against the door, as this is where the ulnar nerve transverses the elbow joint. (PX1, 09WC11528).

Dr. Nikhil Verma saw petitioner for a Section 12 examination at the request of the Respondent, for both his elbow and knee conditions, on May 27, 2009. (RX2). Dr. Verma testified by way of evidence deposition. (RX2). Dr. Verma gave the opinion that Petitioner's left elbow condition was not causally related to the accident as described by Petitioner, as the mechanism of injury was not consistent with Petitioner's condition. (RX1). Dr. Verma's understanding of the mechanism of injury was that there was no specific trauma, but that Petitioner his driving position caused him to hit the posterior aspect of his left elbow against the door of the truck. (RX2, p.7). Dr. Verma did not

elaborate how the reported mechanism of injury could not cause or aggravate Petitioner's condition.

Dr. Verma opined that Petitioner did not require surgical removal of the olecranon spur, whether work-related or not. (RX2, p.20). He further opined that Petitioner was at maximum medical improvement and could return to work full duty for any work-related symptoms in his left elbow as of the date of the examination. (RX2).

As for Petitioner's right knee condition, Dr. Verma opined that Petitioner sustained a right knee contusion only as a result of hitting his knee on the door latch. (RX2). He further opined that Petitioner did not require surgery for his injury. (RX2). He also felt that Petitioner was exaggerating his right knee complaints. (RX2). However, Dr. Verma did not review the actual MRI film of Petitioner's right knee. (RX2, p.19). Dr. Verma opined that an accident such as that described by Petitioner would not cause a meniscal tear. (RX2, p.19). He further opined that Petitioner was at maximum medical improvement and could return to work full duty for his right knee as of the date of the examination. (RX2). He also opined that chiropractic treatment was not reasonable for a meniscal tear. (RX2).

After the deposition, Dr. Verma prepared a narrative report. (RX4). Dr. Verma reviewed the operative report for Petitioner's right knee. He still did not review the MRI film. He opined that a review of operative report, where Petitioner had a completely different diagnosis, did not change his opinions in any way.

Respondent had a utilization review performed by Dr. Fefles, a chiropractor. (RX5). Dr. Fefles opined that Petitioner should not have received chiropractic treatment following he initial injuries for both Petitioner's knee and elbow for more than 8 weeks. (RX5). Dr. Fefles also opined that Petitioner should have only received physical therapy and not chiropractic treatment following Petitioner's left elbow surgery, and that this therapy should only have lasted for 4-6 weeks. Dr. Fefles further opined that Petitioner did not require chiropractic treatment of any kind following his right knee surgery. (RX5).

CONCLUSIONS OF LAW (09WC11528)

(C,D,F) In support of the Arbitrator's decision with regard to whether Petitioner sustained accidental injuries that arose out of and in the course and scope of his employment with Respondent, and whether Petitioner's current state of ill-being is causally related to the accident, and what was the date of the accident, the Arbitrator makes the following conclusions of law:

Petitioner testified credibly that in the course and scope of his job duties over the last 9 years leading up to the accident date of October 8, 2008, that he would hit his left elbow on a metal bar that was across the driver side door. Petitioner testified that on that particular date, he hit his elbow again on the bar, and that the pain was such that he felt he needed medical attention. Petitioner left work early that day, and sought medical care at St. Alexius.

Petitioner testified credibly that despite the condition and the medical care, Petitioner continued to work until he had another accident involving his knee of February

16, 2009. He testified that his left elbow did not get better from the time of the original medical treatment, and he decided to address this condition as well at that time.

Based upon the foregoing, the Arbitrator finds that on October 8, 2008 Petitioner sustained accidental injuries that arose out of and in the course and scope of his employment with Respondent.

Dr. Freedberg explained that at the first examination, Petitioner's left elbow was tender at the tip. (PX1, p.9, 09WC11528). This was consistent with the radiological studies, which showed a spur at the olecranon, which is the tip of the elbow. (PX1, p.9, 09WC11528). Dr. Freedberg diagnosed Petitioner with cubital tunnel syndrome and a spur at the olecranon process. (p.11). He further testified that the symptoms Petitioner was having, as well as the medical condition, can be caused or aggravated by repeatedly hitting the back of the elbow as described by Petitioner, as that is where the ulnar nerve transverses the elbow. (p.14 - 15). Dr. Freedberg explained that although Petitioner was tender at the medical aspect of the elbow, this can occur if he hit his elbow with enough force. (p.14 - 15) The Arbitrator is persuaded by Dr. Freedberg's testimony.

Based upon the foregoing, the Arbitrator finds that Petitioner's current condition of ill-being as it relates to the left elbow is casually related to the accident of October 8, 2008.

(E) In support of the Arbitrator's decision with regard to whether Respondent was given notice of the accident within the time limits stated in the Act, the Arbitrator makes the following conclusions of law:

Petitioner testified credibly that he gave notice to his supervisor on October 8, 2008 that he had injured his left elbow at work.

Therefore, the Arbitrator finds that timely notice of the accident given to Respondent.

(J) In support of the Arbitrator's decision with regard to whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent paid all appropriate charges for reasonable and necessary medical treatment, the Arbitrator makes the following conclusions of law:

Respondent's dispute on this issue is premised on liability for accident and notice, which has been resolved in favor of Petitioner.

Therefore, the Arbitrator finds that the claimed medical bills are awarded.

(K) In support of the Arbitrator's decision with regard to the amount due for temporary total disability, the Arbitrator makes the following conclusions of law:

Respondent's dispute on this issue is also premised on liability for accident and notice, which has been resolved in favor of Petitioner.

Therefore, the Arbitrator finds that the claimed temporary total disability benefits are awarded.

(L) In support of the Arbitrator's decision with regard to the nature and extent of Petitioner's injury, the Arbitrator makes the following conclusions of law:

Based upon the testimonial and documentary evidence, the Arbitrator finds that Petitioner sustained 20% loss of use of the left arm.

(N) In support of the Arbitrator's decision with regard to whether Respondent is due any credit for payments made, the Arbitrator makes the following conclusions of law:

Respondent shall have credit for all amounts, if any, to or on behalf of Petitioner on account of said accidental injury.

CONCLUSIONS OF LAW 09WC11529

(F) In support of the Arbitrator's decision with regard to whether Petitioner's present condition of ill-being is causally related to the injury, the Arbitrator makes the following conclusions of law:

Petitioner testified credibly that prior to the February 16, 2009 accident, he never had any problems with his right knee. Petitioner's credible testimony is corroborated by medical records and medical testimony and is consistent with the sequence of events.

Based upon the foregoing, the Arbitrator finds that Petitioner's current condition of ill-being as it relates to the right leg is casually related to the accident of February 16, 2009.

(J) In support of the Arbitrator's decision with regard to whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent paid all appropriate charges for reasonable and necessary medical treatment, the Arbitrator makes the following conclusions of law:

Respondent's dispute on this issue is premised on liability for causation, which has been resolved in favor of Petitioner.

Therefore, the Arbitrator finds that the claimed medical bills are awarded.

(K) In support of the Arbitrator's decision with regard to the amount due for temporary total disability, the Arbitrator makes the following conclusions of law:

Respondent's dispute on this issue is also premised on liability for causation, which has been resolved in favor of Petitioner.

Therefore, the Arbitrator finds that the claimed temporary total disability benefits are awarded.

(L) In support of the Arbitrator's decision with regard to the nature and extent of Petitioner's injury, the Arbitrator makes the following conclusions of law:

Based upon the testimonial and documentary evidence, the Arbitrator finds that Petitioner sustained 20% loss of use of the right leg.

(N) In support of the Arbitrator's decision with regard to whether Respondent is due any credit for payments made, the Arbitrator makes the following conclusions of law:

Respondent shall have credit for all amounts, if any, to or on behalf of Petitioner on account of said accidental injury.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☐ 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 SHELBY,

Petitioner,

14IWCC0059

vs.

NO: 06 WC 10643

ILLINOIS YOUTH CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Petitioner appeals the Decision of Arbitrator Granada finding that Petitioner sustained accidental injuries arising out of and in the course of his employment on December 23, 2005, that Petitioner was entitled to an award of medical expenses related to his lumbar and thoracic spine injuries under Section 8(a) and 8.2, that Petitioner was permanently disabled to the extent of 50% of the person as a whole under Section 8(d)(2) of the Illinois Workers' Compensation Act ("Act"). The Arbitrator further found Respondent was not liable for any medical expenses or pharmaceutical expenses related to Petitioner's depression, sexual dysfunction, high blood pressure, or any other medical condition claimed. The issues on Review are whether Petitioner is permanently and totally disabled as a result of his work injury of December 23, 2005, and whether or not the medical expenses incurred for his additional medical conditions should be awarded.

The Commission, after considering the entire record, reverses the Decision of the Arbitrator and finds that Petitioner is permanently and totally disabled as of February 14, 2013, for life pursuant to Section 8(f) of the Act, and that Petitioner's current condition of ill-being with regard to his failed back syndrome, urinary dysfunction, sexual dysfunction, insomnia, depression, anxiety, GERD, hypertension, and chronic intractable breakthrough pain are all causally related, for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner, a 39 year-old youth supervisor at Respondent's youth center, testified that on December 23, 2005 he sustained a low back injury while attempting to break up a fight between juveniles at work. (T6-7). On December 24, 2005, Petitioner sought medical treatment at Hardin County Hospital, at which time he was diagnosed with a lumbosacral muscular sprain with bilateral leg numbness, and a herniated lumbar disc was suspected. Petitioner was taken off work on that date. (PX1).

On December 28, 2005, Petitioner sought follow-up treatment with his personal physician, Dr. Sunga, who diagnosed a severe lumbosacral sprain, right hip radiation, and bilateral radiculopathy, as well as constipation from prescription medication. Petitioner was continued off work and physical therapy as well as an MRI of the lumbar spine was recommended. (PX2). On January 30, 2006, Petitioner's MRI study of the lumbar spine indicated changes of degenerative disc disease with mild annular disc bulges at L4-5 and L5-S1, as well as a minimal annular disc bulge at L3-4. (PX1). Petitioner underwent additional diagnostic testing, a course of physical therapy, from January 26, 2006 through March 20, 2006, and continued conservative treatment with Dr. Sunga. On April 11, 2006, Petitioner reported continued pain in the lumbar spine on the right with right gluteal pain, an increase in his pain medication intake, and complained of a urinary tract obstruction. Dr. Sunga diagnosed post traumatic and persistent lumbosacral and gluteal pain and hypertension, referred Petitioner to Dr. Bergandi, an orthopedic surgeon, and continued to authorize him off work. (PX2).

Petitioner began treating with Dr. Bergandi on May 8, 2006, and subsequently underwent additional diagnostic testing including a CT scan of lumbar spine on May 23, 2006, and an EMG of the lumbar spine on June 27, 2006. On October 26, 2006, Dr. Bergandi performed a complete L4 laminectomy, complete L5 laminectomy, and bilateral foraminotomies at L4 & L5. (PX4). Petitioner complained of continued low back and bilateral leg symptoms following his October 26, 2006 surgery. On December 28, 2006 Petitioner underwent an additional MRI study of the lumbar spine, significant for granulation tissue impinging on the exiting left L5 and left S1 nerve roots. Petitioner continued to treat with Dr. Bergandi through March 5, 2007, during which time he complained of continued low back pain, bilateral radiating leg pain, difficulty voiding, and sexual dysfunction. (PX4).

Petitioner subsequently began treating with Drs. Vaught and Cleaver at the Brain and Neurospine Clinic of Missouri. Petitioner was diagnosed probable lumbar post laminectomy syndrome, and bilateral SI joint dysfunction. Petitioner began a course of therapy and Lyrica, and on September 21, 2007 trial spinal cord stimulator was implanted. Based upon his response to the trial stimulator, on October 19, 2007 Petitioner underwent an implantation of spinal cord stimulator system. Based upon continued complaints of back pain, Petitioner underwent an additional procedure on October 19, 2008, at which time the spinal cord stimulator leads were repositioned. (PX6, PX7).

Petitioner continued to complain of back and right leg pain, and was subsequently seen by Dr. Kern, a neurosurgeon. On February 2, 2011, Dr. Kern removed the dorsal column stimulator and performed a T10 laminotomy. On April 6, 2011, Dr. Kern performed an

additional surgery, an anterior lumbar interbody fusion at L5-S1, and an attempted anterior lumbar interbody fusion at L4-5. However, intraoperative complications arose, iliac vein laceration, which resulted in the abortion of the attempted L4-5 anterior lumbar interbody fusion. On April 8, 2011, Dr. Kern performed the fusion at L5-S1, and repair of iliac vein lacerations. On April 12, 2011, Dr. Kern then performed a L4 thru S1 pedicle screw fixation with posterolateral fusion. (PX11).

On November 29, 2011, Petitioner underwent a functional capacity evaluation, at which time the evaluator found Petitioner unable to be gainfully employed due to significant limitations in his ability to stand, sit, and lift. (PX12).

Petitioner testified he has treated with his personal physician, Dr. Sunga, for 7-1/2 years, is still under his care, and sees him once a month. Petitioner testified Dr. Sunga prescribed the medications listed in PX20, which are medications for high cholesterol, depression, high blood pressure, urinary incontinence, anxiety, and constipation. Petitioner testified he takes three different Oxycontin tablets a day for pain, and that he has not returned to work since his work-related injury on December 23, 2005. (T13-19). Petitioner testified he has to lay down 23 hours a day in normal day, needs a cane to ambulate, and that while he is able to walk, he has back pain immediately when he tries to walk so he avoids walking. Petitioner testified he has pain laying down, standing up, sitting down, and that his burning and throbbing pain radiates to both legs. (T20-28).

Petitioner also testified that he suffers from a urinary problems, that he did not did not have this issue prior to accident or prior to taking all pain meds from it. He also testified he suffers from sexual dysfunction problems, insomnia, constipation, high blood pressure, stomach issues, depression and anxiety, none of which he had prior to taking all the narcotic medications for his work-related injury. Petitioner testified Dr. Sunga diagnosed him with depression and anxiety, and prescribed medication for same. (T28-36).

Petitioner testified he has approximately $207,000.00 in outstanding medical expenses, and that while under Dr. Sunga's care for his work-related injury he received treatment for anxiety, depression, a sleeping disorder, GERD, constipation, high blood pressure, and sexual dysfunction. Petitioner also testified that his monthly medication expense is $1,410.57. (T36-40).

Dr. Sunga testified on June 7, 2012. He testified he treated Petitioner for the last 6-1/2 years, that Petitioner had eight levels of his lumbar spine operated on in those eight surgeries, that over the past 6-1/2 years Petitioner had developed chronic pain syndrome, and that as a result of his surgeries he required narcotic and other medications to control pain and relieve symptoms including Oxycontin CR for pain, Endocet, for breakthrough pain, Lyrica to help with burning sensation in the lower extremities, and Ibuprofen for inflammation and back pain. (T16-21). Dr. Sunga testified the spinal cord stimulator did not work for P, that there is no other type of pain resolution system available to him. He further testified Petitioner takes Valium every night for sleeping and muscle spasm, Celexa for anxiety and depression, and Lunesta for insomnia. He opined Petitioner's anxiety, depression, and insomnia from which he suffers are due to chronic back pain. (T21-24).

unemployable, based upon his significant lumbar and thoracic injuries, the eight invasive surgical procedures, his testimony as to his severe and constant pain symptoms, and his functional capacity evaluation indicating he is unable to be gainfully employed. Furthermore, Petitioner's treating physician, Dr. Sunga, testified Petitioner is incapable even of sedentary work. Although Respondent obtained a Section 12 examination by Dr. Rutz on May 21, 2009 wherein the examiner opined Petitioner was capable of sedentary light duty(RX2), in 2011 Petitioner underwent four additional surgeries to his lumbar spine, including a lumbar fusion. The record fails to reflect Respondent obtained a Section 12 examination subsequent to May 21, 2009 to address Petitioner's medical condition. Respondent tendered no evidence to rebut Dr. Sunga's testimony that Petitioner is permanently totally disabled. Given the severity of his injuries, his significant surgical procedures, his severe ongoing pain symptoms, and Dr. Sunga's opinion he is permanently totally disabled, Petitioner met his burden to prove permanent total disability under Section 8(f) and is to receive $459.46 per week for life commencing February 14, 2013. Furthermore, based upon Dr. Sunga's credible and unrebutted opinions on a causal connection between Petitioner's work related injury and his failed back syndrome, urinary dysfunction, sexual dysfunction, insomnia, depression, anxiety, GERD, hypertension, and chronic intractable breakthrough pain, the Commission finds these conditions are all causally related, in part or in whole, to his work-related injury of December 23, 2005.

Based upon our finding of a causal connection between Petitioner's work-related injury and his current condition of ill-being with regard to his lumbar and thoracic spine injuries, depression, anxiety, sexual dysfunction, urinary dysfunction, and high blood pressure, the Commission further finds Petitioner is entitled to the medical expenses related to these conditions, contained in Petitioner's Exhibit 17 ($207,968.15) and Petitioner's Exhibit 20 ($3,733.40).

The Commission notes the parties stipulated Petitioner is entitled to temporary total disability benefits for the period of 423-1/7 weeks, from December 24, 2005 through February 13, 2013. Accordingly, the Commission finds Petitioner is entitled to temporary total disability benefits for the period of 423-1/7 weeks, from December 24, 2005 through February 13, 2013, at the rate of $459.46 per week.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 20, 2013, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $459.46 per week for 423-1/7 weeks, from December 24, 2005, through February 13, 2013, which is the period of temporary total disability for which compensation is payable.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $211,701.55 for medical expenses as identified in Petitioner's Exhibit 17 and Petitioner's Exhibit 20, representing all past medical bills related to his lumbar and thoracic spine injuries, depression, anxiety, sexual dysfunction, urinary dysfunction, and high blood pressure, as provided under § 8(a) of the Act, subject to the medical fee schedule,

14IWCC0059

IT IS FURTHER ORDERED BY THE COMMISSION that commencing on February 14, 2013, Respondent shall pay to Petitioner the sum of $ 459.46 per week for life under § 8(f) of the Act for the reason that the injuries sustained caused the total permanent disability of Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that commencing on the second July 15th, after the entry of this award, the Petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in Section 8(g) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall 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: JAN 2 9 2014
KWL/kmt
O-10/29/13
42

Thomas J. Tyrrell

Daniel R. Donohoo

DISSENT

I respectfully dissent from the decision of the majority. I disagree with the majority's interpretation of the record finding that Petitioner falls within the category of a permanent total disability. I find Arbitrator Granada's opinion to be both thorough and well reasoned. I would affirm this decision in its entirety without modification.

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0059

SHELBY, JAMES JR
Employee/Petitioner

Case# 06WC010643

ILLINOIS YOUTH CENTER HARRISBURG
Employer/Respondent

On 3/20/2013, 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:

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

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
AARON WRIGHT
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

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

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

MAR 20 2013

KIMBERLY B. JANAS 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
NATURE AND EXTENT ONLY

14IWCC0059

James Shelby, Jr.
Employee/Petitioner

v.

Illinois Youth Center, Harrisburg
Employer/Respondent

Case # 06 WC 10643

Consolidated cases: ___

The only disputed issue is the nature and extent of the injury. 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 **Herrin**, on **02/14/13**. By stipulation, the parties agree:

On the date of accident, **12/23/05**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained 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 **$35,874.00**, and the average weekly wage was **$689.88**.

At the time of injury, Petitioner was **39** years of age, ***married*** with **2** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **$171,364.03** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$171,364.03**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $413.93/week for a further period of 250 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused **50% Person as a Whole.**

Respondent shall pay Petitioner compensation that has accrued from **12/24/05** through **02/14/13**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay all medical bills that are reasonably related and medically necessary regarding the Petitioner's spinal injury, limited to all treatment regarding his Lumbar and Thoracic spinal regions subject to the Fee Schedule in accordance with Sections 8(a) and 8.2 of the Act.

Respondent shall NOT be required to pay for any medical bills, including pharmaceuticals, incurred for depression, sexual dysfunction, high blood pressure or any other condition claimed or alleged arising out of his incident other than the Lumbar and or Thoracic injury.

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

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

Signature of Arbitrator

3/15/13
Date

MAR 20 2013

14IWCC0059

Findings of Fact

The Petitioner was employed at the Respondent's Illinois Youth Center in the Department of Corrections, Harrisburg Illinois at the time of this stipulated accident on December 23rd, 2005. At that time his job title was that of Youth Supervisor II. On the aforementioned date, the Petitioner was called to break up a fight between juveniles and in the process, injured his back. Initially, the Petitioner's injury was believed to be that of a sprain/strain to his lower back. Petitioner treated at the Hardin County General Hospital during which a lumbar x-ray was conducted finding degenerative changes with no acute bone abnormality. Petitioner had an MRI conducted on January 30th, 2006 which found a mild annular disc bulge at L4-5, L5-S1, and a minimal annular disc bulge at L3-4. Petitioner was then referred by his personal physician, Dr. Sunga to Dr. Bergandi with the Southern Orthopedic Associates in southern Illinois. A laminectomy was performed at the L4 level on October 26th, 2006. Thus began a series of surgeries involving the Petitioner's spinal region that totals eight to date. This included having a dorsal column stimulator put in and then removed in a later surgery.

At trial Petitioner testified he was unable to work. Petitioner proffered a job search exhibit consisting of only one page which tabulated only fifteen positions sought from June 20, 2012 through August 10, 2012. Seven [7] of these list "word of mouth" as the source. The Petitioner has not worked since December 23rd 2005, nor was any evidence provided that Petitioner's job search went beyond the fifteens positions indicated above.

Dr. Kevin Rutz at Orthopedic Specialists conducted an examination of the Petitioner on May 21st, 2009 pursuant to Section 12 of the Act. Dr. Rutz opined the Petitioner "is capable of sedentary type duty at this point and no lifting over 20 pounds and being able to change positions as needed." He indicates the Petitioner was not "capable of performing his full duties as a juvenile justice specialist" and he did feel these restrictions were permanent.

Additionally, at trial Petitioner testified in detail regarding other conditions believed to be related to the lumbar injury including, sexual dysfunction, high blood pressure, and depression. Petitioner also proffered the deposition of his treating physician, Dr. Sunga, with testimony in this regard. Dr. Sunga testified under cross examination that three or four months after his accident the Petitioner was complaining of a benign enlarged prostate, which can cause sexual dysfunction. [Dr. Sunga Deposition, p37]. Dr. Sunga indicated the Petitioner's own low testosterone levels could be related to his pain medication intake. [Id. P38]. While the medical records in this matter are quite copious, there does not appear to be any testimony from any of the Petitioner's treating experts regarding Petitioner's sexual dysfunction, high blood pressure, or depression being causally connected to his back injury. Furthermore, there does not appear to be any testimony from either a licensed Psychologist or Psychiatrist regarding these issues.

Based on the foregoing, the Arbitrator makes the following conclusions:

1. As a result of Petitioner's undisputed accident, Petitioner's injuries have resulted in a 50% loss of use of the man as a whole . Accordingly, Respondent shall pay Petitioner permanent partial disability benefits of $413.93 per week for 250 weeks, because the injuries sustained caused the 50% loss of the person as a whole, as provided in Section 8(d)2 of the Act. The Arbitrator notes that there was insufficient evidence presented at trial to support an award of permanent total disability, as there was no medical evidence of permanent total disability nor sufficient evidence supporting an odd-lot claim in the form of either an extensive job search or the opinion of a vocational rehabilitation expert regarding the same.

2. Respondent shall pay all medical bills that are reasonably related and medically necessary regarding the Petitioner's spinal injury, limited to all treatment regarding his Lumbar and Thoracic spinal regions. Respondent shall NOT be required to pay for any medical bills, including pharmaceuticals, incurred for depression, sexual dysfunction, high blood pressure or any other condition claimed or alleged arising out of his incident other than the Lumbar and or Thoracic injury. No testimony was offered by experts and or specialists in these fields, nor was any evidence offered by any of the Orthopedic Surgeons that treated the Petitioner giving a causal connection between these conditions and the Petitioner's original back injury.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ 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

14IWCC0060

Roger Hunter,
Petitioner,
vs.

NO: 11 WC 40433

Ecolab Pest Elimination,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 7, 2013 is hereby affirmed and adopted.

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

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

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: JAN 3 1 2014
KWL/vf
O-12/3/13
42

Kevin W. Lamborn

Daniel R. Donohoo

 DISSENT

I respectfully dissent from the decision of the majority. This case involves a 61 year old employee who had worked the same job for Respondent for over 18 years. Essentially, he averaged 13 hour days, working 5-7 days a week, and was always on call. He baited and set traps and bait stations outside of buildings, food plants, restaurants, hospitals, and other commercial establishments. He would hold on to the compressed air sprayer with his left hand and spray with his right. He used his right hand to pump the sprayer. The frequency of the pumps depended upon the age of the sprayer. It would range anywhere from 8 to 30 pumps. The weight of the sprayer would depend on the particular size as well as the number of pounds of pesticide contained therein. The range, depending on the size of the container, would vary from 8 to 16 pounds of pesticide.

Petitioner testified that both of his hands were numb and burn like fire at night. In an effort to remedy his intense discomfort, he tried putting on gloves, took pain pills, and even got up in the night to put his hands in cold water to try to get relief from the burning and pain. He worked the sprayer on all his jobs. He testified that he was not a "baseboard Jockey". He would even stay and spray on the smallest accounts from 30 minutes to a 1 hour. Petitioner testified that his hands were continually hurting when he worked at Ecolab right up until the time he left at the end of December 2010 or beginning of January 2011. He stopped working at Ecolab due to an unrelated medical condition.

Bilateral Carpal Tunnel Syndrome by its very nature comes on gradually. Indeed, this case was no different. Petitioner testified his hands kept getting worse to the point that he sought medical treatment from his family physician, Dr. Alvaredo, on March 30, 2011. Dr. Alvaredo ordered an EMG Nerve Conduction Study at Oliver Anderson Hospital. Following the EMG at Oliver Anderson Hospital, Petitioner was seen by Dr. Bruce Schafly, a board certified orthopedic hand surgeon, who was familiar with Petitioner's job duties. He opined that Petitioner's repetitive work activities were the cause of his bilateral carpal tunnel syndrome. Dr. Schafly was aware of the number of hours worked per day, the weight of the spraying canisters, the days worked per week, and the length of the spraying per shift. Dr. Schafly recommended bilateral carpal tunnel release surgeries to resolve the condition.

Dr. William Strecker, a board certified orthopedic hand surgeon retained by Respondent as a Section 12 examiner, examined Petitioner and offered opinions. Dr. Strecker agreed that Petitioner's diagnosis was bilateral carpal tunnel syndrome and that Petitioner needed bilateral carpal tunnel release surgeries. However, Dr. Strecker opined that Petitioner's job activities would not have had any more impact on the development of Petitioner's bilateral condition than any other activity of daily living. Important to take into consideration are relevant facts that were unknown to Dr. Strecker. He was unaware of the weight of the spray canisters used, the

number of hours per day spent spraying, or the number of days worked per week. Dr. Strecker acknowledged in his deposition that his report was inaccurate regarding the number of complaints of bilateral hand pain until January of 2012. Dr. Strecker corrected this aspect of his report during his deposition since Dr. Alvaredo's March 30, 2011 note stated Petitioner had burning numbness and tingling in both hands.

Unquestionably, the nature of Petitioner's job duties, hours, years performing the same repetitive function, the credibility of his testimony, the strength of Dr. Strecker' s opinion when compared to the lack of pertinent information not contained in Dr. Schafly's opinion, I find there is sufficient justification to reverse the majority. Respectfully, I dissent.

Thomas J. Tyrrell

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

14IWCC0060

HUNTER, ROGER
Employee/Petitioner

Case# **11WC040433**

ECOLAB PEST ELIMINATION
Employer/Respondent

On 6/7/2013, 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:

1846 BROWN & CROUPPEN PC
KERRY O'SULLIVAN
211 N BROADWAY SUITE 1600
ST LOUIS, MO 63102

2965 KEEFE CAMPBELL BIERY & ASSOC LLC
JAMES EGAN
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0060

Case # 11 WC 40433

Consolidated cases: _____

Roger Hunter
Employee/Petitioner

v.

Ecolab Pest Elimination
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 William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on April 26, 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. ☒ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident (manifestation), March 30, 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 not sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $60,717.12; the average weekly wage was $1,167.64.

On the date of accident, Petitioner was 59 years of age, married with 0 dependent child(ren).

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

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $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

Based upon the Arbitrator's conclusions of law attached hereto, claim for compensation is denied.

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

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

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

William R. Gallagher, Arbitrator
ICArbDec19(b)

May 30, 2013
Date

JUN - 7 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury to both hands arising out of and in the course of his employment for Respondent. The Application alleged a date of accident (manifestation) of April 1, 2011. At trial, Petitioner's counsel made a motion to amend the date of accident (manifestation) to March 30, 2011. Respondent's counsel had no objection and the motion was granted by the Arbitrator. This case was tried as a 19(b) proceeding and Petitioner sought an order for payment of medical bills and prospective medical treatment. Respondent disputed liability on the basis of accident and causal relationship.

Petitioner testified that he worked for Respondent as a service specialist for approximately 18 years. Respondent was in the business of controlling/eliminating various pests such as insects, mice and other animals. Petitioner worked up to 13 hours a day and five to six days per week. While performing his work, Petitioner used an air sprayer, a fogger, a bait gun (which he described as being similar to a caulk gun) and various traps.

The primary basis of Petitioner's repetitive trauma claim was his use of the air sprayer which was used to spray insecticides. Petitioner used two of these devices, a smaller one that contained one gallon of liquid and another that contained two gallons of liquid. Petitioner estimated the weight of the small and large sprayers (when empty) to be approximately three pounds and five to six pounds, respectively. Petitioner would hold the device with the left hand and sprayed with the right hand. The repetitive trauma alleged to have been sustained by Petitioner was the repetitive pumping of the canister to compress the air so that the sprayer would work properly. Petitioner testified that he would have to pump the sprayer anywhere from eight to 20 or 30 times depending on the age of the device. Petitioner agreed that there was no vibration associated with the pumping of these canisters.

Petitioner testified that he usually spent one half or more of each workday spraying. Petitioner stated that for the larger commercial jobs he could spray up to four to six hours at one location. Even while on smaller jobs, Petitioner would spray 35 to 45 minutes. Petitioner made an effort to control his scheduling so that, on any given workday, the accounts that he would service would be a five to 15 minute drive from one to another. This minimized Petitioner's driving time to two to three hours per day which included his travel time from his home to the first job and his return home from the last job.

Petitioner testified that the symptoms in his hands came on gradually within four to five years before he sought treatment from Dr. Ale Alvarado, his family physician, who saw him on March 30, 2011, (the date of manifestation alleged in the Amended Application) because of his hand complaints. Dr. Alvarado's record of that date stated that Petitioner had complaints of burning, limb pain, numbness and tingling and that the symptoms had begun approximately three years prior. Dr. Alvarado had nerve conduction studies performed on April 5, 2011, which found that Petitioner had bilateral carpal tunnel syndrome.

In June, 2010, Petitioner sustained an injury to his right knee and he was unable to work because of this injury until late November, 2010. Petitioner was only able to work for a little more than a

month and he ceased working completely sometime in January, 2011. Petitioner attributed his inability to work to his knee injury and there was no demand for any payment of temporary total disability benefits at the time this matter was tried. Petitioner testified that, although he had not been working for considerable amount of time, that his hand condition worsened.

At the direction of counsel, Petitioner was examined by Dr. Bruce Schlafly, an orthopedic surgeon, on January 24, 2012. Dr. Schlafly obtained a work history from Petitioner, reviewed medical records provided to him and examined the Petitioner. At the time Petitioner was examined by Dr. Schlafly, he stated that since the time he stopped working for Respondent that the extreme burning pain had lessened but that he still had constant numbness in both of his hands. Dr. Schlafly opined that Petitioner had bilateral carpal tunnel syndrome and he recommended surgical releases. In regard to causality, Dr. Schlafly opined that Petitioner's repetitive work with his hands was the substantial and prevailing factor in the cause of the bilateral carpal tunnel syndrome and the need for surgery.

Dr. Schlafly was deposed on April 18, 2012, and his deposition testimony was received into evidence at trial. Dr. Schlafly's testimony was consistent with his narrative medical report of January 24, 2012, and he reaffirmed his opinion regarding causality. Dr. Schlafly agreed that his understanding of Petitioner's job duties was based solely on what the Petitioner told him and that he did not review any written job description.

At the direction of Respondent, Petitioner was examined by Dr. William Strecker, an orthopedic surgeon, on August 22, 2012. Dr. Strecker obtained a history from Petitioner, reviewed both medical records and a job description and examined the Petitioner. Dr. Strecker agreed with Dr. Schlafly and opined that Petitioner had bilateral carpal tunnel syndrome and that surgery was appropriate; however, in regard to causality, Dr. Strecker opined that there was not a causal relationship between Petitioner's work activities and the bilateral carpal tunnel syndrome. Dr. Strecker opined that Petitioner was not exposed to forceful repetitive activity, does not use vibratory tools and he is not required to maintain his extremities in abnormal positions for prolonged periods of time. Dr. Strecker also noted that Petitioner did not mention any parasthesias in his hands until approximately four months after he ceased his employment for Respondent, erroneously stating that this occurred in January, 2012.

Dr. Strecker was deposed on March 14, 2013, and his testimony was received into evidence at trial. Dr. Strecker's testimony was consistent with his narrative medical report of August 22, 2012. Dr. Strecker reaffirmed his opinion that there was not a causal relationship between Petitioner's work activities and the bilateral carpal tunnel syndrome. Dr. Strecker opined that the pumping of the canister was not a forceful repetitive activity that would cause or aggravate the carpal tunnel syndrome. When cross-examined, Dr. Strecker agreed that the first mention of parasthesias was on March 30, 2011, and that his reference to January, 2012, was erroneous.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner did not sustain a repetitive trauma injury arising out of and in the course of his employment for Respondent and that his current condition of ill-being is not related to any work activity.

In support of this conclusion the Arbitrator notes the following:

The Petitioner was not working for Respondent at the time of the alleged manifestation of March 30, 2011, and had not worked for Respondent for approximately four months. Further, since June, 2010, with the exception of late November, 2010, to January, 2011, the Petitioner had been unable to work for Respondent because of a knee injury.

Petitioner testified that the symptoms came on gradually for approximately four to five years; however, Petitioner did not provide any explanation as to why he did not seek medical care until March 30, 2011.

Petitioner's testimony at trial was that while he was not working, his hand symptoms worsened. This is contrary to what he told Dr. Schlafly at the time of his examination when he informed Dr. Schlafly that the extreme burning pain had lessened but that he still had constant numbness.

It is not clear exactly how much time the Petitioner spent pumping canisters; however, while performing this task, the Petitioner was not exposed to any vibration nor was he required to maintain his upper extremities and wrists in any abnormal positions for any prolonged periods of time.

The Arbitrator thereby finds the opinion of Dr. Strecker in regard to causality to be more credible than that of Dr. Schlafly.

In regard to disputed issues (J) and (K) the Arbitrator makes the following conclusion of law:

Based upon the Arbitrator's conclusions in disputed issues (C) and (F) the Arbitrator concludes that Petitioner is not entitled to payment of medical bills or prospective medical treatment.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ 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

Dennis Smith,

Petitioner,

14IWCC0061

vs.

NO: 09 WC 32114

U. S. Steel,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 20, 2013 is hereby affirmed and adopted.

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.

14IWCC0061

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $22,200.00. 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: JAN 31 2014

David L. Gore

Mario Basurto

Daniel R. Donohoo

DLG/gal
O: 1-23-14
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SMITH, DENNIS
Employee/Petitioner

Case# **09WC032114**

14IWCC0061

U S STEEL
Employer/Respondent

On 2/20/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

4364 LAW OFFICE OF THOMAS SCHOOLEY
203 EDISON AVE
P O BOX 1289
GRANITE CITY, IL 62040

0299 KEEFE & DEPAULI PC
GREGORY S KELTNER
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

☐ 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

14IWCC0061

DENNIS SMITH
Employee/Petitioner

v.

U.S. STEEL
Employer/Respondent

Case # 09 WC 32114

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **LEE**, Arbitrator of the Commission, in the city of **COLLINSVILLE**, on **12/21/12**. 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 **6/29/09**, 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 $; the average weekly wage was **$1,299.52**.

On the date of accident, Petitioner was **45** 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 **$N/A** for TTD, **$N/A** for TPD, **$N/A** for maintenance, and **$N/A** for other benefits, for a total credit of $.

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

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $866.35/week for 5 6/7 weeks, commencing 6/17/09 through 7/27/09, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 6/17/09 through 7/27/09, and shall pay the remainder of the award, if any, in weekly payments.

Medical benefits

Respondent shall pay reasonable and necessary medical services of $ See Petitioner Exhibit 6, as provided in Section 8(a) of the Act.

Respondent shall be given a credit of $n/a 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.

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of $664.72/week for 25.625 weeks, because the injuries sustained caused the 12.5% loss of the 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.

Edward Lee
Signature of Arbitrator

2/17/13
Date

MEMORANDUM OF DECISION OF ARBITRATOR

The issues in dispute in this case are Causation, Temporary Total Disability, Medical Bill, Nature and Extent, Accident, Accident Date and Notice. The Petitioner filed an Application for Adjustment of benefits on August 3, 2009 alleging a date of accident of June 29, 2009 as a result of repetitive trauma.

The Petitioner testified that he had been employed by U.S. Steel for approximately 17 years. In 2000 he began working as a hot strip bander and the Petitioner alleges that his duties therefore caused him to be diagnosed with right hand carpal tunnel. Petitioner's Exhibit Number 7 is a hand written note with a diagram that details the Petitioner's work duties as a hot strip bander. The Petitioner testified that his duties require a forceful grip on the gun and that a typical shift where he works one hour on and one hour off he could band as many as 135 coils. The Petitioner testified that at least once a week he would double over on his shift and during that 16 hour period he would band approximately 270 coils. Respondent's witness Robert Peek testified that he felt this number to be a little high and that in all likelihood it was more like 150 - 200 coils would be run per shift. In either event the Arbitrator finds that the video tape as submitted by the Respondent illustrates that the coils moving on the conveyor are moving at a slower rate than it would be required to band the number of coils per the Petitioner or Robert Peek's testimony. Both the Petitioner and Robert Peek indicated that the video tape does correctly and accurately detail the Petitioner's job duties as a hot strip bander, although the Petitioner indicated his right hand was constantly moving. The Petitioner further testified however that the video depicts clean tails or ends of the coil and in many instances the Petitioner would have to personally re-wrap the coil because it would start to unwind and the Petitioner did consider his work fast paced.

The Petitioner first testified that he began having symptoms while banding coils 1-2 years after he began this process. He felt like his hands would just be sore at the end of the day, however he did not recognize or put together that his work activities were causing the soreness in his hands or wrists. Prior to his hot strip banding job the Petitioner did not have any symptoms of his right hand or wrist.

The Petitioner testified that his hand would be cramping and going numb and that his arm was always sore.

The Petitioner in 2007 was assigned a job in the storeroom and worked this until there was an overall plant layoff on November 20, 2008. The Petitioner testified that during his time in the storeroom his right hand was constantly numb and hurting and he was not getting any relief. His duties in the storeroom were to use a delivery truck making deliveries throughout the plant including valves, furniture, water cases, cables, and bearings. The Petitioner testified that the truck would be loaded with pallets by the previous shift and when working his shift he would immediately begin delivering material throughout the plant. Material would be distributed by hand and the Petitioner classified this work as heavy. The Petitioner testified that he and a co-

worker would together lift the heaviest objects off the truck.

Once the trucks were off loaded the remainder of Petitioner's shift consisted of filling orders which would require him to pull items off the shelf and place them where they would go.

The Petitioner testified that during his time in the storeroom his right hand never stopped hurting and continued to go numb. His right elbow would also experience stiffening pain when he would raise or lower his arm.

The Petitioner testified that on November 20, 2008 there was a general plant shutdown which lasted until he returned to work on July 29, 2009.

The Petitioner sought out the care of his family physician Dr. El-Khatib in February 2009. The Petitioner's Exhibit 3, the records from Troy Family Heath Center, Dr. Khatib show the Petitioner between October 2005 and February 2008 made generalized complaints of pain in his feet, hips, shoulder, hands and was given Celebrex for what the doctor diagnosed as osteoarthritis.

On February 23, 2009, the Petitioner complained to Dr. Khatib that his hands and feet are going numb. Primarily the Petitioner complained of foot pain over a year. Dr. Khatib did assess that the Petitioner may have right upper extremity carpal tunnel syndrome but it is uncertain whether this was relayed to the Petitioner. He did suggest nerve conduction studies.

On March 2, 2009, the Petitioner saw Dr. Khatib complaining of fatigue and numbness and felt better after using over the counter B12 and did advise Dr. Khatib that on the job he pulled and twisted his right upper extremity for 5-6 years. The Petitioner saw Dr. Khatib on April 13, 2009 advising that nerve conduction studies were scheduled for the following week and also advised that the vitamin B12 has helped his feet numbness but his arm was still going numb.

On March 27, 2009, the Petitioner saw Dr. Naseer to get the nerve conduction studies scheduled. He complained to Dr. Naseer of complains of feet and arm numbness, there is no mention of any associated work activity causing these symptoms. Nerve conduction studies performed on May 14, 2009 revealed moderate right carpal tunnel syndrome and ulnar neuropathy around the elbow.

Dr. Naseer referred the Petitioner to orthopedic surgeon Dr. Paul Scherer who first saw the Petitioner on June 11, 2009. The Arbitrator notes that when the Petitioner first saw Dr. Scherer the Petitioner advised that doctor that he was having problems with his right hand going to sleep for at least 1 ½ years he was laid off from the mill he wants to have this taken care while he still has insurance. Simply using a computer mouse causes his entire right hand goes to sleep. The Arbitrator notes that there is no mention by Petitioner of any work activities in this initial visit. Dr. Scherer's impression was that the Petitioner had right carpal tunnel syndrome moderate

and performed surgery on June 17, 2009.

On the first post operative visit on June 29, 2009 the Petitioner reported that he was no longer experiencing episodes of numbness in the right hand. The Petitioner's work history was discussed with the doctor and the Petitioner advised Dr. Scherer that he had been banding coils for 7 years using a heavy duty banding tool which requires a hard squeezed to crimp and cut the bands and this ends in a snap. The coils are hot when he was doing this and he has to do it quickly. Approximately 2 years ago when he went to the storeroom he had been doing a lot of lifting and carrying and his hand numbness has persisted since that time.

It was the Petitioner's testimony that Dr. Scherer initiated the conversation about his work activity.

Dr. Scherer has opined that it is very likely that the job duties of the Petitioner of banding coils repeatedly and using the hand coil banding tools for 7 years substantially contributed to or caused his carpal tunnel syndrome. He further opined that the Petitioner has had persistent numbness in his hands for several years and that when he started working in the storeroom and continued lifting and carrying that the numbness persisted. Scherer further opined that it is hard to say whether the carrying and lifting may have aggravated the carpal tunnel further or whether the carpal tunnel syndrome has merely persisted from prior years of hand use.

Dr. Scherer's records reveal that he had the Petitioner on light duty after surgery (6/17/09)and returned the Petitioner to work fully unrestricted on July 27, 2009. The Petitioner's light duty restrictions were that he was to do no repetitive use of the right hand and no lifting pushing and pulling in excess of 2-5 pounds. The Petitioner further testified that he last saw Dr. Scherer on August 10, 2009 and has not seen a doctor for his right carpal tunnel syndrome since that date. He currently states that his hand is doing well and that he has no pain, numbness, or tingling, however he does notice a deficit in his grip strength.

The Petitioner testified that the first time he realized that his work activities were causing his right hand symptoms and the diagnosis of his carpal tunnel was when Dr. Scherer discussed this with him on June 29, 2009. The Petitioner testified that he was not aware of what carpal tunnel was while he was working for the Respondent.

The Respondent had the Petitioner examined by Dr. Mitchell Rotman who took a history from the Petitioner, the history consisted of the Petitioner's stating that he feels his carpal tunnel on the right side was due to banding coils. The Petitioner testified that he thought he was having circulation problems when he was doing that job, stating that he ignored it and then his hand went numb all the time and woke him up at night. He banded for about 7 years and then for the last 2-3 years he was transferred to the storeroom. There is no history of diabetes but he does have a history of B12 deficiency. His B12 shots did help his leg numbness and tingling. The Petitioner has described in detail the banding process and Dr. Rotman did review medical records and the video provided by the Respondent. Based upon a review of all this information Dr.

Rotman opined that the Petitioner was at MMI from his advanced carpal tunnel. Dr. Rotman could not attribute the Petitioner's carpal tunnel to the banding activity, in fact finding his carpal tunnel to be idiopathic. Dr. Rotman did not feel the carpal tunnel was aggravated by any work activities as well.

ACCIDENT AND NOTICE OF ACCIDENT

The Arbitrator concludes, based upon the evidence submitted and the Courts analysis set forth in the cases of Peoria County Belwood Nursing Home vs. Industrial Commission, 115 Ill. 2nd 524, 505 N.E. 2nd 1026, 106 Ill. Dec. 235 (1987), Three "D" Discount Store v. Industrial Commission, 198 Ill, App 3d 43, 556 NE 2d 261, 144 Ill. Dec. 794 (1989) as well as Durand v. Industrial Commission, 224 Ill. 2d53, 862 N.E. 2d 918, 308 Ill. Dec. 715 (2006) that the Petitioner sustained an accidental injury on June 29, 2009, the date that Dr. Scherer inquired of Petitioner what his specific work duties were. The Petitioner testified that was the first time he was aware that his repetitive work activities were causing his right hand symptoms caused by the carpal tunnel syndrome. The Petitioner testified that while working for the Respondent he was unaware as well what carpal tunnel syndrome was and did not make the connection between his work activities and his hand complaints.

The arbitrator also concludes that Notice of Accident was properly given by the Petitioner to the Respondent as his Application for Adjustment of Claim was filed on August 3, 2009, 36 days after June 29, 2009.

ACCIDENT AND CAUSAL CONNECTION

The Petitioner testified that prior to working as a hot strip bander he had no symptoms referable to his right wrist or hand. The medical records from Dr. Scherer reveal Petitioner is not diabetic. The Petitioner's job description (Exhibit 7), his testimony concerning his job duties as a bander and while in the storeroom, along with the Respondent's video demonstrating the bander's job (albeit at a slower pace) clearly provide evidence that the Petitioner's work was hand and wrist repetitive in nature.

Petitioner testified that he was required to use his right hand to grip the banding gun and twist the gun to the left and right to hook onto the band. He was also required to use his right hand to move the gun up and down to gain access to the band. The Petitioner testified the banding gun vibrates when operated and that the gun would kick as it crimps and cuts. The gun would also "kickback" into Petitioner's palm when it cut. This was all done as Petitioner was forcefully gripping the gun. By Petitioner's estimation as well as Respondent's witness Peek the Petitioner would band 100 to 135 coils per shift which would consist of 4 hours of work or 25-34 bands per hour. This would further break down to a coil being band every 1.75 minutes to 2.4 minutes. When Petitioner worked a double shift, then he would band on on average 200-270 coils per day.

Petitioner testified his right hand and wrist symptoms first appeared while performing the banding duties and did not abate when he stopped banding and went to the storeroom, where his symptoms continued when delivering throughout the plant.

Petitioner's treating physician has testified that the job duties of the Petitioner, banding coils repeatedly and using hand coil banding tools for 7 years, substantially contributed to or caused his carpal tunnel syndrome.

The Arbitrator therefore concludes that the Petitioner sustained an accident arising out of and in the course of his employment with the Respondent and further finds the Petitioner's carpal tunnel syndrome causally related to his work accident when banding coils. In doing so, the Arbitrator finds more credible Dr. Scherer's opinion than Dr. Rotman as the video does not correctly or accurately depict the speed of Petitioner's work duties.

T.T.D, MEDICAL BILLS, P.P.D.

Having found for Petitioner on the issues of Notice, Accident and Causal Connection, the Arbitrator awards the Petitioner T.T.D. benefits from 6/17/09 to 7/27/09, the undisputed time period for which Petitioner was taken off work by Dr. Scherer.

The Arbitrator further orders the Respondent to pay Petitioner's medical bills incurred as a result and related to his carpal tunnel syndrome condition per the medical fee schedule.

The Arbitrator lastly orders Respondent to pay to Petitioner 12.5% loss of the right hand at the rate of $664.75 per week for 25.625 weeks as a result of the carpal tunnel syndrome and based upon the Petitioner's testimony.

Respectfully Submitted,

Edward Lee

Arbitrator Edward Lee

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☒ 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

Robert Griffin,

Petitioner,

14IWCC0062

vs.

NO: 11 WC 40321

Caterpillar, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, the nature and extent of Petitioner's disability, statutory interpretation (section 8.1(b)), and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 1, 2013 is hereby affirmed and adopted.

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.

14IWCC0062

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $13,900.00. 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: JAN 3 1 2014

DLG/gal
O: 1/23/14
45

David L. Gore

Mario Basurto

Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION

NOTICE OF ARBITRATOR DECISION

GRIFFIN, ROBERT
Employee/Petitioner

Case# **11WC040321**

CATERPILLAR INC
Employer/Respondent

14IWCC0062

On 3/1/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0293 KATZ FRIEDMAN EAGLE ET AL
PHILIP A BARECK
77 W WASHINGTON 20TH FL
CHICAGO, IL 60602

2994 CATERPILLAR INC
MARK FLANNERY
100 N E ADAMS ST
PEORIA, IL 61629-4340

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

☐ 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 14IWCC0062

Robert Griffin
Employee/Petitioner

v.

Caterpillar, Inc.
Employer/Respondent

Case # 11 WC 40321

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 Mathis**, Arbitrator of the Commission, in the city of **Springfield**, on **December 12, 2012**. 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 **September 30, 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 $**46,000.52**; the average weekly wage was $**884.63**.

On the date of accident, Petitioner was **62** 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 $**2,106.36** for TTD, $**1,257.88** for TPD, $- for maintenance, and $- for other benefits, for a total credit of $**3,364.24**. The parties stipulated the correct TTD and TPD was paid.

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

ORDER

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of $530.78/week for 32.25 weeks, because the injuries sustained caused the 15 % loss of use of the Petitioner's left leg, as provided in Section 8(e)12 of the Act. In support of the Arbitrator's determination, please refer to Appendix "A" attached. Respondent shall pay Petitioner compensation that has accrued from September 30, 2011 through December 12, 2012, and shall pay the remainder of the award, if any, in weekly payments.

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.

S J Mathis
Signature of Arbitrator

2-27-13
Date

MAR 1 - 2013

APPENDIX "A"

In regards to "F" – "Is Petitioner's current condition of ill-being causally related to the injury?" and "L" – "What is the nature and extent of the injury?", the Arbitrator finds the following:

FINDINGS OF FACT

Petitioner was 62 years of age at the time of the accident on September 30, 2011. He was married and had no dependent children. On September 30, 2011 Petitioner testified that he was carrying a ladder, weighing approximately 50 pounds, positioning the ladder and felt a "pop" in his left knee. (T.15).

At the time of the accident, Petitioner testified he was a machinist and had worked for Respondent as a machinist since he was hired in 2004. As a machinist, Petitioner testified that he worked in a large cell on machine parts and sent them on to assembly. (T.9). In performing his job duties, he would spend eight hours a day on his feet and was required to perform kneeling, squatting and twisting at his knees periodically throughout the work day. (T.10). Petitioner also testified that he would use step ladders throughout the work day and would utilize ladders 15 to 25% of the work day while working on certain machines. (T.11, T.12). Petitioner would classify his machinist's duties as physical with reference to his knees.

After the accident, Petitioner testified he notified his supervisor and was carted to Caterpillar Medical. (T.16). According to the Caterpillar medical records, the Respondent provided Petitioner with a knee sleeve which Petitioner testified he began wearing. (T.17, T.18, Px1, Rx1).

On October 5, 2011, Petitioner testified he began treatment with Dr. Kefalas. (T.18). Dr. Kefalas noted that Petitioner presented with an "acute left knee injury which occurred on 09-30-11 at work." (Px2, Rx2). The doctor noted the Petitioner felt a "pop" in his left knee while he was positioning a ladder. (Px2, Rx2). He was prescribed restrictions, provided light duty work, and recommended for an MRI which was performed. (T.19).

On October 6, 2011, the MRI revealed a partial tear of the ACL, Grade I MCL injury as well as medial meniscal tear with meniscus extrusion, joint effusion and synovial changes. (Px2, Rx2). On October 18, 2011, Caterpillar's physician, Dr. Fabrique, indicated that Petitioner's left knee injury was "occupational" and Petitioner was prescribed restrictions. (Px1, Rx1).

As a result of his knee restrictions, he was transferred to the tool room which dropped his classification from a Class V to a Class II and decreased his hourly pay rate from $22.40 to $14.97. From October 24, 2011 through December 14, 2011, Petitioner received TPD from Respondent. (T.21). He also underwent physical therapy.

On December 15, 2011, Petitioner underwent left knee surgery performed by Dr. Kefalas. According to the operative report, there was a "radial tear" in the medial meniscus and a partial medial meniscectomy was performed. (Px2, Rx2). The operative report also noted Grade III chondral lesions on the weight-bearing surface of the medial femoral condyle which were smoothed with a shaver. (Px2, Rx2).

Petitioner continued to treat with Dr. Kefalas through March, 2012. (T.23).

On May 11, 2012, Respondent sent Petitioner to Dr. Ethiraj for an independent medical evaluation and impairment rating. (Rx3). Dr. Ethiraj testified for Respondent in an evidence deposition. Dr. Ethiraj agreed that the Petitioner's accident on September 30, 2011 could be the cause of the Petitioner's left knee injury based upon a reasonable degree of medical certainty. (Rx.3 @ Page 42, 43)

CONCLUSIONS OF LAW

In regards to "F" - "Is Petitioner's current condition of ill-being causally related to the injury?"

The Arbitrator finds that the Petitioner's left knee condition of ill-being is causally related to the injury and relies upon the Respondent's in-plant physician Dr. Fabrique, noting "occupational," Dr. Ethiraj's opinion, as well as the treating records from Dr. Kefalas, which document the accident.

In regards to "L" – "What is the nature and extent of the injury?"

The injuries to Petitioner's left leg include a radial tear of the medical meniscus and chondral lesions which required surgery. For accidental injuries occurring on or after September 1, 2011, Section 8.1b of the Act lists the following criteria to be weighed in determining the level of permanent partial disability:

1) **The reported level of impairment** - A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment 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.
2) **The occupation of the injured employee;**
3) **The age of the employee at the time of the injury;**
4) **The employee's future earning capacity; and**
5) **Evidence of disability corroborated by the treating medical records.**

No single enumerated factor shall be the sole determinant of disability.

1. In regards to the level of impairment:

Dr. Ethiraj, Respondent's physician, opined Petitioner sustained a 2% left lower extremity/leg impairment and 1% whole person impairment pursuant to the most current AMA Guides. The Arbitrator notes that the impairment does not equate to permanent partial disability under the Illinois Workers' Compensation Act. Dr. Ethiraj acknowledged in his deposition that his "impairment (rating) is not directly correlated to disability because there were many other factors that would lead to disability." (Rx3 @ Page 37). Dr. Ethiraj found no atrophy or loss of motion in the knee but noted mild tenderness to palpation around the medial joint line. (Rx3 @ Pages 26, 27, 55). The doctor admitted that he could have used the operative report as a grade modifier to increase the impairment rating, but used the MRI which revealed an MCL sprain and not the actual surgical report that revealed the medial meniscus tear. (Rx3, Pages 56, 57, 58, 59). The doctor acknowledged that the AMA Sixth Edition clearly states that the doctor should use the most significant injury in the diagnosis for the impairment rating but the doctor instead used the MRI which revealed an MCL sprain. (Rx3 @ Page 62). The doctor acknowledged that when a patient undergoes a meniscus surgery, "they are at more risks to develop arthritis". (Rx3 @ Page 48). Dr. Ethiraj also testified that Petitioner continues to perform his home exercise program. (Rx3 @ Page 51).

2. In regards to occupation:

Petitioner's occupation is machinist/factory worker. Prior to working at Caterpillar, Petitioner testified he worked in general construction as a scheduler, Mitsubishi Motor Manufacturing Company as a supervisor and although he did some office work, he basically is a "blue collar physical" worker. (T. 14, 15). The Arbitrator notes that the Petitioner's permanent partial disability is greater based on the fact that his occupation and past occupations required physical, strenuous labor, with significant leg/knee activities.

3. In regards to age:

Petitioner at the time of the injury was 62 years of age. The Arbitrator acknowledges the Petitioner's age and the limitations and residual that come with this type of injury as a result of his age.

4. In regards to future earning capacity:

Petitioner's future earning capacity has been limited as a result of the injury. After the surgery, Petitioner returned to work but testified that he chose not to transfer or bid to more physically demanding, higher paying jobs in the plant because of the knee injury. Also, after he returned to work, Petitioner testified that he did not work a lot of voluntary overtime because his left knee continued to bother him and at that time he was taking pain medication two to four times per day. (T. 24). Petitioner testified that after he returned to work for approximately four months, following his surgery, he was terminated and has been looking for work unsuccessfully since and recently began

drawing his Social Security early retirement at a reduced rate. (T. 27, 29). Petitioner testified that he has decided not to apply for employment in factories or foundries performing the kind of work he previously performed in his occupation, "because there's just too much walking and bending." (T. 28). Petitioner testified that he continues to look for part-time or full-time work and the jobs are in the range of $10.00 to $15.00 per hour, significantly less than how much he was making at the time of the injury. The Arbitrator concludes that this injury has negatively impacted on the Petitioner's future earning capacity.

5. In regards to evidence of disability corroborated in the treating records:

Petitioner has demonstrated evidence of disability. Petitioner credibly testified that he currently experiences pain, stiffness, swelling and locking in his left knee. Petitioner's complaints regarding his left leg are corroborated in the treating medical records of Dr. Kefalas as well as the Caterpillar Plant medical records. (Px1, Px2, Rx1, Rx2). Dr. Kefalas' treating records demonstrated a loss of motion that required surgery and improvement following surgery. (Px2, Rx2). On January 18, 2012, Dr. Kefalas noted that his knee condition had stabilized and released him from his care. (Px2, Rx2). Dr. Kefalas encouraged him to continue using the patella femoral brace whenever he was active and to return if there were any "further problems or concerns". (Px2, Rx2). Petitioner's complaints, supported by the treating medical records, evidences a disability as indicated by the Commission decisions regarded as precedent pursuant to Section 8(e).

The determination of permanent partial disability ("PPD") is an evaluation of all five factors as stated in the Act. In making this determination of PPD, no single enumerated factor is deemed the sole determinant. Rather, the Arbitrator, after weighing all five factors, notes that his advanced age, physical occupation, credible complaints, loss of earning capacity, all support a permanent partial disability award of 15% loss of use of his left leg. The Arbitrator specifically acknowledges the 2% impairment rating and included this rating in his analysis. However, Dr. Ethiraj admitted that the rating could have been computed in a different manner to obtain a higher percentage and the Arbitrator concludes that impairment does not equate to disability in this case. Therefore, applying Section 8.1b of the Act, 820 ILCS 305/8.1b, Petitioner has sustained an accidental injury that resulted in a 15% permanent partial disability/loss of use to his left leg. The Arbitrator further finds the Respondent shall pay the Petitioner the sum of $530.78 a week for a further period of 32.25 weeks, as provided in Section 8(e) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

☒ 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

Michelle Narczewski,

Petitioner,

14IWCC0063

vs.

NO: 12 WC 27591

Manor Court of Peru, LLC,

Respondent.

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 medical expenses, prospective medical expenses, causal connection, 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 August 7, 2013 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.

14IWCC0063

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 $3,400.00. 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: JAN 3 1 2014

David L. Gore

Mario Basurto

Daniel R. Donohoo

DLG/gal
O: 1/23/14
45

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

14IWCC0063

NARCZEWSKI, MICHELLE
Employee/Petitioner

Case# 12WC027591

MANOR COURT OF PERU LLC
Employer/Respondent

On 8/7/2013, 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 0.07% 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:

1097 SCHWEICKERT & GANASSIN LLP
SCOTT J GANASSIN ESQ
2101 MARQUETTE RD
PERU, IL 61354

1337 KNELL & KELLY LLC
CHARLES D KNELL
504 FAYETTE ST
PEORIA, IL 61603

STATE OF ILLINOIS)
)SS.
COUNTY OF LaSalle)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION 19(b)

14IWCC0063

Michelle Narczewski,
Employee/Petitioner

v.

Manor Court of Peru, LLC,
Employer/Respondent

Case # **12** WC **27591**

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 **Robert Falcioni**, Arbitrator of the Commission, in the city of **Ottawa**, on **June 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. ☒ 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 _____

14IWCC0063

FINDINGS

On the date of accident, **October 6, 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 **$23,920.00**; the average weekly wage was **$460.00**.

On the date of accident, Petitioner was **38** years of age, ***married*** with **2** 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 **$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 reasonable and necessary medical services, pursuant to the medical fee schedule, of $231.00 to Dr. Klopfenstein, $2,208.00 to Dr. Kube, $827.00 to IVCH and $68.50 to St. Margaret's Hospital, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay to Petitioner penalties of $0, as provided in Section 16 of the Act; $0, as provided in Section 19(k) of the Act; and $0, as provided in Section 19(l) of the Act.

Pursuant to Section 8(a), the Respondent shall provide the Petitioner the care recommended by Dr. Kube including a cervical surgery at C6-7 that provides for a disc excision, decompression and disc replacement along with ancillary care required to complete these procedures and the care that is necessary following her surgery.

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.

Robert E. Dalton
Signature of Arbitrator

July 30, 2013
Date

ICArbDec19(b)

AUG 7 - 2013

FINDING OF FACT

Michelle Narczewski f/k/a Michelle Ristau was an employee of the Respondent, Manor Court of Peru, LLC on October 6, 2011. At that time, she was employed as a certified nurse assistant ("CNA") and had been for the last two years.

As a CNA for the Respondent, Ms. Narczewski assisted people in and out of wheelchairs for transport to and from the bathroom, dining area and other parts of the nursing home. She also helped residents with bathing tasks and answered call lights. On October 6, 2011, one of the residents was a man weighing 350 to 400 pounds who had just undergone knee surgery. He had to be moved from his wheelchair to the bed as he was unable to stand on his own. The devices typically used to assist the Petitioner in transferring a patient from the wheelchair to the bed, such as a Hoyer Lift, were unavailable for use due to his size and weight.

Due to concerns about how to move the patient, up to ten staff members met in the resident's room to discuss how he could be safely transferred. It was agreed two to three aids would assist in lifting the patient while four to five others, one of them being the head nurse, would also lift and turn the patient to help place him in bed. The group began to move the patient when he suddenly began to drop and fall toward the bed. During this fall, the patient landed on the Petitioner's left upper body.

After the Petitioner was able to manipulate herself out from underneath the patient, Ms. Narczewski states she was in shock for the first few moments after the accident and then made her way into the hallway. The remaining staff completed the transfer. While in the hallway, Ms. Narczewski experienced pain in the left arm and shoulder. She also experienced pain at the base of her neck where it meets the shoulder.

She was asked by Gerry McKay, the head nurse, Don Summers, a supervisor, and Angie Taylor, the human resource director, what happened and how she was doing.

An employee report of injury form was completed and indicated the Petitioner experienced pain in the left shoulder and bicep area. Rx 12. The Petitioner indicates the pain drawing on this form includes the base of her left neck through the shoulder and into the bicep. Id.

Ms. Narczewski continued to work the remainder of her shift and worked the next day with the help of co-employees. Because of increasing pain, the Respondent sent her to the Occupational Health Department at St. Margaret's Hospital on October 10, 2011. Px 5. She was seen by Dr. Koogler who wrote a heavy patient fell onto the Petitioner's left shoulder on October 6, 2011. Id. Her pain has not improved since the accident and is presently at a nine out of ten. Id. No prior injuries or problems with the left shoulder area are reported. Id. Dr. Koogler noted tenderness on palpation around the left acromion and anterior glenohumeral joint areas. Id. Tenderness of the left shoulder trapezius muscle was also reported. Id. There was decreased range of motion of the left shoulder at 40 degrees of forward flexion and 40% of abduction increased pain. Id. Neer's and Hawkin's Testing was positive. Id. A mild positive impingement sign was also recorded. Id. The Petitioner testified at this visit that she was experiencing pain which began at the base of her neck and ran through her left shoulder, into the upper portion of her arm. Following this examination, a Medrol Dose Pack and Naprosyn were prescribed. Id. A work restriction of 20 pounds with minimum use of the left arm and no over the shoulder work was ordered. Id.

At her October 17, 2011 follow up appointment with Dr. Koogler, the Petitioner had continued complaints of pain around the left scapula area and down the back of the left arm. Id. Pain in the acromion had improved. Id. She remained tender in the left scapula area extending to the posterior glenohumeral joint and over the triceps muscle area. Id. Ms. Narczewski was told to continue use of her sling. Id. A prescription for physical therapy was provided for left shoulder and arm strengthening. Id.

Ms. Narczewski returned to Dr. Koogler on October 31, 2011. Id. He reported she experienced sharp impingement pains to the left anterior and lateral shoulder area. Id. He wrote her shoulder pain has improved and physical therapy is still pending. Id. She is working on light duty and does not require regular use of medication. Id. Dr. Koogler indicated the neck is not tender and that there is minimal discomfort around the posterior left scapula. Id. Neer and Hawkin's Tests remain positive. Id. With his assessment of left shoulder pain and mild impingement signs, he provided a Medrol Dose Pack. Id. Physical therapy was again ordered and light duty restrictions provided. Id.

At a follow up appointment of November 14, 2011, Dr. Koogler stated the Petitioner had been doing well in physical therapy and experienced no pain in her left shoulder in the last week. Id. It was not tender to palpation and had a full range of motion without aggravating her pain. Id. Neer and Hawkin's Tests were now negative without impingement signs. Id. He wrote the Petitioner is to complete her physical therapy and continue her home exercises. Id. He permitted Ms. Narczewski to return to full duty. Id.

After she completed physical therapy, the Petitioner explained she had continuing complaints of pain from the base of her neck through the left shoulder and upper arm. However, the Petitioner hoped she could continue to work and improve. Ms. Narczewski

testified that at work she struggled to perform her daily tasks over the next several months. By May 3, 2012, her pain intensified to the point she reported to the Illinois Valley Community Hospital emergency room complaining of pain in her neck and left shoulder. Px 3.

At the Illinois Valley Community Hospital emergency room, their notes indicate the Petitioner was injured about eight months ago when moving a heavy patient. Px 3. Her left shoulder is tender to touch and over the last week she has been experiencing increased pain. Id. Dr. Ghidorzi indicates she has pain everywhere in her left shoulder area with limited range of motion in all planes. Id. He considered a number of differential diagnoses that included a rotator cuff tear, sprain/strain, tendonitis or bursitis as well as a contusion or abrasion. Id. He prescribed her off of work for the day and prescribed minimum work using the left arm. Id.

After her visit to the Illinois Valley Community Hospital, she reported to her employer with their prescribed restrictions. Upon receipt, her supervisor sent her to the Occupational Health Department of St. Margaret's Hospital. Px 8. Their records demonstrate the Petitioner had complaints of left shoulder pain. Id. She had earlier gone to the emergency room at the Illinois Valley Community Hospital. Id. To clarify her work restrictions, she was required by her employer to report to St. Margaret's for a follow up. Id.

At St. Margaret's Occupational Health Department, they report the Petitioner's left shoulder was previously injured in 2011 and the shoulder pain resolved but returned by mid March. Id. There was no additional injury reported but it was felt the routine work she performed required a lot of resident lifting and moving which caused a reoccurrence

of her pain with this work activity. Id. The soreness in the shoulder progressed over the last six weeks with pain occurring with movement of the limb. Id. Dr. Koogler wrote the pain is worse between the neck and left shoulder and extends through the shoulder into the upper arm. Id. Objectively, Dr. Koogler noted the Petitioner had a good range of motion within the neck but movement aggravated pain from the base of the neck to the left shoulder and arm. Id. A positive Spurling's Compression Test with a sharp increase of pain was reported. Id. There was tenderness over the upper trapezius muscles. Id. Left shoulder movement does not significantly aggravate her pain. Id. There is minimal discomfort on palpation with significant aggravation of pain with the Neer's, Hawkin's and O'Brien's Testing. Id.

After his examination, Dr. Koogler diagnosed her condition as cervical radicular pain extending to the left shoulder. Id. He also provided an additional diagnosis of left shoulder pain. Id. Naprosyn and Tramadol were prescribed along with a cervical MRI to evaluate the upper back and left shoulder. Id. He reported the Petitioner is to remain off for the remainder of the day but could return to work with the restrictions of ten pounds maximum lifting, minimum bending or stooping, minimal work involving the left arm and no over the shoulder work. Id. The Petitioner was also to avoid extreme neck movement. Id.

At the request of Dr. Koogler, Ms. Narczewski returned after her MRI of May 11, 2012. Id. This MRI of the cervical spine provided a history that the 38 year old Petitioner had cervical radicular pain involving the left shoulder. Px 7. The test demonstrated a moderate central and slightly left paracentral disc herniation at C6-7 with a slight caudal extrusion of the herniated disc. Id. There is a moderate degree of central stenosis without

cord impingement. Id. The radiologist, Dr. Yousuf, noted that clinically, this finding may produce C7 radiculopathy. Id.

At the Petitioner's May 16, 2012 visit, Dr. Koogler reviewed the MRI and indicated she had cervical radicular pain on the left side through the shoulder to the left upper arm. Id. Tilting her head, working on a computer, or other extreme neck movements aggravates her pain. Id. She continues to have good range of motion in her neck but motion does increase shoulder pain. Id. A Spurling's Compression Test aggravates her pain. Id. Dr. Koogler provided a diagnosis of a C6-7 disc herniation and C6-7 radiculopathy with the left shoulder pain being likely from the radiculopathy itself. Id. He next provided a referral to a neurosurgeon and ordered continued light duty work for her. She was later seen by Dr. Klopfenstein.

The records of Dr. Klopfenstein with the Illinois Neurological Institute demonstrate he initially received a referral from Dr. Koogler, the Respondent's occupational health physician. Px 7. The diagnosis on the initial referral to the Institute was a C6-7 disc herniation with radiculopathy. Id. Records were forwarded to Dr. Klopfenstein and were reviewed by him on May 30, 2012. Id. His impression was a cervical disc herniation at C6-7. Id. Following this review, he suggested continued physical therapy with the addition of traction and a referral to a pain clinic for epidural steroid injections. Id. If the symptoms persisted after therapy, she was to come in for an appointment in six to eight weeks. Id. As her symptoms did persist, she was seen by Dr. Klopfenstein on July 26, 2012. Id.

At this appointment, Dr. Klopfenstein reported Ms. Narczewski had a several month history of neck and left upper extremity pain after a patient fell on her at work. Id.

He explained her pain is in the left paraspinal musculature and radiates into the intrascapular region as well as into the left shoulder and down the upper extremity into her digits. Id. The MRI demonstrates a C6-7 disc herniation. Id. Physical therapy has provided little relief and traction seems to have increased her symptoms. Id.

Dr. Klopfenstein's examination revealed some break away weakness of the left triceps with possible grip weakness in the left upper extremity but otherwise her motor function was a five out of five. Id. Her Tinel's is marginally positive at the medial epicondyle. Id. Dr. Klopfenstein noted some of her complaints related to her C6 disc herniation while others did not. Id. He suspected multiple issues including the disc herniation as well as myofascial pain and potential peripheral nerve entrapment. Id. He next ordered epidural steroid injections and stated he wanted to see her back for an additional appointment. Id. If she remained symptomatic, surgery versus additional work up would occur. Id.

The injections recommended by Dr. Klopfenstein did occur on August 1, 2012 and August 10, 2012. Id. Neither provided the relief hoped for per Ms. Narczewski. After the failure of the injections, the Petitioner next saw Dr. Kube on a referral from Dr. Orteza. Px 4. Dr. Kube is an orthopedic spine surgeon located in Peoria, Illinois.

The Petitioner's first visit with Dr. Kube occurred on September 4, 2012. Id. At that time, Dr. Kube wrote Michelle Narczewski was being seen for an October 2011 accident in which pain occurred after a lifting maneuver of a patient weighing approximately 365 pounds. Id. At that time, the patient fell upon the Petitioner's left side. Id. She had fairly immediate significant pain in the shoulder girdle on the left side and in the neck. Id. She now also has headaches and tried physical therapy which provided no

relief. Id. She reports that Dr. Klopfenstein originally told her she would require surgery but then became upset after he suggested additional epidural steroid injections. Id. The patient suggested she was frustrated because Dr. Klopfenstein did not appear to be listening to her complaints. Id.

Dr. Kube performed an examination which revealed left upper back, forearm, shoulder, upper arm, hand and finger pain. Id. He wrote moving her neck worsens her symptoms in the left forearm, upper arm, hand and fingers. Id. Left side numbness is present and she expresses difficulty picking up small objects with her left hand. Id. Prior treatments include physical therapy, exercise, traction, anti-inflammatories and epidural steroid injections. Id.

Dr. Kube reviewed the MRI which demonstrated a C6-7 large herniation and caused impingement. Id. The herniation is consistent with the region of the patient's paresthesia and pain. Id. He determined Ms. Narczewski suffered from displacement of her cervical and intervertebral disc with myelopathy, brachial neuritis, cervical spinal stenosis, cervicalgia as well as sprains in the back of the neck. Id. Dr. Kube wrote the cervical disc herniation was likely caused by the lifting maneuver and the fall that occurred. Id. He felt the shoulder pain she experienced was related to the cervical spine and was radiating in nature. Id. Dr. Kube reported her cervical disc and radiculopathy was caused by her accident. Id.

Based upon his examination and given the failure of epidurals and rehabilitation, Dr. Kube explained it was appropriate to perform a disc decompression and replacement at C6-7. Id. A disc replacement versus fusion was discussed with the patient. Id. Given the problems exist at a single level and there is an absence of any significant disc

degeneration, Dr. Kube noted the reported data suggests disc replacement is superior to fusion and provides a faster recovery. Id.

Ms. Narczewski was next seen by Dr. Kube on November 1, 2012. At this visit, she reported continued radiculopathy in the cervical spine. Id. There is a positive Spurling's Sign and she still has an obvious disc herniation at C6-7. Id. His assessment from the prior visit was essentially the same, spinal stenosis, sprain/strain, brachial neuritis, cervicalgia and the requirement of a disc replacement due to her cervical interverbial disc syndrome which was occurring without myelopathy. Id. Dr. Kube repeated his request of a cervical disc replacement. Id. He further indicated he has reviewed the records and noted there was a little gap of treatment. Id. In that gap of treatment, he states the Petitioner reports she was having neck pain that went down the shoulder girdle region including the clavicle and bothered her since the original injury. Id. She rehabbed and did try to return to work. Id.

Dr. Kube was critical of her prior care and reports the initial imaging done clearly demonstrates a cervical disc herniation. Id. Dr. Kube relates his care and need for surgery to her work injury that occurred while moving a patient. Id. He indicates a disc excision and decompression disc replacement was felt to be appropriate. Id. He placed her on light duty restrictions which remain through the present. Id.

Dr. Kube met with the Petitioner again on May 23, 2013. Id. His findings and recommendations remain the same. Id. His request for surgery is unchanged. Id. While surgery is pending, the Petitioner indicates she remains on light duty. The Petitioner reports the Respondent is following the restrictions provided by Dr. Kube.

The Respondent in this matter obtained the services of Dr. Morris Marc Soriano. Rx 11. On November 1, 2012, Dr. Soriano performed a medical evaluation. He reported her current diagnosis is that of a resolved shoulder strain secondary to her October 6, 2011 injury. Id. He claims her diagnosed disc herniation does not bear a relationship to her October injury. Id. Dr. Soriano instead claims the Petitioner's condition is consistent with symptom exaggeration, functional illness and nonorganic illness. Id. He indicated she has positive Waddell Signs which support this finding. Id. He recommends no further treatment and felt the Petitioner was capable of full duty employment. Id.

The Respondent also presented a photograph of the Petitioner and the husband of a co-employee, Mary Holt. Rx 13. The Petitioner testified this photograph was taken of her standing behind the sled occupied by Mr. Holt. She explained Mr. Holt was attempting to be funny and reached back as she stood behind him. He was trying to grab her ankles. She indicated she did not get on or use a sled at all that day and was only present for the company her friends provided.

The Petitioner presented a medical bills exhibit in this matter. Px 1. That exhibit demonstrates gross billings of $9,646.04. Of this amount, $4,035.25 has been paid by the Respondent, insurance discounts of $2,276.29 have been paid and an additional $3,334.50 is outstanding.

ISSUES

F. Is Petitioner' current condition of ill-being causally related to the injury; K. Is Petitioner entitled to any prospective medical care?

Following consideration of the testimony and evidence presented, this Arbitrator finds the Petitioner's current condition of ill-being is causally related to her work injury of October 6, 2011. Further, this Arbitrator finds the Petitioner is entitled to prospective medical care that is recommended by Dr. Richard Kube which includes a C6-7 disc excision, decompression and disc replacement along with all necessary ancillary care for these procedures to occur.

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?

Following the Petitioner's work injury of October 6, 2011, the Respondent sent her to the St. Margaret's Hospital Occupational Health Department. Px 8. She followed the recommendations of Dr. Koogler that included the use of medication, obtaining physical therapy and performing work at light duty. Id. She then attempted to return to her normal job but after several months of effort, her pain increased and she was again seen by Dr. Koogler, the Respondent's occupational health physician. Id. This physician reported the continuation, as well as worsening of her pain and discomfort, had its origin with her October 6, 2011 accident. Id. He ordered a cervical MRI and then sent her for an additional opinion from Dr. Klopfenstein. Id.

Dr. Klopfenstein recommended the Petitioner obtain injections and physical therapy which she did. Px 4 & 6. This physician indicated that if the conservative care that has been provided failed, surgery may then be an option. Px 7.

The Petitioner next sought the care of Dr. Kube. Px 4. He obtained a history consistent with her injuries being related to her October 6, 2011 work injury. Id.

Following consideration of the testimony and evidence presented, this Arbitrator finds the medical services that were provided to the Petitioner were reasonable and necessary. The Respondent has not paid all appropriate charges for all reasonable and necessary services. These medical services shall now be paid by the Respondent and include the following unpaid balances: Dr. Klopfenstein, $231.00; Dr. Kube, $2,208.00; Illinois Valley Community Hospital, $827.00 and St. Margaret's Hospital, $68.50.

M. Should penalties or fees be imposed upon Respondent?

This Arbitrator has reviewed the testimony and evidence presented and finds the Respondent's behavior in this matter does not rise to a level that requires this Arbitrator to order the imposition of penalties. As such, these are denied.