STATE OF ILLINOIS)
)SS
COUNTY OF CHAMPAIGN)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary Jane Cawood,
Petitioner,

vs.

Robinson School District,
Respondent,

No. 11WC 34138
14IWCC0241

ORDER

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

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated April 1, 2014, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner Charles J. DeVriendt.

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

Charles J. DeVriendt

DATED: APR 2 3 2014

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary Jane Cawood,
Petitioner,

vs.

NO: 11 WC 34138
14IWCC 0241

Robinson School District,
Respondent,

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical both incurred and prospective, 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.

The Commission finds that Petitioner proved that she sustained accidental injuries that arose out of and in the course of her employment.

The Commission also finds that Petitioner is entitled to temporary total disability from May 10, 2011 through August 17, 2011 representing 14 2/7 weeks as well as a loss of use of 35% of the left hand and 10% of the left arm.

Petitioner was a school bus driver for the Respondent. On May 9, 2011, after finishing her evening route she grabbed her paperwork and walked across the school's parking lot toward the bus barn to turn the paper work in. Petitioner walked over an area of the lot where the gravel had washed away and the concrete surface was about 1.5 inches higher than the gravel surface. She testified that she hit the toe of her sandal against the raised concrete area causing her to fall forward. She fell onto her left side and could not get up. (Transcript Pgs. 16-17)

She called for assistance and Rip York, Respondent's mechanic, came out of the bus barn and helped her up. (Transcript Pgs. 21-22)

Rip York testified and agreed that the parking lot was asphalt and that the concrete and asphalt do meet but there is no lip other than just a separation where it is blacktop to concrete. He admitted on cross examination that the bus parking lot is gravel and that the gravel is lower than the concrete because some people turn into the lot and cause the gravel to move. He testified that the gravel is about an inch to two inches lower than the concrete. He further admitted that he did not witness the accident. He is just testifying to where Petitioner was when he picked her up. He is unable to testify to where she fell. (Transcript Pgs. 42-54)

Petitioner was taken to Crawford Memorial Hospital on the date of the incident. According to the Hospital's records, the Petitioner stated that she was walking to work when she tripped where the gravel and concrete meet. (Petitioner Exhibit 1)

When an injury to an employee takes place in an area which is the usual route to the employer's premises, and the route is attendant with a special risk or hazard, the hazard becomes part of the employment. Special hazards or risks encountered as a result of using a usual access route satisfy the "arising out of" requirement of the Act. Bommarito v. Industrial Comm'n., 82Ill.2d 191, 195, 412 N.E.2d 548 (1980).

In the case at hand, Petitioner was taking her usual route to the bus barn through a parking lot owned and controlled by her employer. The Petitioner gave a history to Crawford Medical Hospital that she tripped over where the gravel and the concrete meet.

Rip York testified he did not see the Petitioner fall.

Terry Roche testified that there was asphalt in the area where Petitioner was found but admitted, as did Mr. York, that sometimes there is loose gravel found on top of the asphalt. (Transcript Pgs. 61-65)

The Commission finds the Petitioner's testimony to be credible. She gave a consistent history to Crawford Medical Hospital. Both of the Respondent's witnesses did not see her fall and their testimony regarding the condition of the parking lot does not dispute Petitioner's history.

The Commission finds that Petitioner proved that she sustained accidental injuries to her left arm and left hand.

The Commission also finds that the Petitioner's injuries to her left arm and hand are causally connected to this accident. No evidence was offered regarding any problems Petitioner had to her left hand and arm prior to this accident. The Petitioner testified credibly that after her toe struck the concrete where the gravel had washed away, she tumbled forward and fell on her left wrist, forearm and left knee.

Petitioner came under the care of Dr. Fenwick, who returned her to work without restrictions on August 11, 2011. Petitioner is entitled to temporary total disability from May 9, 2011 through August 17, 2011. (Petitioner Exhibit 2, Respondent Exhibit 2)

X-Ray's taken on the Petitioner's left wrist and forearm revealed an acute comminuted articular distal left radial fracture with moderate apex dorsal angulation and subtle impaction. There were also arthritic changes in her left wrist. There was also an acute radial neck with minimal impaction. These X-Rays were taken on May 9, 2011. (Petitioner Exhibit 4-7)

Dr. Fenwick performed an open reduction with internal fixation with a volar plate of the left Colles fracture. (Petitioner Exhibit 8)

At the Arbitration hearing the Petitioner testified that she doesn't have "too much" problems with her left elbow. "It just didn't heal right."

She has trouble with it when she washes buses. The next day she can hardly move it. (Transcript Pg. 25)

In regard to her left wrist she testified that she has a lot of trouble with it. She does not have much grip and has pain turning a knob or opening a jar. (Transcript Pg. 25)

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $416.69 per week for a period of 14 2/7 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 $375.00 per week for a period of 97.5 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of use of the left hand to the extent of 35% and the loss of use of the left arm to the extent of 10%

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner for all medical expenses contained in Petitioner's Exhibit 11 under §8(a) of the Act and 8-2.

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: APR 2 3 2014

Charles J. DeVriendt

Michael J. Brennan

CJD/hf
O: 1/29/14
049

DISSENT

I respectfully dissent from the Majority's Decision to reverse the Arbitrator's Decision.

The Arbitrator found that Petitioner failed to prove she sustained injuries arising out of and in the course of her employment on May 9, 2011. Petitioner did not discuss with Mr. York or Mr. Roche why she thought she fell; she testified that she was never asked.

The records from the Crawford Memorial Hospital emergency department note that Petitioner reported tripping where the gravel met the concrete. Mr. York testified that the bus lot is gravel; the regular parking lot is asphalt with some loose gravel. He testified that there is a concrete drive as well. Where the asphalt meets the concrete drive there is no lip, just a separation. In the area where the concrete meets the gravel there is a one to two inch height difference.

Petitioner testified that she was wearing sandals as she crossed the gravel parking lot and when she came to the place where the gravel met the concrete, the toe of her sandal bent back under her foot. Mr. York did not see Petitioner fall but he did help her to get up.

Mr. Roche testified that the area where there is gravel abutting concrete is not where Petitioner was found. He testified that the area where concrete and gravel meet is "clear down next to Jackson Street" and that it is asphalt in the area where Petitioner was found. The difference in height between the asphalt and the concrete is not noticeable, according to Mr. Roche. He did not think the "gap" could be big enough to fit a dime into.

Petitioner's testimony about her sandal catching on the concrete is not corroborated by the medical records. On the day after the accident Petitioner told Dr. Fenwick that she was unsure what she had tripped over. Petitioner also testified that the gravel was "washed away" from the concrete, forming a hole, but Mr. York denied that he saw any holes on the date of accident. Called for rebuttal, Petitioner marked her path on the Arbitrator's Exhibit #6 and then initialed where she fell, however this is not the same place where Mr. York testified that he found Petitioner.

Compensability depends entirely on whether Petitioner proved that she fell where the gravel met the concrete. The Arbitrator's Decision concluding that Petitioner failed to prove this fact was well reasoned and I would affirm and adopt the Arbitrator's Decision in its entirety.

Ruth W. White

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CAWOOD, MARY JANE
Employee/Petitioner

Case# **11WC034138**

ROBINSON SCHOOL DISTRICT
Employer/Respondent

14IWCC0241

On 1/15/2013, 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 0.10% 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:

1580 BECKER SCHROADER & CHAPMAN PC
TODD J SCHRODER
3673 HWY 111 PO BOX 488
GRANITE CITY, IL 62040

0180 EVANS & DIXON LLC
MARILYN C PHILLIPS
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

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

MARY JANE CAWOOD
Employee/Petitioner

v.

ROBINSON SCHOOL DISTRICT
Employer/Respondent

Case # 11 WC 034138

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 **November 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. ☒ 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 9, 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* causally related to the accident.

In the year preceding the injury, Petitioner earned $32,500.00; the average weekly wage was $625.00.

On the date of accident, Petitioner was 54 years of age, *married* with 0 children under 18.

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 for medical bills paid through its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

Petitioner failed to prove she sustained an accident that arose out of her employment with Respondent. Petitioner's claim for compensation is denied and no benefits 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.

Nancy Lindsey
Signature of Arbitrator

January 10, 2013
Date

JAN 15 2013

THE ARBITRATOR FINDS THE FOLLOWING FACTS:

On May 9, 2011, Petitioner was 54 years of age and employed by Respondent as a school bus driver. After finishing her evening route she parked her bus, locked it up, grabbed some paperwork, and headed across the school's parking lot toward the bus barn to turn in her "stuff." Petitioner described the surface of the lot as part gravel and part concrete. She was walking, wearing sandals, and carrying her purse, a mileage sheet and some bus passes.

Petitioner testified that she walked over an area of the lot where the gravel had washed away and the concrete surface was about 1.5 inches higher than the gravel surface. Petitioner testified that she hit the toe of her sandal against the raised concrete area. The toe of her sandal bent back under her toes causing her to fall forward. The area of the lot where she fell was marked with an "X" on Arbitrator's Exhibits 5 and 6, drawings prepared at trial.

Petitioner tried to catch herself with her hand, and fell onto her left side. She could not get up off the ground and called for assistance. Rip York, a mechanic employed by Respondent, came out of the bus barn, helped her up, sat her on a chair, got ice packs for her arm, and called her husband. Mr. York testified that Petitioner did not say what caused her to fall.

Petitioner fell in an area of the parking lot where an asphalt surface met a concrete surface. There was some gravel on part of the lot. Mr. York testified that he saw where Petitioner fell when he helped her up off the ground. Mr. Roche, Respondent's transportation director, and building, grounds and athletic director viewed Arbitrator's Exhibits 5 and 6, and testified he was familiar with the area marked with the "X," and in fact, it was close to where he parked his car. His parking spot was marked with a "C" on Arbitrator's Exhibit 6. Mr. Roche inspected the area after Petitioner fell. Both Mr. York and Mr. Roche testified that the surface where Petitioner fell was level. Mr. York said there was no lip where blacktop and concrete met. Mr. Roche said any gap between where the concrete and asphalt met was not the width of a dime.

Petitioner's husband took her to Crawford Memorial Hospital where she gave a history of tripping in an area of the parking lot where the gravel and concrete met. She said that she fell onto her left side and complained of pain in her left wrist, forearm and knee. X-rays revealed a left wrist comminuted articular distal left radial fracture with moderate apex dorsal angulation and subtle impaction; a left acute radial neck and distal radial fractures; and, a left radial neck fracture with minimal impaction. She was placed in a temporary splint and a sling, and discharged with instructions to follow up with an orthopedist.

Petitioner saw Dr. Fenwick for left wrist and elbow evaluation on May 10, 2011. She told him that she got off the bus, was walking across a part concrete and part gravel parking lot, and fell. The doctor noted that she was "unsure if or what she tripped over." He diagnosed a left closed fracture of the radial neck and a left closed colles fracture. He told her to continue wearing the splint and sling, authorized her to remain off work, and instructed her to follow-up in a week.

On May 17, 2011, Dr. Fenwick recommended open reduction and internal fixation of the distal radius with Synthes Volar plate. Petitioner was referred to Pro-Rehab Occupational Therapy where she gave a history of falling in a parking lot. The emergency room dressings were removed. Her wrist and forearm were bulked with dressings to simulate post op dressings. A Munster splint was fabricated for her left wrist and forearm. Her forearm and wrist were placed in neutral and she was told to wear the splint fulltime until surgery.

On May 19, 2011 Dr. Fenwick performed an open reduction and internal fixation with a volar plate of the left Colles fracture. The post-operative diagnosis was left closed Colles fracture. Petitioner returned to ProRehab on May 23, 2011. Her splint was reformed with addition of a bivalve piece for greater support. The incision was cleansed and redressed. The therapist recommended skilled rehabilitative therapy in conjunction with a home exercise program.

On May 26, 2011, Petitioner saw Dr. Fenwick's PA, John Combs. She said that she was experiencing some discomfort. She was wearing her brace and reported some finger stiffness. The discomfort in her elbow was improving. Her range of motion was also improving but was limited due to the splint. On physical examination of Petitioner's left elbow Mr. Combs found limited active range of motion with complaints of pain over the dorsal radial head. Examination of the left wrist revealed edema but near normal range of motion. X-rays showed continued slight displacement of the left elbow radial head fracture, and intact left wrist hardware with the fracture in good alignment. Mr. Combs instructed Petitioner to continue her therapy, released her to return to right handed work, and asked her to see Dr. Fenwick in three weeks. Petitioner returned to work at her second job as a night manager in a grocery store for about a week. She took off again because she had been required to use her hand "a lot."

When Petitioner returned to ProRehab on May 26, 2011, her splint was adjusted. The plan was to remove sutures and begin wrist range of motion. ProRehab adjusted the splint again on June 1, 2011, issued a sling for elbow and forearm support, and removed her staples. The plan was to progress with range of motion and scar management.

On June 14, 2011, Petitioner told Dr. Fenwick that her left wrist was doing well. She was wearing the splint when out of the house. She complained of pain when picking up and gripping objects, but was taking no medication for her wrist. Petitioner complained of intermittent elbow pain, and limited elbow range of motion with extension. She was not wearing a splint on the elbow. Petitioner was continuing therapy at ProRehab and home exercises for her wrist and elbow.

Physical examination of the wrist on June 14, 2011 revealed normal sensation; intact incision; and, near normal range of motion. Examination of the elbow revealed no edema or evidence of acute injury, but limited range of motion. X-rays showed distal radius plating revealed left wrist plating with good alignment, and a left elbow radial neck fracture with mild angulation. Dr. Fenwick found Petitioner was healing very well. He told her to continue therapy and wearing the splint/brace. He allowed her to work with no lifting, pushing or pulling over five pounds with the left hand, and asked her to return in four weeks on July 15, 2011.

When Petitioner went to ProRehab on June 14, 2011, her splint was reduced to a volar piece only. Her motion was progressing very well. She denied pain or discomfort, and was able to perform strengthening exercises with no increase in pain. The plan was to continue with strengthening and range of motion.

Mr. Combs saw Petitioner on July 19, 2011. She complained of experiencing left wrist pain after pulling clothes out of her washer and putting them into the dryer. She reported good range of motion and no pain in her left elbow, with an occasional popping sensation. On physical examination of the left wrist he noted radial edema. The incision was intact. There was tenderness over the radial side distal wrist and incision area. Her sensory exam was normal. Her range of motion was near normal, but with pain on extension. Her left elbow examination revealed pain over the cubital radial head, and near normal range of motion. X-rays showed left wrist hardware intact with the fracture healing well, and angulation at the radial head fracture with good healing. Petitioner was advised to continue therapy and wearing the splint/brace. Her lifting limitations were reduced to seven pounds, and she was asked to follow up in four weeks on August 16, 2011.

Petitioner was seen at ProRehab on July 19, 2011. She had been wearing the splint after feeling a pop in her wrist at home, and her range of motion was limited due to inactivity and edema. Range of motion exercises

were restarted due to stiffness. She was independent in her home exercise program. Petitioner returned to work on August 18, 2011.

When Petitioner returned to Dr. Fenwick's office on September 12, 2011, she was working limited from lifting, pushing, or pulling more than seven pounds with her left hand. She reported experiencing pain in her wrist and thumb since her last visit, with occasional numbness at the base of the left thumb. She said that after her bus route her wrist and the top of her hand were swollen, and pain radiated up her forearm. She used ice for pain relief. Regarding her left elbow, she complained of a popping sensation, but no pain, and good range of motion.

On September 12, 2011, physical examination of Petitioner's left wrist revealed normal palpation of soft tissue, tendon and bony structures; normal sensory exam; and, full active range of motion. On physical examination of the left hand the doctor found pain over the first carpometacarpal joint, normal sensation, near normal range of motion, and positive first carpometacarpal compression test. The left elbow physical examination showed normal palpation; and, full range of motion. X-rays revealed left wrist headed radius fracture with intact volar plate; left thumb marked basalar osteoarthritis; and, left elbow healed radial neck fracture. The doctor's assessment was left status post open reduction and internal fixation with volar plate colles fracture; closed fracture of the radial neck; and, CMC arthritis. Petitioner was instructed to continue home therapy and follow up in four weeks. She was referred to ProRehab for evaluation. The doctor noted that her thumb arthritis was causing pain and treatment options included a spika [sic] splint, injection or surgery. He provided no opinion as to the cause of the arthritis or its relationship to the May 9, 2011 incident.

Petitioner was seen at ProRehab on September 12, 2011. She said she had begun experiencing pain at the base of her thumb about one month earlier. She was working full duty. A spica splint was fabricated for her left wrist and thumb. She was told to wear it full time to allow rest at the CMC joint. Therapy of two visits a week or four weeks was recommended.

On October 10, 2011, Dr. Fenwick released Petitioner from care without restriction to follow up as needed. Thereafter, Petitioner continued working for Respondent as a school bus driver. At Arbitration she testified that she experiences weak grip in her left hand, and that her left elbow hurts if she uses it to perform activities such as washing a bus. Her hobbies include crafts, crocheting, and some gardening.

THE ARBITRATOR CONCLUDES:

For an injury to be compensable under the Illinois Workers' Compensation Act it must arise out of the employment, from a risk connected with or incidental to the employment creating a causal connection between the employment and the accidental injury. To determine the compensability of this claim the Arbitrator will analyze the nature of the injury sustained by Petitioner, noting that "risks to employees fall into three groups: (1) risks distinctly associated with the employment; (2) risks personal to the employee, such as idiopathic falls; and (3) neutral risks that have no particular employment or personal characteristics." First Cash Financial Services v. Industrial Comm'n, 367 Ill. App. 3d 102, 105, 853 N.E.2d 799 (2006), Baldwin v. The Illinois Workers' Compensation Commission; Baldwin v. Illinois Workers' Compensation Commission, 409 Ill.App.3d 472 (4th Dist. 2011).

Injuries occurring in employer-controlled parking lots have been found compensable where the injury is caused by some hazardous condition in the parking lot. Conversely, an injury resulting from a condition to which Petitioner would have been equally exposed apart from her employment is not compensable under the Illinois Workers' Compensation Act. Caterpillar Tractor v. The Industrial Commission 129 Ill. 2d 52, 51 N.E. 2d 665, 1989 Ill. Lexis 85,133 Ill. Dec. 454 (1989).

Petitioner testified that she caught her toe in a raised area in the parking lot surface where the concrete met asphalt. She testified that as soon as she fell she knew it was because she hit her toe on the raised area.

There was no mention of tripping over this raised area in the records from Crawford Memorial Hospital medical records, Dr. Fenwick, or ProRehab. Her Application for Adjustment of Claim merely states that Petitioner "fell in parking lot at bus barn." Further, on May 10, 2011, one day after the accident, Dr. Fenwick reported that Petitioner was "unsure if or what she tripped over." Mr. York assisted Petitioner on May 9, 2011, and helped her up after she fell. He testified that Petitioner did not say what caused her to fall. Petitioner's history of tripping over the raised area in the parking lot was not reported prior to the trial of her claim.

The Arbitrator finds more credible the testimonies of Mr. York and Mr. Roche who described the surface of the parking lot where Petitioner fell as level and without defect. Mr. York saw the area when he helped Petitioner up off the ground. Mr. Roche parks his car next to the accident site and inspected the area for "issues," after learning Petitioner had fallen. Based upon their testimonies, the Arbitrator concludes that there was no hazardous condition of the premises which caused or contributed to Petitioner's fall.

Walking on surfaces of gravel, concrete, asphalt, or some combination thereof is not a risk distinctive or peculiar to Petitioner's employment, it is a risk to which the general public is regularly exposed. Nothing in the record distinguishes Petitioner's acts from that of any other person walking in a parking lot. Petitioner was no more likely to fall than she would have been had she not been in the course of her employment.

Therefore, the Arbitrator concludes that Petitioner did fall in a parking lot owned and maintained by Respondent; however, there was insufficient evidence to prove that Petitioner's fall was caused by a defect in that parking lot, or that she was exposed to a greater risk of falling when walking in a parking lot than is the general public. Petitioner's injury was not caused by a risk distinctly associated with her employment.

There is no testimony or other evidence to suggest that Petitioner's fall was idiopathic in nature.

Absent Petitioner's testimony that she caught her toe on a raised area on the parking lot surface, there is no explanation for the cause of her fall. The Arbitrator has found that testimony not credible and uncorroborated by any other evidence. Petitioner's fall is unexplained. For an injury caused by an unexplained fall to arise out of her employment, Petitioner must present evidence which supports a reasonable inference that the fall stemmed from a risk related to that employment, as an injury arising from a neutral risk to which the general public is equally exposed does not arise out of the employment. Baldwin v. Illinois Workers' Compensation Commission, 409 Ill.App.3d 472 (4th Dist. 2011).

As stated above, the Arbitrator finds that Petitioner failed to present evidence sufficient to prove the act of walking across Respondent's parking lot exposed her to a risk greater than that faced by the general public.

Petitioner failed to present evidence sufficient to prove she sustained an accident arising out of her employment. Based upon her conclusion on this issue, it is unnecessary for the Arbitrator to reach the other issues presented at Arbitration. Petitioner's claim is denied.

****

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

William Blake Reed,

Petitioner,

vs.

14IWCC0242

NO: 12 WC 25897

State of Illinois, Shawnee Correctional Center,

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, medical expenses, temporary total disability and permanent 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 7, 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: APR 0 1 2014

MJB:bjg
0-3/25/14
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0242

BLAKE REED, WILLIAM
Employee/Petitioner

Case# 12WC025897

SOI/SHAWNEE CORRECTIONAL CENTER
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:

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

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

0558 ASSISTANT ATTORNEY GENERAL
FARRAH L HAGAN
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

AUG 7 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

14IWCC0242

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

William Blake Reed
Employee/Petitioner

v.

State of Illinois/Shawnee Correctional Center
Employer/Respondent

Case # 12 WC 25897

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 William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on June 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 June 20, 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 $52,922.00; the average weekly wage was $1,019.08.

On the date of accident, Petitioner was 31 years of age, single with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

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

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability of $611.45 per week for 22 weeks because the injuries sustained caused the four percent (4%) loss of use of the body as a whole (20 weeks) as provided in Section 8(d)2 of the Act and two (2) weeks disfigurement to the left elbow as provided in Section 8(c) 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.

William R. Gallagher, Arbitrator

August 5, 2013
Date

ICArbDec p. 2

AUG 7 - 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on June 20, 2012. According to the Application, Petitioner was restraining inmates and sustained injuries to the right and left shoulders, right hip/leg, buttocks, body as a whole, back, neck and right and left arms/elbows. The parties stipulated that Petitioner sustained a work-related accident and the disputed issues at trial were causal relationship as it related to nature and extent, liability for physical therapy bills and the nature and extent of disability.

Petitioner was employed by Respondent as a Correctional Officer and, on June 20, 2012, he sustained injuries to multiple areas of the anatomy as a result of breaking up a fight between two inmates. Petitioner initially sought medical treatment at Rural Health on June 22, 2012, where he was seen by Cheryl Fuller, a CNP. At that time, Petitioner had multiple abrasions to both elbows, right shoulder pain, left sided neck pain, and low back pain which went into his right buttock. X-rays were obtained of the low back and pelvis both of which were negative. Petitioner was given some medication and instructed to return in one week. Petitioner returned to Rural Health on June 29, 2012, and he was seen by Dr. Qi Liu, and his primary complaint was low back pain that was aggravated by bending. Petitioner had not missed any time from work because of this injury. On clinical examination, Petitioner had tenderness in the low back and straight leg raising was positive on the right side. Dr. Liu continued Petitioner's medication and referred him to physical therapy.

Petitioner received physical therapy at Union County Hospital between July 3, 2012, and September 19, 2012. On July 30, 2012, Petitioner was seen by Dr. Matthew Gornet, an orthopedic surgeon, and Petitioner informed Dr. Gornet of the work-related accident of June 20, 2012, as well as a prior back injury that had occurred in January, 2010. In regard to the prior back injury, Petitioner received chiropractic treatment and an MRI was obtained. Dr. Gornet reviewed the report of the prior MRI and noted that it revealed some disc pathology at L4-L5. Dr. Gornet opined that Petitioner had structural pain and opined that Petitioner's current symptoms were related to his work injury. Dr. Gornet recommended that a new MRI scan be obtained, that Petitioner continue with physical therapy and continue to work full duty.

On September 24, 2012, Petitioner underwent an MRI scan which revealed an annular tear at L4-L5 which was increased in size when compared to the prior MRI of June 30, 2010. A central disc bulge at L5-S1 was also noted. Dr. Gornet saw Petitioner on that date and noted that he was responding to conservative care. Dr. Gornet decided to refrain from giving Petitioner any steroid injections. Dr. Gornet saw Petitioner again on November 19, 2012, and noted that Petitioner had a low level of tolerable symptoms and that he continued to work full duty. Dr. Gornet opined that Petitioner was at MMI.

At the direction of the Respondent, on September 7, 2012, Dr. Christopher LeBrun, an orthopedic surgeon, conducted a utilization review pertaining to the issue of whether Petitioner's physical therapy treatments from August 16, 2012, to September 4, 2012 were medically necessary. Dr. LeBrun opined that the physical therapy obtained by Petitioner during this period time was not medically necessary primarily because when he reviewed the physical therapy

records, Petitioner did not report any improvement of his symptoms. Dr. LeBrun was deposed on February 18, 2013, and his deposition testimony was received into evidence at trial. Dr. LeBrun reaffirmed his opinion that the physical therapy obtained by Petitioner between August 16, 2012, and September 4, 2012 (five visits), were not medically necessary.

At trial Petitioner testified that the physical therapy did provide him with temporary relief of his symptoms to where he could continue to work. Petitioner still has complaints of low back pain which he describes as a dull ache. Any physical activity causes an aggravation of his symptoms. Petitioner testified that as a Correctional Officer he is required to stand for virtually the entire eight hour working day. Petitioner also testified that his back symptoms have impaired his ability to exercise to where he has experienced a weight gain of approximately 15 pounds. The injuries to the other areas of Petitioner's anatomy totally resolved with the exception of a circular shaped scar on his left elbow which the Arbitrator did observe at the time of trial.

Conclusions of Law

In regard to disputed issues (F) and (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner has sustained permanent partial disability to the extent of four percent (4%) loss of use of the body as a whole and two (2) weeks disfigurement to the left elbow.

In support of this conclusion the Arbitrator notes the following:

The Petitioner sustained injuries to multiple areas of the anatomy on June 20, 2012; however, all of the Petitioner's symptoms, other than those to the low back, totally resolved. Dr. Gornet opined that Petitioner did sustain an aggravation of his pre- existing low back condition and there was no medical opinion to the contrary.

Neither Petitioner nor Respondent tendered into evidence an AMA impairment rating report.

Petitioner is a Correctional Officer and this occupation does require him to be on his feet for long periods of time and there are other physical demands of his job which, as the facts of this case clearly indicate, can include breaking up fights between inmates.

At the time of this accident Petitioner was 31 years of age so he will have to live with the effects of this injury for very long time.

There was no evidence that this injury will have any effect on Petitioner's future earning capacity.

The medical treatment records confirm that Petitioner sustained a low back injury that was an aggravation of a pre-existing back condition. Comparison of the MRI scans taken before and after the accident indicated that there was an increase in the size of the annular tear at L4-L5.

The Petitioner still has a visible circular shaped scar on his left elbow which the Arbitrator observed at the time of trial.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment obtained by Petitioner, including the disputed period of physical therapy treatment, was reasonable and necessary and that Respondent is liable for payment of the medical bills associated therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid 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.

In support of this conclusion the Arbitrator notes the following:

Both of Petitioner's treating physicians, Dr. Liu and Dr. Gornet, referred Petitioner to physical therapy. Petitioner credibly testified that physical therapy provided him with some relief of his symptoms which enabled him to continue to work. The Arbitrator is not persuaded by the opinion of Respondent's utilization review physician, Dr. LeBrun.

William R. Gallagher, Arbitrator

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

Rick Belton, Sr.,

Petitioner,

vs.

14IWCC0243

NO: 11 WC 32265

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 conneciton, medical expenses 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 1, 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.

DATED: APR 0 1 2014

MJB:bjg
0-3/25/2014
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

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

14IWCC0243

BELTON SR, RICK
Employee/Petitioner

Case# **11WC032265**

MENARD CORRECTIONAL CENTER
Employer/Respondent

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:

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
FARRAH L HAGAN
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

JUL 1 - 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

14IWCC0243

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Rick Belton, Sr.
Employee/Petitioner

v.

Menard Correctional Center
Employer/Respondent

Case # **11** WC **32265**

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 **Joshua Luskin**, Arbitrator of the Commission, in the city of **Herrin, Illinois**, on **April 17, 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, **08/03/2011**, 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 the assertion of the alleged 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, the Petitioner earned **$63,755.00**; the average weekly wage was **$1,226.06**.

Respondent would be entitled to a credit under Section 8(j) of the Act.

ORDER

For reasons set forth in the attached decision, the requested 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.

Signature of Arbitrator

June 26, 2013
Date

ICArbDec19(b)

JUL - 1 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICK BELTON, SR.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 11 WC 32265
	)	
STATE OF IL – MENARD C.C.,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

This matter was heard pursuant to Sections 8(a) and 19(b) of the Act.

STATEMENT OF FACTS

The petitioner began working as a corrections officer at Pontiac Correctional Center in September 1981. He worked various assignments at that facility for approximately a year, and then was unemployed for approximately two years. He was then hired at Menard Correctional Center as a correctional officer in June 1984. He began at the C-1 unit, a medium security kitchen unit. Less than a year after that, he shifted to other positions. Regarding this period. he testified Pontiac was more strenuous except for the condemned unit. Beginning in 1986, he transferred to general population until 1997. At that time he transferred to the health care unit as second floor security or "roving officer." He worked there until January 2010, when he transitioned to supply supervisor. He was initially temporarily assigned to those duties and thereafter was permanently reassigned. In this position, he would load and unload supplies from trailers, work as a cashier in the commissary, and supervise inmate workers. On August 23, 2011, he filed an Application for Adjustment of Claim asserting repetitive trauma with an effective date of loss of August 3, 2011. The petitioner continued to work his regular assignment until his retirement on June 1, 2012.

On August 3, 2011, the petitioner presented to Dr. George Paletta. He reported pain in the arms with weakness in the hands without acute trauma. He reported he "had to turn keys, a lot of keys." The petitioner stated that recently he had developed numbness and tingling into the first three fingers. Physical examination revealed no obvious atrophy or deformity with unremarkable ulnar nerve exam and negative Tinel's. sign. Petitioner had a positive Phalen's test with reproduction after about 15 seconds. He Dr. Paletta assessed possible carpal tunnel syndrome and specifically noted that there was no evidence of epicondylitis or cubital tunnel syndrome. Dr. Paletta recommended EMG study and use of night splints. See PX3.

The EMG study was performed on August 3, 2011. It demonstrated mild ulnar neuropathies, but the petitioner reported that the numbness did not involve the fifth fingers, a finding inconsistent with cubital tunnel syndrome. The readings for carpal tunnel were normal. PX4. Dr. Paletta reviewed the EMG on August 10, and noted that Dr. Phillips believed that the petitioner might have epicondylitis given some tenderness in that area. Dr. Paletta noted that his examination had not suggested such and that while the petitioner had some evidence of cubital tunnel syndrome, the petitioner's pain complaints were not consistent with such a diagnosis. He recommended against surgical intervention at that time. PX3.

On October 5, 2011, Dr. Paletta saw the petitioner again, and noted that EMG studies had been normal. The petitioner "now has a myriad of complaints" and asserted that his symptoms had worsened. However, the symptoms of nerve entrapment continued to spare the little finger, again inconsistent with cubital tunnel syndrome. Given the benign EMG, "entirely normal" cubital tunnel examination at that presentation, and the petitioner's "atypical" complaints, Dr. Paletta recommended against surgical intervention. He suggested the petitioner seek a second opinion. PX3.

On December 5, 2011, the petitioner saw Dr. Young. His history at this time was of three to four years of symptoms, somewhat longer than reported to Dr. Paletta and Dr. Phillips, and at this time reported numbness and tingling for "quite some time." He reported a history significant for smoking, hypertension and high cholesterol. Dr. Young ordered repeat EMG studies. PX5.

On December 16, 2011, the petitioner presented to Dr. Brent Newell for nerve conduction studies. This study demonstrated demyelinating mid ulnar neuropathy, though the needle EMG was within normal limits. No evidence of carpal tunnel syndrome or cervical radiculopathy was observed. PX6.

On December 22, 2011, Dr. Young noted no subluxation of the ulnar nerve but continued complaints of symptoms. He discussed treatment options and the petitioner requested to proceed with bilateral ulnar nerve transposition surgery. PX5.

On February 20, 2012, Dr. Anthony Sudekum reviewed the petitioner's medical records, job description and job demand analysis. He had also toured the Menard Correctional Center. Dr. Sudekum noted that the records contained references to inconsistent and subjective complaints and inconsistent findings on physical examination. He observed that the petitioner's earlier examinations showed history of complaints consistent with carpal tunnel syndrome and specifically inconsistent with cubital tunnel syndrome. At the subsequent evaluation by Dr. Young, however, these complaints had been effectively replaced by descriptions of cubital tunnel syndrome symptoms. Dr. Sudekum further noted findings consistent with symptom magnification, especially given the negative EMG for median neuropathy and equivocal for ulnar nerve abnormality. Dr. Sudekum opined the claimant was a poor surgical candidate. Dr. Sudekum opined that the petitioner's prior employment as a correctional officer at Menard Correctional Center did not cause or contribute to his condition given the chronology of the symptoms

presented, and further opined that the supply supervisor position would not have caused or contributed to such based upon his knowledge of this position and job demands.

Dr. Young and Dr. Sudekum testified in deposition to their respective causal opinion analyses. PX9, RX11. The petitioner testified that retirement has not alleviated any of his symptoms and requested approval of the proposed ulnar nerve transposition surgery. He acknowledged that the health care unit did not use the Folger-Adams keys, but asserted that while assigned to the health care unit he would be assigned to other areas of the prison as needed. He testified that the commissary area did not require substantial use of keys.

OPINION AND ORDER

In cases relying on the repetitive trauma concept, the claimant generally relies on medical testimony to establish a causal connection between the claimant's work and the claimed disability. See, e.g., *Peoria County Bellwood*, 115 Ill.2d 524 (1987); *Quaker Oats Co. v. Industrial Commission*, 414 Ill. 326 (1953). In this case, the claimant has failed to prove to a medical and surgical certainty that his condition is causally linked to his employment.

The petitioner's symptoms and history have shifted over time to conform to the objective testing. This calls into question the credibility of the complaints. Dr. Paletta's assessment was specifically negative for elbow pathology and had ruled out cubital tunnel syndrome from a clinical standpoint. It was only after the petitioner's negative tests for carpal tunnel syndrome that he described a symptom switch. Moreover, he reported to Dr. Young a long history of complaints in all his fingers, when he had specifically denied such to Dr. Paletta. While this might appear to be a minor distinction, it was in large part the specific description provided to Dr. Paletta and Dr. Phillips which they stated undermined any diagnosis of cubital tunnel. Dr. Young acknowledged that the petitioner's history of numbness and tingling would have involved the median nerve distribution when he saw Dr. Paletta, but when he saw Dr. Young it was in the ulnar nerve distribution. Dr. Paletta could not explain the asserted symptom description changes and did not recommend surgery. Dr. Sudekum's assessment parallels this, and notes the discrepancy cannot be credibly explained. He further undermines any causal analysis by noting his review of the job descriptions, job site analysis and personal observation, supporting his foundational basis for his opinion. Dr. Young's assessment is largely based on the claimant's history of complaints, which has been rendered suspect. Moreover, all physicians note non-occupational risk factors, such as smoking and hypertension. This record is insufficient to prove a causal link between the petitioner's employment and his claimed injuries, as the right to recover benefits cannot rest upon speculation or conjecture. *County of Cook v. Industrial Commission*, 68 Ill.2d 24 (1977). For the above reasons, the requested benefits under the Act 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

Daniel Bunting,

Petitioner,

vs.

14IWCC0244

NO: 09 WC 52794

State of Illinois Department of Transportation,

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, temporary total disability, permanent disability, medical expenses, prospective medical care, notice, wages/rate, Sections 19(k) and 19(l) penalties and Section 16 attorney 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 August 20, 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.

DATED: APR 0 1 2014

MJB:bjg
0-3/25/2014
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0244

BUNTING, DANIEL W
Employee/Petitioner

Case# **09WC052794**

STATE OF ILLINOIS IDOT
Employer/Respondent

On 8/20/2013, 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 0.07% 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:

1824 STRONG LAW OFFICES
TODD A STRONG
3100 N KNOXVILLE AVE
PEORIA, IL 61603

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

4390 ASSISTANT ATTORNEY GENERAL
ERIN DOUGHTY
500 S SECOND ST
SPRINGFIELD, IL 62701

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

1430 CMS BUREAU OF RISK MGMT
WORKERS COMPENSATION MANAGER
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

AUG 20 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

14IWCC0244

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

- [ ] 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

DANIEL W. BUNTING,
Employee/Petitioner

v.

STATE OF ILLINOIS, IDOT,
Employer/Respondent

Case # 09 WC 52794

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 **Peoria**, on **February 25, 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. [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. [x] 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. [x] Should penalties or fees be imposed upon Respondent?
N. [x] Is Respondent due any credit?
O. [ ] Other: _____

FINDINGS

On **November 4, 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 alleged accident.

In the year preceding the injury, Petitioner earned **$76,700.00**; the average weekly wage was **$1,475.00**.

On the date of accident, Petitioner was **60** years of age, ***married*** with **no** dependent children under 18.

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 **$8,250.20** for TTD, **$ 0.00** for TPD, **$ 0.00** for maintenance, and **$ 0.00** for other benefits, for a total credit of **$8,250.20**.

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 **$983.33**/week for **20-6/7** weeks, commencing **January 21, 2010** through **June 15, 2010,** as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$664.72**/week for **75** weeks, because the injuries sustained caused the **15%** loss of use of his **person as a whole**, as provided in Section 8(d)2 of the Act.

Petitioner is now entitled to receive from Respondent compensation that has accrued from **November 24, 2009** through **February 25, 2013,** and the remainder, if any, of the award is to be paid to Petitioner by Respondent 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.

Signature of Arbitrator JOANN M. FRATIANNI

August 15, 2013
Date

ICArbDec p 2

AUG 20 2013

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

Petitioner was employed as a "snowbird" for Respondent. Petitioner testified he also worked concurrently with DWB Trucking, a company he has owned for approximately 16 years. Petitioner testified he typically worked for Respondent in the winter and early spring, depending upon the weather, and then worked for DWB from April through December. Petitioner testified that on November 24, 2009, while working for Respondent, he was moving barricades and sandbags when he injured his left arm.

Petitioner saw Dr. Dru Hauter with complaints of a left shoulder injury. Dr. Hauter prescribed an MRI to the left shoulder. (Rx1)

Over the weekend, Petitioner did not experience an improvement in his symptoms. He filled out an accident report for Respondent on November 30, 2009. (Rx1)

Based upon the above, the Arbitrator finds that Petitioner sustained an accidental injury that arose out of and in the course of his employment by Respondent on November 24, 2009.

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

Petitioner completed an accident report form for Respondent on November 30, 2009. Petitioner's supervisor also signed this report. (Rx1) Petitioner further testified he reported the injury to Mr. Brian Ruder, his supervisor, that same day.

Based upon the above, the Arbitrator finds that timely notice of this accidental injury was given Respondent, as defined by the Act.

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

See findings of this Arbitrator in "C" and "E" above. Petitioner testified he reported an injury to his left and right shoulder to Mr. Rick Grausoff. The completed accident report dated November 30, 2009 and signed by Petitioner's supervisor, Mr. Brian Ruder, only reports a left shoulder injury. Respondent accepted an injury claim to the left shoulder and this part of the body is not in dispute. Respondent disputes the causal connection claim by Petitioner to the right shoulder.

Petitioner sought treatment with Dr. Dru Hauter on November 25, 2009 with complaints of pain to his right shoulder. Dr. Hauter prescribed a left shoulder MRI. This was performed on December 3, 2009 and revealed a SLAP tear along with a degenerative cyst formation and osteophyte presence in the head of the left humerous. Following the MRI, Petitioner was referred to Dr. Michael Merkley.

Petitioner saw Dr. Merkley on December 7, 2009 with complaints of left arm and shoulder pain. Dr. Merkley noted range of motion and strength to the right shoulder to be better than the left. (Px5) Dr. Merkley testified by evidence deposition that the right shoulder examination was important to serve as a control to compare against the left shoulder symptoms. Dr. Merkley testified his diagnosis was left shoulder pain. Physical therapy was prescribed. (Px5)

Petitioner returned to see Dr. Merkley and Dr. Hauter on January 5, 2010. Dr. Merkley noted therapy was aggravating Petitioner's neck. Dr. Hauter noted some tenderness in the right neck and upper arm. (Px3) Dr. Hauter diagnosed right shoulder sprain, from muscular irritation from an unknown cause. (Px3)

On January 21, 2010, Petitioner underwent left shoulder arthroscopy with Dr. Merkley in the form of a glenohumeral debridement and chondroplasty. Dr. Merkley also performed a subacromial decompression. (Px6) Post surgery, Petitioner saw Dr. Hauter on February 11, 2010 and reported no pain on the left. When seen by Dr. Merkley on May 4, 2010, Petitioner complained of left shoulder tightness but no pain. When seen again on June 15, 2010, Dr. Merkley released Petitioner to return to full duty work and felt he was at maximum medical improvement. (Px5)

Petitioner saw Dr. Daniel Troy, an orthopedic surgeon. This was at the request of Respondent. The examination took place on May 22, 2012 and included a review of medical records. Dr. Troy concluded the left shoulder injury was likely causally connected to the November 24, 2009 injury, but the right shoulder injury was not. (Rx3) Dr. Troy noted advanced degenerative changes in both shoulders and felt an activity of daily living was the underlying cause of the right shoulder injury. Dr. Troy agreed with Dr. Merkley that Petitioner reached maximum medical improvement on June 15, 2010.

Based upon the above, the Arbitrator finds that the left shoulder condition as noted above is causally related to the accidental injury of November 24, 2009.

Based further upon the above, the Arbitrator finds that the right shoulder condition is not causally related to the accidental injury of November 24, 2009. The Arbitrator notes that examining both shoulders is something orthopedic physicians perform for comparison purposes, which appears to have occurred in this case.

G. What were Petitioner's earnings?

Respondent allege an average weekly wage of $825.00 (Rx1, Rx2). Petitioner alleges concurrent employment by DWB Trucking, Inc. Petitioner testified his supervisors, Doug Ackerman and Rick Grausoff, were aware of his concurrent employment. Petitioner testified his average weekly wage at DWB Trucking, Inc. was $650.00, and introduced wage and tax records in support of this testimony. Respondent offered no evidence rebutting Petitioner's testimony and evidence as to the issue.

Based upon the above, the Arbitrator finds that Petitioner was concurrently employed while working for Respondent. The Arbitrator finds the average weekly wage at DWB to be $650.00, and the average weekly wage from Respondent to be $825.00. This results in a combined average weekly wage of $1,475.00.

This Arbitrator so finds.

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?

See findings of this Arbitrator in "C" and "F" above. Based upon these findings, the Arbitrator also finds Respondent to be not liable for the medical charges incurred for treatment to the right shoulder. All medical bills pertaining to the left shoulder were paid by Respondent.

K. What temporary benefits are in dispute?

See findings of this Arbitrator in "C" and "F" above.

Petitioner was off work commencing January 21, 2010 while undergoing treatment and surgery to his left shoulder. He was released to return to work and deemed at maximum medical improvement on June 15, 2010.

Based upon the above, the Arbitrator finds that the period of temporary total disability incurred as a result of this accidental injury commenced January 21, 2010 and ended on June 15, 2010, and that Petitioner is entitled to receive from Respondent compensation for this period of time.

All other claims for temporary total disability, including those periods relating to the right shoulder, are hereby denied.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "C" and "F" above.

Petitioner underwent a left shoulder arthroscopy on January 21, 2010. Post-operative notes reflect complaints of tightness and physical therapy was prescribed. Dr. Troy, who examined Petitioner at the request of Respondent, did indicate Petitioner had a probability of re-aggravation to the left shoulder. Petitioner was released to return to regular work and deemed at maximum medical improvement on June 15, 2010.

Petitioner testified to complaints of difficulty in raising his left arm above his shoulder and turning a doorknob.

Based upon the above, the Arbitrator finds the condition of ill-being to the left shoulder to be permanent in nature.

M. Should penalties or fees be imposed upon Respondent?

Petitioner claims penalties and attorneys fees against Respondent in this matter. The Arbitrator notes that Dr. Troy felt there was no causal connection between the condition of ill-being to the right shoulder and this accident.

Based upon the above, the Arbitrator finds that Respondent reasonably relied upon the opinion of Dr. Troy in this case.

Based further upon the above, all claims made by Petitioner for penalties and attorneys fees in this matter are hereby denied

N. Is Respondent due any credit?

The parties stipulated that Respondent paid Petitioner the sum of $8,250.20 in temporary total disability benefits. This Arbitrator so finds.

Respondent also paid medical bills pertaining to treatment to the left shoulder in the amount of $29,740.50. These bills are not in dispute between the parties and credit for these payments are also allowed.

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

Yolanda Patino,

Petitioner,

14IWCC0245

vs.

NO: 13 WC 07807

McDonald's,

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 connecation 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 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 September 30, 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.

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 0 1 2014

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB:bjg
0-3/17/2014
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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0245

PATINO, YOLANDA
Employee/Petitioner

Case# **13WC007807**

McDONALD'S
Employer/Respondent

On 9/30/2013, 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 0.05% 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
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0210 GANAN & SHAPIRO PC.
JULIA A MURPHY
210 W ILLINOIS ST
CHICAGO, IL 60654

14IWCC0245

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)

Yolanda Patino
Employee/Petitioner

v.

McDonald's
Employer/Respondent

Case # **13WC 07807**

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 **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Chicago**, on **August 9, 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, **3/1/2013**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$14,200.68**; the average weekly wage was **$273.09**.

On the date of accident, Petitioner was **23** years of age, *single* 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 **$1,698.70** for TTD, **$0** for TPD, **$0** for maintenance, and **$2,541.82** for medical benefits, for a total credit of **$4,240.52**.

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

ORDER

Petitioner failed to prove her current condition of ill being is causally related to the March 1, 2013 accident.

Respondent shall pay to Petitioner the reasonable and necessary medical expenses incurred through May 9, 2013 pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid

Petitioner's request for prospective medical 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.

Carolyn Doody
Signature of Arbitrator

9/27/13
Date

ICArbDec19(b)

SEP 30 2013

FINDINGS OF FACT

At trial, the parties stipulated to the issues of accident and timely notice. ARB EX 1. Petitioner, a 23 year old restaurant worker, was employed by Respondent McDonald's on 3/1/13. Petitioner testified that on that day, she was at work when she was struck by the cover of a soda machine. The cover was taken off the machine by a vendor who left it on the top of the machine. Petitioner testified that the cover fell from the top of the machine and struck her on her left shoulder and arm.

Petitioner testified that she felt fine initially but as time passed she felt pain on the left side of her neck and the top of her left shoulder. Petitioner testified that a manager took her to the hospital around 1:50 pm. Petitioner was taken to Adventist Glen Oaks Hospital. She offered a consistent history of accident and reported pain on her left neck and top of her left shoulder. The records reflect she was struck by a 20 to 30 pound metal lid that fell from 1 foot off the top of a shelf and struck her left neck and top of her left shoulder. Petitioner reported pain in her left clavicle as well as the left neck in the trapezius area radiating down to her left hand. Petitioner is right handed. PX 1. Tenderness was noted in these areas on exam. X-rays of these left clavicle and cervical spine were negative. The diagnosis was contusion of the shoulder and left trapezius muscle strain. PX 1. Petitioner was to apply ice packs and use and arm sling until the pain improved. She was given Flexeril and told to follow up with her doctor.

Petitioner testified that she first saw Dr. Barnabas on 3/8/13. The visit notes indicate that Petitioner tried to see another doctor prior to this date but he would not see her so she saw Dr. Barnabas at the Herron Medical Center. PX 2. Dr. Barnabas' records indicate that Petitioner reported pain in the neck at 8/10 going down the back to the lower back and left leg. Petitioner reported numbness and tingling down her left leg with weakness on walking. Left shoulder pain was also noted at 8/10. Dr. Barnabas ordered a left shoulder MRI which showed an intact rotator cuff and rotator cuff tendinitis and/or bursitis involving the distal supraspinatus tendon. PX 2. Dr. Barnabas also ordered a lumbar MRI which showed a mild annular disk bulge approximately 2mm slightly indenting the thecal sac without spinal stenosis or significant neuroforaminal narrowing. PX 2.

Dr. Barnabas authorized Petitioner off work on 3/8/13 to 3/22/13. On 3/15/13, Dr. Barnabas recommended physical therapy and referred her to a chiropractor for treatment of her cervical, shoulder and lumbar complaints. On 3/22/13, Dr. Barnabas continued Petitioner off work on 3/22/13 to 4/5/13. PX 2.

Petitioner's first visit the chiropractor, Dr. Carrion, was on 3/26/13. Petitioner again gave a consistent history of accident and pain in her neck to her left arm with numbness and tingling in her 3-5th digits and severe to moderate left shoulder sharp pain. PX 2. Petitioner also complained of back pain and left leg pain. Range of motion was noted as limited in her left shoulder due to pain on exam. Under the diagnosis of shoulder sprain/strain, cervical sprain/strain, cervical radiculopathy, and lumbar sprain/strain Petitioner was given chiropractic manipulation and manual therapy. 12 visits were ordered. PX 2.

Petitioner attended chiropractic care through her next visit with Dr. Barnabas on 4/5/13. On that date, Petitioner continued to complain of lower back pain 6/10 and left shoulder pain 8/10. Dr. Barnabas returned Petitioner to light duty work with restrictions against lifting, carrying, and pulling more than 5 to 10 pounds and no stooping or bending. Petitioner was to remain on modified duty through 4/19/13. PX 2.

Petitioner continued with chiropractic care as of 4/9/13. On that date it was noted that Petitioner started work and had some increase in pain in her left shoulder and neck areas. PX 2. The range of motion of the left shoulder and cervical areas were decreased with sharp and severe pain noted. However, some improvement was noted in her condition. Petitioner continued with chiropractic care and reported continued improvement in her cervical and left shoulder pain. She reported being able to perform household and work chores with less pain and discomfort. PX 2. On 4/19/13, Dr. Barnabas continued Petitioner on modified duty through 5/3/13. PX 2. At trial, Petitioner testified that she is able to perform the light duty work.

On 4/24/13, Petitioner was reassessed by Dr. Carrion. Petitioner continued to report moderate sharp left shoulder pain and moderate pain in her neck and left arm but was no longer experiencing numbness and tingling in her 3-5th digits on the left hand. Petitioner continued to report moderate back pain. Improvement since her first visit was noted at 30 -35%. 12 more visits were ordered. PX 2. Petitioner attended chiropractic visits through 5/2/13 with some improvement noted but continued pain complaints. PX 2.

On 4/30/13, Dr. Barnabas noted "patient has low back and shoulder pain. The pain level is 7/10. She has received 6-7 weeks of physical therapy and not doing better so sent to a pain specialist and orthopedic surgeon". On exam, Dr. Barnabas noted left shoulder reveals tenderness on flexion and extension and abduction. Jobe's and Neer's are negative. For her back forward flexion is painful." PX 2. Dr. Barnabas referred Petitioner to Dr. Giannoulias for her left shoulder and to Dr. Chunduri for pain management. PX 2. On 5/7/13, Dr. Chunduri ordered an EMG of Petitioner's left upper and lower extremities. PX 2. Petitioner reported continued left shoulder pain to Dr. Barnabas on 5/8/13 who continued his orthopedic recommendations and was waiting for Dr. Chanduri's recommendations. On 6/4/13, Dr. Barnabas continued Petitioner under the same restricted work duties. He was waiting for the EMG testing which was not authorized. Petitioner testified that she continues to take prescribe pain medication.

Petitioner testified that she stopped seeing Dr. Barnabas and stopped going to PT because she could not pay for the treatment. Furthermore, she testified that she could not see Dr. Barnabas until she brought him the "study" he wanted. At trial, Petitioner requested authorization of the recommended testing and for continued treatment pursuant to Section 8(a) of the Act. Petitioner testified that her left arm and neck continue to hurt. Home exercises are helping but she is unable to carry her baby or perform household chores due to her shoulder pain. Petitioner testified that she had no shoulder pain before this accident. Petitioner was not specific at trial regarding a request for continued low back care but focused primarily on her left shoulder complaints.

Matt Romine testified at trial in his capacity as the manger at the McDonalds where the accident occurred. He has worked 18 years for Respondent. Mr. Romine testified that Petitioner returned to light duty accommodated work the first week of April 2013. He testified that Petitioner returned to full duty work at the end of April or beginning of May 2013 and has been performing her full duties since that time. He has observed Petitioner performing these duties and has not observed Petitioner having any difficulties or complaints while working full duty.

RX 4 is a video of the accident as it occurred on 3/1/13 at approximately 12:47 pm. Prior to that time the video depicts Petitioner working the drive thru window using both arms actively. The video depicts a

vendor working on the beverage machine near the window. At approximately 12.47 pm a metal object falls from the beverage machine area apparently striking Petitioner's left elbow region. The object does not appear to strike Petitioner's head, neck or left shoulder. The Arbitrator notes the action occurred very quickly. Petitioner is seen thereafter holding her left elbow or the area just above her left elbow with her right hand. Petitioner is seen working a few more minutes at the drive thru window clutching her elbow on a few occasions but continuing to use both arms although somewhat favoring the left arm. RX 4.

At Respondent's request, Petitioner attended a Section 12 exam with Dr. Lanoff on May 9, 2013. Dr. Lanoff reviewed Petitioner's medical records from Dr. Barnabas and Dr. Carrion and reviewed the lumbar and shoulder MRI reports and films. Dr. Lanoff noted that the lumbar MRI showed a minor disk protrusion which he noted was "normal for age and not clinically relevant." He noted the left shoulder MRI was "negative" showing a "mild biceps tendinosis in the distal supraspinatus tendon, which is seen quite commonly and normal for age. This is obviously not posttraumatic tendinosis. This is not an uncommon finding and certainly does not correlate to the patient's symptoms."

Petitioner reported cervical, left shoulder, left arm, thoracic and lumbar pain with pain down the left leg to the knee and to the foot. Dr. Lanoff performed a cervical, shoulder and lumbar exam with many positive Waddell findings on lumbar exam. Dr. Lanoff opined that Petitioner's exam was considerably nonorganic but not exaggeratedly so. Based on his exam of Petitioner and on his reading of the "pristine" MRI tests he concluded "I do not see any physical malady in this woman. I do see nonorganic pain behaviors, in addition to the lack of any objective pathology. I do not see any medical diagnosis other than subjective complaints that are out of proportion to the objective findings with the possibility of some possible soft tissue cervical and trapezius injuries. However, this is complicated by the fact that she complaints of pain in the majority of her body on her left side." Dr. Lanoff concluded that the trapezius strain may be related to the accident of 3/1/13 but "by now it should have improved after eight weeks. I would state it is no longer related." RX 2. Dr. Lanoff "released" Petitioner to full duty unrestricted work and placed her at MMI. He determined that no further testing or treatment was necessary.

Dr. Lanoff viewed the work accident video the day after his observations at the Section 12 exam and wrote another report after viewing the video on 5/10/13. He determined that the metal rack struck Petitioner on the left upper arm just above the elbow and her left lower extremity. He further noted that in his view the object did not strike any portion of Petitioner's head, neck shoulder or anywhere along her cervical, thoracic or lumbar spine. RX 3. Petitioner is seen on the video thereafter holding her left forearm, elbow and left lateral upper arm. Dr. Lanoff wrote, "based upon the video, I do not see any injury to the patient's cervical spine, trapezius, or left shoulder. There may have been a glancing blow to her left upper arm and to the left forearm, however, I do not see any significant impact, let alone impact to the areas that she claimed in the office. The video does not change my opinion in any way." RX 3.

CONCLUSIONS OF LAW

The above findings of fact are incorporated into the following conclusions of law.

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

The Arbitrator initially notes that accident is not at-issue. ARB EX 1. Petitioner was clearly struck by a falling metal object at work on 3/1/13 as depicted in RX 4. However, Respondent disputes whether

Petitioner's continued complaints and request for continued medical treatment are casually connected to that injury. The Arbitrator finds Petitioner failed to prove her current condition of ill-being is causally related to the March 1, 2013 accident, as she reached maximum medical improvement for her documented complaints as of May 9, 2013.

In support thereof, the Arbitrator places greater weight on the video footage of the March 1, 2013 incident, as well as the opinions of Dr. Martin Lanoff as supported by that video. The Arbitrator notes that Dr. Lanoff examined Petitioner and issued his opinions regarding her condition and maximum improvement prior to viewing the video. Dr. Lanoff viewed the video the day after the Section 12 exam and noted that his opinions were buttressed by the video depiction of the accident. The Arbitrator agrees.

At best, the video depicts Petitioner being struck in the left forearm by a falling object. The video of the incident shows the object did not strike Petitioner in the neck or left shoulder, as she testified. She did not appear to have been jostled or to stumble once struck. Petitioner did not grab her shoulder or neck after the incident occurred. A minute or so after the incident, she grabbed her left arm around her elbow. Again, the Arbitrator places great weight on the footage of the incident, which does not show an injury to the neck or shoulder as Petitioner originally complained of to her treating physicians and for which she received extensive conservative treatment.

Again, the Arbitrator notes that Dr. Lanoff noted Petitioner had extreme complaints of pain without any objective findings on exam. Dr. Lanoff opined that Petitioner possibly suffered soft tissue cervical and trapezius injuries but that this strain was no longer related to the accident of 3/1/13 as the condition should have improved after eight weeks. He further opined that Petitioner's exam and the video did not support Petitioner's complaints of pain in the majority of her body on her left side. RX 2. The Arbitrator finds Dr. Lanoff's opinions persuasive and finds Petitioner reached maximum medical improvement on May 9, 2013 for her initial complaints of pain. As such, Petitioner failed to prove her current condition of ill-being is causally related to the March 1, 2013 incident.

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

Based on the findings on the issue of causal connection, the Arbitrator further finds that Respondent is to pay Petitioner the reasonable and necessary medical expenses incurred through May 9, 2013 pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

K. Is Petitioner entitled to any prospective medical care?

Based on the Arbitrator's findings on the issue of causal connection, the Arbitrator further finds that Petitioner is not entitled to prospective medical care or expense pursuant to Section 8(a) of the Act.

M. Should penalties or fees be imposed upon Respondent?

Based on the Arbitrator's findings on the issue of causal connection and on the opinion of Dr. Lanoff, the Arbitrator further finds that Respondent's conduct was not unreasonable or vexatious so as to justify the imposition of the requested penalties under Section 19(k) of the Act. Insofar as the request was made based on Respondent's failure to authorize additional medical treatment, Petitioner's request is further denied.

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

Nunzia Maciacci,

Petitioner,

14IWCC0246

vs.

NO: 13 WC 206

Partyline Distributions,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b0 having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, and permanent 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 June 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.

14IWCC0246

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: APR 0 1 2014

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

MJB:bjg
0-3/17/2014
52

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

14IWCC0246

MUCIACCI, NUNZIA
Employee/Petitioner

Case# **13WC000206**

PATRYLITE DISTRIBUTION
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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14IWCC0246

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
ARBITRATION DECISION
19(b)

Nunzia Muciacci
Employee/Petitioner

v.

Partylite Distribution
Employer/Respondent

Case # **13** WC **206**

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 **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. ☐ 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 the alleged accident, **September 19, 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*** **not** sustain an accident that arose out of and in the course of employment.

ORDER

Denial of Beneficent:
Because the alleged accidental injuries did not arise out of the employment, benefits are denied.

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

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

Signature of Arbitrator

May 31, 2013
Date

ICArbDec19(b)

JUN - 7 2013

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner testified that on September 19, 2012, she was on her break in the company cafeteria (lunchroom) at approximately 1:15 – 1:30 p.m when the accident as alleged herein occurred. Under the Personal Comfort Doctrine, the arbitrator finds that the Petitioner was "in the course of" her employment at that time and place.

Petitioner further testified that she was sitting in a chair. The chair was hard case plastic with a metal frame and was not on wheels per the Petitioner's testimony and two Respondent witnesses with no indication that it was broken. Petitioner testified that the chairs were slippery and had been so for some time before the accident.

As such, the Petitioner testified that she stood up, the chair slid, and she fell to the ground. A co-worker testified on behalf of the Respondent that she saw the Petitioner stand-up, lose her balance, and fall to the floor. Further, the Petitioner's supervisor testified on behalf of the Respondent that after the incident, she arrived in the cafeteria and she noticed that the floor was neither slippery nor wet; there was no debris nor objects on the floor and the chair was not broken.

Based upon a review of Petitioner's testimony along with the two Respondent witnesses and the record as a whole, the arbitrator finds that the Petitioner failed to prove that her injuries "arose out of" her employment with the Respondent. In support of this finding, the Arbitrator cites the case of 12 IWCC1090, Henderson v. State of Illinois, Department of Human Services (see attached), where it was found that the Petitioner failed to prove that her injuries arose out of her employment when sitting in a hard cast plastic chair with a metal frame and was not on wheels and which slid out from under her, causing her to fall and injure herself. As such, compensation is denied.

14IWCC0246

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GILDA C. HENDERSON,

Petitioner,

vs. NO: 06 WC 47122

STATE OF ILLINOIS
DEPARTMENT OF HUMAN SERVICES,

12IWCC1090

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, and nature and extent, hereby reverses the Decision of the Arbitrator on the issue of accident for the reasons set forth below and vacates the awards of medical expenses and permanent partial disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1) Petitioner testified that on August 14, 2005, she was sitting in a chair and fell out of it.
2) Petitioner testified that the chair was in the day room of the Baker housing unit and she recalled that the floor had been waxed the night before.
3) Petitioner testified that she was sitting in the chair and writing notes. The chair was hard-cast plastic with a metal frame and was not on wheels. There was a table in front of her.
4) Petitioner testified that, as she was sitting in the chair, it "just left from underneath" her and she fell to the floor.

Based upon a review of Petitioner's testimony and the record as a whole, we find that Petitioner failed to prove that her injuries arose out of her employment with Respondent and find that she was not exposed to an increased risk by merely sitting in the chair. Even assuming that

the floors were waxed the night before, Petitioner has failed to prove how this fact contributed to her falling out of the chair, which was not on wheels. The Commission declines to find a compensable accident under the facts of this case.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator is reversed on the issue of accident and benefits are denied.

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: OCT - 9 2012

Charles J. DeVriendt

Yolaine Dauphin

Yolaine Dauphin

Ruth W. White

Ruth W. White

SE/
O: 8/16/12
49

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0246

HENDERSON, GILDA C
Employee/Petitioner

Case# 06WC047122

ST OF IL DEPT OF HUMAN SERVICES
Employer/Respondent

12IWCC1090

On 11/22/2011, 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 0.05% 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:

0139 CORNFIELD & FELDMAN
JIM M VAINIKOS ESQ
25 E WASHINGTON ST SUITE 1400
CHICAGO, IL 60602-1803

0639 ASSISTANT ATTORNEY GENERAL
CHARLENE C COPELAND
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

1745 DEPT OF HUMAN SERVICES
BUREAU OF RISK MANAGEMENT
100 N NINTH ST
ROOM 103
SPRINGFIELD, IL 62705

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

NOV 22 2011

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)
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

141WCC0246

GILDA C. HENDERSON
Employee/Petitioner

v.

STATE OF ILLINOIS
DEPARTMENT OF HUMAN SERVICES
Employer/Respondent

Case # 06 WC 47122

12IWCC1090

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 Joliet, on April 20, 2010 and December 13, 2010. 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 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 amount of compensation is due for temporary total disability?

L. ☒ What is the nature and extent of the injury?

M. ☐ Should penalties or fees be imposed upon the respondent?

N. ☐ Is the respondent due any credit?

O. ☐ Other _____

FINDINGS

- On August 14, 2005, the respondent *was* operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship *did* exist between the petitioner and respondent.
- On this date, the petitioner *did* sustain 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 earned $ 38,234.04 ; the average weekly wage was $ 735.27 .
- At the time of injury, the petitioner was 35 years of age, *single* with -0- children under 18.
- Necessary medical services ***have not*** been provided by the respondent.
- To date, $ -0- has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

- The respondent shall pay the petitioner the sum of $ 441.16/week for a further period of 15 weeks, as provided in Section 8d(2) of the Act, because the injuries sustained caused 3% loss man as a whole .
- The respondent shall pay the petitioner compensation that has accrued from August 14, 2005 through December 13, 2010, and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall pay the further sum of $ 3,419.56 for necessary medical services, as provided in Section 8(a) of the Act.
- The respondent shall pay $ _____ in penalties, as provided in Section 19(k) of the Act.
- The respondent shall pay $ _____ in penalties, as provided in Section 19(l) of the Act.
- The respondent shall pay $ _____ in attorneys' fees, as provided in Section 16 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.

Rhett E Dalton — Signature of arbitrator

November 15, 2011 — Date

ICArbDec p 2

NOV 22 2011

In response to Arbitrator's decision relating to "C" (Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent? and "F" (Is the petitioner's present condition of ill-being causally related to the injury?) the Arbitrator finds the following facts:

The Petitioner is an employee of the State of Illinois, Department of Human Services Treatment Detention center. Her date of hire was May 7, 2001. Her job title was Security Therapy Aide 1. Her job duties were to secure residents in the facility by recording activity and reporting activities to the control center. The treatment facility is a maximum security detention center. The inmate/residents are locked behind solid doors with chuckhole entry. Some other duties include constant walking, charting, and standing. Every door and entryway has a lock for which she has a key.

On August 14, 2005, Petitioner had another accident while assigned to the Baker housing unit. It was during the night shift and the floors were being waxed. Petitioner testified that she was sitting on a plastic hard-cast chair at a table. While sitting, the chair started to slide out from under her and Petitioner fell to the floor. She hit her right side, including her right hand, back, and head. Petitioner treated immediately at University of Illinois Medical Center and was diagnosed with right wrist pain, cervical spine muscle spasm, and dizziness. A CT scan was performed of the neck with normal findings.

The Arbitrator finds that Petitioner had an accident arising out of and in the course of her employment and that the subsequent treatment was causally related and notes the commission decision in the case of Gossett v. Hoopeston Memorial Hospital 01 WC 32621 (2005)

In response to Arbitrator's decision relating to "L" (What is the nature and extent of the injury?) the Arbitrator finds the following facts:

The Arbitrator finds that Petitioner had a diagnosis of right wrist pain, neck spasms, and dizziness awards 3% man as a whole under Section 8d(2).

In response to Arbitrator's decision relating to "J" (Were the medical services that were provided to petitioner reasonable and necessary?) the Arbitrator finds the following facts:

The Arbitrator, after finding for the Petitioner as to accident and causation, finds the Respondent liable for the following medical bills incurred for treatment at this point to Petitioner:

Univ. of Ill. Medical Center Treatment for right hand ($762.00) and cervical spine ($2,057.00)	$2,819.00
Joliet Pain Center Treatment for left and right hands; cervical spine	600.56
TOTAL	**$3,419.56**

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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Bavaro,

Petitioner,

14IWCC0247

vs.

NO: 12 WC 13367

Chicago Tribune,

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 causal connection, temporary total disability and 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 17, 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.

14IWCC0247

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: APR 01 2014

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

MJB:bjg
0-3/17/2014
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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR
CORRECTED

14IWCC0247

BAVARO, RICHARD
Employee/Petitioner

Case# **12WC013367**

CHICAGO TRIBUNE
Employer/Respondent

On 6/17/2013, 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 0.08% 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:

0664 LAW OFFICE OF JOSEPH G HAFFNER
800 WAUKEGAN RD
SUITE 200
GLENVIEW, IL 60025

1120 BRADY CONNOLLY & MASUDA PC
SURABHI SARASWAT
ONE N LASALLE ST SUITE 1000
CHICAGO, IL 60602

14IWCC0247

STATE OF ILLINOIS)
)SS.
COUNTY OF Lake)

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

CORRECTED

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Richard Bavaro
Employee/Petitioner

v.

Chicago Tribune
Employer/Respondent

Case # **12** WC **13367**

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 **Waukegan**, on **March 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 _____

14IWCC0247

FINDINGS

On the date of accident, **November 2, 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 **$70,145.40**; the average weekly wage was **$1348.95**.

On the date of accident, Petitioner was **57** 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 **$20683.44** for TTD, $ for TPD, $ for maintenance, and **$10,966.50** for other benefits, for a total credit of **$31,649.94**.

ORDER

The Respondent shall pay the Petitioner TTD benefits of $899.30 for 72 weeks pursuant to Section 8b of the Act. See attached.

The Respondent shall pay for prospective medical care for Petitioner's total knee arthroplasty pursuant to Sections 8a and 8.2 of the Act. See attached.

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

6/14/13
Date

ICArbDec19(b)

JUN 17 2013

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

1. The Petitioner testified that on November 2, 2011, and prior thereto, he was employed by the Respondent as a truck driver, and on said date and time, he was working in Lake Zurich, Illinois. The Petitioner further testified that while performing his duties at said place and time, and while in the process of climbing up in to the tractor of the tractor trailer, he was caused to slip as he was extending his left leg up to what would be the third step on his climb up the trailer. The Petitioner testified that, as a result of his left foot slipping, gravity caused his body to fall toward the ground, and in an effort to keep himself from falling to the ground, he held tightly to the truck, which caused him to sustain an injury to his right leg. He further testified that, at that time, he felt considerable pain in the right knee, but stepped down to the ground and attempted to walk off the pain. Petitioner further testified that he proceed to his next stop in Arlington Heights and, while standing on the loading dock at this stop, he squatted down to reach the handle of the rear door of the truck, and while doing so, experienced a sudden sharp pain in the right knee. Petitioner testified that he returned to the shop in Chicago and immediately went to the emergency room for treatment.

2. That the medical records (Petitioner's Exhibits numbers 1 and 2) contain a history as given to Concentra Medical Center and Dr. Baker at Wheaton Orthopaedics. Said history is consistent with Petitioners testimony at arbitration.

3. Respondent presented no evidence in rebuttal.

4. Based on the aforementioned, the Arbitrator finds that the Petitioner sustained an accident arising out of and in the course of his employment by Respondent on November 2, 2011.

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

1. Following the injury, the Petitioner testified that he began to feel pain immediately. After returning to his station, Petitioner testified that he was seen at Northwestern Hospital Emergency Room. That same day, as required by the Respondent, he made an appointment with the company's doctor, Concentra Medical Center. Petitioner testified that he instructed the Concentra Medical Center that he had an injury on the job on the previous evening, November 2, 2011.
2. The Petitioner further testified, and the records reflect, that at the Concentra Medical Center on November 3, 2011, the Petitioner was examined, diagnosed with a leg/knee sprain and instructed to return to work with a no squatting or knelling restriction, no climbing restriction as well as a no driving restriction. Lastly, he was instructed to wear a knee brace. Thereafter, the Petitioner testified that he had a follow up appointment and physical therapy was recommended. Petitioner further testified that he underwent a few courses of physical therapy without noticing any benefit. The Petitioner further testified, and the records reflect, that on November 15, 2011 he was advised by Respondent's doctor, Concentra Medical Center, to undergo an MRI of the right knee, which was completed on November 18, 2011. Petitioner further

testified that, upon receiving the results of the MRI, Concentra Medical Center directed him to schedule an appointment with an orthopedic surgeon.

3. Dr. Baker of Wheaton Orthopaedics examined the Petitioner on November 28, 2011. Dr. Baker opined, per his medical records and testimony, that the Petitioner's symptoms were consistent with an exacerbation of a pre-existing condition, with an impression of Osteoarthritis right knee with acute traumatic synovitis. At that time, Dr. Baker proceeded with a steroid injection to attempt to provide the Petitioner with some relief.
4. On December 19, 2011, the Petitioner once again was examined by Dr. Baker. At said time, Dr. Baker opined that the steroid injection afforded the Petitioner some relief, but said relief lasted only a few days. As the Petitioner's condition was otherwise unchanged, Dr. Baker ordered a Synvisc injection of the right knee. On December 29, 2011, the Petitioner was again examined by Dr. Baker and was given the Synvisc injection.
5. The Petitioner next visited with Dr. Baker on January 26, 2012. At that time, the Petitioner advised the doctor that the injection helped for about 2 weeks, but his right knee pain had then returned to the pre-injection state. At that time, Dr. Baker again examined the Petitioner and based on his examination, Dr. Baker opined that all non-surgical measures had been exhausted, and as such, recommended that the Petitioner undergo a right total knee arthroplasty.
6. The Petitioner next visited with Dr. Baker on April 17, 2012. At said time, Dr. Baker again examined the Petitioner and opined again that the Petitioner

required a right total knee arthroplasty and that the Petitioner would be unable to return to work until after said procedure was complete.

7. Dr. Baker testified that the Petitioner has been a patient of his for some time, and specifically, that the Petitioner had previously been a patient of his for a right knee injury in 2004 (Pet. Ex 3 page 7-8). Dr. Baker testified that he performed a surgery on the right knee in May of 2004 and released the Petitioner from treatment in October of 2004. Dr. Baker testified that the Petitioner sustained a hyperflexion injury as a result of the occurrence on November 2, 2011 (Pet Ex 4 page 6-7) Dr. Baker further testified that, as of his April 17, 2012 appointment with the Petitioner, he continued to note that there was audible crepitation on bending and straightening of the right knee. Dr. Baker further testified that when the Petitioner sustained the November of 2011 injury, this injury pushed him over the edge, that the injury was a permanent aggravation of a pre-existing condition, causing pain since the date of injury and the reason for the need for the total right knee replacement. (Pet Ex 3 page 19-20 and Pet Ex 4 page 20) Dr. Baker further testified that he made no such recommendation for a total knee replacement when releasing the Petitioner back to work after the 2004 treatment. (Pet Ex 3 page 20) Dr. Baker further testified that he bases his opinion that the injury of November 2011 caused the need for the right total knee arthroplasty as the Petitioner was functioning well prior to the November 2, 2011 occurrence, and subsequent to that, and as a result of the occurrence, his ability to ambulate declined. (Pet Ex 4 page 26-27)

8. Dr. Brian Cole testified on behalf of the Respondent. Dr. Cole examined the Petitioner on two occasions, March 22, 2012 and September 29, 2012. Dr. Cole testified that he could not state that the Petitioner was a candidate for a right knee replacement prior to the date of the occurrence, November 2, 2011, specifically because he failed to ask the Petitioner the proper questions to state such an opinion. (Resp Ex 3 page 18, 24-25) Dr. Cole further testified that the Petitioner did sustain an aggravation of a pre-existing condition as a result of his work occurrence on November 2, 2011 and that the Petitioner is now a candidate of a right knee replacement. (Resp Ex 3 page 19 and 21) In short, Dr. Cole opined that the Petitioner was not in need of a knee replacement prior to the date of occurrence, November 2, 2011, that as a result of said occurrence, the Petitioner aggravated a pre-existing condition and that the Petitioner is currently a candidate for right knee replacement. Dr. Cole's testimony provides no medically related opinions to suggest that the Petitioners present condition of a medical need for a right total knee arthroplasty is not causally related to the injury.

9. Based on the aforementioned and the Arbitrators review of the medical records and testimony, the Arbitrator finds that the injury sustained by the Petitioner was causally related to the accident of November 2, 2011. The Arbitrator finds that the opinions of Dr. Baker as expressed in the medical records and the testimony of Dr. Baker, as well as the testimony of the Petitioner, are more persuasive then the testimony of Dr. Cole.

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

1. The Petitioner testified that Dr. Baker has advised that the Petitioner undergo a right total knee arthroplasty. The Respondent's IME doctor, Dr. Brian Cole, agrees with the recommendation of a right total knee arthroplasty. Per the finding in Section (F) above, the Petitioner is entitled to receive the recommended medical care of the right total knee arthroplasty

(L) What temporary benefits are in dispute?

1. The Petitioner testified that, due to the injuries suffered as a result of the November 2, 2011 occurrence, he was instructed not to work from November 3, 2011 to the date of the hearing, March 20, 2013. The Petitioner testified that, initially, from November 3, 2011 through November 28, 2011, he was instructed not to work by the Concentra Medical Center. Thereafter, since November 28, 2011, Dr. Baker had instructed the Petitioner not to work and said work restriction is permanent until a right total knee arthroplasty is performed on Petitioner.
2. The medical records of Dr. Baker corroborate the Petitioner's testimony. Specifically, Petitioner's Exhibits 1 and 2, the medical records of Concentra Medical Group and Wheaton Orthopaedics, reflect work restrictions from November 3, 2011 to present.
3. That Respondent presented the testimony of Dr. Cole to dispute the Petitioners inability to work. Dr. Cole opines that the Petitioner may not return to work without restrictions, but that those restrictions are unrelated to the injuries sustained as a result of the November 2, 2011 occurrence. Dr Cole's

testimony is not credible as he testified that he has no opinion if the right total knee replacement was required prior to November 2, 2011 and further testified that the Petitioner is now a candidate for said replacement.

4. The Arbitrator finds that the Petitioner was temporarily totally disabled from November 3, 2011 through March 20, 2013. That the Respondent shall pay the Petitioner TTD benefits of $ 899.30/week for 72 weeks which equals $64,749.60.

(N) Is the Respondent due any credit?

1. The Arbitrator finds the Respondent is due a credit for TTD in the amount of $ 31,649.94 representing TTD paid in the amount of $20,683.443 and long term disability payments paid in the amount of $10,966.50.

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

Erika (Granera) Moran, Widow and
next of kin to Michael Moran, Decasesd,

Petitioner,

14IWCC0248

vs.

NO: 07 WC 50823

J & W Delivery Systems and Joseph Orto
d/b/a J & W Delivery Systems and the Illinoios
Treasurer, as ex-officio custodian of the
Injured Workers' Benefit Fund,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondents herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, wages, rate, permanent disability and 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 February 21, 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.

14IWCC0248

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 the Illinois State Treasurer as ex-officio custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is herby entered against the Fund to the extent permitted and allowed under Section 4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petition from the Injured Workers' Benefit Fund.

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: APR 0 1 2014

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

MJB:bjg
0-3/17/2014
52

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0248

(GRANERA) MORAN, ERIKA, WIDOW & NEXT OF KIN TO MORAN, MICHAEL DECEASED
Employee/Petitioner

Case# 07WC050823

J & W DELIVERY SYSTEMS & JOSPEH ORTO DBA J & W DELIBERY SYSTEMS & THE ILLINOIS STATE TREASURER AS EX-OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Employer/Respondent

On 2/21/2013, 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:

0641 HARRIETT LAKERNICK ESQ
203 N LASALLE ST
SUITE 2100
CHICAGO, IL 60601

BRADLEY H FOREMAN PC
120 S STATE ST
SUITE 535
CHICAGO, IL 60603

4987 ASSISTANT ATTORNEY GENERAL
LAURA HARTIN
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

14IWCC0248

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
FATAL

Erika (Granera) Moran, Widow and next of kin to Michael Moran, Deceased,
Employee/Petitioner

Case # **07** WC **50823**

v.

J & W Delivery Systems, & Joseph Orto, DBA J & W Delivery Systems, and the Illinois State Treasurer,as ex-officio custodian of the Injured Workers' Benefit Fund,
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 **Milton Black**, Arbitrator of the Commission, in the city of **Chicago**, on **August 23, 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. [X] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. [X] Was there an employee-employer relationship?

C. [X] Did an accident occur that arose out of and in the course of Decedent'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 Decedent's current condition of ill-being causally related to the injury?

G. [X] What were Decedent's earnings?

H. [X] What was Decedent's age at the time of the accident?

I. [X] What was Decedent's marital status at the time of the accident?

J. [X] Who was dependent on Decedent at the time of death?

K. [ ] Were the medical services that were provided to Decedent reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

L. [X] What compensation for permanent disability, if any, is due?

M. [ ] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [ ] Other _____

FINDINGS

On the date of accident, **August 15, 2007**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Decedent's death ***is*** causally related to the accident.

In the year preceding the injury, Decedent earned **$60,275.40**; the average weekly wage was **$1,178.32**.

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

Respondent ***hasnot*** 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.

The Arbitrator finds that Decedent died on **August 15, 2007**, leaving **2** survivors, as provided in Section 7(a) of the Act, including Erika Moran, widow, and Michael Joseph Moran, son.

ORDER

Respondent shall pay death benefits, commencing **August 15, 2007**, of **$392.77**/week to the surviving spouse, ***Erika Moran***, on her own behalf and**$392.78**/week to ***Erika Moran***, natural parent and guardian of the minor child, ***Michael Joseph Moran***, born ***May 23, 2005***; until ***$500,000.00 has been paid or 20 years,*** whichever is greater, have been paid, because the injury caused the employee's death, as provided in Section 7 of the Act.

If the surviving spouse dies before the maximum benefit level has been reached, and the children herein named still survive, Respondent shall continue to pay benefits until the youngest child reaches 18 years of age; however, if such child is enrolled as a full-time student in an accredited educational institution, payments shall continue until the child reaches 25 years of age. If any child is physically or mentally incapacitated, payments shall continue for the duration of the incapacity. If no children named herein are alive upon the death of the surviving spouse, payments shall cease.

If the surviving spouse remarries, and no children remain eligible, Respondent shall pay the surviving spouse a lump sum equal to two years of compensation benefits; all further rights of the surviving spouse shall be extinguished.

Respondent shall make payments for not less than six years to any eligible child under 18 years of age at the time of death.

Respondent shall pay ***8,000.00*** for burial expenses to the surviving spouse or the person(s) incurring the burial expenses, as provided in Section 7(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) of the Act.

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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.

Walter Black

Signature of Arbitrator

February 20, 2013

Date

FEB 21 2013

FINDINGS OF FACT

This claim has been filed on behalf of Erika Moran, widow, and Michael Joseph Moran, son, of Michael David Moran, the decedent. The named Respondents are J&W Delivery Systems (hereinafter (J&W), Joseph Orto doing business as J&W Delivery Systems (hereinafter "Orto"), and the Injured Workers' Benefit Fund. J&W did not maintain workers' compensation insurance. Orto appeared at the hearing, was represented by counsel, and participated in the proceedings. The Illinois Attorney General's office appeared on behalf of the Illinois State Treasurer, as *ex-officio* custodian of the Injured Workers' Benefit Fund, and participated in the proceedings. The Petitioner alleges that on August 15, 2007 the decedent was employed by J&W as a night driver to deliver luggage and that while making deliveries he was involved in a single vehicle crash, which resulted in his death.

Orto was called as an adverse witness. He further testified upon questioning by his attorney and by the assistant attorney general. Orto testified that he was the owner of J&W, which was incorporated in Illinois. Orto

testified that he was the president, sole shareholder, and sole member of the board of directors. He testified that the corporation was not still in existence. He then testified that he has not filed an annual report for 2011, "so it should be dead". He then testified that he did not ever have a statement of dissolution. Orto testified that J&W closed in March of 2009 and was incorporated in December of 1999. He then testified that J&W was "obviously not" dissolved.

Orto testified that J&W delivered mishandled airline luggage and that it also delivered tires outside of Illinois. Orto testified that J&W worked out of O'Hare and Midway airports in addition to airports in Memphis and San Antonio and that J&W had contracts with more than 50 airlines. Orto testified that he had rented a warehouse in Schiller Park, Illinois, that the airlines would phone in job orders and provide work tickets, and that he, his wife, or his daughter would pick up luggage at the airport and deliver to the warehouse. Orto testified that delivery persons never went to the airport, that they only picked up luggage at his warehouse, and that there was no set employee delivery schedule. Orto testified that Gene's Delivery Service (hereinafter "Gene's) sublet space in his warehouse, did the same work as J&W, and sometimes delivered luggage for J&W. Orto testified that when he closed his doors, that he walked out on his lease, and that that court case "is over".

Orto testified that drivers would show up at different times, that he had no assurance the drivers would show up, that sometimes he had to call drivers to come in, and that sometimes he had to make deliveries himself. Orto testified that he did not chastise drivers if there were not there to make deliveries. Orto testified that he did not supply telephones or two way radios to the drivers and that the drivers could call in on their own. Orto testified that he did not hire the drivers and that they were independent contractors. Orto testified that he believes he had written contracts with the drivers specifying independent contractor status but that he could not find any of the signed contracts. Instead, he brought in a blank unsigned agreement form (RX2) and a blank unsigned Illinois Workers Compensation insurance rejection form (RX3). Orto testified that he did not instruct drivers on what work orders they had to take or what routes to use. He testified that deliveries were divided into zones based on distance from the airport, which was the basis for payment rates. Orto testified that a few weeks

before decedent's accident he provided drivers with shirts with had the J&W logo, that drivers were not required to wear these shirts, that there was no dress code, and that drivers did not have J&W signage on their vehicles. Orto testified that he did not control the drivers. Orto testified that if a driver could not complete a delivery, he was required to call back to the office. Orto testified that drivers were paid a percentage of what the airlines paid per each delivery and that the airlines did not all pay the same rate. Orto testified that drivers submitted groups of luggage invoices periodically to be paid. Orto testified that drivers were not paid for gas or car maintenance and that insurance and any other benefits were not provided. Orto testified that he did not withhold income or social security taxes and that he would submit 1099 tax forms.

Orto confirmed that the decedent was one of the drivers for J&W. Orto could not recall how the decedent was hired and thought it was a few months before the accident. Orto testified that he required proof of insurance for the vehicle used for deliveries. Orto testified that he found out about the decedent's death when he tried to call him about some luggage that the decedent had picked up for delivery and the bags had not yet been returned. Orto testified that he called the decedent's wife and found out about the car crash. Orto testified that he received some of the undelivered luggage that had been left in the decedent's car and that he delivered this luggage himself. Orto testified that after the accident there were a number of work slips for delivered luggage that was submitted by an attorney for the Petitioner. Orto testified that he could not turn these slips into the airlines to be paid himself but that he paid out what was owed through the attorney.

Orto testified that sometimes the decedent made deliveries for Gene's, and Orto submitted a purported check from Gene's (RX5). Orto also testified about a group of luggage slips and job tickets (RX6) and luggage information from the undelivered baggage (RX4). These group exhibits include luggage information for bags taken by the decedent to be delivered on August 14, 2007, the night of the accident. Orto testified that some of the work orders were J&W and that some of the luggage tags with the same date were from Gene's. Orto testified that he does not know which delivery service the decedent was driving for at the time of the

accident. He had two work orders from Gene's and four from J&W. Orto testified that he was aware that the decedent worked another job during the day.

J & W did not have workers' compensation insurance at the time of the decedent's accident (PX11).

James Oesterreich testified that he was employed by AJR International (hereinafter "AJR"). He verified that the decedent worked for AJR as an electronic manufacturer manager and that the decedent was so employed during August of 2007. He testified that at that time, the decedent worked the 6:00 am to 2:30 pm shift at AJR. He testified to a payroll record for the decedent covering 51 weekly checks issued from September 1, 2006 through August 10, 2007. Excluding vacation pay, the AJR annual earnings are $50,846.40, which divided by 51 equals $996.99 (PX10 B).

The Petitioner testified that she is the widow of Michael Joseph Moran. They were married on December 23, 2006 (PX1). She testified that they have one child, named Michael David Moran, who was born on May 23, 2005 (PX3). The Petitioner testified that the decedent started working for J&W in February of 2007 or in 2006. The Petitioner testified that the decedent worked three days a week for J&W. She testified that this was set by a schedule, but it changed every week. The Petitioner testified that the decedent's hours at J&W were flexible but that he did not make his own schedule. The Petitioner testified that the decedent worked nights and never went to work before 6:00 pm, because he had another job as a manager with AJR during the day. She testified that the decedent had worked for AJR since 1984 or 1985. He worked there full time for AJR from 9:00 am to 5:00 pm. The Petitioner testified that she had heard of Gene's but did not know if the decedent had worked for Gene's.

The Petitioner testified that decedent drove his own vehicle during deliveries for J&W. He was paid based on how much luggage he delivered. The Petitioner was not sure if the decedent was paid hourly. The Petitioner testified that the decedent paid for his gas. The Petitioner testified that the decedent had a uniform for work, which was a shirt with initials. She testified that the decedent had the uniform towards the end of his employment with J&W. She was not sure if he had it for three weeks or a month prior to the accident. The

Petitioner was not sure if the decedent was required to wear it every day he worked. She believed he wore it most days he went to work.

The Petitioner testified she found out about the decedent's death when she received a phone call from the police department. She was told she would have to come and identify the body at the coroner's office. The decedent was driving his vehicle at the time of the accident. The Petitioner testified that according to the death certificate the decedent died at the scene. The death certificate states that the decedent died of traumatic asphyxia and compression of the chest from a SUV roll over on August 15, 2007 at approximately 2:19 am (PX2). He was pronounced dead at 3:25 am. The accident occurred on Interstate Highway in Peotone Township in Will County Illinois (PX2).

The Petitioner recovered a number of items from the vehicle. She recovered a document reciting the name and telephone number of J&W, the names and cell phone numbers of 5 dispatchers, and the names and cell phone numbers of 44 drivers. The decedent's name and cell phone number are among the listed drivers (PX7). She also recovered a work order from the night of the accident. The work order is for luggage from British Airway and states that it will be delivered by J&W to 1550 State, Rt. 50 Bourbonnais 60914 (PX6). Petitioner also presented tax form 1099 from 2007 and 2008 issued by J&W to the decedent. The 2007 form 1099 shows $7,509.00 and the 2008 form 1099 shows $1,920.00 for a total of $9,429 (PX9).

CONCLUSIONS OF LAW

Was the Respondent operating under and subject to the Illinois Workers' Compensation Act?

It is undisputed that J&W was a delivery service that required carriage by land, loading and unloading of luggage, the operation of a warehouse, and gasoline driven motor vehicles. Therefore, it was operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act.

Was there an employee-employer relationship?

Orto testified that he did not control the drivers. The Arbitrator finds Orto's denial of control, as well as

most of Orto's testimony, to be lacking in credibility.

The document recovered from the vehicle crash listed name and telephone number of J&W, the names and cell phone numbers of 5 dispatchers, and the names and cell phone numbers of 44 drivers, including the decedent. That document in the possession of the decedent, while in the performance of his work, strongly suggest that J&W and its drivers could and would be in contact to determine status and to assert control.

Orto testified that delivery persons had no set employee schedule. However, he further testified that the decedent worked another job during the day. Accordingly, Orto knew that the decedent worked nights at J&W.

Orto testified that he provided drivers with shirts with had the J&W logo and that drivers were not required to wear the shirts. The Arbitrator does not believe that drivers were provided with shirts that drivers were not required to wear.

Orto testified to written independent contractor agreements that he failed to produce. The blank unsigned forms that he submitted are given no weight. The Arbitrator does not believe that drivers executed written independent contractor agreements.

Orto testified that sometimes the decedent made deliveries for Gene's, and Orto submitted a purported check from Gene's. There is no explanation of or independent corroboration for the issuance of the purported check. That document is given no weight. There is no credible evidence that decedent worked for Gene's.

The nature of J&W's work in Illinois is the pickup and delivery of mishandled luggage. Based upon all of the credible evidence, the Arbitrator is persuaded that the decedent was employed by J&W to perform the delivery of mishandled luggage. Payment was based upon the deliveries. The decedent provided the essential tool, his vehicle. No specialized skill was required. J&W had the *de facto* power to terminate its drivers because it had the sole power to assign or not assign a delivery to any driver.

Based upon the foregoing, the Arbitrator finds that there was an employee-employer

relationship between the Michael David Moran and J&W Delivery Systems.

Did an accident occur that arose out of and in the course of Decedent's employment with the Respondent-Employer J&W?

The decedent's vehicle crashed on an interstate highway while transporting misplaced luggage. The death certificate states that the decedent died of traumatic asphyxia and compression of the chest. There is no indication of any other cause of death.

Based upon the foregoing, the Arbitrator finds that an accident occurred that arose out of and in the course of the decedent's employment by employer- respondent.

What was the date of accident?

The death certificate establishes that the date of accident is August 15, 2007.

Was timely notice of the accident provided to the Respondent-Employer J & W?

Orto learned of the death when he received calls regarding undelivered luggage the day after his accident. He then called the home of the decedent's home, spoke to the Petitioner, and found out about the car accident and death. Accordingly, the Arbitrator finds Respondent had timely notice.

Is Decedent's present condition of ill-being causally related to the accident?

The death certificate states that the decedent died of traumatic asphyxia and compression of the chest. There is no indication of any other cause of death.

What were the Decedent's earnings?

The Petitioner testified that the decedent may started have started working for J&W in 2006. Orto testified that he was aware that the decedent worked another job during the day. The decedent's total earnings from J&W are $9,429.00. Without proof of an actual start date at J&W or specific parts of weeks worked at

J&W, those total earnings will be divided by 52, which yields $181.33.

The decedent's weekly earnings from AJR equate to $996.99.

The sum of $996.99 and $181.33 is $1,178.32.

Based upon the foregoing, the Arbitrator finds that the decedent's average weekly wage was $1,178.32.

What was the Decedent's age at the time of the accident?

The death certificate establishes that the decedent was 45 years old when he died.

What was the Decedent's marital status at the time of the accident?

The testimony of the Petitioner, as corroborated by the marriage license, establishes that she was married to the decedent at the time of his death.

Who was dependent on Decedent at the time of death?

The testimony of the Petitioner, as corroborated by the marriage license, establishes that she was married to the decedent at the time of his death. Her further testimony, as corroborated by the birth certificate, establishes that Michael Joseph Moran, a son was born May 26, 2005.

Based upon the foregoing, the Arbitrator finds that Erika Moran, widow of the Michael David Moran, the decedent, and Michael Joseph Moran, son of Michael David Moran, were dependents at the time of death.

What compensation for permanent disability is due, if any?

Based upon the evidence of earnings the widow and son shall be entitled to receive a total of 784.55 weekly to be divided between them, as provided by the Act. The widow shall be further entitled to statutory burial expenses of $8,000.00.

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

Craig Mitchell,

Petitioner,

vs. NO: 12WC 35386

14IWCC0249

State of Illinois/Menard Correctional Center,

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 causation, temporary total disability, medical, "denial of motion to supplement the record" 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 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.

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: APR 0 2 2014
o032614
CJD/jrc
049

Charles J. DeVriendt

Daniel R. Donohoo

Ruth W. White

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

MITCHELL, CRAIG
Employee/Petitioner

Case# 12WC035386

14IWCC0249

SOI/MENARD CORRECTIONAL CENTER
Employer/Respondent

On 5/7/2013, 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:

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

MAY 7 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
19(b)

Craig Mitchell
Employee/Petitioner

Case # 12 WC 35386

v.

Consolidated cases: n/a

State of Illinois/Menard 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 William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on March 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. ☒ 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 _____

14IWCC0249

FINDINGS

On the date of accident, August 27, 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 $82,896.00; the average weekly wage was $1,594.15.

On the date of accident, Petitioner was 48 years of age, married with 2 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. At trial, the parties stipulated that Respondent paid TTD or extended benefits through January 22, 2013.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall receive a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall authorize and make payment for the medical treatment recommended by Dr. Gornet.

Respondent shall pay Petitioner temporary total disability benefits of $1,062.77 per week for six and six-sevenths (6 6/7) weeks, commencing January 23, 2012, through March 12, 2013, as provided in Section 8(b) of the Act.

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

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

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

William R. Gallagher, Arbitrator
ICArbDec19(b)

May 3, 2013
Date

MAY - 7 2013

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on August 27, 2012. According to the Application, Petitioner was assaulted by an inmate and sustained injuries to the buttocks, face/neck, upper lip, back, body as a whole, left elbow/arm, left eye and teeth. There was no dispute that Petitioner sustained an accidental injury; however, Respondent disputed liability in regard to the low back on the basis of causal relationship. This case was tried as a 19(b) proceeding and Petitioner sought an order for temporary total disability benefits, medical bills and prospective medical treatment. At trial, the parties stipulated that either temporary total disability benefits or extended benefits had been paid through January 22, 2013, and that the disputed temporary total disability benefit period was January 23, 2013, onward.

Petitioner worked for Respondent as a Correctional Officer and since May, 1997, held the rank of Correctional Lieutenant. Petitioner testified that on August 27, 2012, he was assaulted by an inmate exiting the yard and was knocked to the ground. Petitioner immediately sustained pain to the left cheek, left arm/elbow, teeth and right hip. Petitioner was taken to the Healthcare Unit at Mernard and was then sent Chester Memorial Hospital.

The Chester Memorial Hospital records noted that Petitioner had left facial pain, a laceration to the upper lip, a chipped tooth, lateral neck pain and pain at the right second MCP joint. It was also noted that Petitioner had multiple areas of bruising. Petitioner was treated and released. These records did not make any reference to Petitioner having low back pain.

On August 29, 2012, Petitioner was seen by Dr. Jay Pickett and, at that time, Petitioner complained of headaches, neck pain, left facial pain, swelling of the upper lip and left elbow pain. Dr. Pickett prescribed medication and stated that physical therapy might be necessary for the neck and elbow if the pain was persistent. When seen by Dr. Pickett on September 12, 2012, Petitioner's condition was improved in regard to the neck, left elbow and facial contusions; however, Petitioner complained of right low back pain and a right gluteal hematoma. Dr. Pickett diagnosed Petitioner with both a left elbow and right lumbar strain. Dr. Pickett recommended application of ice several times a day and physical therapy. When Dr. Pickett saw Petitioner on September 28, 2012, there were no significant improvements in either his left elbow or low back symptoms and he recommended a referral to an orthopedic surgeon. Dr. Pickett saw Petitioner again on October 19, 2012, and he gave him a steroid injection in the SI area. Dr. Pickett restated his recommendation that Petitioner be referred to an orthopedic specialist.

On November 29, 2012, Petitioner was seen by Dr. Matthew Gornet, an orthopedic surgeon. Petitioner informed Dr. Gornet about the accident and it was noted that Petitioner did not discuss low back pain with his doctor at the time of the first visit, but that over the next two weeks, the back pain became progressively worse. Petitioner stated that he had no significant prior problems with his low back and that his low back symptoms worsened with bending, lifting and prolonged sitting, standing or walking. On examination, straight leg raising was positive at 45° on both sides and x-rays did reveal some facet changes. Dr. Gornet opined that Petitioner's current symptoms were related to the work injury. Dr. Gornet authorized Petitioner to be off work and recommended that he have an MRI scan performed.

An MRI scan was performed on November 29, 2012, which, according to the radiologist, revealed disc herniations at L3–L4 and L4–L5. Dr. Gornet performed a steroid injection and facet block on December 19, 2012. When Dr. Gornet saw the Petitioner on January 17, 2013, he noted that the injection helped to relieve some of his right sided pain but that Petitioner still had back and bilateral leg pain. At that time, Dr. Gornet stated that he was referring Petitioner to Dr. Granberg for additional epidural injections and blocks but that if Petitioner's condition did not improve, a CT myelogram and surgery might be indicated. Dr. Gornet continued to authorize the Petitioner to be off work.

Petitioner testified that he had a prior left hip problem approximately 10 years ago for which he sought some chiropractic treatment. Petitioner denied any prior injuries to the head, teeth, left elbow or low back. Petitioner further testified that immediately following the accident he felt some "pressure" in his low back but thought that it was nothing more than some soreness. Unfortunately, the back pain did not resolve and grew progressively worse to where he did report it to Dr. Pickett on September 12, 2012, 16 days subsequent to the accident.

Petitioner admitted to going deer hunting in November, 2012, and that he killed a deer on November 18, 2012. Petitioner also testified that his 15-year-old son accompanied him when he went deer hunting and that Petitioner did not engage in any strenuous activities and avoided walking on uneven terrain.

Petitioner testified that he still takes over-the-counter medication to alleviate his symptoms and that he underwent the CT myelogram the day before the hearing of this case. Petitioner is to be seen by Dr. Gornet sometime in the near future to discuss treatment options. Petitioner has still not returned to work for Respondent at this time. Respondent did not obtain a Section 12 examination of Petitioner so there is not a medical opinion contrary to that of Dr. Gornet.

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill–being in regard to the low back is causally related to the accident of August 27, 2012.

In support of this conclusion the Arbitrator notes the following:

Petitioner's testimony that he had no prior injuries to his low back was unrebutted. While Petitioner did not report any low back pain to Dr. Pickett until 16 days post-accident, Petitioner's testimony that he had no significant low back pain immediately following the accident and that it became worse over time is credible especially given the nature of the multiple injuries that he sustained as a result of the assault. Dr. Gornet's opinion that Petitioner's low back symptoms are related to the accident is likewise unrebutted because Respondent chose not to obtain a Section 12 examination of the Petitioner.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills associated therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1 as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid 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.

In support of this conclusion the Arbitrator notes the following:

All of the medical care that has been provided to the Petitioner has been conservative and reasonable. Further, there is no medical opinion stating that any of the medical treatment provided to Petitioner was either unreasonable or unnecessary.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is entitled to prospective medical treatment as recommended by Dr. Gornet.

In support of this conclusion the Arbitrator notes the following:

The Arbitrator notes that Dr. Gornet has recommended additional diagnostic tests and possible surgery and that there is no medical opinion to the contrary.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is entitled to payment of temporary total disability benefits from January 23, 2013, through March 12, 2013, a period of six and six-sevenths (6 6/7) weeks.

In support of this conclusion the Arbitrator notes the following:

Dr. Gornet has opined that Petitioner is temporarily totally disabled and in need of additional medical treatment and there is no opinion to the contrary.

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
☒ Remand	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rosemary Foxworth,

Petitioner,

vs. NO: 10 WC 16429

Cajun Operating Co. d/b/a Church's Chicken,

Respondent,

14IWCC0250

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 and prospective medical and being advised of the facts and law, remands this matter back to the Arbitrator in accordance to the findings and opinions stated below. 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 the Petitioner sustained a burn injury to the dorsum of her left hand from hot grease from a fryer. This accident occurred on April 2, 2010.

Petitioner was treated at the emergency room of Kenneth Hall Regional Hospital on April 2, 2010, and followed up with St. John's Mercy Medical Center on April 7, 2010. According to their records, Petitioner had a large blister covering the entire dorsum of the left hand and smaller blisters on the second, fourth and fifth proximal left digits. (Petitioner Exhibit 3)

Petitioner followed up with Dr. Pollack and Dr. Ross.

On April 17, 2010, Dr. Ross indicates that Petitioner has sharp pains and tingling at the burn area on the left dorsum of her hand. She sees Dr. Ross again on April 29, 2010, with complaints of painful tingling over the burned area but with no weakness of the left hand. (Petitioner Exhibit 2)

On May 5, 2010, Dr. Pollock finds that the Petitioner is doing well and her hand is fully healed. There was no infection. She had a full range of motion and her skin was healed. He found that on that date she had no carpal tunnel syndrome. He sees her once again on June 2, 2010 and finds that she is doing well, is fully healed and has no carpal tunnel syndrome and no neuromas. (Petitioner Exhibit 4)

On June 21, 2010, the Petitioner presents to the Touchette Regional Hospital. She had left forearm pain of gradual onset. The pain was mild. She gave a history of her left hand burn and denied trauma, numbness, tingling and chest pains. Petitioner indicated that exacerbating factors were unknown and that she has had this pain for "awhile." It still hurts and she doesn't know why. According to Touchette's records, her radiating symptoms were "none." (Petitioner Exhibit 5)

Petitioner sees Dr. Pollack again on July 14, 2010, and once again, he finds that her hand is fully healed. However, she complains of pain at night. He finds that her combination of pain and numbness is a questionable distribution. He questions whether Petitioner has carpal tunnel syndrome. (Petitioner Exhibit 4)

Dr. Alvarez performs an EMG on the Petitioner on September 17, 2010. Petitioner gives a history of pain in the dorsal aspect of the left hand. Since the burn, Petitioner has been experiencing intermittent burning pain in the dorsal of the hand and proximal fingers. Petitioner states her sensation was decreased in the dorsal hand and proximal fingers. According to Dr. Alvarez, the Petitioner had a normal electrodiagnostic study. There was no evidence of left focal ulnar neuropathy at the wrist or elbow. There was no evidence of a left focal median neuropathy at the wrist and no evidence of a left superficial radial neuropathy. (Petitioner Exhibit 6)

The Petitioner sees Dr. Pollack on September 22, 2010 and indicates that she is feeling much better and when informed of her negative nerve conduction test she feels better about that. The Doctor indicates that the Petitioner's numbness and tingling are specifically over the burn and is unsure that it correlates with carpal tunnel or cubital tunnel syndrome. (Petitioner Exhibit 4)

Petitioner was sent to Dr. David Brown for an Independent Medical Evaluation on March 1, 2011. He found that the hand had completely healed and that there was no contracture. He stated that it was not uncommon to have abnormal sensation over the skin after this type of burn.

He goes on to state in his March 29, 2011 addendum that based on the nerve conduction studies performed on September 10, 2010, Petitioner does not have carpal tunnel syndrome. (Respondent Exhibit 1)

Petitioner continued to be seen by Dr. Ross. He treated her with injections and medications for her complaints of pain. (Petitioner Exhibit 2)

Petitioner saw Dr. Shekhani on July 11, 2011. At that time, Petitioner gave him a history of left upper extremity pain. He recommended a nerve conduction test which he performed himself on July 27, 2011. According to Dr. Shekhani that test was consistent with left median compressive neuropathy and only sensory in nature. He diagnosed Petitioner as having a left neuropathy and left upper extremity pain. On September 21, 2011, his record indicates that the nerve conduction test, which he performed, was positive for carpal tunnel syndrome. (Petitioner Exhibit 7)

It was at this time on September 27, 2011, that Dr. Ross starts treating the Petitioner for possible carpal tunnel syndrome. (Petitioner Exhibit 2)

On October 13, 2011, Dr. Sandra Tate performed another Independent Medical Evaluation on behalf of the Respondent. She was supplied with all of the Petitioner's prior medical records and tests. She does not believe that Petitioner has clinical finding of carpal tunnel syndrome nor does she believe that her symptoms are related to the burn incident. (Respondent Exhibit 2)

In reviewing Dr. Ross's records, it is clear that he wants to get a surgical evaluation from a Dr. Prieb. Petitioner also testified that Dr. Prieb believes she needs surgery. Based on the records of Dr. Ross it does not appear that Prieb saw the Petitioner.

The Commission finds that based on its review of Dr. Shekhani's deposition and records, he is not a credible witness concerning whether the Petitioner has carpal tunnel. The Commission also finds he is not credible regarding his opinions as to causal connection. (Petitioner Exhibit 8)

The Commission orders that Petitioner is entitled to one visit with Dr. Prieb. During that visit both Respondent and Petitioner will present to the Doctor all of the Petitioner's prior medical treatment and records. Dr. Prieb will then give his opinion regarding whether Petitioner needs carpal tunnel surgery and most importantly, whether that surgery is causally connected to the original burn on April 2, 2010.

The Commission remands this matter back to the Arbitrator for a further hearing pursuant to this decision.

14IWCC0250

IT IS THEREFORE ORDERED BY THE COMMISSION that this matter be remanded back to the Arbitrator for a further hearing pursuant to this decision. 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.

DATED: APR 04 2014

o012914
CJD/hfs
049

Charles J. DeVriendt

Michael J. Brennan

Ruth W. White

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

FOXWORTH, ROSEMARY
Employee/Petitioner

Case# **10WC016429**

CAJUN OPERATING CO D/B/A CHURCH'S CHICKEN
Employer/Respondent

14IWCC0250

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:

0384 NELSON & NELSON
NATHAN LANTER
420 N HIGH ST
BELLEVILLE, IL 62222

2871 LAW OFFICES OF PATRICIA M CARAGHER
WILLIAM PAASCH
1010 MARKET ST SUITE 1510
ST LOUIS, MO 63101

14IWCC0250

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)

Rosemary Foxworth
Employee/Petitioner

v.

Cajun Operating Co. d/b/a Church's Chicken
Employer/Respondent

Case # **10** WC **16429**

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 **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. [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. [ ] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] Is Petitioner entitled to any prospective medical care?
L. [ ] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [ ] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On the date of accident, **4/2/2010**, 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 $**see below**; the average weekly wage was $**see below**.

On the date of accident, Petitioner was **60** years of age, ***single*** with **0** dependent children.

Expenses related to medical services incurred to date were not at issue in this proceeding.

Respondent shall be given a credit of $**see below** for TTD, TPD, maintenance, and other disability benefits.

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

ORDER

By agreement of the parties, the issues of average weekly wage, medical costs incurred to date, disability benefits due, benefits paid to date, and 8(j) credit which may be available were deferred to a future hearing.

Regarding the issue of causal relationship between the accident and the proposed medical care pursuant to Section 8(a), the treatment is denied for reasons stated in the attached decision.

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 — Date: April 3, 2013

ICArbDec19(b)

APR 15 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROSEMARY FOXWORTH,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 10 WC 16429
	)	
CAJUN OPERATING CO. D/B/A CHURCH'S CHICKEN,	)	
	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

This matter was heard pursuant to Section 19(b) of the Act. Prior to hearing, the parties stipulated that issues of average weekly wage, medical costs incurred to date, disability benefits due, benefits paid to date, and 8(j) credit which may be available were deferred to a future hearing and that only causation regarding the proposed medical care under Section 8(a) would be addressed at this juncture.

STATEMENT OF FACTS

The petitioner is a 63-year-old cook for the respondent who had an undisputed accident on April 2, 2010, when she burned the back of her left hand from heated grease from a fryer. She presented at Touchette Regional Hospital on the date of accident (see PX1). She was noted to have 1st and 2nd degree burns to the back of her left hand. She was given medication and the blistering was dressed, and she was sent home.

On April 7, 2010, she presented at St. Johns Mercy Medical Center. See PX3. She complained of increased pain despite painkillers. Examination noted blistering on the back of her left hand and lesser blistering on the backs of her second through fifth fingers. She was instructed on wound care and told to follow up with burn care.

The petitioner began care with Dr. Pollack at Mercy Burn and Plastic Surgery on April 14, 2010. PX4. She was prescribed off work and given lotion for the injury.

On April 17, 2010, she saw Dr. Ross. PX2. She noted painful tingling in the burn area but denied weakness. On April 29, 2010, she reiterated those complaints. She was going to follow up with the burn unit, however. Dr. Ross's only prescription at that point was for unrelated matters.

On May 5, 2010, Dr. Pollack noted the wound was fully healed without evidence of infection and full range of motion. The skin had healed and it was specifically noted she had no carpal tunnel syndrome. She was instructed on wound care. PX4.

On June 2, 2010, the petitioner presented to Dr. Pollack. She was tearful because of pain. However, Dr. Pollack noted she was doing well, that the hand was fully healed, and that there was no infection. He noted there was "no carpal tunnel syndrome, no neuroma, no evidence of other problems." She was kept on light duty. PX4.

On June 21, 2010, she presented at the Touchette Hospital emergency room complaining of forearm pain. The history noted was of "left forearm pain for 'awhile'." They noted a history of a burn to the left hand and she stated that since then the forearm had been swollen and painful, but denied numbness or tingling. Tenderness was noted near the elbow. She was given medication. PX5.

On July 2, 2010, she returned to Dr. Ross complaining of persistent symptoms in the left hand. He also noted a history of swelling in the left elbow which appeared to have resolved. The petitioner complained of paresthesia in the left hand which he noted as "pain/paresthesia ? cause" (see PX2). He noted it would "take time" and told her to follow up with the burn unit. PX2.

On July 14, 2010, the petitioner returned to Dr. Pollack. She complained of pain at night. It was noted the condition was "Possibly CTS now? Not perfect distribution." There was no neuroma or evidence of other problems. He prescribed return to light duty work and use of carpal tunnel syndrome splints. On August 25, 2010, Dr. Pollack noted generalized anxiety "about everything right now." PX4.

On September 17, 2010, the petitioner presented for an EMG study of the left hand. On examination, no swelling or loss of strength was noted. She asserted loss of sensation in the left hand. The EMG study was conducted and revealed no neuropathy at either the elbow or the wrist. See PX6.

On September 22, 2010, Dr. Pollack noted that a nerve conduction test had proven negative and that she "feels much better." He noted the persistent symptoms as she described were "odd after such a small burn" but left her on a fifteen pound weight restriction "for now." PX4. She ceased treating with him thereafter.

On March 1, 2011, the petitioner saw Dr. David Brown at the Orthopedic Institute of St. Louis at the employer's request pursuant to Section 12 of the Act. She related a consistent history of accident. He noted no scarring and full range of motion. He opined the burn had healed and there was no associated scar contracture. He noted that burns can cause abnormal skin sensation, but that should resolve in time and she had regained good functional level. He opined she could return to work and needed no further treatment from a hand surgeon standpoint. See RX1. In an addendum on March 29, 2011, he reiterated his opinion that she was at MMI from a treatment standpoint, though he believed the abnormal skin sensation would improve over time. He did not believe

she had carpal tunnel syndrome based on his physical and clinical examination and the negative EMG study. RX1.

On June 21, 2011, the petitioner returned to Dr. Ross complaining of left arm and hand pain. Dr. Ross assessed possible RSD and provided Neurontin. On June 27, she called him describing electrical shock sensation in the hand and requesting a note saying she was still on restrictions. Dr. Ross recommended she see a workman compensation doctor for this. PX2.

On July 6, 2011, the petitioner presented at the Touchette Hospital ER. She described acute left hand pain since the day before with swelling and redness that morning extending up to her elbow. She related the burn in April 2010 and denied intervening incident, though she asserted carrying garbage out the day before had hurt. Examination noted the left hand appeared normal without scarring, swelling, bruising or discoloration. She was given medication. PX5.

On July 11, 2011, the petitioner presented to Dr. Shekhani, a pain specialist. See PX7 and PX8. Dr. Shekhani prescribed an EMG, which was done on July 27, 2011. He interpreted it as positive for left carpal tunnel syndrome. He provided medication and splints for the left wrist complaints.

On August 16, 2011, the petitioner asserted pain in the left lower arm with discoloration in the arm. On examination, however, Dr. Ross noted "good grip" and normal color. It was noted she was scheduled for a steroid injection. See PX2.

On October 5, 2011, Dr. Shekhani attempted a steroidal injection into the wrist. The petitioner reported no improvement from the injection. Dr. Shekhani thereafter recommended a surgical referral after the injection was not successful in resolving her complaints. PX7.

On October 13, 2011, the respondent had the claimant seen by Dr. Sandra Tate, a pain specialist. After she examined the petitioner and reviewed the medical records, Dr. Tate noted the petitioner had complaints of chronic pain, some of which were non-anatomic, but that the petitioner lacked clinical findings consistent with carpal tunnel syndrome and did not believe any diagnosis of carpal tunnel syndrome would be related to the April 2010 burn in any event. See RX2.

Dr. Ross continued to see her for these complaints as well as for unrelated issues during the same timeframe that Dr. Shekhani treated her. On January 10, 2012, Dr. Ross made notes that the claimant denied hair loss, dry skin, or white fingers, and "denies assoc with cold." Dr. Ross later recommended the petitioner see Dr. Prieb, a hand surgeon, for further care. See PX2.

Dr. Shekhani provided periodic treatment to the petitioner until March 5, 2012. At that time, he opined that she would have pain in her left hand for life and will require

periodic physical therapy, but was not a surgical candidate. PX7. He has not provided further care since that time.

Dr. Shekhani testified in deposition on February 14, 2013. At that time he opined there was a causal connection between the claimant's carpal tunnel syndrome and the April 2010 accident and he recommended she seek a surgical evaluation. PX8.

OPINION AND ORDER

As stipulated by the parties, the issues of average weekly wage, medical costs incurred, disability benefits due, benefits paid to date, and credit which may be available were deferred to a future hearing and the only issue to be considered at this juncture is the proposed medical care under Section 8(a).

The petitioner submits the opinions of Dr. Shekhani regarding causal connection to the carpal tunnel syndrome diagnosis, and the Arbitrator takes note of a certain degree of skepticism from both Dr. Pollack and Dr. Ross being reflected in their records. Dr. Shekhani opines the injury caused carpal tunnel syndrome, arguing that the burns to the hand caused the compression to the wrist. However, his causal opinion relies on faulty information. His analysis does not accurately note the location or extent of the burns. In PX8 p. 33, he states the burns involved both the dorsal and palmar aspects of the hand, which is not consistent with the treating records and implies that he was under the impression that the injury was far more significant than it actually was. He also notes that an EMG would need 18 to 23 days following the accident to become positive. However, the EMG in September of 2010 was over five months following the accident. He does not adequately explain the negative test, nor the abnormal distribution of complaints referenced by multiple physicians, such as her complaints around the elbow (for instance in June 2010, PX5). He also does not explain the multiple references to "no carpal tunnel syndrome" from by Dr. Pollack, which proceeded for long after the three weeks suggested by Dr. Shekhani.

The respondent's Section 12 examiners included both a hand surgeon as well as a pain specialist. Dr. Brown detected no carpal tunnel syndrome at the time he examined her and could not explain how a burn that produced no significant scarring or contracture could have inflamed the carpal tunnel anatomy. Dr. Tate similarly found a lack of anatomical findings consistent with carpal tunnel syndrome and could not relate such a condition to the organic damage from April 2010. In this, they effectively echo Dr. Pollack, who admitted puzzlement by the extent of the claimant's ongoing complaints after the burns had healed, as well as his review of the negative EMG/NCV.

The claimant has not proven to a medical and surgical certainty that any condition of carpal tunnel syndrome is causally related to the April 2010 accident. The requested medical care is therefore denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

☐ 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

TARA SMITH,

Petitioner,

14IWCC0251

vs.

NO: 12 WC 39030

UNIVERSITY OF ILLINOIS,

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, TTD, prospective medical care and PPD and being advised of the facts and law, reverses the Decision of the Arbitrator, finding Petitioner failed to prove that she sustained accidental injuries that arose out of and in the course of her employment on September 24, 2012.

The genesis of Petitioner's claim was that she fell to the ground after exiting a parking lot owned and under the control of Respondent. No testimony was given that Petitioner fell while in the parking lot, rather it was her testimony that she fell on the ground immediately adjacent to the parking lot, land that also is owned and under the control of Respondent. In finding accident and awarding benefits, the presiding Arbitrator attributed to Petitioner testimony of her believing that the uneven ground and loose wood chips caused her to lose her balance. In doing so, the Commission finds the presiding Arbitrator misconstrued Petitioner's testimony.

In reviewing Petitioner's testimony, the Commission finds Petitioner never expressed a belief that the uneven ground and loose wood chips caused her to lose her balance. Petitioner did, indeed, testify to the ground being uneven and to wood chips being present on the ground. At no time, however, did she attribute either to her falling. When asked on direct examination, "Do you know what caused you to loss [sic] your balance?," Petitioner answered, "I do not." Petitioner then affirmatively answered the follow-up question concerning the pieces of wood, bark and

14IWCC0251

mulch being loose. The Commission finds this question and answer cannot be a substitute for Petitioner's previously given answer that she did not know what caused her to lose her balance. Unless Petitioner testified that she slipped on wood, bark or mulch, their presence or their being loose is irrelevant.

The Commission further finds Petitioner's medical records from Carle Hospital do not support the history as written in the Arbitration Decision. In the order found in said medical records, Petitioner's injuries were the result of her having "tripped and fell," "tripping and falling," and "fell up the curb and fell on right shoulder." Absent from Petitioner's medical record is any mention as to what caused her to fall.

Two facts can be arrived at based on Petitioner's testimony and the evidentiary record. First, Petitioner fell and broke her arm. Second, there was debris on the ground. In the absence of any testimony or any record of any defect of the ground Petitioner walked upon as being the reason for her fall, the Commission must find these facts to be unrelated for the purposes of determining accident. To do otherwise, the Commission would have to engage in speculation or conjecture.

Based on Petitioner's testimony and her medical records, the Commission finds Petitioner suffered an unexplained, idiopathic fall on September 24, 2012, one that cannot be attributable to her employment. Accordingly, the Commission reverses the September 13, 2013, Arbitration Decision and, in doing so, denies, to Petitioner, any benefit under the Act

IT IS THEREFORE ORDERED BY THE COMMISSION that the September 13, 2013, Arbitration Decision is hereby reversed and compensation denied.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $58,000.00. 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: APR 0 4 2014
KWL/mav
O: 02/25/14
42

Kevin W. Lamborn

Daniel R. Donohoo

14IWCC0251

DISSENT

Respectfully, I dissent, Arbitrator Zanotti carefully reviewed this "slip and fall" accident which occurred on the property of Respondent, the University of Illinois.

Petitioner pays to park in the subject lot "B1". Petitioner's risk included the loose chips on the surface and the uneven ground, coupled with the increased risk of traversing this route on a regular basis. Petitioner parked in her designated parking lot, cut across a part of a small area of earth and wood-chips, and lost her balance while walking across the loose wood-chips on an uneven surface between the parking lot and her work place on campus.

The Arbitrator thoroughly analyzed all the case law presented by both sides. His decision is supported by the most recent case law, and the Arbitrator makes special note of Petitioner's credibility. He found her to be a very credible witness, who testified in a forthcoming and honest manner. He noted she was confident in her responses, and testified in a very open manner during cross-examination.

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0251

SMITH, TARA
Employee/Petitioner

Case# **12WC039030**

UNIVERSITY OF ILLINOIS
Employer/Respondent

On 9/13/2013, 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 0.03% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

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

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

0522 THOMAS MAMER & HAUGHEY LLP
ERIC CHOVANCE
P O BOX 560
CHAMPAIGN, IL 61824

1073 UNIVERSITY OF ILLINOIS
OFFICE OF CLAIMS MANAGEMENT
100 TRADE CENTER DR
SUITE 103
CHAMPAIGN, IL 61820

0904 STATE UNIVERSITY RETIREMENT SYS
PO BOX 2710 STATION A*
CHAMPAIGN, IL 61825

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

SEP 13 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

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 14IWCC0251

TARA SMITH
Employee/Petitioner

v.

UNIVERSITY OF ILLINOIS
Employer/Respondent

Case # 12 WC 39030

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 **Urbana**, on **July 18, 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 **September 24, 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 **$53,800.00**; the average weekly wage was **$954.21**.

On the date of accident, Petitioner was **38** years of age, ***single*** with **2** 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 **$59,360.19** under Section 8(j) of the Act.

ORDER

Respondent shall pay for reasonable and necessary medical services set forth in Petitioner's exhibits (as more fully discussed in the Memorandum of Decision of Arbitrator), as provided in Section 8(a) of the Act, and subject to the medical fee schedule, Section 8.2 of the Act. Respondent shall have credit for bills paid under Section 8(j) of the Act, as noted above.

Respondent shall pay Petitioner temporary total disability benefits of $636.14/week for 2 1/7 weeks, commencing September 24, 2012 through September 30, 2012, and for the dates of October 2, 4, 5, 9, 10, 12, 16, and 22, 2012, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner temporary partial disability benefits totaling $1,484.59 (dates and calculations discussed in the Memorandum of Decision of Arbitrator), as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $572.53/week for 94.875 weeks, because the injuries sustained caused the 37.5% loss of use of the right 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

09/10/2013
Date

SEP 13 2013

STATE OF ILLINOIS)
)SS
COUNTY OF CHAMPAIGN)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

TARA SMITH
Employee/Petitioner

14IWCC0251

v.

Case# 12 WC 39030

UNIVERSITY OF ILLINOIS
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

This case involves a "slip and fall" injury on the property of Respondent, the University of Illinois, when Petitioner, Tara Smith, was leaving her vehicle and traversing Respondent's premises on her way to her office on the morning of September 24, 2012.

Respondent affords its employees parking in lots on its campus. At all relevant times herein, Petitioner parked in Lot B-1, which was the closest provided parking lot to her office. The lots are maintained, operated, monitored and patrolled by Respondent. Respondent's campus is extensive.

Employees and faculty must apply with Respondent to secure a parking permit to park in its lots. Respondent charges a fee for the permit. Petitioner testified that the lot in which she parks, Lot B-1, holds approximately 200 cars. Parking lot permits issued by Respondent constitute the identification required to avoid ticketing and thus being fined by Respondent's parking enforcement agents. (See also Respondent's Exhibit (RX) 2, p. 1). The sign depicted in Respondent's Exhibit 2, page 1, establishes that Respondent controlled the lot in question. There were also about 15 parking meters in the lot for public parking.

The parking in designated lots is available only to faculty and employees, with the exception of the limited number of metered-spots. Photographic exhibits portray appearance of the earthen area between the parking lot curb and the adjacent sidewalk. (See PX 3(c) and (d)). Respondent's Exhibit 2, page 1, discloses the permit requirement for the parking lot. Respondent's Exhibit 2, page 2, depicts where Petitioner had parked on the day of the alleged accident, and Respondent's Exhibit 2, page 3, depicts the general condition of the area between the parking lot and sidewalk, as well as an exit.

Petitioner parked at her typical and usual parking location on the morning of September 24, 2012. She parked up to the parking lot curb. In between that area was what she described as an uneven surface, with soil, mulch and tree bark, which she crossed on prior occasions and which other employees also used to cross to and from the parking lot. It was her usual way to her work location. The bark was loose, not embedded into the soil. The surface of the earth was disclosed in Respondent's Exhibit 2, page 3, and in

Petitioner's Exhibits 3(c) and (d). As Petitioner crossed that area, she slipped, losing her balance and propelling herself forward toward the sidewalk and the street. She then took some faltering steps and collided with an automobile, striking it with her right arm. Petitioner's description as to what occurred is un-rebutted. A co-employee saw the incident and called an ambulance, which transported Petitioner to Carle Hospital.

Petitioner agreed that she could have walked through the parking lot to the street entrance, and crossed without going over the area where she began her fall. However, she testified that she and other employees of Respondent take this path regularly, and she has never been reprimanded for crossing in this area. She also testified that there was no type of impediment present to block crossing that area, such as a fence or guardrail. No warning signs appear in the photographic exhibits.

The next morning following her fall and presentation to the hospital, Petitioner underwent surgery by Dr. Mark Palermo, an orthopedic surgeon. The surgeon described the fracture as a long oblique-type fracture and as a long spiral-type fracture. He performed an open reduction with internal fixation involving screws into the fracture site to maintain reduction, an 8-hole plate along the lateral aspect of the humerus, and insertion of 6 screws to secure the plate. Petitioner was discharged from the hospital on September 28, 2012. (PX 1). Petitioner experienced discomfort during the course of her prescribed physical therapy. She complained of her shoulder and obtained an order for MRI testing, which was performed on November 8, 2012 at Carle. While the integrity of the rotator cuff was maintained, there was bone marrow edema localized to the greater tuberosity of the humeral head, which is associated with a subtle linear disruption of the trabecular pattern in this area. A small non-displaced greater tuberosity fracture was suspected. (PX 2).

In his last note, Dr. Palermo recommended Petitioner continue strengthening her right shoulder. He noted she had pain with forward elevation of the scapular plane greater than 90 degrees and with external rotation, as well as some pain with internal rotation. Elbow and wrist motion were noted as good. X-rays disclosed a healed humeral shaft fracture with the hardware in place. The doctor's resultant impression was that of open reduction with internal fixation of the right humerus. Dr. Palermo believed Petitioner would benefit from strengthening exercises of the right shoulder, and noted she was to return in six weeks to see how she progressed. (PX 2). Petitioner did not return.

Petitioner continues to perform home exercises. She has constant pain in her shoulder of varying degrees. She can lift her arm overhead but it aches. She has limited motion with her right upper extremity at the shoulder. Because of the lack of strength in her shoulder, Petitioner has difficulty lifting items at home and decorating for holidays. She can reach behind her back with her right arm, but it is harder to do so than before the September 2012 injury. Petitioner denied having any prior right shoulder or arm injuries or difficulties prior to the September 2012 injury, and further denied any intervening injury to her right shoulder or arm after that event.

CONCLUSIONS OF LAW

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

In order for an injury to be compensable under the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act"), the injury must arise out of and in the course of the employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.2d 52, 57, 541 N.E.2d 665 (1989). The Arbitrator turns first to the "arising out of" component. The facts disclosed that Respondent maintained and controlled the parking lot where Petitioner parked. Respondent enforces its parking areas and fines those who are not

allowed to park in its lots. The lot in question was on Respondent's campus. Permits were required to park in an individual lot. Petitioner had parked her vehicle in her regular, designated lot on the morning of September 24, 2012, shortly before her work day was to begin. She crossed an area between the parking lot and the adjacent side of which consisted of an uneven, somewhat mounded area of dirt and loose wood chips. As she crossed that area, she slipped. She was not completely certain what caused her to lose her balance, but she believed the uneven ground and loose wood chips were what caused her loss of balance. No other reason was expressed or established for her injury.

An accident "arises out of" one's employment if the origin of the accident is a risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Jewel Companies, Inc. v. Industrial Comm'n*, 57 Ill.2d 38, 40, 310 N.E.2d 12 (1974). The risk is incidental to the employment where it belongs to or is connected with what the employee has to do in fulfilling his duty. *Orsini v. Industrial Comm'n*, 117 Ill.2d 38, 45, 509 N.E.2d 1005 (1987). Petitioner's risks included the loose wood chips on the surface and the uneven ground, coupled with the increased risk of traversing this route on a regular basis. Petitioner parked in her designated parking lot, cut across a part of a small area of earth and wood chips, and lost her balance while walking across the loose wood chips on an uneven surface between the parking lot and her work place on campus. In *Litchfield Healthcare Center v. Industrial Comm'n*, 349 Ill. App. 3d 486, 812 N.E.2d 401 (5th Dist. 2004), an employee tripped over an uneven sidewalk connected to the parking lot of the work place, and that incident was found to be a work related injury. As an employee of Respondent, Petitioner was reasonably exposed to this risk on a regular basis.

The issue of whether the risk of injury is an increased risk may be either qualitative (such as some aspect of the employment which contributes to the risk), or quantitative (such as when the employee is exposed to a common risk more frequently than the general public). *Potenzo v. Ill. Workers' Comp. Comm'n*, 378 Ill. App. 3d 113, 117, 881 N.E.2d 523 (1st Dist. 2007). In this instance the risk is also a quantitative issue, as Petitioner's risk is greater than that of the general public. The parking lot was restricted primarily for the use of employees and not the general public, and Petitioner traversed the route in question regularly. Approximately 15 parking spots were available for the public, and Petitioner's description indicated those were at a different area in the parking lot, not near the soil and wood chip area in question. It was that area which contributed to Petitioner losing her balance and ultimately sustaining her injury. The area where she lost her balance was uneven and covered with loose pieces of what appears to be tree bark or wood chips.

Employment related risks associated with injuries sustained as a consequence of a fall are those to which the general public is not exposed, such as the risk of tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing work related tasks which contribute to the risk of falling. *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 106, 853 N.E.2d 799 (1st Dist. 2006). The condition of the area between the parking lot and the sidewalk on Respondent's campus increased the risk of falling. When the injury to an employee takes place in an area that is the usual route to the employer's premises, and the route is attended with a special risk or hazard, the hazard becomes part of the employment. In *Litchfield Healthcare Center*, cited *supra*, the decision did not rest solely upon the claimant's regular use of a specific parking lot, but also that the sidewalk involved in the claimant's injury was uneven. Here, there is sufficient proof that Petitioner did encounter a special risk or hazard in the uneven area that was also covered with loose wood chips. It was an area to which she had greater exposure than the general public. The ratio of an employee of Respondent to the general public using the parking lot in question is *de minimis*. The facts in the record confirm as such.

Respondent argues that the following cases are applicable in this matter: *Dodson v. Industrial Comm'n*, 308 Ill. App. 3d 572, 720 N.E.2d 275 (5th Dist. 1999); *Hatfill v. Industrial Comm'n*, 202 Ill. App. 3d 547, 560 N.E.2d 369 (4th Dist. 1990); and *Warden v. Advent Systems, Inc.*, 02 IIC 73 (Jan. 29, 2002). The Arbitrator finds these cases distinguishable as to the issue of accident.

In *Dodson*, the employee traversed a grassy slope as opposed to using the typical path to the parking lot to reach her automobile when leaving from work, due to the fact that it was raining and this route provided a shorter distance to the driver's side of her parked vehicle. She fell and injured herself in the process. In *Hatfill*, the employee, when leaving from work and going to his vehicle, jumped across some water which had accumulated at the base of the five-foot incline going to the upper level parking area, and upon landing, injured himself. In the Commission decision of *Warden*, the employee voluntarily took a short cut from his vehicle to his work building, and in doing so had to "scramble up" [words used in decision] an inclined embankment. He injured his right knee in the process. The Court in *Dodson* and *Hatfill*, and the Commission in *Warden*, found that the respective employees did not establish their burden of proving the "arising out of" element of the accident issue. It was found that the paths these employees took which led to their respective injuries were personal risks for their own benefit, and that they placed themselves in unnecessary danger by taking these routes. The Arbitrator also points out the Commission decision of *Dascotte v. So. Ill. University*, 12 IWCC 944 (Sept. 4, 2012), in which the Commission found that the employee did not sustain an accident that arose out of her employment. In *Dascotte*, the employee took a short cut when leaving her vehicle and walking to her place of work, as she was "running late." This short cut involved physically traversing over a chain link fence, which the employee tripped over, causing injury.

The Arbitrator notes that in the foregoing cases (*Dodson*, *Hatfill*, *Warden* and *Dascotte*), the respective employees were not taking a usual and customary route when either coming from or going to the parking lot at their places of work, as Petitioner did in the instant case. In each of those cases, the employee was taking a route that was not normally taken. In *Dodson*, the employee was attempting to cut down on time traveling in the rain and traversed a grassy slope to reach her car sooner. In *Hatfill*, the employee *jumped* over a pool of accumulated water. In *Warden*, the employee "*scrambled up*" an inclined embankment. In *Dascotte*, the employee traversed over a chain link fence in order to take a short cut because she was "running late." None of the foregoing reasons for taking the routes in question in those cases are present in the case at bar. Petitioner credibly testified that it is normal and usual for her to take the route in question across the earthen area. She credibly testified that other employees of Respondent do the same. Respondent has not informed Petitioner not to take this path, nor is there any warning or guardrails to prevent the same. Further, given the analysis of the photographs in evidence, the Arbitrator finds Petitioner's explanation for the reasoning in taking the path in question reasonable.

As to the issue of "in the course of" employment, Petitioner was performing an act which was a reasonable activity in conjunction with her employment – parking her car and walking to her work station. She parked in Respondent's lot designated for employees like her, and was traversing across Respondent's campus during the time of accident. The Appellate Court has recognized that accidental injuries sustained on the employer's premises within a reasonable time before and after work are generally deemed to occur in the course of the employment. *Caterpillar Tractor Co.*, 129 Ill.2d at 57. The Arbitrator thus finds that Petitioner's accident was in the course of her employment.

The Arbitrator also makes note of Petitioner's credibility when taking into account her testimony regarding the accident. The Arbitrator found Petitioner to be a very credible witness at trial. She testified in a forthcoming and honest manner. She was confident in her responses, and testified in a very open manner

during cross-examination. She was very pleasant, polite and well-mannered, and made an excellent and credible witness.

Based on the foregoing, the Arbitrator finds that Petitioner sustained an accidental injury arising out of and in the course of her employment by Respondent.

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

At the hospital following the accident, the injury was identified as a spiral fracture of the right humerus with the need for multiple screws. Petitioner credibly testified that she had not experienced any problems with her right upper extremity prior to the accident, which stands un-rebutted. Petitioner described slamming into a parked vehicle after she fell. Respondent put forth no evidence that Petitioner had any prior condition of ill-being. Immediately after the incident, Petitioner was taken by ambulance to the hospital and surgical intervention was required. The history recorded in the medical records is consistent with Petitioner's testimony about her incident at work. The Arbitrator therefore finds that Petitioner's condition of ill-being with regard to her right shoulder and arm is causally related to the accident of September 24, 2012.

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?

Respondent disputed responsibility for unpaid medical bills only on the basis of liability. Having found that Petitioner sustained an accidental injury at work and that her condition of ill-being is causally related to that injury, the Arbitrator finds that the medical services rendered to Petitioner were reasonable and necessary. After reviewing the invoices for medical services at issue, the Arbitrator also finds that the medical bills submitted are reasonable and necessary. As such, Respondent is liable for said medical expenses, subject to the medical fee schedule, Section 8.2 of the Act.

Pursuant to Petitioner's Exhibit 5, medical bills totaled as follows:

• Carle Hospital	$43,176.19
• Carle Physician Group	$13,892.00
• Carle Hospital (pt. II)	$2,927.00
• Arrow Ambulance	$890.50
TOTAL	$60,885.69

Respondent shall pay any of the foregoing medical expenses that remain unpaid. Respondent, through its group insurance pursuant to Section 8(j) of the Act, paid medical bills in the amount of $59,060.19 for which it is allowed credit. (See Arbitrator's Exhibit (AX) 1).

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

After reviewing Petitioner's Exhibit 6, and taking into account the credible testimony of Petitioner, the record establishes that Petitioner normally works 7.5 hours per day. Petitioner's Exhibit 6 discloses the number of hours that she worked and those days for which she received "sick time" during all relevant time periods in question. Each page in Petitioner's Exhibit 6 represents two weeks. Petitioner returned to work before she was released, working both part-time and ultimately full-time because of lack of income. Petitioner worked several hours from home after the accident.

Adding all of the time lost for which Petitioner was not given workers' compensation benefits, Petitioner lost 87.5 hours. (See the following dates from 2012 in PX 6: October 1, 3, 8, 11, 15, 17, 18, 19, 23, 24, 25, 26, 29, 30, 31; November 1, 2, 5, 6, 7, 8; and December 10). No evidence was submitted establishing the nature of her sick time. Her vacation time is a benefit to which she is entitled regardless of whether she is working or not, so that is not a credit against temporary partial or temporary total disability benefits. Respondent submitted no information indicating the withholding from Petitioner's wages during the temporary partial working period.

Petitioner's stipulated average weekly wage is $954.21. (AX 1). Her hourly rate is therefore $25.45. With regard to the 87.5 hours missed from work on the dates listed above, she lost $2,226.88 in wages ($25.45 x 87.5 hours). Two-thirds of that wage is $1,484.59. Therefore, Respondent shall pay Petitioner the amount of $1,484.59 in temporary partial disability (TPD) benefits pursuant to Section 8(a) of the Act.

Petitioner was unable to work from the date of her accident, September 24, 2012, through September 30, 2012 (representing 1 week), and then again on the following dates in 2012 pursuant to Petitioner's Exhibit 6: October 2, 4, 5, 9, 10, 12, 16, and 22 (representing 1 1/7 weeks). Respondent shall therefore pay Petitioner temporary total disability benefits for 2 1/7 weeks.

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

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 (Petitioner's occupation), the record is scant with details concerning Petitioner's occupation with Respondent. Petitioner discussed working in a building on Respondent's campus, and the record establishes that she was able to perform part of her job duties at home, suggesting a sedentary position. Given the lack of evidence in this regard, very little weight is placed on this factor in determining permanency.

Concerning Section 8.1b(b)(iii) of the Act (Petitioner's age at the time of the injury), Petitioner was 38 years of age on September 24, 2012. The Arbitrator considers Petitioner to be a younger individual and concludes that Petitioner's permanency will be more extensive than that of an older individual because she will have to live and work with the permanent partial disability longer. Ample weight is placed on this factor when determining the permanency award.

Concerning Section 8.1b(b)(iv) of the Act (Petitioner's future earning capacity), no evidence was introduced concerning this factor, and therefore no weight is given in this regard.

With regard to Section 8.1b(b)(v) of the Act (evidence of disability corroborated by Petitioner's treating medical records), Petitioner suffered a spiral fracture of the right humeral shaft necessitating an open reduction and internal fixation with both plates and multiple screws. In addition to the injury to the arm, MRI testing following the surgery disclosed linear disruption of the trabecular pattern in the greater tuberosity aspect to humeral head with the suspicion of a small non-displaced fracture of the greater tuberosity. Petitioner returned to work with no restrictions less than two months after the work accident. Petitioner testified to continued pain with her arm, and difficulty with lifting. Her range of motion became limited as a

result of the accident. The Arbitrator notes these complaints are credible and consistent with Petitioner's injuries and resulting surgery. Great weight is afforded this factor when determining the permanency award.

Based on the foregoing, the Arbitrator finds that Petitioner has sustained injuries that caused the 37.5% loss of use of the right arm pursuant to Section 8(e) of the Act, and is awarded permanent partial disability benefits accordingly.

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

COLLEEN KELLER,

Petitioner,

14IWCC0252

vs. NO: 12 WC 31459

PROVENA VILLA FRANCISCAN NURSING HOME,

Respondent.

DECISION AND OPINION ON REVIEW

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

On April 23, 2013, the Arbitrator caused a 19(b) Decision of Arbitrator to be filed with the Commission, one in which it was found Petitioner failed to satisfy her burden of proving that the current condition of her left shoulder and left upper extremity is related to the uncontested workplace accident of August 27, 2012. In explaining his finding, the Arbitrator noted that he sustained the objections to the admissions of Petitioner's Exhibit A, Exhibit D, and Exhibit E and received these exhibits only as rejected exhibits. He went on to provide additional support for his finding by noting that he found Respondent's examining physician, Dr. Gregory Primus to be more credible than Petitioner's treating physician, Dr. David Burt. The Commission finds the Arbitrator's decision denies Petitioner due process of law and requires the Commission to modify the decision.

As noted above, the Arbitrator wrote in his 19(b) Decision of Arbitrator that he sustained objections made by Respondent to the admission of the above referenced exhibits and accepted those exhibits as rejected exhibits only. The Commission finds, after reviewing the transcript of arbitration proceedings, that Petitioner's Exhibit A, Petitioner's Exhibit D and specific pages contained within Petitioner's Exhibit E were conditionally admitted into evidence, with Petitioner's Exhibit A and Petitioner's Exhibit D admitted conditionally so. Exhibit A, referred to in the decision as PX1, was "accepted" by the Arbitrator subject to his "reviewing what is objected to . . . ." He reiterated this, stating, "I will accept [Exhibit A] subject to me ruling in the award . . . I will accept PX1." He then admitted Petitioner's Exhibit D, twice stating it admitted the exhibit under Section 16 of the Act, and suggested that the objections be restated in the proposed findings. In addressing Respondent's objection to the admission of records contained in Petitioner's Exhibit E, pages 1, 3, and 4 of that exhibit were admitted but, again, requested that Respondent "make [its] evidence in [the] proposed findings." The Commission finds deferring a final decision concerning an objection until it is argued further in the proposed findings to be inappropriate and admits these exhibits, except as articulated below.

The Commission addresses Respondent's position that Petitioner's Exhibit A is inadmissible as it not being true, correct and complete, contrary to the statement contained in the Records Certification that it is. Certification of records, under the Act, allows for those records to "be admissible without any further proof as evidence of the medical and surgical matters stated therein, but shall not be conclusive proof of such matters" and goes onto state, "[t]his paragraph does not restrict, limit or prevent the admissibility of records, reports, or bills that are otherwise admissible." 820 ILCS 305/16 (2014). Unlike Section 6(c) of the Act, Section 16 of the Act does not address defects concerning certified records. Illinois case law appears to be silent with respect to defective certification as the only case law found that addressed certification concerned itself with the admissibility of records that were uncertified.

The defect, that allows Respondent to make its objection to the admission of Petitioner's Exhibit A, in the instant matter is a single record, a work slip that excused Petitioner from work until the prescribed MRI could be performed. The absence of this document renders the certification "that the records submitted herewith are true and correct; and are a complete set of all the records in my/our possession or control . . . .", as Arbitrator Andros noted, inaccurate. It does not, by itself, render the information contained within the records untrustworthy, and its absence should be found to be *di minimis*.

To the extent any record contained within Petitioner's Exhibit A should be excluded, the Commission finds Dr. Burt's November 29, 2012, note in which he expresses an opinion concerning causation to be inadmissible as it appears to have be included for litigation purposes as the opinion was expressed only after two examinations of Petitioner had occurred and only after Dr. Primus opined that Petitioner's injury was not related to her August 27, 2012, workplace accident.

As stated above, except as indicated, the Commission admits Petitioner's Exhibit A, Petitioner's Exhibit D and Petitioner's Exhibit E in evidence and, in weighing the evidentiary value of the contents within these exhibits, finds Petitioner's current condition of ill-being to be causally connected to her workplace accident of August 27, 2012.

The Commission next addresses the issue of Petitioner's incurred and prospective medical treatment and related expenses. Petitioner's medical records indicate attempts to treat her complaints conservatively failed, resulting in her eventually undergoing surgery to her left shoulder. The Arbitrator noted that the evidence of multi-ligament laxity with an abnormal signal in the anterior labrum was a pre-existing condition and made a "special finding of fact" that Petitioner's arthroscopic surgery was not medically necessary. The Commission is uncertain as to how the Arbitrator arrived at the decision he did concerning Petitioner's pre-accident health as it finds nothing in the record, including Dr. Primus' IME report, that hints at the condition of Petitioner's left shoulder being a pre-existing one. Further uncertainty exists with respect to the Arbitrator's conclusion that Petitioner's surgery was not unnecessary given the post-surgery diagnoses of tearing of the mid-anterior labrum with inner edge fraying, posterior-superior undersurface partial tearing and subacromial bursitis. The Commission finds Petitioner's failure to respond to conservative treatment measures combined with Dr. Burt's surgical findings to be sufficient to warrant a finding that Petitioner's surgery, and the treatment that led up to it, were medically reasonable and necessary to treat the aftereffects of Petitioner's August 27, 2012, workplace accident.

The Commission last addresses the issue of Petitioner's entitlement to TTD benefits. The Arbitrator found Petitioner was not entitled to TTD benefits, noting that Petitioner declined an offer of light duty work that Respondent believed to be within her work restrictions. In doing so, the Arbitrator relied on the opinions of Dr. Primus and Dr. Anne Li, both of whom opined Petitioner could work with restrictions. The Commission finds the denial of TTD benefits through the date of surgery to be appropriate as Petitioner failed to prove that she was unable to perform the light duty work that was offered her, but the Commission also finds that the surgery, which was found above to be compensable, rendered Petitioner unable to work even in the light duty capacity that was offered her. The Commission, therefore, finds Petitioner to be entitled to TTD benefits from the date of the surgery, December 14, 2012, through the date of the arbitration hearing, January 16, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $321.60 per week for a period of 4-5/7 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 Respondent pay to Petitioner for medical expenses under §8(a) of the Act incurred both prior to the January 16, 2013, arbitration hearing.

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.

14IWCC0252

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 $1,700.00. 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: APR 4 - 2014
KWL/mav
O: 02/10/14
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

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

14IWCC0252

KELLER, COLLEEN
Employee/Petitioner

Case# 12WC031459

PROVENA VILLA FRANCISCAN NURSING HOME
Employer/Respondent

On 4/23/2013, 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:

0073 LAW OFFICE OF KEVIN M O'BRIEN
407 S DEARBORN ST
SUITE 1125
CHICAGO, IL 60605

2965 KEEFE CAMPBELL BIERY & ASSOC LLC
NATHAN S BERNARD
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

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)

14IWCC0252

Colleen Keller
Employee/Petitioner

v.

Provena Villa Franciscan Nursing Home
Employer/Respondent

Case # 12 WC 31459

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 **George Andros**, Arbitrator of the Commission, in the city of **New Lenox**, on **January 16, 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, **August 27, 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 not** causally related to the accident.

Petitioner is not entitled to temporary total disability.

In the year preceding the injury, Petitioner earned **$24,960.00**; the average weekly wage was **$480.00**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of **$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 Arbitrator finds as a matter of law and fact the Petitioner is not entitled to compensation and not entitled to medical treatment for shoulder surgery under the Workers Compensation Act, as amended.

STATEMENT OF FACTS

Petitioner testified to employment with Provena Villa Franciscan Nursing Home as a C.N.A. since October 2011. On August 27, 2012, Petitioner testified she attempted to log roll a 300-lb leg amputee nursing home resident and complained of left shoulder pain. Petitioner testified she did not use any lifting assistance device although she was trained in the use of same. She asserts this was neither possible nor practical. Petitioner worked the remainder of the shift and presented to Provena Emergency Department. On August 28, 2012, Petitioner was placed on the following work restrictions of no carrying or lifting greater than 5 pounds, no pushing or pulling greater than 20 pounds and no reaching above left shoulder. On September 6, 2012, Dr. Anne Li recommended restrictions of no carrying or lifting greater than 5 pounds, no pushing or pulling greater than 25 pounds, and no reaching above left shoulder.

On September 10, 2012, Provena Villa Franciscan Nursing Home offered accommodation of duty--feeding residents as well as terminal cleaning of resident's rooms. Petitioner testified she received the offer of duty accommodating her restrictions. Claimant refused to return to work because of her opinion the offer was not in accordance with restrictions. In making that statement, Petitioner testified she did not review a Provena Villa Franciscan Nursing Home job description. There is also no medical report or other review of the job accommodations in the record.

H.R. Manager Deborah Shrum testified to working at Provena Villa Franciscan Nursing Home for thirty-seven years. Deborah Shrum testified the undisputed job offer to feed residents and clean resident's rooms was a modified position in accordance with restrictions outlined by Dr. Li of no carrying or lifting greater than 5 pounds, no pushing or pulling greater than 25 pounds, and no reaching above left shoulder.

On November 2, 2012, Petitioner underwent a section 12 examination at respondent's request by Dr. Gregory Primus, an orthopedic surgeon. Dr Primus opined Petitioner's problems began while simply performing a pulling maneuver. He felt she strained the biceps tendon and possibly her rotator cuff. Dr. Primus diagnosed generalized multi-ligament laxity with abnormal signal in the anterior labrum which was a pre-existing condition. Dr. Primus opined arthroscopic surgery not necessary at that time as objective findings did not support subjective complaints. Dr. Primus recommended lifting restrictions of no greater than 25 pounds or lift greater than 10 pounds overhead with MMI after another 4-6 weeks

Petitioner treated with Dr. David Burt at Midwest Sports Medicine Institute from August 30, 2012 to December 21, 2012 with follow-up in three weeks. Dr. Burt recommended complete off work restrictions, reviewed the IME, disagreed with the opinions of Dr. Primus, and recommended arthroscopic exam of the shoulder with possible labral repair and treatment of the biceps and/or rotator cuff. On December 14, 2012 Dr. Burt performed arthroscopic debridement of partial undersurface rotator cuff tear and anterior mid labrum and subacromial decompression and bursectomy on Petitioner.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision regarding the question of whether an accident occurred which arose out of and in the course of the Petitioner's employment by the Respondent, the Arbitrator finds the following facts and makes the following rulings:

This Arbitrator reviewed the documentary evidence and carefully considered the testimony.

Petitioner testified to attempting to log roll a 300-lb leg amputee nursing home resident and complained of left shoulder pain. Dr. Primus noted Petitioner was simply performing a pulling maneuver and strained the biceps tendon and possibly the rotator cuff.

Based upon the totality of the evidence the Arbitrator finds Petitioner did sustain an accidental injury that arose out of and in the course of employment.

In support of the Arbitrator's decision regarding the question of whether Petitioner's present condition of ill-being is causally related to the injury, the Arbitrator finds the following facts and makes the following rulings:

Respondent's counsel objected to the accuracy and completeness of Dr. Burt's records as Petitioner counsel admitted on the record some of the treatment records were absent from Petitioner Exhibit A. This rendered the certification of Dr. Burt's records as correct and complete copies as inaccurate. The Arbitrator finds the records are untrustworthy.

Respondent's counsel also proffered a hearsay objection to the causal connection opinion of Dr. Burt without a chance for cross-examination. The Arbitrator rules this opinion was not medical care but created in anticipation of this litigation.

Finally, Respondent's counsel objected to Petitioner's testimony laying a foundation for her own medical records. There is no indication Claimant created the records, stored them or can vouch for their accuracy or completeness. Thus, it is disregarded.

For all these reasons, the Arbitrator sustains the objections to Petitioners' exhibits A, D, and E and the documents are received as rejected exhibits only.

This Arbitrator also strikes the opinions of Dr. Burt under Illinois Rules of Evidence 801. Dr. Burt reviewed the IME report and disagreed with the opinions of Dr. Primus. Dr. Burt did not testify at the arbitration hearing or via deposition. In this case, there is no exception to the hearsay rule under which records may be admitted if the other side objects and desires cross-examination. Only by agreement can such hearsay documents be received into evidence. There was no agreement here.

Notwithstanding the rulings above, this Arbitrator finds as a matter of fact the opinions of Dr. Primus more persuasive and more analytical than those of Dr. Burt.. This Arbitrator is not required to accept the opinion of a treating physician over that of an examining doctor, and may give more weight to the opinions of an examining physician over a treating physician as the facts warrant. *Prairie Farms Dairy v. Industrial Commission, (1996) 279 Ill. App. 3d 546, 664 N.E.2d 1150.*

In support of the Arbitrator's findings relating the reasonableness and necessity of the medical treatment plus the need for prospective medical treatment allegedly related to the accident at bar, the Arbitrator finds as follows:

The Arbitrator further finds as fact Petitioner was simply performing a pulling maneuver and strained the biceps tendon and possibly rotator cuff sustaining multi-ligament laxity with abnormal signal in the anterior labrum which was a pre-existing condition.

The Arbitrator makes a special finding of fact the Arthroscopic surgery was not medically necessary.

Based upon the totality of the evidence this Arbitrator finds medical services provided to Petitioner were reasonable and necessary up to the section 12 examination on November 2, 2012. This Arbitrator finds medical services provided after November 2, 2012 were not reasonable and necessary or related to the care recommended and provided. Specifically, arthroscopic surgery was not reasonably and necessarily related.

In support of the Arbitrator's decision regarding the question of what amount of compensation is due for temporary total disability, the Arbitrator finds the following facts and makes the following rulings:

The Arbitrator makes a finding of material fact that Provena Villa Franciscan Nursing Home offered accommodation of duty within restriction of feeding residents as well as terminal cleaning of resident's rooms. Petitioner testified she received the offer of accommodated duty but refused to return to work because she felt the offer was not in accordance with restrictions. Petitioner testified she did not review a Provena Villa Franciscan Nursing Home job description.

This Arbitrator finds the testimony of H.R. Manager Deborah Shrum, a thirty-seven-year employee, to be more accurate thus more credible than that of Petitioner on this issue. Deborah Shrum testified the offer to feed residents and clean resident's rooms was a modified position in accordance with restrictions of no carrying or lifting greater than 5 pounds, no pushing or pulling greater than 25 pounds, and no reaching above left shoulder. The Arbitrator adopts in total the testimony of Ms. Deborah Shrum.

This Arbitrator finds Dr. Primus as well as Dr. Li, both recommending light duty restriction, to be more persuasive than the opinions of Dr. Burt who recommended complete off work restrictions.

For these reasons, the Arbitrator finds as a matter of fact and law the Petitioner is not entitled to temporary total disability in the case at bar.

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

April 19th, 2013
Date

ICArbDec19(b)

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Tate,
Petitioner,
vs.
Manpower,
Respondent,

NO: 12 WC 21427

14IWCC0253

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 causation, medical expenses and permanency 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 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 845.89 credit for temporary total disability payments, $1,760.00 credit for an advance in payment of workers' compensation benefits and $8,020.99 for a payment under Section 8(j) of the Act 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 0 4 2014

Mario Basurto

David L. Gore

Stephen Mathis

MB/jm
o:2/27/14
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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

TATE, ROBERT
Employee/Petitioner

Case# **12WC021427**

14IWCC0253

MANPOWER INC
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:

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

2795 HENNESSY & ROACH PC
DAVID DOELLMAN
415 N 10TH ST SUITE 200
ST LOUIS, MO 63101

14IWCC0253

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

- [ ] 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

Robert Tate
Employee/Petitioner

v.

Manpower, Inc.
Employer/Respondent

Case # **12** WC **21427**

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 **Mt. Vernon, IL**, on **1/11/13**. 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. [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 **4/10/12**, 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 with respect to the left hernia but Petitioner's right hernia condition ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$16,640.00**; the average weekly wage was **$320.00**.

On the date of accident, Petitioner was **29** 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 **$845.89** for TTD, $ for TPD, $ for maintenance, and **$1,760.00** for other benefits, for a total credit of **$2,605.89**.

Respondent is entitled to a credit of **$8,020.99** under Section 8(j) of the Act.

ORDER

The Respondent shall provide the Petitioner with TTD benefits from April 11, 2012 through April 19, 2012, as well as TTD benefits from July 23, 2012 through July 30, 2012, payable at a rate of $220.00. Respondent shall also provide Petitioner with PPD benefits with respect to the left hernia. Respondent is allowed a credit for TTD benefits previously paid in the amount of $845.89, as well as an additional credit for $1,760.00 in other benefits previously provided to Petitioner.

The Respondent shall also provide the Petitioner with the medical benefits related to the left hernia condition for treatment received prior to August 28, 2012 to the extent that it has not already done so. Respondent shall provide these benefits in accordance with the Illinois Fee Schedule.

The Respondent shall also provide the Petitioner with PPD benefits in the amount of 3% of the man as a whole measured at the 500-week level as compensation for Petitioner's left hernia condition. Petitioner is therefore entitled to 15 weeks of compensation measured at a PPD rate of $220.00, totaling $2,750.00. Again, however, Respondent is allowed an additional credit for the $1,760.00 in other benefits previously provided to Petitioner to the extent not already awarded herein.

No benefits are awarded with respect to the Petitioner's right hernia condition.

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

March 17, 2013
Date

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Tate,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 12 WC 21427**
	)	
Manpower,	)	
	)	
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on April 10, 2012 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, (as to the left hernia only). They further agree that the Petitioner gave the Respondent notice of the accident within the time limits stated in the Act.

At issue in this hearing is as follows: (1) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure (right hernia only); (2) were the medical services provided to the Petitioner reasonable and necessary and has the Respondent paid for all appropriate charges for reasonable and necessary medical services; (3)what temporary benefits are due to the Petitioner and what credit is due the Respondent for payments already made; and (4) the nature and extent of the injury.

FIND OF FACTS

The Petitioner testified that he is currently 29 years old and was employed at PLS in Mt. Vernon, Illinois at the time of his injury. He was placed at PLS through Manpower. The Petitioner indicated his job duties included loading and unloading semi-tires, including pushing them on pallets. He estimated that these tires weighed anywhere from 45 to 57 pounds.

The Petitioner testified that the day the injury occurred, he was pushing a pallet of tires and pulling one of the tires off of the pallet when it fell and struck him in the low abdomen. He did not feel any immediate pain and continued working throughout the day. However, the Petitioner indicated that pain then developed that night and the next morning.

The Petitioner further testified that Dr. Pruett's office addressed his pain and symptoms, and described his pain as being worse on the left side than on the right side. He indicated that the left side was operated on first and that he fully recovered.

The Petitioner testified that his right groin also began to hurt following the work accident. He believes he informed Dr. Pruett at the time of his left sided surgery about this pain. He indicted Dr. Pruett also performed surgery on the right hernia as well, which improved his symptoms. However, the Petitioner indicated that he suffered some complications after the right hernia surgery requiring an additional procedure to drain fluid. He testified that he believed Dr. Pruett performed this procedure free of charge.

The Petitioner testified that he fully recovered from his complications following his right hernia operation and was given a full duty release by Dr. Pruett. He stated he has some difficulties with lifting things and believes overall he may have lost some strength. Petitioner identified no additional limitations in his activities as a result of the work injury.

The Petitioner also testified that he began working light duty at the employer approximately one week following the injury of April 10, 2012. These tasks included clerical work such as answering phones, organizing papers, and other office work. The Petitioner testified he was able to perform these tasks without any additional pain.

The Petitioner further stated he worked in a light duty capacity and received his regular wages until his left hernia operation on July 23, 2012. He testified that he was then off of work following this surgery through July 31, 2012. The Petitioner indicated that he then began to work light duty once again and did so until his right hernia surgery on August 28, 2012. Again, the Petitioner indicated he received his regular pay during this time.

The Petitioner also testified that he has since returned to work on at least one occasion through Manpower for a few days in December 2012. The Petitioner stated he was actively seeking additional employment at this time.

A review of the Petitioner's medical records show that the Petitioner was seen at St. Mary's Good Samaritan Hospital on April 11, 2012 with complaints of lower abdomen pain. A CT of the abdomen and pelvis was performed which show no evidence of urinary bladder calculi, no hydronephrosis, no bowel obstruction and no gross pelvic lesions.

The Petitioner was then seen by Tammy Pike at WSI/Physical Therapy on April 12, 2012. He indicated to Ms. Pike that he was unloading a pallet of tires that weighed approximately 57 pounds a piece and that when he pulled one of the tires down it bumped him in the stomach. He had no initial pain, but later in the evening he noted some pressure in the bilateral lower abdomen. Ms. Pike was unable to feel a hernia but noted that Petitioner had significant pain. She referred Petitioner to Dr. Annette Shores for further evaluation.

Dr. Shores then evaluated Petitioner on April 12, 2012. Petitioner indicated on April 10, 2012, he was at work when a tire hit him in the lower abdomen. He had been having pain in the left groin since that time. Dr. Shores' assessment was pain in the left groin. She indicated she

did not feel a hernia, but he could have torn the fascia in this area and it would take a while for the hernia to pop out. She recommended an additional CT of the abdomen and pelvis in order to further evaluate Petitioner.

A CT of the abdomen and pelvis was performed on April 18, 2012. The report indicates a finding of a small sliding hiadal hernia in the lower thorax, though the remainder of the findings were otherwise unremarkable. A scrotal ultrasound was also performed on April 18, 2012. The report indicates no evidence of testicular torsion and no evidence of epididymitis or orochitis. It also indicates no obvious hernia formation.

Dr. Shores saw Petitioner again on May 10, 2012. She indicated again that Petitioner was having complaints of left groin pain. Her records do not indicate any right sided pain. She provided Petitioner with pain medication but was uncertain of what further treatment to recommend.

The Petitioner was then seen by Dr. Kenneth Bennett on June 7, 2012. Dr. Bennett diagnosed Petitioner with a left groin strain, and indicated the Petitioner had no hernia present on the right or left side. He recommended physical therapy and pain medication, as well as work restrictions. Dr. Bennett's records do not contain any diagnoses or treatment recommendations for Petitioner's right groin.

The Petitioner was then seen by Dr. Don Pruett on June 20, 2012 for an additional evaluation. His examination revealed that the left ring was dilated with a broad bulge through the ring. The right ring was also dilated, but not nearly as much as the left. Dr. Don Pruett recommended a left inguinal herniorraphy with mesh graft. However, he indicated he would not do anything with the right side at this time as Petitioner had no money and no insurance. He noted the right side was a probable hernia, but indicated the right side "would not be work comp regardless."

The Petitioner's left hernia was surgically repaired by Dr. Chris Pruett on July 23, 2012. The Petitioner was instructed to remain off of work until his next appointment on July 31, 2012.

Dr. Don Pruett saw the Petitioner in post-op on July 31, 2012. Dr. Don Pruett noted that the Petitioner for the first time was complaining of right-sided groin pain. Physical examination revealed a small tender bulge through the right external ring, not previously palpated. Dr. Pruett stated that the Petitioner had developed a right-sided hernia which was "undoubtedly work related" and acquired in the same manner as the one on the left. Dr. Pruett recommended a right-sided inguinal herniorraphy.

Dr. Chris Pruett then performed surgery on Petitioner's right hernia on August 28, 2012 with a mesh graft and Lichtenstein repair. Dr. Chris Pruett acknowledged in the operative report that the right side was found not to be work related. This was discussed with the Petitioner but Dr. Pruett stated he would proceed with the operation at this time to allow Petitioner to return to work sooner.

Dr. Chris Pruett provided a work-release form dated August 29, 2012 that indicated Petitioner should remain off work until next appointment on 9/5/12. He also indicated Petitioner should be at full-duty work on or about 10/2/12.

The Petitioner was then admitted to Crossroads Community Hospital with post-surgical right groin pain on August 29, 2012 and September 1, 2012. The impression was acute right groin pain, post-operative. Petitioner was also admitted to St. Mary's Good Samaritan Hospital on September 3, 2012 with complaints of right inguinal pain following his right-sided hernia surgery. The clinical impression is listed as post operative wound pain. A CT of the abdomen with contrast was performed, as well as a scrotal ultrasound. The ultrasound showed no evidence of bilateral testicular mass and normal flow to both testes.

Dr. Chris Pruett then provided a medical release dated September 5, 2012 whereupon he noted that Petitioner would be at full duty on October 2, 2012, or approximately 5 weeks after his right hernia surgery.

Petitioner was then again admitted to St. Mary's Good Samaritan Hospital on September 8, 2012 and September 9, 2012 with additional right groin pain. Petitioner was transferred to Missouri Baptist Hospital on September 9, 2012 for an additional evaluation by Dr. Chris Pruett. He was noted to have a 2x2 cm collection of fluid in right groin. Petitioner also indicated he had some small drainage of the wound in the shower. Dr. Chris Pruett specifically noted a past surgical history of left hernia repair (work related) and right hernia repair done "under private insurance". Dr. Chris Pruett then performed a procedure on September 9, 2012 to drain the fluid in Petitioner's right groin.

Dr. Chris Pruett also wrote Petitioner's attorney on September 28, 2012 regarding Petitioner's condition. He indicated the left sided hernia condition was found to be work-related. Dr. Chris Pruett specifically stated that "Petitioner's pain was significant and it did not appear it would ever be deemed work related." He also indicated the right-sided hernia operation and post-op drainage of fluid were done free of charge because of Petitioner's condition and his desire to go back to work.

Dr. Chris Pruett also provided a work release for Petitioner dated October 9, 2012 indicating that Petitioner could return to work in a full-duty capacity as of October 5, 2012.

Dr. Russell Cantrell testified on behalf of Respondent by way of deposition. He stated that he specializes in physical medicine and rehabilitation and treats various injuries to the muscular skeletal system and neuromuscular conditions. Dr. Cantrell indicated he saw patients that have groin pain, sometimes related to the hip and sometimes related to the back. However, he stated that this pain would sometimes be related to abdominal wall and hernia diagnoses. Dr. Cantrell is not a surgeon.

Dr. Cantrell testified that reviewed medical records from Petitioner's treatment at St. Mary's Good Samaritan Health Center in Mt. Vernon from April 11, 2012 and April 12, 2012. He stated that these records showed that Petitioner described initial pressure in his lower abdomen and pain that developed in his left inguinal area with coughing or laughing. He also

noted that Petitioner also presented to Dr. Shores for treatment and with complaints of only tenderness in his left groin.

Dr. Cantrell also testified that the records from Dr. Shores did not indicate an actual diagnosis of a hernia on the left or the right side. He further stated that the records from Dr. Shores' treatment of Petitioner did not indicate any treatment regarding any right groin pain of Petitioner as the present symptoms of diagnostic work up were for left groin complaints only.

Dr. Cantrell testified he also reviewed records from an evaluation by Dr. Bennett on June 7, 2012. He indicated that Dr. Bennett diagnosed a left groin strain and that he also examined the right groin and found no indication of a hernia. Dr. Cantrell also noted that Dr. Bennett only recommended treatment with respect to Petitioner's left groin.

Dr. Cantrell testified that he also reviewed the report from Dr. Don Pruett dated June 20, 2012. He stated that at that time, Petitioner presented to Dr. Don Pruett with complaints of discomfort in the left groin without any obvious bulging. Dr. Cantrell noted that Dr. Don Pruett diagnosed a probable left inguinal hernia without any definite hernia on the right.

Dr. Cantrell also stated that Dr. Don Pruett's examination of Petitioner also showed some dilation of the external inguinal ring on the right side but no evidence of a hernia. He noted that Dr. Don Pruett also went on to state that the right side would not be work related regardless. Dr. Cantrell believed that the dilated inguinal ring on the right side was generally larger and more dilated in men than women. He testified that is why men have approximately 25% greater incidents of hernia formation than women. As a result, Dr. Cantrell indicated he would not be surprised to see some dilation of an external inguinal ring on any given man compared to any woman. In absence of any particular symptoms, Dr. Cantrell did not think Petitioner's right dilated ring in this instance had any clinical consequence. He further noted that Dr. Bennett did not note this dilated ring at all during his examination of Petitioner.

Dr. Cantrell testified that he also reviewed a report from Dr. Don Pruett dated July 31, 2012 following Petitioner's left hernia operation. He noted that this record showed the Petitioner presented at that time with right-sided groin complaints and was found to have a definite small tender bulge in the right inguinal external ring that had not previously been palpated. Dr. Cantrell also indicated that Dr. Don Pruett then seemed to have changed his opinion on the work relatedness regarding the findings of the right hernia, which he had previously not considered work related.

Dr. Cantrell noted that the records indicated Petitioner first had presenting complaint of right-sided groin pain on July 31, 2012, or approximately 3 ½ to 4 months after the initial work accident. He testified that given the fact that essentially all of the medical records prior to the evaluation by Dr. Don Pruett on July 31, 2012 reflected symptoms in only the left groin and left lower quadrant, Petitioner's right-sided groin complaints were not causally related to the work injury of April 10, 2012. Dr. Cantrell further stated that the dilated ring noted in Petitioner's right side by Dr. Don Pruett on June 20, 2012 was applicable in his mind to a male versus female disposition because of the increased size in the external inguinal ring in men versus women.

Dr. Cantrell further testified that any additional treatment Petitioner chose to pursue for his right-sided groin pain would not be necessitated by the April 10, 2012 injury. He indicated this would include the subsequent treatment at Crossroads Community Hospital and St. Mary's Good Samaritan Hospital. He believed that while it would be reasonable for Petitioner to have sought follow-up medical care following his right hernia repair, the more reasonable delivery of medical care would have been with Dr. Pruett through an outpatient setting. However, Dr. Cantrell testified that this additional treatment would regardless not be related to the work injury from April 10, 2012.

Dr. Chris Pruett testified on behalf of Petitioner also by deposition. He stated that he is a general laproscopic surgeon who has been practicing for 11 years with his father, Dr. Don Pruett, in St. Louis doing general surgery and laproscopic surgery.

Dr. Chris Pruett stated that the Petitioner was first seen by Dr. Don Pruett on June 20, 2012 for an IME. He acknowledged, however, that the Petitioner was seen by both Dr. Annette Shores and Dr. Kenneth Bennett prior to being seen in his office. He testified that he reviewed these records and that Dr. Shores and Dr. Bennett only provided diagnoses and treatment with respect to Petitioner's left groin.

Dr. Chris Pruett indicated that on June 20, 2012, Dr. Don Pruett diagnosed a left inguinal hernia and a dilated tender ring on the right side, but no definite hernia at that time. Regarding initial symptoms at the time Petitioner presented to Dr. Don Pruett for his initial evaluation, Dr. Chris Pruett stated that Petitioner definitely had symptoms on the left and some pressure across his abdomen. However, Dr. Chris Pruett acknowledged that Petitioner had no specific complaints on the right side other than pressure and that the right side was not symptomatic. He further testified that page 2 of Dr. Don Pruett's IME report from June 20, 2012 indicated that Dr. Don Pruett believed that Petitioner's right side "would not be work comp regardless."

Dr. Chris Pruett testified that he performed the repair of Petitioner's left hernia and this was covered under workers' compensation. He then verified Dr. Don Pruett saw Petitioner in post op following this operation on July 31, 2012. Dr. Chris Pruett confirmed that the report by Dr. Don Pruett's indicated that at "this point" Petitioner complained of pain in the opposite right groin for the first time. He also noted that Dr. Don Pruett now indicated that Petitioner's right-sided hernia was work related. Dr. Chris Pruett testified that "inconsistent" was the "perfect word" to characterize the comparison between Dr. Don Pruett's initial IME opinions regarding causation of the right hernia and those in his July 31, 2012 report.

Dr. Chris Pruett also testified that he performed the right-sided hernia repair on Petitioner on August 28, 2012. He indicated that his operative report from this procedure indicated that the right side was found to not be work related. As such, Dr. Chris Pruett testified that he informed Petitioner he was doing this procedure free of charge. He also stated he did not intend to submit any bills to workers' compensation for this treatment and to his knowledge, no bills were generated.

Dr. Chris Pruett also stated that Petitioner developed an infection in his right groin following surgery and an additional procedure was required, which he again performed free of charge. He noted that Petitioner had recovered from this infection.

When asked whether the dilated ring was causally related to the lifting incident Petitioner sustained at work, Dr. Chris Pruett stated this was a difficult question to answer. He indicated there could be a dilated ring as a baseline and therefore if there was a dilated ring and some sort of injury was sustained, it was more than likely that a hernia would develop in that area. However, Dr. Chris Pruett initially indicated that he was not able to answer whether the dilated ring caused by the incident of April 10, 2012.

However, Dr. Chris Pruett then stated that he believed the most reasonable answer with respect to causation was that the incident that caused the Petitioner's pain and his left inguinal hernia ultimately also caused his right inguinal hernia. He further opined that there are times when a hernia cannot be felt and that this is referred to as an "insipient hernia". He admitted, however, that he believed causation could be argued either way in this instance and that the Petitioner's case was an unusual situation.

Finally, Dr. Chris Pruett also stated he had the opportunity to review the report of Dr. Cantrell in preparation for his deposition. He acknowledged that on page 4 of the copy of Dr. Cantrell's August 24, 2012 report contained in his file there were hand written notes in the right margin by the first paragraph belonging to Dr. Don Pruett. He confirmed these notes read "7/31/2012", "date of injury 4/10/2012", and "too long ago without complaints". Dr. Chris Pruett also agreed in looking at page 4 of the report that there was a portion in the first full paragraph that was underlined which read "the small right inguinal hernia which is undoubtedly work related and inquired in the same manner as the hernia on the left". Dr. Chris Pruett then agreed that the hand written note that he just read into the record was directly to the right of that underlined portion. He indicated it would be a fair characterization that this note pertained to the underlined portion of this paragraph.

Dr. Chris Pruett also examined the hand written note at the bottom of page 4 of the same copy Dr. Cantrell's August 24, 2012 report and acknowledged there was an additional handwritten note by Dr. Don Pruett that read, "agree". He further testified that there was a line that extended up from the word "agree" to an underlined portion of the paragraph directly above it. He confirmed this underlined portion was the end of the sentence that read "it is my opinion that currently the right sided groin complaints reported to Dr. Pruett on the July 31, 2012 are not related to his alleged work injury of April 10, 2012." Dr. Chris Pruett then testified that it would be a fair characterization that the hand written note "agree" was pertaining and referencing this underlined portion of that paragraph.

CONCLUSIONS OF LAW

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

The Petitioner's left hernia condition is not in dispute and has been accepted by Respondent as related to the work injury of April 10, 2012.

However, the Arbitrator finds that the Petitioner's right hernia condition is not causally related to the work injury of April 10, 2012. The medical records and evidence show that Petitioner only experienced left groin pain following the work accident of April 10, 2012. All of the diagnoses from both Dr. Shores and Dr. Bennett regarding Petitioner were related to the left side only, and no diagnoses were made with respect to the right side. Moreover, neither Dr. Shores nor Dr. Bennett provided any treatment recommendations with respect to Petitioner's right groin.

The evidence also shows that Dr. Don Pruett's initial assessment of Petitioner's right hernia condition was that it was not work related. There is also no evidence in the medical records that the Petitioner voiced any complaints of pain in his right groin area until one week following his left hernia surgery. These complaints are noted in Dr. Don Pruett's July 31, 2012 report and he verifies that these complaints were made by Petitioner for the first time on this occasion. This would be approximately 16 weeks following the work accident of April 10, 2012.

The evidence indicates that Dr. Don Pruett felt a dilated ring on Petitioners' right side during his examination on June 20, 2012. Dr. Chris Pruett provided testimony that it was difficult to determine whether that this dilated ring on Petitioner's right side was a result of the work injury of April 10, 2012. In fact, Dr. Chris Pruett initially indicated that he could not answer this question with respect to causation. Dr. Chris Pruett testified further that he had reviewed the report of Dr. Cantrell, as had his father Dr. Don Pruett, and that Dr. Don Pruett had made notes in the margin of the report, indicating he agreed with the statement of Dr. Cantrell, regarding the statement that the right hernia was not work related as the onset of symptoms was to long from the date of injury to the report of symptoms.

Although Dr. Chris Pruett later provided testimony indicating that the Petitioner's right hernia may have been "incipient" and thereby not detectable until well after the work accident, the Arbitrator finds that this is insufficient to explain the delay in the onset of Petitioner's right groin symptoms. The Arbitrator therefore finds the opinions of Dr. Cantrell to be more persuasive and consistent with the medical records submitted into evidence.

Dr. Cantrell testified that this dilated inguinal ring on the right side was generally larger and more dilated in men than women. He indicted this is why men have approximately 25% greater incidents of hernia formation than women. Therefore, in absence of any particular symptoms, Dr. Cantrell did not think Petitioner's right dilated ring in this instance had any clinical consequence. He further testified that Dr. Bennett did not note a dilated right inguinal ring in Petitioner during his examination. Dr. Bennett's examination of Petitioner was approximately 2 weeks before that of Dr. Don Pruett.

Dr. Cantrell concluded that as essentially all of the medical records prior to the evaluation by Dr. Don Pruett on July 31, 2012 reflected symptoms in only the left groin and left lower quadrant, Petitioner's right-sided groin complaints were not causally related to the work injury of

April 10, 2012. The Arbitrator finds that this conclusion is logical and consistent with the medical records submitted into evidence. Moreover, the Arbitrator notes that Dr. Chris Pruett provided testimony that his father, Dr. Don Pruett made handwritten annotations on Dr. Cantrell's August 24, 2012 report that are suggestive that he was in agreement with Dr. Cantrell's opinions.

The Arbitrator finds that Dr. Don Pruett's annotations on Dr. Cantrell's report provide additional support to his original conclusion in his evaluation of Petitioner on June 20, 2012 that the right hernia condition was not related to the accident of April 10, 2012. This, combined with the opinions of Dr. Cantrell is more persuasive than the opinions of Dr. Chris Pruett.

For the foregoing reasons, the Arbitrator therefore finds that Petitioner's current condition of ill-being with respect to his right hernia is not medically causally related to the work accident of April 10, 2012.

WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER WERE REASONABLE AND NECESSARY, AND HAS THE RESPONDENT PAID ALL APPROPRIATE CHARGES FOR REAONSABLE AND NECESSARY MEDICAL SERVICES?

As the Respondent has not disputed the Petitioner's left hernia condition and accepted the same, the Arbitrator finds that the treatment Petitioner received prior to his right hernia operation on August 28, 2012 was reasonable and necessary and related to the work injury of April 10, 2012. Therefore, Respondent is obligated to provide payment for the medical expenses from Petitioner's treatment prior to August 28, 2012 according to the Illinois Fee Schedule to the extent it has not already done so.

With respect to the medical treatment Petitioner received for his right hernia condition, as the Arbitrator has found that this condition is not medically causally related to the work accident of April 10, 2012, Respondent is not responsible for payment of any medical bills after August 28, 2012.

The Arbitrator further finds that the Respondent shall be entitled to a credit of $8,020.99 under Section 8(j) of the Act for medical benefits already provided to Petitioner.

WHAT TEMPORARY BENEFITS ARE IN DISPUTE AND WHETHER RESPONDENT IS DUE ANY CREDIT?

The Petitioner claims temporary total disability benefits from April 11, 2012 through April 19, 2012, July 23, 2012 through July 30, 2012 and August 27, 2012 through October 12, 2012. Petitioner has provided testimony that for the remaining dates between his date of injury and his release from care by Dr. Chris Pruett, he was able to work light duty for Respondent and was provided his regular wages.

As the Respondent has not disputed the Petitioner's left hernia condition and accepted the same, the Arbitrator finds that Petitioner is entitled to TTD benefits from April 11, 2012 through

April 19, 2012, as well as July 23, 2012 through July 30, 2012. These benefits shall be paid by Respondent at Petitioner's TTD rate of $220.00.

However, since the Arbitrator finds that the Petitioner's right hernia condition is not medically causally related to the work accident of April 10, 2012, no TTD benefits are awarded from August 27, 2012 through Petitioner's full duty release by Dr. Chris Pruett.

To fully address the TTD periods owed to Petitioner, the evidence shows that Respondent has already paid Petitioner $845.89 in TTD benefits, and has also provided an advancement of benefits on a disputed basis of $1,760.00 for which Respondent would be entitled to a credit.

WHAT IS THE NATURE AND EXTENT OF PETITIONER'S INJURY?

The Arbitrator finds that Petitioner suffered a hernia in his left groin as a result of the work accident of April 10, 2012. The evidence shows that Petitioner required some conservative treatment and ultimately required surgery that was performed by Dr. Chris Pruett on July 23, 2012. However, Petitioner was able to work light duty during most of the treatment for this condition, and was only completely off of work for approximately two weeks. The evidence also shows that Petitioner fully recovered from his left hernia approximately 4 weeks after the surgery was performed.

Dr. Chris Pruett gave Petitioner a full duty release with respect to his left hernia. Petitioner provided testimony that he has some difficulty in lifting objects following his recovery. However, no additional evidence was presented indicating that any other aspect of Petitioner's daily life was adversely affected by the work injury. Moreover, Petitioner testified that he had at one point temporarily returned to work and was in the process of applying for additional employment. No evidence indicates that Petitioner is in any way restricted from finding employment due to his work injury.

The Arbitrator finds in light of the evidence presented at trial concerning the nature and extent of Petitioner's left groin injury, Petitioner is awarded permanent partial disability benefits in the amount of 3% of the man as a whole measured at the 500-week level. This totals 15 weeks of compensation. Respondent shall therefore provide Petitioner with 15 weeks of compensation payable at his PPD rate of $220.00, or a total of $2,750.00.

However, as the evidence shows that Respondent has provided an advancement of benefits to Petitioner on a disputed basis of $1,760.00, Respondent would be entitled to a credit against any permanent partial disability awarded for any amount of the advancement remaining if not applied to other benefits awarded herein.

Given that the Arbitrator has found that Petitioner's right hernia condition is not medically causally related to the work accident of April 10, 2012, Petitioner is not entitled to any permanent partial disability for his right hernia condition.

ORDER OF THE ARBITRATOR

The Respondent shall provide the Petitioner with TTD benefits from April 11, 2012 through April 19, 2012, as well as TTD benefits from July 23, 2012 through July 30, 2012, payable at a rate of $220.00. Respondent shall also provide Petitioner with PPD benefits with respect to the left hernia. Respondent is allowed a credit for TTD benefits previously paid in the amount of $845.89, as well as an additional credit for $1,760.00 in other benefits previously provided to Petitioner.

The Respondent shall also provide the Petitioner with the medical benefits related to the left hernia condition for treatment received prior to August 28, 2012 to the extent that it has not already done so. Respondent shall provide these benefits in accordance with the Illinois Fee Schedule.

The Respondent shall also provide the Petitioner with PPD benefits in the amount of 3% of the man as a whole measured at the 500-week level as compensation for Petitioner's left hernia condition. Petitioner is therefore entitled to 15 weeks of compensation measured at a PPD rate of $220.00, totaling $2,750.00. Again, however, Respondent is allowed an additional credit for the $1,760.00 in other benefits previously provided to Petitioner to the extent not already awarded herein.

No benefits are awarded with respect to the Petitioner's right hernia condition.

Deborah L. Simpson
Arbitrator Deborah Simpson

March 17, 2013
Date

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

Derrick Dawson,

Petitioner,

14IWCC0254

vs.

NO: 12 WC 29594

CR Coating & Logistics Management,

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-including prospective medical care, temporary total disability, and penalties and attorney 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.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

- Petitioner was a 33 year old employee of Respondent, who described his job as 3rd shift (10:30pm-7:00am) wash line, team lead. Petitioner is about 5'10 tall and weighed 185 pounds on the date of accident; currently he weighs approximately 208 pounds. Petitioner testified that prior to the accident he had no problems with his neck or low back, and had no scars that required him to seek medical attention. Since the date of accident, Petitioner had not been involved in any other accidents or injuries regarding his neck, head, low back, legs, or any other parts of his body that were alleged injured here. Petitioner testified that prior to the incident he had no medical condition or diseases that in any way affected his health.

- On July 6, 2012, Petitioner testified he was employed with Respondent and had been for 8-9 months. Petitioner stated that he had started working for Respondent as a wash operator, washing tanks. Petitioner testified that the job involved getting tanks with a forklift, putting them inside a machine, and hooking up a washer to wash them. Petitioner stated he then took them out, dried them with an air hose, vacuumed them out and put the tanks back in the stationary area. Petitioner testified that the tanks are used for diesel and hydraulic oil; the tanks went into big machines. Petitioner stated that some of the tanks were 800-900 pounds or more. Petitioner testified that he did that for about 3 months when the Caterpillar supervisor spoke to Mr. Jim and Mr. Bob and told them that he was doing a good job because he was doubling the tanks done in that area. Petitioner testified that after those three months, he was moved to team lead. Respondent talked to him about it and Petitioner testified that as team lead he was over people and the machines. Petitioner stated that he had to make sure that the machines were running and that everyone was doing their jobs. Petitioner stated that he knew practically everything about the machines and how to run them. Petitioner testified at the time of the accident he had 10-12 people working under him as team lead. Petitioner testified his duties as team lead were putting in tickets for machines, getting parts, going to the crib to get things needed to work with. Petitioner stated he had to make sure everyone was doing their job and make sure everyone was using safety precautions and staying safe. Petitioner testified that he was responsible for production. He stated that they had so many parts that they had to get out every night on each shift. Petitioner stated at the end of the week they had to add up the number of parts washed and that determined production the 3rd shift put out for the week. Petitioner stated that he had to turn those numbers in to the supervisors each week. When he turned in the numbers the supervisors would comment on the productivity and he stated they would just tell him they were doing a good job on 3rd shift and they were pushing out a lot of parts that needed to be pushed out. Petitioner stated that Caterpillar supervisors that walked around would also say they were doing a good job on 3rd shift. Petitioner stated that the Caterpillar supervisors walked around the floor every night. Petitioner stated on the south end he (they) always had the floor clean. Petitioner stated they would come in at 10:30pm and there would be 40 tubs on the floor and before Petitioner left in the morning, those tubs would be all done.

- Petitioner testified that the facility was owned by Caterpillar but that he worked there for Respondent (C.R. Coating) to wash all the parts and paint. Petitioner's shift was 10:30pm to 7:00am. Petitioner testified in the time he worked as team lead he always worked the 3rd shift; however, sometimes he had to stay over onto 1st shift when people did not show up for work or they needed extra help. Petitioner stated overtime was mandatory most of the time for him. Petitioner testified that he worked a lot of hours. Petitioner stated that he would sometimes request time off but they were unable to let him off because they did not have enough people.

- On the date of accident, July 6, 2012, Petitioner testified he was working in his capacity as team lead. Petitioner stated they were short handed as there was a labor situation at the facility. Petitioner stated they had gotten rid of a lot of people; there was a strike going on at Caterpillar. Petitioner did not know if Caterpillar or Respondent owned the machine, he just knew they operated it and the mechanics that fixed the machines were employees

of Caterpillar. The Caterpillar employees were required to fix the machines then during the strike. Petitioner stated they had contingency workers that were brought in from different facilities to repair the machines. Petitioner stated that those people did not know a lot about the machines as they would come and ask them (Petitioner) for information about the machines. Petitioner stated that if something happened to the machines, they would ask what was wrong, and different questions about the machines. Petitioner indicated that the strike had been going on for weeks. Petitioner stated on the day of the accident he came in at 10:00 so he could get everything ready, go to his locker, get gloves for all the workers, check e-mails, see if any posts were there that he needed. Petitioner stated that he gave safety speeches before they started work. Petitioner stated that he worked seven days a week and normally came in at that time to get everything ready. Petitioner stated on that day as he was coming in to work he had to pass by Mega which was the machine he was injured on. He stated he went by the machine and there was a mechanic there and the 2nd shift lead came to him and told him that Mega had been down all day and that they had been working on it. Petitioner stated he told the 2nd shift lead that there were a lot of tubs on the floor (50-60) as the machine had been down for two shifts. Petitioner stated the Mega machine is the biggest machine that they have at that end and it washed the biggest parts they have. Some of those parts are 400-500 pounds or more and you can only fit one of the bodies in the basket; he again noted the parts are heavy and the mega washes the parts. Petitioner indicated it was unusual for that many tubs to be on the floor when he came to work; but they were there because the machine was down. Petitioner indicated if there is no problem his shift would do 15-20 tubs in a shift. When the 2nd shift lead advised Petitioner about the machine, Petitioner stated he continued to go to clock in and then he met everyone upstairs as they normally did. Petitioner stated that he went through the safety meeting and after the meeting dismissed everyone. The meeting is to tell everyone of the parts on the floor and that they were to try to push the parts out and have the floor clean before they left. He stated he read off a report about if there were injuries. He stated the building was always very hot and he told them to drink plenty of fluids. Petitioner indicated that after the meeting he met with Brian, the person who ran the Mega, and they went back to the machine but the maintenance person was gone. The maintenance worker was one of the contingency workers during the strike. Petitioner stated he then put a ticket into the computer on the machine letting them know what was wrong with the machine and that it needed maintenance/repair. Petitioner stated that he requested that about 10-15 minutes after the meeting; around 10:40pm. Petitioner indicated there had already been tickets put in about the machine as the prior shift mechanic had been working on trying to repair it. That mechanic left at the end of 2nd shift so Petitioner had to put in another ticket for repair. Petitioner indicated that the mechanic did not respond to that ticket for repairs. Petitioner stated they waited a while for another mechanic who never showed up after waiting 25-30 minutes. Petitioner noted that the machine was still down. Petitioner stated that the tubs that were there to be washed were from different areas of the building. After being washed the parts are sent inside to get billed. Petitioner was not sure what Caterpillar was building with the parts, he just knew he washed the tanks and the tanks were then sent to the warehouses and different places. Petitioner indicated if the parts were not washed in the Mega machine; that delayed the other destinations in the plant where the parts are used to fabricate and make something. Petitioner indicated there were 50-60 tubs backed

up at that time. Petitioner stated that he looked at the machine and saw what the problem was, as it broke down all the time. Petitioner testified that the same thing happened several times with that machine. Petitioner stated he was looking to see the problem and saw there was a basket stuck in the washer. Petitioner stated that the door on the washer cannot close unless the basket is all the way in. Petitioner stated that he knew what to do to fix the machine; he stated he had done it before. Petitioner stated you can walk inside the machine, it is a real tight fit, but big enough for a person to get in.

- Petitioner viewed RX 2 (a photo) and stated it was the backside of the Mega where the tubs come out of the machine down the roller on the back. It was noted that there is a door with like a window on it and the door leads inside the machine. Petitioner indicated that inside the machine are the mechanisms for washing. Petitioner viewed RX 6 and stated that it was the inside of the machine. Petitioner noted the shovel and clamps. He indicated that the basket inside was full of parts on a flat surface inside the wash tub area where the actual washing takes place. Petitioner indicated the basket was visible because it was not all the way inside the wash area, it was stuck. Petitioner stated when it is stuck you can give it a push to get it in and the door will then close with it sliding down and the machine will then operate.

- Petitioner testified that the reason the Mega machine was not operating that day was because the basket was stuck. Petitioner indicated the substitute mechanics are not familiar with the machine and did not attempt to address the problem by pushing the stuck basket into the proper position. Petitioner stated that after looking at the situation, with 50-60 tubs holding and no mechanics coming, he got with Brian and they got a golf cart, went to the other side of the building, got a bar and returned to the machine. Petitioner stated when they got back he hit the safety shut down button which shuts down certain parts of the machine. Petitioner stated after that he went around to the back of the machine (indicating on the photo RX 2) and told Brian to stay out as it was a safety zone and not safe for him there. Petitioner again indicated that he had gone in several times before to fix that situation because it happened all the time with that machine. Petitioner testified he went inside the machine and he had the bar to push the basket on the lift. Petitioner stated he gave it a push and when he did, it freed the basket and the door came in and the shuttle plunged off to the left (he indicated it on the photo). The rails were noted where the shuttle slides on. Petitioner indicated the shuttle was not in the same position then as in the photo (RX 6). Petitioner testified that the shuttle had been shifted all the way to the right (apparently going out of the pictured area). He agreed there are 4 platforms bound tightly to each other so they move the whole shuttle all together. It was again noted Petitioner was freeing up the basket with a metal bar and when he pushed it the door closed down and the shuttle shot off to the left. Petitioner stated that he was between the machine arm on the right and left; Petitioner indicated with an 'X' on the photo where he had been standing; He was between the two arms. The general area was circled on the photo. Petitioner indicated (RX 6) the shuttle moved into the picture area noted. Petitioner testified when the shuttle moved it shot off so fast that it struck him on the right side of his head (above the eyebrow). He indicated he would have been struck by the corner of the shuttle (indicated on the photo). Petitioner indicated when it struck him it twisted Petitioner around to the left and his left side struck the metal area.

Petitioner just knew that something (pointed at in the indicated photo) hit the side of his face and cut him (the Arbitrator made a square around the area). Petitioner indicated when he twisted he also hit his back on the right side and his right leg on the brace that was sticking out. Petitioner stated when it twisted him around he saw blood and he immediately put pressure on his face where he was bleeding. Petitioner indicated he put up both hands to his face as he was hit in 2 spots and the back of his head.

- Petitioner testified that after that, he immediately got out of the machine and told Brian (the Mega operator) to take Petitioner to the ER inside the building. Petitioner stated when they got there, they were closed; no one was there, so they immediately went to the security office. Petitioner stated when they got there they could not touch Petitioner so they immediately called 911 for an ambulance. Petitioner testified the ambulance took him to Provena St. Joseph Hospital.

The Commission finds the evidence and testimony is clear that Petitioner entered a restricted area when he went into the Mega to clear a basket jam. Petitioner was an operator and not qualified or authorized to perform that task whether he had previously aided maintenance people or not. Petitioner worked for Respondent and the Mega was owned and maintained by Caterpillar. Petitioner's job duties were to oversee the washers on the machine and duties such as maintenance were clearly outside of his responsibilities. There was a lockout/tag out procedure to be followed by Caterpillar maintenance people. Petitioner obviously did not have the lock equipment or knowledge to properly bring the Mega to 'O' energy to allow for safe repair. Petitioner even entered the Mega via the belt area rather than through the doorway which would have set off an alarm, which he was clearly aware and further showed he was beyond his scope of his job duties. Petitioner was clearly at work when the accident occurred but he was not acting within the scope of his employment as he was employed as a lead on the 3rd shift wash for Respondent and not as a maintenance worker for Caterpillar or Respondent. While Petitioner apparently wanted to get the machine operational to move the wash production that was backed up, he did not want to wait for maintenance to remedy the problem. Petitioner tried to fix it himself which was well beyond his expertise and his job duties. Petitioner's testimony is unrebutted as to being injured while working for Respondent at the Caterpillar facility; however Petitioner took himself out of the scope of his employment by performing the job of an employee (maintenance) of another employer (Caterpillar) well beyond his expertise and the proscribed job duties of his employment with Respondent. Accordingly, Petitioner failed to meet the burden of proving accident that arose out of and in the course of his employment and thereby also failed to prove any causal relationship between his injuries and condition of ill-being. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence, and, herein, affirms and adopts the Arbitrator's finding that Petitioner failed to prove accident that arose out of and in the course of employment, and further affirms and adopts the Arbitrator's finding that Petitioner failed to prove a causal connection.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 3, 2013 is hereby affirmed and adopted.

14IWCC0254

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 $-0-. 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 0 7 2014
o-1/16/14
DLG/jsf
45

David L. Gore

Michael J. Brennan

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DAWSON, DERRICK
Employee/Petitioner

Case# 12WC029594

14IWCC0254

CR COATINGS & LOGISTICS
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:

2221 VRDOLYAK LAW GROUP LLC
MICHAEL P CASEY
741 N DEARBORN ST 3RD FL
CHICAGO, IL 60610

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
KIM EMERSON
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

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 14IWCC0254

DERRICK DAWSON
Employee/Petitioner

v.

CR COATINGS & LOGISTICS
Employer/Respondent

Case # 12 WC 29594

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 **George Andros**, Arbitrator of the Commission, in the city of **New Lenox**, on **April 11, 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 _____

14IWCC0254

FINDINGS

On **7/6/12**, 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 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 **$33,698.17**; the average weekly wage was **$648.04**.

On the date of accident, Petitioner was **33** years of age, ***single*** with **3** 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 **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$3,110.56** for other benefits, for a total credit of **$3,110.56**.

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

ORDER

No benefits are awarded as the accidental injuries sustained by petitioner on July 6, 2012 are not arising nor in the course of his employment with Respondent in the case at bar.

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 30,2013
Date

JUN -3 2013

FINDINGS OF FACT 12 WC 29594

On July 6, 2012, petitioner was employed by CR Coating & Logistics as the Wash Line Team Lead on the third shift. (T. 10) The third shift operated from 10:30 p.m. to 7:00 a.m. (T. 14) Petitioner testified that his job responsibilities included putting in tickets for machines, getting parts and supplies, making sure those under him were performing their jobs correctly and safely, and ensuring production. (T. 10-12) Petitioner admitted on cross examination that part of his job duties as Team Lead were to report all equipment malfunctions to the supervisor on duty and complete a maintenance request ticket. (T. 70 & RX7) Petitioner further testified that the wash line operators were required to process/wash the metal parts in any tubs left by their assigned machines during their shift.

Mr. Robert Sieffert, testified on behalf of the respondent. He testified that he had worked for CR Coatings and Logistics at the Caterpillar facility for four years and had worked as the general manager for two years. (T. 122-123) As general manager, he was the chief operating officer and was responsible for the entire operation. (T. 123)

Mr. Sieffert testified that, as Wash Line Team Lead, petitioner was responsible for all of the wash operators on his shift. This included getting them set up, making sure they were washing the correct pieces, making sure that they were washing enough pieces, and making sure that they worked safely. (T. 125) Mr. Sieffert testified that Respondent's Exhibit 7, was a detailed job description for a Wash Line Team Lead that was prepared by CR Coatings and Logistics in the regular course of business. He testified that petitioner was provided with a copy of this job description at the time of his promotion. (T. 125-126)

Mr. Sieffert testified that CR Coatings was an independent contractor working for Caterpillar. He continued to explain that they were responsible for painting all of the components that were manufactured in the facility and washing some of the parts prior to assembly. (T. 123) Mr. Sieffert testified that Caterpillar owned the machines operated by CR Coatings to paint and wash the components. He testified that Caterpillar was responsible for repairing these machines in the event of a breakdown. (T. 124) Mr. Sieffert testified that CR Coatings and Logistics did not employ any maintenance staff to repair the machines that they operated for Caterpillar. Rather, Caterpillar was responsible for hiring all maintenance employees to repair the machines. (T. 124)

On cross examination, petitioner testified that he received a copy of the Summary of Joliet Facility Safety Rules and Regulations during his orientation and was familiar with same. (T. 73)

Mr. Sieffert confirmed that petitioner was provided with a copy of the Summary of Joliet Facility Safety Rules and Regulations during his orientation with CR Coatings and Logistics. (T. 127) Petitioner admitted that paragraph 13 of these rules provided that employees were to stay out of any hazardous or restricted areas unless they were assigned to it. (T. 74 & RX1) Mr. Sieffert testified that, if an unauthorized employee was found to enter a restricted area, it was standard procedure to terminate that employee. (T. 130-131) Mr. Sieffert confirmed that the internal areas of the Mega Wash machine were considered a restricted area. (T. 131) Specifically, the internal areas of Mega were restricted to maintenance personnel only. (T. 131) Again, Mr. Sieffert confirmed that CR Coatings did not employee any maintenance personnel. (T. 131)

Petitioner further admitted that paragraph 23 of these rules required that lockout/tagout procedure must be followed when a machine was being repaired or cleaned. (T. 74) Petitioner testified that he was familiar with the lockout and tagout procedures that were preformed by the maintenance staff. (T. 75) He indicated that only mechanics were issued personal locks to lockout a machine and admitted that he did not have a personal lock to lockout the machines. (T. 76-77) Petitioner testified that the lockout/tagout procedure was posted on the front of the electronic control box to the left of the entry doorway to Mega. (T. 86, RX4 & RX5)

Petitioner testified that on July 6, 2012, the Caterpillar employees had been on strike for weeks. He testified that Caterpillar employed the mechanics that fixed the wash machines. He continued to testify that, during the strike, the contingency workers brought in to work on the machines had little knowledge of the machines and asked the other workers about the malfunctions and repairs. (T. 17-19) On cross examination, petitioner admitted that he was not trained in maintenance repairs on Mega by CR Coatings or Caterpillar. (T. 84-86)

Petitioner testified that on July 6, 2012, he arrived at the facility at 10:00 p.m. for the third shift. He testified that as he entered the facility he passed by Mega and noted that a mechanic was there with the second shift lead. He testified that the second shift team lead told him that Mega had been down all day. (T. 20) Thereafter, petitioner proceeded to clock in and present the safety meet for the third shift employees. (T. 22) After the meeting was completed, petitioner returned to Mega on the floor. When he arrived, the maintenance worker was no longer at the machine. (T. 24) Petitioner stated that the maintenance worker from the second shift had left Mega because they had to change shifts as well. (T. 26) Petitioner then put in a maintenance ticket for the Mega wash machine for the third shift at approximately 10:40 p.m. (T. 25) Petitioner testified that he waited 25 minutes or so for maintenance to respond to the new ticket. (T. 27)

Mr. Sieffert testified that the response time for a maintenance request depended upon the demands on the maintenance department. Some requests were answered very promptly and some could take an hour or more,

depending upon the workload and priorities. (T. 143) Mr. Sieffert continued to state that if a maintenance request was taking longer than normal, petitioner should have phoned the maintenance department directly or a supervisor who could exert some influence on the maintenance department. (T. 143) Mr. Sieffert testified that while awaiting maintenance repairs, CR Coatings employees were expected to perform general housekeeping tasks and make their supervisor aware of the delay. (T. 144) He continued to state that there was no penalty for decreased production when a machine was down. (T. 143)

Instead of following the standard protocol, petitioner testified that he looked at the machine himself to determine the problem and saw that a basket was stuck in a door of the machine, which prevented the door from closing and the machine from running. (T. 29-30) Mr. Sieffert testified that the stuck basket described by petitioner was not a simple issue and was actually a difficult thing to repair. (T. 149)

Petitioner testified that, upon identifying the problem, he went to the opposite end of the facility to obtain a metal pry bar and came back to the machine to attempt to fix it. (T. 36) He testified that he hit the safety shut off button before entering the machine, but admitted that this button only shut down certain parts of the machine and not the whole machine. (T. 36) He then admitted that he told his co-worker to stay outside of the machine because it was a known safety zone and it was not safe. (T. 37)

Petitioner testified that the baskets had become stuck on this machine on multiple occasions and he had assisted in fixing it previously. (T. 37) On cross examination, petitioner admitted that none of the Caterpillar supervisors or CR Coatings supervisors had knowledge of his entering Mega to assist with repairs prior to July 6, 2012. (T. 101) Mr. Sieffert confirmed that, prior to July 6, 2012, he was unaware that CR Coatings employees were entering the restricted areas of Mega. (T. 132)

On cross examination, petitioner testified that Mega was an enclosed machine with all of the moving parts being enclosed within a metal and plexiglas structure. (T. 78) He admitted that the doorway into Mega was marked as restricted access with the sign stating that only maintenance personnel were to enter Mega, as depicted in Respondent's Exhibit 2. (T. 78-79) Petitioner continued to testify that this doorway was supposed to be locked but had been left unlocked on July 6, 2012. (T. 79-80) Petitioner admitted that when the door was locked, he did not have a key to unlock the padlock. (T. 80) *Even though the door into Mega had been left unlocked on the date in question, petitioner still entered the machine by hopping through the opening in which the conveyor belt exits the machine, as depicted in Respondent's Exhibit 2. (T. 86-87) He testified that he did not use the unlocked doorway to avoid the alarm from sounding throughout the plant. (T. 87) (emphasis added by Arbitrator)*

Upon entering Mega, petitioner moved between the first and second arms on the left side of the machine (T. 43) and stepped inside of the lower I-beam connecting these arms (T. 91) when he began to work on the machine. This area was marked by the Arbitrator with a circle on Respondent's Exhibit 2. He then gave the basket a push with the metal bar, freeing the basket. (T. 38) Once freed, the basket entered the wash area and the door to the wash area closed. (T. 38) After the basket was freed, the shuttle was released and moved to the left of the machine or towards the back of the picture in Respondent's Exhibit 6. (T. 38) Petitioner testified that when the shuttle moved, the left upper corner of the shuttle hit him on the right side of the head above his eyebrow twisting his body to the left where he hit the left side of his head on the second arm of the machine. (T. 44-46) Petitioner testified that his right leg and back were also hit by the brace on the lower part of the shuttle. (T. 47)

Petitioner testified that he saw blood and immediately grabbed both sides of his head and exited the machine. (T. 47-48) Then he asked his coworker to take him to the building ER. Upon finding the building ER closed, Petitioner then proceeded to the security office where 911 was call and an ambulance was sent. (T. 48) Petitioner testified that he was taken to Provena St. Joseph Hospital by ambulance. (T. 48) He reported that he was hit on the right side of his head by a moving machine and then hit the left side of his head. He denied loss of consciousness, dizziness, or vision changes. He did complain of a mild headache. He was noted to have lacerations to his right temple, left cheek, and top of his right thigh. (PX1 p. 17-18 & 26) Petitioner specifically denied any neck pain. (PX1 p. 28)

On examination, he had no midline or paraspinal tenderness in his neck or back. (PX1 p. 20 & 29) The lacerations on the right and left sides of his face and his right thigh were cleaned and sutured. (PX1 p. 29) Petitioner was discharged home with prescriptions for Keflex and Norco. He was instructed to keep his wounds clean, dry and covered. He was given a note to be off work July 7 and July 8, 2012 and was instructed to follow-up with his primary care physician or Dr. Shahid Masood. (PX1 p. 21)

Petitioner testified that he returned to the Emergency Room at Provena Saint Joseph Medical Center on July 10, 2012 for evaluation of very bad headaches and neck pain. (T. 50) This testimony is not supported by the medical records. Upon presentation to the emergency room on July 10, 2012, petitioner indicated that he was presenting for a wound check and complaints of headaches only. (PX1 p. 33) In fact, during this visit, petitioner denied any neck or back pain or injury. (PX1 p. 46) On examination, his lacerations were noted to be healing well. He had full range of motion with no pain or tenderness in his neck. He had no focal neurologic deficits. He had normal motor function and normal gait. (PX1 p. 46-47) Petitioner was provided a new prescription for Norco and was discharged home. He was not taken off work. (PX1 p. 47)

Petitioner testified that he was truthful and honest with the nurses and physicians in the emergency room during each visit. (T. 92) He confirmed that he reported all of his complaints and symptoms to his treaters at each of his presentations. (T. 92)

Mr. Sieffert testified that he contacted petitioner by phone on July 11, 2012 to advise him that he was being terminated for violation of a serious safety rule. (T. 141) Most notably, Mr. Sieffert continued to advise petitioner that CR Coatings would like to assist him in finding employment with one of their sister companies off of the Caterpillar site. (T. 141-142) Petitioner confirmed the contents of this telephone conversation and admitted that he did not follow-up on the offer to assist with other employment. (T. 98) Mr. Sieffert advised that after this conversation petitioner stopped returning their calls and stopped communicating with them. (T. 142) Instead, petitioner contacted an attorney and signed his application for adjustment of claim on July 13, 2012. (T. 99)

Petitioner next presented to Dr. Shahid Masood on July 16, 2012. (T. 99) During this visit, ten days after the alleged accident, petitioner reported his first complaints of neck and back pain. He complained of severe pain radiating from his neck to his right upper extremity. (PX2 p. 11) Contrary to the emergency room records, petitioner advised Dr. Masood that he had presented to the emergency room twice for this pain. He also complained of back pain radiating from half way down his back to his hips. (PX2 p. 11) He was given prescriptions for OxyContin and Ibuprofen and was referred for a CT of his C-spine.

Petitioner next presented to Dr. Mark Cohen of Physician Plus, Ltd. (PX3) These records include an initial work status note dated July 18, 2012; however, there are no corresponding office notes for this date of service included therewith. (PX3) The first substantial medical record from Dr. Cohen is a physical therapy progress evaluation dated July 24, 2013. This was noted to be petitioner's initial physical therapy session. He denied any changes in his condition. (PX3) Petitioner completed 32 physical therapy sessions with Dr. Cohen from July 24 to October 16, 2012. (PX3) Upon referral from Dr. Cohen, petitioner underwent MRIs of his lumbar and cervical spine at SKAN National Radiology Services on July 25, 2012. The lumbar MRI revealed a small shallow posterior disc protrusion with a central annular tear at L5-S1. (PX3 p. 66-67) The cervical MRI revealed multilevel chronic degenerative disease with no evidence of cord compression. (PX3 p. 68-69)

On August 31, 2012, petitioner presented to Dr. Scott Glaser of Pain Specialists of Greater Chicago. Petitioner reported an injury on July 6, 2012 where he was hit by a sliding shuttle in the head, arm and back. (PX6 p. 19) Petitioner then claimed that the day after the accident he began to note bilateral, left greater than right, lower back pain and numbness going into the left leg, as well as, neck pain associated with headaches and left upper extremity pain and numbness. (PX6 p. 19) However, these allegations of neck and back pain beginning the day after the incident are inconsistent with the histories provided and symptoms reported by the petitioner in the emergency room on July 10, 2012. Based upon the history provided by petitioner and his clinical examination, Dr. Glaser assessed petitioner with headache, cervical, thoracic, and lumbar facet syndrome with myelopathy, cervical radiculopathy, and lumbar radiculopathy.

Petitioner presented to Dr. Scott Lipson on September 4, 2012 for evaluation and an EMG to evaluate left arm and leg pain, numbness and tingling. (PX5 p. 9) Inconsistent with his prior medical records and his trial testimony, petitioner advised Dr. Lipson that he was dazed after the impacts of his accident and the next thing that he remembered after the impact was being in the ambulance. (PX5 p. 5; T. 47-48) Petitioner reported symptoms of low back pain, neck pain, headaches, dizziness and slowed cognitive processing developed after July 6, 2012. (PX5 p. 9) However, other than the headaches, none of these symptoms were reported in either of his emergency room visits. This EMG was read to reveal evidence of left-sided cervical radiculopathy affecting the C6 nerve root and Left lumbosacral radiculopathy affecting the L5 nerve root. Based upon his examination and petitioner's less than accurate history, Dr. Lipson diagnosed petitioner with postconcussion syndrome, chronic post-traumatic headache, cervicalgia, lumbago and disturbance of skin sensation. (PX5 p. 7)

Dr. Kevin Walsh, a orthopedic surgeon, performed a section 12 exam on September 10, 2012. (T. 100) On examination, petitioner was noted to have decreased cervical range of motion. However, he had no palpable trigger points or muscle spasms and there was no tenderness in the spinous processes. His motor strength was 5/5 throughout the upper extremities and his sensation was intact. Examination of his lumbar spine revealed tenderness to simple touching of the skin. He could heel and toe walk with pain reported. Motor strength in his lower extremities was 5/5 and he was neurologically intact.

Dr. Walsh opined that petitioner suffered a head contusion with lacerations involving his head and right thigh with subsequent development of pain in his neck and back. Dr. Walsh indicated that petitioner may have suffered a cervical or lumbar strain with the incident described. However, he opined that it was not at all likely that he suffered an acute herniated disk or annular tear with the described injury. Dr. Walsh noted that petitioner's imaging studies revealed degenerative changes. However, he opined that those degenerative changes were not caused or aggravated by the described incident. Dr. Walsh noted that petitioner did not have specific cervical or lumbar radiculopathies on physical examination. Dr. Walsh continued to opine that petitioner's subjective complaints were out of proportion to his objective abnormalities, specifically noting that his physical examination revealed behaviors consistent with symptom magnification.

Dr. Walsh opined that petitioner's reported symptoms in September 2012 were not causally related to the July 6, 2012 incident. With respect to the incident in question, Dr. Walsh opined that petitioner required no work restrictions and had reached maximum medical improvement within weeks of the incident.

Petitioner testified that he continued to treat with Dr. Glaser for his cervical and lumbar complaints as of the time of trial. (T. 57) During the course of his treatment petitioner had presented for two injections. On January 29, 2013, Dr. Glaser performed a cervical intralaminar epidural steroid injection at C6-7. (PX6 p. 44) Petitioner returned for a transforaminal epidural steroid injection on the left at L4-5 and L5-S1 on February 12, 2013. (PX6 p. 42) During his February 26, 2013 office visit with Dr. Glaser, petitioner reported that his pain had decreased by 50% status post injections. (PX6 p, 37) Petitioner testified that Dr. Glaser was recommending additional injections for his lumbar spine. (T. 55) Petitioner testified that he was continued off work at the time of the hearing by Dr. Masood. (T. 57, PX9)

II. CONCLUSIONS OF LAW

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

For an employee's workplace injury to be compensable under the Illinois Workers' Compensation Act, the claimant must prove that the injury arose out of and in the course of his employment with respondent. *Saunders v. Industrial Commission,* 301 Ill.App.3d 643 (1998), 705 N.E. 2d 103, 235 Ill.Dec. 490. Under the Illinois Workers' Compensation Act, an employer is not liable for an injury sustained when an employee exposes himself to a danger which is not arising out of his employment. *Lumaghi Coal Co. v. Industrial Commission,* 318 Ill. 151 (1925), 149 N.E. 11. Recklessly performing ones job duties differs considerably from doing something unconnected with the work. *Saunders v. Industrial Commission,* 301 Ill.App.3d 643 at 648, 705 N.E. 2d 103 at 106, 235 Ill.Dec. 490 at 493.

Petitioner claims an injury occurring on July 6, 2012 when he entered the restricted area of Mega machine and was struck by a moving shuttle while attempting to repair the machine. Both petitioner and respondent's witness, Mr. Sieffert, testified that petitioner was working as the third shift wash line team lead for respondent on July 6, 2012. A copy of the written job description for a wash line team lead is Rx. 7. Mr. Sieffert testified that petitioner was provided with a copy of this job description at the time of his promotion. A review of this document reveals that a maintenance and repair of the machines operated by respondent is not one of the duties or responsibilities of a wash line team lead. In fact, the only responsibilities of a wash line team lead with respect to equipment malfunctions is to report the malfunction to his supervisor and preparing a maintenance request ticket. Petitioner admitted that he was not trained in maintenance repairs on Mega by either respondent or Caterpillar. The Arbitrator adopts the above facts as special findings of fact for the Award.

Mr. Sieffert testified that respondent operates as an independent contractor for Caterpillar at its Joliet facility. They were hired to operate the painting and washing machines at the facility. Mr. Sieffert testified that Caterpillar owned the machines that were operated by respondent's employees and further indicated that Caterpillar was responsible for repairing these machines in the event of a breakdown. In fact, Mr. Sieffert testified that respondent did not employ any maintenance staff at the Caterpillar facility.

Petitioner admitted that he had received a copy of the Summary of Joliet Facility Safety Rules and Regulations during his orientation and was familiar with same. These rules require that employees are to stay out of any hazardous or restricted areas unless they were assigned to that area. Mr. Sieffert testified that if an unauthorized employee were to enter a restricted area, then that employee would be terminated. This policy was borne out when the petitioner was terminated for his violation of this safety rule following the July 6, 2012 accident when he entered a restricted area for which he was unauthorized to enter.

These same rules continue to require that lockout/tagout procedures be followed when a machine was being repaired or cleaned. Petitioner testified that he was familiar with the lockout/tagout procedures which were posted on the electronic control box at Mega. He testified that before entering the machine, he merely hit the emergency stop button rather than complete the required lockout/tagout procedure. He further testified that he had not been issued a personal lock that was required to complete the lockout/tagout procedure as only maintenance personnel were issued locks.

Petitioner testified that he took it upon himself to enter an area restricted to maintenance personnel only to repair Mega due to delayed response from the contingency maintenance personnel working during a Caterpillar labor strike. He admitted that he knew that this was a dangerous situation when he instructed his coworker to wait outside the machine. While petitioner claimed that he had entered Mega to repair similar problems in the past, he admitted that none of the Caterpillar supervisors or CR Coatings supervisors had knowledge of his entering Mega for prior repairs.

In the case at bar this petitioner left the area where his duties required him to go when he entered the internal area of Mega that was restricted to maintenance personnel only. Petitioner admitted that he did not follow the safety rules and complete the lockout/tagout procedure before entering Mega and further admitted that he was never provided with a personal lock required to complete the lockout/tagout procedure.

Upon entering Mega, petitioner attempted to repair the dangerous machine by inserting a pry bar into the machine to dislodge a stuck basket on a pressurized machine that had not been reduced to a zero energy state. Signs were clearly posted on Mega stating that the internal workings of the machine were restricted to maintenance personnel only. Respondent's witness testified that Respondent did not employ any maintenance personnel. Petitioner admitted that he was not trained in maintenance and repair of Mega by Respondent or Caterpillar. Further, Respondent's witness testified that petitioner was unauthorized to enter the restricted area of Mega. While petitioner testified that he had entered Mega before to assist in similar repairs, he admitted that no supervisors from Respondent or Caterpillar had ever witnessed him doing so. There is no provision for such volunteering under a strict interpretation of the concept of the defense of a violation of a safety rule under workers compensation.

Thus the Arbitrator makes a special findings of fact that petitioner took himself outside of the sphere of his employment when he violated the safety rules by entering the restricted area of Mega, where he was unauthorized to be, to perform repairs that he was untrained to perform. Further the concept of selective law enforcement as most often found in criminal cases and denied by the U. S. Supreme Court in that setting early in the last century, has no part in the determination of safety rule violation cases under the Worker Compensation Act determinations.

Based upon the totality of the evidence, despite the obvious qualities of the worker in terms of work ethic as acknowledged by the company witness, and as summarized above, the Arbitrator finds as a matter of material fact and as a conclusion of law that the accident of July 6, 2012 was not in the course of nor did it arise out of petitioner's employment with Respondent under the Workers Compensation Act.

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

As this accident has been found to not arise out of nor was it in the course of petitioner's employment, whether or not petitioner's injuries are causally related to the July 6, 2012 injury is moot.

Nothwithstanding the above the Arbitrator has studied the totality of the evidence and finds as follows: the current condition of ill-being of petitioner's cervical and lumbar spine and head is not causally related to the accident of July 6, 2012.

Petitioner presented to the emergency room at Provena Saint Joseph Medical Center on July 7, 2012 and July 10, 2012. Contrary to the petitioner's trial testimony and the histories provided to Dr. Masood, Dr. Glaser, and Dr. Walsh, petitioner actually denied any neck or back complaints during both of these emergency room visits. Furthermore, while petitioner later reported issues with loss of memory and dizziness to Dr. Lipson, he denied any loss of memory or dizziness during his emergency room visits.

Over and above the contradictory histories provided throughout petitioner's medical records, Dr. Walsh opined that, at the time of his September 10, 2012 examination, petitioner's subjective complaints were out of proportion to his objective abnormalities. The doctor continued to note that during his physical examination petitioner exhibited behaviors consistent with symptom magnification. Dr. Walsh opined that petitioner's reported symptoms in September 2012 were not causally related to the July 6, 2012 incident. With respect to the incident in question, Dr. Walsh opined that petitioner required no work restrictions and had reached maximum medical improvement within weeks of the incident.

J. Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Respondent is not liable for payment for any medical services as the accident did not arise out of petitioner's employment with respondent.

K. What temporary total disability benefits are due to petitioner?

Respondent is not liable for any lost time benefits as the accident did not arise out of petitioner's employment with respondent.

M. Should penalties or fees be imposed upon Respondent?

Petitioner has requested that penalties and fees be assessed on Respondent under sections 19(k), 19(l) and 16 of the Act. As this accident was found to not arise out petitioner's employment with respondent, the petitioner has not been awarded any medical or lost time benefits. As the respondent is not liable for payment of any benefits to petitioner, the petitioner is not entitled to penalties in this matter. Moreover, the evidence is overwhelming that Respondent's actions in this matter have been reasonable.

#01 Arbitrator George J. Andros

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mark Retterer,
Petitioner,

vs. NO. 13 WC 04360

14IWCC0255

West Aurora School District #129,
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 temporary total disability, permanent partial disability, and vocational rehabilitation/maintenance 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 May 23, 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.

14IWCC0255

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 0 7 2014

Daniel R. Donohoo

o-03/19/14
drd/wj
68

Charles J. DeVriendt

DISSENT

I do not concur with the majority that Petitioner was entitled to maintenance or vocational rehabilitation services. I would have reversed the Arbitrator's awards of those benefits. Accordingly, I respectfully dissent.

The record reveals that Petitioner issued a letter of resignation on January 24, 2013, effective immediately. He was at maximum medical improvement at the time of his resignation. A functional capacity evaluation assessed Petitioner could work at a medium to heavy physical demand level, which still allowed Petitioner to fulfill virtually all of the regular duties of his job as custodian. Respondent's Director of Operations testified Respondent could accommodate the restrictions imposed pursuant to the evaluation. The Arbitrator noted it "was more likely than not" that Petitioner had Asberger's syndrome, a mild form of autism, and that he did not really understand the meaning of his letter of resignation. In my opinion the record does not support those conclusions. The only mention of the Asberger's syndrome in the record was in a question posed by Petitioner's lawyer, which does not constitute evidence. In my opinion, Petitioner voluntarily left his employment and therefore should not be entitled to maintenance.

In order to be entitled to vocational rehabilitation services, a claimant must show that he can no longer perform the duties of his current job and that he had tried and failed to find other employment after a diligent job search. In this case, Petitioner proved neither. It appears that Petitioner could indeed have performed his duties as custodian, based on the functional capacity evaluation and the testimony of Respondent's Director of Operations that Respondent could accommodate the very limited restrictions the assessment imposed. In addition, Petitioner's job search log spans only three weeks and included just a very few number of contacts with potential employers. It simply did not constitute a diligent job search. Because Petitioner did not sustain his burden of proving he could no longer perform the duties of his current employment and because he did not sustain his burden of proving a diligent job search, I do not believe he is entitled to vocational rehabilitation services.

For the reasons stated above, I respectfully dissent.

Ruth W. White

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

RETTERER, MARK
Employee/Petitioner

Case# **13WC004360**

14IWCC0255

SCHOOL DISTRICT 129
Employer/Respondent

On 5/23/2013, 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:

5122 PORRO NIERMANN & PETERSEN LLC
KURT A NIERMANN
821 W GALENDA BLVD
AURORA, IL 60506

2461 NYHAN BAMBRICK KINZIE & LOWRY
LINDA ARUN ROBERT
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

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
ARBITRATION DECISION
19(b)

MARK RETTERER
Employee/Petitioner

v.

SCHOOL DIST 129
Employer/Respondent

Case # **13** WC **4360**

Consolidated cases: _____

14IWCC0255

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 **Geneva**, on **4/11/13 and 5/7/13**. 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 **Vocational Rehabilitation Services**

14IWCC0255

FINDINGS

On the date of accident, **9/19/11**, 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 **$26,000**; the average weekly wage was **$500.00**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **2** dependent children.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $333.33/week for 68 5/7 weeks, commencing 10/5/11 through 1/7/13 and 1/24/13 to 3/15/13, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 9/19/11 through 4/11/13 and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall provide petitioner with vocational rehabilitation services.

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 22, 2013
Date

ICArbDec19(b)

MAY 23 2013

Petitioner worked as a custodian for 25 years. Petitioner started working for respondent as a custodian in 2008. On 9/19/11, petitioner noted the onset of right elbow pain with repetitive activities at work. (RX6 4/14/12 report) Petitioner sought treatment with Dr. Christofersen. This physician documented pain in the lateral epicondyle from mopping a floor at work. Dr. Christofersen prescribed oral steroids and provided petitioner with a brace, a month of therapy and a cortisone injection. (RX6 4/14/12 report) Each of these treatments provided limited relief of petitioner's symptoms. Petitioner returned to Dr. Christofersen on 10/4/11 complaining of a flare-up of the pain after work. Petitioner was further restricted from lifting more than three pounds, and against gripping and twisting with the right hand. (RX6 4/14/12 report p.2) Respondent paid TTD rather than accommodate the restriction.

Dr. Christofersen and his associates provided a lengthy course of conservative care. A repeat MRI was performed on 10/26/11. Dr. Christofersen read the MRI as showing moderate tendinosis and a partial interstitial tear of the common extensor tendon, along with moderately severe tendinosis and myxoid degeneration of partial tear of the distal biceps tendon. Dr. Christofersen diagnosed the injury as involving right lateral epicondylitis and a right elbow strain. Petitioner was then examined by the surgeon, Dr. White, on 11/3/11. Dr. White documented that petitioner's employer had told him to not come back to work until he was ready for regular work duty. Petitioner also testified at hearing that it was school district policy that workers could not return to work unless it was full duty work. Petitioner returned to Dr. White on 11/21/11 reporting no improvement in his condition. Dr. White recommended surgery for the injury.

Respondent sent petitioner for his first independent medical examination with Dr. Mark Cohen on 12/16/11. (RX3) Dr. Cohen outlined the history of onset of the condition and treatment history from the records. He noted that petitioner was first seen at an occupational clinic in September of 2011 where he complained of developing right elbow pain while mopping at work. The occupational doctors had diagnosed the condition as lateral epicondylitis and prescribed a tapering dose of oral prednisone. Petitioner returned to the clinic on 9/27/11 reporting some improvement in his condition. Additional prednisone was offered. During the follow up visit on 10/4/11, petitioner was given a cortisone injection into the elbow. He was also referred out for a MRI scan which revealed signal changes consistent with lateral epicondylitis. Bracing and Motrin were prescribed. Conservative measures were continued through the point of petitioner's visit with Dr. Cohen. A second MRI from 10/26/11 showed moderate tendinosis with a partial insertional tear of the common extensor tendon at the right elbow lateral epicondyle. Additional abnormalities were also noted at the distal biceps tendon insertion. Dr. Cohen's examination revealed mild to moderate point tenderness over the lateral epicondyle. Dr. Cohen diagnosed the condition as involving chronic tendinopathy of the wrist and digital extensor muscles at their humeral origin. Dr. Cohen felt that a course of therapy would relieve the condition and that surgery was not warranted. Dr. Cohen further noted that he knew of no pre-existing condition which might affect his case.

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Dr Cohen authored an addendum to his report on 3/9/12 after reviewing all of petitioner's medical records. Dr. Cohen felt that petitioner's diagnosis did "appear to be associated with his occupational activities". (RX3) He continued to believe that petitioner's prognosis was favorable. He felt that surgery was the last resort for this type of injury.

Petitioner returned to Dr. Cohen again on 6/20/12. Petitioner reported that his elbow pain had actually worsened over the past six months and he now had pain along the lateral aspect of his arm, well above the elbow as well as the medial aspect of his proximal forearm. He also reported pain over the dorsoradial forearm. Dr. Cohen felt that some of his symptoms did relate to the epicondylitis and some of the complaints were difficult to explain. Even so, Dr. Cohen felt that it was reasonable to proceed with tennis elbow surgery given that he was nine months out from the onset of the condition. Dr. Cohen cautioned that petitioner's prognosis was guarded as the surgical procedure involved one of the less predictable medical procedures and given the additional complaints he had documented. Even so, Dr. Cohen agreed with the recommendation for surgery. He also maintained to the causal opinions he had offered in the previous report.

Petitioner underwent the surgical release on 7/20/12. The surgery provided limited relief. Petitioner completed a course of therapy and moved on to home exercises.

Dr. Cohen reassessed petitioner on 11/7/12. Dr. Cohen noted that petitioner's epicondylitis surgery appeared to be a "relative failure". (RX3 11/7/12 report p.2) He agreed with the treating physician that petitioner should be given an additional period of therapy to build strength and endurance. He again characterized petitioner's prognosis as guarded.

The 12/10/12 FCE determined that petitioner did not meet all the requirements of the custodian position. (RX4 p.2) The FCE tested petitioner's capacities for certain material handling activities against the job requirements outlined in the formal job description for the custodian position. (RX4 p.2) The job description was provided by the employer. (RX4 p.2) According to the FCE report, petitioner did not meet the demands for occasional squat lifting as is noted on the FCE. The FCE also identified petitioner's safe lifting capacity at 75 lbs when petitioner testified that his custodial job required occasional lifting at 100 lbs. Petitioner's capacity for unilateral lift from floor to waist is documented at 40 lbs on an occasional basis. (RX4 p.2) Petitioner also had difficulty with the mopping and the dusting/wiping simulations. The tester characterized petitioner's dusting/wiping difficulties as "reliable". It was noted that Petitioner had self terminated the mopping portion of the FCE after approximately 3 minutes due to reports of pain, but that there were no objective findings to support the pain complaints.

Petitioner did return to work on 1/7/13. Elizabeth Wendel was now his supervisor. Ms. Wendel testified that she was unaware that petitioner had any restrictions. This is information she would normally receive from Mr. Schiller but he led her to believe that petitioner was unrestricted in his work capacities. In any event, petitioner was assigned to a light duty position for his first week back at work.

Petitioner testified that he was disinfecting desks, wiping windows and handling garbage during this week. The case nurse reports document his success in performing this work. (RX6 1/26/13 report) However, this was only a temporary assignment while the person who held the position was away. For his second week of work, petitioner was moved to a position where he was vacuuming, cleaning bathrooms and dusting. These activities caused a flare-up in petitioner's right elbow pain. (RX6 1/26/13 report) Petitioner's pain level reached a 5/10 level and he took Ibuprofen for 3 days. This position was also temporary. By 1/24/13, respondent was moving petitioner into an unrestricted custodian position where petitioner would be cleaning the cafeteria, seven bathrooms and an unspecified number of classrooms. Ms. Wendel was not aware that petitioner had any work restrictions when she was assigning him to the full custodial job.

Petitioner was informed of his new assignment during a 1/23/13 meeting with Mr. Schiller and Ms. Wendel. Petitioner returned to Dr. White for an examination on 1/24/13. He complained of a flare up of pain with his new work activities. As of that visit, Dr. White restricted petitioner from returning to work. Petitioner testified that Dr. White informed him that he was no longer able to be a custodian. Petitioner called Mr. Schiller after the appointment and Schiller asked petitioner to get a note from Dr. White about petitioner not being able to return to work as a custodian. Petitioner dropped off the note from Dr. White as well as his keys and FOB with Schiller's administrative assistant. (PX1) Mr Schiller was not there at the time. However, Mr. Schiller later called petitioner asking whether petitioner could get something in writing from Dr. White about petitioner's inability to return to work as a custodian. Petitioner checked with Dr. White's office and called Schiller back, reporting that Dr. White would not author such a note for two months. Petitioner testified that Mr. Schiller then suggested to petitioner that he should resign from the district if he could not perform the custodial duties. Mr. Schiller had his office draft up a resignation form which he had petitioner sign on 1/24/13. (PX2)

Petitioner testified that he did not understand the significance of the form which Mr. Schiller had him - sign. Petitioner did not intend to resign from the district. He only knew that his doctor thought he was finished as a custodian and that is what petitioner told Mr. Schiller. After signing Schiller's form, petitioner went to consult with his attorney about what had happened. Petitioner's counsel faxed a letter off to the district explaining that petitioner had no idea what Mr. Schiller had told him to sign and that he had never intended to resign. (PX3) The district responded by sending petitioner a letter accepting petitioner's resignation effective 2/4/13. (PX4)

Mr. Schiller testified about the resignation form. He admitted that he had his office draft up the resignation form and he had petitioner sign the form. He was not present at the time petitioner signed the form and he could not explain whether petitioner understood what he was signing. He also admitted on cross examination that petitioner was not a confrontational employee and that petitioner did was he was told to do. He testified that to his knowledge Petitioner suffered from aspergergers syndrome. Mr. Schiller believed that petitioner was scared to deal with him. He also admitted that he thought petitioner was somewhat slow- even though he did not want to think of his employees as

slower functioning as a general matter. However, Mr. Schiller's performance evaluation from 4/19/11 outlines his thoughts on petitioner. The evaluation criticized petitioner for his learning ability and initiative, his dependability and his judgment. (RX1) Mr. Schiller explained that petitioner was slow to learn procedures and rules and other details of his position. Mr. Schiller further explained the dependability issue as involving petitioner's inability to perform his job without close supervision. The judgment issue challenged petitioner's ability to make sound decisions and to use common sense.

Dr. Cohen's final examination took place on 3/15/13. (RX3) Dr. Cohen noted that his opinions had not materially changed since his last report in November of 2012. The diagnosis was tennis elbow treated surgically with persistent symptoms. He noted that petitioner's subjective complaints correlated well with his objective findings. Dr. Cohen felt that petitioner had reached MMI and he recommended that petitioner perform range of motion, stretching and strengthening exercises at home. He further opined that petitioner could return to work in accordance with the FCE findings.

Issue F- Whether Petitioner's Current Condition of Ill-Being Is Causally Related To The 9/19/11 Accident?

Petitioner has proven that his condition of ill-being in his right arm is causally related to the 9/19/11 work accident. Respondent's own medical examiner causally related both the injury and the treatment to the accident. There is no evidence to the contrary or even evidence that petitioner had problems with the right arm during the years he worked elsewhere as a custodian.

Issue L- What Temporary Total Disability Benefits Are Owed To Petitioner?

Petitioner has proven that he was temporarily and totally disabled from 10/5/11 through 1/7/13 and again from 1/24/13 through 3/15/13. Petitioner's ongoing treatment and work restrictions are outlined above. Respondent's IME physician even agreed with the need for restrictions and ultimately released petitioner to work within the findings of the FCE. This FCE determined that petitioner had certain limitations which did not match the custodial position.

The initial period of TTD ended on 1/7/13 when petitioner returned to a light duty position. That position lasted a week and petitioner was moved into a non-restricted position the following week. Petitioner claimed that the second week of work involved activities which aggravated his condition. This is consistent with the histories contained in respondent's exhibits. (RX3 3/15/13 report p.1; RX6 1/26/13 report) In any event, despite the limitations identified on the FCE, respondent planned to move petitioner into a fully unrestricted custodial position as of 1/24/13. This assignment was not an accommodative position and petitioner returned to Dr. White with complaints of pain, and who informed petitioner that he was finished with custodial work. Petitioner informed Mr. Schiller of the doctor's opinion which led to petitioner's purported resignation. MMI was finally declared by Dr. Cohen during his final examination of petitioner on 3/15/13. The Arbitrator notes that he closely observed the witnesses as they testified and examined the record in great detail, and concludes that

Petitioner did not in fact understand the resignation note he signed nor the impact it would have on his case. The Arbitrator finds that it is far more likely than not that Petitioner, who suffers from a mental disability know as Aspergers syndrome, was merely following the directions of his supervisor in signing the note the supervisor himself had ordered prepared. Immediately upon informing his attorney of what had transpired,that attorney sent a letter to the Respondent repudiating the resignation letter, which was ignored by the Respondent. Additionally, testimony by Respondent's witnesses clearly set forth that respondent had a position open at the time of hearing that Petitioner could have worked at with slight modification to the duties involved.

Based on the record as a whole the Arbitrator finds that as Respondent did not provide an accommodative position as of 1/24/13, Petitioner is entitled to TTD from 1/24/13 through 3/15/13. Pursuant to stipulation between the parties, respondent shall receive credit for the TTD that it paid to petitioner.

Issue L- What Maintenance Benefits Are Owed To Petitioner?

Issue O- Whether Petitioner Is Entitled To Vocational Rehabilitation Services?

Petitioner has further proven his need for vocational rehabilitation and maintenance benefits. Respondent denies responsibility for vocational rehabilitation based on its claim that petitioner resigned from the school. However, it is apparent under the circumstances that petitioner is in need of vocational rehabilitation services and maintenance.

Petitioner' testified that his doctor told him he was finished as a custodian. The actual language in the doctor's notes indicate that Petitioner's prognosis for returning to full duty at his job was poor. Petitioner took that information to his supervisor which led to the events surrounding the alleged resignation. This Arbitrator believes that Mr. Schiller knew that petitioner did as he was told and was an employee who would not challenge him on the directive to sign the resignation form. Mr. Schiller did not explain the consequences of the form to petitioner when he came in to sign it. Mr. Schiller directed his office to prepare the resignation form. He had the form addressed to the school board seeking petitioner's immediate resignation. Petitioner credibly claimed that he did not understand what the supervisor was having him sign. We further know that petitioner did not have an opportunity to consult with his attorney nor his union representative before signing the form. (PX3) When petitioner consulted with his attorney, correspondence was immediately directed to the district clarifying that petitioner never intended to resign. Mr. Schiller explained that resignations required board approval so we know that the resignation had not occurred without board action. However, rather than responding to petitioner's clarification, the district sent a letter accepting petitioner's resignation a week after they had received the clarification. Under the circumstances, it is clear that petitioner did not intend to tender a resignation.

The Arbitrator also notes that Dr. White had predicted on 1/24/13 that petitioner's prognosis for returning to work was poor. (RX6 1/26/13 report p.2) . The IME doctor documenting respondent's noncompliance with petitioner's work restrictions and his flare-ups with the temporary assignments is also in the record. (RX3 3/15/13 report p.1) The FCE identified certain activities and limitations which did not fully match the custodial duties. In the face of these details, respondent was trying to place petitioner into a full duty custodial position effective 1/24/13. The parties dispute whether the district could have accommodated petitioner's restrictions. However, petitioner's immediate supervisor admitted that she had no idea petitioner needed work restrictions at the time she was slotting him for the full duty custodial position in 1/24/13. Thus, it is fairly clear that the school was not considering any accommodation of his restrictions. Both Dr. Cohen, Respondent's IME, and Dr. White found that Petitioner was at MMI.

As respondent has refused to accommodate petitioner's restrictions, respondent shall provide the vocational rehabilitation services which petitioner has requested as well as maintenance during the search. Petitioner's efforts to find work after 1/24/13 are documented in PX5, RX6 and in petitioner's testimony. The need for professional services is highlighted by the events leading to the alleged resignation as well as Mr. Schiller's documented observations of petitioner's vocational deficits. Mr. Schiller had supervised petitioner for years and he said he was familiar with petitioner and his work abilities. Mr. Schiller outlined his observations about petitioner's difficulty in learning procedures, rules and other details of a custodial position and even his inability to perform the work without close supervision. Mr. Schiller further highlighted petitioner's lack of ability to make sound decisions and to use common sense. Petitioner had already been performing custodial work for 25 years by the time Mr. Schiller made his observations. Having observed the petitioner during the hearing and considering the evidence, the Arbitrator is persuaded as to Mr. Schiller's assessment of petitioner's capabilities.

Respondent also presented its case nurse manager to dispute petitioner's pain complaints and to show that petitioner could perform all of the activities of his job. However, this case nurse manager offered nothing of substance to detract from petitioner's need for vocational rehabilitation services or maintenance. Ms. Bondi's observations on petitioner's pain behaviors were at best the opinions of a layman in the employ of the respondent. Further, the relevance of the observations is highly questionable as they were not made in the context of petitioner performing work in any capacity. Finally, Ms. Bondi peppered her reports with comments challenging petitioner's complaints from the outset of her involvement in the case. By her 9/1/12 report, Ms. Bondi dropped any pretense of objectivity and she jumped to her thereafter repeated conclusion that she was dealing with "a case of subjective complaints far outweighing objective findings". The Arbitrator also notes that Bondi had been exclusively employed by Respondent insurance companies, and in her testimony she mentioned that she had previously done work on behalf of Wramsco among other agencies.Such bias is understandable if it is understood that her role is as an agent of the respondent rather than as a neutral reporter of details. Ms. Bondi's reports did provide a useful chronology of treatment. However, her opinions on pain levels and work capacity are not persuasive or even relevant. Based on the record as a

whole, the Arbitrator awards the vocational rehabilitation benefits requested by Petitioner. The Arbitrator cannot,however award prospective maintenance and therefore declines to do so.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(
☒ 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

Lawrence Dassinger,
Petitioner,

vs. NO: 04 WC 04041

14IWCC0256

Tiffany Express, 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 dismissal, reinstatement, various evidentiary rulings, and penalties and fees, and being advised of the facts and law, amplifies with additional language the June 10, 2013, Decision of Arbitrator Andros as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission has adopted and affirmed the Decision of the Arbitrator as it finds that he has given careful consideration to the record and facts as presented to him. The record demonstrates the Arbitrator's abject frustration with the Petitioner's refusal to allow the matter to proceed and with his refusal to allow for its presentation at trial.

This record demonstrates a frustration that has been endemic to the legal process for the past half century, identified by our Supreme Court in *Bromberg v. Industrial Comm'n*, 97 Ill. 2d 395, 454 N.E.2d 661, 73 Ill. Dec. 564 (1983). The Supreme Court in *Bromberg* cited to the Circuit Court Decision which affirmed the Commission's dismissal of the claimant's Petition for Review after the claimant repeatedly failed to appear despite numerous continuances to enable him to do so, coupled with a failure to present an authenticated transcript. The Circuit Court made the following findings and apt observations:

"I have listened with care to the arguments of counsel. I have reviewed the very extensive briefs that were filed. I find no abuse of discretion by the Industrial Commission. I cannot say that this decision is contrary to the manifest weight of the evidence or contrary to law. In the Court's opinion this is symptomatic of a malaise that grips the entire metropolitan system of justice.

The endless delays, the endless failures of attorneys to appear without excuse, either real or apparent, to inform a hearing officer as to the reasons for delay has reflected for years adversely upon the effective administration of justice and continues to do so and will continue to do so until the Appellate Courts start acting to see to it that lawyers fulfill their responsibilities to their clients and appear on the days and dates set for hearing that move hearings to a proper conclusion."

In the case at bar, the Arbitrator was equally frustrated by endless delays that were the result of an intentional strategy employed by Petitioner to ensure that the matter never moved forward. Finally, in abject frustration, Arbitrator Andros saw no option but to dismiss the matter for want of prosecution and to refuse to reinstate it. The Commission adopts and affirms the Decision of the Arbitrator as it as it recognizes and agrees with the Arbitrator's frustration. This act of the Arbitrator was not an abuse of discretion.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 10, 2013 is hereby affirmed and adopted and expanded with additional language. The claim is hereby dismissed.

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 $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: APR 0 7 2014

Michael J. Brennan

Charles J. DeVriendt

Ruth W. White

o-02/19/14
mjb/dak
52

STATE OF ILLINOIS)
)
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
DECISION

Lawrence Dassinger
Employee/Petitioner

v.

Tiffany Express, Inc.
Employer/Respondent

Case # **04** WC **04041**

14IWCC0256

The *petitioner* filed a petition or motion for **reinstatement**

on **Feb 11, 2013** , and properly served all parties. The matter came before me on

April 16th, 2013 in the city of **New Lenox** . After hearing

the parties' arguments and due deliberations, I hereby *deny* the petition.

A record of the hearing *was* made.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Arbitrator has carefully listened to the Petition and Response on the record. The Arbitrator has dealt with this case in detail during many status calls and conferences since being assigned to the Will County status call in January 2012.

After deliberating on the same, the Arbitrator finds the facts against the reinstatement to be compelling.

Considering the grounds relied upon by the Petitioner and the objections of the Respondent while applying standards of equity the Arbitrator finds as a matter of fact and conclusion of law that the Petitioner in the case at bar has failed to establish the grounds to reinstate this case.

Unless a *Petition for Review* is filed within 30 days from the date of receipt of this order, and a review perfected in accordance with the Act and the Rules, this order will be entered as the decision of the Workers' Compensation Commission.

Signature of arbitrator

June 10, 2013
Date

JUN 17 2013

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Joseph Vetter,
Petitioner,

vs. NO: 11 WC 22915

14IWCC0257

Roto Rooter,
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 and 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. 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 January 24, 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.

14IWCC0257

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.

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 0 7 2014

Daniel R. Donohoo

o-03/25/14
drd/wj
68

Ruth W. White

Charles J. DeVriendt

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

VETTER, JOSEPH
Employee/Petitioner

Case# **11WC022915**

ROTO ROOTER
Employer/Respondent

14IWCC0257

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:

4888 SHORT & SMITH PC
KEITH SHORT
515 MADISON AVE
WOOD RIVER, IL 62095

2623 McANDREWS & NORGLE LLC
MATTHEW T McENERY
53 W JACKSON BLVD SUITE 315
CHICAGO, IL 60604

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

Joseph Vetter
Employee/Petitioner

v.

Roto Rooter
Employer/Respondent

Case # **11** WC **22915**

Consolidated cases: __

14IWCC0257

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 **11/20/12**. 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 **Prospective medical**

14IWCC0257

FINDINGS

On **5/27/11**, 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 **$47,933.34**; the average weekly wage was **$921.79**.

On the date of accident, Petitioner was **41** years of age, *married* 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, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $.

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

ORDER

Respondent shall authorize medical treatment as prescribed by his treating physicians for his condition of carpal tunnel syndrome.

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

1/7/13
Date

JAN 24 2013

14IWCC0257

Findings of Fact

The issues in dispute at arbitration are as follows: Jurisdiction; Accident; Causal Connection and Prospective medical treatment.

Petitioner was a 41 year old full time plumber who worked exclusively for Respondent in 2009 and 2010. Respondent hired Petitioner from their St. Charles, Missouri office in 2009. When Petitioner was first hired by Respondent in 2009 he was only licensed to work in Illinois and all of his work was in Illinois until mid-late 2010. In the first year of his employment he worked exclusively in Illinois. Petitioner testified that subsequent to receiving a Missouri license, 80% of his assignments were in Illinois and 20% were in Missouri. When he received a job assignment he would leave his home in Cottage Hills, Illinois and drive to the location. Petitioner would receive his job assignments from Respondent's Chicago regional office. He received assignments on a pager supplied by Respondent. He received his paycheck from the Respondent's automated payroll department in Ohio.

Petitioner described his job requires him to use both his hands in performing the job of a plumber. This includes using both hands to handle plumbing parts and vibratory tools on a regular basis. Such tools include the following: electric saw, jack hammer, pipe wrenches and pipe cutters. He would use such tools as a "sawzall" and a pipe cutter 20-30 times per day.

Petitioner began developing problems with both his hands in May, 2011. He was eventually seen by Dr. Michael Beatty and was diagnosed with bilateral CTS. The diagnosis was confirmed by EMG. Dr. Beatty told Petitioner to continue working until such time that surgery on his hands would be approved. Respondent denied liability and refused to pay for the CTS surgery. Dr. Beatty testified via evidence deposition that Petitioner's condition was causally connected to his employment activities.

Respondent retained Dr. Charles Goldfarb as an IME. Dr. Goldfarb examined the Petitioner on September 29, 2011. Dr. Goldfarb testified via evidence deposition that although Petitioner's employment was not the prevailing factor in his diagnosis of carpal tunnel syndrome, it was a factor nonetheless.

Respondent called Richard Maloney to testify. He is Petitioner's supervisor. Mr. Maloney confirmed that at least 75% of the Petitioner's work was performed in Illinois. He confirmed that Petitioner only goes to the St. Charles office once a week when he turns in his job tickets and mileage information.

Subsequent to the instant filing, Petitioner had another accident resulting in injury to his shoulder. Petitioner was lifting a sink. He felt the sink slipping through his hands; he caught the sink and felt a tear in his shoulder. At the time of arbitration of this case Petitioner was receiving TTD benefits under the Illinois Workers' Compensation Act for that shoulder injury as it occurred in Illinois. The shoulder claim is filed separately and is not directly part of this litigation.

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

1. Respondent was operating under and subject to the Illinois Workers' Compensation Act. Petitioner met his burden of proving jurisdiction in this matter. He performed 75% to 80% of his work in Illinois. Respondent's witness confirmed this testimony. As such, it would be reasonable to conclude that a majority of Petitioner's repetitive activities allegedly leading to his carpal tunnel syndrome, occurred in Illinois.

2. Petitioner has met of his burden of proving that he sustained an accident arising out of and in the course of his employment with the Respondent. Petitioner credibly testified that his job required regular use of vibratory hand tools, including electric saws and jack hammers, as well as other tools requiring forceful gripping and forceful flexion / extension, including pipe wrenches, screwdrivers, hammers, caulking guns and scrapers. Respondent offered no evidence to counter Petitioner's testimony in this regard.

3. Petitioner provided timely notice of his accident to Respondent. Respondent offered no testimony to refute this issue.

4. Petitioner has met his burden of proving that his condition of bilateral carpal tunnel syndrome is causally related to his employment. The Arbitrator notes the medical evidence clearly supports the Petitioner on this issue. Furthermore, the Respondent's IME confirmed that the Petitioner's employment was a factor in the diagnosis of this condition. Essentially, Respondent did not provide any evidence to dispute this issue.

5. Based on the findings above, the Respondent shall authorize medical treatment for Petitioner's carpal tunnel syndrome as recommended by the treating physician, Dr. Beatty, and shall pay any TTD related to any lost time resulting from the treatment of this condition.

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 JEFFERSON	)	☐ 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

Eric Bailey,
Petitioner,

vs. NO: 11 WC 26751

14IWCC0258

Granite City Police Department,
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 temporary total disability and 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 6, 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.

14IWCC0258

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 0 7 2014

Daniel R. Donohoo

Ruth W. White

Charles J. DeVriendt

o-03/26/14
drd/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BAILEY, ERIC
Employee/Petitioner

Case# **11WC026751**

GRANITE CITY POLICE DEPARTMENT
Employer/Respondent

14IWCC0258

On 6/6/2013, 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:

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

0299 KEEFE & DEPAULI PC
TOM H KUERGELEIS
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

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

ERIC BAILEY
Employee/Petitioner

v.

GRANITE CITY POLICE DEPARTMENT
Employer/Respondent

Case # 11 WC 026751

Consolidated cases: 14IWCC0258

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 **Mt. Vernon**, on **April 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 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 5, 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 **$67,745.08**; the average weekly wage was **$1,302.79**.

On the date of accident, Petitioner was **39** years of age, *married* with **1** children under 18.

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 **$1,737.94** for TTD, **$-0-** for TPD, **$-0-** for maintenance, and **$-0-** for other benefits, for a total credit of **$1,737.94**.

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 $669.54 per week for 25 weeks because the injury sustained caused the 5% loss of the person as a whole as provided in Section 8(d)2 of the Act.

The medical expenses claimed for the Petitioner's surgery, Petitioner's Exhibit #10, and the temporary total disability benefits claimed from July 3, 2011 until December 2, 2011 are denied.

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

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

Signature of Arbitrator

6/6/13
Date

JUN - 6 2013

14IWCC0258

FINDINGS OF FACT

Petitioner testified that on January 5, 2011 he had been employed by the City of Granite City as a policeman for approximately five years.

On January 5, 2011, while engaged in canine training, the dog jerked the leash causing Petitioner to experience immediate low back pain. Petitioner denied prior back problems.

Subsequent to the occurrence, Petitioner was seen by Dr. Eavenson, who rendered conservative care and had an MRI performed on January 7, 2011. Petitioner lost time from work from January 6, 2011 through January 22, 2011, and was paid temporary total disability benefits for that period of lost time.

Petitioner then came under the care of Dr. Gornet, who referred Petitioner to Dr. Boutwell. Dr. Boutwell performed injections that gave Petitioner temporary relief of his symptoms, and Dr. Gornet released Petitioner to return to work without restriction on March 17, 2011.

Petitioner then returned to Dr. Gornet on June 13, 2011, complaining of a low level of back pain. Petitioner rated the back pain at a 2 out of a potential 10.

Petitioner provided a history to Dr. Eavenson of experiencing additional and more serious back pain when getting out of bed on or about July 11, 2011. Petitioner denied specific injury to his back.

Petitioner returned to Dr. Gornet who on September 19, 2011 placed Petitioner on light duty. On October 21, 2011, Dr. Gornet performed surgery consisting of a laminotomy at L5-S1 on the left with a posterior fusion at L5-S1 with Medtronic fixation. The operative note reveals that Dr. Gornet performed decompression of the L5-S1 nerve root by removing a mild to moderate ridge of bone. In addition, hardware was placed at the L5-S1 level and Dr. Gornet's operative procedure was to correct a pre-operative and post-operative diagnosis of isthmic spondylolisthesis at L5-S1.

Subsequently, Petitioner was released to return to work. At arbitration, his complaints consisted of stiffness when sitting and mobility restrictions that were present in the morning.

A review of Petitioner's Exhibit #2, the radiology reports, reveal that an MRI of the lumbar spine done on January 7, 2011 and a CT of the lumbar spine done on March 17, 2011 revealed L5 spondylolysis with grade I anterolisthesis of L5 on S1. Subsequent diagnostic testing, including an MRI on July 13, 2011, revealed similar findings with no new disc bulge or herniation and without central canal or foraminal stenosis detected. A CT of the lumbar spine done on October 13, 2011 likewise revealed no central canal or foraminal stenosis.

The testimony of Dr. Gornet revealed that he rendered an opinion that the condition from which surgery was performed was related to the work accident of January 5, 2011.

Respondent provided the testimony of Dr. Michael Chabot, who conducted an independent medical examination of Petitioner on August 19, 2011, and rendered a report on that same date; and, in addition, rendered a supplemental report dated February 28, 2012, as well as providing deposition testimony. Dr. Chabot diagnosed a back strain and recommended no additional treatment for that sprain. Dr. Chabot further rendered the opinion that the surgery performed by Dr. Gornet for a pre-

existing condition for which the acts of daily living could have aggravated that condition. Dr. Chabot further noted that Petitioner was completely released by Dr. Gornet without restrictions and with a low level of pain. It was only when Petitioner had the intervening incident of July 11, 2011 when he got out of bed with increased pain and developed a sharp lower back pain that surgery was performed. Dr. Chabot therefore rendered the opinion that the condition diagnosed by Dr. Gornet and the subsequent surgery was not causally related to the work accident.

CONCLUSIONS OF LAW

1. Regarding the issue of causation, the Arbitrator finds that the Petitioner sustained a soft tissue back strain as the result of his injury on January 5, 2011 and that the Petitioner's current condition of ill-being was the result of an intervening incident on July 11, 2011 and therefore not caused by the January 5, 2011 accident. The evidence revealed that subsequent to the work accident Petitioner was treated with conservative care and suffered only mild low back pain. The Petitioner was released to complete and full duty subsequent to the work accident and, in fact, returned to work subsequent to that release. The Arbitrator notes that Petitioner sustained increased low back pain when he arose from bed on July 11, 2011. The above, along with the radiology reports and the testimony of Dr. Chabot, therefore, causes the Arbitrator to find that the back condition suffered in the work accident was a soft tissue or sprain injury that had resolved and from which the Petitioner had reached maximum medical improvement prior to the incident on July 11, 2011. The surgery performed by Dr. Gornet was to correct a pre-existing problem and not causally related to the work accident of January 5, 2011.

2. The Arbitrator finds that Petitioner sustained 5% permanent partial disability to the body as a whole, pursuant to Section 8(d)(2) of the Act. This finding is based on the medical records indicating Petitioner had sustained a soft tissue injury or back strain following his accident on January 5, 2011.

3. Respondent shall pay for any related medical expenses up through July 11, 2011. Based on the Arbitrator's findings regarding the issue of causation, the Arbitrator further finds that the claimed medical expenses of Dr. Gornet from July 11, 2011, up to and including the subsequent surgery are not related to the work accident.

4. Based on the Arbitrator's findings regarding the issue of causation, the Petitioner's claim for TTD from July 13, 2011 until December 2, 2011 is not related to the work accident of January 5, 2011 and is therefore denied.

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 Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jennifer McCully,
Petitioner,

vs. NO: 11 WC 46458

14IWCC0259

River Rates Skating Rink
and State Treasurer as Ex-officio
Custodian of The Injured Workers' Benefit Fund ,
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, temporary total disability, permanent partial disability, medical expenses and 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 7, 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.

14IWCC0259

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 0 7 2014

Daniel R. Donohoo

Ruth W. White

Charles J. DeVriendt

o-03/26/14
drd/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

McCULLY, JENNIFER
Employee/Petitioner

Case# **11WC046458**

RIVER RATS SKATING RINK AND THE ILLINOIS STATE TRERASURER AS EX-OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Employer/Respondent

14IWCC0259

On 5/7/2013, 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:

1189 WOLTER BEEMAN AND LYNCH
RANDALL WOLTER
1001 S SIXTH ST
SPRINGFIELD, IL 62703

0382 ALVAREZ LAW OFFICE
R JOHN ALVAREZ
975 S DURKIN DR SUITE 103
SPRINGFIELD, IL 62704

ASSISTANT ATTORNEY GENERAL
ANDREW SUTHARD
500 S SECOND ST
SPRINGFIELD, IL 62706

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

JENNIFER McCULLY
Employee/Petitioner

v.

RIVER RATS SKATING RINK and
THE ILLINOIS STATE TREASURER AS EX-OFFICIO CUSTODIAN OF THE ILLINOIS INJURED WORKERS' BENEFIT FUND
Employer/Respondent

Case # 11 WC 46458

Consolidated cases:

14IWCC0259

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 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 _____

14IWCC0259

FINDINGS

On **December 17, 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 prceding the injury, Petitioner earned **$6,864.00**; the average weekly wage was **$132.00**.

On the date of accident, Petitioner was **34** years of age, ***married*** 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 **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$0.00**.

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

ORDER

Respondent shall pay reasonable and necessary medical services as set forth in Petitioner's Exhibits 1 through 7 (and as listed and discussed in the attached Memorandum of Decision of Arbitrator), as provided in Section 8(a) of the Act and subject to the medical fee schedule, Section 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $132.00/week for 8 3/7 weeks, commencing 12/17/2010 through 02/14/2011, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $132/week for 71.75 weeks because the injuries sustained caused the 35% loss of use of the left hand, as provided in Section 8(e) of the Act.

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund (hereafter the "Fund") was named as co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General's Office. Award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of the Act, in the event of the failure of Respondent-Employer, River Rats Skating Rink, to pay the benefits due and owing Petitioner. Respondent-Employer, River Rats Skating Rink, shall reimburse the Fund for any compensation obligations of Respondent-Employer, River Rats Skating Rink, that are paid to Petitioner from the Fund.

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

05/03/2013
Date

MAY - 7 2013

STATE OF ILLINOIS)
)SS
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JENNIFER McCULLY
Employee/Petitioner

v.

Case # 11 WC 46458

RIVER RATS SKATING RINK and
THE ILLINOIS STATE TREASURER AS EX-OFFICIO
CUSTODIAN OF THE ILLINOIS INJURED WORKERS'
BENEFIT FUND
Employer/Respondent

14IWCC0259

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

In approximately the late part of October 2010, Petitioner was hired by Respondent, River Rats Skating Rink, to work in Respondent's roller skating rink. Petitioner testified that she was issued a t-shirt that had the company name printed on it, a whistle and a pair of skates marked "DJ," as Petitioner served in the role of a disc jockey at the rink. Petitioner testified that she worked Fridays and Saturdays from 4:30 p.m. to 11:30 p.m., Sundays from approximately 12:00/12:30 p.m. to 2:30 p.m., and parties as needed. She testified that she was paid $8 per hour in cash.

Petitioner testified that her responsibilities included programming and monitoring music, interacting with patrons – particularly younger skaters and those that needed assistance – keeping the corners of the rink clear of patrons who were not skating, coordinating games designed for the skaters and operating the microphone. In short, Petitioner testified that she was to engage in any activity that promoted the safety and the entertainment of Respondent's patrons.

Petitioner was able to perform her multiple duties, as monitoring the music did not require her constant attention. Play lists could be programmed so that Petitioner was free to perform her other responsibilities. Petitioner testified that she could program up to 15 songs at a time, and would then at those times be free to roam around the rink performing her other duties.

On December 17, 2010, Petitioner testified that she and Respondent's patrons of various ages were participating in a game called "Jump the Stick." Petitioner testified that at this time, she was wearing her staff t-shirt and "DJ" skates, and participated in the game at the owner's request. While attempting to jump over the stick, Petitioner caught her skate and fell, landing primarily on her left hand.

Petitioner was initially taken to the Sarah D. Culbertson Memorial Hospital by Rodney Martin, her employer and Respondent's owner at the time. She suffered a comminuted fracture at the distal radius and ulna at the left wrist. (Petitioner's Exhibit (PX) 8). She was immediately transferred to St. John's Hospital for definitive orthopedic care. Her injuries were surgically repaired by Dr. Christopher Wottowa on

December 18, 2010. Dr. Wottowa reduced and stabilized the fracture and fragments with a TriMed plate and seven screws. (PX 9). Subsequently, she underwent physical therapy and was eventually released to return to work without restrictions on February 14, 2011. (PX 10).

Petitioner testified that her left wrist is now "usable," but it is not like it was before the accident. She testified she experiences a sharp pain when lifting, and that if the temperature is cold, her wrist feels numb and tingles. Petitioner also has scarring from the surgery at the wrist up into forearm that traverses approximately four inches up the arm from base of wrist. There is also a 1.25-1.5 inch similar scar on Petitioner's left wrist at the side of the base of the wrist.

Rodney Martin testified on behalf of Respondent. Mr. Martin confirmed that he hired Petitioner for weekend work in October 2010. However, he stated that her hours worked were 6:00 p.m. to 8:30 p.m. on Fridays, and 9:00 to 11:30 on Saturdays. He also confirmed that she did work at least one private party. He also confirmed that he paid Petitioner in cash, and that he did not withhold any deductions from her pay. He testified that he did not have workers' compensation insurance because he was not aware he needed it. Petitioner's Exhibit 11 confirms Respondent's lack of workers' compensation insurance coverage. Mr. Martin testified that he hired Petitioner as a disc jockey (DJ), and that this primarily required her to monitor songs for profane language. He testified that she also could leave the DJ booth to monitor the rink's corners. When asked if Petitioner assisted as a guard on the rink, he testified that he did not think that she did to his recollection. He testified that he did not give her skates, and that if she wore skates she would have gotten them on her own. Mr. Martin testified on cross-examination that Petitioner was subject to his direction as she was his employee.

Mr. Martin testified that two persons hold up the stick for the "Jump the Stick" game, and that at the time in question, he was holding the stick with Adam McCombs, an eighteen year old person who would assist him in exchange for the ability to skate at no cost. Mr. Martin testified that he did not see Petitioner in the line for the game until she had already jumped the stick and fell. Mr. Martin also confirmed on cross-examination that the purpose of the "Jump the Stick" game was to increase the patrons' enjoyment at the rink. Mr. Martin also testified that he never paid Petitioner her owed wages from the date of accident, which was a Friday, and further had no reason to give as to why he did not pay her for her time worked that day.

Mr. McCombs was called to testify by Respondent. Mr. McCombs testified that while not a "regular" employee of Respondent during the time in question, he nevertheless considered himself employed by Respondent. Mr. McCombs testified that he never saw Petitioner act as a floor guard. However, he testified that the DJ could also act as a floor guard.

Petitioner offered a series of medical bills into evidence containing charges for medical services she claims she received as a result of the claimed injury. (See PX 1-7).

The Illinois State Treasurer as ex-officio custodian of the Illinois Injured Workers' Benefit Fund was named as a respondent in this case due to Respondent, River Rats Skating Rink's lack of insurance coverage.

CONCLUSIONS OF LAW

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

There is no question that Petitioner was employed at the time of her injury. She was fulfilling her job responsibilities during her regularly scheduled hours, wearing the clothing and equipment provided by Respondent, which indicated to patrons that she was an employee, and was subsequently paid for the time she worked. Her injury arose out of her employment as its origin was the result of a risk incidental to her job responsibilities. As compared to the general public, Petitioner was subject to an increased risk of injury and was performing a task in the furtherance of her employer's business. *See Quarant v. Industrial Comm'n*, 38 Ill.2d 490, 231 N.E.2d 397 (1967). Petitioner was carrying out a task that was foreseeable and consistent with Respondent's desire to safely entertain its invitees, and, therefore, her claim is compensable. *See Homerding v. Industrial Comm'n,* 327 Ill. App. 3d 1050, 765 N.E.2d 1064 (1st Dist. 2002). There was no evidence presented that Petitioner was engaging in activities for her personal benefit. Even if there had been such testimony, her claim would still be compensable as her conduct was encouraged and consistent with Respondent's business goals. *See Panagos v. Industrial Comm'n*, 171 Ill. App. 3d 12, 524 N.E.2d 1018 (1st Dist. 1988). At no time did Petitioner voluntarily and in an unexpected manner expose herself to a risk outside the reasonable exercise of her duties. *See Bradway v. Industrial Comm'n*, 124 Ill. App. 3d 983, 464 N.E.2d 1139 (4th Dist. 1984).

Further, Rodney Martin's testimony that Petitioner's sole responsibility was operating the music panel is not credible. Both parties agreed that the music could be programmed and it was not necessary for Petitioner to stay at that particular location the entire time. In addition, Petitioner was given a shirt clearly indicating to patrons that she was a representative of the rink. Petitioner also testified that she was given roller skates which would only be used on the skating floor and were marked "DJ." The Arbitrator further finds Petitioner a credible witness. She openly testified in a forthcoming and truthful manner.

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

As a result of her fall, Petitioner sustained a comminuted distal radius fracture. During the open reduction Dr. Wottowa performed on December 18, 2010, he reduced and stabilized the fracture and fragments with a TriMed plate and seven screws. Petitioner has experienced no other trauma to her left arm, nor did she experience pain or loss of motion or strength prior to the December 17, 2010 injury. The scars on her left arm are the result of Dr. Wottowa's surgery.

Issue (G): What were Petitioner's earnings?

The Arbitrator finds Petitioner's testimony credible, as discussed *supra*, and therefore also finds that she was hired to work 7 hours on Fridays, 7 hours on Saturdays, and 2.5 hours on Sundays. She therefore worked 16.5 hours per week, and was paid $8.00 per hour. Her average weekly wage is accordingly $132.00.

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?

There was no evidence presented that the medical services provided by Sarah D. Culbertson Hospital, St. John's Hospital or Dr. Christopher Wottowa were unreasonable or unnecessary. The

comminuted, unstable distal radius fracture suffered by Petitioner required immediate treatment, and the subsequent physical therapy was designed to restore strength and mobility. (See PX 8-10). Nevertheless, none of the medical bills identified in Petitioner's Exhibits 1 through 7 have been paid by Respondent. They include the following:

1	Sarah D. Culbertson Hospital Statements – 12/17/10 – 2/14/11	$2,918.90	(PX 1).
2	Clinical Radiologists Statement – 12/17/10	$ 56.50	(PX 2).
3	St. John's Hospital Statement – 12/18/10	$18,488.40	(PX 3).
4	Central Illinois Radiological Associates Statement – 12/18/10	$ 84.00	(PX 4).
5	Sangamon Associated Anesthesiologists Statement – 12/18/10	$ 960.00	(PX 5).
6	APL Clinical Pathology Statement – 12/18/10	$ 31.00	(PX 6).
7	Dr. Christopher Wottowa Statement – 12/29/10 – 2/14/11	$ 3,667.00	(PX 7).

Respondent shall pay the foregoing charges, subject to the medical fee schedule, Section 8.2 of the Act.

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

Petitioner was unable to work as a result of her injury from December 17, 2010 until the date of her release, February 14, 2011. As a result, she is entitled to temporary total disability benefits for a total of 8 3/7 weeks.

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

Petitioner sustained a comminuted distal radius fracture with multiple bone fragments. Her injury required surgical intervention. Her current wrist pain, numbness and tingling is the result of the fractured radius caused from the work injury. Based upon the foregoing, Petitioner has suffered the 35% loss of use of the hand pursuant to Section 8(e) of the Act, and should be paid permanent partial disability benefits accordingly.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Carrie Smith,
Petitioner,

vs. NO: 11 WC 21607

General Dynamics,
Respondent.

14IWCC0260

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 temporary total disability, maintenance, medical expenses, and 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 May 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.

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

14IWCC0260

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 $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: APR 0 7 2014

Daniel R. Donohoo

o-03/25/14
drd/wj
68

Ruth W. White

Charles J. DeVriendt

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

SMITH, CARRIE
Employee/Petitioner

Case# **11WC021607**

GENERAL DYNAMICS
Employer/Respondent

14IWCC0260

On 5/7/2013, 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:

2500 WOMICK LAW FIRM CHTD
CASEY VAN WINKLE
501 RUSHING DR
HERRIN, IL 62948

0299 KEEFE & DEPAULI PC
JAMES K KEEFE SR
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Carrie Smith
Employee/Petitioner

v.

General Dynamics
Employer/Respondent

Case # 11 WC 21607

Consolidated cases: n/a

14IWCC0260

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 Herrin, on March 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. ☐ 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 29, 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 $17,677.93; the average weekly wage was $631.35.

On the date of accident, Petitioner was 34 years of age, single with 10 dependent child(ren).

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

Respondent shall be given a credit of $11,621.53 for TTD, $0.00 for TPD, $0.00 for maintenance, and $8,000.00 for other benefits, for a total credit of $19,621.53.

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 $420.90 per week for 33 2/7 weeks, commencing June 7, 2011, through September 2, 2011; September 19, 2011, through September 25, 2011; and October 10, 2011, through February 27, 2012, as provided in Section 8(b) of the Act.

Based upon the Arbitrator's conclusions of law attached hereto, Petitioner's claim for maintenance benefits is hereby denied.

Respondent is entitled to a credit for the advance payment made of $8,000.00.

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 3, 2013
Date

MAY -7 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment for Respondent on July 29, 2010. According to the Application, Petitioner was pushing/pulling while pumping up a pallet jack and sustained injuries to her neck. This case was tried as a 19(b) proceeding and Petitioner sought an order for payment of maintenance benefits from August 3, 2012, to the date of trial. At trial the disputed issues were causal relationship, average weekly wage and Petitioner's entitlement to maintenance benefits. Further, the parties stipulated that Petitioner was entitled to payment of temporary total disability benefits for 33 2/7 weeks and that Respondent was entitled to a credit of $11,621.53 for temporary total disability benefits paid during that time as well as an advance payment made by Respondent to Petitioner in the amount of $8,000.00.

Petitioner testified that on July 29, 2010, she was pumping up a pallet jack and, because it was malfunctioning, it would not come up more than an inch to an inch and one-half off of the ground. At that time, Petitioner felt a "pop" and burning sensation in the area of her left shoulder and arm. Petitioner reported the accident to her supervisor shortly after its occurrence. Petitioner was initially treated by Dr. Mark Austin who saw her on August 4, 2010. Dr. Austin's records contained a history of the accident of July 29, 2010, and he diagnosed Petitioner with a left cervical and trapezius strain. He also noted that the findings on examination were consistent with the C8 dermatome and similar to an injury that Petitioner had sustained the preceding year. Dr. Austin prescribed physical therapy which Petitioner received in July and August, 2010, with one final visit occurring on October 14, 2010. Petitioner was able to continue to work for the Respondent.

At the direction of the Respondent, Petitioner was examined by Dr. David Robson, an orthopedic surgeon, on March 17, 2011. Petitioner informed Dr. Robson of the accident of July 29, 2010, and Dr. Robson also reviewed Dr. Austin's medical records. At that time, Dr. Robson noted that Petitioner had previously had an MRI of the cervical spine performed on December 1, 2009. Dr. Robson recommended that Petitioner undergo another MRI to determine if treatment was indicated and whether there was a new injury or not. An MRI was performed on April 19, 2011, which revealed disc bulging at C4–C5, C5–C6 and C6–C7 as well as some degenerative changes.

Dr. Robson saw Petitioner on May 3, 2011, and reviewed both the report and films of the MRI that had just been performed. Dr. Robson opined that the C5–C6 was herniated and recommended Petitioner have a cervical discectomy and fusion performed. Dr. Robson further opined that Petitioner's condition and need for the surgical procedure were directly related to the accident of July 29, 2010. He did authorize Petitioner to continue to work. Dr. Robson performed surgery on June 7, 2011, which consisted of a discectomy at C5–C6, insertion of a spacer as well as a metal plate and screws.

Following the surgery, Petitioner remained under Dr. Robson's care. When Dr. Robson saw Petitioner on July 7, 2011, Petitioner reported that the left sided neck pain had resolved but that she was now experiencing pain down the right arm. When Dr. Robson saw Petitioner on August 11, 2011, Petitioner's right arm pain was improved but she then had more complaints of left sided neck pain. Dr. Robson stated that Petitioner should continue physical therapy and could

return to sedentary work, if available. The specific work restrictions imposed by Dr. Robson at that time were no lifting, pushing/pulling anything over 10 pounds, no overhead work, and that Petitioner needed to be able to change positions every 60 minutes. Respondent was able to provide work to Petitioner consistent with those restrictions; however, at that time Petitioner only worked for a very brief period.

On October 26, 2011, Dr. Robson had a CT scan performed to determine if the fusion was solid. The report of the scan stated that there was probable union with incorporation of the bone graft material. At that time, Dr. Robson opined that a functional capacity evaluation (FCE) was indicated. The FCE was performed on November 15, 2011, and the examiner opined that Petitioner was only capable of working in the "light" physical demand level; however, a program of work hardening was recommended so that Petitioner could progress to working in the "medium" physical demand level. Dr. Robson reviewed the FCE report and referred Petitioner to a program of work hardening. When Dr. Robson saw Petitioner on December 15, 2011, he opined that she was at MMI and released her to return to work with a permanent lifting restriction of 20 pounds and no overhead work. Respondent did provide work to Petitioner that conformed to Dr. Robson's restrictions.

Petitioner was seen again by Dr. Robson on July 25, 2012, and he again opined that Petitioner was at MMI and imposed permanent restrictions of no lifting over 20 pounds, no overhead work, no repetitive flexion/extension of the neck and that the maximum neck flexion should be 30°. Petitioner continued to work for Respondent within her restrictions until her employment was terminated by the Respondent on August 3, 2012.

A surveillance video of Petitioner was obtained and a DVD of it was tendered into evidence at trial. Petitioner was under surveillance on May 19, 25, 26 and 27, 2012. Subsequent to the trial of the case, the Arbitrator watched the video and observed that Petitioner mowed grass, operated a weedeater, made multiple attempts to pull on a string to start the weedeater, moved a decorative rock from one part of the yard to another, moved dirt in a wheelbarrow, dug in the garden and carried a large piece of plywood with both of her hands/arms. At trial, Petitioner testified that she had also watched the video and agreed that the decorative rock that she had moved weighed something in excess of 20 pounds and that this was in excess of the work restrictions imposed by Dr. Robson.

At the direction of the Respondent, Petitioner was examined by Dr. David Lange on December 4, 2012. Prior to that date, Dr. Lange reviewed Petitioner's medical records and the surveillance video. In his initial report of November 10, 2012, Dr. Lange opined that he disagreed with Dr. Robson's finding of causality and that Petitioner could work without restrictions. This was based, at least in part, on his belief that Petitioner had continued to work without restrictions until shortly before surgery was performed. Following his examination of the Petitioner, Dr. Lange reaffirmed his opinions in his report of December 4, 2012. Dr. Lange was deposed on March 7, 2013, and his deposition testimony was consistent with his medical reports.

Dr. Robson was deposed on October 4, 2012, and his deposition testimony was received into evidence at trial. Prior to his being deposed, Dr. Robson watched the surveillance video of the Petitioner and he reaffirmed his opinion as to Petitioner's work restrictions. Dr. Robson was not

persuaded to change the work restrictions he previously imposed on the Petitioner based upon the video and he noted that the video was only approximately one-half of an hour of observation of the activities of the Petitioner and he expressed doubt that Petitioner could perform activities such as those she participated in at the time the video was obtained over a 40 hour work week.

Subsequent to the termination of her employment with Respondent on August 3, 2012, Petitioner applied for unemployment compensation benefits and testified that she has been attempting to secure employment since that time. Petitioner tendered into evidence her job search logs for various jobs she has sought from August 6, 2012, through March 6, 2013. Petitioner testified that she has not been able to find any employment and is claiming entitlement to maintenance benefits from August 3, 2012, onward.

In regard to the average weekly wage, Petitioner claimed that the appropriate average weekly wage was $706.00. Respondent claimed that the average weekly wage $611.73. Petitioner submitted into evidence Petitioner's wage records for a period that began with the payroll ending August 9, 2009, through the pay period that ended June 27, 2010. Each pay period is two weeks long and there are 22 pay periods; however, the statement indicated that it pertained to a total of 42 weeks. Included in this statement were six pay periods which appeared to cover a period of 14 weeks in which Petitioner was paid short-term disability benefits. If the amount of the short-term disability benefits are excluded there is a total payment made to Petitioner of $17,677.93. The wage statement indicates that there are a number of pay periods in which the Petitioner worked substantially less than what would be considered a full time employee, specifically, the pay period ending October 4, 2009, Petitioner only work 14.5 hours; the pay period ending August 9, 2009, Petitioner worked 40 hours; and the pay period ending February 7, 2010, Petitioner worked 46 hours.

Respondent tendered into evidence the testimony of Kathy Wynn, Respondent's Human Resource Manager and Darren Byrd, Petitioner's immediate supervisor. Wynn testified that there was nothing reported about any malfunctioning of the pallet jack and that Respondent has an active light duty program and that Respondent made such light duty work available to Petitioner that conformed to Dr. Robson's restrictions. Byrd testified that Petitioner did not make any complaint to him about any malfunctioning of the pallet jack.

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being is related to the accident of July 29, 2010.

In support of this conclusion, the Arbitrator notes the following:

The Petitioner was initially examined by Dr. Robson at the direction of the Respondent and Dr. Robson subsequently became Petitioner's treating doctor. Dr. Robson opined that there was a causal relationship between the accident of July 29, 2010, and the cervical spine condition that he diagnosed and treated.

It was stipulated at trial that Petitioner did sustain a work-related accident on July 29, 2010, and Petitioner's testimony that she experienced a "pop" in her neck and experienced pain down her left arm was unrebutted.

In regard to disputed issue (G) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner had an average weekly wage of $631.35. In support of this conclusion the Arbitrator notes the following:

As stated herein, Petitioner claimed that she had an average weekly wage of $706.00 and Respondent claimed that the average weekly wage was $611.73. The Arbitrator reviewed the wage data and could not determine with any certainty how either side arrived at those amounts.

The wage statement is not a statement for the year preceding the date of injury. The statement includes payment of short-term disability benefits made to Petitioner between November 1, 2009, and January 10, 2010. When the short-term disability benefits are excluded, the net wages paid to Petitioner equal $17,677.93 which was paid over 16 pay periods or 32 weeks. The statement does indicate that Petitioner worked sporadically and there are pay periods in which she worked considerably less than a 40 hour work week. The Arbitrator lacked sufficient data to make a precise determination of the number of weeks and parts thereof worked by the Petitioner; however, the data seems to support that Petitioner worked 28 weeks. This computes to an average weekly wage of $631.35 ($17,677.93 divided by 28).

In regard to disputed issue (L) the Arbitrator makes the following conclusions of law:

Pursuant to the stipulation of the parties, the Arbitrator concludes that Petitioner is entitled to payment of temporary total disability benefits from June 7, 2011, through September 2, 2011; September 19, 2011, through September 25, 2011; and October 10, 2011, through February 27, 2012, a period of 33 2/7 weeks.

The Arbitrator concludes that Petitioner is not entitled to maintenance benefits from August 3, 2012, onward.

In support of these conclusions the Arbitrator notes the following:

The parties stipulated and agreed to Petitioner's entitlement to temporary total disability benefits for aforestated periods of time.

Petitioner was released to return to work with restrictions and Respondent was able to provide work that conformed with those restrictions as testified to by Kathy Wynn, Respondent's Human Resource Manager.

The surveillance video clearly showed Petitioner participating in strenuous activities that exceeded the work restrictions imposed by Dr. Robson. Petitioner's participation in those strenuous physical activities is supportive of the opinion of Dr. Lange that she can work without restrictions.

In regard to disputed issue (N) the Arbitrator makes the following conclusion of law:

Pursuant to the stipulation of the parties, the Arbitrator concludes that in addition to the temporary total disability benefits paid by Respondent to Petitioner, Respondent made a further payment of $8,000.00 for which it is entitled to a credit.

William R. Gallagher, Arbitrator

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

Stanislawa Mlynarczk,
Petitioner,

vs.

NO: 08 WC 01595
(11 IWCC 0747)
(11 MR 766)
(3-12-0411 WC)

Sophie Obrochta d/b/a Janitorial By Sophie,
Respondent.

14IWCC0261

DECISION AND OPINION ON APPELLATE COURT REMAND

This matter comes before the Commission on Remand from the Appellate Court of Illinois, Third Judicial District. The Appellate Court's Order, entered May 30, 2013, reverses the Decision of the Circuit Court of Will County confirming the July 29, 2011 Decision of the Commission and remands the case to the Commission for reinstatement of the Decision of the Arbitrator with instructions to address the propriety of the Arbitrator's imposition of attorney fees and penalties pursuant to Sections 16, 19(k) and 19(l) of the Act.

In his Decision of January 26, 2010, Arbitrator Hennessey found Petitioner proved she sustained an accident on December 5, 2007 arising out of and in the course of her employment with Respondent, Sophie Obrochta d/b/a Janitorial by Sophie. The Arbitrator found Petitioner was a "traveling employee" and therefore was entitled to benefits under the Workers' Compensation Act for injuries she sustained while walking to a vehicle used to transport her to work. The Appellate Court agreed with the findings of the Arbitrator.

The Arbitrator ordered Respondent to pay the Petitioner temporary total disability benefits of $274.12/week for 54 weeks for the period December 6, 2007 through December 17, 2008 and the further sum of $34,818.91 for necessary medical services, as provided in Section 8 of the Act. The Respondent was further ordered to pay the Petitioner the sum of $246.71/week for a further period of 133.25 weeks, as provided in Section 8(e)9 of the Act, because the injuries sustained caused 65% loss of use of the left hand/wrist.

On remand and pursuant to the Appellate Court's ruling and mandate, the Commission vacates its prior Decision of July 29, 2011 and hereby affirms and adopts the January 26, 2010 Decision of the Arbitrator with respect to all issues less penalties and attorneys' fees as provided in Sections 19(k), 19(l) and 16 of the Act.

The Commission, pursuant to the instructions of the Appellate Court, reviews the record as a whole and addresses the propriety of the Arbitrator's imposition of attorneys' fees and penalties pursuant to Sections 16, 19(k) and 19(l) of the Act. The Arbitrator imposed penalties and fees upon the Respondent as "the facts in this case are for the most part undisputed." The Arbitrator found that the testimony of the Petitioner and her husband was credible, clear and consistent unlike the testimony of Walter Obrachta, the husband of Sophie Obrachta. The Arbitrator stated, "because of the facts, the Respondent's refusal to pay temporary total disability benefits is unreasonable, vexatious and the defenses raised are frivolous."

The Commission finds Respondent was not unreasonable in requiring Petitioner to establish her prima facie case given the facts as presented. The evidence shows there was a genuine controversy as to whether Petitioner sustained an accident that arose out of and in the course of employment for Respondent. Respondent filed a Response to Petitioner's Petition for Penalties and Attorneys' Fees on September 30, 2009 which outlined its reasoning for denial of benefits. The Commission finds Respondent's conduct in defense of this claim was neither unreasonable nor vexatious as there were legitimate issues in dispute, including a compensable accident, despite the ultimate outcome of the case. The Commission vacates the Arbitrator's award of penalties as provided in Section 19(k) and 19(l) of the Act and attorneys fees as provided in Section 16 of the Act. Penalties and fees are denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 26, 2010 is hereby affirmed and adopted with respect to all issues less Section M, penalties and fees. The Commission vacates the Arbitrator's award of penalties as provided in Section 19(k) and 19(l) of the Act and attorneys fees as provided in Section 16 of the Act. Penalties and fees are denied.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay the Petitioner temporary total disability benefits of $272.12 per week for 54 weeks, for the period December 6, 2007 through December 17, 2008, that being the period of temporary total incapacity from work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay the Petitioner the sum of $246.71 per week for a further period of 133.25 weeks, as provided in Section 8(e)9 of the Act, because the injuries sustained caused 65% loss of use of the left hand.

14IWCC0261

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $34,818.91 for medical expenses pursuant to Section 8 and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's request for penalties and fees pursuant to Sections 19(k), 19(l) and 16 is 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.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at $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: APR 0 7 2014

Daniel R. Donohoo

Ruth W. White

Charles J. DeVriendt

o-03/25/14
drd/adc
68

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 Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Janice M. Farrell,

Petitioner,

vs.

NO: 12 WC 26689

14IWCC0262

Noodles & Company,

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 and prospective medical treatment and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below and 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).

Petitioner, a 50-year-old general manager, filed an Application for Adjustment of Claim alleging injuries to her right and left shoulders occurring during the course of and arising out of her employment by Respondent on January 24, 2012. Petitioner testified that on January 24, 2012 she was carrying a tub weighing thirty to thirty-five pounds when suddenly her left shoulder popped and she felt immediate pain. Respondent does not dispute that Petitioner sustained a compensable left shoulder injury. Petitioner initially treated at Physicians Immediate Care and was diagnosed with a left shoulder strain. She was issued lifting restrictions from Physician's Immediate Care and allowed to return to work, although Petitioner testified that she actually returned to her regular duties in order to perform her job as a general manager. (PX 1; T. 13-14) An MRI of the left shoulder revealed degenerative changes and tendinosis. Petitioner was

examined by Dr. Shah at Parkview Orthopaedics on March 12, 2012 for a second opinion. Dr. Shah believed that the MRI showed a rotator cuff tear. (PX 2) While performing physical therapy exercises on April 4, 2012, Petitioner complained that her right shoulder was becoming sore from work. (PX 3) Petitioner underwent a left shoulder arthroscopic rotator cuff repair on May 15, 2012 by Dr. Shah. (PX 2) Petitioner was off of work for six weeks and then returned work performing modified duties. She continued to complain to the physical therapist and to Dr. Shah that her right shoulder was bothering her while she compensated for her left arm. An MRI arthrogram on January 31, 2013 revealed a rotator cuff tear in Petitioner's right shoulder. Petitioner sought authorization for arthroscopic surgery recommended by Dr. Shah. (PX 2, PX 4)

Petitioner was examined by Dr. Tonino at Loyola University at the request of the Respondent and pursuant to §12. Dr. Tonino opined that Petitioner did not injure her right shoulder on January 24, 2012 and did not subsequently injure her right arm as a result of overuse following the left shoulder injury. At the 19(b) hearing, Petitioner admitted that her right arm pain and symptoms did not begin until April of 2012. She testified that her right shoulder became increasingly painful while using it to compensate for the left arm. Area manager Laura Kraus testified for Respondent. Ms. Kraus was aware that Petitioner injured her left shoulder on January 24, 2012 but she was not aware that Petitioner was alleging an overuse injury to her right shoulder. Approximately around the time of Petitioner's left shoulder surgery, Petitioner informed Ms. Kraus that she was seeking workers' compensation approval for a right shoulder MRI. (T. 49)

In a June 17, 2013 Decision, the Arbitrator found that Petitioner failed to prove she sustained an accidental injury to her right shoulder on January 24, 2012 or an overuse injury to her right shoulder as a result of her undisputed left shoulder injury. We disagree, and for the following reasons we reverse and award benefits.

Although Petitioner was placed on light duty restrictions for her left arm soon after the accident, she did not miss any time from work and she testified that she still needed to perform all of her regular job duties. She testified that she relied upon her dominant right arm in order to baby her left arm. (T. 13-14) Petitioner had pre-existing arthritis in both shoulders and multiple other areas of her body. She testified that she had a prior injury to her right shoulder in 2005 when a box of cups fell onto her right shoulder, but she did not miss any work and did not file a claim for that injury. She recalled that she had one medical visit, but there are no corresponding records in evidence. (T. 10-11) As Petitioner admitted, her right shoulder symptoms arose in the months following the January 24, 2012, and her testimony is consistent with the treatment records in evidence. Petitioner's surgeon, Dr. Shah, opined that Petitioner developed a right shoulder overuse injury related to the accident because "initially she had the work injury on the left side and as she started using her right side more at work and in therapy that started to cause pain on the right side." A right shoulder arthrogram showed a full thickness rotator cuff tear and degenerative changes, similar to the left shoulder. Dr. Shah recommended right shoulder surgery and opined that the need for surgery was causally related to the January 24, 2012 accident. (PX 2; PX 4)

The Arbitrator's Decision, relying on the opinion of Dr. Tonino, is not supported by the preponderance of the credible evidence. Dr. Tonino's reports with respect to causation are not persuasive because he was not provided with all of the information needed to form a reliable causal connection opinion and his opinion appears to be biased by incomplete or misleading facts. In Dr. Tonino's first report, dated October 22, 2012, he stated that no records were received that corresponded to the Petitioner's first month of treatment after the accident. He agreed with Dr. Shah's diagnosis and his treatment plan for the right shoulder, but he stated that he could not offer a causal connection opinion due to the lack of complete information. (RX 1) Dr. Tonino wrote an addendum report, purporting to have been issued the same day, stating that additional records had been obtained and that his opinion remained unchanged. He stated that his opinion was partially based on the absence of any right shoulder complaints in the records for the time period following the accident. (RX 2) Therefore, it does not appear that Dr. Tonino ever obtained the physical therapy records reporting right shoulder complaints beginning in April of 2012 with the performance of Petitioner's work duties. In a final addendum report dated January 18, 2012, Dr. Tonino stated that updated records he received indicate that Petitioner's right shoulder complaints started when "she was accidentally struck in the ribs and fell onto her right elbow" around "5/15/12." Dr. Tonino reviewed a "light-duty job description" and understood that Petitioner performed "mostly administrative-type procedures," involving sedentary work and no lifting over ten pounds. Dr. Tonino stated that he would prefer to see a video of Petitioner's job performance if possible, but he concluded from the information available to him that Petitioner's work did not consist of the "typical activities that would require overuse of the contralateral upper extremity." (RX 3)

The Arbitrator relied on Dr. Tonino's opinion that modified duties could not have caused overuse of the right shoulder as alleged by Petitioner. However, Petitioner testified that Dr. Tonino's understanding of her post-accident work duties was completely incorrect; she strongly disputed any of her duties changed until she returned to work post-operatively with specifically modified duties. (T. 30) Petitioner's testimony is not rebutted; it was instead corroborated by the testimony of Laura Kraus. Ms. Kraus oversaw nine stores and did not have daily interaction with Ms. Farrell but understood her to be a good worker. (T. 50-51) Ms. Kraus agreed that the job duties of a general manager include setting up, prepping food, cleaning, delivering food, waiting on guests, carrying produce and cooked noodles, and stocking and lifting boxes. Ms. Kraus was only aware of Petitioner being on light duty status after her left shoulder surgery and at no time previously. (T. 52) Ms. Kraus believed that while recovering from left shoulder surgery, Petitioner was provided with modified duties consisting of administration, scheduling, marketing, phone calls, ordering, entering invoices, greeting, hosting, light cashier duty and modified work hours. (T. 48-49)

As stated above, Dr. Tonino concluded that Petitioner appeared to have injured her right shoulder outside of work in the summer of 2012 due to a reference in the physical therapy records from August 6, 2012 (Dr. Tonino's report bears the apparent typographical error "5/15/12") reporting that Petitioner had recently been injured at a party. She presented to the physical therapy session with a right elbow bruise and complaints of right-sided rib pain. (PX 4)

14IWCC0262

Dr. Tonino's conclusion that this incident caused the onset of Petitioner's right shoulder complaints is not supported by the preponderance of the evidence and is directly contradicted by the prior physical therapy records, the records of Dr. Shah and Petitioner's testimony.

After reviewing all of the evidence, we find Petitioner to be credible and we award the right shoulder surgery recommended by Dr. Shah as reasonably necessary medical treatment for the overuse injury sustained by Petitioner as a result of the January 24, 2012 accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 17, 2013 is hereby reversed and the Petitioner is awarded the requested prospective medical treatment consisting of a right shoulder surgery recommended by Dr. Shah. Furthermore, this case is remanded to the Arbitrator for a further hearing and 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 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 removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $50,000.00. 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: APR 7 - 2014
RWW/plv
o-2/19/14
46

Ruth W. White

Charles J. DeVriendt

Michael J. Brennan

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

Todd Brooks,
Petitioner,

vs. NO: 11 WC 14017

State Of Illinois,
Chester Mental Health Center.
Respondent.

14IWCC0263

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, temporary total disability, permanent partial disability 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 May 29, 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.

14IWCC0263

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: APR 0 7 2014

Ruth W. White

Daniel R. Donohoo

Charles J. DeVriendt

o-03/26/14
rww/wj
68

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

BROOKS, TODD
Employee/Petitioner

Case# **11WC014017**

SOI/CHESTER MHC
Employer/Respondent

14IWCC0263

On 5/29/2013, 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:

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

1745 DEPT OF HUMAN SERVICES
BUREAU OF RISK MANAGEMENT
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 29 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)

TODD BROOKS
Employee/Petitioner

v.

SOI/CHESTER MHC
Employer/Respondent

Case # 11 WC 14017

Consolidated cases: ___

14IWCC0263

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 **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. ☒ 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

14IWCC0263

FINDINGS

On the date of accident, **02/28/11**, 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 not* 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 $**69,182.88**; the average weekly wage was $**1,330.44**

On the date of accident, Petitioner was **45** 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 $**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

5/23/13
Date

ICArbDec19(b)

MAY 29 2013

14IWCC0263

Findings of Fact

This is a 19(b) decision on a repetitive trauma claim. The issues in dispute are accident, notice, causation and prospective medical care.

Petitioner is a 47 year old employee of the State of Illinois at the Chester Mental Health Center. Petitioner began working at Menard in June 1994. Petitioner worked as a Security Therapy Aide (STA) I from until 1994 until 2003. From 2003-2004 Petitioner was a STA II. Beginning in August 2004 Petitioner began working as a STA IV.

On March 2, 2011, Petitioner completed his employee notice of injury. (Px. 6) On said form Petitioner stated that he unlocked and locked doors, restrained patients and wrote reports as a STA I; as a STA II Petitioner wrote he unlocked and locked doors, assist in forcible leather restraint, excessive writing; as a STA III Petitioner wrote that he locked and unlocked doors, excessive writing . . .; as a STA IV Petitioner wrote that he locked and unlocked doors, typing on computer. (Px. 6)

Petitioner was a STA IV from August 2004 until present. A STA IV ensures STAs are assigned to work each unit for a shift, monitors compliance of staff with security procedures. (Rx. 2A)

A report indicating the demands of the job was completed by Patricia Mosbacher and Mike Brown. (Rx. 1A) Ms. Mosbacher was the hospital administrator for Chester Mental Health Facility at the time of Petitioner's alleged date of injury. (Px. 7) Mike Brown was a STA IV at Chester Mental Health Facility. The demands of the job noted most of the doors of the facility were operated by a badge entry system and that the badge entry system was installed in 1996. (Id.) It was also noted that the office doors utilized by Petitioner were only unlocked on one side and lock automatically when closed. (Id.) Further, the computer information is cut and pasted, very little typing is required. (Id.) The doors at the facility utilize a key the same size as a house key. (Id.) For comparison it was stated that the same type of motion is used to lock and unlock a house door or start a car or texting on a phone. (Id.) Finally it was noted that Petitioner's duties were not repetitive nor without periods of rest. (Id.)

Petitioner was examined by Dr. James Emanuel pursuant to Section 12 at the request of Respondent. (Rx. 2, Rx. 6) Dr. Emanual reviewed the DVD of a STA IV (Rx. 3), the Job Site Analysis (Rx. 1), Employee's Notice of Injury (Px. 6) and the CMS Demands of the Job (Px. 2A) Dr. Emanual noted that Petitioner was obese as Petitioner has a BMI of 41.61. (Rx. 2) Dr. Emanual noted Petitioner was an avid weightlifter. Dr. Emanual testified that he did not feel Petitioner's carpal tunnel diagnosis was related to or aggravated by Petitioner's job duties. Dr. Emanual noted that Petitioner's hobby of weight lifting could cause his carpal tunnel syndrome.

Petitioner was referred to Dr. George Paletta by his attorney, Thomas C. Rich. Petitioner was examined by Dr. Paletta on May 6, 2011. At that visit it was noted that Petitioner "has to use keys to open cell doors" (Px. 5) On cross examination Dr. Paletta did not know what types of keys Petitioner used to open doors. (Px. 7, pg. 28) Also, Dr. Paletta did not know whether or not a swipe card system was used at Chester Mental Health Center. (Px. 7, pg. 28) Dr. Paletta agreed that if the majority of keying was done with a swipe care, his opinion could change as to whether opening cells and doors played a role in Petitioner's carpal tunnel syndrome. (Id.) Dr. Paletta agreed that Petitioner's computer work did not have any effect on Petitioner's carpal tunnel syndrome. (Id., pg. 29)

Conclusions of Law

1. Regarding the issue of Accident, the Arbitrator finds that the Petitioner failed to meet his burden of proof. This finding is based primarily on the question of credibility. In this case, the Petitioner's description of his job duties, particularly in terms of the repetitive nature of each activity, are rebutted by the evidence presented by Respondent. For example, the Petitioner testified that he was involved in restraining tens of thousands of patients, yet he evidence shows that he holds a supervisory position in which he has other employees actually doing the restraining. Petitioner also highlighted in his testimony the use of keys to lock and unlock doors, yet Respondent's facility uses a key card system. In viewing the evidence regarding the Petitioner's job description as STA IV and comparing this evidence to Petitioner's own testimony, it is clear that the Petitioner's job duties for what he described as the roll of hospital administrator, vary throughout the day. Petitioner attempts to cast a wide net by referencing his earlier jobs for the Respondent as STA I, STA II, and STA III to prove his repetitive trauma claim. However, 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. In cases relying on the repetitive trauma concept, the petitioner must show the injury arose out of and in the course of his employment and was not the result of a normal degenerative aging process. See, e.g., *Peoria County Bellwood*, 115 Ill.2d 524 (1987); *Quaker Oats Co.* v. *Industrial Commission*, 414 Ill.2d 326 (1953). In the case at bar, there are a number of factors presented by the evidence that would attribute Petitioner's condition to factors outside his employment, including his obesity and his weight lifting activities.

2. Regarding the issue of Causation, the Arbitrator also finds that the Petitioner failed to meet his burden of proof. A claimant fails to prove a causal relationship through repetitive trauma where the medical opinion upon which they have relied is based upon incorrect or incomplete information about the claimant's job duties. See, e.g., *Lon Dale Beasley* v. *Decatur Public School* #61, 03 IIC 301; *Jerry Wiser v. American Steel Foundries*. 02 HC 310; *Vicki Staley v. BroMenn Lind Medical Hills Internists*, 99 IIC 539. The Commission has determined a claimant fails to prove causation from repetitive trauma when the treating physician testified repetitive motions caused the injuries but failed to detail what repetitive motions the petitioner engaged in and the frequency of the motions. *Gambrel* v. *Mulay Plastics*, 97 IIC 238. The Commission decision Clay v. Hill Correctional Center, 11 I.W.C.C. 0038, is instructive to this case. In Clay, the Commission noted that testimony of locking and unlocking hundreds of doors was unpersuasive testimony to show that those job duties aggravate carpal tunnel syndrome when there is no mention of the force required to do these activities. (Id.) Likewise, in this case there is no testimony about the force to perform any of the activities listed by Petitioner. Viewing the evidence of Petitioner's job duties, the reports and testimony of Dr. James Emanual, the testimony of Dr. Paletta, Petitioner has failed to meet his burden of proof that he sustained an accidental injury in the course of his employment for Respondent.

3. Based on the findings above, all other issues are rendered moot.

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Gregory Dehaven
Employee/Petitioner

v.

Suro, Inc.
Employer/Respondent

Case # 12 WC 031299

Consolidated cases: _____

14IWCC0264

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 5/7/2013. 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. ☒ 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 _____

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

DeHAVEN, GREGORY
Employee/Petitioner

Case# **12WC031299**

14IWCC0264

SURO INC
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:

0874 FREDERICK HAGLE FRANK & WALSH
JEFFREY D FREDERICK
129 W MAIN ST
URBANA, IL 61801

2593 GANAN & SHAPIRO PC
TIM STEIL
411 HAMILTON BLVD SUITE 1006
PEORIA, IL 61602

14IWCC0264

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 $3,300.00. 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: APR 0 7 2014

Ruth W. White

Daniel R. Donohoo

Charles J. DeVriendt

o-03/26/14
rww/wj
46

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 Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gregory DeHaven,
Petitioner,

vs. NO. 12 WC 31299

Suro, Inc.,
Respondent.

14IWCC0264

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 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 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.

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

FINDINGS

On the date of accident, **1/29/2012**, 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 $**14,134.40**; the average weekly wage was $**275.60**.

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 has not paid TTD from the period of 7/18/12 through 10/8/12.

Respondent has refused to pay for further medical treatment to Petitioner as recommended by Dr. Fletcher.

ORDER

Pursuant to Section 8(a) of the Illinois Workers' Compensation Act, the Respondent, Suro, Inc., is hereby ordered to authorize and pay for the further medical treatment, of physical therapy modalities, a myelogram/postmyelogram scan, prescription medication, a TENS unit, recommended by Dr. Fletcher, plus all costs of reasonable and necessary further medical treatment after a diagnosis can be clarified.

Respondent is ordered to pay, pursuant to the Illinois Workers' Compensation Act the Carle Foundation Physician Group bill of $185.00, Carle Physician Services bill of $105.00, Safeworks Illinois bill of $786.33, 217 Rehab and Performance Center bills of 121.87, and MedSource bill of $171.00. Respondent's liability is limited to amounts set forth in the medical fee schedule. Respondent is ordered to repay Petitioner the amount of $595.00 for a bill Petitioner paid Dr. Paunicka out of his own pocket.

Respondent shall pay Petitioner temporary total disability benefits of $220.00 per week for 12 weeks, commencing 7/14/12 through 10/8/12, as provided in Section 8(b) of the Act.

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

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

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

D. [illegible]
Signature of Arbitrator
ICArbDec19(b)

May 30, 2013
Date

JUN - 5 2013

FINDING OF FACTS

Petitioner testified he had been employed by Suro, Inc. for less than two years. Petitioner testified that at the time of his injury he was employed by Suro, Inc. Petitioner's job duties at Suro, Inc. included performing janitorial functions. Petitioner testified that just shortly after 2006 up until his on the job accident of 1/29/12 he had no back pain. Petitioner testified that on January 29, 2012, while on the job, he slipped on black ice in a parking lot while carrying cleaning supplies in one hand and a vacuum in his other hand. Petitioner testified that having these items in his hands caused him to land awkwardly when he fell. Petitioner testified this accident occurred within the course of his employment. Petitioner testified he reported it to Robin Stout, a supervisor at his work on 1/29/12. Petitioner testified he reported to work the next day but was in too much pain to work. At that time another supervisor, Susan Stout, instructed him to go to Carle Occupational Medicine for treatment of his injury of 1/29/12. Petitioner testified he has had no new injuries to his back since January 29, 2012.

Petitioner testified that as a result of his on the job injury he followed the instructions of his supervisor and sought treatment at Carle Occupational Medicine on 1/30/12. There Petitioner treated with Dr. William Scott. Dr. Scott notes, in his 1/30/12 record, that Petitioner was being seen after falling in the parking lot and landing on his back. Dr. Scott noted pain in all three areas of the spine, diagnosed osteoarthritis and placed restrictions of avoiding lifting, pulling, and pushing greater than 15 pounds, to avoid repetitive bending or squatting, and to sit, stand, and walk as needed. Petitioner was given a Torodal injection to help with his pain and discomfort. Petitioner was told to follow up with Steven Jacobs, a physician's assistant. PE 3, p 17 and 18.

In Petitioner's follow up visit on 2/6/12 he was diagnosed with a back strain, cervicalgia, and a contusion of the hip as a result of his January 29, 2012 fall at work. Petitioner was taking Vicodin for his pain. PE 3, p 18 and 19. Steve Jacobs, PA, noted Petitioner had pain his the sacroiliac joint. He noted Petitioner had point tenderness in the gluteal region as well as over the hip on the right side. At this time Petitioner still had restrictions of no lifting, pulling, or pushing over 15 pounds. Steve Jacobs recommended Petitioner avoid kneeling or squatting and to get up to stretch every 20 to 30 minutes. Physical therapy was also recommended. PE 3, p 22.

The Arbitrator notes Petitioner still had restrictions of no lifting, pulling, or pushing over 20 pounds after his 2/23/2012 visit with Dr. Sutter. Hypertonicity, or enlargement of the lower lumbar muscles was noted. At this time Petitioner was to avoid bending and twisting of the neck and waist along with kneeling and squatting. PE 3, p 26 and 27.

Dr. Sutter noted, in his record of March 15, 2012 Petitioner's condition had not improved in 47 days. At this time Dr. Sutter recommended an MRI and put Petitioner on a fifteen pound weight restriction. PE 3, p 32.

Dr. Sutter noted Petitioner's MRI objectively showed an annular tear at L3-L4. He also said that it showed no central canal or foraminal stenosis, with an impression of minimal lower lumbar degenerative disc disease. After his evaluation of Petitioner on March 29, 2012, Dr. Sutter

recommended Petitioner stop therapy and allow his back to heal with rest. At this time Dr. Sutter lowered Petitioner's restrictions to not lifting, pushing, or pulling anything over 10 pounds. PX 3, p 36.

The radiologist who performed the MRI, Dr. Muzaffar, also noted no stenosis. He also found mild bulging at L3-4 with a small annular tear and subtle disc bulges at L4-5 and L5-S1. (PX 3)

In his evaluation of Petitioner on April 19, 2012 Dr. Sutter noted Petitioner was not getting better. On exam, he had trouble touching his toes. Dr. Sutter referred Petitioner to the Carle Spine Center. At the Carle Spine Center Petitioner saw Dr. Olivero, a spine surgeon, on May 8, 2012. Dr. Olivero noted, in his record, he was seeing Petitioner due to back pain that came on immediately after a fall at work during the winter, in which Petitioner struck his back. On that date Dr. Olivero noted Petitioner had a decreased range of motion in his back. Dr. Olivero diagnosed Petitioner with a back strain. He noted Petitioner had pain in his back and hips. In this visit Dr. Olivero did not recommend back surgery. Dr. Olivero recommended Petitioner try chiropractic, massage therapy or acupuncture. PE 3, p 46.

Petitioner followed up with Dr. Sutter on May 15, 2012. At this time Dr. Sutter had Petitioner on a 15 pound weight restriction. PE 3, p 52. Dr. Sutter noted Petitioner had been experiencing back pain for 129 days. Dr. Sutter moved Petitioner to a ten pound weight restriction and told Petitioner to avoid any bending or twisting his back. At this time Dr. Sutter noted Petitioner's MRI on March 27, 2012 showed bulges at L4-L5 and an annular tear at L3-L4. PE 3, p 56 & 57. He recommended the petitioner try deep tissue massage.

On June 5, 2012 Petitioner again saw Dr. Sutter for treatment of his back pain from his at work accident. At this point Dr. Sutter put Petitioner on a 10 pound weight restriction. PE 3, p 63. He noted that physical therapy had not helped his symptoms, which remained localized lower lumbar paraspinal pain which was not radiating. He recommended an IME. (PX3)

On July 18, 2012 Respondent sent Petitioner to an Independent Medical Exam with Dr. Monaco. Petitioner testified all Dr. Monaco had him do during his examination was lay flat, stand, a little bending and twisting, and walk. In his report he notes Petitioner had been in good general health prior to the accident of 1/29/12. The Petitioner complained of pain in the same areas which had bothered him since his accident. Dr. Monaco on exam noted discomfort in all ranges of motion of the lumbar spine. He also reviewed the MRI films and noted no central canal or foraminal stenosis. He suggested symptom magnification. He diagnosed acute sprains to the cervical and lumbar spine, but said that the Petitioner had recovered from the effects of those injuries. He opined that the Petitioner's current complaints were not causallypain. Dr. Monaco also reports Petitioner has reached maximum medical improvement then immediately states "there has been no evidence of improvement over the course of the last five months." Respondent's Exhibit 1.

Petitioner testified his employer, Suro, Inc. was unable to accommodate the restrictions he was given from Carle, the Respondent's own doctors. Petitioner testified he received temporary total

disability benefits up until 7/13/12 when Respondent terminated his benefits after the exam of Dr. Monaco.

Petitioner testified he took Dr. Olivero's advice and contacted Dr. Paunicka to make an appointment. Petitioner began treating with Dr. Paunicka on August 29, 2012. Because Respondent had refused to pay any more medical bills after the IME with Dr. Monaco, Petitioner had to pay Dr. Paunicka himself, for treatment.

On August 29, 2012 Petitioner saw Dr. Paunicka who noted that since Petitioner's January 29, 2012, accident of slipping on ice at work and injury his back, Petitioner has had problems with leaning, stooping, squatting, climbing, kneeling, bending, twisting, carrying, lifting, pushing, and restful sleeping. At this point Dr. Sutter had still not lifted Petitioner's 10 pound weight restrictions he put in place on June 5, 2012. Dr. Paunicka never removed these restrictions. Dr. Paunicka noted Petitioner has struggled getting to sleep as a result of the accident. Dr. Paunicka also noted that Petitioner wakes up in the middle of the night due to pain in his lower back. Dr. Paunicka noted Petitioner had no prior problems sleeping before the accident. In this visit Dr. Paunicka further noted there was tenderness to digital palpation and muscle tension on both sides of Petitioner's lumbar spine. PE 4, p 1.

In this August 29, 2012 visit Dr. Paunicka took x-rays of Petitioner's lumbar spine. Dr. Paunicka notes Petitioner's pain came on immediately after the accident and has not improved since. PE 4, p 1. He noted subluxations at L5 and sacrum sacroiliac joint on the right. After his initial consultation and review of the x-rays Dr. Paunicka diagnosed Petitioner with subluxation to the sacrum, a sprain/strain of the sacrum, subluxation lumbar region, lumbago, subluxation to the sacroiliac joint. Dr. Paunicka inititial prognosis for Petitioner was guarded. PE 4, p 3 and 4.

The Petitioner saw Dr. Paunicka for a total of nine visits through October 26, 2012. Throughout his treatment Dr. Paunicka noted Petitioner had pain, a restricted range of motion, myospasms and tenderness to digital palpation in his lumbar spine. In Petitioner's October 26, 2012 visit Dr. Paunicka noted Petitioner still required further rehabilitative care. Dr. Paunicka believed Petitioner would benefit from aquatic therapy. Dr. Paunicka took Petitioner completely off of work from a period of September 5 through September 17. PE 4 p. 13. The Petitioner testified that the treatment provided very little relief of his symptoms.

Petitioner's pain continued so on 12/10/12 he saw Dr. Fletcher. Dr. Fletcher notes Petitioner's symptoms first began to develop after a fall when leaving one of his cleaning accounts on 1/29/12. Dr. Fletcher noted Petitioner's pain level when he first fell was an 8 and Petitioner's pain level is now a 6 or 7. In his examination, Dr. Fletcher noted no muscle spasm, tenderness or swelling. He did find decreased ranges of motion of the lumbar spine, and a negative straight leg raising test, indicative of no nerve root involvement. He also found no evidence of symptom magnification. Dr. Fletcher recommended a Myelogram/CT examination to clarify his diagnosis followed by a course of physical therapy once the results were noted. Dr. Fletcher's prognosis of Petitioner was guarded due to the need for additional testing. Dr. Fletcher noted Petitioner had incurred a permanent loss. Pe 5, p 4.

The next visit Petitioner had with Dr. Fletcher was on February 6, 2013. At this time Dr. Fletcher noted Petitioner was complaining of an aching, stabbing pain in his lower back and hip area. Dr. Fletcher expressed a concern that Petitioner had spinal stenosis aggravated by his injury at work on 1/29/12. Dr. Fletcher still recommended Petitioner have a myelogram/postmyelogram CT scan to clarify his diagnosis. He also recommended that the Petitioner start pool therapy, use a TENS unit and take Ultram. (PX 5) He has not seen the Petitioner since that visit. The Petitioner is seeking authorization for the treatment prescribed by Dr. Fletcher, and he has been using a TENS. (PX 11)

Petitioner testified he still participates in pool therapy and does daily stretching to help alleviate his severe pain from the accident. Petitioner testified he is currently taking Torodal due to his pain from the accident. Petitioner testified since the accident he has had severe pain in his back area ranging around a 7 out of 10. Petitioner testified this pain has changed many of the things he does and things he is able to do. Petitioner testified he is can no longer mow his own lawn or do certain chores around the house. Petitioner testified he is unable to climb or lift anything heavy whatsoever.

Petitioner testified that sitting in the hearing the pain in his back was at a pain level of 7 out of 10. Petitioner testified this pain level will get worse with activity. Petitioner testified he feels worn out in the morning due to being restless all night because of the pain in his back. Petitioner further testified he cannot sit much longer than 50 minutes. Petitioner also testified that after he gets out of the car driving to work he is extremely stiff and sore.

Petitioner testified on October 9, 2012 he was able to find work within his restrictions at A.J.'s collision repair. Petitioner testified that he was hired at A.J.'s collision repair due to his knowledge in the auto repair business. Petitioner further testified other employees are available to do any work that requires heavy lifting, extreme bending, or twisting. Petitioner testified that he only works within his restrictions.

CONCLUSIONS OF LAW

The Arbitrator finds that the Petitioner testified credibly. From the date of accident forward to the present time, he has tried almost every conceivable form of conservative treatment to relieve his lower back pain. All of his doctors, including Dr. Monaco, found restrictions in his range of motion. He also has shown increased muscle tone, or swelling in the muscles in the lumbar area on many of his exams. He is able to work, but he still has pain.

Dr. Monaco's opinion that his symptoms were no longer related to his original accident, in essence, because he felt the symptoms should have resolved themselves by that date. Everyone recovers differently from injuries such as those sustained by the Petitioner. In rendering his opinion, Dr. Monaco does not explain why the Petitioner had persistent symptoms with regular treatment. He concludes the Petitioner was magnifying his symptoms. The Arbitrator notes that no other doctors found symptom magnification; the Petitioner had consistent symptoms and

followed all of the treatment recommendations of his doctors until his treatment authorization was revoked by the Respondent. Dr. Monaco's above opinions are not persuasive. The Petitioner's current condition is causally related to his accident of Jan. 29, 2012.

The past medical treatment, as it was for injuries causally related to the accident, are properly the Respondent's responsibility. Dr. Fletcher's prescription for pool therapy, a TENS unit and Ultram are reasonable forms of treatment for the injuries diagnosed and properly payable under Section 8(a) of the Act. Dr. Fletcher also recommends a myelogram with a follow up CT, presumably to rule in or out central stenosis from a disc. While the other doctors who reviewed the earlier MRI films did not see stenosis, the fact remains that the Petitioner still has severe lower back pain. The testing could be probative on the issue, and the Arbitrator believes it is reasonably required to cure or relieve the Petitioner from the effects of his injury.

The Arbitrator notes Petitioner has had work restrictions since the time of the his January 29, 2012 accident. The Arbitrator finds the opinions of Dr. Scott, Dr. Sutter, Dr. Olivero of Carle and, Dr. Paunicka and Dr. Fletcher to be much more credible than the opinion of Dr. Monaco. Dr. Monaco noted Petitioner could return to work without restrictions but also noticed Petitioner's condition has not improved since his accident.

The Arbitrator notes Respondent had paid Petitioner TTD from the time of the accident up until Petitioner's independent medical exam, with Dr. Monaco. The Arbitrator notes Petitioners restrictions of avoiding bending and twisting his back and 10 pound weight restriction put in place by Dr. Sutter on June 5, 2012 were never lifted. PE 3, p 63. The Arbitrator further notes Dr. Paunicka took Petitioner off work completely from the time of September 5, 2012 through Septmeber 17, 2012. PE 4, p 13.

Petitioner testified he was able to get a job within his work restrictions on October 9, 2012. On this date Petitioner began working at A.J.'s Collision Repair in Colfax, Illinois. Petitioner testified he is only seeking TTD benefits from July 14, 2012 through October 8, 2012, when he was able to find a job within his restrictions. The Arbitrator finds that Petitioner is entitled to TTD from 7/14/12 through 10/8/12.

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 Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lori Sue Morrison,
Petitioner,

vs.

NO: 08 WC 56768
10 WC 46563

Springfield Coal Company,
Respondent.

14IWCC0265

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's permanent partial disability and 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 April 22, 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.

14IWCC0265

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,500.00. 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: APR 7 - 2014

Ruth W. White

Ruth W. White

o-03/25/14
rww/wj
68

Daniel R. Donohoo

Daniel R. Donohoo

Charles J. DeVriendt

Charles J. DeVriendt

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MORRISON, LORI SUE
Employee/Petitioner

Case# **08WC056768**

10WC046563

14IWCC0265

SPRINGFIELD COAL CO/TRI-COUNTY COAL CO
Employer/Respondent

On 4/23/2013, 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:

1241 LEMP & ANTHONY PC
WILLIAM LEMP
10805 SUNSET OFFICE DR STE 203
ST LOUIS, MO 63127

0332 LIVINGSTONE MUELLER ET AL
DENNIS S O'BRIEN
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

LORI SUE MORRISON
Employee/Petitioner

v.

SPRINGFIELD COAL CO. /TRI-COUNTY COAL CO.
Employer/Respondent

Case # 08 WC 56768

Consolidated cases: 10 WC 46563

14IWCC0265

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 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: Is Petitioner owed any amounts for mileage reimbursement?

14IWCC0265

FINDINGS

On **05/12/2008** and **10/04/2010**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

Timely notice of 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 **$46,365.28**; the average weekly wage was **$891.64**.

On the date of accident, Petitioner was **44** 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 **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$6,685.38*** for other benefits, for a total credit of **$6,685.38**.

*** The parties stipulated that this amount was limited to the time period between 12/05/2011 and 04/17/2012, for which Petitioner received non-occupational lost time benefits in this amount.**

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $594.43/week for 13 3/7 weeks, commencing May 26, 2009 through July 15, 2009, and December 7, 2011 through January 18, 2012, as provided in Section 8(b) of the Act.

The medical and pharmacy charges from Springfield Clinic (Petitioner's Exhibit (PX) 3), Lincolnland Physical Therapy (PX 9), Harry's Pharmacy (PX 4), Prime Therapeutics (PX 8), and Walgreens Pharmacy (PX 11), that pertain to Petitioner's cervical spine injuries at bar are found to be reasonable and necessary, and Respondent shall pay these charges, subject to the medical fee schedule, Section 8.2 of the Act. All other charges contained in those exhibits are from medical providers whose records were not introduced into evidence and are denied for failure to prove they are related to the accidents of May 12, 2008 and October 4, 2010. Respondent is given credit for any portion of these charges it has paid prior to the issuance of this decision.

Respondent shall pay Petitioner permanent partial disability benefits of $534.98/week for 300 weeks, because the injuries sustained caused the 60% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner the benefits that have accrued from May 12, 2008 through March 6, 2013, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay Petitioner $2,084.55 in mileage reimbursement. (See Respondent's Exhibit 17).

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

04/08/2013
Date

APR 23 2013

STATE OF ILLINOIS)
)SS
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

LORI SUE MORRISON
Employee/Petitioner

v.

Case # 08 WC 56768
Consolidated Case: 10 WC 46563

SPRINGFIELD COAL CO. /TRI-COUNTY COAL CO.
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

A previous decision was entered on this matter pursuant to Section 19(b) of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act") by Arbitrator Jeffery Tobin on March 11, 2011. A copy of that decision was entered into evidence as Arbitrator's Exhibit 5 and its findings are incorporated herein by reference. The transcript of proceedings concerning that decision was entered into evidence as Arbitrator's Exhibit 4. That hearing occurred on February 10, 2011. That decision dealt with prospective medical treatment, granted Petitioner a revision fusion at C6-C7 and denied Petitioner an artificial disc replacement at C3-C4, reserving rulings on all further issues for future determination. (Arbitrator's Exhibit (AX) 2).

Subsequent to the hearing of February 10, 2011, Petitioner, Lori Sue Morrison, continued working with restrictions for Respondent, Springfield Coal Co./Tri-County Coal Co., until April 19, 2011. Respondent is in the business of coal mining. Petitioner's work assignments during that period of time were watering roads in the coal mine, a job which involved hooking and unhooking a trailer to a tractor, filling a water tank on a number of occasions during a shift and driving the tractor through the mine during the shift, watering roads to reduce dust in the mine. (See Respondent's Exhibit (RX) 10). On April 19, 2011, Dr. Donald DeGrange performed the revision fusion at C6-C7. (Petitioner's Exhibit (PX) 2).[1]

Petitioner was paid temporary total disability (TTD) benefits following that surgery, and the parties stipulated that the only periods of disputed TTD were May 26, 2009 through July 25, 2009; and December 11, 2011 through April 17, 2012. Petitioner has indicated via an "arrow" marking on Arbitrator's Exhibit 1 that Petitioner is further owed maintenance benefits from April 18, 2012 through

[1] It is noted that the evidence establishes that Dr. DeGrange was originally hired by Respondent to conduct an examination of Petitioner pursuant to Section 12 of the Act. Petitioner then began a course of treatment with Dr. DeGrange, which led to Dr. DeGrange performing surgery, as mentioned *supra*. Dr. DeGrange's reports he authored after each course of treatment of Petitioner are carbon copied to Shellie Sylvia and Debbie Grimsley. (See PX 2). Dr. DeGrange's October 1, 2010 report pursuant to Section 12 of the Act was directed to the attention of Shellie Sylvia, who is addressed at "Old Republic Insurance/WC." (PX 2). Arbitrator's Exhibit 1 indicates that Respondent's insurance company is indeed Old Republic Insurance Co.

July 9, 2012. Respondent's basis of dispute for the claimed TTD and maintenance periods is liability. (AX 1).

Petitioner's assigned duties in April and May of 2009 were those of watering roads. She said she was also assigned at times to picking up trash, which was a light duty activity. (See also RX 10). Petitioner testified that while her job normally included shoveling and building stoppings, as well as picking and scooping, she never performed any of that work while on light duty. Petitioner testified at the first hearing that she was working when examined at Respondent's request by Dr. David Lange on May 5, 2009. Dr. Lange noted in his report that while Petitioner reported wearing a hard hat caused discomfort, Petitioner could work with that discomfort, that the wearing of a hard hat would not injure Petitioner or make the herniation worse, stating that Petitioner could safely wear a hard hat and engage in light duty activities. (RX 2-4). The medical records of Dr. Joseph Williams reflect he saw Petitioner on May 26, 2009, and Petitioner advised him at that time that she had worked the previous three days and that any time she put a hard hat on she experienced numbness in her arms and hands and her symptoms worsened. Dr. Williams stated that given Petitioner's statements, he recommended she return to work, but without wearing a hard hat. (PX 7). Petitioner and her attorney agreed that, pursuant to a union contract, a third doctor's opinion was to be obtained, and that after exchanging lists of doctors' names, Petitioner's attorney suggested Dr. Robson. (AX 4, pp. 46-48).

Dr. David Robson examined Petitioner on July 15, 2009. Dr. Robson was of the opinion that Petitioner could work sedentary duty with restrictions of a 15 pound weight limit, and that the hard hat would fall within that 15 pound weight limit. (RX 5). The attendance records reflect Petitioner returned to work on July 25, 2009. (RX 10). Petitioner testified that when she returned to work she was not pain free but did feel better.

Petitioner testified that she was able to work until she had a second surgery by Dr. Williams on October 16, 2009. Petitioner was off work at that time from October 16, 2009 through March 25, 2010, when she returned to light duty work. (See RX 10).

Petitioner testified she then saw Dr. Thomas Lee, who was suggested by her attorney, and was examined at Respondent's request by Dr. DeGrange (as discussed, *supra*). Dr. Lee's suggested treatment was the subject of the prior hearing pursuant to Section 19(b) of the Act and resulting decision. (AX 5).

Petitioner testified that she decided to have surgery by Dr. DeGrange. Petitioner continued working through April 18, 2011. (RX 10). Dr. DeGrange performed the C6-C7 revision fusion with removal of hardware at C4-C5 surgery on April 19, 2011 (as discussed, *supra*). (PX 2). Petitioner stated that this surgery helped, as it eased her pain, but it did not cure her problems. Petitioner was paid TTD benefits following this surgery.

Dr. DeGrange restricted Petitioner totally from work from her surgery in April 2011 until September 7, 2011, when he sated she could return to sedentary work with a 10 pound lifting limit, five hours per day and driving of no more than twenty minutes one-way. (PX 2). Petitioner testified that she was assigned volunteer work at the Girard Public Library pursuant to those restrictions.

On October 20, 2011, Petitioner advised Dr. DeGrange that a week after starting work at the library her symptoms returned, with pain at the base of her skull as well as tingling in the elbows, hands and fingers. Dr. DeGrange's physical examination findings at that time were those of an unrelated condition, cubital tunnel syndrome. On that date he felt Petitioner could work five hours per day with a 40 pound lifting limitation and no overhead work. (PX 2).

On November 10, 2011, following continued complaints, Dr. DeGrange took Petitioner off work entirely for one week, returning her to her previous restrictions on November 17, 2011, after a MRI

showed no canal compromise or nerve root impingement and an EMG showed no evidence of radiculopathy. (PX 2).

Petitioner was examined at Respondent's request pursuant to Section 12 of the Act by Dr. Paul Matz on November 23, 2011. (RX 1). Dr. Matz's deposition testimony was entered into evidence as Respondent's Exhibit 15. Petitioner said that at the time of Dr. Matz's evaluation, she was still taking extensive pain medication and continuing to have significant pain. Dr. Matz found the fusion performed by Dr. DeGrange to have been successful with x-rays showing a solid fusion at C6-C7. He diagnosed Petitioner as having chronic cervicalgia with resolved and successfully treated radiculopathy. He noted that the EMG performed by Dr. Phillips on November 17, 2011 showed no evidence of radicular problems. Dr. Matz was of the opinion that Petitioner could perform her duties as an underground coal miner, though she might need more frequent breaks if she developed neck stiffness. He felt that since her hard hat weighed less than two pounds she could work with a hard hat. He noted that he had reviewed a video of Petitioner washing a car and noted it showed Petitioner was able to change her neck positions. (RX 1; RX 15, pp.12-13; pp. 15-16; pp. 18-19). The video surveillance in question was taken in September 2011, and was introduced into evidence as Respondent's Exhibit 18. It depicts Petitioner moving about in a relatively normal manner while washing a car for a period in excess of twenty minutes. (RX 18).

Petitioner was again seen by Dr. DeGrange on December 7, 2011. Dr. DeGrange noted that he had reviewed Dr. Matz's report and agreed with the basic contention that the x-rays showed bridging of bone at all levels. Due to Petitioner's symptoms, he ordered a SPECT scan to conclusively diagnose whether or not the fusion had completed or if there was a mechanical basis to Petitioner's symptoms. Dr. DeGrange's disability status for Petitioner on this date was "[t]emporary partial disability, 15 pound lifting limit and no helmet wearing for the time being." (PX 2). Petitioner testified she was not paid TTD benefits at that point.

The SPECT scan was performed on January 4, 2012, and the reviewing radiologist stated that it did not suggest nonunion or pseudoarthrodesis. Dr. DeGrange last saw Petitioner on January 18, 2012, and he detected no muscle spasm, noted tenderness in numerous areas but no focal motor deficits or focal sensory deficits. He interpreted the SPECT scan as showing a solid bony fusion. He stated that despite Petitioner's somatic complaints, she had reached maximum medical improvement (MMI). In regard to Petitioner's cervical spine, Dr. DeGrange's final diagnoses were C6-C7 pseudarthrosis with prior C4-C5 and C5-C6 fusions, with successful revision fusion at C6-C7 to repair the pseudarthosis. He noted that no further testing or treatment was required as it related to her work-related incident. Dr. DeGrange released Petitioner from his care and reported that she could return to work with restrictions of no underground work, as she could not tolerate the weight of the hard hat, no lifting of more than 25 pounds, no repeated bending or twisting of the neck and no prolonged work at or above shoulder level. No follow-up evaluation was required by Dr. DeGrange. (PX 2).

Petitioner said she received a letter from her manager, Archie Parker, dated April 19, 2012, indicating that since Respondent had no information that she had last worked a year earlier, on April 18, 2011, and that they had no information indicating she would be physically able to return to work and assume her normal duties, her employment was terminated. That letter indicated Respondent's intent to terminate Petitioner's employment, but also stated Respondent would re-evaluate this position if Petitioner provided it with a written medical update with a date when she would be able to return to work. (PX 6). Petitioner said she was discharged and that Respondent did not offer her any other position within the company. Petitioner said she filed a union grievance in regard to her termination and a labor arbitrator upheld Respondent's decision to terminate her employment. Petitioner later testified on cross-examination that her union classification of "OUTBY" was an underground position

at Respondent's coal mine, not on the surface, and that workers on the surface had a different classification and also had to wear hard hats.

Petitioner said that following her release by Dr. DeGrange she returned to her primary care physician, Dr. J. Eric Bleyer, the same physician who had initially referred her to Dr. Watson, who in turn had referred her to Dr. Williams. Petitioner testified that Dr. Bleyer at this point referred her to Dr. Margaret MacGregor, who saw Petitioner for the first time on March 5, 2012. Dr. MacGregor's records from this date indicate that Dr. Bleyer in fact reviewed said records. The medical notes for the March 5, 2012 visit reflect complaints of pain at the base of the skull which progressed to a headache, soreness and tenderness in the area of her elbows with her worst pain in the back of her arms into her hands. Those notes do not reflect a physical examination having been conducted. By the time Dr. MacGregor next saw Petitioner on April 12, 2012, she had undergone bilateral carpal tunnel releases by Dr. Greatting. Those conditions are not the subject matter of this claim. Petitioner's pain complaints remained in the neck; she also experienced headaches and bilateral arm, elbow and hand pain. A physical examination revealed decreased range of motion and a diagnosis of cervical spondylosis. (PX 3).

A CT scan of the cervical spine requested by Dr. MacGregor was conducted on April 25, 2012. It revealed an osseous fusion from C4 to C6 and a plate and osseous fusion at C6-C7. No stenosis was seen at any level. A myelogram of the cervical spine of that same date showed no evidence of a myelographic block. (PX 3).

On July 2, 2012, Petitioner's complaints to Dr. MacGregor were similar to previous visits. Petitioner told the doctor she could not sit for more than an hour and that keyboarding was difficult, as was anything where she had to hold her arms in front of her. Dr. MacGregor noted markedly limited range of motion of the cervical spine. She stated that even going to school would be difficult for Petitioner, did not recommend keyboarding and said she could not foresee Petitioner being involved in mining or heavy labor. (PX 3).

Petitioner testified that prior to working in Respondent's coal mine, she performed construction work, including work performing maintenance at rental units owned by her father. She said that after her termination at the mine she looked in the newspaper and online for employment opportunities, but did not note what type of work she had applied for and what response she got to her inquiries. No records in regard to such a search were introduced into evidence, although Petitioner claimed she had such documents at home. Petitioner said that commencing in early July 2012, Respondent provided vocational rehabilitation through Tracy Fortenberry, and that she cooperated with those efforts. Petitioner was paid maintenance benefits in the same amount as the TTD benefits she had received during the rehabilitation effort period. She testified that during that same period of time she also pursued further education, obtaining two grants from the state and federal governments which pay for her college coursework.

Petitioner said that during the vocational rehabilitation effort she had discussions with AT&T in regard to a customer service position and had passed testing with them, and when talking to them about the job and finding that it involved sitting, talking on the telephone and typing, she advised them she could not do those activities per Dr. MacGregor. Petitioner said that it was at this point that she decided to go to college on a full-time basis. The employer contact log filled out by Petitioner dated August 15, 2012 indicates her having passed the test for AT&T, but indicates she would in the future be interviewed in regard to that position. (RX 16). Petitioner had already decided to go to college full time in July 2012 according to her testimony and the records of Tracy Fortenberry, Respondent's vocational consultant. (RX 16). Petitioner testified that it was on August 23, 2012 that she had the conversation with a representative from AT&T, and told that person of her restrictions and of going to school full-

time. Petitioner testified that she advised Ms. Fortenberry that when the AT&T person was advised she was in school, that person told her she would not be able to work with that company. Petitioner testified that she began classes at Lincoln Land Community College three days earlier, on August 20, 2012.

Petitioner testified that as of the date of trial, she was in constant pain in her neck and shoulders, experienced difficulty moving her head from side to side and up and down, suffered from headaches and had difficulty sleeping. She said that to relieve her pain she would lie down in a reclining position to get pressure off of her neck.

The records of Lincoln Land Community College indicate Petitioner took courses and earned or is in the process of earning credit hours for the Fall 2012 and Spring 2013 semesters. (RX 11). Petitioner testified that she was pursuing a business degree and taking courses such as computer applications, business law, college algebra and introduction to accounting.

Respondent introduced the records of vocational counselor Tracy Fortenberry. Her records indicate meeting with Petitioner on several occasions between July 6, 2012 and August 22, 2012, as well as additional telephonic contact between them. The records indicate that copies were provided to counsel for both Petitioner and Respondent as they were generated. (RX 16).

Ms. Fortenberry instructed Petitioner on how to look for and apply for jobs, as well as how to dress and interview for jobs. She noted Petitioner's transferable job skills and she performed labor market research in the Greater Springfield, Illinois area. Following her initial meeting with Petitioner and Petitioner's attorney and performing labor market research and after considering Petitioner's work history and the restrictions set out by Drs. Matz, DeGrange and MacGregor, Ms. Fortenberry was of the opinion that Petitioner could seek employment and return to work. Ms. Fortenberry reported in her initial report that Petitioner told her at their first meeting that she had not begun a job search on her own. (RX 16).

Ms. Fortenberry periodically provided Petitioner with lists of employers to contact and Petitioner provided Ms. Fortenberry with contact logs indicating contacts she had made with potential employers. In her second report, Ms. Fortenberry noted that she had instructed Petitioner was not to disclose her restrictions to potential employers and was only to disclose the restrictions if an employer noted a job task that exceeded her physical capabilities so reasonable accommodations could be discussed. During their second meeting, Petitioner advised Ms. Fortenberry that she was seeking financial aid grant assistance to attend Lincoln Land Community College in the Fall. Ms. Fortenberry met with Petitioner at the college on July 25, 2012, and noted that they discussed that Petitioner was to continue a full-time employment search even if she was to attend school, with Petitioner noting that she could at least work part-time while doing so. (RX 16)

The latest medical record introduced into evidence was the February 11, 2013 office note of Dr. MacGregor. At that time, Petitioner was complaining of neck pain with numbness in both hands and a feeling of coldness in the hands. Petitioner was taking Gabapentin three times per day, which she said was helping somewhat. Dr. MacGregor's physical examination findings included findings of a supple neck, a good range of motion, weakness in squeezing the hands and good movement of all extremities. Continued use of Gabapentin and a Medrol Dosepak was prescribed. (PX 3).

Medical bills were introduced from the following providers where medical records indicate treatment for medical conditions claimed to be as a result of these accidents: Springfield Clinic (PX 3); Lincolnland Physical Therapy (PX 9); Harry's Pharmacy (PX 4); Prime Therapeutics (PX 8); and Walgreens Pharmacy (PX 11). As stated above, Petitioner underwent treatment for carpal tunnel syndrome, and that treatment is not the result of the work accidents in question. Therefore, medical

bills for any treatment concerning the carpal tunnel injury, or any other injury not at issue, will not be awarded in this matter. Further, a substantial amount of the medical bills in evidence were paid via Respondent's insurance, and Respondent shall have any and all applicable credit in regard to those bills paid.

Petitioner introduced a list of trips for which she was requesting mileage reimbursement. (PX 5). She also admitted a subsequent list of trips that were corrected to show the total amount claimed owed as $3,823.11. (PX 12). Respondent introduced a list of mileage it stipulated it believed was subject to reimbursement, totaling $2,084.55 (based on 4,087.36 miles at a rate of $0.51 per mile). (RX 17). The only testimony in regard to mileage was Petitioner saying that she did not wish to be reimbursed for more mileage than she had actually driven, when on cross-examination it was noted that on a number of occasions multiple requests were made for a single trip to a physician's office and where the address used for the destination was in the wrong city. (See PX 5). Counsel for Petitioner stated that the list was prepared by his office and agreed duplicate claims should be removed. Neither Petitioner nor any other witness testified as to how the distances were determined for any of the trips listed.

CONCLUSIONS OF LAW

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?

Petitioner testified that she her initial choice of physician was Dr. Bleyer, her primary care physician. She stated that he referred her to Dr. Watson. Dr. Watson referred Petitioner to Dr. Williams. Both Dr. Watson and Dr. Williams are within the chain of referrals of the first doctor of choice. (See PX 7). Petitioner testified that Dr. Bleyer referred her to Dr. MacGregor. This is confirmed in the records of Dr. MacGregor. Dr. MacGregor is within the chain of referrals of the first doctor of choice. (PX 3)

Petitioner testified that she saw Dr. Lee on the recommendation of her attorney, not on the referral of Dr. Bleyer. Dr. Lee is Petitioner's second physician of choice.

Petitioner was examined at Respondent's request by Dr. DeGrange pursuant to Section 12 of the Act on October 1, 2010. Petitioner then chose to undergo medical treatment with Dr. DeGrange. However, no bills for treatment by Dr. DeGrange were introduced into evidence.

The medical and pharmacy charges from Springfield Clinic (PX 3), Lincolnland Physical Therapy (PX 9), Harry's Pharmacy (PX 4), Prime Therapeutics (PX 8), and Walgreens Pharmacy (PX 11) that pertain to Petitioner's injuries at bar are found to be reasonable and necessary, and Respondent shall pay these charges, subject to the medical fee schedule, Section 8.2 of the Act. All other charges contained in those exhibits are from medical providers whose records were not introduced into evidence and are denied for failure to prove they are related to the accidents of May 12, 2008 and October 4, 2010. Respondent is given credit for any portion of these charges it has paid prior to the issuance of this decision.

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

Petitioner is found to be temporarily and totally disabled from May 26, 2009 to July 15, 2009, a period of 7 2/7 weeks, and from December 7, 2011 to January 18, 2012, a period of 6 1/7 weeks, for a total of 13 3/7 weeks, and not thereafter. These findings are based on the following facts:

Petitioner testified at the first hearing that she was working when examined at Respondent's request by Dr. Lange on May 5, 2009. She further testified that Respondent repeatedly accommodated her restrictions when she returned to work. Dr. Lange noted in his report that while Petitioner reported

wearing a hard hat caused discomfort, Petitioner could work with that discomfort, that the wearing of a hard hat would not injure Petitioner or make the herniation worse, stating that Petitioner could safely wear a hard hat and engage in light duty activities. (RX 2-4). On May 26, 2009, Dr. Williams recommended Petitioner return to work, but without wearing a hard hat. (PX 7). Petitioner's underground mining job required everyone to wear a hard hat. Petitioner and her attorney agreed that pursuant to a union contract a third doctor's opinion was to be obtained, and that after exchanging lists of doctor's names, Petitioner's attorney suggested Dr. Robson. Dr. Robson examined Petitioner on July 15, 2009, and was of the opinion that Petitioner could work with restrictions of a 15 pound weight limit and that the hard hat would fall within that 15 pound weight limit. (RX 5). The attendance records reflect Petitioner returned to work on July 25, 2009. (RX 10). No explanation was given for why Petitioner failed to return to work immediately after the third physician opined that she could work while wearing a hard hat.

Following Petitioner's third cervical surgery of April 19, 2011, Dr. DeGrange restricted Petitioner totally from work until September 7, 2011, when he sated she could return to sedentary work with a 10 pound lifting limit, five hours per day and driving of no more than twenty minutes one-way. Petitioner testified that she was assigned work at the Girard Public Library pursuant to those restrictions. On October 20, 2011, Petitioner advised Dr. DeGrange that a week after starting work at the library her symptoms returned, with pain at the base of her skull as well as tingling in the elbows, hands and fingers. Dr. DeGrange's physical examination findings at that time were those of an unrelated condition, cubital tunnel syndrome. On that date he felt Petitioner could work five hours per day with a 40 pound lifting limitation and no overhead work. On November 10, 2011, following continued complaints, Dr. DeGrange took Petitioner off work entirely for one week, returning her to her previous restrictions on November 17, 2011, after an MRI showed no canal compromise or nerve root impingement and an EMG showed no evidence of radiculopathy. (PX 2).

Dr. Matz performed an examination of Petitioner at Respondent's request pursuant to Section 12 of the Act on November 23, 2011, and found Petitioner's recent surgery had resulted in a successful fusion with the recent MRI showing no cervical stenosis. Dr. Matz had also viewed the video surveillance of Petitioner washing a car on September 25, 2011, and noted that in that video she appeared to flex her neck beyond what she had done for him during his examination of November 23, 2011. He stated that in the video she appeared to be moving about quite easily doing the car washing activities. (RX 1; RX 15, pp. 12-13). He was of the opinion that Petitioner was as of that time suffering from cervicalgia which he felt was minor and that she was capable of working in a coal mine and wearing a helmet and lamp weighing less than two pounds as the head itself weighed a lot more than two pounds, though he noted she might need more frequent breaks if she developed neck stiffness from prolonged work. (RX 1; RX 15, pp.18-19).

On December 7, 2011, Dr. DeGrange ordered a SPECT scan to definitively prove whether the fusion was solid and restricted Petitioner's work to 15 pounds of lifting and no wearing of a helmet/underground work. Dr. DeGrange last saw Petitioner on January 18, 2012, and noted that the SPECT scan showed Petitioner had a solid bony fusion. His physical examination on that date revealed no spasm in the neck, diffuse tenderness in the cervical region, and no focal motor or sensory deficits. He declared Petitioner to be at MMI, stated that there was no further orthopedic or neurologic testing or treatment required, and discharged her from his care, stating she could work with a 25 pound lifting restriction, no repeated bending or twisting of the neck, no prolonged work at or above shoulder level and no wearing of a hard hat. (PX 2).

While Petitioner testified that she had looked for work prior to the institution of vocational rehabilitation assistance, she did not identify when she began looking for work, what type of work she

was seeking, where she had applied for work, or introduce any exhibits evidencing such activity. For an award of TTD benefits, it is not sufficient that Petitioner merely prove she did not work; she must prove she could not work. *Arbuckle v. Industrial Comm'n*, 32 Ill.2d 581, 586, 207 N.E.2d 456 (1965). In determining if temporary total disability is to be paid, the "dispositive test is whether the condition has stabilized, because a claimant is entitled to TTD when a 'disabling condition is temporary and has not reached a permanent condition.'" *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 175, 741 N.E.2d 1144 (5th Dist. 2000). Here, Petitioner's condition had stabilized and reached a permanent condition by January 18, 2012, when Dr. DeGrange stated no further testing or treatment was needed and declared her at MMI. While Petitioner subsequently sought follow-up care from Dr. MacGregor beginning March 5, 2012, Dr. MacGregor's treatment has been limited to evaluation, diagnostic testing, and prescription of medication; no specific work restrictions have been issued by that physician. (See PX 3).

Petitioner failed to introduce any evidence in regard to her alleged search for work between January and July of 2012, such as job search logs, lists of employers contacted during that period or copies of applications for employment. When questioned in regard to this matter, she testified she had those materials at home. Again, no such documentation was ever offered into evidence. Further, Ms. Fortenberry's vocational records indicate that Petitioner informed her that she had not engaged in a job search as of the first meeting with Ms. Fortenberry in July 2012. The weight of the evidence thus indicates that Petitioner did not prove she engaged in a self-directed job search during the period in question.

Based on the foregoing, Petitioner has failed to prove she was entitled to any TTD or maintenance benefits from January 18, 2012 through the commencement of her vocational rehabilitation program with Ms. Fortenberry on July 6, 2012.

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

Petitioner has undergone three different surgical procedures to her cervical spine. The first was a C5-C6 and C6-C7 anterior cervical discectomy and fusion performed by Dr. Williams on October 9, 2008. The second was a C4-C5 anterior discectomy and fusion with removal of the hardware from the prior surgery, again performed by Dr. Williams on October 16, 2009. The third surgery, performed by Dr. DeGrange on April 19, 2011, was a C6-C7 fusion with removal of the hardware at C4-C5.

Prior to these accidents, Petitioner was able to perform her regular duties as an underground coal miner, work that required physical labor and the wearing of a hard hat. She returned to work in the coal mine at various times between the date of the first accident and the date of her eventual job termination by Respondent when it became apparent her restrictions would not allow her to return to work pursuant to her treating physician's restriction of not wearing a hard hat, which is required for underground coal mining. Respondent accommodated her attempts to return to work with restrictions, providing her with work within those restrictions.

Respondent did attempt to assist Petitioner in finding employment in the Summer of 2012, but Petitioner chose to attend college on a full time basis instead of seeking permanent employment. As of the date of trial, Petitioner was attending Lincoln Land Community College on a full time basis, pursuing a business degree. She noted that government grants were covering the cost of her education.

Petitioner testified that as of the date of trial, she continues to have complaints of neck and shoulder pain, difficulty moving her head from side to side and up and down, headaches and difficulty sleeping.

As a result of these accidents, Petitioner has suffered a 60% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act. The Arbitrator finds guidance in the basis of this award in the

Commission decision of *Landreth v. Landreth Lumber Company*, 11 IWCC 532 (June 1, 2011). In *Landreth*, the petitioner underwent three surgeries at three cervical levels, similar to the case at bar. The petitioner in that case was unemployed as of the date of trial and his employer was no longer business. In *Landreth*, however, there was no evidence of any permanent restrictions, nor was there evidence that the petitioner was unemployed due to a result of his work injuries. The Commission awarded 55% loss of use of the person as whole pursuant to Section 8(d)2 of the Act in *Landreth*.

Issue (O): Is Petitioner owed any amounts for mileage reimbursement?

Petitioner introduced a list of trips for which she was requesting mileage reimbursement. (PX 5; PX 12). Respondent introduced a list of mileage it stipulated it believed was subject to reimbursement. (RX 17). The only testimony in regard to mileage was Petitioner saying that she did not wish to be reimbursed for more mileage than she had actually driven, when on cross-examination it was noted that on a number of occasions multiple requests were made for a single trip to a physician's office and where the address used for the destination was in the wrong city. Counsel for Petitioner stated that the list was prepared by his office and agreed duplicates should be removed. Petitioner offered a "corrected" mileage chart as Petitioner's Exhibit 12. Neither Petitioner nor any other witness testified as to how the distances were determined for any of the trips listed.

While Petitioner has failed to prove with specificity the exact mileage she traveled on account of these accidents, and her initial mileage reimbursement list admittedly contains several duplicate requests for reimbursement for single trips, as well as an erroneous address for the Girard Public Library (placing it in a distant city), it is clear she did travel to physicians, therapists, rehabilitation meetings, etc. Respondent introduced its own proposed list of mileage. (RX 17). This list contains the majority of dates alleged by Petitioner and is treated as a stipulation by Respondent that these miles are reimbursable.

Based on the foregoing, the Arbitrator awards Petitioner mileage reimbursement based on Respondent's stipulated amounts as set forth in Respondent's Exhibit 17, $2,084.55.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Debbie Smith,

Petitioner,

vs. NO: 12 WC 010237

14IWCC0266

Dana Sealing Manufacturing,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by both parties herein and notice given to all parties, the Commission, after considering the issue of nature and extent of Petitioner's 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.

On September 13, 2013, the Arbitrator caused an arbitration decision to be filed with the Commission, one in which awarded partial disability benefits under both Section 8(e)1 of the Act and under Section 8(e)9, respectively. The benefits compensated Petitioner for the crushing injury to her right hand, an injury that resulted in multiple surgeries, including the excision of nectrotic tissue of the pulp from her right thumb. Both parties appealed the decision and, in doing so, conferred jurisdiction upon the Commission to review the arbitration decision. In reviewing the arbitration decision, the Commission agrees with benefit awarded under Section 8(e)1 but finds it appropriate to increase the benefit awarded under Section 8(e)9.

The Commission takes notice that the lingering effects of Petitioner's injury to her right hand has resulted in the diminution of both the quality of her work for Respondent but also of her ability to engage in her pursuits outside of this work, namely the cutting hair and engaging in a craft business in which she sewed dolls, pillows and decorative art. To compensate Petitioner for this, the Commission modifies the benefits awarded under Section 8(e)9 upwards, finding

14IWCC0266

Petitioner lost 50% use of her right hand.

All other findings and conclusions of law contained in the September 13, 2013, arbitration decision are affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $356.39 per week for a period of 140.5 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 50% loss of use of her right thumb and the 50% loss of use of her right hand, respectively.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the unpaid charge from Indiana University Health 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 $61,600.00. 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: APR 0 8 2014
KWL/mav
O: 03/17/14
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0266

SMITH, DEBBIE
Employee/Petitioner

Case# **12WC010237**

DANA SEALING MANUFACTURING
Employer/Respondent

On 9/13/2013, 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 0.03% 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:

1608 MOSS & MOSS PC
DAVID MOSS
122 WARNER CT PO BOX 655
CLINTON, IL 61727

0180 EVANS & DIXON LLC
JAMES M GALLEN
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

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
NATURE AND EXTENT ONLY

14IWCC0266

DEBBIE SMITH
Employee/Petitioner

v.

DANA SEALING MANUFACTURING
Employer/Respondent

Case # 12 WC 10237

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 **Urbana**, on **July 18, 2013**. By stipulation, the parties agree:

On the date of accident, **April 6, 2011**, 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 **$29,105.39**, and the average weekly wage was **$593.99**.

At the time of injury, Petitioner was **52** 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 **$6,674.41** for TTD, **$0** for TPD, **$0** for maintenance, and **$13,542.82** for other benefits (permanent partial disability benefit advance payment). All TTD has been paid, so Respondent is entitled to a credit of **$13,542.82** for permanency paid.

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 $356.39/week for a further period of 120 weeks, as provided in Sections 8(e)1, 8(e)8 and 8(e)9 of the Act, because the injuries sustained caused the amputation of the distal phalanx of Petitioner's right thumb (50% loss of use of the thumb), and the 40% loss of use to the right hand.

Per agreement, Respondent is ordered to pay the unpaid charge from Indiana University Health contained in Petitioner's Exhibit 8, subject to the medical fee schedule, Section 8.2 of the Act.

Respondent is entitled to a credit for $13,542.82 for permanency paid on this claim, as noted above.

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

09/09/2013
Date

SEP 13 2013

STATE OF ILLINOIS)
)SS
COUNTY OF CHAMPAIGN)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

DEBBIE SMITH
Employee/Petitioner

14IWCC0266

v.

Case # 12 WC 10237

DANA SEALING MANUFACTURING
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Debbie Smith, was at all relevant times herein employed by Respondent, Dana Sealing Manufacturing, as a "utility," meaning that she performed every job in the plant that needed to be done. She is right hand dominant. On April 6, 2011, she and a co-worker were cleaning a branding machine. While wiping alcohol off the table, the roller of the machine grabbed the rag and pulled her right hand into the roller. After that she noticed that her thumb was hanging off and her hand was stuck in the rollers. She was then taken by ambulance to Crawford Memorial Hospital, where she was in turn transferred by air ambulance to Indiana University Hospital, also known as Methodist Hospital. She was treated and released the same day. (Petitioner's Exhibit (PX) 4; PX 5).

On April 7, 2011, Petitioner came under the care of Dr. William McDonald, who gave conservative treatment. He then referred Petitioner to Southern Illinois Hand Center, where she was seen by Dr. Nash Naam. Dr. Naam performed surgery on April 20, May 4 and September 28, 2011.

Petitioner first saw Dr. Naam on April 19, 2011, on a referral from Dr. McDonald. She complained of pain mainly in the right thumb and numbness in the long and ring fingers. Because of concerns about the thumb, Dr. Naam determined to operate as soon as possible. On April 20, 2011, Dr. Naam performed surgery consisting of the following:

1. Extensive debridement and irrigation of deep lacerations of the volar aspect of the right long and ring fingers;
2. Microneurosurgical neuroplasty of the radial digital nerve of the right long finger;
3. Microsurgical exploration and neuroplasty of the radial digital nerve of the right ring finger;
4. Excision of necrotic tissue of the pulp of the right thumb;
5. Open treatment of open fracture of the distal phalanx of the right thumb;
6. Soft tissue coverage of the traumatic amputation of the right thumb using cross-finger pedicle flap from the dorsal aspect of the proximal phalanx of the right-index finger;
7. Full-thickness skin graft of the secondary defect of the right index finger from the right elbow;
8. Extensive debridement of deep lacerations of the right long and ring fingers; and
9. Application of a short-arm splint.

(PX 7).

On May 4, 2011 Dr. Naam performed a second surgery consisting of a division and in-setting of cross-finger pedicle flap of the right thumb; and secondary closure of dehiscence of the of the right long finger wound of one centimeter and of the right ring finger wound of two centimeters. (PX 7).

Petitioner followed-up with Dr. Naam on May 10, 17, & 24, 2011. At each visit Petitioner was doing well. At the June 7, 2011 visit, Dr. Naam diagnosed chronic regional pain syndrome (CRPS), for which he recommended medication and therapy. By June 21, 2011, she was doing much better and was determined to have progressive improvement of CRPS. At the July 5, 2011 visit, Petitioner was doing much better and the CRPS had improved significantly. Dr. Naam released Petitioner to return to light duty work with the restriction of not lifting more than two pounds with her right hand. He advised no further surgery until her hand function improved, and the CRPS was markedly improved. By July 19, 2011, she had improved to the point that the doctor recommended scar excision and Z-plasties of the scars of the MP joints of the long and ring fingers. At the August 2, 2011 visit, they were still awaiting the approval for surgery, so Dr. Naam recommended Petitioner resubmit her request for authorization. Approval was received and the surgery was scheduled by the September 22, 2011 visit. (PX 7).

On September 28, 2011, Dr. Naam performed a surgery consisting of excision of the contracted scar of the metacarpal phalangeal joint of the right long finger with a Z-plasty of the metacarpalphalangel joint of the right long and ring fingers. (PX 7).

Petitioner's first post-operative visit was on October 3, 2011, and the dressings were changed on that date. By October 17, 2011, she was doing very well and could return to light duty starting the next day. She was to continue light duty, but the weight limit was raised to 10 pounds. At the November 28, 2011 visit, Dr. Naam released Petitioner to regular work activities. During the December 13, 2011 visit, Dr. Naam concluded that Petitioner would reach maximum medical improvement (MMI) in approximately 6 months. At the last visit of January 10, 2012, Petitioner was doing very well and was released to return on an "as-needed" basis. (PX 7).

At trial, Petitioner stated that she has no feeling in the thumb from the second joint to the end, and no feeling in the entire long finger or partial of the ring finger. She testified that her right palm is numb. She cannot straighten out her long or ring fingers totally and cannot give a proper grip. She says that she finds it difficult to grip or grasp with her right hand. Petitioner does not believe her work quality is the same as before the accident, but testified that she always endeavors to give 100% effort. She can no longer cut hair, as she did before the accident. Petitioner had a craft business before the accident. As a part of that business, she would sew dolls, pillows, and decorative art. She stated that this business was one of her "passions." She can no longer sew as she cannot control the needles and scissors due to her hand and finger conditions. She last saw Dr. Naam on January 10, 2012.

CONCLUSIONS OF LAW

The Arbitrator initially finds that Petitioner suffered an amputation of the distal phalanx of the right thumb entitling her to 50% loss of use of the thumb under Sections 8(e)1 and 8(e)8 of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq*. (hereafter the "Act").

In addition to the amputation of the distal phalanx of the right thumb, Petitioner suffered from extensive injuries to her fingers that necessitated three surgical operations. In determining the permanency award, the Arbitrator notes the diagnoses given in regard to her fingers, the extensive nature of the three surgical procedures, and Petitioner's current and credible subjective complaints regarding her fingers and hand, as discussed *supra*. Taking into account the foregoing, the Arbitrator finds that Petitioner has sustained the 40% loss of use to the right hand pursuant to Section 8(e)9 of the Act.

All temporary total disability benefits have been paid, and there is no credit for overpayment or claim for underpayment. Respondent is entitled to a credit for $13,542.82 in permanent partial disability benefits paid to date on this claim.

It is further noted that liability for unpaid medical bills is not in dispute and pursuant to a stipulation by the parties, Respondent is ordered to pay the unpaid charge from Indiana University Health contained in Petitioner's Exhibit 8 in accordance with Section 8.2 of the Act.

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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JON LUCHSINGER,

Petitioner,

vs.

NO: 12 WC 44551

14IWCC0267

IL DEPT. OF CORRECTIONS,

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 penalties and fees and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission 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 Respondent's reliance upon the causation opinion of its §12 examiner, Dr. Lami, was not unreasonable and vexatious. As such, we vacate the award of penalties under §19(k) and the attorneys' fees under §16. However, we affirm the award of penalties under §19(l). We note that Respondent did not have Petitioner examined by Dr. Lami until May 15, 2013, and Respondent admitted in its brief that it had not paid temporary total disability (TTD) from February 27, 2013, when Dr. Rubenstein first took Petitioner off work, through March 14, 2013.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $1,287.87 per week for a period of 33-1/7 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 Respondent pay to Petitioner the sum of $16,338.77 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner additional compensation of $4,500.00 as provided in §19(l) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's awards for penalties under §19(k) and attorneys' fees under §16 of the Act are hereby vacated.

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

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

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

DATED: APR 0 9 2014

Charles J. DeVriendt

Ruth W. White

Daniel R. Donohoo

SE/
O: 3/19/14
49

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b-1) DECISION OF ARBITRATOR

LUCHSINGER, JON
Employee/Petitioner

Case# **12WC044551**

ILLINOIS DEPARTMENT OF CORRECTIONS
Employer/Respondent

14IWCC0267

On 12/9/2013, 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 $ 476.00 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 0.10% 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
MICHAEL W HORWITZ
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

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

5120 ASSISTANT ATTORNEY GENERAL
DAVID PAEK
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

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

DEC 9 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

14IWCC0267

STATE OF ILLINOIS)
)SS.
COUNTY OF Will)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b-1)

Jon Luchsinger
Employee/Petitioner
v.
Illinois Department of Corrections
Employer/Respondent

Case # 12 WC 44551

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 **August 30, 2013**. Respondent filed a *Response* on **September 19, 2013**. The Honorable **George Andros**, Arbitrator of the Commission, held a pretrial conference on **October 16, 2013**, and a trial on **October 16, 2013**, in the city of **New Lenox**. 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, **December 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 **$100,453.60**; the average weekly wage was **$1,931.80**.

On the date of accident, Petitioner was **57** 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 **$15,086.86** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$15,086.86**.

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 $1,287.87/week for 33.14 weeks, commencing February 27, 2013 through October 16, 2013, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $16,338.77, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay to Petitioner penalties of **$16,196.95**, as provided in Section 16 of the Act; **$21,965.96**, as provided in Section 19(k) of the Act; and **$4,500.00**, 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 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 $476.00 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, 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 George Andros

December 6, 2013
Date

ICArbDec19(b-1) p. 2

DEC - 9 2013

STATEMENT OF FACTS

On December 13, 2012 the petitioner, Jon Luchsinger, was employed by the respondent, Illinois Department of Corrections, as the Chief Engineer at the Dwight Correctional Center in Dwight, Illinois. The petitioner had been employed by the respondent for approximately 14 years at that time.

As chief engineer, the petitioner worked with 5 employees under his supervision, including electricians, carpenters, laborers and plumbers. The petitioner's staff was shorthanded, so the petitioner would work with each of the tradesmen when needed, performing all the activities of the tradesman as part of his duties. As part of his work duties, the petitioner replaced processed piping and recharge lamps, changed toilets, rodded out drains and performed any other task as necessary. The petitioner's job also required that he lift furniture such as beds and tables, and equipment like rodders and boxes of hand tools. The lifting involved in the petitioner's position could range anywhere from 5 to 80 pounds. The petitioner's job duties further required him to climb ladders and scaffold, crawl into tight spaces and work frequently overhead.

On December 13, 2012, the petitioner was emptying a 40-50 pound garbage can into a 5 foot tall garbage tote. The petitioner testified that as he lifted the can, he attempted to balance its weight on the tote. However, the edge of the can slipped from the tote and the petitioner caught the weight of the can by "muscling" it back up to stop the can from falling. The petitioner testified that he immediately felt pain into his arms, hands and neck. The petitioner explained that this pain was different than any pain he had felt in his arms or hands before.

On December 21, 2012, the petitioner was seen by Dr. Scott Rubenstein at the Illinois Bone and Joint Institute for sore hands, wrists, arms and neck. It is noted in Dr. Rubenstein's report that the petitioner's symptoms onset on December 13, 2012 with his work accident. Dr. Rubenstein prescribed medication and laboratory studies for the petitioner and recommended a follow up visit. (PX 1).

On January 14, 2013, the petitioner was seen by Dr. Rubenstein again. Dr. Rubenstein reviewed the petitioner's lab work and recommended that he be evaluated by a rheumatologist. He also recommended physical therapy for the petitioner's pain in the neck and shoulders. (PX 1).

On January 28, 2013, the petitioner began physical therapy at Provena St. Joseph Medical Center. (PX 8).

Also on January 28, 2013, the petitioner was seen by Dr. Charles Geringer for a rheumatology consult. Dr. Geringer found that the petitioner did not have any significant evidence of an inflammatory or collagen vascular disease. Dr. Geringer did suspect that the petitioner could have a cervical syndrome and recommended an x-ray for that. The petitioner did undergo that x-ray, which revealed mild degenerative changes in the lower cervical spine. At trial, the petitioner testified that this was the only time he ever saw Dr. Geringer. (PX 8).

On February 20, 2013, the petitioner followed up with Dr. Rubenstein. The petitioner complained of continued pain in his neck with radiation down into his arm that was not helped by physical therapy. Dr. Rubenstein recommended a MRI of the cervical spine. (PX 1).

On February 25, 2013, the petitioner underwent a MRI of the cervical spine. The MRI report states, "Multilevel spondylotic changes of the cervical spine are seen. Multilevel spinal stenosis seen throughout the cervical spine however no gross cord compression, cord edema or cord myelomalacia is seen. This appears to be worst at the

level of C3-C4 where there is effacement of the ventral cervical spinal cord by the spondylotic ridge formation present. Multilevel neural foraminal narrowing and uncovertebral hypertrophy and facet disease is present." (PX 1).

On February 27, 2013, the petitioner was seen by Dr. Rubenstein who reviewed the MRI results. Dr. Rubenstein opined that the mild-to-moderate stenosis at multiple levels as well as foraminal stenosis most significantly at the C3-4 level was probably responsible for a lot of the radicular symptoms the petitioner was feeling. Dr. Rubenstein took the petitioner off work due to the threat of worsening his condition with his work duties and recommended epidural steroid injections. Dr. Rubenstein also found that the petitioner's condition was causally related to his work accident, stating "While I am sure some of the degenerative changes pre-existed his injury, he was previously asymptomatic, and I think that this has caused some inflammation of the soft tissues in addition to the degenerative changes that are causing increased compression on his nerves." (PX 1).

The petitioner was then seen by Dr. Anas Alzoobi at Health Benefits Pain Management on March 19, 2013. Dr. Alzoobi recommended physical therapy and that the petitioner be scheduled for epidural steroid injections. (PX 2).

On April 2, 2013 and April 16, 2013, the petitioner underwent cervical epidural steroid injections, performed by Dr. Alzoobi, who kept the petitioner on an off work status. (PX 2).

The petitioner returned to Dr. Rubenstein for a follow up on April 26, 2013. At that time, Dr. Rubenstein noted that the petitioner had gotten some relief from the injections. However, Dr. Rubenstein further stated, "With his spinal stenosis still, I am a little concerned ultimately that returning back to the environment he was working in could be risky and dangerous for him. As you are well aware, working in a prison with a lot of people puts him at risk for being assaulted and injured, and further injury to his neck could lead to significant downsides and even partial paralysis." Dr. Rubenstein recommended physical therapy for the neck and cleared the petitioner to return to work with restrictions of no lifting greater than 25 pounds in a safe environment where he is not at risk for being injured by the people around him. (PX 1).

On May 20, 2013, the petitioner was seen for a Section 12 examination by Dr. Michael Vender of Hand to Shoulder Associates at the request of the respondent, Illinois Department of Corrections (hereinafter IDOC). Dr. Vender noted that the petitioner's symptoms were consistent with the diagnosis of cervical spine disease with suspected irritation of cervical roots leading to cervical radiculitis and/or cervical radiculopathy. He also diagnosed ulnar impaction of both wrists along with right thumb carpal-metacarpal joint arthritis. He went on to state that he could not opine on causation for the petitioner's cervical radiculopathy. But, he opined that the ulnar impaction and thumb arthritis were not related to the petitioner's December 13, 2012 work accident. Dr. Vender further stated that he would not say the petitioner had reached MMI for his cervical spine issues. He found that the petitioner could return to work from the standpoint of his wrists, but deferred on his ability to work from a cervical perspective. (RX 5).

On May 25, 2013, the petitioner was seen for another Section 12 examination at the request of the respondent with Dr. Babak Lami. Dr. Lami opined that the petitioner had sustained only a neck sprain in his accident and that the degenerative changes in the cervical spine were due only to the petitioner's personal health. He further opined that the petitioner had reached MMI and that he could return to full duty work without restriction as a result of the December 13, 2012 work related accident. (RX 4).

On June 3, 2013, the petitioner was seen again by Dr. Rubenstein. Dr. Rubenstein had the opportunity to review the petitioner's Section 12 examination from Dr. Lami. Dr. Rubenstein then opined:

"I take issue with Dr. Lami's opinion for a number of reasons; patient was asymptomatic prior to his injury despite having preexisting cervical spondylolysis as mentioned in Dr. Lami's notes. As I mentioned previously, he has mild-to-moderate cervical stenosis, most significantly at the C3-4 level, and while I certainly agree with Dr. Lami that a lot of his cervical arthritic changes predated his injury, the fact that he was asymptomatic prior to the injury implies to me that there was some inflammatory component of the injury that occurred at that time that has increased his cervical radicular symptoms and nerve-related pain due to narrowing and compression of the nerves in the spinal canal. I think that his injury at the time of his workplace incident was more than just a simple cervical neck sprain as Dr. Lami mentions, but rather an injury that also created some swelling within the spinal canal which has caused increased pressure on his nerves and a lot of his radicular-type symptoms. While through medication and epidurals He has gotten somewhat better, he has not reached his pre-injury asymptomatic state and is concerned about reinjury while returning to work which is a concern that I share as well. As far as maximum medical improvement is concerned, I think at this point without further intervention he is at maximum medical improvement. I think he is still having some mild radicular symptoms as well as some cervical symptoms related to his degenerative changes and the aggravation of it at the time of his injury. I would classify this injury primarily as a significant aggravation of a preexisting condition rather than an entirely new injury, but at the same time I would not completely discount anything related to that as being outside the realm of his workplace injury since his symptoms were brought on and have not resolved fully due to the significant aggravation of his preexisting cervical spine degenerative condition. Indeed, since he is not fully recovered from his symptoms despite epidurals and medication, there is a possibility he is going to need some further and more extensive intervention in the form of surgery, possibly a decompression and fusion at certain levels in the cervical spine." (PX 1).

Dr. Rubenstein placed the petitioner on restrictions of no lifting greater than 25 pounds and no overhead work, with a note that the petitioner was to be off work if no light duty was available. (PX 1).

On September 16, 2013, the petitioner was seen by Dr. Rubenstein. At that time, Dr. Rubenstein stated "With the MRI findings and patient's continued cervical spine symptoms and those in his upper extremities, I do not think it is likely that he is going to be able to return back to the type of work he was doing previously." He further opined that there was no additional treatment for the petitioner that would improve his condition. The petitioner was considered to be at maximum medical improvement, absent future surgical intervention if his cervical condition worsened. (PX 1).

At trial, it was noted for the record that if Dr. Rubenstein had been called to testify and a proper hypothetical question had been asked of him, he would testify that the current condition of ill-being in the petitioner's cervical spine was causally related to his December 13, 2012 work accident and that all care and treatment for the petitioner's arms, hands and cervical spine had been reasonable and necessary.

At trial, the petitioner testified that the Dwight Correctional Center had closed in May of 2013. During its closing, although the petitioner was still off work, he was informed by the State that he would be transferred to the Pontiac Powerhouse. The petitioner testified that he has never been back to work following the closure of the Dwight facility. He did contact an employee of IDOC at the Pontiac facility in human resources. He requested work

within his physical restrictions from IDOC. No light duty work has been offered to him by the IDOC, or any State agency. The petitioner testified that he understands the regular job in Pontiac to be heavy physical work, operating and maintaining a high pressure facility.

The petitioner further testified that neither the job of chief engineer at Dwight, nor the job at the Pontiac Powerhouse, fall within the physical restrictions placed on him in June of 2013.

Since being placed on permanent restrictions, the petitioner has conducted a self-directed job search, as detailed in Petitioner's Exhibit 12. The petitioner has received no job offers during this search. No vocational assistance has been offered by the respondent in this case.

Petitioner remains and is still an employee of the State of Illinois.

Prior to December 13, 2012, the petitioner had no history or neck pain or neck treatment. The petitioner had never been disabled from his job prior to December 13, 2012. The petitioner has never been pain free since December 13, 2012.

The petitioner further testified about his current condition. The petitioner's hands are constantly swollen and sore. The petitioner experiences soreness and pain in his neck, with tingling when performing certain movements. For example, the petitioner will experience shooting pain in the neck while he is opening a jar. The petitioner described one particular incident when he was attempting to assist his elderly mother out of a chair and felt pain in his hands and neck. The petitioner experiences pain in his hands, neck and in the back or his arms when stretching or reaching. When active, the petitioner experiences pain in the neck, arms and hands the next day. The petitioner has been trying to live his life within the restrictions placed on him by Dr. Rubenstein.

The petitioner tries to avoid taking medication, but will take Ibuprofen approximately every other day, sometimes up to 6 doses in a day.

CONCLUSIONS OF LAW

I. On the issue of whether an accident occurred that arose out of and in the course of the petitioner's employment by respondent, (C), the arbitrator hereby finds:

After reviewing all evidence and testimony in this matter, the arbitrator finds that an accident did occur that arose out of and in the course of the petitioner's employment by respondent.

The arbitrator finds that the petitioner's testimony regarding his December 13, 2012 work accident to have been honest and credible. Furthermore, the petitioner's testimony is supported by the records in this case.

On December 14, 2012, the petitioner filled out a CMS accident report, detailing his accident from the day prior. In that report, the petitioner details that he injured himself while attempting to empty a 40 gallon garbage can and had to catch the weight of the can as it slipped off the bin. (PX 15). This report matches the testimony of the petitioner regarding his December 13, 2012 accident.

In addition, throughout the petitioner's treating records, including during his first visit to Dr. Rubenstein on December 21, 2012, the petitioner provides the exact same accident history.

The respondent in this case has presented no testimony or evidence to dispute the honest and credible testimony of the petitioner or the history contained in the accident report and medical records.

Petitioner has also been recognized by the State as employee of the year (2011) and for saving hundreds of thousands of dollars in money for the prison system. (PX 18).

The arbitrator finds the petitioner to be highly credible. Nothing was offered by respondent to suggest otherwise.

Therefore, the arbitrator finds that an accident did occur that arose out of and in the course of the petitioner's employment by respondent on December 13, 2012.

II. On the issue of whether the petitioner's current condition of ill-being is casually related to his work injury, (F), the arbitrator hereby finds:

The arbitrator hereby finds that the current conditions of ill-being in the petitioner's cervical spine, arms and hands is causally related to his December 13, 2012 work injury.

After reviewing all records and evidence in this matter, the arbitrator finds the causation opinion of Dr. Rubenstein to be more persuasive than the opinion of Dr. Lami.

The records reflect that he petitioner has suffered from cervical, arm and hand pain since the time of this accident. On February 27, 2013, after reviewing the petitioner's cervical MRI which revealed mild-to-moderate stenosis at multiple levels as well as foraminal stenosis most significantly at C3-4, Dr. Rubenstein opined, "While I am sure some of the degenerative changes pre-existed his injury, he was previously asymptomatic, and I think that this has caused some inflammation of the soft tissues in addition to the degenerative changes that are causing increased compression on his nerves." Dr. Rubenstein explained that this was the cause of the petitioner's radicular symptoms. (PX 1).

The respondent relies on the opinion of Dr. Lami to dispute causal connection in this case. However, the arbitrator finds the opinion of Dr. Lami to be flawed. Dr. Lami does not even address the possibility of an aggravation of the preexisting condition of the petitioner's cervical spine. Both Dr. Lami and Dr. Rubenstein agree that he petitioner had preexisting degenerative changes in his cervical spine; however, it is clear from the records the petitioner had no symptoms in his cervical spine prior to December 13, 2012 and his cervical spine has never been pain free after December 13, 2012. The fact that Dr. Lami does not so much as mention the possibility of an aggravation of that condition exhibits the weakness of his opinion.

In contrast, the opinion of Dr. Rubenstein, the petitioner's treating physician, is well-reasoned and credible. After reviewing Dr. Lami's opinion, Dr. Rubenstein explained, "while I certainly agree with Dr. Lami that a lot of his cervical arthritic changes predated his injury, the fact that he was asymptomatic prior to the injury implies to me that there was some inflammatory component of the injury that occurred at that time that has increased his cervical radicular symptoms and nerve-related pain due to narrowing and compression of the nerves in the spinal canal." (PX 1).

The respondent has offered no evidence or testimony to indicate that the petitioner ever had cervical spine pain or disability prior to December 13, 2012. Furthermore, the records reflect that after December 13, 2012, the petitioner has had continuous symptoms and limitations due to his cervical injury. It is clear from the records and testimony in this case that Dr. Rubenstein was accurate in stating that the petitioner's December 13, 2012 injury

caused an inflammatory response which has increased the narrowing of the spinal canal, compressing the nerves, and causing cervical radicular symptoms.

Even Dr. Vendor diagnosed a cervical radiculopathy. Dr. Vendor gave no opinion on causation of the radiculopathy, and only released petitioner to work for the hands. What is glaringly obvious is Dr. Vendor diagnosed the same condition as Dr. Rubenstein, while Dr. Lami fails to address it at all.

Furthermore, the petitioner testified that the pain he felt in his arms and hands following his December 13, 2012 accident was different than any he had ever felt before. The respondent has offered no persuasive evidence or testimony to dispute the causal connection between the current condition of ill-being in the petitioner's arms and hands and his December 13, 2012 accident.

Based upon the above reasoning, the arbitrator hereby finds that the current conditions of ill-being in the petitioner's cervical spine, arms and hands, including the cervical radiculopathy and physical restrictions due to his cervical condition are causally related to his December 13, 2012 work accident.

III. On the issue of outstanding medical bills, (J), the arbitrator hereby finds:

As detailed above, the arbitrator has found that the petitioner sustained an accident that arose out of and in the course of his employment by respondent on December 13, 2012 and that the current conditions of ill-being are causally related to that accident.

The arbitrator further finds that all care and treatment received by the petitioner in this matter has been reasonable and necessary. The respondent has offered no evidence or testimony to dispute the reasonableness or necessity of the treatment offered and administered by the petitioner's treating physicians. Furthermore, it was noted on the record that if Dr. Rubenstein had been called to testify and a proper hypothetical question had been asked of him, he would testify that the current condition of ill-being in the petitioner's cervical spine was causally related to his December 13, 2012 work accident and that all care and treatment for the petitioner's arms, hands and cervical spine had been reasonable and necessary.

The arbitrator hereby finds that all care and treatment admini8stered to the petitioner in this matter has been reasonable and necessary.

The petitioner has presented outstanding medical bills related to his care and treatment in this case as follows:

Provider	Beginning	Ending	Total Charges	WC Paid	WC Adj	Balance
Associated Pathologist of Joliet	12/26/2012	12/26/2012	$378.00	$0.00	$0.00	$378.00
Franciscan Alliance	1/28/2013	1/28/2013	$269.51	$0.00	$0.00	$269.51
Health Benefits	3/19/2013	4/16/2013	$8,712.17	$0.00	$0.00	$8,712.17
Illinois Bone & Joint	12/21/2012	9/16/2013	$1,128.00	$64.86	$76.14	$987.00
Open MRI of Plainfield	2/25/2013	5/16/2013	$3,269.74	$0.00	$0.00	$3,269.74
Provena St Joseph Medical Center	12/26/2012	12/26/2012	$2,625.50	$0.00	$0.00	$2,625.50
Summit Pharmacy	12/26/2012	12/26/2012	$96.85	$0.00	$0.00	$96.85
Balance			$16,479.77	$64.86	$76.14	$16,338.77

Therefore, the arbitrator hereby orders respondent to pay outstanding medical bills in the amount of $16,338.77 pursuant to Sections 8(a) and 8.2 of the Act.

IV. On the issue of temporary total disability benefits, (L), the arbitrator hereby finds:

Following the petitioner's December 13, 2012 accident, he was seen by Dr. Rubenstein and underwent a course of physical therapy at Provena St. Joseph Medical Center. During that treatment, the petitioner remained working.

On February 25, 2013, the petitioner underwent a cervical MRI, ordered by Dr. Rubenstein, due to his continued cervical symptoms.

After reviewing the MRI results on February 27, 2013, Dr. Rubenstein stated, "While I am sure some of the degenerative changes pre-existed his injury, he was previously asymptomatic, and I think that this has caused some inflammation of the soft tissues in addition to the degenerative changes that are causing increased compression on his nerves" and placed the petitioner on an off-work status. (PX 1).

Following February 27, 2013, the petitioner has not been cleared to return to full duty work for his cervical spine by any physician other than Dr. Lami. As detailed above, the arbitrator has found the opinions of Dr. Rubenstein more persuasive than those of Dr. Lami and hereby adopts Dr. Rubenstein's opinions regarding the petitioner's ability to return to work.

On June 3, 2013, Dr. Rubenstein placed the petitioner at MMI with restrictions of no lifting over 25 pounds and no work above shoulder level. (PX 1).

There is no evidence in the record that respondent has ever offered light duty work to the petitioner. The arbitrator further notes that in Respondent's own Exhibit 10, the at the end of February 2013, the petitioner is noted to have been on a "service connected sick leave" as signified by a "sc" on his time sheet. The petitioner is then noted to have a leave of absence through May 2013. From April 1 2013 through the end of August 2013, the respondent's internal documentation primarily shows the petitioner off on a service connected sick leave/leave of absence. It is worth note that the respondent's own documentation shows that the petitioner was off due to service connected reasons. (RX 10).

The petitioner has undergone a self-directed job search since August 23, 2013, as detailed in Petitioner's Exhibit 12, but has received no offers of employment. (PX 12).

Based upon the above-reasoning, the arbitrator hereby orders respondent to pay temporary total disability benefits of $1,287.87 per week for 33.14 weeks, commencing February 27, 2013 through October 16, 2013, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $15,086.86 for TTD paid in this matter.

V. On the issue of whether penalties or fees should be imposed on respondent, (M), the arbitrator hereby finds:

The arbitrator has reviewed all records and evidence in this matter and finds that the respondent has had no reasonable basis for withholding temporary total disability or medical benefits due to the petitioner in this case.

The respondent's reliance on the opinion of Dr. Lami, who does not even address a possible aggravation of the petitioner's cervical degeneration, was completely unreasonable. The petitioner's treating physician, Dr. Rubenstein clearly and repeatedly explained that the petitioner's December 13, 2012 injury caused inflammation in the petitioner's cervical spine which further compressed the spinal canal and pressed upon the petitioner's nerves, causing cervical symptoms. Dr. Lami wholly ignored the facts of this case, including that the petitioner was completely asymptomatic prior to his December 12, 2013 work injury, but has never been asymptomatic since the injury. Clearly, based upon the records and testimony in this case, the opinion of Dr. Lami is unreliable. Even Dr. Vendor diagnosed the cervical radiculopathy while Dr. Lami, in essence, ignored the injury and ignored the significance of the abnormal cervical MRI that explains petitioner's radicular symptoms.

The respondent's reliance upon Dr. Lami to deny this case under these facts is not reasonable.

In denying compensation, the respondent has not met the burden of demonstrating a reasonable belief that its denial of liability was justified under the circumstances, as required by *Continental Distrib. Co. v. Indus. Comm'n*, 98 Ill.2d 407, 456 N.E.2d 847 (1983), *Bd. of Educ. v. Indus. Comm'n*, 93 Ill.2d 20, 442 N.E.2d 883 (1982) ("*Norwood*" case) and *Bd. of Educ. v. Indus. Comm'n*, 93 Ill.2d 1, 442 N.E.2d 861 (1982) ("*Tully*" case). In *Tully*, the Illinois Supreme Court held that where a delay has occurred in payment of workers' compensation benefits, the employer bears the burden of justifying the delay and the standard he is held to is one of objective reasonableness in his belief. Thus it is not good enough to merely assert honest belief that the employee's claim is invalid or that his award is not supported by the evidence; the employer's belief is "honest" only if the facts that a reasonable person in the employer's position would have would justify it. 42 N.E.2d at 865. The Court added in *Norwood* that the question whether an employer's conduct justifies the imposition of penalties is a factual question for the Commission. The employer's conduct is considered in terms of reasonableness. 442 N.E.2d at 885. Moreover, the Appellate Court has noted that the burden of proof of the reasonableness of its conduct is upon the employer. *Consol. Freightways, Inc. v. Indus. Comm'n*, 136 Ill.App.3d 630, 483 N.E.2d 652, 654 (1985); accord, *Ford Motor Co. v. Indus. Comm'n*, 140 Ill.App.3d, 488 N.E.2d 1296 (1986).

Based on the failure of respondent to present a reasonable basis for withholding TTD benefits and not paying for medical treatment, there has been an unreasonable delay of payment. There has been a failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of the Act (relating to payment of TTD), which is presumed to be an unreasonable delay. 820 ILCS 305/19. There has also been an unreasonable delay in payment of medical bills, without adequate basis for that decision. The arbitrator finds the respondent's behavior to be unreasonable, vexatious and solely for the purpose of delay.

Accordingly, the Arbitrator finds that Respondent shall pay penalties under §19(k) in the amount of **$21,965.96**, representing fifty percent of the total amount due to date in TTD and medical expenses. The arbitrator calculated this amount as follows:

TTD Due: $1,287.87 per week for 33.14 weeks = $42,680.01 total TTD due
$42,680.01 total TTD due – Respondent's TTD credit of $15,086.86 = $27,593.15 unpaid TTD

$27,593.15 unpaid TTD + $16,338.77 unpaid medical = $43,931.92

$43,931.92 / 2 = **$21,965.96 due pursuant to Section 19(k)**

SECTION19(L)

Petitioner is due 33.14 weeks of TTD benefits from February 27, 2013 through October 16, 2013. The respondent in this matter paid TTD benefits which equate to approximately 11.72 weeks' worth of TTD benefits. Therefore, there are TTD benefits unpaid for a period of 21.42 weeks. The Arbitrator therefore finds, pursuant to Section 19(l) of the Act, that Respondent shall pay the sum of **$4,500.00**, constituting $30.00 per day for each day during the 150 days of non-payment of TTD.

SECTION 16

Pursuant to §16 of the Act, the Arbitrator finds that Respondent shall pay attorneys' fees calculated upon twenty percent of the unpaid TTD to date; twenty percent of the unpaid medical expenses to date and twenty percent of the §19(k) award. Accordingly, Respondent shall pay the sum of $56,960.55 in attorneys' fees, with the remainder of Petitioner's attorneys' fees, if any, to be paid by Petitioner to his attorneys. This award was calculated by the arbitrator as follows:

$21,965.96 in Section 19(k) + $42,680.01 in unpaid TTD, as detailed above + $16,338.77 = $80,984.74

$80,984.74 x .2 = **$16,196.95 in Section 16 fees**

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

IWCC,
Petitioner,

vs.

NO: 11 INC 237
11 INC 238

14IWCC0268

Gilbert E. Blaum, individually and
sole LLC Member of Home Decor & More, LLC,
Individually and as President of
Macarthur Family Medical Health Center,
Respondent.

DECISION AND OPINION ON INSURANCE NON-COMPLIANCE

This claim was set for hearing before the Illinois Workers' Compensation Commission on December 19, 2013 pursuant to Section 4(c) of the Illinois Workers' Compensation Act. The Commission, after reviewing the entire record, finds Respondent was not in compliance with Section 4 of the Act, for the reasons set forth below.

FINDING OF FACTS AND CONCLUSIONS OF LAW

The Commission finds:

1. Joe Stumph, a compliance investigator for the Illinois Workers' Compensation Commission, testified on May 2, 2011 he received a complaint from Joe Jones, an employee of Home Decor & More in Springfield, Illinois which stated he had been injured while at work and while the employer had initially handled his medical bills they have has since refused to talk to him or pay for any medical procedures. Mr. Jones, the employee, said that the business is owned by Dr. Gilbert Blaum and run by

Susan Defraties, his girlfriend. Mr. Jones stated that he believes the business which has two locations has no insurance. Mr. Jones filed Claim No. 11 WC 13791 with an injury date of October 13, 2010. Mr. Stumph testified he checked the insurance status of Home Décor & More located at 2025 South Macarthur Blvd. Springfield Illinois, phone number 217-670-1310, sole LLC Member Gilbert E. Blaum DOB: 7/9/36, FEIN #271766382 and found no current workers' compensation insurance for the business. He also checked Macarthur Family Health Center SC located at 2025 S. Macarthur Blvd. Springfield IL. 62704 President Gilbert E. Blaum DOB 7/9/36 FEIN#272398541 and found no current workers' compensation insurance for that business as well.

2. Mr. Stumph testified he checked in accurint and found Home Décor & More LLC 2025 S. Macarthur Blvd. Springfield Illinois 62704. Dun and Bradstreet listed a start date of 2010 and listed Susan Defraties as owner and Gilbert Blaum as contact. He also found in accurint a Home Decor & More, LLC located at 1943 West Monroe Street Springfield IL. 62704 with a start date according to Dun and Bradstreet of 2010. Lastly, he checked accurint for Macarthur Family Health Center SC 2025 S. Macarthur Blvd. Springfield IL. 62704 with a state date according to Dun and Bradstreet of 2010. A check in ICNI found an injury Case No. 11 WC 013791 for Joe N. Jones with a date of injury of 10/13/10 and a docket date of 6/6/11 before Arbitrator White. The Illinois Secretary of State's home page showed Home Decor & More, LLC certificate of good standing file date of 1/27/10 listing Gilbert E. Blaum as Agent and sole LLC Member and Macarthur Family Health Center SC certificate of good standing file date of 1/27/10 listing Gilbert E. Blaum as Agent/President. A check in ICNI found no claims for the business. A check in POC found there was insurance coverage from 10/18/10 to 5/6/11, which was cancelled for non-payment of the premium and no coverage from 5/7/11 to present for Home Décor & More. A check in POC for Macarthur Blvd. found there was no insurance coverage from 4/21/10 to present. A check of IDES find Macarthur Family Health Center SC with a liability date of 5/1/10 listing one employee for the 3rd month of the 4th quarter of 2010.

3. From May 2, 2011 through May 6, 2011 Mr. Stumph called both the Monroe and Macarthur Blvd. stores and Dr. Blaum's office and was told Sue was not in; at the doctor's office, he obtained a recorded message stating the answering machine was full and could not accept messages; he received no answer and he was told the doctor was with a patient. On May 6, 2011, Mr. Stumph called the Macarthur store and informed Brianna that he would be forced to seek a stop work order for the business if Sue did not contact him. He left his name and number. Later that day Mr. Stumph said he received a called from Sue Defraties who said she was very busy and was

going to contact him as soon as possible. Mr. Stumph explained who he was and why he was calling. Sue said Dr. Blaum was the owner of the doctor's office which had 2 employees and both furniture stores had 3 employees between them. The Macarthur store was opened in March of 2010 and the Monroe store was opened in October of 2010. Sue said she would contact the insurance agent about the workers' compensation insurance.

4. Case No. 11 INC 00237 was opened for a business in violation of 820 ILCS 305/3 #15 and Case No. 11 INC 00238 was opened for a business in violation of 820 ILCS 305/3 # 9 & 15. On May 9, 2011, a letter of inquiry and notice of non-compliance was sent regular mail.

5. A check of POC found policy 00 WC 87360 through Pekin Insurance Company effective 10/18/10 had been reinstated effective 5/6/11. A check of POC finds policy 00 WC 91595 through Pekin Insurance Company effective 7/25/10 to 7/25/12.

6. On October 25, 2011, Mr. Stumph spoke with Dr. Gilbert Blaum. Dr. Blaum agreed to a $5,000.00 fine to be paid in payments. Mr. Stumph sent him a settlement agreement via regular mail. On December 5, 2011, he received an e-mail from Assistant Attorney General Paula Velde stating the injury case was going to trial on December 8, 2011 in Springfield, IL. On December 6, 2011 Mr. Stumph received a phone message from Attorney Apfelbaum stating the settlement would fail unless the compliance department agreed to no fine for the non-compliance. He also stated that the doctor had had his medical license suspended. The attorney for the Commission said he would not agree to join the injury and non-compliance cases and he would not agree to waive any fine for non-compliance. On August 8, 2012, Mr. Stumph received an e-mail from Attorney Apfelbaum with bankruptcy papers attached showing Dr. Blaum had filed for chapter 7 bankruptcy.

7. On August 10, 2012, after the settlement agreement was not returned and no payments were made, Mr. Stumph petitioned for a formal hearing on September 27, 2012 before Commissioner Basurto. On August 13, 2012, Mr. Stumph went to Attorney Mike Logan's office at 607 E. Adams Street Springfield, IL. 62701 who is the representative for Dr. Blaum and he agreed to accept service of the formal hearing for Dr. Blaum. On September 18, 2012 Attorney Logan called stated he didn't believe the insurance compliance division could proceed with the formal hearing due to Dr. Blaum filing bankruptcy. He was told that the formal hearing was separate and not dischargeable under the law. He was told that the formal hearing would go ahead and a fine would be asked for during the hearing. The claim was continued multiple times for hearing.

8. Mr. Stumph testified that after the last hearing date, he and Assistant Attorney General Richard Glisson went to Dr. Blaum's residence and personally served Gilbert Blaum with the notice of December 19, 2013 hearing date. Subsequently, on October 10, 2013 he e-mailed Attorney Logan copies of the notice of the hearing date for December 19, 2013. Mr. Blaum did not appear for the December 19, 2013 hearing. Proof of service for the hearing date was given by Mr. Stumph.

9. A Review hearing was held on December 19, 2013. At that time the Commissioner presiding over the review hearing and having called out his name and having received no answer, it was noted that Dr. Blaum was not in attendance and the hearing proceeded. It was further noted that Dr. Blaum is individually and sole LLC Member of Home Décor & More LLC 11 INC 00237 as well as Agent and sole LLC Member and Macarthur Family Health Center SC 11 INC 00238 and both cases would proceed to hearing.

10. Mr. Stumph testified at the December 19, 2013 hearing that of today's date both businesses are closed and there is no workers' compensation insurance for either business.

11. Mr. Stumph submitted into evidence at the December 19, 2013 Review Hearing the following documents which were essentially the same for both claims:

PX1, insurance non-compliance report;

PX2, letter of inquiry and notice of non-compliance to both businesses;

PX3, Illinois Department of Employment Security (IDES) information;

PX4, Illinois Secretary of State Corporate File;

PX5, Self-Insurance certification

PX6, Illinois Department of Revenue document;

PX7, National Council on Compensation Insurance (NCCI) on-line inquiry;

PX8, IWCC information on 11 WC 013791 & Division of Professional Regulation document;

PX9, 10/25/11 Letter and settlement agreement;

PX10, 9/27/12 Notice of Hearing ;

12. Mr. Stumph testified in regard to Macarthur Family Health Center, 11 INC 00238 it has been in non-compliant from April 21, 2010 to July 24, 2011, which is 460 days x $500.00 totaling $230,000. The annual premium of $1,911.00 on the insurance that he did have divided by 365 days would mean that he paid $5.24 a day. If this is times by 460 days of non-compliance this would equal an additional $2,410.40 for a total fine of $232,410.40.

13. Mr. Stumph testified in regard to the Home Décor & More business, 11 INC 00237 it has not been non-compliant from January 27, 2010 to October 17, 2010 a total of 264 days and May 7, 2011 to December 31, 2011 for an additional 239 days for a total number of days equaling 503 days at $500.00 a day which would total $251,500.00. The annual premium of $1,230.00 on the insurance that he did have divided by 365 days would mean that he paid $3.37 a day. If this is times by 503 days of non-compliance this would equal an additional $1,695.11 for a total fine of $253,195.11. This is what the insurance compliance division would like the Commission to award against this business for its failure to have Illinois Workers' Compensation insurance pursuant to the law of the state.

Based on the above evidence along with the testimony of Mr. Stumph, the Commission finds Respondent, Mr. Blaum individually and as sole LLC member of Home Décor & More, LLC and individually and as Agent and sole LLC Member and Macarthur Family Health Center SC was not in compliance with the dates testified to by Mr. Stumph and awards $485,605.51 against Dr. Blaum, Individually and against Home écor & More, LLC and Macarthur Family Health Center SC for its failure to comply with Section 4 of the Illinois Workers' Compensation Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that a penalty of $485,605.51 is assessed against Respondent, Dr. Blaum, Individually and against Home Décor & More, LLC and Macarthur Family Health Center SC, for its failure to comply with Section 4 of the Illinois Workers' Compensation Act.

DATED: APR 09 2014

R:12 /19/13

MB/jm

43

Mario Basurto

David L. Gore

Stephen J. Mathis

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

Michael Morris,
Petitioner,

vs.

NO: 11 WC 22011

14IWCC0269

Icon Mechanical,
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, temporary total disability, medical expenses, prospective medical expenses, causal connection, employer employee relationship, 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 June 27, 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.

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 0 9 2014

MB/mam
O:2/27/14
43

Mario Basurto

David L. Gore

Stephen Mathis

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

MORRIS, MICHAEL
Employee/Petitioner

Case# 11WC022011

14IWCC0269

ICON MECHANICAL
Employer/Respondent

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:

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

0439 ROUSE & CARY
TRACEY PLYMELL
10733 SUNSET OFFICE DR STE 410
ST LOUIS, MO 63127

14IWCC0269

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Michael Morris
Employee/Petitioner

v.

Icon Mechanical
Employer/Respondent

Case # 11 WC 22011

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

FINDINGS

On the date of accident, **March 1, 2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did not*** exist between Petitioner and Respondent.

In the year preceding the injury, Petitioner earned **$146.34**; the average weekly wage was **$1331.20**.

On the date of accident, Petitioner was **51** years of age, **married** with **2** dependent children.

ORDER

Petitioner failed to prove by a preponderance of the evidence that on March 1, 2011, an Employee-Employer relationship existed between the Petitioner and the Respondent therefore benefits are denied.

Because Petitioner failed to prove that an employee-employer relationship existed on March 1, 2011, all other issues are moot.

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

June 26, 2013
Date

ICArbDec19(b)

JUN 27 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Morris,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 11 WC 22011**
	)	
Icon Mechanical,	)	
	)	
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that the Petitioner gave Respondent notice of an accidental injury sustained by the Petitioner on March 1, 2011, that Petitioner alleges arose out of and in the course of the employment of the Petitioner by the Respondent, within the time limits stated in the Act.

At issue in this hearing is as follows: (1) On March 1, 2011, were the Petitioner and the Respondent operating under the Illinois Worker's Compensation or Occupational Diseases Act and was their relationship one of employee and employer; (2) On March 1, 2011, did the Petitioner sustain accidental injuries or was he last exposed to an occupational disease that arose out of and in the course of employment; (3) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure; (4) Is the Respondent liable for the unpaid medical bills contained in Petitioner's exhibit number 12; (5) Is the Petitioner entitled to TTD from May 25, 2011, through June 21, 2012; and (6) Is the Petitioner entitled to any future medical treatment.

STATEMENT OF FACTS

The Petitioner testified that he was fifty-two years old and had been a journeyman sheet metal worker for thirty to thirty-one years. He stated that March 1, 2011, was the first day on the job for him at the Respondent's place of business. He testified that he was there to meet his foreman. He stated that he had been there the day before when his foreman had taken him through the shop showing him what machines they had, where the machines were located and how the machines worked.

On March 1, he arrived at about 6:45 a.m. It was a safety meeting day and Petitioner sat in on the safety meeting. He believes there were three or four other guys there at the meeting with him. He believes that he did some insulating duct work while on the floor and that during the safety meeting he was asked if he had been drug tested yet. He told them he wasn't. He was then sent for a drug test.

Respondent sent Petitioner to the Gateway clinic for his drug test. It is located in Granit City, which is where Petitioner lived and Respondent had its' place of business. The Petitioner testified that he knew where the clinic was but he does not recall how he went there. He knows that he got on Madison Ave at some point because he knows that the clinic is on Madison. He was travelling from one parking lot to another. He testified that in the closer parking lot, "the lights went out and I lost five weeks." Petitioner also testified that he does not remember anything other than his truck rocking, hitting his head and nothing. He does not recall going to Gateway Regional Hospital, or being moved to St. Louis University Hospital.

Petitioner knows that he was sent to St. Mary's for rehabilitation and that he stayed for about three weeks.

Petitioner testified that he did not have any previous neck problems before the accident.

Petitioner testified that currently he experiences constant pain. He cannot do anything fast or strenuous. He does not have full range of motion in his neck. His pain is in his shoulders and goes down into his arms. He states that he has to think before he acts. He did not have these problems before the accident. He stated that all the doctors, Gornet, Boutwell and Crane are recommending surgery in his neck since everything else has failed.

On cross examination Petitioner stated that he is still a member of the sheet metal workers union and that he is hired out of the union hall. Drug testing is required by the union before you can work. A positive test could be a reason for you not to get hired.

Petitioner also testified that he knows that he met Bob the first day he was there but it was a long time ago. He stated that he may have left early on February 28, but he does not know why he left early. He said it could have been because he had something with the kids that day. He does remember putting some fittings together and doing some duct work.

Petitioner testified that he met with Mike and two other guys for the safety meeting, he identified Respondent's exhibit number 6 as a document he initialed and signed regarding the topics that were covered that day. He identified his signature and his initials. Mike asked him if he had done everything, when he said no he had not had the drug test, Mike told him to go get the test and to come back when he was finished. He stated that he used his truck to drive to the clinic for the test. He said he went straight from Icon to Gateway; he was not given anything else to do between Icon and Gateway by Icon. He has no memory of the accident or what happened, he has read the police reports and they do not jog his memory. He has no memory of time after the accident for five weeks.

The Respondent called Mr. Robert Belobraydic to testify. Mr. Belobraydic is the shop foreman for the Respondent. He testified that his duties included controlling man power, assigning work, keeping the employees from just standing around and measuring and fabricating.

New employees see Mr. Belobraydic first. He conducts orientation which is the same for everyone. Mr. Belobraydic is a member of the union. He met the Petitioner for the first time on February 28, 2011. The Petitioner started about 7:00 a.m. that day. Mr. Belobraydic took the Petitioner through the shop, like he does with all new employees. They go over shop safety and a list of all the machines, and then he shows them how to operate the various machines. Respondent has 20 machines that are explained to them and that the Respondent makes sure they know how to safely operate. He stated that Respondent has some newer machines that other shops do not have. The orientation takes about one hour to one hour and fifteen minutes, plus the paperwork. Mr. Belobraydic testified that the Petitioner told him that he had to leave early that day because he said he had water in his basement. Petitioner left before the first break at 9:30 a.m. Petitioner was paid for two hours of work that day pursuant to the union agreement.

Although the responsibility for drug testing is his, Mr. Belobraydic does not remember telling the Petitioner to go for the drug test the first day, he remembers that the Petitioner had to leave that morning because of problems with water at home. Mr. Belobraydic stated that several months after the accident he received a phone call from the Petitioner asking him to keep Petitioner's tools on the side, that he would send his brother to pick them up.

The Respondent also called Michael Buchana to testify. Mr. Buchana has been employed by Respondent for five years as the Safety Director. He was working as the safety director on March 1, 2011. As the safety director he is responsible for orientation of new employees, safety inspections and worker's compensation cases.

Mr. Buchana did not know the Petitioner prior to February 28, 2011. He met the Petitioner for the first time on March 1, 2011, in his capacity as safety director. He does not know why he did not meet the Petitioner when he was at the facility on February 28, 2011, but he knows that the Petitioner left in the early morning that day.

When Mr. Buchana met with the Petitioner on March 1, 2011, it was about 8:30 a.m. They went through the safety work sheet, including the shop, the worksite and the safety rules. He had the Petitioner review them and then sign off on them. He also got his W-4 information at that time. Mr. Buchana identified Respondent's exhibit number 6 as the cover sheet for the W4 and the safety sheet and other documents from the safety meeting between him and the Petitioner.

According to Mr. Buchana, the safety meeting on March 1, 2011, was with Mr. Morris alone. He was the only new hire. Mr. Buchana noticed that the Petitioner appeared to be nervous and a bit "shaky" that day. It is the policy of the company that offers of employment are subject to passing a drug and alcohol screen. The company has a zero tolerance policy towards substance abuse in the workplace. He testified that after the safety meeting the Petitioner was supposed to go for his drug test.

They finished the safety meeting some time after 9:00 a.m., it usually takes from thirty minutes to an hour. When the meeting was concluded, the Petitioner was sent to Gateway Clinic

for his drug test. He was not given a specific appointment time nor was he given a time to report back to work. The clinic is less than a mile from the shop; it takes about two minutes to get there from the shop. The Petitioner was not given a specific route to take to get there. Mr. Buchana identified Respondent's exhibits 2a, 2b, 2c and 2d as depicting routes that could be taken from the shop to the clinic with directions, time and distances. Each of which is less than a mile and according to the computer could be driven in less than two minutes. Mr. Buchana tried them out and was able to drive each in three minutes or less. The Petitioner was not given any errands to run for or by the Respondent when he was sent for his drug test. Driving for the Respondent is not included in the job duties for the position that the Petitioner had applied for and would have gotten if he had passed the drug test.

Mr. Buchana had an appointment outside the facility that morning, so when the meeting between he and the Petitioner was concluded he left to go to his car. According to Mr. Buchana, the Petitioner and he walked out of the building at the same time, going to their respective vehicles. It was 9:30 a.m. when they left.

According to Mr. Buchana the drug test must be passed before anyone is hired. When potential employees are sent for drug testing it is not compensated time, they are not on the clock because the company has no control over their time. The clinic is a walk-in clinic and the majority of the time the test results are obtained instantly, unless the clinic has to send them out for some reason. Had the Petitioner returned from the clinic with a clean test, he would have gone on the clock at that point. The Petitioner never returned after leaving for the drug test. They heard later that he was involved in an automobile accident. Mr. Buchana does not recall any construction work being done on any of the streets that are in either of the routes between the clinic and the shop at the time of the accident.

Mr. Buchana admitted that the Petitioner was paid for two hours on Feb. 28, 2011, and for three hours on March 1, 2011, because the union contract requires it. It is show up time.

Respondent's exhibit number 6 is identified as Morris Information Sheet. It contains five pages that were identified by both the Petitioner and Mr. Buchana as the documents that Petitioner filled out and went over with Mr. Buchana during the safety meeting. The second page is identified as the Substance Abuse Policy. The policy states that "To prevent drug / alcohol abuse from entering the work force a pre-employment urine screening to detect the use of illegal substances, the misuse of prescription medications and / or the abuse of alcohol will be required for all prospective employees." (R. Ex. 6) It states further that "all offers of employment will be made subject to the results of a drug test." (R. Ex. 6) The zero tolerance policy also includes conditions under which current employees can also be required to submit to drug and alcohol screening, such as when there is an accident at work, on the job. It provides for random drug testing as well. (R. Ex. 6)

The police report, (P. Ex. 1, R. Ex. 1), indicates that the accident happened at 10:00 a.m., it also indicates that the Petitioner who was driving the motor vehicle that drove over a curb, struck a sign, an occupied motor vehicle and two parked, unoccupied motor vehicles appeared to be having a seizure after his pick-up truck came to a stop. Witnesses who described the accident said the Petitioner's vehicle was travelling west on 21st street, turning north onto Madison Avenue when the accident occurred. According to the maps contained in R. Ex. 2a, 2b, 2c and 2d, the clinic is east of the shop, not west.

At the time of the motor vehicle accident the Petitioner sustained multiple injuries and was in a coma for some time. (P. Ex. 2-9, R. Ex. 7) According to Carl A. Freeman, M.D., the Petitioner was admitted to the hospital because of a questionable seizure. After assessment, neurologists felt there was no seizure, and that the decreased level of consciousness was from alcohol abuse. (P. Ex.3, 5, p. 1) The doctors agree that the Petitioner's current medical condition is as result of the accident that he was involved in on March 1, 2011, and that he requires additional treatment, including surgery. (P. Ex. 2-9, R. Ex. 7)

CONCLUSIONS OF LAW

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)

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)

Under the Illinois Workers' Compensation Act, a "traveling employee" is defined as an employee who is required to travel away from the employer's premises in order to perform his job. *Chicago Bridge and Iron, Inc. v. Industrial Commission*, 248 Ill.App.3d 687, 694, 618 N.E.2d 1143 (5th Dist. 1993).

As a general rule, accidents that occur while an employee is going to or from his or her place of employment do not arise out of and in the course of employment. *Commonwealth Edison Co. v. Industrial Comm'n*, 86 Ill. 2d 534, 537-38 (1981); *Quarant*, 38 Ill. 2d at 491; *Urban*, 34 Ill.2d at 161.

On March 1, 2011 were the Petitioner and the Respondent operating under the Illinois Worker's Compensation or Occupational Diseases Act and was their relationship one of employee and employer?

In general an employee is defined as any person who is in the service of another under any contract for hire. In this case, the Petitioner admitted that it is a requirement of the union hall through which he is hired that before union members can work at a job they must undergo drug and alcohol testing, and that failure to pass the drug and alcohol screening can prevent them from being hired for a job. The Petitioner further admitted that he had not completed the drug and alcohol screen on February 28, 2011, or March 1, 2011, when he appeared at Respondent's place of business for the orientations that were conducted by Mr. Belobraydic and Mr. Buchana.

The Petitioner identified documents that he went over during the safety meeting / orientation, with Mr. Buchana, including the Substance Abuse Policy, that were contained in Respondent's exhibit number 6. That policy clearly states that a pre-employment urine screening must be completed for all prospective employees before they are hired. Petitioner admitted that he did not complete the urine test prior to his orientation/safety meeting with Mr. Buchana and that he was told to go get it done and come back so that he could go to work. Both Mr. Buchana and Mr. Belobraydic testified that before anyone could begin working for Respondent they had to pass the drug test.

It is uncontested that the Petitioner was in his own vehicle, had not been given a specific route to take to go for the test, had not been given a specific time to appear for the test, and that he was not running any errands for the Respondent at the time of the accident. The job that the Petitioner was being considered for did not include driving for the Respondent as one of his duties. Petitioner, although he does not remember the route he took, claims he drove straight to the hospital from the Respondents place of business, less than one mile away. It took him thirty minutes to do so and according to the reports of the witnesses to the accident he was travelling west, not east. The Petitioner never testified that he took the drug test or that he passed the drug test, and did not produce any records of having taken or passed the test.

Petitioner and Mr. Buchana testified that the Petitioner did receive a pay check from the Respondent for 5 hours of work; two hours worked on Feb. 28, 2011, and 3 hours worked on March 1, 2011. Mr. Buchana explained that because Petitioner showed up, and participated in the orientation around the shop, they were required to pay him for the time by the union. He described it as show up pay. According to Mr. Buchana that is why he was paid for 3 hours on March 1, 2011, as well. He showed up, participated in the orientation, filled out paper work in order to begin working for Respondent, but was unable to start that day because he had not completed his drug test. He testified further that had the Petitioner passed the test and returned, he could have clocked in and worked that day.

The Petitioner has not proven by a preponderance of the evidence that an employer-employee relationship existed between the Petitioner and the Respondent on March 1, 2011.

On March 1, 2011 did the Petitioner sustain accidental injuries or was he last exposed to an occupational disease that arose out of and in the course of employment? Is the Petitioner's current condition of ill-being causally connected to this injury or exposure? Is the Respondent liable for the unpaid medical bills contained in Petitioner's exhibit number 12? Is the Petitioner entitled to TTD from May 25, 2011 through June 21, 2012? Is the Petitioner entitled to any future medical treatment?

Because no Employee-Employer relationship existed between the Petitioner and the Respondent at the time the Petitioner was in the automobile accident the other issues are moot.

ORDER OF THE ARBITRATOR

Petitioner failed to prove by a preponderance of the evidence that on March 1, 2011, an Employee-Employer relationship existed between the Petitioner and the Respondent therefore benefits are denied.

Deborah L. Simpson
Signature of Arbitrator

June 26, 2013
Date

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Greg Boltz,

Petitioner,

vs.

NO: 09 WC 00715

141WCC0270

International Paper,

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 September 9, 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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $3,600.00. 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: APR 09 2014

Mario Basurto

David L. Gore

Stephen Mathis

MB/mam
O:2/27/14
43

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

BOLTZ, GREG
Employee/Petitioner

Case# **09WC000715**

14IWCC0270

INTERNATIONAL PAPER
Employer/Respondent

On 9/9/2013, 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 0.05% 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:

2046 BERG & ROBESON
STEVE W BERG
1217 S 6TH ST PO BOX 2485
SPRINGFIELD, IL 62705

0180 EVANS & DIXON LLC
KIM M PARKS
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

14IWCC0270

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
19(b)

GREG BOLTZ
Employee/Petitioner

v.

INTERNATIONAL PAPER
Employer/Respondent

Case # 09 WC 00715

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 **Springfield**, on **July 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. ☒ 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

14IWCC0270

FINDINGS

On the date of accident, **January 29, 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 $**46,106.08**; the average weekly wage was $**922.12**.

On the date of accident, Petitioner was **48** years of age, **married** with **3** 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 for any 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 reasonable and necessary medical expenses in the amount of $3,486.60, subject to the Fee Schedule as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for the surgery recommended by Dr. Jones and all reasonable costs associated with that 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.

Henry Lindsey
Signature of Arbitrator

9.4.13
Date

ICArbDec19(b)

SEP 9 - 2013

GREG BOLTZ
V.
INTERNATIONAL PAPER

09 WC 00715

The Arbitrator finds:

Petitioner, 48 years of age, was employed by Respondent on January 29, 2006, as a master mechanic. On that date Petitioner was involved in an undisputed accident. Petitioner testified he was on the upper deck of a printing press standing on a ladder four or five feet in the air when a fork truck malfunctioned and he jumped from the ladder in order to avoid being hit. Petitioner testified he dove over a tool box and landed flat on the left side of his body. Petitioner testified his left arm was extended and he was leaning towards the left. Petitioner testified it "hurt like hell" and he testified he experienced pain in his left butt cheek and left shoulder.

Petitioner presented to Carle Foundation Physician Services Occupational Medicine on January 30, 2006. Petitioner described an injury occurring the day before. The report notes "He [Petitioner] reports that he was putting in a 6 unit stack weighing 1,000 pounds into a truck. He was standing on the 4th rung of a ladder to do this. The unit slipped and fell towards him. He used his left arm to try to push it away. He fell off the ladder and landed on his left buttock. He presents today with complaints of left buttock pain, as well as bilateral shoulder soreness and left elbow soreness." (PX 3) Overhead range of motion was limited due to pain. Petitioner's left elbow and buttock were tender with palpation. Petitioner was diagnosed with bilateral shoulder pain, a soft tissue injury to the left buttock and a left elbow contusion. Petitioner was advised to use ice and Ibuprofen; however, Petitioner reported he preferred to use aspirin. Petitioner was given work restrictions and was to return for a follow-up visit in a few days, or sooner, if necessary. The note is signed by Janet Baker, APN. (PX 1)

Petitioner returned for follow-up care on February 2, 2006. At that time he was examined by Dr. Bettina Collin, who recorded the following history: "The patient reports that on Monday he was on a ladder about 4 feet off the ground and the support that was holding up the roof they were working on broke. Everything started to

slide in the direction of where the patient was with his ladder. In order to avoid being hit by a ton of material, he jumped off the ladder and fell to the ground and landed on his left side hurting his left shoulder and left hip. He reports that he did not pass out. He actually rolled out of the way of the debris falling on the ground where he lay." (PX 3) Petitioner reported he had been up and around but experiencing more pain in his left shoulder, elbow, and hip, along with a bruise "in that area." Petitioner's primary complaints that day were stiffness and pain in his left shoulder. Physical examination revealed tenderness on palpation around the deltoid muscle, mainly anteriorly and posteriorly, but no tenderness on the biceps insertion or deltoid muscle insertion. He had full range of motion of his left elbow and left wrist albeit some occasional crepitus when his elbow was flexed and extended. Bilaterally, Petitioner had normal capillary refill, normal radial pulses, and normal sensation bilaterally. He had a large purplish hematoma on the left buttock area. An x-ray of the left shoulder and left elbow was ordered. Petitioner was also told to call back if he started getting stiff in the next two weeks and the doctor noted he might benefit from physical therapy. Petitioner was instructed to return to the clinic "prn" if there was any worsening of his symptoms. Work restrictions were given. (PX 3)

X-rays were taken of Petitioner's left shoulder on February 2, 2006 and revealed intact bony structures with well maintained joints and no sign of any fracture or acute joint injury. X-rays of Petitioner's elbow taken the same day were also normal. (PX 3)

Petitioner continued working for Respondent and sought no further treatment until February 8, 2007, a little over a year after his accident and his last visit with Occupational Medicine.

Petitioner presented to Dr. Dycoco on February 8, 2007. The doctor's note indicates "The patient is complaining of pain on the right shoulder. Claims he was injured a year ago at work, he over-stretched his right shoulder. Since then he has had intermittent, persistent pain. He was seen by a company physician. X-rays did not show any findings. He still has some pain on the left shoulder, especially on trying to lift something. Sometimes has limitation of motion, especially on hyper-extension. He wants to have an MRI but the company

physician advised him to see his family physician. Will refer to orthopedic surgeon of possible rotator cuff injury. He is otherwise doing well." (PX 4)

Petitioner was next examined by Dr. Jones on February 20, 2007. The level of pain is recorded as "10 at its worst." (PX 5) The history of the accident indicates "standing on step ladder et fork truck raised up et fell toward pt. pt jumped onto concrete landing on Lt side to avoid being hit." (PX 5) On March 1, 2007, Petitioner underwent an injection in the left anterior glenohumeral joint space. (PX 5)

On March 2, 2007, an MRI of Petitioner's left shoulder with contrast was performed. The impression was a partial articular surface tear, distal supraspinatus, estimated at less than 50%, and tendinosis, distal infraspinatus, versus old strain injury. The labral signal was normal. (PX 5)

Dr. Jones' note of March 6, 2007 indicates he reviewed the MRI and recommended a steroid injection and, if there was no change, to proceed with arthroscopic surgery.

The doctor's note from March 7, 2007 indicates Petitioner was notified to advise him that Dr. Jones had reviewed the MRI of his left shoulder and noted no RCT (rotator cuff tear). A steroid injection was recommended. Petitioner wished to proceed with the injection and an appointment was given for March 13, 2007. (PX 5)

Petitioner returned to Dr. Jones on March 13, 2007 and underwent the injection. (PX 5)

Dr. Jones' notes indicate on March 27, 2007, Petitioner was contacted and reported the injection did help and he was to call as needed. (PX 5)

Petitioner signed his Application for Adjustment of Claim on May 31, 2007 claiming he injured his left shoulder and arm on/about January 8, 2006. (AX 2)

Petitioner underwent no treatment between March 13, 2007 and November of 2007.

According to Dr. Jones' office notes Petitioner called on November 7, 2007 asking for an appointment for his left shoulder and reporting it felt like his shoulder had popped out of joint and then popped back in.

Petitioner was given an appointment for November 15, 2007 which he did not keep. (PX 5) At arbitration Petitioner testified he did not recall having scheduled an appointment or missing same in November of 2007.

On March 10, 2011, over five years after the work accident, Petitioner was seen by Dr. Kohlmann. At that time he complained of pain in the posterior shoulder below the spine of the scapula near the level of the glenohumeral joint or medial to that. He reported the symptoms had been intermittent since the injury. Petitioner reported to Dr. Kohlmann that he built cars for a living at home which involved some lifting, and that he didi other things that aggravated it, like recently trying to lift his deer stand into the truck which hurt. Petitioner reported viewing the current problem as a continuation of the problem he had from the day of his injury. Physical examination revealed well developed shoulder muscles bilaterally with no muscle atrophy anywhere in the left posterior shoulder. Strength was equal and his only complaint of pain was in the posterior shoulder. There was no clicking, popping or catching, and no bony tender spots anywhere in the left shoulder. There was also no shoulder instability. (PX 6)

An MRI of Petitioner's left shoulder was performed on May 5, 2011. The MRI revealed partial tears SST involving the articulating fibers. Since the previous examination, there was now greater than 70% tear of the articular fibers with several bursal fibers remaining. A small through-and-through tear of the SST could be excluded by MRI arthrogram if clinically warranted. (PX 6)

Petitioner followed up with Dr. Kohlmann on May 19, 2011. On that date, Dr. Kohlmann recommended Petitioner return to the same facility that did the original MRI and arthrogram so the two studies could be compared. (PX 6)

An MRI arthrogram was performed on June 2, 2011. Dr. Kohlmann reviewed the results and indicated in his note of June 30, 2011, that Petitioner was in no hurry to have aggressive treatment. At that time, Petitioner did not even wish to try a cortisone shot. (PX 6)

In his report of September 8, 2011, Dr. Kohlmann indicated he reviewed the MRI of Petitioner's left shoulder done on June 2, 2011 and compared it to the prior MRI done five to six years ago. Dr. Kohlmann

indicated "They looked the same to me." (PX 6) Dr. Kohlmann indicated there was no full thickness cuff tear and there was no evidence for even really serious bursitis. (PX 6) A subdeltoid steroid injection was performed on that date.

Petitioner was next seen by Dr. Jones on January 10, 2012 at which time he continued to complain of pain in the left shoulder. Dr. Jones noted moderate to severe osteoarthritis on x-rays and informed Petitioner he should contact him if he wished to proceed with the surgery. (PX 6) That was the last date Petitioner was seen for treatment.

Petitioner was seen by Dr. Milne at the request of Respondent on January 15, 2013. Dr. Milne's history indicated Petitioner was probably five feet off the ground on a ladder at the time of the injury and he jumped off to avoid being hit by the deck. He reported landing on his outstretched arm. Petitioner reported having a third MRI but Dr. Milne noted there was no record of a third study. Dr. Milne's examination revealed the left shoulder was without edema or erythema. Passive range of motion was full and he had pain with Speed's testing. He had a positive Hawkin's test and no pain with O'Brien's testing. Radial pulse was 2+ and equal bilaterally and sensation was grossly intact to light touch. The right side was free from abnormality. X-rays of the left shoulder taken by Dr. Milne showed acromioclavicular joint arthrosis. Dr. Milne's diagnosis was left shoulder partial thickness rotator cuff tear, possible superior labral tear, left shoulder impingement syndrome, and left shoulder mild to moderate acromioclavicular joint arthrosis. Dr. Milne initially indicated it was his opinion the work-related injury was at least an aggravating factor in Petitioner's current complaints, if not the primary and prevailing factor; however, after being asked to re-review the records, Dr. Milne indicated that given the significant gaps in Petitioner's treatment, both between 2006 and 2007, and also between 2007 and 2011, during which Petitioner did not seek treatment and was active with businesses away from his full-time employment with Respondent, and engaged in hobbies such as hunting, Dr. Milne indicated he felt Petitioner likely suffered a shoulder contusion at the time of his injury and went back to an asymptomatic shoulder for long periods of time. For that reason, he indicated he did not believe a significant structural abnormality

occurred at the time of his initial injury and therefore he did not feel there was a direct causal relationship between any currently recommended treatment and the work injury of January 29, 2006. Respondent's attorney's correspondence to Dr. Milne setting forth the medical evidence was submitted as part of Petitioner's Exhibit 9. The letter refers to a business listed as Boltz Lathe & Mill Services & Custom Automotive Fabrication and references pictures of numerous deer heads mounted on the wall. There is also a reference to Petitioner selling a car on e-bay and killing and harvesting several deer in 2008 and 2010. Those activities were admitted to by Petitioner at the time of trial.

Petitioner submitted an initial opinion regarding causation from Dr. Jones dated March 6, 2012 which indicates "His pain has persisted since his injury on January 29, 2006. I do not have any other information that he has had shoulder pain or treatments prior to this incident." (PX 8) On February 14, 2013, Dr. Jones indicated "In regards to his shoulder problem requiring interventions to include conservative management as well as the recommended arthroscopic evaluation, I do feel that his injury at the time of work could have caused or aggravated a pre-existing condition to require this. The patient did not, to my knowledge, have any symptoms prior to this incident." (PX 8)

At the time of arbitration Petitioner amended his Application for Adjustment of Claim, without objection, to reflect an accident date of January 29, 2006. (AX 2)

Petitioner denied any problems with his left shoulder prior to his work accident.

Petitioner testified that he was sent to Carle Foundation Physician Services at the request of Respondent and that the information contained in the initial treating medical records (Carle Foundation Physician Services Occupational Medicine) is not consistent with what he told the nurse and is not consistent with what happened. Petitioner testified he was not given a prescription for physical therapy as far as he could recall. Petitioner further testified that for several months he could not raise his left arm above shoulder level. Petitioner testified it was very sore and it kept "popping out of place."

Petitioner testified his shoulder has never been pain free since the accident of January 29, 2006.

Petitioner testified he went in several times to his employer and reported continual pain. He also testified that he was eventually told to stop coming in and reporting his pain. According to Petitioner he went in to his employer and asked about seeing a doctor because his shoulder was no better and "that's when things started." Petitioner testified he was told his case was "over" and he had to see a doctor on his own. Petitioner explained that he then went to his family doctor, Dr. Dycoco, in February of 2007. Dr. Dycoco then referred him to Dr. Tyler Jones. Petitioner testified that when he was examined by Dr. Jones, there was a "dent" in the back of his shoulder near the top; however, that dent is better now. According to Petitioner, Dr. Jones ordered an MRI of his left shoulder followed by a steroid injection which only afforded him about one week of relief. Petitioner's symptoms continued and Dr. Jones recommended surgery. Petitioner testified he called Dr. Jones' office on November 7, 2007 indicating he was still in pain and wanted to proceed with surgery. He did not recall an appointment being scheduled for November 15th as he was on vacation at that time.

Petitioner testified he continued to work thereafter with ongoing symptoms in his left shoulder. Petitioner testified he has not had surgery although it has been recommended. He testified it is now time to have the surgery because of the pain. Petitioner testified he is left-hand dominant.

Petitioner testified that he was accompanied by a safety person, Scott Fisher, when he went to Dr. Kohlman, Respondent's company doctor, in March of 2011. Petitioner denied any new injuries to his left shoulder prior to that appointment. He testified that his pain never stopped nor did it improve throughout the foregoing time period.

Petitioner testified he formerly had a business involving the building/rebuilding of cars. He testified he shut the doors about four years ago or approximately 2009. Petitioner denied injuring his left shoulder while engaged in activities associated with that business (cutting, welding, and fabricating of pro street cars).

Petitioner acknowledged he is a deer hunter and uses both a bow and gun. He holds the stock of his hunting rifle with his right shoulder and holds the bow with his right hand. Petitioner denied injuring his left shoulder while hunting.

Petitioner testified that when he rolls over at night he must hold his arm in order to roll over. He denied being able to throw a softball or football hard. Petitioner described a "toothache pain" in his left shoulder and the inability to lift like he formerly did. Petitioner testified there are certain motions/tasks at work that he will not perform. Finally, Petitioner described himself as "hard headed" and wanting to put off surgery because he has been reluctant to proceed with it. Petitioner denied any new injuries to his left shoulder since his last office visit with Dr. Jones.

On cross-examination Petitioner testified to hip, shoulder, and elbow complaints at his February 2, 2006 office visit. Petitioner also testified that the office visit with Dr. Dycoco on February 8, 2007 was for left shoulder complaints, not his right shoulder. Petitioner denied every having any right shoulder complaints.

On further cross-examination Petitioner acknowledged selling a car (an El Camino) in January of 2007. Petitioner worked on the car in 2006 and information pertaining to it is found in RX 1. Petitioner testified that he rarely works on vehicles after his work because he is too tired. He may work on them on his days off and he believes he easily put 80 hours into the El Camino. Petitioner acknowledged hunting and fishing since 2006 without needing any pain medication.

Petitioner also testified on cross-examination that he has to raise his left arm above his shoulder to perform lots of work activities. He acknowledged using ladders at home and putting lights on a tree every year during the holidays using a pole with a hook on the end. Petitioner testified his shoulder has always bothered him both at work and in his personal activities.

No depositions were taken by either party.

The issues in dispute are causal connection, past medical services and prospective medical care.

The Arbitrator concludes:

1. Causal Connection.

While there are some discrepancies between Petitioner's account of what he told early medical providers and what is contained in those office notes themselves, Respondent does not dispute accident and its causation

defense appears centered on Petitioner's gaps in treatment, outside activities, and Petitioner's credibility regarding his ongoing complaints and symptoms. At the outset the Arbitrator concludes that Petitioner was a credible witness. He was very candid in acknowledging his activities outside of work and what he notices about his left shoulder and when. The bottom line is that Petitioner injured his left shoulder in an undisputed accident, His reluctance to have surgery and his ability to continue working and living despite ongoing complaints of pain is believable. While time has passed and he has undergone gaps in treatment, his 2006 work accident continues to be a cause of his ongoing complaints and need for surgery. He has had no subsequent injuries. This is not a case in which a shoulder tear was noted years after the accident; rather, the tear was noted within a reasonable time after the accident and has increased/worsened over time and with activity, including work. Surgery was recommended for the partial tear early on and Petitioner chose to wait. The tear is still there and now Petitioner wishes to proceed with surgery. Petitioner's current condition of ill-being in his left shoulder is causally connected to his work accident of January 29, 2006. In support thereof, the Arbitrator notes, Petitioner's credible testimony, a chain of events, and the more credible opinion of Dr. Jones over that of Dr. Milne. Dr. Milne originally opined that Petitioner's condition was causally related to the accident. It was only after being presented with additional information that he changed his opinion and even then he conditioned his changed opinion on the accuracy of the reported information. That information was not correct. Petitioner was not asymptomatic for long periods of time. The Arbitrator also notes that Petitioner's testimony regarding his multiple conversations with Respondent's representatives regarding his ongoing complaints and desire for treatment was not rebutted, further supports Petitioner's credibility, and provides a connective thread between Petitioner's accident and the 2007 MRI findings, despite no intervening treatment. While Dr. Dycoco's February of 2007 office visit contains a reference to the "right shoulder" a reading of the entire office allows one to reasonably infer that was a typographical error as the examination and findings noted in the note reference only Petitioner's left shoulder.

Petitioner's left elbow and buttocks contusions appear to have resolved.

2. Medical Expenses.

Petitioner's exhibit number 2 consists of medical bills submitted by Petitioner. The Arbitrator finds the bill from Dr. Tyler Jones, with an outstanding balance in the amount of $213.00 to be reasonable and necessary and related to Petitioner's accident. According to that bill, Petitioner has paid $65.00 himself and BCBS of Illinois has paid $147.00. The Arbitrator orders that Respondent pay the outstanding balance of $213.00 pursuant to the Fee Scheduled under the Illinois Workers' Compensation Act and to pay $65.00 to Petitioner for the bills that he paid himself and to satisfy any subrogation from BCBS for their payment to Dr. Jones. The bill from Decatur Memorial Hospital in the amount of $3,041.68 is found by the Arbitrator to be reasonable, necessary and related to Petitioner's injury and Respondent is ordered to pay that bill, pursuant to the Fee Scheduled under the Illinois Workers' Compensation Act, to Petitioner so he can pay the bill to Decatur Memorial Hospital. Additionally, Respondent is ordered to pay the sum of $171.92 to Petitioner for his direct payments to Decatur Memorial Hospital as outlined on that bill The bill with Dr. Kohlman showing a balance of $60.00 is found to be reasonable, necessary and related to Petitioner's injury and Respondent is ordered to pay that bill pursuant to any contract they may have with their plant physician, Dr. James Kohlman and if no specific contract exists, then pursuant to the fee schedule under the Illinois Workers' Compensation Act.

3. Prospective Medical

Dr. Jones has recommended that Petitioner undergo surgical intervention to his left shoulder and the Petitioner has indicated that he is desirous of having that surgery so he can hopefully see some improvement in his shoulder condition.(PX5;8) Dr. Milne also was of the opinion that Petitioner would need surgical intervention.(PX9) Therefore, the Arbitrator concludes that the recommended surgery is a reasonable and necessary treatment mode to attempt to cure Petitioner of his condition of ill-being and orders Respondent to pay all reasonable costs, pursuant to the fee schedule of the Illinois Workers' Compensation Act, for all treatment associated with the Petitioner's recommended surgery and recovery from the same.

****

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

Adele Shanklin,
Petitioner,

vs.

No: 11 WC 01267
12 WC 39898

14IWCC0271

Belleville Shoe Company,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) of the Act having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, and effect of prior settlement, and being advised of the facts and law, clarifies 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 hearing, Petitioner's attorney stated that claim 11 WC 001267 was filed for the same injury as 12 WC 39898 but was missing a date of accident upon initial filing. The 12 WC 39898 claim was intended to be a correction of the 11 WC 01267 application, but a new claim number was assigned. Both claims allege an injury on September 20, 2010 and were consolidated for hearing on November 29, 2012. A single arbitration decision was issued for both claims on December 31, 2012.

After considering the entire record, the Commission clarifies the Decision of the Arbitrator and otherwise affirms and adopts the Decision of the Arbitrator for the reasons set forth below.

14IWCC0271

Arbitrator Granada found in his December 31, 2012 decision that Petitioner failed to prove that she sustained an accidental injury on September 20, 2010. Petitioner testified at hearing that she was working at Respondent's factory on September 20, 2010 trimming boots coming off the line when something popped and caused pain in her left shoulder and she experienced additional pain in her right hand and left elbow. Petitioner further testified that she did not notice any gradual onset of symptoms in the months leading up to September 20, 2010 and that she did not report her complaints until after she received payment for prior workers' compensation claims which had been recently settled. The arbitrator noted Dr. Brown's treatment record of November 8, 2010 stated Petitioner reported recurrent numbness in her right hand and left little finger which she had been experiencing for the past three to four months, and she had no specific injury that she could recall. Petitioner also treated with Dr. Miller on November 8, 2010, and his record indicates that Petitioner gave a history of bilateral shoulder pain, left greater than right, for a six month period with escalation of her symptoms beginning in September and no specific injury was noted. The Arbitrator found Petitioner's testimony that she sustained a specific injury on September 20, 2010 disingenuous and not credible. The evidence did not support an accidental injury on that date, and the medical records in evidence indicate symptoms for several months before November 2010 without specific injury. The Commission agrees and affirms and adopts the Arbitrator's finding that Petitioner did not sustain an accident that arose out of and in the course of employment on September 20, 2010.

Prior to the current claims at issue here, Petitioner filed Applications for Adjustment of Claim which were assigned case numbers 09 WC 19807 and 09 WC 8806 for injuries allegedly sustained in the scope and course of employment for Respondent on August 1, 2008 and December 3, 2008. In both prior claims, Petitioner alleged injury to her bilateral hands, wrists, elbows, arms and body as a whole. A consolidated settlement on claims 09 WC 8006 and 09 WC 19087 was approved on August 24, 2010 by an arbitrator for alleged injuries to the bilateral hands and arms, right leg, back, spine and body as a whole. The terms stated the agreement represented the full and final settlement of all claims from the alleged accidents of August 1, 2008 and December 3, 2008 and any aggravating incidents, accidents or exacerbations to date. The parties agreed at hearing that the settlement contract approved on August 24, 2010 was intended to compensate Petitioner for any injuries suffered through the date of approval. Arbitrator Granada found that, based on the history Petitioner relayed to her treating physicians for the September 20, 2010 claim, her hand, arm and shoulder complaints began three to six months prior to November 8, 2010, and Petitioner admitted at hearing that she waited to seek treatment for her complaints until after she received payment for the settlement approved on August 24, 2010. Therefore, the Arbitrator found that Petitioner's claims 11 WC 001267 and 12 WC 39898 to her upper extremities was barred by the August 24, 2010 settlement contract.

The Commission clarifies the Arbitrator's finding with regard to the bar of claims 11 WC 1267 and 12 WC 39898 due to the prior settlement approved August 24, 2010 for claims 09 WC 19087 and 09 WC 8006. The Arbitrator found Petitioner failed to prove she sustained an accident in the scope and course of employment on September 20, 2010. The Arbitrator stated in his decision that based on the history Petitioner gave her treating physicians, her hand, arm and shoulder problems actually began three to six months prior to November 8, 2010. Respondent argues, and the Commission agrees, that the Arbitrator was stating that the August 24, 2010 settlement contract would bar a claim for injuries three to six months prior to November 8, 2010 if the Commission were to modify the alleged accident/manifestation date to conform to the credible medical records in evidence. If the Commission were to modify the alleged accident

date to conform to the credible evidence, the accident date would fall in the period of May 8 to August 8, 2010. This is squarely in the time period in the terms of settlement approved on August 24, 2010 covering any aggravating incidents, accidents or exacerbations Petitioner might suffer. The Commission finds that had the accident or manifestation date been modified to conform to the credible evidence in the record, the Petitioner's claims 11 WC 1267 and 12 WC 39898 would be barred by the terms of settlement for claims 09 WC 19087 and 09 WC 8006.

All else is otherwise affirmed and adopted. Claims denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the December 31, 2012 Decision of the Arbitrator is hereby clarified and otherwise affirmed or 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.

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 11 2014

Daniel R. Donohoo

Kevin W. Lamborn

Thomas J. Tyrrell

drd/adc
o-10/29/13
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SHANKLIN, ADELE
Employee/Petitioner

Case# **11WC001267**

12WC039898

BELLEVILLE SHOE MANUFACTURING CO
Employer/Respondent

14IWCC0271

On 12/31/2012, 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:

2424 SAUTER SULLIVAN LLC
MICHAEL KNEPPER
3415 HAMPTON AVE
ST LOUIS, MO 63139

0180 EVANS & DIXON LLC
MARILYN C PHILLIPS
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

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

Adele Shanklin
Employee/Petitioner

Case # 11 WC 1267

v.

Consolidated cases: 12 WC 39898

Belleville Shoe Manufacturing Co.
Employer/Respondent

14IWCC0271

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 **November 29, 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 **Whether prior settlement bars this claim.**

FINDINGS 14IWCC0271

On 9/20/10, 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 $18,862.35; the average weekly wage was $400.01.

On the date of accident, Petitioner was 53 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 $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 Arbitrator finds petitioner failed to prove she sustained an accident arising out of and in the course of her employment on September 20, 2010.

The Arbitrator finds this claim is barred by petitioner's settlement contract regarding 09 WC 8006 and 09 WC 19087.

No benefits are awarded. These claims are denied.

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

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

Signature of Arbitrator

12/20/12
Date

DEC 31 2012

Findings of Fact

Petitioner was hired by respondent on May 20, 2008. She testified that her job as a rubber trimmer required her to trim excess rubber off boot soles using a chest level trimming wheel machine and pliers. She sustained injuries to her hands, wrists, elbows, arms and body as a whole due to repetitive trauma with a manifestation date of August 1, 2008 (09 WC 19087). On December 3, 2008, Petitioner slipped and fell sustaining injuries to her back, spine, right knee, and body as a whole (09 WC 8006). Resp. Exs. 1 & 2.

On October 9, 2009, Petitioner underwent a right ulnar nerve transposition. On October 30, 2009, she underwent left ulnar nerve transposition and carpal tunnel releases. These surgeries were performed by Dr. Brown of The Orthopedic Center of St. Louis, to whom she had been referred by her attorney. On December 28, 2009, Dr. Brown released her from care to follow up as needed. Resp. Ex. 4.

Both 09 WC 8006 and 09 WC 19087 were settled at the same time by a settlement contract approved on August 24, 2010. The terms of that contract read as follows:

> Respondent to pay petitioner the sum of $23,848.54 representing 17.5% permanent partial disability to petitioner's right arm, 15% permanent partial disability to petitioner's left arm, 15% permanent partial disability to petitioner's left hand and .4% permanent partial disability to petitioner's body as a whole in full and final settlement of all claims resulting from the alleged incidents of on or about 08/01/08 and 12/03/08 ***and any aggravating incidents, accidents or exacerbations to date*** to be paid in a lump sum. Disputes include: (1) Accident; (2) Causation; (3) Nature and extent of disability; (4) Amount of temporary total disability benefits, if any, to which petitioner may be entitled; (5) Responsibility for any treatment expense that has been incurred or may be incurred in the future. Respondent disputes all unpaid treatment expense. It is the purpose of this contract to effect a final settlement without the right of either party to reopen this case under any provision of the Workers' Compensation Laws of Illinois, Missouri or any other jurisdiction except respondent waives no rights pursuant to Section 5(b) of the Illinois Workers' Compensation Act or any other subrogation interest. (*Emphasis added.*) Resp. Ex. 2.

At Arbitration on November 29, 2012, Petitioner testified that while at work trimming on September 20, 2010, something popped in her left shoulder. She complained of pain in her right wrist, left elbow, and left shoulder and claimed that she had no problems in the months preceding September 20, 2010. She admitted she did not report her current problems until she received the settlement payment for her two prior claims. After she received her money, she returned to Dr. Brown.

On November 8, 2010, Petitioner complained to Dr. Brown of having experienced recurrent numbness in her right hand and left little finger for the last three to four months. She could recall no specific traumatic injury. He ordered nerve conduction studies and allowed her to continue working full duty. Resp. Ex. 4; Pet. Ex. 2.

On November 8, 2010, Petitioner also saw Dr. Miller of The Orthopedic Center of St. Louis and reported a six month history of bilateral shoulder pain, left greater than right, with an escalation in September. Pet. Ex. 3, Personal Information Sheet; Pet. Ex. 6, 19. Her pain bothered her most with reaching, overhead movements. He found tenderness over the left biceps groove and posterior capsule. He also found left sided pain on active motion, and a catching on internal and external rotation. X-rays revealed bilateral AC joint degenerative joint

disease. His assessment was left shoulder; rule out rotator cuff tear, likely due to repetitive use. He allowed her to continue working and requested an MRI arthrogram. Pet. Ex. 3; Pet. Ex. 6, Depo. Ex. B. Dr. Miller testified that he spoke with Petitioner about any specific injuries and she did not report any one particular event, but rather described a gradual onset of bilateral shoulder symptoms, left worse than right. Pet. Ex. 6, 6-7.

On November 17, 2010, Petitioner saw Dr. Phillips. She told him that after her surgery she was better, but about four months later she had an exacerbation of the left medial elbow pain and a sudden onset of numbness in the fifth finger. Electrodiagnostic studies performed on that date revealed improved right ulnar and left median nerve studies consistent with decompression in the normal range. There was mild demyelinative median sensory neuropathy across the right carpal tunnel, slowing of the left ulnar motor conduction velocity across the elbow with a decrement in the ulnar sensory responses consistent with recurrent left ulnar neuropathy across the elbow. Dr. Phillips recorded no history of a specific injury. Pet. Ex. 4.

On November 17, 2010, Dr. Brown reviewed Petitioner's November 17, 2010 electrical studies and diagnosed recurrent left cubital tunnel syndrome and right carpal tunnel syndrome. He recommended surgery. Pet. Ex. 2.

On November 17, 2010, Petitioner underwent a left shoulder arthrogram which Dr. Wu, the radiologist, found revealed mild distal supraspinatus and infraspinatus tendinosis, no tendon rupture or retraction; acromioclavicular osteoarthritic disease; and, no discrete labral tear. Pet. Ex. 5.

When Petitioner saw Dr. Brown on December 1, 2010, she reported that her symptoms had not improved. He found tenderness on the transposed ulnar nerve at the left. Tinel's also induced some discomfort. She had positive Tinel's and direct compression test at the right carpal tunnel. His impression was recurrent left cubital tunnel syndrome and right carpal tunnel syndrome. He recommended surgical intervention, but allowed her to continue working full duty pending surgery. Pet. Ex. 2.

Petitioner also saw Dr. Miller on December 1, 2010. She described her job duties as pulling and tugging on rubber. The doctor noted: "She puts boots on a cutting machine. Evidently, she does 150 boots an hour." Dr. Miller assumed Petitioner had a history of several months of bilateral shoulder pain. She demonstrated a loss of strength and rotation left more than right, with a catch on internal and external rotation on the left. Petitioner told the doctor that the intraarticular cortisone injection performed at the same time as the MRI arthrogram did not help her symptoms. She complained of a great deal of biceps pain and anterior shoulder pain. His assessment was "Left shoulder: Rule out biceps tendon partial tear." He recommended a left shoulder diagnostic arthroscopy and biceps tenodesis. Pet. Ex. 3; Pet. Ex. 6, Depo. Ex. B.

Petitioner was evaluated by Dr. Mirkin at respondent's request on March 14, 2011. She told him that she began to develop pain in her left shoulder, elbows and hands on September 20, 2010 while performing her normal job of cutting. He noted she had undergone bilateral elbow surgery and a left carpal tunnel release in 2009. Petitioner said she had enjoyed post-operative improvement, but her symptoms recurred. Resp. Ex. 5, Depo. Ex. 2.

Petitioner complained to Dr. Mirkin of aches and pains over her entire body, and in particular in her shoulders, elbows and wrists. On physical examination he found she had full range of motion in her shoulders, mild tenderness in the anterior aspect of the left shoulder, a negative supraspinatus sign, a negative impingement

sign, negative Tinel's over both carpal tunnels, some tenderness over the left ulnar nerve and healed incisions on the left and right ulnar nerves. Her shoulder x-rays were normal. Resp. Ex. 5, Depo. Ex. 2.

Dr. Mirkin reported that Petitioner had developed recurrent cubital tunnel syndrome and carpal tunnel symptoms which were related to her prior injury in 2009, and were unrelated to any incident occurring on September 20, 2010. He also found mild left shoulder supraspinatus tendinitis. He found no indication for biceps tenodesis unless an abnormality could be confirmed on the MRI by a competent radiologist. He found Petitioner could work without restriction. Resp. Ex. 5, Depo. Ex. 2.

On May 16, 2011, Dr. Miller recommended a diagnostic arthroscopy. He explained that the likely intervention for an intrasubstance biceps tear was biceps tenodesis. He explained that biceps tendon pathology was typically related to repetitive pushing and pulling. He found a causal relationship between her job and the development of the biceps tendon problem. Pet. Ex. 6, Depo. Ex. B.

At Arbitration Petitioner complained of pain in her right wrist, left elbow, and left shoulder. She testified that she wanted to undergo the treatment recommended by Drs. Brown and Miller to relieve her pain. She was continuing to work without restriction.

Regarding the Disputed Issues the Arbitrator Finds as Follows:

1. Whether Petitioner sustained an accident at work on September 20, 2010.

The Arbitrator finds Petitioner failed to prove she sustained an accidental injury arising out of and in the course of her employment with respondent on September 20, 2010.

At Arbitration on direct examination Petitioner testified that on September 20, 2010: "I was trimming the boots, trimming the boots, and then something popped and that's when I reported it to my supervisor." She explained that the popping had been in her left shoulder, and at that time she also experienced pain in her right hand, and her left elbow. She testified that she did not notice a gradual onset of symptoms in the months leading up to September 20, 2010.

Dr. Brown's records indicate that on November 8, 2010, Petitioner reported experiencing recurrent numbness in her right hand and left little finger for the last three to four months, and that she could recall no specific traumatic injury. Resp. Ex. 4; Pet. Ex. 2. Petitioner admitted she told Dr. Brown she could recall no specific injury that caused her symptoms. She said she did not remember telling Dr. Brown her symptoms began three or four months earlier, but was confident the history in his report was accurate.

Petitioner testified that she told Dr. Miller she had suffered a specific incident at work with a popping in her shoulder. Dr. Miller's records indicate that on November 8, 2010, Petitioner gave a history of having experienced bilateral shoulder pain, left greater than right, for six months with an escalation in September. No specific injury was detailed in his records, or in the Personal Information form completed by Petitioner herself on that date. Pet. Ex. 3, Personal Information Sheet; Pet. Ex. 6, 19. Petitioner agreed that if Dr. Miller testified that the intake report said six months, he would have been accurate.

14IWCC0271

At Arbitration, Petitioner admitted that she did not report the problems of which she complained at trial until she received payment for her prior claim. She admitted that after she received her settlement check, she went to Dr. Brown with complaints of recurrent right hand numbness and numbness in her left little finger.

The Arbitrator finds Petitioner's testimony that she sustained a discrete injury on September 20, 2010 disingenuous, and not credible. The Arbitrator finds that although Petitioner claimed she sustained an accidental injury on September 20, 2010, no other evidence supports that allegation. To the contrary, Petitioner told both Dr. Miller and Dr. Brown she had been experiencing symptoms for several months before seeing them on November 8, 2010. She gave neither of them a history of problems beginning after an accident which occurred on September 20, 2010.

Based on the foregoing, the Arbitrator finds that Petitioner failed to prove she sustained an accidental injury arising out of and in the course of her employment by respondent on September 20, 2010.

2. Whether this claim is barred by the settlement contract for 09 WC 19087 and 09 WC 8006.

Petitioner in her prior claim, 09 WC 19087, alleged that she sustained serious and permanent injuries to her "Right and left hands, wrists, elbows, arms, and body as a whole." Resp. Ex. 1. That case was settled by contract signed by Petitioner on August 12, 2010 and approved on August 24, 2010. Resp. Ex. 2. The terms of the contract state that it was a "full and final settlement of all claims resulting from the alleged incidents of on or about 08/01/08 and 12/03/08 and any aggravating incidents, accidents or exacerbations to date."

In **Tyler v. Kane County** 2010 Ill. Wrk. Comp. LEXIS 58, a settlement contract approved on October 10, 2006 contained the following language: "for all accidental injuries allegedly incurred on 9/18/02 or any claim that Petitioner could bring for any injury as a result of employment with Respondent or for which the Respondent would provide coverage as described herein and any facts which could give rise to a claim up to the date of this settlement and including and all results, developments, or sequelae, fatal or nonfatal, resulting or allegedly resulting from such accidental injuries." That Petitioner subsequently filed another claim alleging an accident date of October 7, 2005. The Commission ordered the October 7, 2005 claim dismissed as it included a date of accident covered by the settlement language of the contract approved on October 10, 2006.

In **Powell v. Peoria Housing Authority**, 2010 Ill. Wrk. Comp. LEXIS 951, the Petitioner settled a March 21, 2006 claim with contracts approved on March 3, 2008. The language of that contract provided that the settlement "includes any aggravation of or a new injury to that part of the body injured in this specific occurrence which may have occurred prior to the date of this contract's approval." The Commission found Petitioner's claim for an accident occurring on June 18, 2007 was compromised by the terms of the contact approved on March 3, 2008.

The facts in the present case are similar to **Gibbons v. The American Coal Co.**, 12 IWCC 259, 2012 Ill. Wrk. Comp. LEXIS 246, where the Commission affirmed the Arbitrator's finding that Petitioner's claim for a July 13, 2009 injury was barred by the terms of a settlement contract approved on July 3, 2009. The contract recited that consideration was to be paid to Petitioner in exchange for full, final and complete settlement of all claims for injuries to both hands, the right arm and left arm arising out of Petitioner's employment by Respondent to the date that Petitioner signed the contract on June 17, 2009.

In **Gibbons**, on February 3, 2010, Petitioner gave his treating physician a history of shoulder pain dating back 13 months to January 2009. The Arbitrator found Petitioner's symptoms began in January 2009 and continued unabated thereafter. Therefore, the Arbitrator found the July 3, 2009 contract covered the accident date of January 7, 2009, as well as any claims involving Petitioner's hands and arms arising out of his employment with respondent to the date Petitioner signed the contract on June 17, 2009. The Arbitrator found the parties had intended to extinguish all pending or potential claims involving the hands and arms which were or might have been asserted as of June 17, 2009.

The Arbitrator finds that based upon the history Petitioner gave to her treating physicians, Dr. Brown and Dr. Miller, her hand, arm and shoulder problems of which she complained at Arbitration, began three to six months prior to November 8, 2010. Petitioner admitted that after she received payment for her prior claims she reported her current hand and arm problems, and sought medical treatment from Drs. Brown and Miller. The Arbitrator finds Petitioner's testimony that she sustained a discrete injury on September 20, 2010 disingenuous, and not credible.

The Arbitrator finds that the parties agreed the settlement contract approved on August 24, 2010 was to compensate Petitioner for any injuries suffered through that date. The Arbitrator finds Petitioner's present claim for injuries to her upper extremities barred by that contract.

Based on his findings regarding the issues of date of accident, and whether this claim is barred by a prior settlement contract, it is not necessary for the Arbitrator to reach the other issues.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alex Moll,
Petitioner,

vs. 12 WC 42536

14IWCC0272

State of Illinois/Menard Correctional Center,
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 and causal connection, and being advised of the facts and law, reverses the May 31, 2013 Section 19(b) decision of Arbitrator Gerald Granada as stated below. After considering the record as a whole, and for the reasons set forth below, the Commission finds that Petitioner proved that he suffered an accident in the course of and arising out of his employment as correctional officer and that his current condition of ill-being is causally related to that accident. 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 Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

On November 26, 2012, Petitioner, a 28 year old gallery officer, lost his footing and fell down seven metal steps, striking his back and head. He testified that he walks up the steps six to ten times a day during the course of his daily duties. On this occasion, he was carrying only a lightweight pair of handcuffs and was not hurrying. There was nothing defective about the stairs themselves and nothing on them that caused him to fall. Petitioner's attorney referred him to Dr. Gornet for evaluation, and Petitioner was diagnosed with disc herniations at C3-4 and C6-7.

14IWCC0272

Arbitrator Granada found that Petitioner failed to meet his burden of proof regarding the issue of accident. He noted that Illinois courts have found that ascending or descending stairs is not a hazard uniquely related to an employee's employment. The Arbitrator found that nothing about the stairs or Petitioner's descent created an increased risk of injury to Petitioner.

The Commission views the evidence differently and finds the facts of this case remarkably similar to those in *Village of Villa Park v. IWCC*, 2013 IL App (2d) 130038WC. In *Villa Park*, the Appellate Court found that the claimant, a community service officer's, frequent use of stairs placed him in a position of greater risk of falling than the general public. The claimant's knee gave out as he was descending the stairs at the police station. These stairs led to a secured area not open to the general public and accessible only with a pass key. The *Villa Park* claimant had suffered a knee injury at home a few months before his fall at work, but the fall resulted in a new back injury and an exacerbation of his knee injury. The Arbitrator found that the claimant failed to prove that his injuries arose out of and in the course of his employment, because the act of walking down stairs did not establish a risk greater than those faced outside the work place. The Commission reversed the Arbitrator's denial of benefits, finding that the claimant's necessary and repeated use of the stairs for his employment exposed him to a greater risk than the general public. The Circuit Court confirmed the Commission, and the employer appealed to the Appellate Court. The Court noted that an injured worker must prove that his accident occurred both "in the course of" and "arose out of" his employment in order to obtain benefits and discussed what was required under both prongs. The Court cited *Sisbro* for the Supreme Court's description of "arising out of": "if the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. . . A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties."*Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). The Appellate Court then discussed the three categories of risk: direct, personal, neutral. A fall caused by a weak knee would be a personal risk and non-compensable unless the claimant's employment significantly contributed to the injury by placing him in a position of increased risk of falling. Falling down stairs is a neutral risk, which would be non-compensable, unless the claimant was exposed to an increased risk of injury by his employment.

The Court further noted that the increased risk may be qualitative or quantitative, such as where the claimant is exposed to a common risk more frequently than the general public, citing *Illinois Consolidated Telephone Co. v. Indus. Comm'n*, 314 Ill. App. 3d 347, 352-53, 732 N.E.2d 49, 247 Ill. Dec. 333 (2000). In *Villa Park*, the claimant was required to transverse the stairs a minimum of six times per day for his own personal comfort and to complete his work-related activities. The requirement that he use the stairs constituted an increased risk on a quantitative basis from the risks to which the general public is exposed. Therefore, the Appellate Court affirmed the Commission's finding of accident and award of benefits.

14IWCC0272

The facts in this case are nearly identical to those in *Villa Park*. In both cases, the claimant was required by the demands of his job to utilize stairs more frequently than would the general public. In both cases, the stairs on which the claimant was injured were utilized only by employees, not the public, and in both cases, the employee had to use the stairs at least six times a day. This presented a quantitatively increased risk of injury to the Petitioner and satisfied the "arising out of" requirement in the Act. The Commission finds that Petitioner here was injured in the course of his employment and that his injury arose out of that employment. Respondent is ordered to pay for Petitioner's related medical expenses (See PX6). Temporary total disability is not at issue, as Petitioner continued to work either light or full duty following his accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the related medical expenses as evidenced in PX6 at the fee schedule rate, pursuant to Sections 8(a) and 8.2 of the Act.

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.

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

DATED: APR 11 2014

Daniel R. Donohoo

Charles J. DeVriendt

Ruth W. White

o-03/26/14
drd/dak
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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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Childers,
Petitioner,

vs. No. 06 WC 006301
No. 06 WC 018557

Metropolis Fire Department,
Respondent.

14IWCC0273

DECISION AND OPINION ON REVIEW UNDER SECTION 8(a)

This cause comes before the Commission on Petitioner's Petition for Review of Prior Award and Prospective Medical Care Pursuant to Section 8(a) of the Illinois Workers' Compensation Act, filed on April 4, 2013. The arbitration hearing was held on March 14, 2007, after which Arbitrator Dibble issued a decision on April 23, 2007. The sole issue at hearing was the nature and extent of Petitioner's permanent disability, and Arbitrator Dibble awarded Petitioner $91,511.00 in related medical expenses and 22.5% of the person as a whole for his cervical spine injuries which occurred in the course of and arose out of his employment on January 2, 2004 and March 8, 2006. Neither party appealed the Arbitrator's Decision.

The hearing addressing Petitioner's Petition under Section 8(a) was held before Commissioner Donohoo on May 15, 2013.

14IWCC0273

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner testified at hearing on May 15, 2013 that since this matter was tried in March 2007, he has continued to treat with Dr. Gornet for his neck and with Dr. Granberg and Dr. Boutwell for pain management related to his cervical condition. He stated that his condition had steadily worsened since the March 2007 hearing, despite his conservative treatment with injections, creams, and oral pain medications. Dr. Gornet performed a disc replacement at C6-7 on August 29, 2013 and is currently treating Petitioner for structural changes at C2-3. Petitioner testified that he was claiming only medical expenses under Section 8(a), not temporary total disability benefits or additional permanent partial disability.

Respondent argued that Petitioner's post-arbitration treatment was not related to his 2004 and 2006 work injuries, but to a 1999 work-related cervical spine injury and resulting C3-6 fusion. Petitioner underwent this fusion surgery three to four years prior to initiating treatment with Dr. Gornet for his 2004 work injury in 2005. Dr. Gornet opined that Petitioner's current complaints at C2-3 resulted from adjacent level failure. The doctor explained that Petitioner's disc replacement at C6-7 caused abnormal movement of his cervical spine, resulting in structural changes at C2-3, on the opposite end of Petitioner's fusion. Dr. Gornet causally related Petitioner's C2-3 complaints to his 2004 and 2006 work accidents.

Respondent's Section 12 examiner, Dr. Petkovich, opined that Petitioner's cervical complaints at C2-3 resulted from idiopathic and degenerative changes unrelated to his 2004 and 2006 accidents. Dr. Petkovich agreed with Dr. Gornet that Petitioner's C2-3 complaints are related to his adjacent multi-level fusion performed prior to Petitioner's 2004 and 2006 work accidents. Dr. Petkovich opined that Petitioner's C3 through C6 fusion mechanically stressed the levels above and below it, causing or contributing to Petitioner's degenerative arthritic changes at C2-3. According to Dr. Petkovich, Petitioner's disc replacement at C6-7 could not have caused Petitioner's symptoms at C2-3, because of the C3-6 fusion between those levels, and Petitioner's C2-3 complaints could therefore not be causally related to his work accidents in 2004 and 2006.

The Commission finds Dr. Petkovich's opinions more persuasive than Dr. Gornet's. Petitioner's 2004 and 2006 work accidents caused injury to his cervical spine at C6-7. This area is separated by a fused segment of Petitioner's cervical spine stretching from C3 through C6 from the area currently causing Petitioner's complaints at C2-3. Even if, as represented by Dr. Gornet, the disc replacement caused Petitioner's cervical spine to move abnormally, it does not seem reasonable that a level several fused discs removed from the replacement would be adversely affected so as to result in adjacent level complaints. Therefore, the Commission adopts Dr. Petkovich's opinion that Petitioner's complaints at C2-3 and resulting need for treatment are not causally connected to his 2004 and 2006 work accidents, but are rather the result of progressive degenerative arthritis. Petitioner's current complaints are not related to his disc replacement at C6-7 which resulted from his 2004 and 2006 work injuries, but to his adjacent multi-level disc fusion which resulted from his 1999 work injury.

14IWCC0273

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition for Review of Prior Award and Prospective Medical Care is denied.

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: APR 11 2014

Daniel R. Donohoo

Charles J. DeVriendt

Ruth W. White

o-03/26/14
drd/dak
68

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

Darrell Lewis,
Petitioner,

vs.

NO: 10 WC 47167

14IWCC0274

Midwest Automatic Door,
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 temporary total disability, medical expenses and penalties and attorneys' 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 May 8, 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.

14IWCC0274

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 $21,700.00. 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: APR 11 2014

Daniel R. Donohoo

Ruth W. White

Charles J. DeVriendt

o-03/19/14
rww/wj
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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

LEWIS, DARRELL
Employee/Petitioner

Case# **10WC047167**

MIDWEST AUTOMATIC DOOR
Employer/Respondent

14IWCC0274

On 5/8/2013, 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:

0512 NOONAN PERILLO POLENZANI & MAR
JASON S MARKS
25 N COUNTY ST
WAUKEGAN, IL 60085

2837 LAW OFFICES OF THADDEUS GUSTAFSON
MICHELLE POWELL
2 N LASALLE ST SUITE 2510
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
19(b)

Darrell Lewis
Employee/Petitioner

v.

Midwest Automatic Door
Employer/Respondent

Case # 10 WC 47167

Consolidated cases: _____

14IWCC0274

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 **Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **February 8, 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**

FINDINGS

On the date of accident, **September 8, 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 $**66,665.56**; the average weekly wage was $**1,282.03**.

On the date of accident, Petitioner was **42** years of age, ***married*** 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 $**85,899.26** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**85,899.26**.

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 $**854.69**/week for **84-1/7** weeks, commencing **9/15/10** through **4/25/12**, as provided in Section 8(b) of the Act.

Maintenance

Respondent shall pay Petitioner maintenance benefits of $**854.69**/week for **41-2/7** weeks, commencing **4/26/12** through **2/8/13**, as provided in Section 8(a) of the Act.

Penalties

Respondent shall pay to Petitioner penalties of $**300.00**, as provided in Section 19(l) of the Act.

Vocational Rehabilition

Respondent shall provide vocational rehabilitation benefits for Petitioner 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.

14IWCC0274

5/7/13

Signature of Arbitrator

Date

ICArbDec19(b)

MAY - 8 2013

ILLINOIS WORKERS' COMPENSATION COMMISSION

DARRELL LEWIS Employee/Petitioner	)	
v.	)	Case No.: 10 WC 47167
MIDWEST AUTOMATIC DOOR Employer/Respondent	)	Setting: Chicago

14IWCC0274

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ARBITRATOR'S 19(b) DECISION

FINDINGS OF FACT

Petitioner was previously employed by Respondent as a service technician. Respondent services and installs commercial doors. Prior to working for Respondent, Petitioner worked for Door Systems for six years. Door Systems also services and installs commercial doors and Petitioner's job duties with Door Systems were similar to those he had with Respondent. (Petitioner's testimony)

Petitioner testified extensively regarding a typical day on the job with Respondent. He is required to travel to various locations for service and installation of commercial automatic doors. Upon arrival on the site, he diagnoses the customer's particular problem and often is required to remove the door panels from the frame. Depending upon the problem, Petitioner either repairs the existing door or is required to install a new door. (Petitioner's testimony)

Petitioner testified that he is required to lift in excess of 50 pounds on a daily basis as part of his job as a service technician with Respondent. Petitioner testified that the average door he had to service and take down weighed a minimum of 100 pounds. In some doors, Petitioner continued, a panel of glass can weigh more than a couple hundred pounds. His job involved extensive use of both hands in order to, among other things, operate power and manual tools. (Petitioner's testimony)

As part of his employment, Petitioner was required to service and install automatic swing doors, automatic sliding doors, revolving doors, hollow metal doors and manual swing doors. Petitioner offered specific testimony regarding work he personally performed on the doors. Petitioner testified that he was required to install and/or remove the particular door panels. (Petitioner's testimony)

On September 8, 2010, Petitioner was working at a Sears store with another employee of Respondent. He was using a hammer with his right hand and using his left hand to hold a threshold. He sustained an injury to the middle finger on his left hand when he struck it with the hammer. (Petitioner's testimony)

Petitioner advised David Walker of the injury, but continued working for several days before seeking medical treatment. Petitioner thought the injury was just a contusion and that it would resolve. In light of continued problems, Petitioner eventually sought medical treatment. (Petitioner's testimony)

Petitioner testified that he did not believe that he could perform his job while wearing a splint on the middle finger of his non-dominant hand. He reported pain with lifting. (Petitioner's testimony)

Petitioner testified that he was unable to return to work and had been terminated from his position with Respondent. He testified that he received TTD benefits through August 26, 2012. (Petitioner's testimony)

Petitioner testified that as of the date of trial, he had pain in his left middle finger that ran up his elbow. (Petitioner's testimony)

Petitioner was seen in the emergency room at Ingalls Memorial Hospital on September 14, 2010. He was noted to have pain and swelling in his left hand following a work injury one week ago. An x-ray was performed which revealed a fracture of the distal phalanx of the left middle finger. The fracture was noted to extend to the articular surface and was slightly displaced. Petitioner was discharged with instructions to follow-up with Dr. Fanto, an orthopedic surgeon. (PX 22, pp. 40-46)

Petitioner was taken to surgery on September 17, 2010, where Dr. Fanto performed an arthrotomy of the left middle finger DIP joint as well as an open reduction internal fixation of the intraarticular fracture of the left middle finger. Petitioner underwent a course of physical therapy subsequent to surgery. Additional surgery was performed on November 8, 2010, at which time Dr. Fanto removed two pins that were placed at the time of the original surgery. (RX 1)

Due to continued complaints of pain, Petitioner returned to the emergency room at Ingalls Memorial Hospital on December 21, 2010. An x-ray was performed which revealed a non-union of the left middle finger DIP joint. He was also diagnosed with an infected wound. (PX 22, pp. 21-28)

Petitioner was seen by Dr. Daniel Mass at the University of Chicago Hospitals on March 25, 2011, in order to obtain a second opinion. Dr. Mass examined Petitioner and provided him with the option of repeating the open reduction internal fixation of the fracture in order to preserve some motion at the DIP joint or, alternatively, undergoing a fusion. (PX 23, pp. 162-163)

Petitioner elected to proceed with the repeat open reduction internal fixation procedure and this was performed by Dr. Mass on May 9, 2011, at the University of Chicago Hospitals. Petitioner followed up with Dr. Mass subsequent to surgery and began physical therapy. Additional surgery was performed on September 20, 2011, to remove the screws. (PX 23, pp. 153-160)

Petitioner continued to complain of pain in his left middle finger and left hand following the surgical procedures performed by Dr. Mass. On November 15, 2011, Dr. Mass suggested that Petitioner restart formal physical therapy. On December 19, 2011, Dr. Mass recommended that Petitioner undergo work hardening and that he complete a functional capacity evaluation ("FCE") at the conclusion of the work hardening program. (PX 23, pp. 149-150)

Work hardening was performed at ATI Physical Therapy in Matteson from February 1, 2012 through February 24, 2012. Four progress reports were generated by the therapist at ATI throughout the course of Petitioner's work hardening. The progress reports all indicate Petitioner's complaints of pain in his left middle finger with lifting activities. Additionally, the reports note that as Petitioner was required to lift heavier weights, the pain increased with radiation through his hand and up through his forearm and, at times, to his left elbow. He was also noted to have swelling of his finger with increased lifting and gripping. (PX 25, pp. 21, 28, 39 and 50)

Petitioner completed an FCE at ATI Physical Therapy on February 22, 2012. The evaluator found that the test was a valid representation of Petitioner's present physical capabilities. His functional capabilities were found to be most consistent with the medium physical demand level, which is defined as 50 pounds of occasional lifting. The evaluator further noted strength deficits regarding his left hand (involved) versus his right hand (uninvolved) and Petitioner was noted to display limited flexion of his L middle MIP and DIP joints. The FCE went on to state as follows:

> There was swelling of his entire L middle finger during and after every lift he performed. He used his L middle finger sparingly during all nuts and bolts activities when asked to tighten the nuts with his L hand. He displayed difficulties with the dexterity of his L middle finger during these activities due to swelling and pain. As the swelling and pain increased so did these difficulties.

Due to his displayed difficulties with manipulating the nuts and washers during nuts and bolts activities, the evaluator recommended left hand fine grasping at a minimally occasional frequency. Petitioner was unable to wrap his left middle finger around the handles during any of his lifts. Therefore, the evaluator recommended left hand firm grasping at an occasional frequency. (PX 25, pp. 10-11)

Petitioner was last seen by Dr. Mass on April 23, 2012. He was noted to be status post open reduction and internal fixation and hardware removal with residual osteoarthritis of his DIP joint. He noted that Petitioner demonstrated pain and swelling with usage and demands greater than 30 pounds. Dr. Mass indicated that Petitioner could attempt to return to work with occasional lifting up to 30 pounds with the left hand with breaks that would allow him to ice his finger and take anti-inflammatories to reduce swelling. Dr. Mass noted that if Petitioner is unable to successfully return to work with these restrictions, he should consider undergoing a fusion or finding a new line of work that did not require him to lift such heavy loads. (PX 25, p. 147 and PX 24, p. 1)

Petitioner was terminated by Respondent while he was treating with Dr. Mass. Petitioner was therefore unable to return to his prior employment after he received permanent restrictions

from Dr Mass on April 23, 2012. As Respondent did not have work for Petitioner within his restrictions, Petitioner was paid temporary total disability benefits by Respondent.

On September 5, 2012, Petitioner received a letter from Respondent's insurance carrier advising him that his temporary total disability benefits had been discontinued. Notwithstanding the date of the letter, Petitioner did not receive any temporary total disability benefits beyond August 26, 2012. (Petitioner's testimony)

The condition of Petitioner's left middle finger has not changed since he last saw Dr. Mass. He has pain and swelling of the finger with any increased activity and lifting. (Petitioner's testimony)

Petitioner has searched the internet in an attempt to find employment as a service technician. He testified regarding job postings with BH Pace, Atlas Door Repair and ASSA ABLOY Entrance System. Based on the job descriptions, these positions are similar to the position Petitioner had with Respondent. The job requirements for each of these positions indicated that the individual should be able to safely lift at least 80 pounds. Petitioner testified that he did not apply for these positions as they are outside of the restrictions indicated by Dr. Mass. (Petitioner's testimony)

Petitioner wore a splint at the time of the hearing and demonstrated how the splint limits the motion of his left middle finger. Petitioner testified that he is unable to perform his job as a service technician and installer of commercial doors while using a splint as it affects his ability to safely lift, maneuver and carry commercial door panels that weigh in excess of 100 pounds. The splint also affects his ability to grip and grasp with his left hand which is essential for the job. (Petitioner's testimony)

On cross-examination, Petitioner acknowledged that he collected unemployment while he received TTD benefits. When asked, Petitioner demonstrated that he was able to make a fist with his left hand, although he was unable to completely close his left middle finger. Petitioner testified that he had not completed a job search either before or after the termination of his TTD benefits. He submitted no job search records or logs. He testified that he also looked for work at Walgreen's and K-Mart, but that no one would hire him because he was on workers' compensation. He has not treated with Dr. Mass since April 23, 2012. Petitioner has not tried to work with a splint. He has not contacted the union with regard to a return to work. (Petitioner's testimony)

Given the condition of his left middle finger, Petitioner testified that he is not able to return to his prior employment as a service technician and installer of commercial doors. Petitioner cited the lifting requirements of the position and indicated that he is unable to safely lift, maneuver and carry commercial door panels due to pain and swelling of his left middle finger. His opinion is also based on his inability to grip and grasp things with his left hand which he is required to do as part of his job. Petitioner testified that safety is a large issue in the industry and that the pain he experiences in his left middle finger (which radiates through his forearm and elbow) while lifting

heavy objects will not allow him to safely perform his job as a service technician and installer of commercial doors. (Petitioner's testimony)

David Walker

David Walker testified that he is currently the General Manager for Midwest Automatic Door and has been so since July of 2012. Prior to that, he was a Vice-President and Co-Owner of Respondent. Respondent services and installs commercial doors in buildings such as Sears, Starbucks and Walmart. Respondent performs work at many buildings in the downtown Chicago area. (David Walkers' testimony)

Mr. Walker is familiar with Petitioner as he previously worked for Respondent as a service technician. Petitioner was required to service and install commercial doors as part of his job with Respondent. His job involved lifting the door/door panels and all associated parts as well as the using hand tools and doing electrical wiring. (David Walkers' testimony)

The service technician is required to travel to a job site and investigate customer complaints regarding commercial doors. Oftentimes this involves removing the door from the frame and, potentially, replacing the door. Service technicians are required to safely lift, maneuver and carry the commercial door panels. (David Walkers' testimony)

Many of the door panels weigh in excess of 100 pounds and can be several hundred pounds. Mr. Walker testified regarding doors of Dorma Automatics, Besam, Hunter Automatics, Stanley and Gyro Tech and indicated that these doors are similar to those used by Respondent and serviced and installed by Respondent's technicians. He testified regarding the written materials from each of these companies that indicated door panel weights ranging from 200 to 440 pounds per leaf/panel. (David Walkers' testimony)

Mr. Walker offered testimony that he could not hire a service technician who could not safely lift, maneuver and carry a commercial door leaf/panel or other components weighing in excess of 50 pounds. He stated that the doors contained glass and, obviously, posed a safety hazard if they are unable to be moved without being dropped. (David Walkers' testimony)

On cross-examination, Mr. Walker testified that the doors Respondent serviced at the time of the accident, weighed, without the glass panels in them, a minimum of 40 pounds. He testified that doors from different manufacturers weigh different weights. A service technician worked by himself, or in multiple-person crews. If a service technician went out on a job and discovered that he had to lift 150 pounds, he could call in and get another technician to help him.

Timothy P. Conrin

Timothy P. Conrin is employed at Door Systems as a supervisor. Door Systems services and installs commercial doors. He has been in the commercial door service and installation business for over 30 years. He is familiar with the job duties of a service technician. (Timothy Conrin's testimony)

He knows Petitioner from his prior employment with Door Systems. Petitioner was a

service technician while at Door Systems and serviced and installed commercial doors. The doors weighed 80 to 220 pounds per panel. (Timothy Conrin's testimony)

Tim Conrin testified regarding the job duties of a service technician. A service technician is required to safely lift, maneuver and carry commercial door panels that weigh in excess of 100 pounds and to perform gripping and grasping activities with both hands. Additionally, a service technician is required to operate both manual and power tools. He characterized the job as physical. (Timothy Conrin's testimony)

In his opinion, as someone who has worked in the industry for over 30 years, an individual with a 50 pound lifting restriction and diminished ability to grip and grasp things with his hands cannot work safely as a commercial door service technician and installer. Mr. Conrin testified that there is a significant safety issue given the fact that the commercial doors are heavy, loaded with glass and repairs are often performed in the area of the general public. He would not hire someone for the service technician position who has these types of restrictions. (Timothy Conrin's testimony)

Dave Krasnopolski

Dave Krasnopolski is a service technician for Door Systems. He installs and services commercial doors. He has been a service technician and installer of commercial doors for more than 15 years. He is familiar with Petitioner and worked with him at another company prior to beginning his employment with Door Systems. (Dave Krasnopolski's testimony)

He identified the specific types of doors that he works on as a service technician, including automatic sliding doors, automatic swing doors, manual swing doors, revolving doors and hollow metal doors. Mr. Krasnopolski described the physical requirements of the job and indicated that a service technician is often required to safely lift, maneuver and carry door panels that weigh in excess of 100 pounds. He described the job as physical. He indicated that he would not be able to perform his job if he had to wear a splint on his finger much like the one Petitioner was wearing at the time of the hearing. He stated that the splint would compromise his ability to lift heavy objects and to grip and grasp objects with his hands. (Dave Krasnopolski's testimony)

In his opinion, as someone who has been a service technician for over 15 years, an individual with a 50 pound lifting restriction and a diminished ability to grip and grasp things with his hands cannot work safely as a commercial door service technician and installer. (Dave Krasnopolski's testimony)

Elizabeth Walker

Elizabeth Walker testified that she is currently the office manager for Midwest Automatic Door. She was the President of Midwest Automatic Door from February 28, 2005 through July 11, 2012. Throughout that time period, she was the human resources contact at the company. (Elizabeth Walker's testimony)

She is familiar with Petitioner as he was previously employed by Respondent.

Essentially, Ms. Walker testified that Petitioner was terminated for improper use of his company credit card and being written up several times. Petitioner was not discharged until approximately 11 months after the alleged improper charges. Elizabeth Walker did not produce any written material to confirm or support her allegation that Petitioner was written up on several occasions. Furthermore, Ms. Walker testified that Petitioner was terminated for collecting unemployment benefits while employed by Respondent. (Elizabeth Walker's testimony)

Adrian Zaharia

Mr. Zaharia was hired by Respondent's workers' compensation insurance carrier to perform surveillance on Petitioner. He testified regarding his reports of October 1, 2011, December 1, 2011 and January 12, 2013. (Adrian Zaharia's testimony)

In summary, Mr. Zaharia performed surveillance of Petitioner on four separate occasions on September 15, 2011 through September 28, 2011. These dates were summarized in his report of October 1, 2011. He observed Petitioner drive to a fast food restaurant and walk his dog along the street during the aforementioned dates. He did not observe Petitioner performing any other physical activity. (Adrian Zaharia's testimony)

He took additional surveillance of Petitioner on November 23, 2011 and November 28, 2011, which were summarized in his report dated December 1, 2011. On those dates he observed Petitioner walking from his residence to the corner and possibly biting his fingernails. He did not observe Petitioner perform any other physical activity on the aforementioned dates. (Adrian Zaharia's testimony)

Finally, he surveilled Petitioner on January 9, 2013 and January 10, 2013. These dates are outlined within his report of January 12, 2013. He observed Petitioner talking on his mobile phone and rolling a garbage can to the curb with both hands on January 9, 2013. On January 10, 2013, he observed Petitioner holding a cigarette in his left hand. He did not observe Petitioner performing any other physical activity on those dates.

Mr. Zaharia testified that the only time Petitioner was seen wearing a splint was when he went to a doctor's appointment. (Adrian Zaharia's testimony)

Dr. Michael Cohen

Dr. Cohen examined Petitioner on three separate occasions and authored four reports which were admitted into evidence at the time of trial. (RX 1, RX 2, RX 3 and RX 4)

In his report of December 21, 2011, Dr. Cohen indicated that Mr. Lewis continues to have a non-union and arthritic changes at the distal interphalangeal joint of his left middle finger related to the original injury of September 8, 2010. Dr. Cohen opined that Mr. Lewis should have occupational therapy/work hardening until his progress plateaus and, if he continues to have

significant pain at the distal interphalangeal joint that is not resolved or significantly improved with further therapy, he should consider undergoing a distal interphalangeal joint fusion. As of December 21, 2011, Dr. Cohen indicated that Mr. Lewis could work with a splint on the left middle finger and with a 15 to 20 pound weight restriction. He went on to state that if the above recommended therapy is successful, he would be able to return to his normal job activities without restriction at the end of therapy . . . if that is unsuccessful, then he would require a fusion and determination of a specific date of return to full-duty work, which would be difficult to determine at that time since it would depend on his recovery from the surgery. (RX 2)

Petitioner was examined for the third and final time by Dr. Cohen on April 25, 2012. Dr. Cohen wrote that Petitioner does have some motion at the DIP joint, but that he also has crepitance and pain in the DIP joint. Dr. Cohen performed x-rays which showed evidence of arthritis and non-union at the DIP joint. His diagnosis was a non-union of the left middle finger DIP joint with associated arthritis - - which is related to the original injury of September 8, 2010. He indicated that Petitioner was at a plateau in improvement and continued to recommend a fusion of the DIP joint. Dr. Cohen opined that if Petitioner decides not to have the surgery, then he believes he is at maximum medical improvement. Dr. Cohen further opined that Mr. Lewis is capable of gainful employment in a modified fashion, i.e., with a splint on the middle finger. While he mentioned the FCE in the "History of Present Injury", Dr. Cohen makes no mention of its findings or of the lifting and other requirements of Petitioner's specific employment as a commercial door service technician and installer. (RX 3)

On July 17, 2012, Dr. Cohen authored an addendum report after reviewing a video job analysis that was provided to him by the workers' compensation insurance carrier. The question from the workers' compensation insurance carrier was whether Petitioner could perform his full work duties with a finger splint. Upon his review of the 10 minute and 11 second video job analysis, Dr. Cohen opined that it does not appear that Mr. Lewis' wearing of a splint on his left middle finger, i.e., on his non-dominant hand, would prevent him from doing his job activities. He further indicated, on the basis of the job video, that he believed Petitioner could work with a splint on his left middle finger. He recommended a streamlined splint. (RX 4)

Petitioner testified that the video job analysis did not depict his complete job duties. He testified that Petitioner's Exhibit 20 depicts some, but not all, of the job duties associated with the position of service technician. (Petitioner's testimony)

CONCLUSIONS OF LAW

In Support of the Arbitrator's Decision Regarding F (Causal Connection), the Arbitrator Finds as Follows

Petitioner sustained an acute injury to the middle finger of his left hand on September 8, 2010, when he struck it with a hammer. Petitioner has undergone four surgical procedures, including two open reduction internal fixation procedures, to repair an intraarticular fracture. Petitioner underwent extensive physical therapy, including work hardening, and completed an FCE on February 22, 2012, which was found to be valid and reliable.

Petitioner last saw Dr. Mass on April 23, 2012, at which time he was noted to have residual arthritis of the DIP joint and pain and swelling with usage and with lifting of greater than 30 pounds. Dr. Cohen, Respondent's examining physician, last evaluated Petitioner on April 25, 2012. It was his opinion that Petitioner continued to have a non-union at the left middle finger DIP joint with associated arthritis. Dr. Cohen clearly stated that Petitioner's current condition is related to the original injury of September 8, 2010.

Based on the forgoing, the Arbitrator finds Petitioner's current condition of ill-being to be causally related to his work accident of September 8, 2010. Both Doctors Mass and Cohen agree as to Petitioner's diagnosis and its causal connection to the work accident.

In Support of the Arbitrator's Decision Regarding O (Vocational Rehabilitation), the Arbitrator Finds as Follows

While Dr. Mass and Dr. Cohen agree as to Petitioner's current diagnosis and its causal connection to the work accident, they disagree as to his current restrictions and whether those restrictions prevent him from returning to his prior line of employment. Dr. Mass has provided Petitioner with restrictions of occasional lifting up to 30 pounds with the left hand with breaks to ice his finger and to take anti-inflammatory medications. He further opined that if Petitioner is unable to perform his job within these restrictions, he should find other work that would not require him to lift such heavy loads.

Dr. Cohen does not believe Petitioner requires a weight restriction. Rather, after reviewing a 10 minute video, Dr. Cohen believes that Petitioner can return to his prior line of employment with the only restriction being the use of a splint on his left middle finger.

Petitioner underwent an FCE on February 22, 2012, which was found to be valid and reliable. The FCE placed him at the medium physical demand level with occasional lifting up to 50 pounds. Petitioner was noted to have strength deficits in his left hand as opposed to his right hand. He experienced swelling of his entire left middle finger during and after every lift he performed. He was noted to have difficulty with nuts and bolts activities and with the dexterity of his left middle finger due to pain and swelling. Based on these difficulties, it was recommended that he perform left hand fine grasping with only a minimally occasional frequency and left hand firm grasping with an occasional frequency.

The testimony and other evidence at trial clearly established that Petitioner is required to lift in excess of 50 pounds relatively frequently in order to perform his job as a commercial door service technician and installer. All witnesses testified that the weights of the door panels often exceed 100 pounds and can weigh up to several hundred pounds. The ability to safely lift, maneuver and carry these door panels is essential in Petitioner's line of work as the doors are filled with glass. The six videos contained on Petitioner's Exhibit No. 20 depict the physical nature of the job and that the service technician is required to have full use of both hands.

Based on the foregoing, the Arbitrator finds the opinions of Dr. Mass (with regard to Petitioner's restrictions) to be more persuasive than that those offered by Dr. Cohen. The FCE was found to be valid. The evaluator noted that Petitioner had significant difficulties with pain and swelling of his left middle finger associated with lifting, gripping and grasping activities. The Arbitrator finds that Dr. Mass considered the functional capacity evaluation in determining Petitioner's restrictions. The testimony of all witnesses established that Petitioner is not able to return to his line of work as a commercial door service technician due to the lifting, gripping and grasping requirements needed to safely fulfill one's job duties in that profession. Taken as a whole, the testimony and other evidence also establish that Petitioner could not safely perform his prior job simply by using a finger splint as indicated by Dr. Cohen. It appears that Dr. Cohen's opinion fails to consider the findings of the valid FCE wherein it clearly stated that Petitioner experienced significant increased pain and swelling in his left middle finger with lifting, gripping and grasping activities.

Based on the foregoing, the Arbitrator finds that Petitioner could not safely perform his job as a service technician with the use of a finger splint as indicated by Dr. Cohen.

Petitioner has elected not to proceed with the fusion surgery. Dr. Mass and Dr. Cohen believe, therefore, that he is at maximum medical improvement ("MMI").

The Arbitrator places more weight on the opinions of Dr. Mass and the FCE evaluator than he does on the opinions of Dr. Cohen.

Petitioner is unable to return to work within the restrictions imposed by Dr. Mass and the FCE evaluator. Notwithstanding Petitioner's limited job search, the Arbitrator finds that Petitioner is entitled to vocational rehabilitation pursuant to Section 8(a) of the Act.

In Support of the Arbitrator's Decision Regarding L (TTD/Maintenance), the Arbitrator Finds as Follows

Petitioner was last seen by Dr. Mass on April 23, 2012. At that time he was given permanent restrictions. Petitioner was seen by Dr. Cohen on April 25, 2012, and found to be at maximum medical improvement. In light of the Arbitrator's decision regarding Petitioner's inability to return to work and entitlement to vocational rehabilitation, the Arbitrator finds that Petitioner was entitled to temporary total disability benefits from September 15, 2010 through April 25, 2012, at which point his condition stabilized and he was found to be at maximum medical improvement. The Arbitrator further finds that Petitioner is entitled to maintenance benefits from April 26, 2012, through February 8, 2013, as Petitioner was unable to return to his prior line of

employment due to his restrictions.

In Support of the Arbitrator's Decision Regarding M (Penalties and Attorneys' Fees), the Arbitrator Finds as Follows

Respondent forwarded correspondence dated September 5, 2012, to Petitioner's counsel advising that Petitioner's temporary total disability benefits were being terminated. However, Respondent failed to pay Petitioner's benefits beyond August 26, 2010.

Section 7110.70(b) of the Rules governing practice before the Illinois Workers' Compensation Commission provide as follows:

> When an employer begins payment of temporary total compensation and later terminates or suspends further payment before an employee in fact has returned to work, the employer shall provide the employee with a written explanation of the basis for the termination or suspension of further payment no later than the date of the last payment of temporary total compensation. 50 Ill. Adm. Code Chapter II Section 7110.70(b). Failure to comply with the provision without good and just cause shall be considered by the Commission or an arbitrator when adjudicating a petition for additional compensation pursuant to Section 19(l) of the Act. 50 Ill. Adm. Code Chapter II, Section 7110.70(e).

Section 19(l) of the Act provides for penalties of $30.00 per day for each day that the Respondent refuses to pay benefits pursuant to Section 8(b).

The Arbitrator finds that Respondent failed to comply with Commission rules when they terminated Petitioner's benefits pursuant to its correspondence of September 5, 2012, but failed to pay Petitioner beyond August 26, 2012. This represents a period of 10 days.

In light of the above, the Arbitrator assesses penalties against Respondent under Section 19(l) in the amount of $300.00 ($30.00 per day x 10 days).

STATE OF ILLINOIS	)	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
	)	☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
	SS.		
COUNTY OF SANGAMON	)	☐ 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

Margaret Skagg,
Petitioner,

vs. No: 12 WC 17823

14IWCC0275

State of Illinois,
Department of Revenue.
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 accident, medical expenses, temporary disability and permanent disability, and being advised of the facts and law, corrects the Decision of the Arbitrator as stated below and otherwise affirms and adopts the May 3, 2013 Decision of the Arbitrator, which is attached hereto and made a part hereof.

After considering the entire Record, the Commission corrects several typographical errors in the Arbitrator's decision. The Commission affirms the Arbitrator's finding that the injury manifested itself on December 10, 2002. The Commission corrects page six, first paragraph, fourth full sentence to read "On December 10, 2002, Dr. Bergman noted that Petitioner's wrist splints were no longer helping Petitioner's bilateral CTS symptoms, as Petitioner had reported on this date that her symptoms returned about 4-5 months prior."

14IWCC0275

The Commission also corrects page six, second paragraph, fifth sentence to read, "The wrist splints alleviated Petitioner's CTS symptoms for almost a year, but Petitioner then presented to Dr. Bergman on December 10, 2002, noting the splints were no longer working." In the same paragraph, the Commission corrects the last two sentences to read, "As of December 10, 2002, Petitioner knew or reasonably should have known that she had work-related, bilateral CTS in which surgery would be needed unless her job duties changed. December 10, 2002 is accordingly the manifestation date of Petitioner's injury."

The Commission also corrects page six, third paragraph, third sentence to read, "Further, the diagnosis on December 10, 2002 was related to specific work activities, and Petitioner would have known this fact at that time." Finally, the Commission corrects page seven, second paragraph, first sentence to read, "Accordingly, given a manifestation date of December 10, 2002, and the fact that Petitioner did not file an application for adjustment of claim with the Illinois Workers' Compensation Commission until May 23, 2012 (see PX 1), Petitioner's claim is barred by the statute of limitations pursuant to Section 6(d) of the Act."

All else is otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator is hereby corrected and affirmed. Petitioner's claim for compensation is denied.

DATED: APR 1 1 2014

drd/adc
o-02/25/14
68

Daniel R. Donohoo

Kevin W. Lamborn

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SKAGG, MARGARET E
Employee/Petitioner

Case# **12WC017823**

14IWCC0275

STATE OF ILLINOIS
Employer/Respondent

On 5/3/2013, 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:

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

MAY 3 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

MARGARET E. SKAGGS
Employee/Petitioner

v.

STATE OF ILLINOIS
Employer/Respondent

Case # 12 WC 17823

Consolidated cases: _____

14IWCC0275

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: Is Respondent's Exhibit 5 admissible?

14IWCC0275

FINDINGS

On **March 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 **$61,259.00**; the average weekly wage was **$1,178.06**.

On the date of accident, Petitioner was **51** 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 **$3,590.36** for TTD, **$.0** for TPD, **$.0** for maintenance, and **$.0** for other benefits, for a total credit of **$3,590.36**.

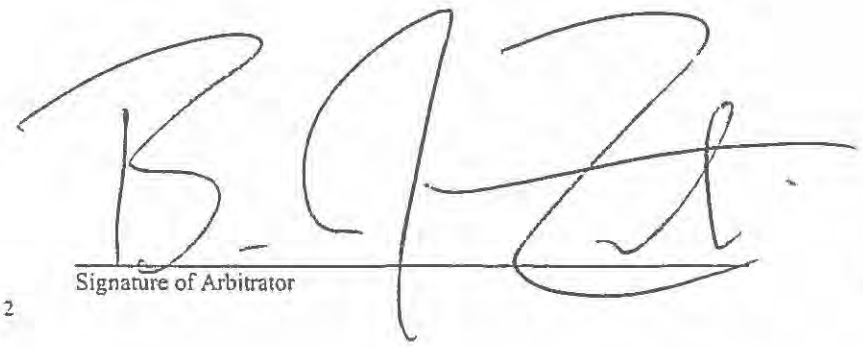
Respondent is entitled to a credit for all medical bills paid by Respondent under Section 8(j) of the Act.

ORDER

Petitioner failed to prove she sustained an accident on March 15, 2011 arising out of and in the course of her employment with Respondent. For the foregoing reasons, Petitioner's claim for compensation is denied and no benefits 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

04/29/2013
Date

MAY - 3 2013

STATE OF ILLINOIS)
)SS
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARGARET E. SKAGGS
Employee/Petitioner

v.

Case # 12 WC 17823

STATE OF ILLINOIS
Employer/Respondent

14IWCC0275

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Margaret E. Skaggs, worked for Respondent, the State of Illinois – Department of Revenue, from June 7, 1977 until her retirement on May 31, 2012. From 1991 until her retirement in 2012, she worked in Respondent's print shop. She worked in this position for 7.5 hours per day, 5 days per week. This position required extensive typing duties, as Petitioner would be typing on a keyboard approximately 5 to 7.5 hour per day. When typing, her elbows would be against her side, with her hands off of her desk, fingers pointed down, arms not at rest, with palms parallel, and both wrists turned down. Petitioner testified she typed this way during her entire 21 year tenure in the print shop. Photographs of Petitioner's work station were entered into evidence as Respondent's Exhibit 6. Petitioner's job in the print shop also required repetitive lifting between 1 to 50 pounds. Her duties also involved the daily use of her hands for gross and fine manipulation. (See Respondent's Exhibit (RX) 3).

On June 5, 2001, Petitioner presented to Dr. Claude Fortin with bilateral hand numbness. It was noted this numbness would wake Petitioner at night and was associated with reduced hand grip strength in the day. She also reported associated wrist pain at this time. Petitioner reported that these symptoms had been going on for over a year, and were significantly worsening, particularly on the right hand/wrist. Dr. Fortin performed nerve stimulation studies, and noted said studies were consistent with bilateral median neuropathy at the bilateral wrists, moderately severe on the right with evidence of sensory axon loss, and moderate on the left. Dr. Fortin reported that the study would support surgical decompression of the median nerve at the wrist. (RX 7).

Petitioner next presented to Dr. Beth Bergman on July 24, 2001. Dr. Bergman's report on this date indicates as follows:

> "[Petitioner] is right handed. She works for the State and has for the past 25 years, doing keypunch, data entry, typing, a lot of lifting. She has had absolutely no fall or trauma. She has had right greater than left numbness and tingling. The right, in the last few months has gotten significantly worse and, in fact, she is having it happen almost every night…She has never been placed in a wrist splint."

(RX 7).

Dr. Bergman diagnosed bilateral carpal tunnel syndrome (CTS), right greater than left, and recommended a wrist splint. Dr. Berg reported to Petitioner on this visit that if she was not improved, she would need bilateral carpal tunnel releases. Dr. Berg also reported: "She will also talk to work about the possibility of Workman's Comp time off, should she need surgery." (RX 7).

Petitioner returned to Dr. Bergman over a month later on September 4, 2001. It was noted Petitioner was wearing a right wrist splint, and that it felt "wonderful." Petitioner reported she was able to sleep "pretty much the whole night through." Petitioner reported symptoms of the left hand on this visit, and that she had yet to get a left wrist splint at that time. Dr. Berg reported that Petitioner had "given some consideration to additional jobs and is, as well, considering that." Dr. Berg's impression on this date was:

> "1. Right carpal tunnel, markedly improved with splint therapy – would recommend consideration to alternate job and continued wrist splinting at night for another 3 months. She'll call earlier if she gets worse.
>
> 2. New left carpal tunnel syndrome. We will try left splint at night as well on the exact same course."

(RX 7).

Petitioner returned to Dr. Berg over a year later on December 10, 2002. The history on this date was reported as follows:

> "[Petitioner] is a patient we saw 9-4-01. She had right carpal tunnel. I put her in a splint. She was doing great. She then had left carpal tunnel. I put her in a splint and she was supposed to come in 3 months, she didn't, she states she was doing great. She now notes that 4-5 months ago she started to have symptoms of both hands. She notes no fall, no fracture, no trauma. She notes that with lay-offs at work she is having to do a lot more lifting than she normally does. She doesn't think that is going to get better and in fact she thinks it may get worse. She notes that they fall asleep during the day, several times. She wears bilateral wrist splints at night and occasionally they fall asleep 1 or 2 x a night, even with splints. She really does like her job. She hadn't thought about other types of work. She also developed some left ulnar sided wrist pain. She has not had any fall or fracture."

(RX 7).

Dr. Bergman's impression on the December 10, 2002 visit was, "Worsened carpal tunnel with no fixed neurologic deficit, most likely related to increased work load at work." Dr. Bergman reported that Petitioner had "not responded to splint therapy." Dr. Bergman recommended carpal tunnel release. The doctor also informed Petitioner that if she were to modify her job back to previous duties she might be

able to get by without surgery. If the job duties could not be modified, then Petitioner was to report back to Dr. Bergman about scheduling the CTS surgery. (RX 7).

Petitioner presented to Dr. Jeffrey Horvath on December 14, 2007, five years after the December 10, 2002 appointment with Dr. Bergman, discussed *supra*. The primary purpose of this visit was concerning a follow-up evaluation regarding Petitioner' s hip condition, which is not at issue in the present claim. On that date, however, Petitioner reported her CTS had been "acting up more." An impression was noted for, *inter alia*, "[h]istory of carpal tunnel." (RX 7).

Petitioner presented to Dr. Tomasz Borowiecki on January 24, 2008. Petitioner reported numbness and paresthesias in both hands, and that her hands had gotten progressively worse over the last few months. It was noted that Petitioner worked "in a computer room doing a lot of typing, etc." Dr. Borowiecki reported as follows:

> "[Petitioner] states that she has a diagnosis of carpal tunnel syndrome based on EMG and nerve conduction studies that she had she estimates probably five to six years ago. She gets symptoms at work while working on the keyboard and doing some of the other activities in her job in the computer room at CMS. Unfortunately, it does not sound like she has actually filed this as a workman's comp claim."

(RX 7).

Dr. Borowiecki also explained to Petitioner on the January 24, 2008 evaluation that if she felt her hand problems were work related she would need to file a claim. The doctor noted that, if the claim was accepted, he would likely recommend carpal tunnel release, as Petitioner "has had symptoms for at least five to six years." Dr. Borowiecki noted that the proposed hip surgery would likely need to occur first, as Petitioner would be using a walker and would not need to do so on fresh wrist/hand incisions from the CTS surgeries. (RX 7; PX 11, p. 27). Dr. Borowiecki testified, however, that he did not see Petitioner in the intervening three years following the 2008 hip surgery he performed. (PX 11, pp. 8-9).

Petitioner testified that her wrist pain increased, and she then presented for further nerve conduction studies on March 1, 2011 with Dr. Koteswara Narla. Dr. Narla's impression from the studies was, *inter alia*, severe carpal tunnel compression of the median nerve on the right side, and moderate to severe carpal tunnel compression of the median nerve on the left side. Dr. Narla reported that there was little else to do other than perform bilateral surgery. (RX 7).

Petitioner presented to Dr. Borowiecki on March 15, 2011. She also saw Dr. Borowiecki's physician assistant, David Purves, on this date. Petitioner reported that the numbness and tingling in her hand had progressively gotten worse over the past several years. Petitioner denied any injury or trauma, and noted that the symptoms had been present for "at least 8 years if not longer." Petitioner reported that her symptoms were worse, especially with performing work activities. Dr. Borowiecki recommended bilateral carpal tunnel releases on this date. Dr. Borowiecki discussed with Petitioner the risks of the surgery, including potential nerve and artery damage, downtime, tingling the palm after surgery, and failure of the surgery to resolve all of her symptoms. He then noted that the forgoing was true, "especially on the right side, as her symptoms have been present for so long, and her EMG shows no sensory or motor response." (PX 4; RX 7).

Petitioner underwent a right carpal tunnel release by Dr. Borowiecki on November 7, 2011, and further underwent the left carpal tunnel release on April 2, 2012. (PX 4). Petitioner was kept off work from the date of her first surgery (November 7, 2011) until December 12, 2011, and then again from her second surgery (April 2, 2012) until May 4, 2012. (PX 4; see also Arbitrator's Exhibit 1).

Dr. Borowiecki testified that he believed Petitioner's work activities certainly could have aggravated her bilateral CTS. (PX 11, p. 19). Dr. Borowiecki testified that the effect of wrist flexion during typing has a significant impact on carpal tunnel pressure. He testified that it had been clearly shown that typing in either a flexed or extended position does increase pressure in the carpal tunnel which can worsen carpal tunnel symptoms in a particular patient. (PX 11, p. 22). Dr. Borowiecki further testified that the typing performed by Petitioner was certainly one of the factors that aggravated her CTS that lead to the surgery, ultimately because of failure of resolution of symptoms with other conservative measures. (PX 11, p. 24).

Petitioner was evaluated at Respondent's request by Dr. James Williams pursuant to Section 12 of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq*. (hereafter the "Act") on October 3, 2012. (RX 4, Dep. Exh. 2). Dr. Williams took a job history from Petitioner from 1977 to her retirement in May 2012, as well as discussed Petitioner's job duties with her. (RX 4, pp. 9-11; p. 15). Dr. Williams also reviewed Petitioner's medical records from March 2011 through July 7, 2012. (RX 4, pp. 12-13). The doctor conducted a physical examination on Petitioner. (RX 4, pp. 13-15). Dr. Williams did not believe that Petitioner's job duties with Respondent contributed, aggravated, accelerated or caused Petitioner's bilateral CTS and resulting surgeries. (RX 4, p. 16). It was Dr. Williams' opinion that Petitioner's bilateral CTS was the result of some medical comorbidities, including hypertension, right-sided carpal-metacarpal arthritis, increased body mass index, and the fact that Petitioner was perimenopausal at the time in question. (RX 4, pp. 16-17). Dr. Williams explained why he believed those comorbidities were the cause of Petitioner's bilateral CTS. (See RX 4, pp. 17-18).

Petitioner testified that her job duties were consistent from 1991 until 2010, when her boss left employment with Respondent. She testified that when this boss left in 2010, she added more to her work load in that she began performing some of the work the boss used to do before he left. She testified that this increased work load in 2010 aggravated her bilateral CTS to the point where medical treatment was required.

Petitioner testified that currently, her bilateral hands are better, but that she still experiences tingling and some numbness in the right hand. She feels her bilateral hand strength is impaired slightly, but testified that she believed the surgeries were a success.

Petitioner is claiming Respondent is liable for medical bills she claims she incurred as a result medical treatment stemming from the bilateral CTS injuries at issue. Those bills were entered into evidence as Petitioner's Exhibits 6-9.

Respondent's Exhibit 5 was offered into evidence and is an article from a medical journal entitled "The Quality and Strength of Evidence for Etiology: Example of Carpal Tunnel Syndrome." Petitioner objected to the admission to Respondent's Exhibit 5 based upon the fact that it is hearsay.

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

For a repetitive trauma injury, such as carpal tunnel syndrome, the date of the injury or accident is considered to be the date on which the injury manifested itself, that is, the date on which both the injury and its causal link to the employee's work became plainly apparent to a reasonable employee. *Durand v. Industrial Comm'n,* 224 Ill. 2d 53, 63, 72, 862 N.E.2d 918 (2007). Courts considering various factors have typically set the manifestation date on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities. *See Peoria County Belwood Nursing Home v. Industrial Comm'n,* 138 Ill. App. 3d 880, 887, 487 N.E.2d 356 (3d Dist. 1985) (holding 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 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. *Id.*; *See also General Electric Co. v. Industrial Comm'n,* 190 Ill. App. 3d 847, 857, 546 N.E.2d 987 (4th Dist. 1989). However, because repetitive-trauma injuries are progressive, the employee's medical treatment, as well as the severity of the injury and particularly how it affects the employee's performance, are relevant in determining objectively when a reasonable person would have plainly recognized the injury and its relation to work. *Durand*, 224 Ill.2d at 72; *See also Oscar Mayer & Co. v. Industrial Comm'n*, 176 Ill. App. 3d 607, 610, 531 N.E.2d 174 (4th Dist. 1988).

In *Durand*, the claimant notified her supervisor in January 1998 that she had noticed pain in her hands in September or October of that year and that she believed her pain was work-related. *Durand,* 224 Ill. 2d at 55. The claimant continued to work, but sought medical help in August 2000. In September 2000, her doctors told her that she suffered from CTS related to her work. *Durand,* 224 Ill. 2d at 55. In her testimony, the claimant testified that, in January 1998, she believed her condition was work-related but did not know precisely what her condition was or that she had CTS. *Durand,* 224 Ill. 2d at 58-59. Although the Commission found that the claimant's injury occurred in September or October 1998, the Illinois Supreme Court reversed that finding and fixed the claimant's date of injury instead at September 2000, when she was diagnosed with CTS. *Durand,* 224 Ill. 2d at 73-74. To reach this conclusion, the Supreme Court relied on evidence that, before September 2000, the claimant did not know precisely what she was suffering from, did not seek medical treatment, may have had doubts as to whether she needed medical treatment, and did not suffer from a condition sufficiently severe to warrant a claim before September 2000.

The Arbitrator finds that the manifestation date of Petitioner's bilateral CTS was December 10, 2002. Petitioner saw Dr. Fortin on June 5, 2001, reporting hand and wrist symptoms for over a year prior that were worsening, more so on the right. Electrodiagnostic studies revealed bilateral CTS, more severe on the right, with axon loss on the right. Dr. Fortin reported his diagnosis supported surgery. Over a month later, on July 24, 2001, Petitioner reported progressing hand and wrist symptoms to Dr. Bergman, with the right side being worse. The diagnosis was bilateral CTS, right greater than left. Dr. Bergman noted Petitioner's job duties with Respondent, including typing and lifting, and advised her to talk to Respondent's workers' compensation personnel in the event surgery would be needed. Dr. Bergman

prescribed wrist splints at this time. Petitioner reported back to Dr. Bergman in September 2001 that the right wrist splint was working very well, and that she would start using a left wrist splint. Dr. Bergman still advised Petitioner to seek an alternate job at this time, and recommended a three-month follow-up evaluation. Petitioner, however, did not return to Dr. Bergman for over a year. On December 10, 2012, Dr. Bergman noted that Petitioner's wrist splints were no longer helping Petitioner's bilateral CTS symptoms, as Petitioner had reported on this date that her symptoms returned about 4-5 months prior. Petitioner reported she was engaging in more lifting at work, and believed the work aggravation would only get worse in time. Dr. Bergman diagnosed Petitioner with "worsened" bilateral CTS "most likely related to increased work load at work." Dr. Bergman advised Petitioner to attempt to get her work modified, as she still had not considered alternate employment at this time; in the alternative, Petitioner was to return to Dr. Bergman to schedule CTS surgery.

The Arbitrator notes that the first diagnosis of bilateral CTS was in June 2001, and later confirmed in July 2001 by Dr. Bergman. On July 24, 2001, Dr. Bergman recommended conservative treatment in the form of wrist splints. Dr. Bergman noted in July 2001 that if the splints did not alleviate the CTS symptoms, surgery would be needed. Dr. Bergman noted Petitioner's job duties as early as July 2001, and further recommended Petitioner consider alternative employment by September 2001. The wrist splints alleviated Petitioner's CTS symptoms for almost a year, but Petitioner then presented to Dr. Bergman on December 12, 2002, noting the splints were no longer working. Dr. Bergman reiterated the bilateral CTS diagnosis, and noted that said diagnosis was most likely related to Petitioner's work. Unless Petitioner changed her work, Dr. Bergman believed surgery would be needed. There is no evidence that Petitioner's job duties changed at this time. As of December 12, 2002, Petitioner knew or reasonably should have known that she had work-related, bilateral CTS in which surgery would be needed unless her job duties changed. December 12, 2002 is accordingly the manifestation date of Petitioner's injury.

Here, unlike the claimant in *Durand*, Petitioner actually sought medical treatment for her condition of ill-being on December 10, 2002, after a worsening and progression of her CTS symptoms. Also unlike the claimant in *Durand*, there is not sufficient evidence that Petitioner's condition of ill-being changed appreciably between December 10, 2002 and Petitioner's claimed manifestation date of March 15, 2011, so that the Arbitrator could say that Petitioner was forced to wait until the later date to file a viable claim or to determine if she actually required medical attention. Further, the diagnosis in December 12, 2002 was related to specific work activities, and Petitioner would have known this fact at that time. She consistently reported her job duties to Dr. Bergman, and Dr. Bergman in fact noted her worsening bilateral CTS to be work related on this date.

Furthermore, while Petitioner testified that her job duties increased to a point where medical treatment for her bilateral CTS was necessitated in 2010 when her boss left Respondent's employment, the record shows that Petitioner's symptoms had already progressed to a level where surgery was needed by late 2002. In fact, on March 15, 2011 (Petitioner's claimed manifestation date), when Dr. Borowiecki was discussing risks inherent in the surgeries he eventually performed, he also noted that the risks were especially present concerning the right side, as Petitioner's symptoms had been present for so long at that point. The record therefore contains ample evidence to not credit Petitioner's testimony that it was only in 2010 that her symptoms progressed and worsened to the point of necessitating medical treatment. In light of the foregoing, the Arbitrator finds that Petitioner's injuries do not escape statute of limitations application.

Even if the Arbitrator were to find that December 10, 2002 was not the manifestation date, Petitioner's injuries would have manifested themselves for purposes of the Act on January 24, 2008, when Petitioner was seen by Dr. Borowiecki. On that date, Petitioner reported increasing CTS symptoms, and that she would suffer said symptoms at work while typing on the keyboard and engaging in some of the other activities in her job in the computer room. Dr. Borowiecki even noted on this date that, "Unfortunately, it does not sound like she has actually filed this as a workman's comp claim." Dr. Borowiecki reported on January 24, 2008 that he would proceed with surgery if Petitioner could get approval. However, the CTS surgeries would have had to occur after Petitioner's 2008 hip surgery. Dr. Borowiecki testified that he did not hear from Petitioner for the intervening three years following Petitioner's hip surgery in 2008. Again, assuming *arguendo* that the manifestation date was not December 12, 2002, the date would be set at January 24, 2008, when Petitioner's CTS symptoms had progressed to the point where Dr. Borowiecki wanted to proceed with surgery and it was clearly recorded that Petitioner's job activities were aggravating her symptoms.

Accordingly, given a manifestation date of December 12, 2002 and the fact that Petitioner did not file an application for adjustment of claim with the Illinois Workers' Compensation Commission until May 23, 2012 (see PX 1), Petitioner's claim is barred by the statute of limitations pursuant to Section 6(d) of the Act. See 820 ILCS 305/6(d). Assuming a manifestation date of January 24, 2008, as discussed *supra*, would still bar Petitioner's claim under Section 6(d) of the Act. For the foregoing reasons, Petitioner has thus not proven that she sustained a compensable accident that arose out of and in the course of her employment with Respondent manifesting itself on March 15, 2011.

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

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

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

Based on the foregoing findings concerning accident and the date of accident, the Arbitrator therefore finds that Petitioner's current condition of ill-being is not causally related to a timely-filed claim for a work injury. Accordingly, no medical expenses, temporary benefits or permanent partial disability benefits are awarded.

Issue (O): Is Respondent's Exhibit 5 admissible?

Respondent's Exhibit 5 is an article from a medical journal entitled "The Quality and Strength of Evidence for Etiology: Example of Carpal Tunnel Syndrome." Petitioner objected to the admission to Respondent's Exhibit 5 based upon the fact that it is hearsay. Under Illinois law, scientific and medical treatises are hearsay and are inadmissible. *Lewis v. Stoval,* 272 Ill. App. 3d 467, 470, 650 N.E.2d 1074 (3d Dist. 1995). Accordingly, Petitioner's objection to Respondent's Exhibit 5 is sustained and Respondent's Exhibit 5 is not admitted into evidence.

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

STEVE STUART,

Petitioner,

vs.

NO: 05 WC 39875

14IWCC0276

CITY OF CHICAGO,

Respondent,

DECISION AND OPINION ON §19(h) AND §8(a) PETITION

This case comes before the Commission on Petitioner's §19(h) and §8(a) Petition, which was filed on November 3, 2009, alleging a material increase in his disability resulting in permanent and total disability and claiming additional medical expenses following the previous Commission §8(a) hearing, which was held on June 10, 2008. A hearing on the current petition was held before Commissioner DeVriendt on February 1, 2013, in Joliet, Illinois and a record was made.

The Commission, having considered the entire record, finds that Petitioner has failed to prove that he is entitled to additional medical expenses and permanency benefits and hereby denies his petition.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1) The original arbitration was heard on March 21, 2007. A decision was issued on May 4, 2007, finding that Petitioner sustained accidental injuries arising out of and in the course of employment on July 11, 2005, and was entitled to $101.00 in medical expenses and permanency of 6% for the loss of use of the person as a whole. There were no findings of fact or conclusions of law included in the decision.
2) On Review, the Commission issued a decision on November 6, 2007, increasing the permanency award to 12% loss of use of the person as a whole based on the August 5,

2005 lumbar MRI report, Dr. Mirkovic's surgical recommendation, and Petitioner's "credible testimony concerning his ongoing complaints and limitations."

3) Petitioner filed a §19(h)/§8(a) petition on March 3, 2008, and a hearing was held on June 10, 2008. However, in his brief, Petitioner had requested that a decision only be made on the §8(a) petition and essentially withdrew the §19(h) petition. The majority found that Petitioner testified that he was still working as a truck driver for Respondent and had not lost any time from work between his July 11, 2005 accident and the original March 21, 2007 hearing. However, he had been off work since December 7, 2007 per Dr. Martin's orders. He testified that, since the arbitration hearing, his hip pain had worsened and he was experiencing "unbearable" back pain every waking hour and rated his current hip and back pain a 10/10. Petitioner had also been seeing Dr. Martin for chronic obstructive pulmonary disease (COPD). Petitioner also continued his treatment with Dr. Egwele who performed a left sacroiliac injection and prescribed cold packs and therapy. At the last visit on May 23, 2008, Dr. Egwele noted improvement and told Petitioner to continue losing weight, exercising, and attending therapy.
4) The Commission issued a decision on May 27, 2009, in which the majority found that there was a causal connection between Petitioner's work injury and his need for additional medical care but denied additional temporary total disability (TTD) because "the opinions expressed in the [leave of absence certificates by Dr. Martin] are unsupported by examination findings and it is clear that the doctor attributed Petitioner's disability to [COPD] as well as ongoing back pain." (5/27/09 Decision at 7). The Commission also found that Dr. Egwele's records contained no mention of the need for work restrictions and, instead, documented consistent improvement during the periods that Dr. Martin was keeping Petitioner off work. (Id.) The dissenting Commissioner stated that she would have also denied the additional medical expenses because of a lack of causal connection opinion from a physician and Petitioner's vague testimony. She believed that the inconsistencies in the medical records undermined Petitioner's credibility.
5) Petitioner filed another §19(h)/§8(a) petition on November 3, 2009, which is the currently pending petition, but it was not heard until February 1, 2013.
6) The first record in evidence after the last hearing is an August 11, 2008, letter from Dr. Martin indicating that Petitioner was being treated for chronic back pain, ruptured disc, and COPD and that Petitioner was not able to resume his normal duties as a truck driver for Respondent. On December 1, 2008, Dr. Martin completed an FMLA form indicating that Petitioner's condition was "permanent" and was "unable to perform work of any kind." Petitioner was receiving therapy, Vicodin, and Flexeril at that time. On April 16, 2009, Dr. Martin referred Petitioner to Dr. Watson for pain management.
7) Petitioner first saw Dr. Artelio Watson on May 1, 2009. This record indicates that Petitioner had returned to work after his 2005 accident but then was involved in another work-related motor vehicle accident in 2007 that caused an exacerbation of his back pain. Petitioner complained to Dr. Watson of constant back pain, bilateral lower extremity paresthesias, and charley horse spasms that occur at night approximately two times per week. On examination, Dr. Watson noted that sitting caused Petitioner too much

discomfort and he had decreased lumbar range of motion in all directions. He had positive straight-leg-raise test bilaterally and was tender to palpation over the left sacroiliac joint.

8) Over the course of the next year and a half, Petitioner underwent conservative treatment including epidural steroid injections, bilateral sacroiliac joint injections, and trigger point injections. Dr. Watson testified that he didn't give Petitioner off-work slips because he was already off work. On December 7, 2009, Dr. Watson recommended an MRI and orthopedic evaluation to see if surgery was warranted. He also wrote that Petitioner "appears to be totally disabled due to the fact that his sleep is impaired and his sitting/walking tolerance are significantly declined."
9) During this time, Petitioner continued treating with his primary care physician Dr. Martin who gave Petitioner updated F.M.L.A. forms indicating that he could not perform his normal job duties.
10) Throughout 2010, Dr. Watson continued Petitioner on various meds and continued to recommend an MRI and orthopedic/neurosurgical consult. Ultimately, on November 5, 2010, he wrote that Petitioner had reached maximum medical improvement from a conservative standpoint but he was still temporarily totally disabled unless there was a surgical option available to him. On December 13, 2011, Dr. Watson opined that Petitioner was permanently disabled. As of the last visit on June 1, 2012, Dr. Watson noted that Petitioner had low back pain worse on the left with intermittent unpredictable spasms in the back and legs along with lower extremity paresthesias. Dr. Watson noted that Petitioner obtained relief (down to 6 to 7 out of 10 pain) with medications. Dr. Watson indicated that Petitioner should "refrain from work" but he could still possibly benefit from surgery.
11) On August 10, 2010, Petitioner was examined by Respondent's Section 12 orthopedic surgeon, Dr. Frank Phillips, who found that there was no spinal contraindications to Petitioner working in some capacity and he recommended a 25-pound lifting limit and to avoid repetitive bending. After reviewing Petitioner's MRIs and medical records, he opined that it did not appear that Petitioner sustained any structural injury in 2005 and that the subsequent 2010 MRI showed degenerative age-related changes only. He felt that those could be responsible for Petitioner's pain complaints but they were not related to any specific work injury or trauma.
12) Dr. Watson testified on March 25, 2011, almost two years prior to the most recent hearing, that Petitioner's exam findings have been similar throughout his treatment and that Petitioner was at maximum medical improvement from a conservative standpoint. He didn't recall if Petitioner told him about the level of work that his job with Respondent demanded. He felt that Petitioner was disabled due to his inability to sleep, difficulty sitting, and decreased lumbar range of motion. He believed that Petitioner's history and exam were consistent with low back trauma. Dr. Watson did not agree that Petitioner's low back condition was solely related to degenerative changes. The extent of his causation opinion was that Petitioner's injuries "could" be a result of his work injury. Dr. Watson testified that he was never suspicious of any malingering or symptom magnification. On cross-examination, Dr. Watson admitted that he relies on the

radiologist's and orthopedic doctor's interpretations of the MRI films since he is not a surgeon. He did not have any prior medical records to compare and there was no way for him to tell if Petitioner's anatomic condition had progressed over the course of treatment. He admitted that he did not know what the physical requirements of Petitioner's job were.

13) Respondent's Dr. Phillips testified that Petitioner's original 2005 MRI was "relatively normal" and that the 2010 MRI was similar but showed progressive degeneration that was not very severe. He did not believe the degeneration was related to either of Petitioner's work incidents (2005 or 2007). He testified that Petitioner had "a couple" of Waddell signs but that symptomatic treatment for his current complaints was reasonable although not related to Petitioner's work injuries. He disagreed with any recommendation for surgery and opined that Petitioner should, at the very least, be able to work with 25-pound restrictions but, again, this was not related to any work injuries. He stated that Petitioner could possibly work at a higher level and a functional capacity evaluation might be helpful. Dr. Phillips opined that Petitioner had reached maximum medical improvement from the work injuries in 2007.
14) Petitioner testified that he is 65 years old, is 5'7" tall, and weighs 225 pounds, which is the same as he weighed at the time of original accident on 7/11/05. He has been an employee with Respondent since 1978 as a motor truck driver.
15) Petitioner testified that he continued seeing Dr. Watson for problems with sleeping due to sudden vicious crippling pain that encompasses both legs, in which the muscles swell up and he is "paralyzed" for 10 or 15 minutes. This happens at least once every 6 weeks. Petitioner testified that he has slept on the dining room floor for almost three years so he can avoid kicking the furniture and not hurt his foot when the pain strikes. Petitioner testified that he wakes up every morning with pain, which increases as the medication wears off. He takes medication three times a day, which helps "very much" with the pain. The injections have also helped.
16) Petitioner testified that if he doesn't take the medications, his back feels as though it is "wedged" or out of place. The lower back and upper back don't feel aligned and the hip becomes bulged. He feels as though something is out of place and subsequently it will go back in place. Petitioner testified that the pain today is in the same area as the time of the accident and that prior to the accident he had no pain in his back or left leg. Petitioner testified that he has had constant low back pain and has taken pain medications since he's been injured. He has to change positions often and cannot stand or sit for extended periods of time. He avoids bending and making sudden movements. He has difficulty tying his shoes.
17) Petitioner testified that he has not returned to work for Respondent because he doesn't feel like he is able to and he is following Dr. Watson's orders. However, Petitioner then had the following exchange with his attorney:

Q: Now bring you up-to-date, I want you to recall all of the kinds of activities

that you did as a truck driver for [Respondent]. Sitting here today, how much time would you be sitting behind the wheel of a truck driving during the course of an eight-hour day as a truck driver?

A: Eight hours in a regular day.
Q: Of the eight hours, how many of those hours would actually be sitting driving the truck?
A: Well, it would be maybe four hours, maybe.
Q: With the condition of your back, are you able to do that?
A: I would.
Q: Pardon me?
A: I would.
Q: Are you able to do it now with the condition of your back?
A: I would.
Q: Right now, are you able to sit behind a truck and drive it for eight hours a day?
A: Not right at this minute.
Q: What would you have to do to be able to sit behind the truck and drive...
A: Well, I would have to drive the truck to the –
Q: -- as you did at the time of the accident?
A: -- location as though, which is normally what you do. You get a location. You drive, when I reach that location then I have to get out and pace around the truck and get back in when I have to move it.
Q: And my question to you is, are you physically capable of doing that today with the condition of your back?
A: Yes, I could do that.
Q: You could return?
A: I could but I am saying I am not going to be able to drive non stop eight hours. I have to stop in between.
Q: Can you drove [sic] the truck with the medication you are on?
A: No. I would have to cut down on the medication.
Q: And if you cut down on the medication, what would happen?
A: Well, then I would be on a different medication maybe that is not as strong as what I am taking.
Q: Do you know if there is different medication that would control your pain?
A: That I don't know.
Q: Would you like to return to work for [Respondent]?
A: Yes, I would.
Q: Has your doctor indicated you are able to go back to work for [Respondent]?
A: Not at this point.

T.28-31 (Emphasis added.)

18) On cross-examination, Petitioner testified that he let his driver's license expire in 2007 and has not renewed it. Petitioner testified that he initially treated with Dr. Egwele until he was released to full duty in May 2006. He returned to Dr. Egwele in November 2007 and treated with him in 2008 but had not returned since. He also had not returned to see Dr. Mirkovic, who had initially recommended surgery, since the first hearing.
19) Kari Stafseth, a certified rehabilitation counselor at Vocamotive, testified that she met with Petitioner on September 21, 2011, and reviewed his history and records. She testified that, based on the opinion of Dr. Watson, Petitioner was totally disabled. However, if Dr. Phillips' opinion was accurate, then Petitioner was prospectively employable at the light demand level earning $9 to $11 per hour as a security guard, cashier, or in customer service. Ms. Stafseth stated that she did not have a formal description of Petitioner's job with Respondent but used the Dictionary of Occupational Titles to determine that it was a medium physical demand level job. She admitted that Petitioner's job duties could vary from that and he did not tell her the length of time that he drove per day. She did not have any information regarding the lifting requirements. Petitioner reported to her that he did some supervisory duties when he filled in when the superintendent was out but she didn't know how much time that would have taken in his work day. Ms. Stafseth admitted that if Petitioner's physical capabilities allowed him to drive a truck, then having a commercial driver's license would expand the range of his employment opportunities but Petitioner had let his expire.
20) Jacqueline Bethell from MedVoc also interviewed Petitioner and reviewed his records at the request of Respondent on January 23, 2013. She reported that Petitioner's job involved driving a truck but not loading/unloading materials. Ms. Bethel stated that Petitioner indicated to her that he has not looked for alternate work since sustaining his injury in 2005 but told her that he believed he could return to work. He also indicated he believed he could start weaning off of his current medication. Ms. Bethell concluded that, based on Petitioner's description of his job tasks and Dr. Phillips' restrictions (25-pound lifting and no repetitive bending), Petitioner may be able to return to his regular job with Respondent without modification if he had his commercial driver's license reissued.

The Commission notes that, instead of returning to his previous treating physicians (Dr. Mirkovic and Dr. Egwele) and getting further treatment and off-work notes from them, Petitioner began treating with Dr. Watson, a physiatrist and pain management doctor, who opined that he was temporarily and, ultimately, permanently disabled even though, according to Respondent's orthopedic surgeon Dr. Phillips, there is no anatomic reason why Petitioner would be unable to at least perform light duty work. We find that Dr. Watson's opinion that Petitioner's current injuries "could be" a result of his original work-related injury is not persuasive on the issue of causal connection. We note that the Commission has previously denied additional temporary total disability because it was unsupported by examination findings and was partly due to Petitioner's COPD.

The Commission finds that Petitioner's testimony indicates that he believes he could return to his former job and he might be able to modify his medications to ones that could relieve

his symptoms and allow him to drive. The Commission notes that Petitioner let his driver's license expire in 2007 so part of the reason he is unable to return to his job is of his own doing. The last record from Dr. Watson is from June 1, 2012 (approximately 8 months prior to the hearing) and Dr. Watson testified on March 25, 2011 (almost two years prior). As such, we find that his opinion does not accurately reflect Petitioner's current condition since it is inconsistent with his testimony at hearing and also what Petitioner told Ms. Bethel on January 28, 2013, regarding his belief that he could return to work. Therefore, we find the opinion of Dr. Phillips more credible regarding causal connection and Petitioner's ability to work than Dr. Watson's.

We further find the opinion of Jacqueline Bethell from MedVoc to be credible that Petitioner could return to his previous employment with Respondent if he obtained a commercial driver's license.

We find that Petitioner's complaints at the current hearing are not materially different than the ones he had at the original hearing. Based on the record as a whole, including Petitioner's testimony at the various hearings, the medical evidence and opinions, and the previous Commission decisions, we find that Petitioner has failed to prove that his current condition of ill-being is causally related to his work injury on July 11, 2005. As such, we find that Petitioner has failed to prove that his outstanding medical expenses are causally related and also that he failed to prove that he has sustained a material increase in his disability.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition under §19(h) and §8(a) is hereby denied.

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 14 2014

Charles J. DeVriendt

Michael J. Brennan

Ruth W. White

SE/
O: 2/19/14
49

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEBAGO

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EVERETT LEE BRADLEY,

Petitioner,

vs. NO: 08 WC 09011

SUPERIOR DRYWALL COMPANY,

14IWCC0277

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 temporary total disability benefits, maintenance benefits and permanent partial disability benefits, 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 found that Petitioner sustained an accident arising out of and in the course of his employment and that Petitioner's current condition of ill being is causally connected to Petitioner's injury. In addition to temporary total disability and maintenance benefits, the Arbitrator awarded Petitioner a wage differential of $779.60 per week commencing October 1, 2012, through the duration of his disability because the injuries sustained cause a loss of earnings as provided in Section 8(d)(1) of the Act. We reverse the Arbitrator's decision with respect to his permanency findings. The Commission holds that Petitioner is not entitled to a wage differential. Instead, we award Petitioner 50% loss of the person as a whole as provided in Section 8(d)(2).

We find that Petitioner did not prove he is entitled to a wage differential. Instead, given Petitioner's injuries, change in occupation and reduced wages, Petitioner is entitled to permanent

partial disability benefits of 50% loss of the person as a whole. Petitioner did not meet his burden of proving his current average weekly wage if he were working full duty, which is necessary for a wage differential award. Petitioner did not present documentation of the hours he worked when fully performing his job as a plasterer prior to the injury, or the hourly rate of pay that he earned at that time. Reviewing the evidence and testimony of Art Strums, Business Agent for Local 11 Cement Masons and Plasterers, shows that Petitioner was not guaranteed 40 hours of employment per week. The hours a full duty plasterer would work in a given week depended on weather, strikes and availability of work, among other factors. The average hours Petitioner worked as a full duty plasterer cannot be determined based on the evidence and testimony presented during the arbitration hearing. Any calculation of Petitioner's current average weekly wage if he was still employed full duty as a plasterer would be purely speculative and not supported by the record. Therefore, Petitioner did not establish that he is entitled to a wage differential under Section 8(d)(1).

Petitioner had various methods by which he could have established a wage for a full time plasterer. One such method was the introduction of the wages of a like employed plasterer at the time of the hearing. Another would involve the production of records, such that they would establish the average number of hours that all union plasterers work during the calendar year.

Without such information, the Commission would be required to speculate, as was done by Petitioner's Business Agent, Art Strums. Neither the arbitrator nor the Commission has the legal capacity to speculate regarding wages, available hours or the income that a like employed person might earn. Absent such evidence, such a finding is without merit.

Additionally, Respondent filed a motion on January 13, 2014, to Present Additional Evidence and Continue Oral Argument. Respondent argued that it has received additional video evidence indicating that Petitioner is able to return to his previous line of work and requested an updated Section 12 exam. Respondent states this evidence was not available until several months after the arbitration hearing.

The Act does not allow parties to introduce additional evidence into the record after the arbitration hearing. Section 19(e) of the Act states, in relevant part, "[i]n all cases in which the hearing before the arbitrator is held after December 18, 1989, no additional evidence shall be introduced by the parties before the Commission on review of the decision of the Arbitrator." The Act does not allow additional evidence to be introduced in any circumstance. Therefore, we deny Respondent's "Motion to Present Additional Evidence and Continue Oral Argument."

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's "Motion to Present Additional Evidence and Continue Oral Argument" is hereby denied.

14IWCC0277

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $663.67 per week for a period of 142-6/7 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 $663.67 per week for a period of 125-4/7 weeks for maintenance benefits under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $597.30 per week for a period of 250 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the permanent partial disability of 50% person as a whole.

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: APR 15 2014
TJT: kg
O: 2/11/14
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BRADLEY, EVERETT
Employee/Petitioner

Case# **08WC009011**

SUPERIOR DRYWALL
Employer/Respondent

14IWCC0277

On 1/3/2013, 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 0.12% 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:

0118 ALLEGRETTI & ASSOCIATES
JAMES ALLEGRETTI
617 W DEVON AVE
PARK RIDGE, IL 60068

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
THOMAS J MALLERS
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

14IWCC0277

STATE OF ILLINOIS)
)SS.
COUNTY OF MC HENRY)

☐ 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

Everett Bradley
Employee/Petitioner

Case # **08** WC **9011**

v.

Superior Drywall
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 **Anthony C. Erbacci**, Arbitrator of the Commission, in the city of **Rockford**, on **November 14, 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

14IWCC0277

FINDINGS

On **October 27, 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 $**51,766.00**; the average weekly wage was $**995.50**.

On the date of accident, Petitioner was **40** 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 for TTD, maintenance, and other benefits, actually paid.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $**663.67**/week for **142 6/7** weeks, commencing **February 20, 2007** through **June 25, 2007**, and from **December 12, 2007** through **May 4, 2010** as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from **October 27, 2006** through **November 14, 2012**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner maintenance benefits of $**663.67**/week for **125 4/7** weeks, commencing **May 5, 2010** through **September 30, 2012**, as provided in Section 8(a) of the Act. Respondent shall be given a credit for maintenance benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits, commencing **October 1, 2012**, of $**779.60**/week for the duration of the disability, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 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.

Arbitrator Anthony C. Erbacci

December 27, 2012
Date

JAN 3 - 2013

FACTS:

On October 27, 2006, the Petitioner was employed by the Respondent as a journeyman plasterer. The Petitioner testified that he did not complete high school prior to becoming a plasterer and that he has worked as a plasterer from the age of 18 until his injury on October 27, 2006. The Petitioner testified that, at the time of his injury, he was a skilled ornamental plasterer and was one of only three skilled ornamental plasterers in the state of Illinois. The Petitioner testified that as one of the only three skilled ornamental plasterers in the state, he was always fully employed. Art Sturm, a Mason's and Plasterer's Union representative, testified the best plasterers would always have work and that the Petitioner was always fully employed. He further testified that fully employed plasterers regularly work 40 hours per week and that the base rate for a journeyman plasterer is currently $33.36 per hour.

The Petitioner testified that on October 27, 2006, he was working for the Respondent as a plasterer and that he was working with an apprentice plaster on a scaffold. The Petitioner testified that the apprentice slipped and he attempted to grab the apprentice, and a bucket of "mud", to prevent the apprentice from falling to the ground. The Petitioner testified that he then experienced severe pain in his low back which brought him to his knees and made it difficult to stand up. The Petitioner testified that he ultimately climbed down from the scaffold he told his foreman what had happened. He also testified that he called his Union business agent and told him as well. The Petitioner testified that he then went to a medical clinic for treatment that day.

The Petitioner testified that he first treated at the Medcare Health Center on the day of the injury and that he was taken off work at that time. The medical records demonstrate that the Petitioner saw Dr. Madhuri Yemul and that, on January 17, 2007, the Petitioner underwent a lumbar MRI which was reported to demonstrate multilevel disk disease with disc protrusions at L4-5 and L5-S1.

The Petitioner then came under the care of Dr. Christopher Sliva at the Rockford Spine Center. The Petitioner testified that he was referred to Dr. Sliva, an orthopedic surgeon, by Dr. Yemul. His first visit to Dr. Sliva was on February 20, 2007. Dr. Sliva's records indicate that the Petitioner reported a work injury on October 27, 2006 and gave a history of injury consistent with his testimony at hearing. The Petitioner reported the immediate onset of back pain which gradually continued to worsen and the development of left sided buttock and posterior thigh pain. Dr. Sliva's impression was L4-5 and L5-S1 degenerative disc disease with disc protrusions and lateral recess stenosis with radiculopathy, and he recommended the Petitioner undergo epidural steroid injections along with physical therapy. Dr. Sliva also noted that surgical options were possible if the Petitioner's symptoms did not improve with the steroid injections and physical therapy. Dr. Sliva prescribed the Petitioner off work pending epidural steroid injection.

The Petitioner returned to Dr. Sliva on May 2, 2007 after having undergone three epidural steroid injections and eight weeks of physical therapy. The Petitioner reported that

while the epidural steroid injections had improved his leg pain he still had episodic left-sided buttock, posterior thigh, and calf pain as well as right-sided buttock pain. Dr. Sliva continued the Petitioner off work and prescribed another month of work hardening. On June 19, 2007, Dr. Sliva released the Petitioner to attempt to return to full duty work as of June 25, 2007. The Petitioner testified that his attempt to return to work was delayed for a time but that he did return to work in October of 2007. He testified that he worked for three to four weeks and was then taken off work again in November 2007.

At the request of the Respondent, the Petitioner was seen and examined by Dr. Anthony Rinella on September 13, 2007. Dr. Rinella noted the Petitioner history of a work injury and his course of treatment to that point. Dr. Rinella opined that, "as a direct result of the work related incident" the Petitioner had a lumbar strain and left L5 radiculopathy. Dr. Rinella indicated that the Petitioner had "maximized conservative management" and could attempt to return to full duty work. Dr. Rinella further opined that should the attempt to return to work fail, a two level decompression and fusion would be in the Petitioner's best interest.

The Petitioner returned to Dr. Sliva on December 12, 2007 complaining of a recurrence of his left leg pain. Dr. Sliva ordered a repeat MRI which was performed on December 12, 2007 and was reported to reveal a broad-based disc herniation at L4-5 and an annular tear at L5-S1. Dr. Sliva and the Petitioner decided to proceed with surgery and Dr. Sliva ordered a pre-operative stress test and a repeat MRI.

In a letter report dated September 2, 2008, Dr. Rinella opined that the repeat MRI of the Petitioner's spine and the pre-operative stress test was reasonable. Dr. Rinella further opined that the L4–S1 posterior fusion recommended for the Petitioner was necessary to treat the Petitioner's left L5 radiculopathy and discogenic pain which was related to the Petitioner's work injury.

On January 12, 2009, the Petitioner underwent the pre-surgery stress echocardiogram and on January 19, 2009, the Petitioner underwent a repeat lumbar MRI. On February 5, 2009 the Petitioner underwent an L4–S1 decompression and fusion with instrumentation and bone grafting which was performed by Dr. Sliva. Following the surgery the Petitioner underwent a course of physical therapy but he continued to have complaints of low back pain.

At the request of the Respondent, the Petitioner was examined by Dr. Avi Bernstein on December 7, 2009. Dr. Bernstein noted the Petitioner's history of a work related injury on October 27, 2006 followed by conservative treatment and then surgery. Dr. Bernstein also noted the Petitioner's continuing complaints of low back pain. Dr. Bernstein opined that the Petitioner suffered a work related incident on October 27, 2006 which resulted in an aggravation of a pre-existing degenerative condition and a lumbar disc herniation. Dr. Bernstein further opined that the Petitioner required further work up to confirm that the spinal fusion had healed and had otherwise reached maximum medical improvement. Dr. Bernstein indicated that a functional capacity evaluation would be appropriate to determine the Petitioner's full functional abilities.

In a subsequent letter report dated January 20, 2010, Dr. Bernstein reported that he had reviewed additional medical records and Dr. Sliva's opinions and he opined that the Petitioner had a failed fusion. Dr. Bernstein indicated that the Petitioner's options were to live with his condition and accept light duty restrictions, or undergo surgery to reconstruct the fusion.

On April 6, 2010, the Petitioner underwent a functional capacity evaluation. The results of the evaluation were considered valid, with the Petitioner demonstrating consistent maximal effort, and were reported to demonstrate that the Petitioner was capable of working at the light-medium level. On May 4, 2010, Dr. Sliva noted the results of the functional capacity evaluation and concluded that the Petitioner was prevented from returning to his regular work. Dr. Sliva further concluded that the Petitioner had reached maximum medical improvement and should follow up on a p.r.n. basis. The Petitioner testified that he has not returned to Dr. Sliva since that date.

Following his release by Dr. Sliva, the Petitioner began a course of vocational rehabilitation with Vocamotive. The Petitioner testified that following the commencement of vocational rehabilitation, he was incarcerated for six months and then was released to a work release program. He testified that during the period of his work release, he took G.E.D. classes, learned keyboarding and basic software skills, and did a job search in accordance with the instructions of the Vocamotive counselors. The Petitioner testified that he started he started his actual job search in July of 2011 and that he made 20 to 30 contacts per week and had a couple of job interviews. The Petitioner testified that he eventually found a job on his own working as a handy man, performing building maintenance, 20 hours per week at $8.25 per hour. The Petitioner testified that he started that job on October 1, 2012.

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to (C.), Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds and concludes as follows:

The Petitioner credibly testified that on October 27, 2006, he was working for the Respondent as a plasterer and that he was working with an apprentice plaster on a scaffold. The Petitioner testified that the apprentice slipped and he attempted to grab the apprentice, and a bucket of "mud", to prevent the apprentice from falling to the ground. The Petitioner testified that he then experienced severe pain in his low back which brought him to his knees and made it difficult to stand up. The Petitioner testified that he ultimately climbed down from the scaffold and he told his foreman what had happened. He also testified that he called his union business agent and told him as well. The Petitioner testified that he then went to a medical clinic for treatment that day.

On January 17, 2007, the Petitioner underwent a lumbar MRI which was reported to demonstrate multilevel disk disease with disc protrusions at L4-5 and L5-S1. The Petitioner then came under the care of Dr. Christopher Sliva on February 20, 2007. Dr. Sliva's records indicate that the Petitioner reported a work injury on October 27, 2006 and gave a history of injury consistent with his testimony at hearing. The Petitioner reported the immediate onset of back pain which gradually continued to worsen and the development of left sided buttock and posterior thigh pain. Dr. Sliva's impression was L4-5 and L5-S1 degenerative disc disease with disc protrusions and lateral recess stenosis with radiculopathy, and he recommended the Petitioner undergo epidural steroid injections along with physical therapy. Dr. Sliva also noted that surgical options were possible if the Petitioner's symptoms did not improve with the steroid injections and physical therapy.

Although no records of the Petitioner's initial medical treatment were offered into evidence, the Petitioner's testimony was credible and was supported by the histories contained in the records of the Petitioner's subsequent medical treatment. No witnesses were called by the Respondent, and the Petitioner's testimony was not contradicted or impeached. Based upon the credible, uncontradicted, testimony of the Petitioner and the histories contained in the medical records, the Arbitrator finds that the Petitioner sustained his burden of proving by a preponderance of the credible evidence that an accident arising out of and in the course of his employment occurred.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that on October 27, 2006, an accident occurred which arose out of and in the course of the Petitioner's employment by the Respondent.

In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

The Arbitrator's findings and conclusions relating to the issue of accident are adopted and incorporated herein.

The Petitioner testified that he first treated for his at the Medcare Health Center on the day of the injury. The medical records demonstrate that the Petitioner saw Dr. Madhuri Yemul and that, on January 17, 2007, he underwent a lumbar MRI which was reported to demonstrate multilevel disk disease with disc protrusions at L4-5 and L5-S1. The Petitioner then came under the care of Dr. Christopher Sliva on February 20, 2007. Dr. Sliva's records indicate that the Petitioner reported a work injury on October 27, 2006 and an immediate onset of back pain which gradually continued to worsen and include left sided buttock and posterior thigh pain. Dr. Sliva's impression was L4-5 and L5-S1 degenerative disc disease with disc protrusions and lateral recess stenosis with radiculopathy, and he recommended the Petitioner undergo epidural steroid injections along with physical therapy. Dr. Sliva also noted that surgical options were possible if the Petitioner's symptoms did not improve with the steroid injections and physical therapy.

At the request of the Respondent, the Petitioner was seen and examined by Dr. Anthony Rinella on September 13, 2007. Dr. Rinella noted the Petitioner history of a work injury and his course of treatment to that point. Dr. Rinella opined that, "as a direct result of the work related incident" the Petitioner had a lumbar strain and left L5 radiculopathy. Dr. Rinella indicated that the Petitioner could attempt to return to full duty work but he opined that should the attempt to return to work fail, a two level decompression and fusion would be in the Petitioner's best interest. In a letter report dated September 2, 2008, Dr. Rinella opined that the L4–S1 posterior fusion recommended for the Petitioner was necessary to treat the Petitioner's left L5 radiculopathy and discogenic pain which was related to the Petitioner's work injury.

The Petitioner continued to treat with Dr. Sliva, undergoing epidural steroid injections a course of physical therapy, work hardening, and, ultimately, an L4–S1 decompression and fusion with instrumentation and bone grafting on February 5, 2009. Following the surgery the Petitioner underwent a course of physical therapy but he continued to have complaints of low back pain.

At the request of the Respondent, the Petitioner was examined by Dr. Avi Bernstein on December 7, 2009. Dr. Bernstein noted the Petitioner's history of a work related injury on October 27, 2006 followed by conservative treatment and then surgery. Dr. Bernstein also noted the Petitioner's continuing complaints of low back pain. Dr. Bernstein opined that the Petitioner suffered a work related incident on October 27, 2006 which resulted in an aggravation of a pre-existing degenerative condition and a lumbar disc herniation. Dr. Bernstein further opined that the Petitioner required further work up to confirm that the spinal fusion had healed and had otherwise reached maximum medical improvement. Dr. Bernstein indicated that a functional capacity evaluation would be appropriate to determine the Petitioner's full functional abilities.

In a subsequent letter report dated January 20, 2010, Dr. Bernstein reported that he had reviewed additional medical records and Dr. Sliva's opinions and he opined that the Petitioner had a failed fusion. Dr. Bernstein indicated that the Petitioner's options were to live with his condition and accept light duty restrictions, or undergo surgery to reconstruct the fusion.

On April 6, 2010, the Petitioner underwent a functional capacity evaluation which was reported to demonstrate that the Petitioner was capable of working at the light-medium level. On May 4, 2010, Dr. Sliva noted the results of the functional capacity evaluation and concluded that the Petitioner was prevented from returning to his regular work. The Petitioner testified that he has not returned to Dr. Sliva since that date.

The Arbitrator notes that following his work injury the Petitioner undertook a continuous course of medical treatment which culminated in a lumbar surgery and permanent work restrictions. The Respondent's examining physicians specifically opined that the Petitioner's injury and need for surgery were related to his work accident. Prior to his work injury the

Petitioner was fully employed as a journeyman plasterer, and no evidence of any subsequent intervening accidents was presented or contained in the medical records. In light of the Petitioner's credible testimony and the records and opinions of Dr. Sliva, Dr. Rinella and Dr. Bernstein, the Arbitrator concludes that the Petitioner's present condition of ill-being is causally related to the work accident.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner's current condition of ill-being is causally related to the work injury of October 27, 2006.

In Support of the Arbitrator's Decision relating to (K.), What temporary benefits are due, the Arbitrator finds and concludes as follows:

The Arbitrator's findings and conclusions relating to the issues of accident and causation are adopted and incorporated herein.

The Petitioner testified that he first treated at the Medcare Health Center on the day of the injury and that he was taken off work at that time. The Arbitrator notes, however, that there is no medical documentation to support the Petitioner's absence from work prior to February 20, 2007 when he first began treatment with Dr. Sliva.

The Petitioner was taken off work by Dr. Sliva from February 20, 2007 to June 25, 2007 when he was given a full duty release. The Petitioner returned to Dr. Sliva in July, 2007 reporting additional complaints. Surgery was discussed as an option, but the Petitioner was not specifically taken off of work. On September 13, 2007, the Petitioner was examined by Dr. Rinella who found the Petitioner able to return to work until and unless he elected to undergo surgery.

The Petitioner testified that he did return to work in October of 2007. He testified that he worked for three to four weeks and was then taken off work again in November 2007.

On December 12, 2007 Dr. Sliva and the Petitioner decided to proceed with surgery and Dr. Sliva ordered a pre-operative stress test. In a letter report dated September 2, 2008, Dr. Rinella opined that the pre-operative stress test was reasonable and that the L4–S1 posterior fusion recommended for the Petitioner was necessary. The Arbitrator notes that in September 2007 Dr. Rinella had opined that the Petitioner was able to return to work *"until and unless he elected to undergo surgery"* (emphasis added). On February 5, 2009 the Petitioner underwent an L4–S1 decompression and fusion. Following the surgery the Petitioner continued under Dr. Sliva's care and remained off work. On January 20, 2010, Dr. Bernstein opined that the Petitioner had a failed fusion and that the Petitioner's options were to live with his condition and accept light duty restrictions, or undergo surgery to reconstruct the fusion.

On May 4, 2010, Dr. Sliva noted the results of the functional capacity evaluation and concluded that the Petitioner was prevented from returning to his regular work. Dr. Sliva further concluded that the Petitioner had reached maximum medical improvement.

On May 10, 2010 the Petitioner began a course of vocational rehabilitation. It was noted that the Petitioner had lost access to his usual and customary work as a plasterer and that he had attended special education classes throughout primary school and high school. During the course of his vocational rehabilitation, the Petitioner took G.E.D. classes, learned keyboarding and basic software skills, and did a job search. It was noted that, except for some period in November and December of 2011, the Petitioner maintained regular contact with the vocational counselors and was cooperative with virtually all of the vocational rehabilitation and job search efforts conducted on his behalf. The Petitioner testified that he eventually found a job on his own working as a handy man and that he started that job on October 1, 2012.

The evidence demonstrates that the Petitioner was taken off work by Dr. Sliva from February 20, 2007 to June 25, 2007 when he was given a full duty release. On December 12, 2007, Dr. Sliva and the Petitioner decided to proceed with surgery and Dr. Sliva ordered a pre-operative stress test which was delayed due to lack of authorization by the Respondent. Dr. Rinella, the Respondent's examining physician, ultimately opined that the pre-operative stress test was reasonable and that the L4–S1 fusion recommended for the Petitioner was necessary to treat the Petitioner's condition which was related to the Petitioner's work injury. On February 5, 2009 the Petitioner underwent an L4–S1 decompression and fusion and he remained disabled from work through the commencement of his vocational rehabilitation on May 10, 2010. The Petitioner continued to participate in a course of vocational rehabilitation until he started a new job on October 1, 2012.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner is entitled to Temporary Total Disability benefits from February 20, 2007 through June 25, 2007, and from December 12, 2007 through May 4, 2010, a total period of 142 6/7 weeks. The Arbitrator further finds that the Petitioner is entitled to Maintenance benefits from May 5, 2010 through September 30, 2012, a period of 125 4/7 weeks.

In Support of the Arbitrator's Decision relating to (L.), What is the nature and extent of the injury, the Arbitrator finds and concludes as follows:

The Petitioner previously worked as a journeyman plasterer out of his union local. The Petitioner's permanent restrictions prevent him from returning to his prior occupation as a journeyman plasterer. Art Sturms, the business manager for Local 11, testified that the Petitioner would currently be able to earn $33.36 per hour if he were still so employed and that the normal workweek for a journeyman plasterer was 40 hours per week. While he testified that the Petitioner was not guaranteed full time employment; he also testified that the Petitioner was one of only three ornamental plasterers in the state and that there was always

work for the Petitioner. The Petitioner testified that he typically worked forty hours per week although he provided no documentation in support of that testimony.

Subsequent to his release to return to light-medium level work on May 4, 2010, the Petitioner began to participate in a vocational rehabilitation program directed by the Respondent. While participating in that program, the Petitioner eventually found a job on his own working as a handyman at Cal, Inc. The Petitioner started that employment on October 1, 2012 and he is currently earning $8.25 per hour and working 20 hours per week at that job. The Petitioner testified that his current employment with Cal, Inc. will always be a part time job.

Based on the evidence of record, the Arbitrator finds that the Petitioner, in the full performance of his former job, would earn $33.36 per hour for, on average, 40 hours a week, or $1,334.40 per week. The Petitioner is currently earning $8.25 per hour and working 20 hours per week. The Arbitrator finds that the Petitioner's current employment is suitable for the Petitioner and that the Petitioner is currently earning $165.00 per week. Deducting the Petitioner's current earnings of $165.00 per week from the $1,334.40 the Petitioner would earn in the full performance of his former job yields an earnings differential of $1,169.40. Multiplying the difference times 2/3 results in a wage differential award of $779.60 per week.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner is entitled to a wage differential award pursuant to Section 8(d)1 of the Act. The Arbitrator finds, therefore, that the Petitioner is entitled to $779.60 per week beginning October 1, 2012 and for so long as his disability may last.

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

KAREN BAILEY,

Petitioner,

14IWCC0278

vs.

NO: 08 WC 9216

UPS,

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 causal connection and permanent partial disability and begin advised of the facts and applicable 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 29, 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.

14IWCC0278

DATED: APR 16 2014

MJB/tdm
O: 3/18/2014
052

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0278

BAILEY, KAREN
Employee/Petitioner

Case# **08WC009216**

UPS
Employer/Respondent

On 5/29/2013, 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:

4095 KP LAW LLC
RAJESH KAMURU
105 W ADAMS ST SUITE 2325
CHICAGO, IL 60602

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
PAMELA K HARMAN
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

14IWCC0278

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

Karen Bailey
Employee/Petitioner

v.

UPS
Employer/Respondent

Case # **08** WC **9216**

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 **January 22, 2013 and March 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 _____

FINDINGS

On **October 3, 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 not*** causally related to the accident(s) as explained *infra*.

In the year preceding the injury, Petitioner earned **$20,979.21**; the average weekly wage was **$411.36**.

On the date of accident, Petitioner was **32** years of age, ***single*** with **2** dependent children. *See* AX1.

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 **as agreed by the parties** under Section 8(j) of the Act. *See* Arbitration Hearing Transcripts.

ORDER

As explained in the Arbitration Decision Addendum, the Arbitrator finds that Petitioner failed to establish a causal connection between her head injury at work and any current condition of ill being or her entitlement to permanent partial disability benefits. Thus, Petitioner's claim for benefits 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

May 24, 2013
Date

MAY 29 2013

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Karen Bailey
Employee/Petitioner

v.

UPS
Employer/Respondent

Case # **08** WC **9216**

Consolidated cases: **N/A**

FINDINGS OF FACT

A consolidated hearing was held in four of Petitioner's cases: 08 WC 2000, 08 WC 9216, 10 WC 27277, and 11 WC 30158. The above-captioned case involves Petitioner's head injury and the only issues in dispute are causal connection and the nature and extent of Petitioner's injuries. Arbitrator's Exhibit ("AX") 1; January 22, 2013 Arbitration Hearing Transcript ("Tr. at page(s)"); March 12, 2013 Arbitration Hearing Transcript ("Tr2. at page(s)"). The parties have stipulated to all other issues. *Id.*

The medical records reflect that Petitioner went to the Clearing Clinic on October 3, 2007 and reported that she bumped her head while reaching for a box at work on October 2, 2007. Petitioner's Exhibit ("PX") 4 at 77; Respondent's Exhibit ("RX") 2. Dr. Gorovits diagnosed Petitioner with a head contusion, placed Petitioner off work for the remainder of her shift, and scheduled a follow-up appointment the following day. *Id.* Petitioner returned on October 4, 2007 reporting continued pain at a level of 7/10 and a headache. PX4 at 78. Dr. Pitsilos restricted Petitioner to light duty work with no standing/walking over 20 min. per hour and no lifting over 5 pounds. *Id.* He scheduled a follow-up appointment for the next day. *Id.*

On October 8, 2007, Petitioner returned to the Clearing Clinic and reported continued pain at a level of 7/10, one episode of vomiting with some recent nausea, and an occasional headache. PX4 at 79-80. Dr. Pitsilos ordered a CT scan of the head and maintained Petitioner's work restrictions. *Id.* Petitioner returned on October 11, 2007, reporting continued head pain at a level of 7/10. PX4 at 83. Dr. Gorovits returned Petitioner to full duty work and instructed her to return as needed. *Id.* On October 12, 2007, Petitioner reported head pain at a level of 8/10 and a pounding headache. PX4 at 85. Dr. Gorovits maintained that Petitioner could work full duty, and ordered a head MRI to rule out an acute event. *Id.*

On October 16, 2007, Petitioner returned reporting continued head pain at a level of 8/10 and her concern about being unable to obtain a head MRI. PX4 at 87-88. Dr. Gorovits maintained that Petitioner could work full duty, prescribed pain and anti-inflammatory medications, and reiterated his order for a head MRI to rule out an acute event. *Id.* Petitioner underwent the recommended brain MRI on October 18, 2007. PX4 at 90. The interpreting radiologist noted minimal right frontal and ethmoid sinus disease changes and no gross abnormalities. PX4 at 90. On October 23, 2007, Dr. Gorovits discharged Petitioner from care at the Clearing Clinic and maintained that Petitioner could work full duty without restrictions. PX4 at 91.

At trial, Petitioner testified that her complaints of headaches while she was treating for other conditions (i.e., shoulder, wrist) would probably not be contained in the medical records because she and the first doctor that she saw at the Clearing Clinic "clashed." Tr. at 36. The medical records from shortly after her injury at work on November 1, 2007 do not reflect any complaints by Petitioner of symptomatology or objective findings related to the head. PX4 at 100. At trial, Petitioner acknowledged that no medication was prescribed, but rather testified that Clearing Clinic physicians gave her ibuprofen, which she took periodically. Tr. at 37-38.

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 (F), whether the Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

The medical records reflect that, while Petitioner sustained an undisputed head injury, its effects were minimal, temporary, and completely resolved in less than three weeks. Petitioner provided little testimony at trial regarding any lasting effects of the accident and the medical records do not corroborate Petitioner's claimed symptomatology regarding any continued medical treatment or symptomatology during the subsequent 5 ½ years after her injury at work. Based on the foregoing, the Arbitrator finds that Petitioner failed to establish a causal connection between any claimed current condition of ill being and her head injury at work in October of 2007.

In support of the Arbitrator's decision relating to Issue (L), the nature and extent of Petitioner's injury, the Arbitrator finds the following:

As explained above, Petitioner's failed to establish a causal connection between any current condition of ill being and her head injury at work in October of 2007. Thus, the Arbitrator finds that Petitioner failed to establish through any credible evidence that she sustained permanent disability as a result of her injury at work. Petitioner's claim for permanent partial 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	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KAREN BAILEY,

Petitioner,

14IWCC0279

vs.

NO: 11 WC 30158

UPS,

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 casual connection and permanent partial disability 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 modifies the Decision of the Arbitrator with respect to permanent partial disability only. The Commission finds that the Petitioner is entitled to seven and a half percent loss of use of the right arm as the result of her February 25, 2011 work-related injury.

IT IS THEREFORE ORDERDED BY THE COMMISSION that the Decision of the Arbitrator filed on May 29, 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 $564.05 per week for a period of 18.975 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of use of 7.5% of the right arm.

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

14IWCC0279

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 $10,700.00. 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: APR 16 2014

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB/tdm
O: 3/18/2014
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0279

BAILEY, KAREN
Employee/Petitioner

Case# **11WC030158**

UPS
Employer/Respondent

On 5/29/2013, 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:

4094 KP LAW LLC
RAJESH KANURU
105 W ADAMS ST SUITE 2325
CHICAGO, IL 60602

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
PAMELA K HARMAN
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

14IWCC0279

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

Karen Bailey
Employee/Petitioner

v.

UPS
Employer/Respondent

Case # **11** WC **30158**

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 **January 22, 2013 and March 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 _____

14IWCC0279

FINDINGS

On **February 25, 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(s) as explained *infra*.

In the year preceding the injury, Petitioner earned **$40,047.89**; the average weekly wage was **$940.09**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **2** dependent children. *See* AX1.

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 **as agreed by the parties** under Section 8(j) of the Act. *See* Arbitration Hearing Transcripts.

ORDER

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of $564.05/week for 5.06 weeks, because the injuries sustained caused the Petitioner 2% loss of use of the right arm (elbow), 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 24, 2013
Date

MAY 29 2013

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Karen Bailey
Employee/Petitioner

v.

UPS
Employer/Respondent

Case # **11** WC **30158**

Consolidated cases: **N/A**

FINDINGS OF FACT

A consolidated hearing was held in four of Petitioner's cases: 08 WC 2000, 08 WC 9216, 10 WC 27277, and 11 WC 30158. The above-captioned case involves Petitioner's right arm injury and the only issues in dispute are causal connection and the nature and extent of Petitioner's injuries. Arbitrator's Exhibit ("AX") 3; January 22, 2013 Arbitration Hearing Transcript ("Tr. at page(s)"); March 12, 2013 Arbitration Hearing Transcript ("Tr2. at page(s)"). The parties have stipulated to all other issues. *Id.*

February 25, 2011

Petitioner testified that she returned to Dr. Atkenson in February of 2011 for treatment of a right forearm incident and that she occasionally had treatment to her shoulder, but the primary focus was the forearm. Tr. at 108. Petitioner testified that she was working the same position for Respondent while she was placing a torn package weighing approximately 50 to 60 pounds into a new box. Tr. at 129-130. The box fell on her arm and caused a big knot between the knuckles of the third and fourth digits of the right hand. Tr. at 130-131. Petitioner testified that she reported this incident to her supervisor. Tr. at 131. Petitioner testified that she never had right elbow pain before this date, that her right elbow did not pop, and that she had no issue with it catching while she moved back-and-forth. Tr. at 134, 137-130.

The medical records reflect that Petitioner went to the Clearing Clinic on February 25, 2011 and reported that she was re-boxing a package when it fell on her right arm and a metal piece on it hit her hand. PX4 at 28-31, 63-65; Tr. at 131-132. Petitioner had an x-ray which showed no fracture or dislocation. *Id.* On examination of the right elbow, Petitioner had no bruising, joint crepitus, pain with movement, swelling/pain/paresthesias with percussion over the ulnar nerve, and no subluxation of the ulnar nerve from the cubital tunnel on elbow flexion. *Id.* Petitioner did have tenderness to palpation over the lateral epicondyle, and pain over the lateral epicondyle with wrist extension against force. *Id.* Dr. Lutas diagnosed Petitioner with a right forearm contusion and right hand contusion noting that it was probably work related. *Id.* She was placed off work for the remainder of her shift, instructed her to ice the affected areas, and return to regular duty work. *Id.*

Petitioner followed up at the Clearing Clinic from February 28, 2011 through April 8, 2011. PX4 at 66-70; PX4 at 109-114. On May 24, 2011, Petitioner underwent a right elbow MRI without contrast. RX3. The interpreting radiologist noted that the MRI was unremarkable. *Id.*

Petitioner continued to work full duty until March 25, 2011 when she was restricted to lifting up to 5 lbs. with the right hand. *Id.* On March 8, 2011, a Clearing Clinic physician ordered occupational therapy for worsening symptoms. *Id*; PX6 at 8; Tr. at 134-135. On March 14, 2011, Petitioner was referred to a hand specialist. *Id*; PX4 at 66-70.

Petitioner testified that she was placed off work on April 25, 2011. Tr. at 135. Before then, Petitioner testified that she was assigned to TAW classroom again in the small sort area. Tr. at 135-136. Petitioner was peeling labels off and pulling bags off a slide. Tr. at 136. Petitioner testified that she had a 5 pound lifting restriction at this time. Tr. at 136.

On June 1, 2011, Petitioner returned to Dr. Atkenson. PX5 at 25. On examination, Petitioner had tenderness to palpation at the lateral epicondylar origin of the forearm musculature and marked antalgic weakness of the wrist and finger extensors. *Id.* He noted a "high signal at the lateral epicondylar origin of the forearm musculature" which was in contrast to Petitioner's normal MRI results which he noted was consistent with tendinopathy. *Id.* He diagnosed Petitioner with lateral epicondylitis of the right elbow and noted that the condition was work related. *Id.*

Petitioner testified that she returned to unrestricted work in November of 2011. Tr. at 137. She also testified that, in the last two years, she may have had one more injection and that she did have more physical therapy. Tr. at 109-110; *see also* PX5-PX6.

Section 12 Examination of Right Shoulder and Right Elbow – Dr. Nicholson

On September 20, 2011, Petitioner submitted to an independent medical evaluation with Dr. Nicholson for the right shoulder and elbow. PX2 at 3-5; RX4. Petitioner's right elbow examination showed no evidence of effusion, full active and passive flexion/extension/pronation/supination, no tenderness over the lateral epicondyle or radial tunnel or medial epicondyle, no evidence of ulnar nerve subluxation, and negative Tinel's sign over the cubital tunnel. *Id.*

Dr. Nicholson diagnosed Petitioner with right elbow pain of non-anatomic origin, more of a soft tissue myofascial pain that would be the primary diagnosis. *Id.* He found no evidence of a multiple crush injury to the right side with signs of thoracic outlet syndrome. *Id.* Dr. Nicholson further opined that Petitioner did not require any further medical treatment for the right elbow. *Id.* He recommended a functional capacity evaluation, indicated that Petitioner was at maximum medical improvement absent a functional capacity evaluation, and indicated that Petitioner would not be able to return to her regular job duties. *Id.*

Additional Information

On November 11, 2011, Petitioner underwent a functional capacity evaluation at Dr. Atkenson's referral. RX5. The evaluator determined that Petitioner was physically capable of performing all of the essential duties of her job. *Id.*

On November 17, 2011, Petitioner returned to Dr. Atkenson. RX10. On examination, Petitioner's right elbow showed minimal tenderness to palpation at the lateral epicondyle origin of the forearm musculature and no instability or loss of motion. *Id.* Dr. Atkenson noted that Petitioner had recently completed a functional capacity evaluation showing that she was capable of performing all of her duties at work. *Id.* He released Petitioner back to work without restrictions. *Id.*

Regarding her current right elbow condition, Petitioner testified that her elbow was fine when she came back to work and she only has a little bit of trouble with it today; every so often it will stick in place and she has to shake her elbow out and extend her arm. Tr. at 138.

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 (F), whether the Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

The Arbitrator finds that Petitioner's claimed current condition of ill-being in the right elbow is related to the injury sustained on February 25, 2011. In so finding, the Arbitrator notes that Petitioner's testimony regarding her right elbow is consistent, overall, with the medical records submitted into evidence and finds the causal connection opinion of Dr. Atkenson to be persuasive given his clinical finding of a signal at the lateral epicondyle on June 1, 2011. The Arbitrator also notes that Petitioner did not testify regarding any residual symptomatology in the right hand.

In support of the Arbitrator's decision relating to Issue (L), the nature and extent of Petitioner's injury, the Arbitrator finds the following:

Based on the record as a whole—which reflects an undisputed accident at work and an injury to the right elbow resulting in the need for conservative treatment with minimal current residual symptoms in the elbow—the Arbitrator finds that Petitioner has established permanent partial disability to the extent of 2% loss of use of the right arm pursuant to Section 8(e).

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

KAREN BAILEY,

Petitioner,

14IWCC0280

vs.

NO: 08 WC 2000

UPS,

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 causal connection and permanent partial disability and being advised of the facts and applicable 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 29, 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 $19,400.00. 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: APR 16 2014

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB/tdm
O: 3-18-2014
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0280

BAILEY, KAREN
Employee/Petitioner

Case# **08WC002000**

10WC027277

UPS
Employer/Respondent

On 5/29/2013, 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:

4095 KP LAW LLC
RAJESH KAMURU
105 W ADAMS ST SUITE 2325
CHICAGO, IL 60602

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
PAMELA K HARMAN
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

14IWCC0280

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

Karen Bailey
Employee/Petitioner

v.

UPS
Employer/Respondent

Case # 08 WC 2000

Consolidated cases: 10 WC 27277

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 **January 22, 2013 and March 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 **Nature & extent, allocation of TTD, causation**

FINDINGS

On **November 1, 2007** and **July 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*** 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(s) as explained *infra*.

In the year preceding the injury, Petitioner earned **$21,662.94 / $40,267.70**; the average weekly wage was **$424.76 / $932.12**.

On the date of accident, Petitioner was **32**[1] years of age, ***single*** with **2** dependent children. *See* AX2.

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

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

Respondent shall be given a credit of **$6,189.50** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$6,189.50**.

Respondent is entitled to a credit **as agreed by the parties** under Section 8(j) of the Act. *See* AX2.

ORDER

Temporary Total Disability Benefits

Respondent shall pay Petitioner temporary total disability benefits of $283.17/week for 19 and 5/7th weeks, commencing January 9, 2008 through February 25, 2008 and commencing May 27, 2009 through August 24, 2009, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $621.41/week for 6 weeks, commencing September 10, 2010 through October 21, 2010, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from November 1, 2007 through March 12, 2013, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of $6,189.50 for temporary total disability benefits that have been paid.

Permanent Partial Disability: Person as a whole

Respondent shall pay Petitioner permanent partial disability benefits of $260.00/week for 62.5 weeks, because the injuries sustained caused the 12.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

---

[1] The Arbitrator notes that, while the parties only list one age for Petitioner and there are two dates of accident involved in Petitioner's claims, her age on those dates is not in dispute. *See* AX2.

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 24, 2013
Date

MAY 29 2013

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Karen Bailey
Employee/Petitioner

v.

UPS
Employer/Respondent

Case # **08** WC **2000**

Consolidated cases: **10** WC **27277**

FINDINGS OF FACT

A consolidated hearing was held in four of Petitioner's cases: 08 WC 2000, 08 WC 9216, 10 WC 27277, and 11 WC 30158. The above-captioned cases involve Petitioner's right shoulder and the only issues in dispute are causal connection and the nature and extent of Petitioner's injuries. Arbitrator's Exhibit ("AX") 2; January 22, 2013 Arbitration Hearing Transcript ("Tr. at page(s)"); March 12, 2013 Arbitration Hearing Transcript ("Tr2. at page(s)"). The parties have stipulated to all other issues. *Id.*

November 1, 2007 – Right Shoulder

Petitioner testified she had no right shoulder pain before her November 1, 2007 accident and could freely use her right shoulder. Tr. at 46, 76.

On November 1, 2007, Petitioner was employed as a 22.3 (i.e., package handler) and injured her right shoulder while loading a bag filled with small packages inside a wall. Tr. at 40-41; *see also* Petitioner's *Exhibits generally*. Petitioner testified that she heard a pop in her shoulder and tried to continue working but had to quit after some time because her arm was hurting. Tr. at 41. Petitioner reported the injury to her supervisor. *Id.*

Petitioner testified that she was sent to the Clearing Clinic[2] and was told there that she had a shoulder strain. Tr. at 41-42. Petitioner saw Dr. Gorovits on November 1, 2007 reporting right shoulder pain at a level of 7/10. PX2 at 40; PX4 at 94-103. Petitioner's range of motion was limited secondary to pain. *Id.* Her right shoulder and right wrist x-rays were negative. *Id.* Dr. Gorovits diagnosed Petitioner with a right shoulder sprain and right wrist sprain, released Petitioner to full duty work, and scheduled a follow-up visit. *Id.*

On November 6, 2007, Petitioner went to the St. Francis Hospital emergency room. PX1 at 71-82; Tr. at 42. She provided a history and reported feeling a pop in her shoulder while loading a truck and experienced right arm pain radiating down to her fingertips after putting some packages into a wall at work. PX1 at 71, 77. The emergency room physician diagnosed Petitioner with arm pain, placed her arm in a sling, prescribed Tylenol 3 and Motrin, and she was referred to a specialist, Dr. Atkenson. PX1 at 72-76; Tr. at 42-43, 82. Later that day, Petitioner also followed up at the Clearing Clinic. PX4 at 104.

Dr. Atkenson ordered a right shoulder MRI with and without contrast, which Petitioner underwent on November 26, 2007. PX2 at 38-39, 41-42; PX7 at 5-6; Tr. at 43. The interpreting radiologist noted the following: (1) there appears to be chronic injury to the anterior inferior labrum and anterior inferior glenohumeral ligament as well as a possible focal tear of the tip of the posterior superior labrum with mild displacement as described; (2) down

[2] The parties and medical records interchangeably refer to the Clearing Clinic and the MacNeal Clinic. For the purpose of uniformity, the Arbitrator refers only to the Clearing Clinic.

sloping acromion with secondary tendinosis of the rotator cuff tendon without a rotator cuff tear; and (3) focal partial tear of the biceps tendon at the junction of the bicipital groove and the rotator cuff interval, but no complete biceps tendon tear. *Id.*

On November 29, 2007, Petitioner returned to Dr. Atkenson. PX2 at 43-44. After an examination and reviewing Petitioner's diagnostic test results, Dr. Atkenson administered an injection into the right shoulder and released Petitioner to work on a trial basis effective November 30, 2007 based on Petitioner's desire to return to work. *Id*; *see also* Tr. at 44, 84.

On December 3, 2007, Petitioner saw Dr. Atkenson reporting some improvement after her injection, but an inability to work; that is, Petitioner reported that she was happy that she could brush her hair, but she could not lift up to 70 lbs. as required at work. PX2 at 45. Dr. Atkenson diagnosed Petitioner with tendinitis of the shoulder and recommended physical therapy. *Id*; *see also* Tr. at 44, 84. He placed Petitioner off work. *Id.*

On December 27, 2007, Petitioner returned to Dr. Atkenson reporting improvement in her condition with the exception of an acute exacerbation of pain during her last physical therapy session. PX2 at 46. He kept Petitioner off work, ordered additional physical therapy, and prescribed a nonsteroidal anti-inflammatory medication. *Id*; PX3 at 31.

On January 28, 2008, Petitioner reported diminished right shoulder pain as well as diminished lifting capacity as compared to her preoperative status. PX2 at 47. Dr. Atkenson ordered additional physical therapy, continued nonsteroidal anti-inflammatory medication use, and released Petitioner to light duty work with a 25 pound lifting restriction. *Id.*

Respondent honored Petitioner's work restrictions and placed her in the "TAW classroom" through January 8, 2008. Tr. at 43. There, Petitioner testified that she watched safety videos and would generally sit there. Tr. at 82-83. Petitioner was off work from January 9, 2008 through February 25, 2008 and received temporary total disability benefits. Tr. at 44, 83-84; PX3 at 51.

Petitioner returned to work on February 26, 2008 without restrictions. Tr. at 45; *see also* PX3 at 51. Petitioner testified that her right shoulder was hurting a little bit at that point, but she could do everything with her right shoulder; she explained that she had "doable pain." Tr. at 45-47.

On cross examination, Petitioner testified that she missed or changed a couple of appointments with Dr. Atkenson in April and June of 2008. Tr. at 84. She saw Dr. Atkenson through August of 2008. PX2.

On May 1, 2008, Petitioner saw Dr. Atkenson reporting pain localized at the lateral aspect of the right upper arm. PX2 at 48. Dr. Atkenson recommended additional physical therapy, continued use of nonsteroidal anti-inflammatory medication, and allowed Petitioner to continue to work. *Id.* On June 12, 2008, Petitioner saw Dr. Atkenson reporting mild right shoulder improvement after being on vacation and not using her right arm as much. PX2 at 49; *see also* Tr. at 84-85. He recommended continued physical therapy and use of nonsteroidal anti-inflammatory medication. *Id*; PX3 at 40. On July 14, 2008, Petitioner saw Dr. Atkenson and reported swelling in the right hand and right shoulder pain while at work. PX2 at 50. He ordered additional physical therapy and allowed Petitioner to continue to work. *Id*; PX3 at 39. On August 18, 2008, Petitioner saw Dr. Atkenson reporting right shoulder popping. PX2 at 51. After an examination, he noted that Petitioner had sufficiently recovered to permit discharge from his care and to return to see him only as needed. *Id.*

Then, Petitioner followed up with physicians at the Clearing Clinic between August 30, 2008 and November 11, 2008. PX2 at 52-60; PX3 at 9-17, 19-23. During this period of time she reported sharp and throbbing right shoulder pain improved with rest and worsened during certain activities including lifting and reaching. *Id.* Petitioner's reported pain levels ranged from mild to severe (10/10) depending on activity. *Id.* The physicians prescribed various topical analgesics, anti-inflammatory medications, and cold packs, and Petitioner was allowed to work full duty. *Id.* They noted that Petitioner's condition was related to her work activities. *Id.*

On November 14, 2008, Petitioner underwent a right shoulder MRI without contrast at the request of a Clearing Clinic physician. PX2 at 61; PX7 at 4; Tr. at 86. The interpreting radiologist noted the following: (1) degenerative changes of the acromioclavicular joint present in association with lateral acromion down sloping, but no bony hook or spur was present; (2) rotator cuff tendinopathy again demonstrated without evidence of a rotator cuff tendon tear; and (3) some deformity in the posterior labrum without evidence of a discrete posterior labral tear. *Id.*

Petitioner returned to the Clearing Clinic on November 19, 2008 at which point Dr. Gorovits diagnosed her with degenerative joint disease and rotator cuff tendinopathy. PX2 at 62. He ordered steroid injections, prescribed use of a cold pack, and (while no work restrictions were imposed) Dr. Gorovits noted that Petitioner "will do no lifting per UPS Supervisor." *Id.* Petitioner continued to follow up at the Clearing Clinic through December 29, 2008. PX2 at 63-66. Petitioner testified that she continued to work full duty through end of 2008. Tr. at 86.

Section 12 Examination of Right Shoulder– Dr. Verma

On February 9, 2009, Petitioner submitted to an independent medical evaluation at Respondent's request with Dr. Verma. PX2 at 6-13, 27-34, 35-37; RX7; Tr. at 87. She completed various intake forms and Dr. Verma performed a physical examination and reviewed various treating medical records and Petitioner's job description. PX2 at 14-26. Petitioner reported intermittent episodes of pain and popping in the right shoulder to the point where she reported no longer being able to lift her arm, pain at a level of 3/10 to 8-10/10 at worst, and no significant episodes over the prior two months, but continued pain over the anterior superior shoulder. PX2 at 6-13, 27-34.

On examination of the right shoulder, Petitioner had significant pain with palpation directly over the right AC joint which reproduced symptoms, mild tenderness at the biceps groove, full active and passive range of motion, full forward elevation to 160° bilaterally external rotation at the side to 60° bilaterally, and internal rotation behind the back to approximately the L3 level bilaterally, but with associated right shoulder pain with internal rotation. *Id.* Strength testing in the right shoulder demonstrated 4/5 with abduction in the scapular plane with complaints of anterior superior shoulder pain, external rotation at 5/5, negative lift off and belly press maneuvers, and complaints of pain with behind the back position. *Id.*

Dr. Verma diagnosed Petitioner with a low grade AC joint separation with persistent AC joint pain in the right shoulder. *Id.* He noted that the separation was visible on the x-rays that he reviewed and that Petitioner's subjective complaints appeared to be consistent with his objective findings including symptom reproduction with palpation over the AC joint. *Id.* He noted no evidence of any pre-existing conditions, co-morbidities, or unrelated factors regarding Petitioner's right shoulder injury. *Id.* Dr. Verma recommended a diagnostic injection into the right AC joint and clinical follow-up with a possible arthroscopic surgery including mini-open distal clavicle excision if her pain persisted. *Id.* Ultimately, he opined that Petitioner's right shoulder condition was causally related to the November 1, 2007 accident based on the mechanism of injury, Petitioner's radiographic studies showing an injury to the AC joint, and Petitioner's persistent symptoms with significant

exacerbations associated with activity. *Id.*

Continued Medical Treatment

Petitioner testified that she injured her right shoulder again in May of 2009 and saw Dr. Atkenson in the early part of 2009. Tr. at 47-50, 79-80. She further testified that her right shoulder hurt between February 26, 2008 through the time she began seeing doctors again in the beginning 2009, and that her shoulder got worse in February of 2009. Tr. at 50-51.

The medical records reflect that Petitioner saw Dr. Atkenson on May 29, 2009 and that he diagnosed her with refractory impingement syndrome with acromioclavicular arthrosis and possible Bankart lesions by MRI with suggestive mechanism of injury. PX1 at 8. He recommended arthroscopic surgery including distal clavicle resection and possible Bankart procedure. *Id.*

Petitioner testified that, before the recommended surgery, she could hardly raise her arm, she experienced clicking and grinding, and it hurt to do anything with her right arm. Tr. at 54-55. She further testified that, while Dr. Atkenson recommended surgery, she was scared of undergoing surgery and getting cut. Tr. at 53-54, 88-89.

On June 3, 2009, Petitioner underwent surgery performed by Dr. Atkenson. PX1 at 10-11, 28-29; Tr. at 54. Preoperatively, he diagnosed Petitioner with impingement syndrome of the right shoulder with acromioclavicular arthrosis and possible labral tear. *Id.* Dr. Atkenson performed the following procedures: (1) examination under anesthesia; (2) arthroscopy of the right shoulder with extensive debridement; (3) arthroscopic subacromial decompression; and (4) arthroscopy of the right shoulder with distal clavicle resection. *Id.* postoperatively, Dr. Atkenson diagnosed Petitioner with impingement syndrome of the right shoulder with acromioclavicular arthrosis without a labral tear. *Id.*

Petitioner was discharged the same day with a shoulder immobilizer, prescription pain medication, and instructions to follow up with Dr. Atkenson. PX1 at 5, 45-46. Thereafter, Petitioner underwent physical therapy through August. Tr. at 55; PX5.

Petitioner testified that she was off work from May 5, 2009 to August 24, 2009. Tr. at 52-53. She testified that Respondent assigned her to the TAW classroom again. Tr. at 51. She did not work from May 5, 2009 through May 27, 2009 and she did not receive any workers' compensation, short term disability, welfare or health benefits. Tr. at 92. Petitioner did not use any sick or vacation time during this period either. Tr. at 92-93. Petitioner did receive workers compensation benefits beginning May 27, 2009 through August 24, 2009. Tr. at 93. Petitioner was released to full duty work without restrictions on August 13, 2009, and she returned to work on August 25, 2009. Tr. at 55-56, 66-67, 91.

Regarding her condition at the time, Petitioner testified that she felt better than she did before her surgery, but she still had "doable" pain. Tr. at 56-57. Petitioner testified that after her right shoulder surgery from August 24, 2009 through July 11, 2010, she still had pain but it was "doable." Tr. at 72-74. Petitioner also testified that she had problems with the scar on her shoulder which developed keloid. Tr. at 93-94. She testified that the keloid was really itchy and painful if anyone touched it. Tr. at 94, 96-97.

Dr. Atkenson suggested using a silicone sheet to help the scar improve or to see a plastic surgeon. Tr. at 94. Petitioner never saw a plastic surgeon about the scar, but did have Silastic sheets applied by Dr. Atkenson. Tr.

at 95-96. Petitioner testified that she did not choose to undergo plastic surgery because there was no guarantee it fixed the keloid. Tr. at 119-120.

Section 12 Examination of Right Upper Extremity – Dr. Phillips

On August 10, 2009, Petitioner submitted to an independent medical examination with Dr. Phillips at Respondent's request. RX8; Tr. at 90. Petitioner provided a history and reported difficulty sleeping on her right side at night, occasional numbness and tingling in her some, index, and long fingers on the right side, pain in the palm which reduced in frequency, some paracervical and scapular discomfort only in physical therapy, no pain for the most part in pain at a level of 3/10 with physical therapy which she described as aching in nature, exacerbated pain with exercise and therapy, and no pain while at rest. *Id.*

Dr. Phillips released Petitioner to return to work with restrictions including no overhead lifting over 10 pounds. *Id.* He recommended continued physical therapy and opined that Petitioner should be able to return to work in approximately two months. *Id.* Dr. Phillips also noted that while Petitioner wished to return to work and he did not believe that Petitioner would have any permanent impairment, pain, or weakness in the right shoulder, he did not believe that Petitioner would be able to load or unload 500 to 1200 packages in an hour or assist in moving packages weighing up to 150 pounds. *Id.*

Regarding causality, Dr. Phillips opined that Petitioner's AC joint separation could not have been caused by overhead work or repetitive activities and he noted Petitioner's denial of any acute injury to her right shoulder. *Id.* He also noted his belief that Petitioner had underlying AC joint pathology and that Petitioner's overhead or repetitive activities might have caused symptomatology, but that Petitioner's medical records revealed no work-related source of Petitioner's condition as follows:

> When she was evaluated by Dr. Gorovitz [sic] on the day of her alleged injury (November 1, 2007), she displayed no evidence of acute injury (swelling, bruising, echymosis [sic]) with full motion in her shoulder. This is certainly not in keeping with an acute ac dislocation or ligament tear. Additionally, outside x-rays reviewed by Dr Atkenson on 11/12/2007, were documented as being unremarkable. MRI of her right shoulder performed on 11/26/27, showed no evidence of acute tears or trauma (no effusion, hemarthrosis, bone bruises etc) with mild degenerative changes in the AC joint, down-sloping acromion with secondary changes in the cuff. When she returned on 8/30/2008, her pain was described as being anterior, which is atypical for ac joint pain, strain or ligament injury, possibly due to biceps tendinitis (as seen on initial MRI). Pain from the ac joint is felt on the superior aspect of the shoulder. She subsequently developed impingement syndrome due to her down-sloping acromion and ac degeneration with resultant inflammation, which impinged on her cuff tendons.

Id. After providing an extensive description of the anatomy of the shoulder, Dr. Phillips ultimately opined that Petitioner's AC joint arthritis mentioned in the MRI report was not caused by Petitioner's work. *Id.*

In an addendum report dated August 21, 2009, Dr. Phillips further opined on Petitioner's right upper extremity and hand condition as a result of the alleged November 1, 2007 accident. *Id.* He diagnosed Petitioner with a dorsal ganglion cyst and possible early carpal tunnel syndrome which, absent Petitioner's shoulder issues, would not prevent Petitioner from working full duty. *Id.* Dr. Phillips ultimately opined that Petitioner's hand symptoms were not work-related. *Id.*

July 12, 2010 – Right Shoulder

Petitioner testified that she was working the same job for Respondent on July 12, 2010. Tr. at 58. She testified that her arm started hurting again while she was loading at work. Tr. at 58-59, 98-99. Petitioner testified that she reported this to her supervisors who told her to go to see her doctor. Tr. at 59. Petitioner also testified that she went to see Dr. Atkenson who placed her on restrictions, administered another steroid injection, and ordered physical therapy. Tr. at 59, 63, 100-101.

The records reflect that, on August 30, 2010, Dr. Atkenson ordered additional physical therapy related to Petitioner's right shoulder. PX5 at 163. Petitioner underwent physical therapy beginning on August 9, 2010 and was discharged on September 28, 2010. PX5 at 255-256. Petitioner testified that she had an MRI on August 25, 2010. Tr. at 101.

Petitioner also testified that she was placed on light duty and that Respondent placed her in the TAW classroom for 29 working days. Tr. at 59-60, 101-102. However, Petitioner testified that this time was different and Respondent sent her out to the small sort area to do what was supposed to be light duty work. Tr. at 60. Petitioner testified she was supposed to take bag filled with other bags that come down a slide into bin and place those bags into a big box. Tr. at 60-61. Petitioner estimated that these bags weighed up to 50 pounds. Tr. at 60-61.

Petitioner testified that she was taken off work effective September 10, 2010 until October 21, 2010. Tr. at 62. Petitioner received temporary total disability benefits beginning in September of 2010. Tr. at 103-104.

The Arbitrator notes that corroborating medical records were not submitted into evidence, but some of the aforementioned medical treatment related to Petitioner's claimed July of 2010 injury is referenced in Dr. Phillips' October 18, 2010 independent medical evaluation report. RX9.

Section 12 Examination of Right Upper Extremity – Dr. Phillips

On October 18, 2010, Petitioner submitted to an independent medical examination with Dr. Phillips at Respondent's request. RX9; Tr. at 106. Petitioner reported no significant change since her last evaluation with Dr. Phillips in August of 2009. *Id.* Dr. Phillips reviewed various records including, but not limited to, the following: (1) records from a Dr. Garcia; (2) an August 27, 2010 MRI; (3) an August 18, 2009 EMG; (4) records from Dr. Atkenson; (5) various physical therapy records; and (6) Dr. Verma's February 9, 2009 independent medical evaluation report. *Id.*

With regard to Petitioner's 2010 medical treatment, Dr. Phillips noted the following:

- On January 25, 2010, Petitioner presented to Dr. Atkenson with complaints of intermittent activity related pain overlying her AC joint. Her primary complaint, however, was related to itching. Petitioner was diagnosed with a prominent keloid scar overlying the right shoulder. Dr. Atkenson recommended Silastic sheeting and scheduled a follow up in one month.
- On July 15, 2010, Petitioner went to the Clearing Clinic. She reported that she re-injured her right shoulder while lifting a box on Monday[3] resulting in immediate pain onset, inability to

[3] The Arbitrator takes judicial notice of the 2010 calendar and notes that the Monday before July 15, 2010 was July 12, 2010.

complete a full work day the following day, and an injury to her finger on Wednesday[4]. Petitioner's right shoulder examination was remarkable for spasm with range of motion and a positive impingement sign. Petitioner was tender to palpation at the keloid scar overlying her AC joint. Plain films of Petitioner's right shoulder showed post acromioplasty and distal clavicle resection changes. Petitioner was diagnosed with a strain of her right rotator cuff and symptomatic keloid scar. Physical therapy was prescribed for her shoulder and she was told to see a plastic surgeon for scar revision of the keloid. She was restricted to no lifting over 15 pounds.

- On August 16, 2010, Petitioner saw Dr. Atkenson. She complained of an episode of intense pain two weeks prior awakening her from sleep and reported right shoulder pain radiating to both her neck and under her arm. On examination, Petitioner was tender to palpation at the keloid scar overlying her AC joint and full active assisted range of motion. Dr. Atkenson maintained his diagnoses and ordered a shoulder MRI.
- On August 30, 2010, Dr. Atkenson reviewed Petitioner's August 27, 2010 MRI showing findings consistent with edema-like changes in the AC joint. Petitioner's right shoulder examination was remarkable for spasm with range of motion and a positive impingement sign, tenderness to palpation at the keloid scar overlying her AC joint, and full active assisted range of motion. Dr. Atkenson administered an injection into the right AC joint, prescribed Voltaren and Lidocaine patches, ordered continued physical therapy and kept Petitioner on light duty work restrictions.
- On September 30, 2010, Petitioner returned to Dr. Atkenson complaining of pain in the vicinity of the keloid scar and at the end of her distal clavicle, and numbness in her right upper extremity. A prominent keloid scar was present overlying the AC joint. Again, Petitioner's right shoulder examination was remarkable for full active range of motion, a positive impingement sign, and tenderness to palpation at the keloid scar and at the distal clavicle on the right. Dr. Atkenson again recommended she see a plastic surgeon for scar revision and she was placed off work.
- On October 18, 2010, Ms. Bailey had a second independent medical evaluation conducted at the Illinois Bone & Joint Institute. Craig Phillips, M.D., conducted the evaluation and noted that Ms. Bailey can return to normal activities at work with regard to her right upper extremity. Dr. Phillips did not believe any further treatment and/or diagnostic tests were necessary. Dr. Phillips believed that Ms. Bailey had reached maximum medical improvement.

RX9. Ultimately, Dr. Phillips opined that Petitioner could return to her normal work activities with regard to her right upper extremity, no further treatment was necessary, and that Petitioner reached maximum medical improvement after her June of 2009 right shoulder surgery and July of 2010 injury. *Id.*

Continued Medical Treatment

Petitioner testified that she returned to work on October 22, 2010 without restrictions. Tr. at 63. At this time, Petitioner testified that she still had a lot of pain, she took medication for pain, and her pain was no longer "doable." Tr. at 63-64. Petitioner described "doable" pain as that which she could still manage while working without medication. Tr. at 64.

On November 13, 2010, Petitioner testified that she obtained a second opinion from Dr. Silver. Tr. at 106-107. The Arbitrator notes that no records from Dr. Silver were submitted into evidence.

[4] The Arbitrator takes judicial notice of the 2010 calendar and notes that the Wednesday before July 15, 2010 was July 14, 2010.

February 25, 2011 – Right Elbow

Petitioner testified that she returned to Dr. Atkenson in February of 2011 for treatment of a right forearm incident and that she occasionally had treatment to her shoulder, but the primary focus was the forearm. Tr. at 108. The Arbitrator notes that the subject of this accident at work is addressed in the Arbitrator's decision in Petitioner's Case No. 11 WC 30158.

Section 12 Examination of Right Shoulder and Right Elbow – Dr. Nicholson

On September 20, 2011, Petitioner submitted to an independent medical evaluation with Dr. Nicholson for the right shoulder and elbow. PX2 at 3-5; RX4. Petitioner localized pain in the shoulder near the keloid scar anterior to the distal clavicle. *Id.* During examination of the right shoulder, Petitioner had pain at the terminal extent of motion, pain to palpation over the shaft clavicle, pain to palpation over the mid shaft of the spine of the scapula over the posterolateral border of the acromion and globally throughout the shoulder. *Id.*

Dr. Nicholson diagnosed Petitioner with right shoulder pain of non-anatomic origin and right elbow pain of non-anatomic origin, more of a soft tissue myofascial pain that would be the primary diagnosis. *Id.* He found no evidence of a multiple crush injury to the right side with signs of thoracic outlet syndrome. *Id.* Dr. Nicholson further opined that Petitioner did not require any further medical treatment for the right shoulder or elbow. *Id.* He recommended a functional capacity evaluation, indicated that Petitioner was at maximum medical improvement absent a functional capacity evaluation, and indicated that Petitioner would not be able to return to her regular job duties. *Id.*

Additional Information

On November 11, 2011, Petitioner underwent a functional capacity evaluation at Dr. Atkenson's referral. RX5. The evaluator determined that Petitioner was physically capable of performing all of the essential duties of her job. *Id.*

On November 17, 2011, Petitioner returned to Dr. Atkenson. RX10. On examination, Petitioner's right shoulder showed full active range of motion with a +1 impingement sign, no demonstrable instability, a prominent keloid scar overlying the acromioclavicular joint, minimal tenderness to palpation at the lateral epicondyle origin of the forearm musculature, and no instability or loss of motion. *Id.* Dr. Atkenson noted that Petitioner had recently completed a functional capacity evaluation showing that she was capable of performing all of her duties at work. *Id.* He released Petitioner back to work without restrictions. *Id.*

Regarding her current right shoulder condition, Petitioner testified that she cannot reach out quickly with her right arm anymore, she has difficulty sweeping the floor, she can no longer do her hair because it bothers her to have her right arm up for long periods of time, she has difficulty driving/making circular motions while driving, and she constantly has to stretch her right arm and change positions. Tr. at 57-58, 65-66. She further testified that her shoulder still hurts today and that the pain is more severe than it was before her July 12, 2010 injury. Tr. at 74-75. Also, she testified that she still takes medication for the pain and she cannot place anything on the keloid/surgery scar on her shoulder. Tr. at 75. Petitioner further testified that if she wears a rear hook bra, she usually straps it in the front and twist it around although she sometimes feels a sharp pain in her right shoulder when doing so, and she now wears a sports bra because there is no strap on her keloid. Tr. at 115-118, 121-126. Petitioner also testified that, while she can reach above her head to place certain clothing on, she has difficulty getting tops off. Tr. at 126-107.

Regarding her current right elbow condition, Petitioner testified that her elbow was fine when she came back to work and she only has a little bit of trouble with it today; every so often it will stick in place and she has to shake her elbow out and extend her arm. Tr. at 138.

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 (F), whether the Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

The Arbitrator finds that Petitioner's claimed right shoulder condition of ill being is related to the undisputed work accidents sustained on November 1, 2007 and on July 12, 2010. In so finding, the Arbitrator notes the overall consistency of Petitioner's testimony with the medical records submitted into evidence, the causal connection notations made by Petitioner's treating physicians, the Clearing Clinic physicians, and Respondent's Section 12 examiner, Dr. Verma, relating Petitioner's right shoulder condition with the original injury. While the Arbitrator notes that Petitioner submitted to two more independent medical evaluations with Dr. Phillips and Dr. Nicholson regarding the right shoulder, the Arbitrator is not persuaded by these opinions in light of the record as a whole which reveals an acute injury occurring on November 1, 2007 followed by relatively consistent right shoulder treatment and continued symptomatology that was exacerbated at work on July 12, 2010. Thus, the Arbitrator finds that Petitioner's claimed right shoulder condition of ill being is related to the undisputed accidents sustained on November 1, 2007 and July 12, 2010.

In support of the Arbitrator's decision relating to Issue (K), Petitioner's entitlement to TTD benefits, the Arbitrator finds the following:

The only temporary total disability period in dispute is from May 5, 2009 through May 26, 2009. *See* AX2. While Petitioner testified that she was off work during this period of time, there is no medical evidence that Petitioner was restricted from performing her job duties during this period of time. Thus, these requested temporary total disability benefits are denied.

In support of the Arbitrator's decision relating to Issue (L), the nature and extent of Petitioner's injury, the Arbitrator finds the following:

The Arbitrator notes that the evidence presented at the consolidated hearing in these matters was insufficient to "delineate and apportion the nature and extent of permanency attributable to each accident." *See City of Chicago v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 258, 265 (1st App. Ct. Dist. 2011). As such, the permanency award in this case encompasses and compensates Petitioner for her injuries alleged in both of the above-captioned claims and no separate award is being made. *See Baumgardner v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 274, 279-80 (1st App. Ct. Dist. 2011) ("From a procedural and practical standpoint, where a claimant has sustained to separate and distinct injuries to the same body part in the claims are consolidated for hearing and decision, it is proper for the commission to consider all of the evidence presented to determine the nature and extent of his permanent disability as of the date of the hearing.") Based

on the record as a whole, the Arbitrator finds that Petitioner has established permanent partial disability to the extent of 12.5% loss of use of the person as a whole pursuant to Section 8(d)(2)[5] for her right shoulder injuries.

[5] The Arbitrator awards permanent partial disability benefits in this case involving an injury to Petitioner's shoulder in light of the Appellate Court's holding in *Will County Forest Preserve District v. Illinois Workers' Compensation Commission*, 2012 Ill.App. LEXIS 109 (February 17, 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	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Pamela Kustwin,

Petitioner,

14IWCC0281

vs.

NO: 05 WC 39631
09 WC 13048
09 WC 13049

Kraft,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the parties herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, notice, average weekly wage, temporary total disability benefits, medical expenses and permanency, modifies the Decision of the Arbitrator regarding case 05WC39631, as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Regarding the issue of average weekly wage, the Commission notes that the wage statement provided by Respondent shows that Petitioner earned $34,838.19 in the 52 weeks before the June 28, 2005 accident. (RX2) That amount includes overtime worked by Petitioner. The Commission notes that Petitioner did not provide any testimony indicating that the overtime she worked was mandatory and, therefore, finds that Petitioner's earnings in the 52 weeks preceding the accident actually totaled $31,971.12. However, as noted by the Arbitrator in his decision, Petitioner did not always work 40 hour weeks. According to the wage statement in evidence, Petitioner worked 1,645 hours in the 52 weeks preceding the accident. According to *Sylvester v. Industrial Commission*, 197 Ill.2d 225, 230-231 (2001),

> "[S]ection 10 provides four different methods for calculating average weekly wage. (1) By default, average weekly wage is 'actual earnings' during the 52-week period preceding the date of injury, illness or disablement, divided by 52. (2) If the employee lost five or more calendar days during that 52-week period, 'whether or not in the same week,' then the employee's earnings

> are divided not by 52, but by 'the number of weeks and parts thereof remaining after the time so lost has been deducted.' (3) If the employee's employment began during the 52-week period, the earnings during employment are divided by 'the number of weeks and parts thereof during which the employee actually earned wages.' (4) 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 above 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 record in the case at bar fails to indicate if Petitioner missed more than 5 calendar days during the 52 weeks preceding the accident. Therefore, the Commission finds that the only calculation method available in this case is method (1), dividing Petitioner's earnings of $31,971.12 by 52 weeks, which would make Petitioner's average weekly wage $614.83. However, as noted by Petitioner in her Statement of Exceptions, Respondent stipulated to an average weekly wage of $791.85. Petitioner, relying on *Neri v. Doherty Giannini Reitz Construction*, 13 IWCC 84, *citing Walker v. Industrial Commission*, 345 Ill.App.3d 1084 (2004), argues that Respondent is bound by its stipulation/claim that Petitioner's average weekly wage is $791.85. The court in *Walker* explained that "[t]he language of *section 7030.40* indicates that the request for hearing is binding on the parties as to the claims made therein. *Walker*, 345 Ill. App. 3d at 1088. Indeed, Section 7030.40 of the Rules Governing Practice before the Illinois Workers' Compensation Commission states that:

> "[b]efore a case proceeds to trial on arbitration, the parties (or their counsel) shall complete and sign a form provided by the Industrial Commission called Request for Hearing. However, in the event a party (or his counsel) shall fail or refuse to complete and sign the document, the Arbitrator, in his discretion, may allow the case to be heard and may impose upon such party whatever sanctions permitted by law the circumstances may warrant. **The completed Request for Hearing form, signed by the parties (or their counsel), shall be filed with the Arbitrator as the stipulation of the parties and a settlement of the questions in dispute in the case.**" 50 Ill. Adm. Code Section 7030.40 (2006) (emphasis added).

In *Domagalski v. Industrial Commission*, 97 Ill. 2d 228 (1983), the Illinois Supreme Court explained that whether or not the Commission is bound to a stipulation made by the parties depends on whether the stipulation concerns a question of law or a question of fact:

> "The claimant, citing *General Electric Co. v. Industrial*

> *Commission (1952), 411 Ill. 401*, contends that the Commission was without authority to enter an order contrary to the terms of the stipulation. The stipulation in *General Electric* was that the employer had provided medical services to the claimant. **This court said that 'a stipulation by the parties as to the facts is conclusive so long as it stands.'** *(411 Ill. 401, 405;* see also T. Angerstein, Illinois Workmen's Compensation secs. 1975, 1976 (rev. ed. 1952).*)* Different from *General Electric*, the stipulation which the claimant here attempts to enforce concerned a question of law, *viz*, whether her injuries arose out of and in the course of employment. Parties cannot bind a court by stipulating to a question of law of the legal effect of facts. *People v. Levisen (1950), 404 Ill. 574; National Bank v. Murphy (1943), 384 Ill. 61. Domagalski*, 97 Ill. 2d at 235 (emphasis added).

The average weekly wage of a claimant is a question of fact. Respondent stipulated that Petitioner's earnings were $41,176.20 and that Petitioner's average weekly was was $791.85 (JX1), contrary to the information it provided via the wage statement (RX2). The Commission finds that, regardless of this contradiction, Respondent is bound to its stipulation under *Domagalski*. Therefore, the Commission finds that Petitioner's average weekly wage is $791.85.

Petitioner also argues that the award of temporary total disability benefits should be increased from 27-2/7 weeks to 28 -1/7 weeks. As explained above, the parties are bound to the stipulations they made on the Request for Hearing form. Petitioner stipulated on that form that she was entitled to temporary total disability benefits for 27-2/7 weeks. As such, the Commission holds Petitioner to her stipulation and affirms the Arbitrator's award of 27-2/7 weeks of temporary total disability benefits.

Next, the Commission notes that the Arbitrator found that Petitioner suffered a 1% loss of use of the person as a whole as a result of June 28, 2005 right shoulder injury. The Commission further notes that Arbitrator took into account Petitioner's February 5, 1999 settlement, which dealt with, among other injuries, prior right shoulder injuries sustained at work. Petitioner received benefits equaling 40% loss of use of the right arm, 15% loss of use of the right hand, and 2% loss of use of the person as a whole. In considering Petitioner's prior settlement in his decision, the Arbitrator apparently applied the settlement award for Petitioner's prior right shoulder injuries as a credit against the current June 28, 2005 right shoulder injury.

In *Killian v. Industrial Commission*, 148 Ill.App.3d 975 (1986), the appellate court dealt with an employer seeking a credit for a prior back injury. The claimant had suffered a back injury at work in 1975 and settled the matter for 7.5% loss of use of right leg and 7.5% loss of use of left leg, which was how benefits for back injuries were awarded at the time. The claimant then suffered work accidents on March 16, 1979, and January 15, 1980, both of which involved claimant's back. At the hearing for both accidents, the employer sought a credit for Petitioner's 1975 back injury. The Commission failed to rule on the issue of credit, but on appeal, the circuit court denied the credit. In affirming the circuit court's denial of the credit, the appellate court explained that:

> "Paragraph 17 of section 8(e) follows in numerical order the 15 specific members for which compensation amounts are specified. The first sentence of section 8(e)(17) refers to the loss or partial loss of any member 'including hand, arm, thumb or fingers, foot or any toes.' Employer argues that the legislature's use of the word 'including' indicates that more body parts than those listed in the first sentence of 8(e)(17) are intended to be included within the definition of member. We agree that the word 'including' suggests those members listed in 8(e)(17) are not exclusive, but this interpretation does not mean that a back is a member. Rather, we read the members listed in 8(e)(17) as representative of the more complete listing of members contained in section 8(e). Every specific member listed in 8(e)(17) is also listed first in sections 8(e)(1) through (e)(15). Therefore, we interpret the term 'member' to refer only to those body parts which are enumerated in sections 8(e)(1) through (e)(15).
>
> In the second sentence of section 8(e)(17), which governs the permanent loss or permanent partial loss of use of a member and which is relied upon by employer here, we observe that the sentence contains the phrase 'any such member.' This phrase directs the reader to the preceding sentence which references leg, fingers, toes, foot, hand, arm, and thumb as members. Since the members listed in the first sentence are representative of the more complete listing in sections 8(e)(1) through (e)(15), the second sentence in 8(e)(17), with its phrase 'any such member,' must also include as members those body parts listed in sections 8(e)(1) through (e)(15). The body part 'back' is not listed as a member in sections 8(e)(1) through (e)(15) or anywhere else in section 8(e). Therefore, we conclude the credit in section 8(e)(17) does not apply to injuries to the back.
>
> Based upon our interpretation of the statute, claimant did not sustain an injury to a member when he sustained injuries to his back on March 16, 1979, and January 15, 1980. Therefore, employer is not entitled to a credit under section 8(e)(17), which requires successive injuries causing loss of use of the same member." *Killian*, 148 Ill.App.3d at 978.

In *Will County Forest Preserve v. IWCC*, 2012 IL App (3d) 110077WC, ¶21, the appellate court determined that a shoulder injury does not qualify as an injury to the arm. The court then explained that:

> "[s]ince claimant's shoulder injury does not qualify as a scheduled loss to the arm, we turn to other provisions of the Act for guidance. We find applicable the first subpart of section 8(d)2. That provision provides for a person-as-a-whole award where the

> claimant sustains serious and permanent injuries not covered by section 8(c) or 8(e) of the Act. In this case, there is no evidence that claimant suffered disfigurement as required for an award under section 8(c) of the Act (820 ILCS 305/8(c)(West 2008)). In addition, as set forth above, the injury to claimant's right shoulder does not qualify as a scheduled loss to the arm under section 8(e)(10). As such, we hold that benefits are proper under the first subpart of section 8(d)2." ¶21

Based on *Killian* and *Will County Forest Preserve*, Respondent is not entitled to a credit for Petitioner's prior right shoulder injury. Therefore, the Commission must reconsider the nature and extent of Petitioner's right shoulder injury. In doing so, the Commission notes that Petitioner underwent conservative treatment for her right shoulder in October and November of 2003 following a motor vehicle accident. (PX2,RX5,T.10,57-58) The Commission further notes that Petitioner's inability to work since late 2006 is not related to her right shoulder condition, but to an unrelated personal condition. (T.29) Petitioner has not sought treatment for her right shoulder since March 26, 2009, at which time Dr. Marra reviewed the March 8, 2009 right shoulder MRI that showed a high-grade partial tear of the supraspinatus tendon at myotendinous junction, and the radiologist who read the MRI could not decide if the tear was evidence of a chronic condition or severe tendinosis. (PX3) Dr. Rhode, Petitioner's treating physician, opined that Petitioner's right shoulder recurrent rotator cuff tear is related to Petitioner's "original work related exposure." (PX6) Dr. Papierski, Respondent's Section 12 examiner, opined that "[i]t is possible that there was subsequent rotator cuff tear of the right shoulder in March of 2009. It is not clear that this would be causally related to the reported injury of June 28, 2005." (RX3) Based on the totality of the evidence, the Commission finds that 7.5% loss of use of the person as a whole as a result of her work-related right shoulder injury on June 28, 2005.

Finally, the Commission notes that in its Statement of Exceptions, Respondent argues that the Arbitrator erred in failing to award Respondent a credit for $15,459.93 for temporary total disability benefits paid. In her Statement of Exceptions, Petitioner agrees that Respondent is entitled to this credit. Therefore, the Commission awards Respondent a credit of $15,459.93 for temporary total disability benefits paid to Petitioner.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 5, 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 $527.90 per week for a period of 27-2/7 weeks, from November 28, 2005 through January 8, 2006, and from January 23, 2006 through June 20, 2006, that being the period of temporary total incapacity for work under Section 8(b) of the Act. Respondent shall have a credit of $15,459.93 for temporary total disability benefits paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $475.11 per week for a period of 37.5 weeks, as provided in Section 8(d)2 of the Act, for the reason that the injuries sustained caused the 7.5% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that the medical care provided to Petitioner for her right shoulder was reasonable and necessary. Respondent shall pay the medical bills incurred in the treatment of her right shoulder after February 1, 2006, pursuant to Sections 8(a) and 8.2 of the Act. The medical charges for the treatment of Petitioner's right elbow and left shoulder are not causally related to the June 28, 2005 accident, and are denied. The medical charges of Loyola University Health System for treatment of Petitioner's skin sores and cough are also not related to the June 28, 2005 accident, and are denied. Respondent shall be given a credit for any amount it paid toward medical bills, including any amount paid within the provisions of Section 8(j) of the Act, and any adjustments, and shall hold Petitioner harmless for all the medical bills paid by its group health insurance carrier.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under Section 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 $4,000.00. 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: APR 16 2014
MJB/ell
o-03/18/14
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0281

KUSTWIN, PAMELA
Employee/Petitioner

Case# **05WC039631**

09WC013048
09WC013049

KRAFT
Employer/Respondent

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:

0293 KATZ FRIEDMAN EAGLE ET AL
CHRISTOPHER MOSE
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

0560 WIEDNER & MCAULIFFE LTD
JANET PALLARDY
ONE N FRANKLIN ST SUITE 1900
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

ARBITRATION DECISION

14IWCC0281

PAMELA KUSTWIN
Employee/Petitioner

Case #05 WC 39631
09 WC 13048
09 WC 13049

v.

KRAFT
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 January 23, 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 June 28, 2005, April 28, 2006, and May 19, 2006, the respondent was operating under and subject to the provisions of the Act. The dates are the subject matter of claims 05 WC 39631, 09 WC 13048 and 09 WC 13049, respectively.

- On those dates, an employee-employer relationship existed between the petitioner and respondent.

- On June 28, 2005, the petitioner sustained injuries that arose out of and in the course of employment.

- Timely notice of the June 28, 2005, accident was given to the respondent.

- At the time of injury, the petitioner was 49 years of age, *married* with no children under 18.

- The parties agreed that the petitioner is entitled to temporary total disability benefits for 27-2/7 weeks, from November 28, 2005, through January 8, 2006, and from January 23, 2006, through June 20, 2006, for the June 28, 2005, accident and is not entitled to temporary total disability benefits for the May 19, 2006, claim.

ORDER:

- The respondent shall pay the petitioner temporary total disability benefits of $423.00/week for 27-2/7 weeks, from November 28, 2005, through January 8, 2006, and from January 23, 2006, through June 20, 2006, which is the period of temporary total disability for which compensation is payable.

- The respondent shall pay the petitioner the sum of $380.70/week for a further period of 5 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent 1% loss of use of the person as a whole.

- The respondent shall pay the petitioner compensation that has accrued from June 28, 2005, through January 23, 2013, and shall pay the remainder of the award, if any, in weekly payments.

- The medical care rendered the petitioner for her right shoulder was reasonable and necessary. The medical charges for the treatment of the petitioner's right elbow and left shoulder are not related to her work injury on June 28, 2005, and are denied. The medical charges of Loyola University Health System for treatment of her skin sores and cough are not related to her work injury on June 28, 2005, and are denied. The respondent shall pay the medical bills incurred after February 1, 2006, in accordance with the Act and the medical fee schedule. 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.

- Claims #09 WC 13048 and #09 WC 13049 are dismissed and the petitioner's request for benefits for her left shoulder and right wrist 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 Williams

2/5/13
Date

FEB - 5 2013

FINDINGS OF FACTS:

On June 28, 2005, the petitioner sustained a re-injury to her right shoulder while doing inspection work on a cookie line. She received care at the Clearing Clinic on the 29th. Dr. Bush-Joseph saw her on July 1st and opined that except for revealing a prior distal clavicle excision, x-rays of her shoulder were unremarkable. The doctor noted that the range of motion of the petitioner's shoulder was limited by pain primarily in the sub deltoid. He gave her a cortisone injection and started physical therapy at AthletiCo on July 26th.

On August 27th, she started care with Dr. Blair Rhode of South Chicago Orthopedics. On November 29th, Dr. Rhode performed a revision arthroscopic right subacromial decompression, a distal clavicle excision, a rotator cuff repair and a suprascapular nerve block. The petitioner started physical therapy on December 5th. At a post-op visit on December 7th, Dr. Rhode noted a left shoulder positive impingement sign with internal rotation representing the posterior/infraspinatus rotator cuff.

The petitioner worked without using her right arm/hand doing inspection on a cracker line from January 9 through 22, 2006. The petitioner reported lateral and medial right elbow pain to the therapist on February 1st and right wrist pain on the 15th. On February 6th, Dr. Rhode gave the petitioner left-handed work restrictions. On March 6th, Dr. Rhode noted moderate symptoms magnification by the petitioner with regards to her right shoulder. He noted that palpation of her right elbow elicited diffuse pain. He gave the petitioner an injection into her right acromioclavicular space and noted that she had significant AC pain somewhat magnified and that no bony work to the AC joint was performed at surgery.

On April 28th, the petitioner received an injection into the superior portion of her left shoulder acromioclavicular space. On May 19th, Dr. Rhode noted pain with palpation over the acromioclavicular joint with only the left arm, negative impingement signs bilaterally, and right elbow pain at the lateral jointline and at the lateral epicondyle. On June 16th, the petitioner received an injection into her right acromioclavicular space and right lateral epicondyle. The petitioner returned to work on June 21st. An MRI of the petitioner's left shoulder on June 8th revealed tendinopathy of the supraspinatus without a focal tear and the subscapularis, and prominent AC spurs.

On June 28th, Dr. Rhode noted that the petitioner's work status was full duty with no restrictions. On September 6th, the doctor noted complaints of headaches, right elbow, 1st CMC pain at the base, right and left shoulder pain and a positive Spurling sign for her cervical spine, and gave the petitioner an injection into her right acromioclavicular joint. At the petitioner's last visit with Dr. Rhode on September 27th, the doctor noted pain with palpation over the acromioclavicular joint, a negative impingement sign and 5/5 strength with external rotation and supraspinatus isolation for both shoulders. He also reported a positive Spurling sign for the cervical spine and pain with palpation of the lateral epicondyle of her right elbow. In a second note dated September 27th, Dr. Rhode noted a positive impingement sign for the petitioner's left shoulder and reported that he injected her right subacromial space.

The petitioner saw Dr. Marra of Loyola University Health System on September 4, 2008, for bilateral shoulder and right elbow pain. Dr. Marra gave the petitioner a right shoulder injection on March 6, 2009. An MRI of her right shoulder on March 8th revealed a high grade partial tear of the supraspinatus tendon, a chronic partial

tear/severe tendinosis of the subscapularis and infraspinatus tendon. The petitioner saw Dr. Marra on April 7, 2011, for her right shoulder. She saw Dr. Steve Gnatz of Loyola University Health System for low back pain on May 13, 2011.

She saw Dr. Bednar of Loyola University Health System on June 21, 2011, for wrist pain and reported sustaining bilateral wrist fractures a year earlier from a fall. An x-ray of her right wrist on June 22nd revealed a united distal radial fracture with residual dorsal angulation, widening of the distal radial ulnar joint and degenerative changes in the first carpometacarpal joint.

The petitioner was examined pursuant to Section 12 by Dr. Papierski on November 7, 2012. Dr. Papierski opined that petitioner's left shoulder and right elbow were not causally related to the injury of June 28, 2005, and were not due to overuse while petitioner worked modified duty. He opined that the petitioner had attained maximum medical improvement for her arms.

FINDING REGARDING WHETHER THE PETITIONER'S ACCIDENT AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH THE RESPONDENT:

Based upon the testimony and the evidence submitted, the petitioner failed to prove that she sustained an accident on April 28, 2006, and May 19, 2006, arising out of and in the course of her employment with the respondent. The petitioner did not work for the respondent on April 28, 2006, and May 19, 2006, and did not provide sufficient evidence of traumatic injuries to her right elbow and left shoulder. Nor did she establish that she sustained repetitive injuries to her left shoulder or right wrist while working for the respondent. There is no evidence of any work activity with her right arm and no evidence of repetitive use of her left shoulder Moreover, the petitioner's left shoulder pain started prior to her left-handed work in January 2006. She reported left shoulder pain

on December 7, 2005, and Dr. Rhode notes a positive impingement sign. The opinions of Dr. Rhode are conjecture and are not given any weight. All claims for benefits for the petitioner's left shoulder and right wrist are denied and claims #09 WC 13048 and #09 WC 13049 are dismissed.

FINDINGS REGARDING WHETHER TIMELY NOTICE WAS GIVEN TO THE RESPONDENT:

The petitioner failed to prove that the respondent received timely notice of her accidents on April 28, 2006, and May 19, 2006.

FINDING REGARDING THE AMOUNT OF WAGES:

From June 27, 2004, through June 26, 2005, the petitioner's regular earnings were $31,971.12. There is no evidence as to the number of calendar workdays lost during that period in Respondent's Exhibit #2, however, since weeks three and eight contain eight hours or less those two weeks are deducted from her earnings leaving $31,725.24 for fifty weeks. In the year preceding the injury on June 28, 2005, the petitioner's average weekly wage was $634.50.

FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:

The medical care rendered the petitioner for her right shoulder was reasonable and necessary. The medical charges for the treatment of the petitioner's right elbow and left shoulder are not related to her work injury on June 28, 2005, and are denied. The medical charges of Loyola University Health System for treatment of her skin sores and cough are not related to her work injury on June 28, 2005, and are denied.

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 proved that her current condition of ill-being with her right shoulder is partially causally related to the work injury on June 28, 2005. The petitioner failed to prove that her current condition of ill-being with her right elbow and left shoulder is causally related to any work injury.

FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:

The respondent shall pay the petitioner temporary total disability benefits of $423.00/week for 27-2/7 weeks, from November 28, 2005, through January 8, 2006, and from January 23, 2006, through June 20, 2006, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner. The petitioner's claim for temporary total disability benefits after June 20, 2006, is denied.

FINDING REGARDING THE NATURE AND EXTENT OF INJURY:

The petitioner had prior right shoulder injuries in 1991, 2003 and 2005 resulting in medical care. She received a settlement in 95 WC 41140 for an injury on July 31, 1995, of 40% of the right arm (94 weeks), 7 ½% of the left arm (17.625 weeks), 15% of the right hand (28.5 weeks) and 7 ½% of the left hand (14.25). The petitioner stopped working for the respondent in 2006 due to unrelated health issues and has not worked in any capacity since.

The petitioner complains that her right shoulder is weak and has a pinching feeling. She has difficulties with many activities. The respondent shall pay the petitioner the sum of $380.70/week for a further period of 5 weeks, as provided in Section 8(d)2 of

the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent 1% loss of use of the person as a whole.

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

Jessica Ratcliff,
Petitioner,

vs.

NO: 11 WC 7084

14IWCC0282

University of Illinois,
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 permanency and credit for third party settlement 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 awards Respondent a credit in the amount of $23,208.73 to reflect the deduction of $1,791.27 to ACS Recovery medical bill under 5(b) and otherwise affirms the Arbitrator's decision.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $576.92 per week for a period of 113.85 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 45% loss of use of the right arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent receive a credit in the amount of $23,208.73 as a result of a third party recovery made by Petitioner and in accordance with Section 5(b) of the Act.

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

14IWCC0282

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

David L. Gore

Stephen Mathis

MB/jm

O: 2/27/14

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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RATCLIFF, JESSICA
Employee/Petitioner

Case# 11WC007084

14IWCC0282

UNIVERSITY OF ILLINOIS
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:

1970 MEYER CAPEL PC
ROCHELLE A FUNDERBURG
306 W CHURCH ST
CHAMPAIGN, IL 61826

0522 THOMAS MAMER & HAUGHEY LLP
BRUCE E WARREN
30 MAIN ST SUITE 500
CHAMPAIGN, IL 61820

14IWCC0282

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

JESSICA RATCLIFF
Employee/Petitioner

v.

UNIVERSITY OF ILLINOIS
Employer/Respondent

Case # 11 WC 7084

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 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 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: Is Respondent owed a credit for Petitioner's third party settlement recovery?

FINDINGS

On **05/20/2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exists 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 **$50,000.08**; the average weekly wage was **$961.54**.

On the date of accident, Petitioner was **35** 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 **$25,000.00** for other benefits, for a total credit of **$25,000.00**.

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 $576.92/week for 113.85 weeks, because the injuries sustained caused the 45% loss of the right arm, as provided in Section 8(e) of the Act.

Respondent shall be given a credit of $25,000.00 against all benefits awarded herein as a result of a third party recovery made by Petitioner arising out of these same facts, pursuant to Section 5(b) 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

03/20/2013
Date

MAR 26 2013

14IWCC0282

STATE OF ILLINOIS)
)SS
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JESSICA RATCLIFF
Employee/Petitioner

v. Case # 11 WC 7084

UNIVERSITY OF ILLINOIS
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Jessica Ratcliff, was employed by Respondent, the University of Illinois, as a research fellow on May 20, 2010. On that date, she was traveling east on Interstate-74, on a trip for Respondent, when the driver in the next lane attempted an illegal u-turn, causing a rear end collision in which Petitioner's car hit the other driver. Petitioner's body was thrown about the car, resulting in broken bones in her right arm. Her husband accompanied her.

Petitioner was taken to Provena Covenant Hospital in Danville, Illinois, where she was treated in the emergency room. She was then transferred to the emergency room at Carle Foundation Hospital. Petitioner was seen by physicians in the emergency room. Dr. Robert Bane performed surgery on Petitioner on May 20, 2010, which consisted of an open reduction and internal fixation of the right proximal ulna. The pre-operative and post-operative diagnoses were comminuted right proximal ulna fracture and right radial neck fracture. Petitioner was discharged from the hospital on May 21, 2010, and advised to follow-up through the hand clinic in one week. (Petitioner's Exhibit (PX) 1; PX 2).

Petitioner was seen by Dr. Clifford Johnson, an orthopedic surgeon, on May 25, 2010. She was referred by Dr. Bane for evaluation and treatment of the radial neck. Petitioner was admitted to Carle Foundation Hospital on May 28, 2010 for the surgery performed by Dr. Johnson. That surgery

consisted of an open reduction and internal fixation of the right radial neck fracture. The pre-operative and post-operative diagnoses were right radial neck fracture as part of a Monteggia variant. Petitioner was discharged on May 28, 2010, after a splint had been applied. (PX 1; PX 2).

Petitioner then was referred for physical therapy, which she received at Carle. Occupational therapy was performed on an out-patient basis from June 7, 2010 through July 7, 2010. Petitioner also performed exercises at home during this period. She received the therapy at Carle one to two times per week for four weeks in order to control the edema or swelling, in an active range of motion, and to manage the scaring from the surgery. (PX 2).

As of July 7, 2010, Petitioner was still advised to wear her splint at all times, removing for hygiene purposes only, and to remove for the exercises regarding active range of motion. Additional treatment as of July 7, 2010 included active range of motion, elbow flexion and extension, forearm rotation and wrist flexion and extension. At that time, because Petitioner was moving to New York, her therapy was transferred to another facility. (PX 2). Petitioner then received therapy from Diane Farnham Physical Therapy and Massage in Ithaca, New York, and at Island Heath and Fitness. (PX 4). Petitioner testified that in order to compensate for her inability to rotate and flex her forearm, she was developing problems with her right shoulder and neck.

Petitioner was seen by Dr. Eldridge Anderson and Dr. Kimberly Carney-Young in Ithaca, New York at the Orthopedic Services of CMA on September 17, 2010. At that time, she was also seeing a hand therapist at Island Health and Fitness. Petitioner's range of motion at this visit was noted to be 50 degrees of extension to 120 degrees. Her main complaint was lack of pronation and supination. She complained of pain in her wrist while wearing the splint. An examination of Petitioner's right upper arm showed a well healed incision on the posterior aspect of the elbow with a flexion extension arc of 15 to 120 degrees. Dr. Carney-Young measured supination and pronation, and it was 0 degrees through the forearm. Petitioner had approximately 7 degrees pronation and supination through the carpal bones.

Holding Petitoiner's forearm and attempting pronation and supination, Dr. Carney-Young noted no motion through the forearm. Dr. Carney-Young did get supination and pronation through the carpal bones. Petitioner had full flexion and extension of the wrist. (PX 3).

A review of Petitioner's x-rays on the September 17, 2010 evaluation with Dr. Carney-Young showed excellent placement of hardware on the radial neck as well as the proximal ulna. However, Dr. Carney-Young indicated that she had concern for a heterotopic bone formation between the radius and ulna in the area of the hardware. At that time, Dr. Carney-Young recommended a CT scan, and indicated that Petitioner might be a candidate for an "acinous into position flap" operation. Dr. Carney-Young indicated that such a procedure involves removal of the radial neck hardware, possible radial head excision if there is significant malunion or arthritis of the radial head followed by interposition of the anconeus muscle between the radius and the ulna, after removing all heterotopic bone. (PX 3).

Petitioner testified that she was told this surgery was in the experimental stages. Petitioner testified that because the surgery was experimental and she did not feel ready for yet a third surgery, she determined not to undergo the operation.

Petitioner testified at trial that she was unable to turn her arm outward, and that it causes significant difficulties with her work. Her work and research requires significant use of computers and typing, and she has been required to obtain some accommodations with the use of various computer equipment and voice activated equipment. She also testified that she has problems with her right shoulder and neck. In compensating for her limited range of motion in the arm, she has been using her neck and shoulder in a different way, causing pain and discomfort in those areas. Petitioner further testified that she travels frequently with her work to various historical archive locations, and such travel causes pain, especially with long drives. Petitioner also teaches and lectures, and noted that she feels awkward in gesturing due to her limited arm motion. Petitioner is now employed as an assistant professor at Yale-NUS College in Singapore.

Physical therapy with Diane Farnham indicated that as of August 18, 2011, Petitioner continued to have problems with the shoulder and neck stiffness and pain, although it had improved. At that time, the physical therapist recommended physical therapy on an as-needed basis for pain, discomfort and limited range of motion. The physical therapist recommended that any physical therapy should be designed to increase the range of motion, and to add comfort in the shoulder and neck area. (PX 4). Petitioner incurred $580.00 in bills for the therapy services provided by Diane Farnham. (PX 5). Petitioner testified that she paid for those bills herself. The parties stipulated that Respondent would pay $580.00 in reference to these bills paid by Petitioner. (See Arbitrator's Exhibit 1).

At trial, Petitioner testified that there are many activities that she cannot perform that she did prior to the accident, such as yoga and other sports activities, like bowling. She testified that it is difficult to perform all of her household duties, and that she frequently receives assistance from her husband. She does have pain from time to time, and takes over the counter medication on an as needed basis for that pain. If the pain endures for too long, she returns to Diane Farnham for massage therapy.

Petitioner has a scar from her two arm surgeries, which begin just above her right elbow going down to just above the wrist. There is some raised area and discoloration of the scar.

Petitioner testified that she made a recovery against the adverse driver involved in the accident in the total amount of $25,000, before a lien was resolved. Respondent's Exhibit 1 is a letter dated October 11, 2011 from GEICO Insurance Company, the insurer of the adverse vehicle, setting out the amount of the settlement, indicating that a check would be issued to pay a lien in the amount of $1,791.27, and that the balance of $23,208.73 was issued to Petitioner and her husband. Petitioner confirmed receipt of this amount at trial. Petitioner testified that her husband was included since this was a "joint claim" including his "loss of consortium." Petitioner further testified that her husband's claim was "not physical." Petitioner testified that she was not assisted by an attorney in making the third party recovery.

CONCLUSIONS OF LAW

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

The parties stipulated to Petitioner's work accident and that her current condition of ill-being is causally related to the work injury. Petitioner received two surgeries for fractures of the right ulna and radial head, consisting of an open reduction and internal fixation of the right proximal ulna, and an open reduction and internal fixation of the right radial neck fracture, respectively. The respective pre-operative and post-operative diagnoses regarding her two surgeries were comminuted right proximal ulna fracture and right radial neck fracture as part of a Monteggia variant. Petitioner received physical therapy over a period of time. A third surgery was suggested but Petitioner refused the surgery, indicating it was an experimental form of treatment which she did not desire. Therefore, Petitioner is at maximum medical improvement. Petitioner has a significant limitation of the range of motion of her right arm and elbow. As of September 17, 2010, Petitioner's range of motion was 50 degrees of extension to 120 degrees. Supination and pronation was 0 degrees through the forearm, with 7 degrees pronation and supination through the carpal bones. This limited range of motion affects her ability to perform her job, although she has obtained some accommodations through the use of various equipment. She is unable to engage in some physical activities she engaged in prior to the accident because of the condition of her right arm. She continues to experience pain in her arm, and compensating for her arm causes pain in her right shoulder and neck. Petitioner testified she cannot turn her arm outward, and this is confirmed in the medical records.

The Arbitrator has reviewed the medical records in this matter. Based upon those records and the credible testimony of Petitioner, the Arbitrator finds that Respondent should pay Petitioner permanent partial disability benefits of $576.92 per week for 113.85 weeks, because the injuries sustained caused the 45% loss of use of the right arm, as provided in Section 8(e) of the Act.

Issue (O): Is Respondent owed a credit for Petitioner's third party settlement recovery?

The issue of whether Respondent is owed a credit for Petitioner's third party settlement recovery under Section 5(b) of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act") was raised at trial. The Supreme Court of Illinois stated in *Scott v. Industrial Comm'n*, 184 Ill.2d 202, 703 N.E.2d 81 (1998), that the Illinois Workers' Compensation Commission (hereafter the "Commission") has full authority to determine credits to which the respondent might be entitled as a result of a third party recovery by the petitioner, commenting in part as follows:

> ...the statute does not require an employer to intervene or to assert a lien in order to recover amounts obtained by an employee in a third party proceeding. When an employer does not assert a lien, the employer foregoes a means of enforcing its claim. The employer does not, however, forfeit its rights under the first paragraph of section 5(b) to recover amounts paid or to be paid to an employee where the employee has obtained a third-party judgment or settlement.
>
> ***
>
> We therefore believe that under section 5(b) of the Act, an employer may make a claim for credits following the conclusion of a third party proceeding without having obtained a lien in that proceeding.
>
> ***
>
> Were the rules to be otherwise, as suggested by Scott [the petitioner], an employee would be able to receive and retain a double recovery.
>
> ***
>
> Accordingly, we believe the Commission, which entered the original compensation award, 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.

Scott, 703 N.E.2d at 88 (citations omitted). See also *Selleck v. Industrial Comm'n*, 233 Ill. App. 3d 17, 19-20, 598 N.E.2d 443 (4th Dist. 1992).

In the case at bar, Petitioner recovered a total of $25,000 in relation to her third-party claim. The fact that part of it was used to pay liens is not relevant to the determination of the credit pursuant to Section 5(b) of the Act. Additionally, the burden is on Petitioner to provide a record from which the Arbitrator could make a determination as to what portion, if any, of the paid amount may be

attributable to her husband's loss of consortium. Because Petitioner offered no evidence on that point, none of the recovery is apportioned to the husband. The burden of proof is on Petitioner to provide the Commission and any reviewing authority with a sufficient record from which to determine the amount of credit, if Petitioner disputes the amount involved. See *Padgett v. Industrial Comm'n*, 327 Ill. App. 3d 655, 661, 764 N.E.2d 125 (1st Dist. 2002).

Section 5(b) of the Act calls for a reduction in the employer's lien or credit by 25% to account for attorney's fees incurred by a petitioner in making the third-party recovery; however, those fees are to be paid only where said petitioner's attorney has substantially contributed to the recovery against the third-party. See *Dukes v J.I. Case Company*, 186 Ill. App. 3d 439, 542 N.E.2d 439 (4th Dist. 1989). Here, Petitioner testified that she was not assisted by an attorney in making the third-party recovery. Consequently, a reduction for attorney's fees is not applied under the facts.

Based on the foregoing, Respondent is awarded a credit of $25,000 against all benefits awarded in this decision as a result of the third party recovery obtained by Petitioner.

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☒ 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 Clem,

Petitioner,

vs.

NO: 13 WC 00912

14IWCC0283

ALCA Carpentry,

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 maintenance, future maintenance, vocational rehabilitation, accomodation of restrictions 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 14, 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.

14IWCC0283

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 $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: APR 17 2014

MB/mam
O:3/6/14
43

Mario Basurto

David L. Gore

Stephen Mathis

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

CLEM, ROBERT
Employee/Petitioner

Case# **13WC000912**

14IWCC0283

ALCA CARPENTRY
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:

1315 DWORKIN AND MACIARIELLO
THOMAS GAYLE
134 N LASALLE ST SUITE 1515
CHICAGO, IL 60602

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JOSEPH MULVEY
135 N LASALLE ST SUITE 4200
CHICAGO, IL 60603

14IWCC0283

STATE OF ILLINOIS)
)SS.
COUNTY OF Dupage)

- [ ] 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)

Robert Clem
Employee/Petitioner

v.

ALCA Carpentry
Employer/Respondent

Case # **13** WC **912**

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 **Carlson**, Arbitrator of the Commission, in the city of **Wheaton**, on **3/15/13**. 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. [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. [ ] 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. [x] What temporary benefits are in dispute?
[ ] TPD [x] 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, **3/15/13**, 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 **$51920.66**; the average weekly wage was **$1274.31**.

On the date of accident, Petitioner was **51** 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 **$67,270.62** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$67,270.62**.

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

ORDER

Petitioner is entitled to TTD benefits from 11/29/11 to 1/28/13. Respondent has paid TTD from 11/29/11 to 1/28/13 and has a credit for $67,270.62.

Petitioner is entitled to ongoing maintenance benefits from 1/29/13 to 3/15/13 and continuing. Respondent shall pay to Petitioner Maintenance benefits from 1/29/13 – 3/15/13 representing 6 and 3/7 weeks at the rate of $849.54 per week or $5,461.27.

Petitioner is in need of vocational assessment. Respondent shall provide vocational assistance under section 8a.

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

6·13·13
Date

ICArbDec19(b)

JUN 14 2013

Robert Clem

v. 13wc000912

ALCA Carpentry

FINDINGS OF FACT:

On 11/29/11 Robert Clem (Petitioner) was employed by and working for ALCA Carpentry (Respondent). On this date, while acting in the course and scope of his employment, Petitioner was in an accident that arose out of his employment with Respondent. Petitioner was moving a stack of plastic boarding, the wind blew the stack over, and the stack fell on Petitioner's left leg fracturing the left leg tibia and fibula bones. The fractures required surgical repair that included open reduction and internal fixation using plates and screws. The surgery was performed on 11/30/11. (PX 1). These facts are not in dispute.

Petitioner continued his medical care with Dr. Zussman of Rockford Orthopedics. On 1/3/12 Dr. Zussman recorded pain complaints of 9/10 at rest and 10/10 with activity and noted that it was at its worst when attempting to walk. (PX 2).

On 1/11/12 Accelerated Rehab Marengo (Accelerated) noted significant deficits in almost every category as well as significant pain complaints. (PX 4). On 3/1/12 Accelerated recorded ongoing deficits. (PX4).

Petitioner again saw Dr. Zussman on 3/2/12 and physical deficits and pain complaints continued. (PX 2). The 3/2/12 chart note includes a specific discussion about Petitioner's driving. (PX 2). It was noted that prior to his injury Petitioner was a "two footed driver" meaning that he used his left foot for braking and right foot for acceleration. (PX 2). Dr. Zussman recorded that he felt that Petitioner "is unable to drive." (PX 2).

At hearing Petitioner testified that prior to his accident his usual way of driving was "left-footed driver." (TX p. 58-59). He described that this meant that he used the left foot for the brake and the right foot for the gas. He has not driven since the accident. (ID).

On 4/12/12 Accelerated reported that Petitioner was having difficulty sleeping, transferring in and out of bathtub, inability to walk independently, noted that he was using a two wheeled walker for ambulation, and noted that he had been compliant with therapy visits. (PX 4).

On 4/17/12 Dr. Zussman recommended ongoing therapy followed by FCE. (PX 2).

On 5/1/12 Accelerated reported that Petitioner had continued difficulty with sleeping, transferring from bathtub, inability to walk independently on uneven surfaces, and that he was using his two wheeled walker on his right side when walking. (PX 4). On the same day, Accelerated Rehab contacted Sports Physical Therapy and Rehab Specialists to make a Durable Medical Equipment Authorization Request of "1x Quad Cane. Dx/Body Part: L tibia fx." (PX4). Petitioner affirmed that he received the quad cane from Accelerated Rehab. (TX p. 9-10).

On 5/23/12 Petitioner saw his primary care physician, Dr. Glantsman of Cordial Medical Center. (PX 5). Dr. Glantsman noted that Petitioner's left leg was longer than his right. (PX 5). Petitioner was using his quad cane at this visit. (PX 5, TX p. 10).

On 5/31/12 Accelerated again noted deficits. (PX 4).

On 6/12/12 Dr. Zussman continued to note that Petitioner had pain, numbness, tingling, coldness in the foot, popping, and clicking. (PX 2). Pain at rest was 7/10 and with activity 8/10. (PX 2). The doctor noted that "his gait is improved when he walks with a quad cane in his right hand." (PX 2). Dr. Zussman referred Petitioner to Dr. Borchardt, within the same practice, citing "continued numbness and tingling and pain." (PX 2).

On 6/14/12 Dr. Borchardt noted pain complaints 7/10 at rest and 9/10 with activity. (PX 2). He noted that Petitioner ambulates with cane. (PX 2). Dr. Borchardt's physical evaluation revealed: "still shows atrophy of his distal quadriceps and calf muscles on the left leg." (PX 2). Dr. Borchardt recorded that "Patient continues to use a cane when walking. He needs to *start* using his cane." (PX 2 emphasis added). Petitioner testified that Dr. Borchardt did **not** tell him to discontinue use of cane. (TX p. 10-11).

On 7/17/12 Accelerated performed an FCE. (PX 4). The FCE revealed that he was unable to perform 100% of the physical demands of his job as a carpenter per dictionary of occupational titles. (PX 4). Additionally, the FCE reviewed the job requirements as provided by Respondent as part of the examination. (PX 4). The FCE limits Petitioner to bilateral lifting up to 40 pounds with only 15 pounds frequently, bilateral carrying up to 35 pounds, bilateral shoulder lifting 30 pounds, pushing and pulling horizontal plane 35 pounds. (PX 4). When assessing the job requirements provided by Respondent the FCE notes that the Petitioner was not capable of the required frequent walking, frequent stair climbing, frequent static balancing, and frequent dynamic balancing. (PX 4). Within the report of FCE, it is further noted that Petitioner reported ongoing difficulty sleeping, inability to walk independently on uneven surfaces, and difficulty climbing stairs. (PX4).

On 7/19/12 Dr. Borchardt recorded Petitioner's ongoing feeling of coldness and soreness from the knee down, pain 7/10 at rest and 8/10 with activity, and new popping and swelling. (PX 2). Dr. Borchardt released Petitioner MMI with restrictions pursuant to the FCE. (PX 2).

Petitioner followed up with Dr. Glantsman on 8/17/12. (PX 5). The doctor advised Petitioner that he could not return to his usual job and may need to go for disability. (PX 5). Dr.

Glantsman notes that Petitioner walks with a cane, reports pain in leg after a "short walk," and that the leg feels cold below the knee. (PX 5).

On 9/5/12 Petitioner saw IME Dr. Shadid at the request of Respondent. (PX 6). The complete subpoenaed record from Dr. Shadid was entered at hearing as Petitioner's exhibit 6.

IME Dr. Shadid noted that Petitioner used a cane. He noted that the left lower leg showed some atrophy. He noted that one leg was shorter than the other. He noted that Petitioner could ambulate without cane. He noted that Petitioner could toe walk and heel walk without cane. Dr. Shadid concluded that *"Yes, he can return to light duty. A separate report will be attached to this, which specifies the level of light duty. Essentially, he is capable of medium level activities."* (PX 6 emphasis added). It is noted that Dr. Shadid did not attach any "separate report" as evidenced by the subpoenaed medical records. (PX6). IME Dr. Shadid released Petitioner MMI per FCE. (ID).

Petitioner again saw Dr. Glantsman on 11/13/12 where it was noted that Petitioner was not working due to disability. (PX 5). It is also noted that the left lower leg has hardware producing a bump in the skin of the leg, and that his leg gets cold. (PX 5). Petitioner testified that Dr. Glantsman did **not** tell him to discontinue use of cane. (TX p. 13-14).

Petitioner testified that in January 2013 he was continuing to have numbness and cold about his left leg and was experiencing pain 8 to 9/10. (TX p. 14).

Respondent discontinued Petitioner's maintenance benefits 1/29/13. (Arb Ex. 1).

Petitioner testified that he received a letter from Respondent in January 2013. (TX p. 15). The letter indicated a start date of 1/30/13 but goes on to say "Please contact Greg Carpenter for job location and start date." (RX 1).

Petitioner testified that he called Greg Carpenter in January 2013. (TX p. 15-17). (NOTE: Greg Carpenter is a managing employee of Respondent ALCA and is a party opponent who Respondent chose not to call to testify, and there is no evidence that he was unavailable).

Petitioner testified that Greg Carpenter told him that there was light duty work but did not tell him when or where to report to and Greg Carpenter ended the call because Petitioner had an attorney. (TX p. 15-17).

Petitioner testified that following this call he continued to call Greg Carpenter and David Pasquinelli, the owner of ALCA, to obtain information about returning to work. (TX p. 17-18). (NOTE: David Pasquinelli is an owner of Respondent ALCA and is a party opponent who Respondent chose not to call to testify, and there is no evidence that he was unavailable).

Petitioner testified that he continued to call Greg Carpenter and David Pasquinelli in February two times per day for two weeks with no return calls. (TX p. 18).

Petitioner testified that approximately 3/7/13 or 3/8/13 he was advised that ALCA wanted him to return to work 3/13/13. (TX p. 18).

On 3/13/13 Petitioner reported to work at ALCA around 8AM. (TX p. 19). He was first greeted by David Pasquinelli. (TX p. 19). He was then greeted by Greg Carpenter and was shown to his work space in the warehouse and was given a circular saw to "rip" plywood (cut plywood into long strips). (TX p. 20-21).

Petitioner testified that at his work station he was performing the saw cuts as requested. (TX p. 21). He testified that when making the saw cuts he would put his cane down and that he would "put his arm on the plywood, and it helped the weight on the left arm and pushed the saw." (TX p. 21). He would use his cane to walk around to the other side of the work area where he would put his cane down and perform more saw cuts. (TX p. 21-22).

He performed these duties for an hour to an hour and twenty minutes. (TX p. 23). Greg Carpenter then approached him and said to Petitioner "come into the lunchroom and sit down and take a break." (TX p. 23). In the lunch room David Pasquinelli said to Petitioner that **"this is a shame, and that they should turn this man's money loose and give it back to him because he is not able to work."** (TX p. 24-26).

Petitioner was then told to call his wife to pick him up. (TX p. 26).

When Petitioner was picked up by his wife he walked to the van and was again approached by David Pasquinelli. (TX p. 27). At the van David Pasquinelli told Petitioner, "call him Friday if I haven't got a check yet." (TX p. 27). Petitioner then left with his wife and mother in law. (TX p. 28). During the entire time that he was at ALCA on 3/18/13 David Pasquinelli never once mentioned the use of a cane to Petitioner. (TX p. 28).

Petitioner testified that as of the day of hearing, 3/15/13, and during the weeks preceding hearing, he experienced pain and coldness about his leg and that it wakes him up in the middle of the night three times per week. (TX p. 29-30). He testified that when he stands without his cane his legs start to shake because he is putting weight on his right leg to compensate for his left leg and he starts shaking. (TX p. 30). No doctor ever told him to discontinue use of his cane. (TX p. 32).

On cross examination Respondent's counsel questioned Petitioner with regard to what Greg Carpenter told him in the January 2013 telephone call. (TX p. 42). Petitioner testified that he never told anyone at ALCA that he was "forced" to use a cane. (TX p. 43). Petitioner testified that Greg Carpenter talked to him about "sandentation [SIC] work" (later described to be sedentary sitting work). (TX p.47). Respondent then asked if Petitioner told Greg Carpenter that he was not able to drive and Petitioner answered that the doctor told him not to drive at that time

because of medications. (TX p. 47-48). On Redirect Petitioner explained that he told Greg Carpenter that he couldn't drive but that he could get there. (TX p. 58).

The issue of driving was again raised on re-cross examination and Respondent asked: "Q: Mr. Carpenter offered you sedentary work in January and you did not accept it, correct? A: Yes, I will tell you why..." but further answer was not allowed. (TX p. 63). On re-direct examination immediately thereafter, Petitioner testified that the reason why he did not accept the sedentary work in January was that he "talked to Diane Reznick, she was my comp nurse, and she said at the time, that the medication that I was taking that I couldn't go down there and sit four hours at a time, or whatever they wanted me to do. She said I didn't have to do that. That was coming from the comp nurse." (TX p. 64). Diane Reznick was a nurse case manager retained by Respondent and Respondent did not call her to testify. (TX p. 64).

The Arbitrator noted viewing Petitioner's lower extremities. (TX p. 64-67). It was noted that Petitioner wore long underwear and that that it was 43 degrees outside. (ID). Petitioner testified that it was because his leg stays cold. (ID). It was also noted that the left leg was visibly smaller than the right leg and that the hardware was visible. (ID). The bottom of Petitioner's cane was viewed and it was noted to be fairly worn. (ID). It was further noted that Petitioner had been working as a carpenter since age 15, was originally from Kentucky, and did not finish high school. (TX p. 72).

Petitioner then called Kimberly Clem to testify. (TX p. 75). Kimberly Clem was not present during Petitioner's testimony. (ID). She is Petitioner's wife. She drove Petitioner to court on 3/15/13 and had driven Petitioner to ALCA for work on 3/13/13. (TX p. 76).

When she picked Petitioner up at ALCA on 3/13/13 Petitioner and David Pasquinelli were speaking beside the van and she heard David Pasquinelli say "be sure to call him by Friday if he hadn't got any money yet." (TX p. 78-79).

Kimberly Clem also testified that the next day, 3/14/13, she had a telephone conversation with David Pasquinelli. (TX p. 79). She answered David Pasquinelli's telephone call and told him that Petitioner was laying down. (ID). She testified that David Pasquinelli then told her **"he called AIG and that they [AIG] had to let this go... and he said Robert wasn't able to work, he is seeing him, he watched him, he saw the pain he was in."** (TX p. 80, emphasis added).

CONCLUSIONS OF LAW:

I. Petitioner's condition of ill-being is causally connected to this injury:

The above findings of fact are included herein by reference. The Arbitrator concludes that Petitioner's current condition of ill-being, and the associated physical limitations, are causally related to the 11/29/11 accident.

The credible medical evidence reveals that Petitioner suffered a fractured tibia and fibula which required open reduction and internal fixation using plates and screws. The medical records contain consistent histories, diagnoses, and treatments. The records of Dr. Zussman, Dr. Borchardt, and Dr. Glantsman, as well as physical therapy, consistently document ongoing severe pain about the affected leg ranging from 7/10 at rest to 9/10 at rest and 8/10 active to 9/10 active. The medical records consistently document Petitioner's difficulty ambulating and other functional deficits. The records consistently document left leg atrophy along with numbness and tingling,

Furthermore, the Arbitrator took judicial notice that Petitioner's left leg revealed atrophy and visible hardware protruding beneath the skin.

The Arbitrator concludes that Petitioner's condition of ill-being is causally connected to the 11/29/11 accident.

The credible medical evidence reveals that Petitioner underwent an FCE showing that Petitioner cannot perform 100% of his job duties as a carpenter. The physical restrictions of bilateral lifting up to 40 pounds with only 15 pounds frequently, bilateral carrying up to 35 pounds, bilateral shoulder lifting 30 pounds, pushing and pulling horizontal plane 35 pounds. (PX 4). The FCE assessed the job duties as described by Respondent and noted additionally that Petitioner was not capable of the required frequent walking, frequent stair climbing, frequent static balancing, and frequent dynamic balancing. (PX 4). The report of FCE further noted Petitioner's ongoing complaints of difficulty sleeping, inability to walk independently on uneven surfaces, and difficulty climbing stairs. (PX4).

The Arbitrator concludes that Petitioner's physical restrictions are causally connected to the 11/29/11 accident.

II: Petitioner is entitled to maintenance benefits from 1/29/13 to the date hearing and ongoing:

The above findings of fact and conclusions of law are incorporated herein by reference. The Arbitrator concludes that Petitioner is entitled additional maintenance benefits from 1/29/13 to the date of hearing and ongoing. Petitioner has reached maximum medical improvement, cannot return to his prior occupation, has not been provided an accommodated position with Respondent, is in clear need of vocational assistance, and is currently off of work.

Dr. Borchardt deemed Petitioner maximum medical improvement and gave him permanent restrictions pursuant to FCE. The credible medical evidence reveals that Petitioner underwent an FCE showing that he cannot perform 100% of his job duties as a carpenter.

Furthermore he has physical restrictions of bilateral lifting up to 40 pounds with only 15 pounds frequently, bilateral carrying up to 35 pounds, bilateral shoulder lifting 30 pounds, pushing and pulling horizontal plane 35 pounds. (PX 4). When addressing the physical requirements of the job as presented by Respondent, additional limitations are noted to include no frequent walking, no frequent stair climbing, no frequent static balancing, and no frequent dynamic balancing. (PX 4). The FCE recorded Petitioner's complaints of ongoing difficulty sleeping, inability to walk independently on uneven surfaces, and difficulty climbing stairs. (PX4).

Based on the FCE the Arbitrator concludes that Petitioner cannot return to his prior occupation as a carpenter.

It is additionally noted that the opinions contained in the report of IME Dr. Shadid are rejected as the report lacks elements of reliability. The report refers to "light duty" then refers to an attached "separate report." However the report does not have an attached "separate report" as evidenced by the subpoenaed medical records. (PX6). Furthermore, the IME Dr. Shadid reports that Petitioner can ambulate without a cane but does not say for how long or for how far. He reports that Petitioner can heel toe walk without cane but does not say for how long or how far. Dr. Shadid lists the medical records that he reviewed in conjunction with his examination and he did not review the FCE from Accelerated Rehab. (PX 6). Throughout the entire set of the subpoenaed medical records of IME Dr. Shadid, there is no mention of FCE results nor is there any indication that he knew what Petitioner's occupation was or what light duty may have been available. (PX 6). The opinion's of Dr. Shadid are rejected because they are not reliable.

The Arbitrator concludes that Respondent has not offered a legitimate light duty accommodation of Petitioner's restrictions. Respondent purports to have offered a light duty position to Petitioner in January 2013. The letter that Respondent sent to Petitioner offering light

duty gave a start date but no location. Instead of giving a location the letter specifically states "contact Greg Carpenter for job location and start date."

Petitioner did as requested and called Greg Carpenter for the location and start date of the accommodation. Petitioner spoke with Greg Carpenter and indicated that he could not drive but could get to work. Greg Carpenter responded that Petitioner should contact his lawyer and did not give a location and time for the beginning of the accommodation. Respondent presented no rebuttal testimony. Petitioner then continued to call Greg Carpenter and David Pasquinelli twice per day for two weeks in early February 2013 without any response and was not told a location and start date for the accommodation. Respondent presented no rebuttal testimony.

Regardless of whether there is a prescribed restriction to refrain from driving or not, Respondent failed to effectuate an accommodation of Petitioner's restrictions at in January 2013 because they failed to provide the location of his accommodated work despite having spoken with Petitioner. Respondent presented no rebuttal evidence in this regard. The Arbitrator concludes that there was no legitimate offer of light duty in January 2013.

The next offer of accommodated work was for Petitioner to work at ALCA light duty on 3/13/13. Petitioner appeared and performed the duties that he was asked to perform for an hour and twenty minutes. Respondent ordered Petitioner to stop this light duty accommodation and brought him to the lunch room. In the lunch room David Pasquinelli said to Petitioner that **"this is a shame, and that [AIG] should turn [Petitioner's] money loose and give it back to [Petitioner] because he is not able to work."** (TX p. 24-26). David Pasquinelli went on to tell Petitioner's wife Kimberly the next day, 3/14/13, that **"he called AIG and that [AIG] had to let this go… and he said [Petitioner] wasn't able to work, he is seeing him, he watched him, he saw the pain he was in."** (TX p. 79-80, emphasis added).

Respondent objected to the testimony of Petitioner and Petitioner's wife with regards to what David Pasquinelli had said. It is undisputed that David Pasquinelli is the owner of ALCA, the Respondent, and is thus a party opponent. The Arbitrator concludes that overruling these objections was clearly supported by the law as the statements were statements of a party opponent. David Pasquinelli did not choose to testify to rebut these statements. Given that Petitioner and Witness Kimberly Clem testified credibly, the statements with regards to what David Pasquinelli had said are credible and reliable facts.

Furthermore, the Arbitrator observed Petitioner throughout two hours of testimony and specifically notes that Petitioner did not exhibit any signs of evasiveness, dishonesty, or unreliability. He presented at all times as a credible witness. The Arbitrator concludes that Petitioner testified credibly.

Witness Kimberly Clem was also observed during testimony and did not exhibit signs of evasiveness, dishonesty, or unreliability. The Arbitrator concludes that witness Kimberly Clem testified credibly.

Given that Respondent, David Pasquinelli, told Petitioner that Petitioner was not able to work, then the next day told Petitioner's wife that Petitioner was not able to work based on him watching him, and that Respondent presented no rebuttal to these statements, it is clear that Respondent cannot accommodate Petitioner's restrictions.

The Arbitrator concludes that Respondent cannot accommodate Petitioner's restrictions and that Respondent failed to present any evidence to the contrary. Furthermore, The Arbitrator concludes that Respondent did not assert that the use of a cane or the inability to drive had any relevance with regard to Respondent not being able to accommodate Petitioner's restrictions. Respondent presented no evidence or testimony to the contrary.

Notwithstanding these conclusions, the Arbitrator notes very convincing evidence that Petitioner in fact cannot drive. His treating physician Dr. Zussman on 3/2/12 notes that Petitioner drives with both feet, left on the brake and right on the accelerator, and that "he is unable to drive." No medical provider ever reverses this recommendation or addresses his ability to drive. Given the physical deficits that are recorded in the medical records subsequent to this physician note and the testimony presented at hearing, it is more likely than not that Petitioner remains unable to drive.

With regards to the use of a cane, the Arbitrator notes very convincing evidence that Petitioner in fact requires the use of a cane to ambulate. All medical records presented at hearing document difficulty and pain about the left lower extremity and there are ample reports of difficulty ambulating. The FCE specifically refers to problems with frequent balancing and with frequent dynamic balancing. The report further notes pain with walking. Petitioner testified credibly that he requires a cane to ambulate and that he cannot stand without his legs shaking if he does not use a cane.

The cane was obtained through Petitioner's physical therapy by a formal durable medical equipment requisition. Each provider noted that he used a quad cane to ambulate and none of the providers told him to discontinue use. The chart note of Dr. Borchardt on 6/14/12 indicates that Petitioner "is using his cane" and should "start" using his cane. This presents a possible dictation error. The correct dictation could be that *he is not using his can and should start using his cane*, or it could be that *he is using his cane and should stop using his cane*. However, conclusions cannot be based on speculation or conjecture and the speculation of a potential error cannot be injected into the decision making process. It is concluded that this record is **not** an affirmative

order to discontinue use of the cane. There is thus no credible evidence that Petitioner was ordered to discontinue use of his cane.

The Arbitrator concludes that the only occupational experience that Petitioner has had since age 15 has been carpentry, that he has no high school education, that he is 52 years of age, and that he has physical restrictions preventing him from returning to his prior occupation, and it is thus clear that Petitioner is in need of vocational services.

Finally, The Arbitrator concludes that Petitioner has not worked since the accident other than one hour and twenty minutes on 3/13/13 before Respondent ended his light duty accommodation, and it is thus clear that Petitioner is currently off work.

For these reasons the Arbitrator concludes that Petitioner is entitled to continuing maintenance benefits. Respondent shall reinstate the payment of benefits from 1/29/13 to the date of hearing and ongoing.

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

Marek Chmiel,
Petitioner,
vs.
GILCO Scaffolding,
Respondent,

NO: 10 WC 10101

14IWCC0284

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 permanent partial disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 6, 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 $39,300.00. 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: APR 17 2014

Mario Basurto

David L. Gore

Stephen Mathis

MB/mam
O:3/6/14
43

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CHMIEL, MAREK
Employee/Petitioner

Case# **10WC010101**

14IWCC0284

GILCO SCAFFOLDING
Employer/Respondent

On 6/6/2013, 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:

1836 RAYMOND M SIMARD PC
221 N LASALLE ST
SUITE 1410
CHICAGO, IL 60601

2542 BRYCE DOWNEY & LENKOV LLC
EDWARD A JORDAN
200 N LASALLE ST SUITE 2700
CHICAGO, IL 60601

14IWCC0284

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

Marek Chmiel
Employee/Petitioner

v.

Gilco Scaffolding
Employer/Respondent

Case # **10** WC **10101**

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 **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **May 29, 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. [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. [ ] 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. [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 **12/14/09**, 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 $**72,618.52**; the average weekly wage was $**1,396.51**.

On the date of accident, Petitioner was **32** years of age, ***married*** with **1** dependent children.

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

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services and medical bills have been fully paid.

Respondent shall be given a credit of $**2,394.02** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $ for other benefits, for a total credit of $**2,394.02, however, no additional TTD is claimed.**

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $664.72 /week for 62.5 weeks, because the injuries sustained caused the 12.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

David A. Kane
Signature of Arbitrator

June 6, 2013
Date

JUN 6 - 2013

14IWCC0284

Marek Chmiel v. Gilco Scaffolding

10 WC 10101

Addendum to Arbitrator's Decision

Statement of Facts:

This matter proceeded to hearing on May 29, 2013 on the issues of causal connection and the nature and extent of Petitioner's injuries. Petitioner's claim was previously tried pursuant to Section 19(b) and 8(a) on July 29, 2011 before Arbitrator Kurt Carlson of the Illinois Workers' Compensation Commission and appealed to the Illinois Workers' Compensation Commission. In its decision and opinion on review, the Commission affirmed Arbitrator Carlson's findings that Petitioner failed to prove surgery was necessary, Respondent was liable to pay Petitioner outstanding medical bills and Petitioner's average weekly wage was $1,396.51 pursuant to Section 10. The Commission modified Arbitrator Carlson's decision as to causal connection, finding Petitioner's current condition of ill-being regarding his lumbar spine to be related to the injury sustained on December 14, 2009. There were no further appeals taken by the parties following the Commission's decision.

The matter was then remanded to the Arbitrator for a determination of a further amount of temporary total compensation or compensation for permanent disability.

The parties stipulated Petitioner sustained injuries to his lumbar spine on December 14, 2009 while working for Respondent. The parties also stipulated that all medical bills and TTD benefits have been paid by Respondent.

A detailed statement of facts is contained the Decision and Opinion on Review and the Arbitrator adopts this statement of facts regarding the findings of the Illinois Workers' Compensation Commission.

Petitioner testified he continues to work in a light duty job for Respondent as a salesperson. Prior to his injuries, he was employed by Respondent as a laborer/scaffold builder and foreman.

He testified that he currently earns $37.05 per hour plus benefits in his position as a salesperson. At the time of the injury, Petitioner earned $35.60 per hour and at the time of the prior hearing earned $36.05 per hour. The wage records entered by Respondent show Petitioner continues to earn $37.05 per hour from Respondent. (Rx. 2) In addition, Petitioner testified he receives $500.00 per month from Respondent in mileage reimbursement for his travel.

Petitioner testified that his position as a salesperson includes a lot of driving and traveling to jobsites in order to develop proposals for Respondent. His job includes selling scaffolding jobs and he testified he drives approximately 2,500 miles per month.

Following the prior hearing, Petitioner returned to Dr. Citow on December 2, 2011 complaining of a progression of his back through both his legs. Dr. Citow's medical records indicate Petitioner complained of numbness, weakness and parasthesias into his legs. An updated MRI of his lumbar spine was recommended. (Px. 1) Petitioner testified he returned to see Dr. Citow because he was feeling worse and was having pain and problems exiting his car and walking.

On December 2, 2011 Petitioner underwent a lumbar MRI. (Px. 1) The impression noted on the MRI report was multilevel degenerative change, degenerative disc disease and annular tears at each level from L2-L3 to L5-S1. (Px. 1)

Petitioner returned to Dr. Citow on February 20, 2013 (Px. 1). The records indicate Petitioner continued to complain of back pain, however, Dr. Citow's records indicate Petitioner had full range of motion of his lumbar spine. (Px. 1). Dr. Citow recommended an updated MRI, continued to prescribe ibuprofen and prescribed Mobic. (Px. 1). Dr. Citow also instructed Petitioner to follow up as needed. (Px. 1).

Petitioner underwent a MRI of his lumbar spine on February 21, 2013 which showed diffuse disc bulging at L2-L3, L3-4, L4-L5 and L5-S1 with no change reported in spondylosis. (Px. 1).

Petitioner testified he has not returned to see Dr. Citow since his visit on February 20, 2013. Since the last hearing, Petitioner testified he has not undergone any additional

physical therapy, functional capacity evaluations or had any injections to his lumbar spine. He testified that he only takes prescription Mobic and no other medications for his back pain.

Respondent entered an addendum records review report from Dr. Salehi dated May 16, 2013, a board-certified neurosurgeon and former Assistant Professor of Neurosurgery at Northwestern University. (Rx. 1). Dr. Salehi's report indicates he reviewed the updated medical records of Dr. Citow and the actual MRI films from December 2, 2011 and February 21, 2013. (Rx. 1). Dr. Salehi noted the MRI films from February 21st showed four level disc disease in the lumbar spine from L2-L3 to L5-S1. (Rx. 1). However, he also opined that these findings were unchanged from the prior MRI films reviewed. (Rx. 1). Dr. Salehi stated Petitioner did not require any surgery or medical treatment for his injuries and his other opinions made in his prior IME reports were unchanged. (Rx. 1).

Petitioner testified that sitting in his car during his workday causes increased pain and numbness in his legs. He still complains of pain in the lower back that travels down to his left leg and foot and right buttock. Petitioner testified he can't do activities with his children, can't complete projects on his home and can't run or engage in sports.

With regard to issue "F", is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

The Arbitrator finds Petitioner's current condition of ill-being regarding his lumbar spine to be causally related to his injuries sustained on December 14, 2009. There is no dispute Petitioner sustained injuries to his lumbar spine. The medical records and reports introduced into evidence support a finding that Petitioner's current condition of ill-being regarding his lumbar spine is causally related to the injury.

With regard to issue "L", what is the nature and extent of the injury, the Arbitrator finds as follows:

Petitioner sustained an injury to his lumbar spine as a result of a lifting accident while working for Respondent. The Decision and Opinion on Review of the Illinois Workers' Compensation dated August 7, 2012 found that Petitioner sustained a L4-L5 herniated disc as a result of the accident. The medical records show Petitioner sustained a herniated disc and multi-level disc bulges, however, Petitioner is not a surgical candidate and the Commission made a factual finding that Petitioner failed to prove that surgery was necessary medical treatment. The Arbitrator finds the issue of whether Petitioner requires surgery to have been decided by the Illinois Workers' Compensation Commission and no additional evidence was taken at Arbitration on this issue.

The parties agree Petitioner requires permanent work restrictions which required him to change professions from a laborer/scaffold builder and foreman to a salesperson.

According to the Commission Decision, Petitioner underwent at FCE which placed him within the "medium" physical demand level and capable of lifting up to 53 pounds occasionally.

However, despite this change of jobs following the accident, the Arbitrator gives significant weight to Petitioner's testimony and the wage records introduced by Respondent, which show Petitioner is actually earning a higher salary in his current position than at the time of the accident. While Petitioner's injuries have forced him to have permanent work restrictions, these restrictions have not caused a reduction in his earning capacity. Petitioner has failed to prove or introduce any evidence to show any loss of future earning capacity as the wage records show his hourly wage has continued to increase since his accident.

Regarding his complaints, Petitioner continues to complain of back pain and radiation of pain to his left leg and right buttock. He testified he experiences pain while driving during his workday, but is able to complete his work duties. Petitioner only requires prescription Mobic and has only treated with Dr. Citow twice since the last hearing.

Based upon the foregoing evidence brought forward at the time of the hearing and the prior Commission Decision, as to the issue of nature and extent, the Arbitrator finds Petitioner has sustained a 12.5% loss of use of the person as a whole

pursuant to Section 8(d)(2) of the Illinois Workers' Compensation Act.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Carolyn Craig,

Petitioner,

vs. NO: 11 WC 21087

14IWCC0285

General Dynamics,

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, the nature and extent of Petitioner's 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 March 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.

14IWCC0285

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
TJT:yl
o 2/25/14
51

Thomas J. Tyrrell

Daniel R. Donohoo

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CRAIG, CAROLYN
Employee/Petitioner

Case# **11WC021087**

GENERAL DYNAMICS
Employer/Respondent

14IWCC0285

On 3/14/2013, 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 0.11% 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:

1167 WOMICK LAW FIRM CHTD
CASEY VANWINKLE
501 RUSHING DR
HERRIN, IL 62948

0299 KEEFE & DEPAULI PC
JAMES K KEEFE JR
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

14IWCC0285

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

Carolyn Craig
Employee/Petitioner

v.

General Dynamics
Employer/Respondent

Case # 11 WC 21087

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 **Herrin**, on **2/13/13**. 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 ___

14IWCC0285

FINDINGS

On **3/29/11**, 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 **$20,309.73**; the average weekly wage was **$700.34**.

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 **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$11,424.24** for other benefits, for a total credit of **$11,424.24**.

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

ORDER

Petitioner failed to meet her burden of proof regarding the issues of accident and causation. Therefore, the 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

3/7/13
Date

MAR 14 2013

Findings of Fact

Petitioner claims she sustained a repetitive trauma injury to her right shoulder working for Respondent. Respondent disputes the claim on accident, causation, medical bills, TTD benefits and the nature and extent of the injury.

On March 29, 2011, Petitioner was 62 years of age. She had worked for Respondent 16 years as an MCA Operator and her current department for 6-7 years.

Petitioner testified she arrived home after work the evening of March 29, 2011, and developed pain in her right shoulder when eating dinner. The symptoms worsened throughout the evening and she reported it to the nurse at work the following day. Petitioner denied experiencing any previous symptoms in her right shoulder at work. She also denied any symptoms in her left arm. Her job duties require her to use both arms at work.

On April 8, 2011, Petitioner came under the care of Dr. Joon Ahn. She related her condition to a lot of repetitive overhead activity, pulling, pushing and lifting. She told Dr. Ahn her work table was 60 inches high. Dr. Ahn diagnosed possible rotator cuff tear. He provided an injection and put Petitioner on light duty.

Respondent sent Petitioner to Dr. George Paletta for an independent medical examination on April 25, 2011. Petitioner reported that her job involved handling, loading and unloading ammunition. She did not describe any specific injury or overhead work. Petitioner related her symptoms to doing stretching exercises before work. Dr. Paletta diagnosed AC joint irritation and subacromial impingement. He recommended an AC joint injection and light duty. Dr. Paletta opined that a medical causal relationship did not exist between the condition and work activities. Dr. Paletta prepared addendum reports on December 22, 2011 and February 14, 2012 following review of a job description, job video and additional medical records. Dr. Paletta's opinion remained a medical causal relationship did not exist between Petitioner's right shoulder condition and work activities.

Petitioner worked light duty until May 19, 2011. She admitted her right shoulder symptoms continued to worsen. She returned to Dr. Ahn who ultimately performed a rotator cuff repair, subacromial decompression and biceps tenotomy on July 26, 2011. (Px. 1). Secondary to post-operative pain and adhesive capsulitis, Dr. Ahn on November 15, 2011 performed a distal clavicle resection and lysis of adhesions. (Px. 1). Dr. Ahn kept Petitioner off work from May 19, 2011 through February 5, 2012. Petitioner received $11,424.24 in short term disability benefits during this period.

Petitioner described four different areas she worked on a daily basis. She generally worked in each area an equal amount of time, rotating approximately every one hour. Petitioner testified the first job required her to reach overhead and bring down two cases full of boxes. She estimated there were 24 boxes in a case. The second job required pulling a cart 25-30 feet that had heavy projectiles. The third job required inspecting bullets that came down a conveyor lane. Lastly, Petitioner shrink wrapped boxes.

The job description admitted into evidence reflects the job does not require reaching above the shoulders. (Rx. 3). The job video does not demonstrate shoulder level or above work. (Rx. 2).

Mike Meadows testified on behalf of Respondent. He generally corroborated Petitioner's description of her work activities. He disputed her work table was 60 inches high and stated it is closer to 48 inches. He also acknowledged the cases Petitioner currently lifts are lower than in the past, but that Petitioner did not have to reach and lift overhead to get cases.

14IWCC0285

Dr. Ahn testified via evidence deposition on March 5, 2012. He opined that Petitioner's work activities contributed to the right shoulder condition if her job involved working at a 60 inch table and lifting things overhead. (Px. 4 at 8). He stated that as long as the work was around shoulder level or above, it could contribute to her shoulder condition. (Px. 4 at 9-10). On cross-examination, Dr. Ahn admitted the Petitioner's right shoulder condition could develop irrespective of any trauma or repetitive trauma. (Px. 4 at 20-21). He confirmed that he had not reviewed any job description and did not know how long Petitioner worked for Respondent. (Px. 4 at 22). He admitted Petitioner would not have required surgery unless she had symptoms and the symptoms did not start until after work. (Px. 4 at 25-26).

Dr. Paletta testified via evidence deposition on September 14, 2012. He opined that as of the April 25, 2011 exam her condition was not work related. (Rx. 1 at 9). Regarding the first surgery, Dr. Paletta did not see any evidence, based upon review of the MRI and operative photos, to indicate a full thickness tear. He disputed the need for surgical repair because there was no evidence of a partial thickness rotator cuff tear on the operative photos. (Rx. 1 at 10-11). After reviewing the job description and video, he opined a medical causal relationship did not exist between the right shoulder condition and work activities because there was no repetitive overhead work or reaching across the body. (Rx. 1 at 11-12).

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

1. Petitioner did not meet her burden of proof regarding the issue of accident. The Arbitrator notes that the Petitioner's complaints of pain were at home and that she denied any complaints while at work. The job description shows that her work is varied throughout the day and while she claims she had to do overhead lifting activities, this is refuted by both the job descriptions entered into evidence and by the testimony of Michael Meadows. Based on these factors, the Arbitrator finds that the Petitioner failed to show a repetitive trauma accident occurring on the March 29, 2011.

2. Petitioner also failed to meet her burden of proof regarding the issue of causation. While Dr. Ahn provides an opinion on causation favoring the Petitioner, his opinion was based on the Petitioner's job description that included overhead lifting. The evidence adduced at trial refutes the Petitioner's version of her job duties in regards to whether she had to do any overhead work. As such, the Arbitrator finds the opinions of Dr. Paletta more reliable on this issue.

3. Based on the Arbitrator's findings regarding accident and causation, 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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICHARD BUTLER,

Petitioner,

vs.

NO: 07 WC 25321
09 WC 00988

STATE OF ILLINOIS / CHOATE MENTAL HEALTH CENTER,
Respondent.

14IWCC0286

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 causation, temporary total disability (TTD), medical expenses and prospective medical treatment, 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 Commission finds that the Petitioner's award of TTD should be reduced to 198-1/7 weeks, covering the periods from March 17, 2007 through August 1, 2008, and from October 25, 2010 through March 27, 2013.

Pursuant to a July 3, 2008 report of surgeon Dr. Davis (following April 30, 2008 knee surgery), Petitioner was released to full duty as of July 24th with regard to the left knee condition (Petitioner's Exhibit 7). The Respondent sent July 25, 2008 correspondence to Petitioner

indicating that, pursuant to this release, he was to report back to work as of August 1, 2008. (Respondent's Exhibit 11). The Petitioner testified that he did not do so both because he was having ongoing knee problems, and because he had been held off work by Dr. Guyton.

With regard to the knee condition, while Petitioner testified to ongoing knee problems, the evidence in the record does not reflect any further medical visits after August 1, 2008 until April 18, 2011 with Dr. Davis. (Petitioner's Exhibit 7). Thus, there is no medical basis for off work status between August 1, 2008 and October 25, 2010 with regard to Petitioner's knee condition.

With regard to his back and/or neck conditions between August 1, 2008 and October 25, 2010, the record reflects that the Petitioner treated with Dr. Guyton (starting on April 9, 2008), Dr. Juergens (starting on December 15, 2008), Dr. Gornet (first time on October 25, 2010). The Petitioner did not visit primary care provider Dr. Ribbing after February 26, 2008 until February 14, 2011, and there is no evidence in the record indicating Petitioner was taken off work by Dr. Ribbing during this gap period, or on February 14, 2011, which appears to have been a visit for the sole purpose of pre-surgical testing, not treatment.

While the Petitioner testified that he was held off work by Dr. Guyton between August 1, 2008 and October 25, 2010, the records of Dr. Guyton (Petitioner's Exhibit 4) do not reflect any off work or work restriction instructions or notes for this period. In fact, her August 28, 2008 report notes the Petitioner had been asked to return to work following his release from knee treatment, but that he was "leaving job without pay – they will hold it. Atty is going to arbitration in September". On December 9, 2008 Dr. Guyton noted the Petitioner "states if he could work he would have already gone back. Afraid of altercations at work and re-injury". Despite these specific discussions of the Petitioner's work status, as well as off work notes from Dr. Guyton prior to August 1, 2008, at no time did Dr. Guyton indicate in her subsequent records that the Petitioner was restricted from work.

Dr. Juergens was a pain management physician who provided injections to the Petitioner. His records (Petitioner's Exhibit 5) reflect nothing with regard to the Petitioner's work status, other than his note on March 23, 2009 that Dr. Goldring had recommended the epidural injections, and other than that Petitioner was able to return to work.

Petitioner first visited Dr. Gornet on October 25, 2010. At that time the doctor initially took the Petitioner off work. Surgery was performed at L5/S1 by Dr. Gornet on April 6, 2011.

It should be noted that a functional capacity evaluation of the Petitioner on September 19, 2007 noted some inconsistencies with the reliability/accuracy of the Petitioner's subjective reports of pain/limitations. (Respondent's Exhibit 12). This includes a note that he failed four out of seven reliability indicators. This is further support for the Petitioner's ability to work following his release from knee treatment.

14IWCC0286

The Commission finds that the preponderance of the evidence supports that October 25, 2010 is the date upon which Petitioner again became temporarily and totally disabled (following the initial March 17, 2007 through August 1, 2008 TTD period). He has remained off work pursuant to the order of Dr. Gornet since that time. Until October 25, 2010, the Commission finds that there was no reasonable evidentiary basis for ongoing TTD after August 1, 2008.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $442.90 per week for a period of 198-1/7 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 Respondent is entitled to a credit in the amount of $33,151.06 based on previous payment of TTD, as well as $22,838.90 under §8(j) of the Act (Respondent's Exhibit 13); provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner any reasonable, related, necessary and outstanding medical bills contained in Petitioner's Exhibit 12 as medical expenses under §8(a) of the Act, but also pursuant to Section 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit for any medical expenses contained in Petitioner's Exhibit 12 that were previously paid through either the workers' compensation carrier, or by the group health insurance carrier under §8(j) of the Act; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the related, prospective medical treatment recommended by Dr. Matthew Gornet, including a two level cervical disc replacement.

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.

14IWCC0286

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: APR 17 2014
TJT:pc
o 3/25/14
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

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

BUTLER, RICHARD
Employee/Petitioner

Case# **07WC025321**

09WC000988

SOI (CHOATE MENTAL HEALTH)
Employer/Respondent

14IWCC0286

On 5/2/2013, 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 0.08% 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:

LAW OFFICES OF FOLEY & DENNY
TIM DENNY
103 TRANSCRAFT DR
ANNA, IL 62906

1745 DEPT OF HUMAN SERVICES
BUREAU OF RISK MANAGEMENT
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0988 ASSISTANT ATTORNEY GENERAL
KYLEE J JORDAN
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

MAY 2 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON) 14IWCC0286

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Richard Butler
Employee/Petitioner

v.

State of Illinois(Choate Mental Health)
Employer/Respondent

Case # **07** WC **25321**

Consolidated cases: **09 WC 00988**

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 **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. ☒ 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 **Intervening Accident**

FINDINGS

On the date of accident, **11/08/2006 & 03/16/2007**, 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 **$34,546.46**; the average weekly wage was **$664.36**.

On the date of accident, Petitioner was **39** 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 **$33,151.06** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$33,151.06**.

Respondent is entitled to a credit of **$22,838.90** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $442.90/week for 308-6/7 weeks, commencing 3/17/07 through 3/27/13, as provided in Section 8(b) of the Act. Respondent shall receive credit of $33,151.06 for temporary total disability paid to date. Respondent shall receive credit of $22,838.90 for amounts paid pursuant to section 8(j) of the Act.

Respondent shall pay any reasonable, related, necessary and outstanding medical bills contained in Petitioner's exhibit 12 to the Petitioner pursuant to the sections 8(a) and 8.2 of the Act. Respondent shall receive credit for any amounts paid through the workers compensation carrier or by the group health insurance carrier and hold Petitioner harmless for such payments.

Respondent shall authorize and pay for the related, prospective, medical treatment recommended by Dr. Gornet including of a two level cervical disc replacement.

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

5/1/13
Date

ICArbDec19(b)

MAY - 2 2013

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Findings of Fact

On November 8, 2006, Petitioner was working for the Respondent as a mental health tech II at the Choate Mental Health Facility. He was working in the full performance of his duties when he assisted co-workers in an effort to control a violent patient. In the altercation the patient punched the Petitioner in the side of the neck. The Petitioner's description of this incident is also set forth in the accident reports and witness statements from the facility. (*see Res. Exh. 1-3*). For this incident, the Petitioner filed an Application for Adjustment of Claim under case number 09 WC 988. (Arb. Exh. 3) Petitioner did not receive medical treatment following this incident, until a subsequent injury on March, 17, 2007.

On March 17, 2007 an extremely violent patient body slammed a female technician. As the patient attempted to hit a female technician, the Petitioner stepped in the way to shield her. The patient kicked the Petitioner in the left knee. In the altercation, the patient also pulled the Petitioner forward in an effort to pull him to the ground. The Petitioner experience immediate pain in his knee and back. The Petitioner's account of the accident that occurred on March 17, 2007 is set forth in the accident reports and witness statements filed at the facility. (*See Res. Exh. 4, 5, & 6*). For this incident, the Petitioner filed an Application for Adjustment of Claim under case number 07 WC 25321. (Arb. Exh. 2)

The Petitioner sought medical treatment with his family physician Dr. Ribbing. Dr. Ribbing referred him to Dr. Ritter for treatment and evaluation of his knee condition. On June 7, 2007 Dr. Ritter performed a left knee arthroscopy, arthroscopic abrasion chrondroplasty of the Patella, and lateral release. The treatment rendered by Dr. Ritter was not disputed by the Respondent. On January 4, 2008 Dr. Ritter noted the petitioner had persistent pain, patellofemoral joint after the previous lateral release. After obtaining an FCE that noted back pain, patella pain, and neck pain Dr. Ritter released the Petitioner from his care. Dr. Ritter noted that the Petitioner remained off work for his back injury for which he was not providing treatment. (Pet. Exh. 8, p. 2). The Petitioner requested a second opinion and Dr. Ritter directed him to the work comp carrier.

Dr. Thomas Davis of Southern Illinois Orthopedic provided he Petitioner a second opinion through a referral from the facility workers compensation coordinator. Dr. Davis recommended and performed additional surgeries on the Petitioner's left knee on April 20, 2008 and June 8, 2011. The injury to the Petitioner's left knee and the care and treatment to the knee was not disputed by the Respondent. Medical bills for the care and treatment related to the petitioner's left knee have been paid were not at issue in this 19(b) hearing for prospective medical treatment.

The Petitioner was referred to Dr. Anthony Knox for evaluation of his neck and back injuries. On May 23, 2007 Dr. Knox noted the Petitioner sustained a left knee injury at work and continued to have low back and neck pain. (Pet. Exh. 6, p. 10). Dr. Knox recommended diagnostic studies and work hardening. Petitioner testified Dr. Knox abruptly left his practice at which point he consulted with the workers compensation coordinator at the facility and obtained approval to transfer care to Dr. Guyton in Herrin IL.

Dr. Guyton took over the Petitioner's care for his low back and cervical issues in early 2008. Dr. Guyton noted the Petitioner had complaints of low back pain, neck pain with numbness in his fingers. Petitioner was scheduled for knee surgery and Dr. Guyton recommended EMG/NCV for further evaluation. (Pet. Exh. 4, p 20). Dr. Guyton referred Petitioner to Dr. Paul Juergens for lumbar epidural steroid injections.

Petitioner underwent multiple injections with Dr. Juergens with approval from the Respondent. He received little relief from three epidural injections and was referred back to Dr. Guyton. (Pet. Exh. 5, p 22). On August 26, 2010 Dr. Guyton referred the Petitioner to Dr. Gornet for surgical evaluation. (Pet. Exh 5, p 7).

Dr. Gornet examined the Petitioner on October 25, 2010. Dr. Gornet recommended repeat MRI studies and a review of the injection records. On December 16, 2010 Dr. Gornet noted significant disc pathology at L5-S1 and recommended a discogram. He also noted that the Petitioner expressed that he emphatically desired to return to work. On February 10, 2011 Dr. Gornet noted the discogram was non-provocative at L4-5. The procedure at L5-S1 was aborted. The CT scan revealed the disc was collapsed at L5-S1 and would not allow the needle to penetrate. Dr. Gornet recommended an L5-S1 fusion. On April 6, 2011 Dr. Gornet performed the lumbar fusion at L5-S1.

After multiple follow up appointment Dr. Gornet noted on September 22, 2011 that the Petitioner continued to do well from his lumbar surgery. He noted the original scan showed structural problems at C5-C6 and C6-7, but the neck was put on hold to deal with his back. Dr. Gornet recommended an MRI of the neck. On November 21, 2011 Dr. Gornet noted the Petitioner was advancing to physical therapy on for his low back and the CT scan revealed good early signs of bone consolidation. Dr. Gornet recommended conservative care in the form of injections and physical therapy for the cervical spine. On January 26, 2012, Dr. Gornet recommended a cervical myelogram due to his failure of conservative measures. On March 12, 2012, Dr. Gornet reviewed the results of the cervical myelogram noting a significant amount of stenosis on the right at C5-6 and C6-7 with disc pathology. Dr. Gornet recommended a two level disc replacement at C5-6 and C6-7. On May 10, 2012, he continued to recommend the two level disc replacement noting the procedure had been denied by the insurance carrier. The Petitioner continued to follow up with Dr. Gornet through November 5, 2012. Dr. Gornet continued his recommendation for a two level disc replacement. He also noted the Petitioner continued to be temporarily totally disabled.

Dr. Gornet testified via evidence deposition on July 25, 2011. (Pet. Exh. 3) He is a board certified orthopedic surgeon who devotes his practice to spine surgery. (Pet. Exh. 3, p. 4). He opined the Petitioner's structural problems in both his cervical and lumbar spine were related to his work accidents and particularly the March 2007 accident since he had not been able to work since that time. (Pet. Exh. 3, p 9). He noted the work up of the neck issues were placed on hold to focus on treatment of the back. After further evaluation the L5-S1 fusion surgery was performed on April 6, 2011. Dr. Gornet testified that the altercation with the patient at least aggravated the petitioner's spine condition. Specifically, Dr. Gornet believes that the altercation disrupted the annulus which caused the persistent discogenic pain. (Pet. Exh. 3, p. 12). He opined the conditions for which he was treating the Petitioner were at a minimum an aggravation of a pre-existing minimally symptomatic condition, but also caused a new injury which necessitated further treatment including surgical intervention. (Pet. Exh. 3, p. 15).

Dr. Gornet testified a second time via evidence deposition on January 24, 2013. (Pet. Exh. 2) Dr. Gornet confirmed that none of his prior opinions regarding the Petitioner's case have changed. (Pet. Exh. 2, p. 5). He noted that he examined the petitioner on November 21, 2011 and the CT scan showed good consolidation of the lumbar spine. He also reviewed the MRI of the cervical spine due to persistent neck pain, headaches, pain into the right shoulder and right arm, and hand numbness. (Pet. Exh. 2, p. 5). Based on a CT Myelogram and following the failure of physical therpapy and injections, Dr. Gornet

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recommended disc replacement surgery at C5-6 and C6-7. He continued to offer the opinion that the Petitioner's condition is related to his work injuries. (Pet. Exh. 2, p. 13). He also confirmed on cross examination that even though it had been several years since the work accidents, if the conditions remained untreated the Petitioner would continue to have symptoms. (Pet. Exh. 2, p. 21). On cross examination about the lack of spine treatment after the accident, Dr. Gornet noted his opinions were consistent with the spine treatment provided by Dr. Knox in the months after the accident. (Pet. Exh. 2 p. 26). He also confirmed the pathology on the May 23, 2007 cervical MRI correlates with his current diagnosis. (Pet. Exh. 2, p. 27).

Dr. James Goldring examined the Petitioner on behalf of the Respondent and also testified via evidence deposition on August 17, 2011. Dr. Goldring is a neurologist and does not perform surgery. (Res. Exh. 10, p. 19) He first evaluated the Petitioner on February 8, 2008. He provided a neurologic diagnosis of lumbar strain and secondarily cervical strain. He opined that "his symptoms are related to the March 16, 2007 incident." (Res. Exh. 8, p. 1). Dr. Goldring offered some additional diagnostic studies. He opined that given the Petitioner did fairly well on the FCE, he could return to work. Dr. Goldring re-evaluated the petitioner on September 26, 2008. He reiterated his opinions that the Petitioner's conditions were related to the March 16, 2007 accident, and recommended lumbar epidural steroid injections. Dr. Goldring confirmed during his cross-examination, that the employer did not request the Petitioner be evaluated for the November 8, 2006 accident. (Res. Exh. 10, p 24). He also confirmed his understanding of the FCE was based on what was reported to him, not on his personal review of the FCE. (Res. Exh. 10, p. 28). He agreed that the April 3, 2007 did show some form of disc collapse at L5-S1 as noted by the radiologist. (Res. Exh. 10, p. 35). He also confirmed the Petitioner's symptoms of tingling in the foot could be suggestive of radicular symptoms. (Res. Exh. 10, p 37). Dr. Goldring did not evaluate the Petitioner's knee condition. (Res. Exh. 10, p. 39).

Petitioner has not returned to work since March, 2007 and has been paid non-occupational disability benefits through the date of the arbitration hearing.

Conclusions of Law

1. Petitioner sustained his burden of proof regarding the issue of whether his current condition of ill-being is causally connected to his undisputed accidents. The undisputed facts show that he was involved in altercations with violent patients on November 8, 2006 and March 16, 2007. Petitioner sought medical treatment in timely fashion following the March 16, 2007 accident. Medical reports within weeks the accident confirm the petitioner was actively pursuing treatment for injuries to his knee, neck, and low back. The Petitioner underwent multiple knee surgeries for injuries he sustained as a result of his work related injuries. Respondent provided no evidence to question causation or reasonable and necessity of the injuries for petitioner's knee injuries. Regarding Petitioner's neck and back injuries, the bulk of the evidence also support a finding of causation. The chain of referrals indicates Petitioner was ultimately referred to Dr. Gornet through the Respondent. Dr. Gornet is board certified spine surgeon, who recommended and exhausted conservative measures before recommending and performing surgery on Petitioner. Respondent relies on the Section 12 opinions of Dr. Goldring who is a neurologist. Dr. Goldring does not perform surgery of any kind. Dr. Goldring provided no opinions regarding the care and treatment performed by or recommended by Dr. Gornet. Based on the facts and evidence presented,

the Arbitrator finds that Dr. Gornet was in a better position to assess the issues of medical causation, and accordingly relies on his opinions in this regard. Additionally, the Arbitrator notes that the evidence presented at the hearing does not show Petitioner sustained an intervening accident that would have broken the chain of causation.

2. Petitioner sustained his burden of proof regarding the issue of medical expenses. There was no evidence offered to question the reasonableness, necessity or the causal relationship of Petitioner's medical treatment for his knee injuries, his neck or his back. Accordingly, the Arbitrator finds the care and treatment rendered to the Petitioner for these conditions are causally related to the work accidents and reasonable and necessary. Respondent is ordered to pay any and all outstanding medical bills related to Petitioner's related medical treatment contained within Petitioner's Exhibit 12 to the Petitioner pursuant to the fee schedule. However, Respondent shall receive credit for any amounts paid through the workers compensation carrier or by the group health insurance carrier and hold Petitioner harmless for such payments.

3. The Arbitrator also concludes the proposed C5-6, C6-7 cervical disc replacement is reasonable and necessary and causally related to the work accident. Respondent is hereby ordered to authorize and pay for reasonable medical care recommended by Dr. Gornet related to the C5-6, C6-7 disc replacement pursuant to sections 8(a) and 8.2 of the Act.

4. Respondent shall pay Petitioner temporary total disability benefits from March 16, 2007 to the date of hearing. Respondent shall receive credit for any amounts paid toward disability. Respondent shall receive credit pursuant to section 8(j) for amounts paid as outlined in Respondent's Exhibit 13.

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

Jeff Fessler,
Petitioner,

vs.

NO: 10 WC 35521

14IWCC0287

Nations Roof North,
Respondent.

DECISION AND OPINION ON REMAND

On December 22, 2011 Arbitrator Kinnaman issued a decision in which she found Petitioner sustained an accidental injury arising out of and in the course of his employment on October 30, 2009. As a result of said accident, she found Petitioner was temporarily totally disabled from November 18, 2009 through September 19, 2010, December 5, 2010 through January 10, 2011 and August 16, 2011 through October 20, 2011 for 58-3/7 weeks under Section 8(b) of the Act and is entitled to $36,651.61 in medical expenses per the medical fee schedule. She also found Petitioner failed to prove that he is entitled to vocational rehabilitation or maintenance. Respondent appealed the decision of Arbitrator Kinnaman. The Issues on Review were whether a causal relationship exists between the October 30, 2009 accident and Petitioner's present condition of ill-being, and if so, whether Petitioner is entitled to reasonable and necessary medical expenses, temporary total disability and permanent disability benefits. The Commission viewed the case differently from the Arbitrator and found, based on the surveillance video, that Petitioner was only temporarily totally disabled from November 18, 2009 through September 10, 2010. The Commission vacated the two subsequent temporary total disability periods awarded by the Arbitrator. Both Petitioner and Respondent appealed the Commission's decision. On April 29, 2013, the Circuit Court of Kane County issued an Order remanding the case to the Commission and seeking clarification of the Commission's decision. Pursuant to the Circuit Court's Order the Commission has clarified its decision as noted below.

FINDINGS OF FAC T AND CONCLUSION OF LAW

The Commission finds:

1. Petitioner testified that he works as a union sheet metal worker. On an average day he would climb ladders, kneel, squat, carry heavy materials repeatedly throughout the day. On October 30, 2009 while Petitioner was carrying a wall panel down a hill he slipped and twisted his left knee.

2. The November 18, 2009 left knee MRI shows that the lateral facet of the patella and central aspect of the patella reveal moderate chondromalacia changes with fibrillation and fissures, measuring 3 mm in thickness. There is subchondral marrow edema at the extreme superior aspect of the patella. The patella tendons appear normal. There is subcutaneous edema overlying the infrapatellar tendons. Moderate joint effusion is present. The medial collateral ligament is intact, though it is thickened with surrounding edema. The medial meniscus reveals degeneration with a complex tear posteriorly involving the free edge. The lateral meniscus reveals degeneration with no evidence for a tear. There was a multiple microlobulated ganglion located in inferior aspect of Hoffa's fat pad with surrounding edema, which measured approximately 13 mm in size and appears to be at the ACL attachment. There is a 9 mm multi microlobulated ganglion emanating from the root of the medial meniscus. There is a small gastrocnemius semi-membranosal bursal cyst visualized.

3. On January 7, 2010 Petitioner underwent surgery consisting of an arthroscopic partial medial meniscectomy and chondroplasty of the patella and medial femur. The post operative diagnosis was a medial meniscal tear of the left knee, Grade III chondromalacia patellar undersurface and medial femoral condyle with some flap instability.

4. On June 25, 2010 Petitioner followed up with Dr. Grosskopf who indicated that Petitioner was 5-1/2 months post surgery. Dr. Grosskopf reported: "We have kind of hit a wall with Petitioner." He has refractory subpatellar and infrapatellar pain. He gets pain with his knee continuously bent, with squatting, kneeling and climbing stairs. He has a little bit of pain with level ground walking. Dr. Grosskopf opined that he believes Petitioner has developed some patellar tendinitis that has not healed. He ordered an MRI.

5. The July 7, 2010 left knee MRI shows there is fibrillation over an 18 mm region of the central superior aspect of the patella with near complete cartilaginous loss over 4 mm superiorly. There is underlying bone marrow edema in this region approximately 11 mm, which has increased in size compared previous. There is a small deep infrapatellar bursitis.

6. On August 13, 2010 Dr. Grosskopf noted that he believes Petitioner is having patellofemoral issues. We have complied with the independent evaluator's recommendations of steroid injection, extended therapy, home program, patellar strapping and we have even resorted to viscosupplementation. Petitioner has had a level of discomfort

now where squatting, kneeling, crawling are prohibited so he is a light duty candidate but his capabilities are not consistent with his normal work. He will give Petitioner one more month to see how the viscosupplementation will do If he cannot return to work, he will need a functional capacity evaluation. Dr. Grosskopf remarked that Petitioner is certainly not disabled. He is doing things as evidence by the fact that his hands are grimy with little cuts. As such he is using his hands. There are things he can do. It is just the knee limits his normal occupation. He tells me he really can't kneel at all and if he does, it hurts. He is only able to kneel at most a minimum of a couple of minutes. The same is true with squatting or even ladder climbing.

7. Approximately twenty hours of surveillance of Petitioner took placed between September 7 through September 8, 2010 and September 10 through September 14, 2010. The video shows Petitioner was physically active from the 7/8 a.m. until 4/5 p.m. Specifically, on September 7th Petitioner was seen on a ladder. He was also seen cleaning windows of vehicle and carrying items out of a truck and into a garage. On September 8th he was working on a garage door and was squatting, and kneeling. He was also kneeling on a truck seat with his left knee bend and standing only on his right leg. He also was mowing the lawn. On September 10th he was again squatting and kneeling on his left knee only.

8. Petitioner testified that in September of 2010 he was doing light activities, running errands, doing a few occasional things. He was performing yard work and doing some painting at his sister's house and performing some additional work on a job he had provided a warranty to previously. The videos shows him doing some refinishing of his sister's garage doors, moving things that weren't too heavy, occasionally kneeling and squatting. Petitioner said he didn't receive any pay for the work he did on his sister's house or the warranty work that he did. While he was performing these tasks his left knee was painful. He had to take breaks and would take a Vicodin when he felt it was necessary so he could push through the pain and finish what he started. In the days after he performed these activities, his left knee was sore. He had to ice down his knee on daily basis and since the surgery he can't sleep.

9. On September 13, 2010 Dr. Grosskopf recommend Petitioner undergo a FCE and he referred Petitioner to Dr. Cole. On October 18, 2010. Dr. Grosskopf opined Petitioner has a meniscal lesion and some patellar chondromalacia. His injury, surgery and less than ideal recovery has left Petitioner with some restrictions that are not compatible with his normal physical work. He noted that Petitioner needs a second opinion from a cartilage expert. If nothing further can be done then Petitioner should undergo a FCE. He opined that at this point Petitioner he cannot work.

10. On October 20, 2010 Dr. Kornblatt evaluated Petitioner. Dr. Kornblatt noted that during the physical evaluation Petitioner was walking with a normal gait. He was able to do full squats. When doing a full squat he complained of a burning type pain over the

anterior aspect of the left knee. The left knee revealed no local swelling or tenderness. His range of motion was from full extension to 140 degrees of flexion. His patella tracking was excellent. He didn't elicit any apprehension or crepitus.

11. On November 17, 2010 Dr. Grosskopf noted that in reviewing the IME report he learned that there was surveillance that apparently showed Petitioner was doing things there that I thought Petitioner could not do. Consequently, any further work-compensation involvement has been terminated. He opined that they had rehabbed Petitioner as best as they could. He recommended that Petitioner undergo a FCE and four weeks of work conditioning. He opined that he did not think that Petitioner could do his former job. Petitioner participated in physical therapy and work hardening from December 2, 2010 through December 31, 2010.

12. On December 6, 2010 Petitioner underwent a FCE. The therapist noted that it was a valid FCE and Petitioner demonstrated the ability to work in light to medium physical demand levels. He further noted that Petitioner's job as a sheet metal worker is classified as a medium physical demand level.

13. On January 5, 2011 Petitioner underwent a second FCE. The therapist noted that it was a valid FCE and Petitioner demonstrated the ability to work at very heavy physical demand level. His job as a sheet metal worker is classified as a medium physical demand level. With the doctor's approval Petitioner may seek work within the safe working guidelines.

14. On January 10, 2011 Dr. Grosskopf noted that Petitioner's FCE shows his efforts were valid. He can perform at a heavy duty level with all methods of bending, lifting and material handling. He relates during his FCE he was in significant pain. The more bending and heavy lifting he did, the more he was hurt. Unfortunately, there is no way to measure pain. He noted that he would see Petitioner after he obtained his second opinion.

15. On March 22, 2011, Petitioner was evaluated by Dr. Freedberg. The doctor noted that on physical examination, Petitioner's McMurray's test was positive. He was tender to palpation tricompartmentally but most significantly tender at the medial facet with a positive patellofemoral compression test. With squatting there is crepitation as well as pain at the patellofemoral articulation.

16. On March 29, 2011 Petitioner saw Dr. Ketterlingwho noted that Petitioner has struggled post-operatively and never regained his prior level of function. Petitioner describes his anterior knee pain and said it was worse with flexed knee activities. Dr. Ketterling opined that Petitioner's symptoms relate to the patellofemoral. He suspected that

Petitioner has had progression of the chondral injury and he may be a surgical candidate for some type of procedure.

17. The April 14, 2011 left knee MRI showed that there is marked fibrillation and fissuring of the central aspect of the patella, particularly superiorly. There is near complete cartilaginous loss over the extreme superior aspect superiorly. There is subchondral marrow edema and microcyst formation in this previously noted MRI.

18. On April 19, 2011, Dr. Ketterling said he discussed the MRI with the Petitioner. The Petitioner is frustrated with this knee at this point. He is struggling significantly with trying to achieve the strengthening necessary to protect his patellofemoral joint and my suggestion is that we continue to find ways for him to aggressively strengthen both through the use of appropriate physical therapy as well as considering repeating his steroid injection. He is not enthusiastic about this recommendation which he reports trying previously with unsuccessful results.

19. On May 26, 2011 Petitioner saw Dr. Shadid who noted that Petitioner's status is post-operative partial medial meniscectomy and significant chondromalacia to the proximal pole of the patella, more so on the medial side. He is complaining of chronic disabling pain in his left knee. Petitioner reports he has had various recommendations including a tibial tubercle transfer and a cartilage restoration procedure. He complains of a catching sensation near the inferior pole of the patella which is most aggravated by prolonged sitting or climbing. He has consistently localized the pain to the region of the inferior pole of the patella. His MRI showed some chondromalacia grade II changes at the superior end of the patella. He did explain to Petitioner that a tibial tubercle transfer at this point is likely to make the symptoms worse. If we can determine his symptoms are coming from the patella tendon then we could consider a novel approach such as platelet rich plasma or high pulsating ultrasound treatment with the understanding that there are no guarantees with this.

20. On June 9, 2011 Dr. Shadid explained to Petitioner that the cartilage defect in the medial condyle and patella is one cause of his symptoms and the patellar tendon is the other cause of his symptoms. He showed Petitioner that the cartilage defects that he has are consistent with arthritic changes. It will be extremely difficult to repair that, if at all, at this point in his life. Ultimately whether cartilage restoration would be an option, would be dependent upon an arthroscopic assessment of the knee.

21. On August 16, 2011, Petitioner underwent surgery consisting of an arthroscopy and endoscopic debridement of the lateral facet of the patellar chondral defect along with a

platelet rich plasma injection to the left patellar tendon. The post operative diagnosis was chondral defect of and chronic patellar tendinosis of the left knee.

22. On October 20, 2011 Dr. Shadid noted Petitioner reports that the symptoms have continued to improve to the point where he is basically functioning doing all activities of daily living now. On physical evaluation there is no effusion in the knee and his range of motion is full. He exhibits a normal ligamentous exam. There is minimum tenderness at the inferior pole of the patella. He is able to navigate going up/down stairs quite easily. Dr. Shadid released him to return to work. He noted that the only restriction will be to avoid any prolonged or repetitive kneeling. Dr. Shadid opined that Petitioner has reached MMI believe that Petitioner's symptoms were aggravated by the direct blunt trauma to the patellar tendon after his original fall.

23. Petitioner testified that currently when he mows the grass or rakes leaves his left knee is aggravated. He experiences aggravation and/or pain when he performs normal activities such as carrying a bag of salt from his truck to his house, raking leaves, repetitive tasks, standing or sitting for prolong periods or driving for more than an hour . He does not believe he can perform the work of a sheet metal worker and he had not done anything regarding possibly returning to work in this area. He testified that he is not currently working. He said his hands are a little dirty because he was doing things around his house.

24. Dr. Freedberg was deposed on June 28, 2011. He testified he is a board certified orthopedic surgeon who evaluated Petitioner on March 22, 2011. He opined that Petitioner's left knee injury is causally connected to the October 30, 2009 work accident. Unfortunately, he has not done as well as would have been expected. The lingering symptoms would have to be related to the accident based on the chronology, the lack of prior history of any issues with this knee and the subsequent events. If one were to perform a surgery in the future Petitioner should undergo either a tibial tubercle elevation or a total knee arthroplasty. He opined that the recommended future surgery is causally connected to the October 13, 2009(sic) work accident. He reviewed some videos of Petitioner. He noted that during the video Petitioner was mostly painting. He did see Petitioner go up a ladder. He didn't see him do any repetitive squatting, kneeling or lifting of any heavy objects or performing any vigorous activities. What he saw on the video didn't have any effect on his diagnostic opinion. His opinion regarding physical restrictions or his opinion on whether Petitioner needed future medical care. There was nothing that Petitioner did in the video that was medically contraindicated. Petitioner did minor stuff when he was painting but he did not do anything that was aggressive and vigorous. He felt like Petitioner was working slowly. He disagrees with Dr. Kornblatt's view of the video. Unlike Dr. Kornblatt, he found some positive

findings in the knee. Based on that he felt that squatting, kneeling, bending and ladder climbing on any repetitive level would not be in Petitioner's best interest. He can perform these tasks but not repetitively. He opined that Petitioner is incapable of returning to work as a sheet metal worker. The July 7, 2010 MRI showed swelling which means the surgery was not effective in alleviating his symptoms. In my opinion there was an aggravation of the pre-existing patellar condition on October 12, 2009 (sic) The salient issue is the continued effusion/swelling in the joint. One does not usually get swelling in a joint unless there's something that's of issue. Clinically here it's the continued symptomatology he's expressing, which I diagnosed as continuing patellar pain which is the most common sequel that we see in post arthroscopic meniscectomy patients.

25. Dr. Kornblatt was deposed on August 24, 2011. He testified that he is a board certified orthopedic surgeon. He evaluated Petitioner on October 20, 2010. On physical examination, Petitioner was walking with a normal gait. He was able to do full squats. When doing a full squat he complained of a burning type pain over the anterior aspect of the left knee. The left knee revealed no local swelling or tenderness. The range of motion was from full extension to 140 degrees of flexion. His patella tracking was excellent. He did not elicit any apprehension or crepitus. Petitioner complained of a burning type of pain over the anterior aspect of his knee on full flexion. Burning type of pain is a subjective measure only and there is no way to measure this. There is less inflammation on the bone in the April 14, 2011 MRI versus the two prior MRIs. He reviewed the surveillance tapes. It showed Petitioner was working, painting, squatting, kneeling and carrying heavy objects without any apparent problem. His diagnosis at that time was medial menisectomy and debridement of the patella. He believes that there was a causal connection between the work accident and Petitioner's initial surgery. However, at the time he saw Petitioner he did not find any objective evidence to substantiate Petitioner's ongoing subjective complaints. Additionally, there seemed to be a marked discrepancy between what the Petitioner told me he was capable of doing and what I visualized on the surveillance tape. It was my opinion that Petitioner had made a full recovery. He didn't need any additional medical care. He had reached MMI and he was capable of returning to his former job. He thought Petitioner was at MMI when he evaluated him on October 20, 2010 and before that period as well Petitioner seemed to be working just fine on the surveillance video. He didn't see any evidence that Petitioner was having any problems while he carried out these activities. Based on Petitioner's physical evaluation, a review of the videos surveillance and his FCE, Petitioner could return to his regular job. He doesn't agree with Dr. Freedberg. He didn't believe Petitioner. He thought Petitioner was lying and was malingering.

The Commission viewed this case differently than the Arbitrator. The Commission finds Petitioner was not credible. As such the Commission vacates the two subsequent temporary total disability periods awarded by the Arbitrator. More specifically, like the Arbitrator, the Commission finds after reviewing the surveillance video showing Petitioner performing maintenance activities for an extended period and involving, at times, his left knee, without any evidence of pain or disability, that Petitioner was capable of performing more tasks in general and more tasks regard to his left knee than he represented to Dr. Grosskopf at that time. In short Petitioner's actions captured on the surveillance tape belie his report to Dr. Grosskopf of the extent of his physically capacity. Dr. Grosskopf noted that while Petitioner could not return to his normal work, he was a light duty candidate and was not disabled. In fact, he noted, on August 13, 2010, based on the condition of his hands, that Petitioner had been performing some type of physical labor. He further noted that there were things Petitioner could do and his restrictions were solely limited to the use of his left knee. As such the Commission finds, based on Dr. Grosskopf's notes, that Petitioner was capable of working in a light duty position at that time. While Dr. Grosskopf initially recommended in September 13, 2010, on or around the time of the video surveillance, that Petitioner could not work and was in need of a referral to a cartilage expert or should undergo a FCE, he changed his mind shortly thereafter about whether Petitioner was a workers' compensation candidate. Specifically, on November 17, 2010, Dr. Grosskopf opined, after he learned that Petitioner was performing tasks that Petitioner represented that he could not do, that Petitioner be released from the workers' compensation program and that he undergo a FCE and work hardening. In the end, it appears that Dr. Gosskopf appears to have kept Petitioner off of work due to his subjective pain complaints, while there was overwhelming evidence via the surveillance tape and the condition of Petitioner's hands that Petitioner was capable of performing a light duty job.

Additionally, Dr. Kornblatt's evaluation which took place on October 20, 2010 further supports Dr. Grosskopf's opinion that Petitioner was capable of performing some type of work even though he was still complaining of knee problems. Specifically, Dr. Kornblatt found that on October 20, 2010 Petitioner's physical examination of his left knee was objectively normal. When Dr. Kornblatt was subsequently deposed he testified that at the time of this October 20, 2010 evaluation he didn't find any objective evidence regarding the left knee to substantiate Petitioner's ongoing subjective complaints. He noted that there was a marked discrepancy between what Petitioner said he was capable of doing and what he witnessed Petitioner doing on the surveillance tapes. At that time, he found Petitioner had reached a level of MMI, was not in need of any additional medical care and was capable of returning to his former job. He specifically stated that Petitioner had reached MMI at the time of his October 20, 2010 evaluation, if not before that time. He also found Petitioner to be lying and malingering at the time of his October 20, 2010 evaluation.

The Commission finds that Petitioner's ongoing medical treatment was prolonged by Petitioner's subjective pain complaints which were not supported by the activities Petitioner demonstrated in the surveillance tapes. Additionally, the Commission infers from his rough and

dirty hands that Petitioner was indeed physical active to a greater degree than he was reporting to his treating doctors. In November of 2010, Dr. Grosskopf said he had rehabbed Petitioner as best as they could and he ordered a FCE to determine where Petitioner's physical capacity stood. Yet, he still ordered work conditioning and held Petitioner off of work based on Petitioner's subjective pain complaints. The two FCEs showed that Petitioner was ultimately capable of working at a very heavy physical demand level, which was well above the medium physical demand level of a sheet metal worker. None the less, Dr. Grosskopf did not release Petitioner to return to work and instead instructed him to obtain a second opinion. The second opinion came from Dr. Freedberg who opined that even though the FCE showed Petitioner could return to heavy physical demand level he could not perform these activities on a regular basis and he needed more treatment to alleviate his subjective pain complaints. Drs. Freedberg, Ketterling and Shadid all offered up alternative treatments ranging from conservative to invasive surgery. Ultimately the invasive surgery was undertaken.

Even post surgery, and after being released to return to work by Dr. Shaded, Petitioner still testified that normal activities and repetitive or prolonged tasks aggravated his left knee condition to such a degree that he was incapable of returning to work as a sheet metal worker and although he testified to performing physical tasks such as mowing, raking and carrying items he had not looked for work or done anything to return to work.

Based on the above, the Commission finds Petitioner is not credible, assigns more weight to Dr. Kornblatt's than Dr. Freedberg's opinions, finds Petitioner reached MMI on/around October 20, 2010 if not sooner, and finds Petitioner is not entitled to the two subsequent temporary total disability periods awarded by the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,110.44 per week for a period of 43-4/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act, and that as provided in §19(b0 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 permanency disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $36,651,61 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case is 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.

14IWCC0287

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

DATED: APR 18 2014

MB/jm

O: 3/6/14

43

Mario Basurto

David L. Gore

Michael P. Latz

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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AARON GOFF,

Petitioner,

vs.

14IWCC0288

NO: 11 WC 4854

STATE OF ILLINOIS/
ILLINOIS YOUTH CENTER HARRISBURG,

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, notice, temporary total disability, and permanent partial disability 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 Respondent filed a Motion for Leave to File Instanter on January 7, 2014. The Respondent filed its Statement of Exceptions on January 7, 2014; however, it was due by January 6, 2014. In its Motion, the Respondent argued that the State of Illinois was closed on January 6, 2014 due to inclement weather. The Commission grants the Motion noting that the Illinois Workers' Compensation Commission was closed on January 6, 2014 due to the weather.

The Commission modifies the Decision of the Arbitrator with respect to permanent partial disability only. The Commission finds that the Petitioner is entitled to fifteen percent loss of use of the right hand and twelve percent loss of use of the left hand as the result of the January 31, 2011 work-related injury.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on September 11, 2013, is hereby modified as stated above, and otherwise

affirmed and adopted. 14IWCC0288

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $819.48 per week for a period of 4-4/7 weeks commencing June 21, 2011 through July 23, 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 $669.64 per week for a period of 55.35 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 15% 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 the sum of $31,311.56 for medical expenses under §8(a) of the Act, and 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.

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: APR 18 2014

MJB/tdm
O: 3/25/14
052

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0288

GOFF, AARON
Employee/Petitioner

Case# **11WC004854**

SOI/ILLINOIS YOUTH CENTER HARRISBURG
Employer/Respondent

On 9/11/2013, 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 0.03% 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 PKWY
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

SEP 11 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

14IWCC0288

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

Aaron Goff
Employee/Petitioner

v.

State of Illinois/Illinois Youth Center Harrisburg
Employer/Respondent

Case # 11 WC 04854

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 William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on July 23, 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 January 31, 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 $63,919.00; the average weekly wage was $1,229.22.

On the date of accident, Petitioner was 51 years of age, married with 1 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

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

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $819.48 per week for four and four-sevenths (4 4/7) weeks commencing June 21, 2011, through July 23, 2011, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $669.64 per week for 66.625 weeks because the injury sustained caused the 17 1/2% loss of use of the right hand and the 15% loss of use of the left hand, as provided in Section 8(e) of the Act.

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

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

William R. Gallagher, Arbitrator

September 6, 2013
Date

SEP 11 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Application alleged a date of accident (manifestation) of January 31, 2011, and that Petitioner sustained repetitive trauma to his right and left hands and right and left arms/elbows. Respondent disputed liability on the basis of accident, notice and causal relationship.

Petitioner testified that from 1990 to 1993 he worked as a laborer out of the Union Hall in Benton. While working as a laborer, Petitioner used a variety of hand tools including a tamper and jackhammer, both of which caused some vibration. From 1993 to 1998, Petitioner worked as a truck driver for Central States Coca-Cola. While working at this job, Petitioner had to use his hands/arms when driving and loading/unloading trucks. Petitioner did not experience any upper extremity symptoms during these two periods of employment.

In 1998 Petitioner began working for Respondent as a Correctional Officer at Vienna Correctional Center. While working at Vienna, Petitioner had to open/close heavy wooden doors, key them with keys that were sometimes difficult to operate as well as performing shakedowns of inmates, cuffing/uncuffing them, etc. Petitioner also assisted during inmate transfers which required cuffing/uncuffing of the hands and shackling/unshackling of the feet. For approximately three years, Petitioner was a member of the tactical unit which required him to do cell extractions and use batons, which also required the repetitive use of his hands/arms.

On July 1, 2006, Petitioner transferred to the Illinois Youth Center Harrisburg as a Juvenile Justice Specialist. Petitioner testified that the youth in the facility have to be behind secured doors all of the time. The doors had to be locked/unlocked when there was any type of inmate movement. This included doors to the cells, showers and laundry room. Petitioner stated that the keys to the doors were rather large and that, on numerous occasions, the locks were difficult to open. Petitioner had to many times use both hands, jiggle the locks, kick the door or some combination of all three. Petitioner testified that he had to perform this activity up to 250 times per day. Petitioner also had to perform shakedowns, use Folger-Adams keys to open chuckholes and hand-write reports. During the course of performing these job duties, Petitioner began to notice tingling in his fingers and aching in his hands, in particular, when turning the keys. During the course of the day, Petitioner's finger/hand symptoms would worsen. Following the end of his shift, approximately 20 to 30 minutes thereafter, his fingers/hands would return to normal; however, he stated that the symptoms would reoccur and sometimes cause him sleep disruption.

Respondent tendered into evidence a DVD which showed the job duties of a Juvenile Justice Specialist and Petitioner disputed its accuracy. Petitioner stated that the video did not show any difficulties with locking/unlocking the doors nor did it show any forceful pulling on the doors. Further, the video did not show the frequency or pace at which the Petitioner had to work.

At the direction of Petitioner's counsel, Petitioner was seen by Dr. David Brown, an orthopedic surgeon, who Petitioner initially saw on January 31, 2011. Petitioner testified that prior to that date, he had never been tested or diagnosed with carpal or cubital tunnel syndrome. Petitioner informed Dr. Brown of the fact that his job required him to open/close locks on various doors

200+ times per day and cuff/uncuff inmates. Petitioner stated that he had a two to three year history of gradual numbness/tingling in both hands, more on the right and left, and aching in both hands. Dr. Brown examined Petitioner and opined that the findings on examination were consistent with bilateral carpal tunnel syndrome and possible cubital tunnel syndrome. He recommended Petitioner have nerve conduction studies performed and referred him to Dr. Dan Phillips.

Dr. Phillips performed nerve conduction studies on Petitioner on January 31, 2011, and the studies revealed severe bilateral median neuropathy and mild ulnar neuropathy across the left elbow. On February 1, 2011, Petitioner returned to work and completed the "Workers' Compensation Employee's Notice of Injury" in which he described the injury as being carpal tunnel which occurred as a result of repetitive motion of keying doors 50 to 200+ times a day (Petitioner's Exhibit 9).

Petitioner was seen by Dr. Brown on April 4, 2011, and he still had symptoms in both hands in spite of receiving some conservative treatment. At that time, Dr. Brown recommended Petitioner have bilateral carpal tunnel surgery. Because Dr. Brown's office did not take Petitioner's group insurance, he referred Petitioner to Dr. George Paletta, an orthopedic surgeon, who saw Petitioner on May 6, 2011. Dr. Paletta reviewed Dr. Brown's medical records, the nerve conduction studies and he examined the Petitioner. Dr. Paletta opined that Petitioner had severe bilateral carpal tunnel syndrome, right greater than left, and agreed with Dr. Brown's surgical recommendation.

Dr. Paletta performed right and left carpal tunnel release surgeries on June 21, 2011, and July 21, 2011, respectively. Subsequent to the surgeries, Petitioner remained under Dr. Paletta's care and received physical therapy. Dr. Paletta released Petitioner to return to work with restrictions on July 24, 2011. On September 19, 2011, Dr. Paletta released Petitioner to return to work without restrictions. However, Petitioner returned to Dr. Paletta on October 5, 2011, because he was experiencing some recurrent symptoms, in particular, numbness/tingling in the tips of the right thumb and index fingers. Because Petitioner continued to have these symptoms, Dr. Paletta ordered that he have repeat nerve conduction studies. These were performed by Dr. Phillips on March 12, 2012, and they revealed a significant improvement in the median nerve condition but did reveal a median sensory neuropathy to the right thumb. Dr. Paletta reviewed the nerve conduction studies and opined that regeneration/reorganization of the nerve could take up to two years. He further opined that Petitioner was at maximum medical improvement and that no further active treatment was indicated.

Dr. Paletta was deposed on April 12, 2013, and his deposition testimony was received into evidence at trial. Dr. Paletta's testimony was consistent with his medical records and he reaffirmed his opinion as to the diagnosis and treatment provided by him. In regard to causality, Dr. Paletta noted that the only non-work risk factor that Petitioner had was his age of 51 years because increasing age has been identified as a risk factor for development of carpal tunnel syndrome. Petitioner's counsel provided Dr. Paletta with Petitioner's work history, as well as the DVD, Job Site Analysis and job descriptions provided by Respondent. Based on the preceding and the lack of any other factors (except Petitioner's age as noted herein), Dr. Paletta opined that

Petitioner's work activities for Respondent were a contributing factor to the development of carpal tunnel syndrome.

At the direction of Respondent, Petitioner was examined by Dr. Anthony Sudekum, a plastic surgeon with a certificate of added qualifications for hand surgery, on August 22, 2011. Dr. Sudekum reviewed Petitioner's medical records, the DVD and various documents provided to him by Respondent and examined the Petitioner. Dr. Sudekum opined that Petitioner's bilateral carpal tunnel syndrome was not caused or aggravated by his work activities and that Petitioner would have developed carpal tunnel syndrome whether he worked for Respondent or not. Dr. Sudekum opined that he did not know what caused the carpal tunnel syndrome; however, he also noted Petitioner's age as being a risk factor as well is the fact that Petitioner was overweight although not obese. Dr. Sudekum opined that Petitioner's experiencing symptoms while turning keys at work was not likely true because carpal tunnel syndrome does not occur when someone is performing that activity.

Dr. Sudekum was deposed on September 6, 2012, and his deposition testimony was received into evidence at trial. Dr. Sudekum's testimony was consistent with his medical report and he reaffirmed his opinions contained therein.

At trial, Petitioner testified that he still experiences some tingling in his hands but that it is much better than what was before. Petitioner's grip strength has also improved since the surgeries but it is not as good as it was previously. Petitioner agreed that he was able to return to work at full duty and that his job performance evaluations have also been good.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent that manifested itself on January 31, 2011, and that Petitioner's current condition of ill-being is causally related to same.

In support of this conclusion the Arbitrator notes the following:

Petitioner credibly testified about his work activities both prior to his being employed by Respondent and when employed by Respondent. While many of Petitioner's job duties prior to being employed by Respondent required repetitive use of his hands/arms, Petitioner did not experience any symptoms until he worked for Respondent, in particular, when turning keys while locking/unlocking doors at Illinois Youth Center Harrisburg.

Petitioner did not seek any medical treatment, have any diagnostic procedures performed or have a diagnosis of carpal tunnel syndrome until he was seen by Dr. Brown and Dr. Phillips on January 31, 2011. The Arbitrator thereby finds that the injury manifested itself on that date.

Petitioner's treating physician, Dr. Paletta, testified that Petitioner's work activities for Respondent were a contributing factor to the development of Petitioner's bilateral carpal tunnel

syndrome. The only other risk factor Dr. Paletta found was Petitioner's age. He did not find Petitioner to be overweight or obese. Respondent's Section 12 examiner, Dr. Sudekum, opined that Petitioner's work activities did not cause or aggravate Petitioner's carpal tunnel syndrome and that Petitioner would have developed this condition whether he worked for Respondent or not. Dr. Sudekum opined that the cause was unknown but that Petitioner had the risk factor of age as well as being overweight. Dr. Sudekum also stated that Petitioner's developing symptoms while keying was probably not true because, in his opinion, carpal tunnel syndrome does not occur when performing that activity. The Arbitrator finds Dr. Paletta's opinion in regard to causality to be more credible than that of Dr. Sudekum.

In regard to disputed issue (E) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner gave notice to Respondent within the time prescribed by the Act.

In support of this conclusion the Arbitrator notes the following:

As aforestated, the Arbitrator found that the condition manifested itself on January 31, 2011. The Petitioner gave notice to Respondent on February 1, 2011, which is within the time limit prescribed by the Act.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and Respondent is liable for payment of the medical bills associated therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid 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.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is entitled to temporary total disability benefits of four and four-sevenths (4 4/7) weeks commencing June 21, 2011, through July 23, 2011.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 17 1/2% loss of use of the right hand and 15% loss of use of the left hand.

In support of this conclusion the Arbitrator notes the following:

Petitioner was diagnosed with bilateral carpal tunnel syndrome and surgery was required on both hands. Petitioner recovered from the surgeries and he was able to return to work to his normal

job; however, after returning to work he had a reoccurrence of symptoms, in particular, in his right thumb and index finger.

Petitioner still has complaints of tingling in both hands as well as diminished grip strength. The Arbitrator finds Petitioner to be a credible witness and that his complaints were consistent with the type of injury he sustained.

William R. Gallagher, 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	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

14IWCC0289

Robert Link,

Petitioner,

vs. NO: 11 WC 14973

City of Chicago – Department of Streets and Sanitation,

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 causal connection, medical expenses both incurred and prospective and 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).

The Arbitrator ordered that the Respondent "provide and pay for future medical costs consisting of a bilateral arthroscopy to the shoulders as prescribed by Dr. Wolin and Dr. Cole,

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."

The Commission finds that the language used by the Arbitrator, about the future medical treatment, is too broad. The Commission instead orders the Respondent to provide and pay for the reasonable future medical costs consisting of bilateral arthroscopic surgeries to the shoulders as prescribed by Dr. Wolin and Dr. Cole, including all reasonable and necessary ancillary medical treatment and costs concerning same.

In addition, the Commission finds that the awarding of the prospective temporary total disability does not fall within §8(a). The Arbitrator has no authority to award prospective temporary total disability and therefore this part of her order should be stricken.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $893.00 per week for a period of 63 1/7 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 the Respondent is ordered, pursuant to §8(a) and 8-2 of the Act to provide and pay for the reasonable future medical costs consisting of bilateral arthroscopic surgeries to the shoulders as prescribed by Dr. Wolin and Dr. Cole, including all reasonable and necessary ancillary medical treatment and costs concerning same.

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

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

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

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

DATED: APR 2 1 2014

Charles J. DeVriendt

Stephen Mathis

Ruth W. White

CJD\HF
O: 2/20/14
049

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

LINK, ROBERT
Employee/Petitioner

Case# 11WC014973

CITY OF CHICAGO-STREETS AND SANITATION
Employer/Respondent

14IWCC0289

On 1/3/2013, 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 0.12% 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:

2731 SALVATO & O'TOOLE
CARL S SALVATO ESQ
53 W JACKSON NLVD SUITE 1750
CHICAGO, IL 60604

0464 CITY OF CHICAGO
STEPHANIE LIPMAN
30 N LASALLE ST SUITE 800
CHICAGO, IL 60602

14IWCC0289

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)

ROBERT LINK, Case # 11 WC 14973
Employee/Petitioner

v. Consolidated cases: NONE.

CITY OF CHICAGO – STREETS AND SANITATION,
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 **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Chicago**, on **June 15, 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. [ ] 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. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other: _____

FINDINGS

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

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

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

In the year preceding the injury, Petitioner earned **$69,654.22**; the average weekly wage was **$1,339.50**.

On the date of accident, Petitioner was **68** years of age, *married* with **no** dependent children.

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

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

Respondent shall be given a credit of $ **25,132.69** for TTD, $ **0.00** for TPD, $ **0.00** for maintenance, and $ **0.00** for other benefits, for a total credit of $ **25,132.69**.

Respondent is entitled to a credit of $ **23,437.35** under Section 8(j) of the Act for medical benefits.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$893.00**/week for **63-1/7** weeks, commencing **March 31, 2011** through **June 15, 2012,** as provided in Section 8(b) of the Act.

Respondent is ordered to provide and pay for future medical costs consisting of a bilateral arthroscopy to the shoulders as prescribed by Dr. Wolin and Dr. Cole, 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.

Respondent shall be given a credit of **$23,437.35** for medical benefits that have been paid, and Respondent shall further hold Petitioner safe and harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall be given a credit for **$25,132.69** that was paid in temporary total disability benefits.

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

December 27, 2012
Date

ICArbDec19(b)

JAN 3 - 2013

14IWCC0289

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

Petitioner is a truck driver for Respondent. Petitioner on March 30, 2011 was working with a laborer on a truck that had a 100-125 pound lift gate. Petitioner attempted to lift the gate by himself when he experienced a pop in both shoulders, arms and biceps. Petitioner felt immediate pain, notified his supervisor, and was sent to MercyWorks for treatment.

When seen at MercyWorks later that day, Petitioner gave a history of injury of "while he was lifting a tail gate, he felt a pop in both biceps." Dr. Diadula noted a hollow deformity in both biceps and prescribed an MRI examination and no further work. Petitioner underwent the MRI that revealed a positive right proximal biceps tendon tear and complete disruption of the supraspinatous with mild selective atrophy of the muscle belly. Also noted was a positive complete disruption of the left supraspinatous and infraspinatous tendon. (Px2) On April 11, 2011, Dr. Diadula reviewed the MRI and diagnosed bilateral rotator cuff tears and a rupture of the proximal right biceps tendon. He prescribed no work and recommended a consultation with an orthopedic surgeon. (Px2)

On April 11, 2011, Petitioner saw Dr. Preston Wolin, an orthopedic surgeon. Dr. Wolin recorded a history of "he lifted a heavy tailgate and he felt a pop and sharp pain in both shoulders." Dr. Wolin reviewed the MRI and following examination diagnosed bilateral proximal bicep tendon ruptures with bilateral full thickness rotator cuff tears. Dr. Wolin injected both shoulders with Kenalog and prescribed physical therapy and no work. (Px3)

Petitioner then commenced physical therapy followed by a work-conditioning program for the next two months, and remained under the care of Dr. Wolin. On May 27, 2011, he saw Dr. Mohammed Atassi, his primary care physician, with complaints of back and left leg pain. Dr. Atassi recommended chiropractic treatment and felt the therapy exercises to the shoulders may be a cause. Px1)

On July 29, 2011, Petitioner saw Dr. Wolin and reported that the therapy hurt more than it helped. On September 9, 2011, Dr. Wolin discussed surgical and non-surgical treatment to the shoulders, either accepting the current conditions, or undergo rotator cuff repairs or joint replacement. (Px3)

On September 29, 2011, Petitioner saw Dr. Brian Cole at the request of Respondent. Dr. Cole felt that Petitioner suffered an aggravation of a pre-existing condition that now needs treatment. Dr. Cole rendered the opinion that even absent the injury of March 30, 2011, Petitioner would have likely become symptomatic in both shoulders. Dr. Cole felt the next treatment step would be arthroscopy to the shoulder with an attempt at rotator cuff repair, the need for which he felt was not likely related to the injury. Should Petitioner fail to thrive despite attempted rotator cuff repair, then soon down the road he would require reverse bilateral shoulder arthroplasty. (Rx2)

Dr. Wolin on November 1, 2011 reviewed the report of Dr. Cole. Dr. Wolin felt Dr. Cole stated the injury caused an aggravation of Petitioner's pre-existing shoulder conditions. He agreed with Dr. Cole that Petitioner was in need of an arthroscopic rotator cuff repair.

On June 1, 2012, Dr. Cole authored a follow up report without examining Petitioner. In that report he repeatedly notes the wrong date of injury, but felt that he believed the injury itself somehow aggravated the pre-existing condition. Dr. Cole however stated he would stand by his earlier comment that Petitioner would have needed care despite the injury. (Rx3)

Petitioner testified that he worked for Respondent for 11 years as a driver without experiencing any symptoms to his shoulders.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Joseph Carney,

Petitioner,

vs. NO: 09 WC 0014

14IWCC0290

Lehigh Press,

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 the Petitioner's 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 views the Petitioner's disability differently than the Arbitrator and finds that the Petitioner has a 17 1/2% loss of use of the person as a whole. The Commission affirms the Arbitrator regarding her finding that Petitioner has a loss of use to the extent of 37 % of the left hand.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $624.33 per week for a period of 75.85 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of use of the left hand to the extent of 37%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $624.33 per week for a period of 87.5 weeks, as provided in §8(d)2 of the Act, for the

14IWCC0290

reason that the injuries sustained caused the loss of use to the person as a whole to the extent of 17 1/2%

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: APR 2 2 2014

Charles J. DeVriendt

Daniel R. Donohoo

Ruth W. White

CJD/hf
O: 3/19/14
049

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

CARNEY, JOSEPH
Employee/Petitioner

Case# **09WC000014**

LEHIGH PRESS
Employer/Respondent

14IWCC0290

On 8/22/2013, 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 0.07% 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:

0320 LANNON LANNON & BARR LTD
PATRICIA LANNON KUS
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0481 MACIOROWSKI SACKMANN & ULRICH
ROBERT ULRICH
10 S RIVERSIDE PLZ SUITE 2290
CHICAGO, IL 60606

14IWCC0290

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 CORRECTED DECISION

Joseph Carney
Employee/Petitioner

v.

Lehigh Press
Employer/Respondent

Case # **09** WC **00014**

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 **Lynette Thompson Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **7/2/13**. 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 **12/12/08**, 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 $**54,108.60**; the average weekly wage was $**1,040.55.**

On the date of accident, Petitioner was **52** years of age, ***married*** 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 $**53,018.49** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**53,018.49**.

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

ORDER

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of $624.33/week for 75.85 weeks, because the injuries sustained caused the 37% loss of the left hand, as provided in Section 8(e) of the Act.

Permanent Partial Disability: Person as a whole

Respondent shall pay Petitioner permanent partial disability benefits of $624.33/week for 50 weeks, because the injuries sustained caused the 10% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

L. Thompson-Smith

Signature of Arbitrator

August 20, 2013

AUG 22 2013

Joseph Carney
09 WC 00014

FINDINGS OF FACT

The disputed issues in this matter are; 1) causal connection; and 2) the nature and extent of the injury. *See,* AX1.

Joseph Carney was employed as a feeder for Lehigh Press on December 12, 2008. He had been employed with the company approximately ten (10) years. He worked in the position of a feeder, a union job, for approximately six (6) of those years.

On December 12, 2008, the petitioner was cleaning rollers and stepping in and out of the press machine. As he stepped up into the unit, his foot slipped and he fell forward. His left hand was pulled into a roller and he twisted his body. He injured his left hand, neck, and low back.

After he had been extricated from the roller, he was taken by ambulance to Loyola Medical Center ("Loyola"). He was diagnosed as having a de-gloving injury to the left hand from the wrist to the fingers. The doctor in the emergency room irrigated the wound and noted that he would require a secondary soft tissue transfer after the flap viability was declared. An x-ray of the hand showed a soft tissue disruption with gas and swelling of the hand. *See,* PX1.

After he was discharged he began treating with Dr. Ramasastry, a plastic surgeon at Loyola. The doctor ordered an orthoplast volar short arm splint with the wrist in dorsiflexion. For the first few weeks, the petitioner continued to see Dr. Ramasastry and underwent dressing changes.

On January 21, 2009, Dr. Ramasastry noted that there was still an open area of the dorsum, which measured 1x1.5 cm, but there was no infection. He referred the petitioner to occupational therapy for range of motion therapy and stated that once the wound healed, the therapy would intensify. The doctor also prescribed a jobst glove for the petitioner to wear.

The petitioner was also seen by Dr. Alexander Ghanayem, the director of spinal surgery, in regards to his neck and back complaints. On February 6, 2009, Dr. Ghanayem felt that the petitioner had sustained a strain of the neck and back and recommended therapy with follow up care in the rehabilitation medicine department.

He referred the petitioner to Dr. Bajaj for further treatment, for his neck and back. Dr. Bajaj saw the petitioner on February 18, 2009, stating that he had increased neck and back pain following the work injury. He recommended an MRI for the lumbar and cervical spine noting that the physical examination was highly indicative of possible cervical and lumbar disc herniations. He felt that the petitioner should continue therapy and prescribed Hydrocodone and Arthrotec. *See,* PX2.

The petitioner underwent an MRI of the cervical spine on February 25, 2009. The impression was multi-level spondylosis most advanced at C5-C6 with bulging at C3-C4, deforming the cord and causing stenosis. The MRI of the lumbar spine showed mild L4-L5 and L5-S1 spondylosis as well as an L4-L5 and L5-S1 disc bulge. The radiologist noted minimal effacement of the thecal sac without significant central spinal stenosis at L5-S1. *See,* PX1.

The petitioner continued with physical therapy at Loyola. On March 17, 2009, the therapist stated that the petitioner had progressed in strengthening activities, and recommended ongoing therapy to address strengthening, range of motion deficits, upper and lower extremities strengthening, stretching and pain complaints.

On March 18, 2009, the petitioner returned to Dr. Bajaj, who diagnosed cervical and lumbar radiculitis and prescribed Lyrica and Etodolac. He also scheduled the petitioner for a cervical epidural steroid injection (hereinafter "ESI"). The petitioner underwent the first injection at Loyola on March 31, 2009.

The petitioner also began seeing a psychiatrist, Dr. Mazhar Golewale, at Baber Psychiatric & Associates. Dr. Golewale stated that the patient had undergone an extremely traumatic and horrific experience when his left hand was caught in the printing press machine. He noted that the petitioner was complaining of nightmares, flashbacks and anger towards the co-workers, as they did not come quickly to help him. Dr. Golewale diagnosed post-traumatic stress disorder and placed the petitioner on Zoloft and Clonidine. The petitioner then began seeing the doctor on a regular basis. *See,* PX3.

The petitioner returned to Dr. Ramasastry on April 6, 2009, who recommended that he continue to wear the jobst glove and continue under psychiatric care. The petitioner returned to Dr. Golewale on April 9, 2009, who noted he was still having trauma, flashbacks and was waking up with night sweats. He prescribed Seroquel to be taken with the Zoloft.

Dr. Bajaj recommended a lumbar ESI at L5-S1 on the left to address the lumbar radiculitis and Petitioner underwent the injection on April 24, 2009.

The petitioner returned to Dr. Ramasastry on May 11, 2009 and the doctor ordered an EMG and NCV; and told the petitioner to continue wearing the jobst glove as well as the orthoplast splint at night. The doctor noted that Petitioner was not sleeping well and was still having nightmares. He underwent EMG testing on May 27, 2009, which reported an impression of a local crush injury involving the superficial sensory branches with minimal findings of ongoing denervation or re-innervation, with a suggestion of superimposed cervical radiculopathy. The doctor also stated that there was an abnormality in the mid cervical paraspinal. *See*, PX1.

When the petitioner returned to Dr. Bajaj on June 24, 2009, the doctor diagnosed both lumbar and cervical radiculitis as well as myofascial pain. He felt the petitioner needed to continue with the therapy, and he increased the Lyrica. He noted that the petitioner had complaints of neck pain with knots on the right upper trapezius; and left shoulder pain.

The petitioner returned to Dr. Bajaj on July 16, 2009, who recommended a second lumbar ESI on the left at L5-S1. The doctor noted that the radicular symptoms were returning and Petitioner was complaining of stiffness in the low back. He underwent the lumbar ESI on July 22, 2009.

Dr. Bajaj also ordered an functional capacity evaluation ("FCE") which the petitioner underwent at Loyola on August 5, 2009. The therapist recommended light duty work with a period of work conditioning.

When Petitioner returned to Dr. Bajaj on August 14, 2009, he scheduled an additional cervical ESI as well as an MRI for the right knee. The petitioner advised the doctor that at the time of the injury, he fell onto his knees and was having knee pain but the symptoms had resolved until recently. The petitioner also continued to see Dr. Golewale during this time and on August 10, 2009; the doctor increased the Zoloft, stating that Petitioner was developing anxiety. The doctor felt that he would need modified work conditions or would have to find a different job. The doctor told him to drive to Lehigh Press and sit in the parking lot, as he was trying to desensitize the petitioner, to enable him return to some type of work. *See,* PX3.

The petitioner underwent a second cervical ESI on August 25, 2009. When he returned to Dr. Bajaj on September 10, 2009, the doctor noted that the cervical injection had

helped the scapular area and the neck pain. At this point, the doctor was diagnosing both cervical and lumbar radiculitis, shoulder impingement on the left and right knee pain, with possible meniscal injury. He also increased the Lyrica and added additional exercises to improve the tendonitis and impingement. He felt the petitioner should continue receiving psychiatric care for the post-traumatic stress. *See,* PX1.

The petitioner returned to Dr. Ramasastry on October 23, 2009, who stated that he was still wearing the jobst glove and complaining of numbness, tingling and pain around the hand. He also noted that the petitioner's back and neck problems were continuing and he was having knee problems. Dr. Ramasastry specifically stated that it was possible that the torque, the petitioner suffered with the hand injury, could have contributed to his knee problem. He recommended ongoing occupational therapy and work conditioning and a return to work with modifications regarding weight. *See,* PX1.

Dr. Bajaj saw the petitioner on November 12, 2009, who was complaining that his back and leg symptoms had recurred. The doctor recommended another lumbar ESI. He also noted that the petitioner had limitations with wrist pain and weakness, which would not allow him to lift heavier weights. He stated that Petitioner should continue to treat with the psychologist, regarding the post-traumatic stress; and should continue on medication. Dr. Bajaj performed another lumbar ESI on November 19, 2009.

When the petitioner presented to Dr. Bajaj on December 4, 2009, he was complaining of increased numbness in the left foot and heel as well as radicular pain in the buttocks and posterior thigh. He also was complaining of numbness and tingling in the hand and little finger, as well as neck pain. Dr. Bajaj noted that the petitioner was progressing with work conditioning and should follow up with an FCE. He felt that since the cervical pain was tolerable, he would wait to see, if the petitioner needed interventional options. He stated that the petitioner should continue working with the therapist for core and lumbar stabilization; and continue treating with the psychiatrist.

The petitioner underwent additional work conditioning at Industrial Rehab Allies (hereinafter "IRA") and on December 3, 2009, the therapist noted that Petitioner's compliance was good but he was not ready to return to work in a full duty capacity.

The petitioner returned to Dr. Ramasastry on December 10, 2009. At that time, the doctor felt he could return to work in a light duty capacity as there was nothing further he could offer him; and he discharged him from his care. Dr. Ramasastry noted that the petitioner was still complaining of neck, back and knee problems, with numbness and tingling in his hand.

The petitioner returned to Dr. Bajaj on January 18, 2010, who felt that he had been making good progress with work hardening but that he had additional trigger points around the left shoulder and neck. Dr. Bajaj recommended another cervical ESI. The doctor also prescribed Elavil to help with sleep and nighttime pain and stated that he should discuss the medications with Dr. Golewale. *See*, PX1.

The petitioner continued to see Dr. Golewale on a regular basis while he was undergoing his treatment at Loyola. The petitioner was also seeing a counselor at the facility, Karl Downing, who was providing emotional support and stress reduction techniques. *See*, PX3.

On February 10, 2010, the therapist at IRA noted that the petitioner had completed ten weeks of work hardening and had made a significant improvement regarding functional and musculoskeletal pain. The petitioner was discharged from the program with a medium to heavy physical demand level. *See*, PX2.

The petitioner presented to Dr. Golewale on February 25, 2010, who continued to diagnose Petitioner as having post-traumatic stress disorder and continued his medications.

The petitioner returned to Dr. Bajaj on March 26, 2010, who noted that he was off Lyrica and would be able to return to work at a medium to heavy-duty level only. Dr. Bajaj again stated that the petitioner had suffered a crush injury, which resulted in cervical and lumbar radiculitis and neuropathic pain in the left hand and leg. He stated that the symptoms of left shoulder quivering left quad numbness; and pain in the neck and back were chronic and would likely remain. He encouraged Petitioner to continue with his psychiatry appointments and stated that he had reached maximum medical improvement ("MMI") in terms of his medical treatment.

The petitioner eventually returned to work for Lehigh Press in May of 2010. On May 3, 2010, Dr. Golewale noted that Petitioner was making visits to his work place, two times a week, and was less anxious. However, he continued his medications. When he returned to Dr. Golewale on June 3, 2010, he stated that he was working but not around machines; and was trying to adjust to his new job. He continued the petitioner's medication at that time.

The petitioner subsequently returned to Dr. Bajaj on September 23, 2010. At that time, he was complaining of increased pain in the left groin and spasms in the right leg. The

doctor ordered an MRI of the lumbar spine, prescribed a medrol dose pack and recommended additional therapy.
The petitioner underwent a new lumbar MRI on October 1, 2010. The radiologist's impression was degenerative changes at L4-L5 and L5-S1, and he noted that the disc bulge at L4-L5 appeared to be slightly decreased but that there was a high signal intensity in the posterior aspect of the disc; which was compatible with an annular tear. Dr. Bajaj recommended additional ESI's however; the petitioner did not undergo any further injections.

The respondent had the petitioner evaluated by Dr. Jesse Butler, on October 27, 2010. Dr. Butler was of the opinion that the petitioner was at MMI for his cervical and lumbar spine.

The petitioner continued to see Dr. Golewale after the IME. He remained under the care of the psychiatrist until September 14, 2012. Dr. Golewale began to taper the petitioner off his medications. However, his diagnosis remained the same, active post-traumatic-stress disorder. *See*, PX3.

When Dr. Golewale last saw the petitioner in September 2012, he noted that he was more relaxed at home but would get anxious around machines. He still diagnosed the petitioner as having post-traumatic stress disorder. The doctor wrote a report stating that the petitioner was stable and functioning, but he advised him not to work near machines that caused his trauma in order to prevent him from reliving the experience.
The petitioner testified that he no longer works as a feeder and does not work around the printing machines.

14IWCC0290

Conclusions of Law

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

Under the provisions of the Illinois Workers' Compensation Act (the "Act"), the Petitioner has the burden of proving, by a preponderance of credible evidence, that the accidental injury both arose out of and occurred in the course of employment. *Horath v. Industrial Commission*, 96 Ill. 2d 349, 449 N.E. 2d 1345 (1983). An injury arises out of the Petitioner's employment if its origin is in the risk connected with or incidental to employment so that there is a causal connection between the employment and the accidental injury. *See, Warren v. Industrial Commission*, 61 Ill. 2d 373, 335 N.E. 2d 488 (1975). *See also, Technical Tape Corp. v. Industrial Commission*, 58 Ill.2d 226 (1974). The mere fact that the worker is injured at a place of employment will not suffice to prove causation. The Act was not intended to insure employees against all injuries. *Quarant v. Industrial Commission*, 38 Ill. 2d 490, 231 N.E. 2d 397 (1967). The burden is on the party seeking an award to prove, by a preponderance of credible evidence, the elements of the claim; particularly the pre-requisite that the injury complained of arose out of and in the course of employment. *Hannibal, Inc. v. Industrial Commission*, 38 Ill. 2d 473, 231 N.E. 2d 409, 410 (1967).

The petitioner sustained a very serious and traumatic de-gloving injury to his left hand on December 12, 2008. The petitioner testified that at the time of the injury, he fell forward and his left hand was pulled into a roller. His body twisted and he injured his neck and back as well as his left hand. The petitioner was taken by ambulance to Loyola Medical Center ("Loyola") and received months of treatment from various doctors including, Dr. Ramasastry, the plastic surgeon, Dr. Ghanayem, the orthopedic surgeon, Dr. Bajaj, the physical medicine specialist and Dr. Golewale, the psychiatrist.

The petitioner testified that he had never been under psychiatric care prior to the date of accident; and he had never undergone substantial treatment for his neck and back prior to the date of accident. The petitioner did testify that he had strained his mid-back muscles about fifteen years earlier but only treatment received was with a heating pad and massages. He had never undergone MRI testing or injections to either his neck or low back prior to December 12, 2008.

When the petitioner saw Dr. Ghanayem on February 6, 2009, the doctor stated that he had developed neck and low back pain following the injury when he tried to get himself out of the machine. When the petitioner saw Dr. Bajaj, he noted that the neck and back pain began December 12, 2008, after the accident at work. The petitioner was diagnosed as having lumbar and cervical radiculitis and was treated with lumbar and cervical ESI's. The petitioner also underwent MRI's of both the cervical and lumbar

spines. Dr. Bajaj stated that the petitioner had disc bulging in both the lumbar and cervical areas.

The petitioner underwent an EMG test on May 27, 2009. The EMG study was abnormal and suggested superimposed cervical radiculopathy. The electrical findings were also consistent with a crush injury involving the superficial sensory branches.

All of the doctors who treated the petitioner at Loyola felt that the petitioner's condition regarding his lumbar and cervical spine as well as his hand was due to the work injury he sustained on December 12, 2008. In addition, the petitioner developed a problem with his knees. Dr. Ramasastry felt that the torque, which the petitioner sustained when his hand was pulled into the roller, could have contributed to the knee problems.

The petitioner also underwent psychiatric treatment. He was diagnosed as having post-traumatic stress disorder by Dr. Golewale, who attributed his condition to what he termed an "extremely traumatic and horrific experience".

The respondent had the petitioner evaluated by Dr. Jesse Butler on October 27, 2010. Dr. Butler was of the opinion that the right-sided leg pain was not the result of the work injury and that the petitioner had a pre-existing stenosis at L4-L5.

However, Dr. Bajaj wrote a report indicating that the petitioner was initially diagnosed with left-sided lumbar radiculopathy and spinal stenosis following the work injury. He felt that even though there were complaints of right sided leg pain, given the fact that he did not have prior back issues, he felt the symptoms on the right leg were secondary to the injury at work.

After reviewing the medical records and considering the credible, unrebutted testimony of the petitioner, the Arbitrator concludes that the petitioner's condition of ill-being regarding his neck, low back, left hand, and knees, as well as the psychiatric care he underwent is causally related to the injury of December 12, 2008.

L. What is the nature and extent of the injury?

The petitioner sustained a very serious de-gloving injury on December 12, 2008, which resulted in his need for psychiatric care. He was diagnosed with post-traumatic stress disorder and placed on permanent restrictions by Dr. Golewale. The doctor stated that he is unable to return to work performing his regular duties as a feeder since he does not

14IWCC0290

want him to work around the printing press machines. The petitioner testified that he gradually returned to work at Lehigh Press but now does repairs.

The job of a feeder is a union job and required Petitioner to work on printing presses. Prior to the injury, he was responsible for running in-lines, washing the press, changing plates, and making repairs. Because of this injury, he can no longer perform that particular job. Although the petitioner has returned to work at Lehigh Press, his restriction would limit his ability to obtain employment elsewhere. The petitioner now performs repair work only. This job requires him to repair parts, perform inventories and work with hot melt machines. The hot melt machine is very different from the large printing press machines and does not contain any type of rollers.

In addition to the psychiatric problems, the petitioner was diagnosed as having a cervical and lumbar radiculitis, necessitating several ESI's. He testified that he continues to have pain in his neck and back. He also testified that he does not have the patience that he once had and is unable to pursue his hobbies. Prior to the injury, the petitioner would go deer hunting but now he is unable to use a bow. He testified that his left wrist cannot support the bow.

The petitioner is right handed. He uses his right hand to perform most of the repair work. He testified that he uses his left hand only as a guide. He further stated that he continues to have pain and stiffness in his left hand. His thumb and forefinger are restricted on the left hand and the stiffness is constant. He stated that he has a "pins and needles" sensation down his shoulder to his fingertips and his left side and left leg are numb.

The Arbitrator concludes that the petitioner has sustained a permanent partial disability because of the psychiatric, neck and back problems due to the injury. He has returned to work, with restrictions; and continues to have ongoing issues with his neck and back. In addition, the petitioner has physical restrictions and ongoing problems with his left hand.

The Arbitrator awards the petitioner 37% loss of use of his left hand due to the degloving injury he sustained. He is also awarded 10% loss of use of a person as a whole.

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS,
ILLINOIS WORKERS' COMPENSATION COMMISSION
Petitioner,

14IWCC0291

vs.

NO. 11 INC 103

ALFRED ROTH, JR. individually, and as president of POTENTIAL TRAINING & WELLNESS, INC. a/k/a THE JUNGLE GYM, INC.,
Respondent,

DECISION AND OPINION RE: INSURANCE COMPLIANCE

Petitioner, the Illinois Workers' Compensation Commission, Insurance Compliance Division, brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondent, alleging violations of Section 4(a) of the Illinois Workers' Compensation Act ("the Act") and Section 7100.100 of the Rules Governing Practice Before the Industrial Workers' Compensation Commission ("the Rules"), codified as 50 Illinois Administrative Code, Chapter 11. Proper and timely notice was given to all parties.

A Hearing was held before Commissioner Michael J. Brennan on November 12, 2013 in Waukegan, Illinois. The Commission, after considering the record in its entirety and the applicable law, finds that Respondent Alfred Roth, Jr. individually, and as President of Potential Training & Wellness, Inc. a/k/a The Jungle Gym, Inc. willfully and knowingly violated Section 4(a) of the Act and Section 7100.100 of the Rules during the period of May 5, 2006 through November 14, 2007 and March 23, 2008 through August 1, 2009. As a result, the Respondent shall be held liable for this 1,056 day period and shall pay a fine pursuant to Sections 4(d) of the Act and 7100.100(b)(1) of the Rules at the rate of $250.00 per day, totaling $264,000.00, for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Alfred C. Roth, Jr. filed Articles of Incorporation for The Jungle Gym, II, Inc. with the Secretary of State on April 28, 2003. Mr. Roth, Jr. was listed as the registered agent and incorporator of The Jungle Gym, II, Inc. PX.4.

2. On November 25, 2005, Mr. Roth, Jr., as sole shareholder and sole director of The Jungle Gym, II, Inc., changed its name to Potential Training & Wellness Center, Inc. PX.4. Mr. Roth, Jr. was listed as the registered agent and owner of Potential Training & Wellness Center, Inc. *Id.*

3. According to the State of Illinois Department of Employment Security, Potential Training Wellness Center had wages in excess of $1,000.00 in 2007 and 2008. PX.5.

4. According to the Illinois quarterly withholding forms, Mr. Roth, Jr. reported compensation on behalf of Potential Training & Wellness Center from January 2006 through December 2008. PX.6.

5. On August 1, 2009, the Illinois Secretary of State dissolved Potential Training & Wellness Center, Inc. for failing to provide acceptable payment in connection with fees or taxes due as required by the provisions of The Business Corporation Act. The Business Corporation Act allows the Illinois Secretary of State to dissolve a corporation for the failure to provide acceptable payment in connection with fees or taxes due under the Act. PX.4.

6. On October 25, 2011, a Notice of Non-Compliance was mailed to Alfred Roth, Jr. The Notice was hand delivered to Mr. Roth, Jr. on October 28, 2011. PX.1. The Notice alleged non-compliance of Section 4(a) of the Act from May 5, 2006 to October 25, 2011. PX.1. The Notice required Mr. Roth, Jr. to submit evidence of compliance with the provisions of Section 4(a) of the Act or otherwise respond in writing to the Commission within thirty days of the date of receipt of the Notice. *Id.*

7. On June 21, 2012, a Notice of Insurance Compliance Hearing was hand delivered to Mr. Roth, Jr. PX.2. An Insurance Compliance Hearing was scheduled for September 18, 2012 at 9:00 a.m. in Waukegan, Illinois. PX.2

8. This matter was previously scheduled for hearing. The hearing was continued with the recommendation that Mr. Roth, Jr. obtain legal representation. This matter proceeded to hearing on November 12, 2013. Mr. Roth, Jr. appeared pro se and stated on the record that he chose to not obtain an attorney. T.5.

9. A notarized affidavit dated November 19, 2012 from the National Council on Compensation Insurance, Inc. (NCCI Holdings, Inc) was admitted into evidence. The affidavit was signed by Ms. Rhonda Garcia, Proof of Coverage Analyst for NCCI Holdings, Inc. The Illinois Workers' Compensation Commission has designated NCCI as its agent for the purpose of collecting proof of coverage

information on Illinois employers who have purchased workers' compensation insurance from carriers. The affidavit states that Alfred Roth, Jr. did not have workers' compensation insurance from May 5, 2006 to November 14, 2007 and from March 23, 2008 to the present. PX.3. Due to a scrivener's error, Petitioner's Exhibit 3 was inadvertently omitted from the record.

10. At hearing, Mr. Roth, Jr. testified that he did not have workers' compensation insurance from May 5, 2006 to November 14, 2007 and from March 23, 2008 to August 1, 2009. T.59.

11. Mr. Roth, Jr. presented Respondent's Exhibit 1 on his behalf. The exhibit was admitted into evidence without objection. According to the exhibit, Mr. Roth, Jr. stated that his insurance was cancelled on May 5, 2006. He further stated that he was unable to qualify for "Workman's Comp. Insurance" as one of the questions to qualify for insurance was whether "you ever had a previous claim b during the time of not being insured." RX.1.

12. An Arbitration Hearing was held on September 19, 2011 naming Potential Training & Wellness Center, Inc.; Alfred Roth, individually; Illinois State Treasurer and ex officio custodian of the Injured Workers' Benefit Fund. The Illinois Attorney General appeared on behalf of the Illinois State Treasurer and ex officio custodian of the Injured Workers' Benefit Fund. No appearance was made on behalf of Potential Training & Wellness Center, Inc. or Alfred Roth, Jr. The Arbitrator found that the Respondent was operating under and subject to Section 3(1) of the Act and an employee-employer relationship existed between Craig Jorgensen and Respondent as of May 23, 2007. The decedent died as a result of his injuries. He had two survivors. The Respondent was ordered to pay death benefits commencing May 27, 2007 of $430.69 per week to the surviving spouse, Betty Anne Jorgensen and on behalf of the children, Adam James Hough-Leifert until $500,000.00 has been paid or 25 years, whichever is greater, as provided in Section 7 of the Act. The Arbitrator further awarded burial expenses of $8,000.00 and medical expenses of $89,419.00. The award was entered against the Injured Workers' Benefit Fund to the extent permitted under Section 4(d) of the Act, in the event of the failure of the Respondent-employer to pay the benefits due and owing to petitioner. PX.7.

13. Respondent appealed to the Commission and a hearing was held on June 11, 2012. The Commission vacated the award of benefits under Section 7(a) to Adam James Hough-Leifert and affirmed and adopted the remainder of the Arbitrator's decision. PX.7.

14. The Illinois Attorney General's Office submitted a Proposed Decision and Opinion on December 10, 2013. They argue for the assessment of penalties in the amount of $250.00 per day for the period of 1,056 days for a total penalty of $264,000.00.

Pursuant to Section 3 of the Act, the provisions of this Act shall apply automatically to all employers engaged in any department of the following enterprises...: 17(a) any business...in which services are rendered to the public at large, provided that this paragraph shall not apply to such business or enterprise unless the annual payroll during the year next preceding the date of the injury shall be in excess of $1,000.00.

The Commission finds that Mr. Roth, Jr. operated Potential Training & Wellness Center, Inc. The business provided services to the public and had wages in excess of $1,000.00. Therefore, Mr. Roth, Jr. was operating under and subject to the provisions of Section 3 of the Act.

The Workers' Compensation Commission's authority and jurisdiction over insurance non-compliance cases is authorized by the Act, as well as the Rules. Under Section 4 of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance, whether this is done through being self-insured, through security, indemnity or bond, or through a purchased policy. Under Section 4(d):

> Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure of an employer to comply with any of the provisions of paragraph (a) of this Section . . . , the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. Each day of such failure or refusal shall constitute a separate offense. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty.

Section 7100.100 of the Rules codifies the language of the Act, and additionally describes the notice on noncompliance required, as well as the procedures of the Insurance Compliance Division, and how hearings are to be conducted. Reasonable and proper notice, as noted above, has been provided to the Mr. Roth, Jr. Section 7100.100(d)(3)(D) of the Rules indicates that "A certification from an employee of National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 7100.30 shall be deemed prima facie evidence of

that fact." Petitioner's exhibit 3 establishes Mr. Roth, Jr. had no workers' compensation insurance from May 5, 2006 to November 14, 2007 and from March 23, 2008 to August 1, 2009, the date of dissolution of Potential Training & Wellness Center. Further, Mr. Roth, Jr. testified that he did not have workers' compensation insurance during the above period.

In *State of Illinois v. Murphy Container Service, et al.*, 2007 Ill.Wrk.Comp.LEXIS 1216, the Commission considered the following factors in assessing penalties against an uninsured employer: 1) the length of time the employer had been violating the Act; 2) the number of workers' compensation claims brought against the employer; 3) whether the employer had been made aware of his conduct in the past; 4) the number of employees working for the employer; 5) the employer's ability to secure and pay for workers' compensation coverage; 6) whether the employer had alleged mitigating circumstances; and, 7) the employer's ability to pay the assessed amount.

In the instant case, there is evidence that Mr. Roth, Jr. was aware of, and willfully ignored his statutory obligation to maintain workers' compensation insurance for a lengthy period of time. Mr. Roth, Jr. testified that he had worker's compensation insurance until May 5, 2006. His policy was then terminated for non-payment. No evidence was offered demonstrating that Mr. Roth, Jr. attempted to secure workers' compensation insurance. The Commission finds that Mr. Roth, Jr. knowingly and willfully failed to comply with the Act. The Commission further finds that the length of time in which Mr. Roth, Jr. had been violating the Act in failing to obtain workers' compensation coverage was significant.

In its Proposed Decision, the Attorney General's requests that the assessment of penalties in the amount of $250.00 per day for the period of 1,056 days be assessed against Mr. Roth, Jr. Having found that Mr. Roth, Jr. willfully and knowingly violated the Act, the Commission assesses penalties in the amount of $264,000.00 against Mr. Alfred Roth, Jr. individually, and as president of Potential Training & Wellness, Inc. a/k/a The Jungle Gym, Inc.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent Alfred Roth, Jr. individually, and as President of Potential Training & Wellness, Inc. a/k/a The Jungle Gym, Inc., found to be an employer who was in non-compliance with the insurance provisions of Section 4(a) of the Act and Section 7100.100 of the Commission Rules, is hereby ordered to pay the Commission a fine of $264,000.00 pursuant to Section 4(d) of the Act and Section 7100.100 of the Commission Rules.

Pursuant to Commission Rule 7100.100(f), once the Commission assesses a penalty against an employer in accordance with Section 4(d) of the Act, payment shall be made according to the following procedure: 1) payment of the penalty shall be made by certified check or money order made payable to the State of Illinois; 2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

14IWCC0291

Illinois Workers' Compensation Commission
Fiscal Office
100 West Randolph Street Suite 8-328
Chicago, Illinois 60601
1-312/814-6625

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: APR 23 2014

MJB/tdm
O: 4-8-14
052

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

HEATHER WATSON,

Petitioner,

vs.

NO: 12 WC 21584

14IWCC0292

SILGAN CONTAINER,

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, causation, temporary total disability, and medical expenses both current and prospective, and being advised of the facts and law, changes 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).

In the second to last page of the Decision of the Arbitrator, there is a one sentence paragraph which is written: "There is no claim that the Petitioner's condition is related to any other accident." The Respondent has no duty to posit alternative theories on the causation of an alleged condition of ill being. It is Petitioner's burden to prove his or her case by a preponderance of the evidence. Therefore, the Commission strikes that sentence from the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 12, 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.

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:

APR 2 2 2014

Ruth W. White

Ruth W. White

Daniel R. Donohoo

Daniel R. Donohoo

Charles J. DeVriendt

Charles J. DeVriendt

RWW/dw
O-3/26/14
46

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

WATSON, HEATHER
Employee/Petitioner

Case# **12WC021584**

SILGAN CONTAINER
Employer/Respondent

14IWCC0292

On 4/12/2013, 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:

1937 TUGGLE SCHIRO & LICHTENBERGER PC
NICHOLAS M SCHIRO
510 N VERMILION ST
DANVILLE, IL 61832

0560 WIEDNER & MCAULIFFE LTD
MARY SABATINO
ONE N FRANKLIN ST SUITE 1900
CHICAGO, IL 60606

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)

14IWCC0292

Heather Watson
Employee/Petitioner

v.

Silgan Container
Employer/Respondent

Case # 12 WC 21584

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 **Urbana, Illinois**, on **March 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 **Should Respondent's Exhibit 6 be admitted into evidence**

FINDINGS

On the date of accident, **April 19, 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 $**41,600.00**; the average weekly wage was $**800.00**.

On the date of accident, Petitioner was **34** years of age, ***single*** 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 for all bills paid by Petitioner's group insurance under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $533.33/week for 47 weeks, commencing April 27, 2012 through March 21, 2013, as provided in Section 8(b) of the Act.

The parties stipulated that all medical bills were paid by Petitioner's group health insurance. Respondent shall hold petitioner harmless from any claims for reimbursement from Petitioner's group health insurance carrier, as provided in Section 8(j) of the Act.

Respondent shall approve and pay for the L5-S1 anterior lumbar interbody fusion with posterior instrumented fusion recommended by Dr. Darwish and Dr. Rinella, as well as all reasonable and necessary follow up care, subject to the medical 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.

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. Dylan McCarthy
Signature of Arbitrator

April 9, 2013
Date

APR 12 2013

Heather Watson v. Silgan Container 12 WC 21584

Findings of Fact:

Petitioner testified that she began working for Respondent in approximately August of 2004. Her position was that of press operator. As a press operator, Petitioner was responsible for running a press that packages metal can ends. The can ends vary in size, from small to gallon size, and are packaged into "sleeves." Petitioner's job required her to manually load the sleeves onto pallets. During this process, Petitioner was required to bend and turn at the waist approximately one thousand times per day. This number was based on the number of sleeves on each pallet and how many pallets are processed each day. Petitioner explained that each pallet holds between 70 and 200 sleeves of metal can ends. She would process approximately five pallets per day when they held 200 sleeves and ten or eleven pallets when they held 70 sleeves. Petitioner estimated that 40 to 45 percent of the bending she did at work was full bends. She would have to bend to a lesser degree as the sleeves were stacked higher on the pallets. (Trans. pgs. 13-18).

Petitioner was on her feet for approximately seven hours per day at work after accounting for lunch and breaks. The floor surface was concrete. (Trans. pg. 19).

Petitioner testified that she does not do nearly as much bending and twisting outside of work. Her hobbies prior to April of 2012 included watching her children play sports, but did not include any activities that were stressful on her back. After beginning her employment with Respondent, Petitioner began to notice soreness and pain in her back over time. Petitioner estimated that these symptoms began in late 2010. The pain was not extreme at first, but became progressively worse over time. (Trans. pgs. 20-21).

Petitioner acknowledged that she had medical treatment for her back prior to April 19, 2012. She first sought treatment with Dr. Colbert and Melia McCord at Charlotte Ann Russell Medical Center. Her treatment consisted of spinal adjustments, physical therapy, and a cortisone shot. When her symptoms did not resolve, she was referred to Dr. Mickeala, who referred her to Dr. Santiago. Dr. Santiago then referred Petitioner to Dr. Darwish, who referred her to Dr. Rinella. (Trans. pgs. 21-22).

Petitioner acknowledged that on May 11, 2011, she irritated her back while helping her daughter up from a fall. Petitioner saw a doctor, who advised her to rest and use heat and ice. Petitioner testified that this incident caused a temporary flare up of back pain that lasted a couple of days. (Trans. pgs. 22-23).

Petitioner also testified that she went to the Emergency Department on October 3, 2011 when her sister fell on her. Petitioner explained that her sister fell on her chest, and that she did not injure her back in any way during this event. (Trans. pgs. 23-24).

Petitioner testified that none of the medical treatment she has undergone to date has provided lasting relief from her symptoms. The best relief she obtained was a couple of months following a nerve block done by Dr. Santiago. After the nerve block wore off, all of Petitioner's symptoms returned. (Trans. pgs. 24-25).

Petitioner testified that Dr. Darwish examined her on April 19, 2012. During that visit, Petitioner's MRI was reviewed, and Dr. Darwish asked her detailed questions about what she did at work. Dr. Darwish also asked Petitioner to demonstrate the mechanics of her job. Petitioner testified that this visit was the first time she came to believe her work may have been contributing to her back condition. (Trans. pgs. 25-26).

Petitioner testified that during the two years prior to April 19, 2012, bending and twisting, lifting, and laying flat on her back aggravated her back pain. Petitioner would rest after work during this time period. (Trans. pg. 27).

When Petitioner began working for Respondent, she was 5' 8" or 5' 9" tall and weighted about 115 pounds. She testified that she never had lower back pain or back problems prior to working for Respondent. She worked for Respondent for approximately six years before her back symptoms began. (Trans. pgs. 27-28).

Petitioner testified that she has been off work since April 27, 2012. On that date, she was given light duty restrictions that Respondent would not accommodate. She did not receive any temporary total disability compensation during that time period. (Trans. pgs. 28-29).

Petitioner's current symptoms include significant back pain, tingling down the back of her right leg into her foot, tingling down her left leg to a lesser extent, and trouble sleeping. Petitioner rated her pain as a 7 on a 10-point scale. That pain is present most of the time. (Trans. pgs. 30-31).

Petitioner testified that her medical bills have not been paid through workers' compensation. She indicated that some of her bills were paid by Blue Cross/Blue Shield, and requested a hold harmless. (Trans. pg. 30).

Petitioner testified that she wants to undergo the surgery recommended by Dr. Rinella so that she can reduce her pain and go back to work. (Trans. pg. 28).

On cross examination, Petitioner acknowledged that she may have been seen at the Hoopeston Community Memorial Hospital in October of 2002 for back pain that developed after lifting patients. Petitioner also testified that she was seen for low back pain in September of 2010 and that there was no specific event that brought on the pain. Petitioner also acknowledged seeing Dr. Colbert for back pain in October of 2010 and that she underwent spinal manipulations, therapy, and injections in the fall of 2010. She also sought treatment for her back at Robinson Chiropractic in March of 2011 and with Melia McCord, a physician's assistant, beginning in May of 2011. (Trans. pgs. 32-36).

Petitioner was on a leave of absence from work for her back condition from May 11, 2011 until July 22, 2011. During that time period, Petitioner underwent her first MRI. Petitioner acknowledged that she did not indicate her injury was not work related in a patient questionnaire she filled out when she first saw Dr. Santiago on June 20, 2011. (Trans. pgs. 38-39).

Petitioner testified that her back pain never completely resolved after it began in 2010. Activities of daily living aggravate Petitioner's back pain. (Trans. pg. 40).

The earliest medical record introduced into evidence was an Emergency Department note dated October 8, 2002. On that date, Petitioner presented to the Emergency Department at Hoopeston Community Memorial Hospital complaining of lower back pain. Petitioner gave a history of low back, left hip, and left leg pain after lifting patients at her job at a nursing home. She reported the pain has been present for around one month, but had gotten worse recently. Petitioner stated that her back does not hurt while lifting, but that it does after. She was diagnosed with a lumbosacral strain, was prescribed medication, and was discharged with instructions to use ice locally. (RX 9, pg. 14).

Petitioner presented to Keith Whitaker, PA-C at Charlotte Ann Russell Medical Center on September 13, 2010 complaining of back discomfort for the previous three weeks. She reported no history of injury. She

noted that her back pain is worse when she bends over. Physical exam showed tenderness in the paraspinal muscles bilaterally, a negative straight leg raise, and no evidence of scoliosis. An anti-inflammatory was prescribed, as was Flexeril. Petitioner was instructed to return to the clinic if she did not improve. (PX 1, pg. 46).

Petitioner returned to Charlotte Ann Russell Medical Center on October 4, 2010 to follow up on her low back pain and was evaluated by Dr. Jay Colbert. Petitioner related no history of injury but stated that she does tend to strain her back quite a bit a work. Petitioner reported little improvement in symptoms with the medications previously prescribed. Physical exam showed tenderness in the lower lumbar spine and the left sacroiliac joint. A spinal manipulation was performed and medications were continued. Petitioner was to follow up in a week if not significantly improved. (PX 1, pg. 44).

Petitioner returned to Dr. Colbert on October 12, 2010 for follow up. She reported ongoing pain in the lower back area. Physical exam was unchanged from the previous visit. A spinal manipulation was performed and medications were continued. Petitioner was to follow up in a week. (PX 1, pg. 43).

Petitioner returned to Dr. Colbert on October 19, 2010 complaining of continued low back pain. She was diagnosed with bilateral sacroiliitis. Injections to the SI joints were administered bilaterally. (PX 1, pg. 42).

Petitioner returned to Dr. Colbert on October 26, 2010. She reported one or two days of relief after the injections, but that her symptoms returned after she got back into her regular work routine. Petitioner was referred for physical therapy. (PX 1, pg. 41).

Petitioner began a course of physical therapy at Hoopeston Regional Health Center on October 28, 2010. Petitioner filled out an intake form in which she indicated her symptoms had been present for seven to sixteen weeks and that her condition was not being covered by workers' compensation. (RX 9, pg. 21). The initial therapy evaluation indicated Petitioner's pain level was a five to six out of ten and that bending and lifting, arising, and morning stiffness increased her pain. Petitioner was to undergo therapy for six weeks. (RX 9, pg. 18). Petitioner was discharged from therapy on December 8, 2010. It was noted that Petitioner had cancelled her appointment on November 16th and that she did not attend on November 19th or November 24th. The discharge report indicated that Petitioner's range of motion had improved, but that her pain was unchanged. (RX 9, pg. 19).

Petitioner returned to Dr. Colbert on November 22, 2010 complaining of persistent symptoms in her low back. An injection of the SI joint under fluoroscopy was recommended. Petitioner was to continue with medication and therapy until that could be arranged. (PX 1, pg. 39).

Petitioner presented to Robinson Chiropractic on March 1, 2011 for evaluation of low back pain. She gave a history of low back pain beginning in September of 2010. She reported doing a lot of lifting and bending with heavy objects but no specific incident of trauma. Petitioner stated that bending with her right foot forward. Petitioner noted that she had seen a doctor for manipulations and injections. She reported minor relief from the injections. Low back pain was noted to be sharp and piercing with radiation going into both hips. Pain in the low back was rated as a 3 to a 9. Petitioner also reported a dull ache in her mid and upper back, as well as her neck. It was noted that the neck symptoms began with a softball injury years ago. (PX 2, pg. 65). Treatment plan was for Petitioner to undergo spinal manipulation. (PX 2, pg. 68).

An x-ray of the lumbar spine performed March 1, 2011 showed spinal biomechanical alterations, degenerative disc disease at the L5 level, and facet tropism at L3-L4, L4-L5, and L5-S1. (PX 2, pg. 67).

Petitioner returned to Robinson Chiropractic from March 2, 2011 through March 11, 2011 for spinal manipulation. (PX 2, pgs. 72-73).

Petitioner returned to Charlotte Ann Russell Medical Center on May 4, 2011 complaining of low back pain that had been present for about six months. She was examined by Melia McCord, PA-C. Petitioner described the pain as a pinching sensation that is worsened by standing or bending over repetitively. She reported working in a factory and that she does experience pain during her shift. Dull aching in her joints was also reported, which Petitioner noted was very different from the pain she had in her back. It was noted that Petitioner had previously tried conservative treatment measures including muscle relaxers, pain medication, manipulation, and chiropractic treatment. Medications were prescribed for back pain, and an x-ray was recommended. (PX 1, pg. 33).

Petitioner returned to PA-C McCord on May 11, 2011 to follow up on her low back pain. Petitioner reported that her pain began long ago, but that it was recently aggravated while helping her daughter stand up. Petitioner's pain radiated into her buttocks bilaterally, but did not radiate into her thighs or lower extremities. Petitioner noted that the medication did not improve her pain. X-ray was reviewed, which was interpreted to show a relative disc space narrowing at L5-S1 and facet hypertrophy. Assessment was lumbago with evidence of L5-S1 disc space narrowing. Medrol Dosepak was prescribed and FMLA paperwork was completed. Petitioner was placed on light duty status. An MRI would be recommended if the Medrol Dosepak did not improve her pain. (PX 1, pg. 32).

An MRI performed on May 20, 2011 showed L5-S1 disc degeneration with a mild asymmetric right posterior disc bulge minimally encroaching on the right S1 nerve root sheath. (RX 10).

Petitioner presented to Dr. Alexander Michalow at Oak Orthopedics on June 17, 2011. She was referred by Dr. Colbert's office for evaluation of low back pain. Petitioner reported that the pain was chronic and had been present for more that a year. She reported no specific injury, but noted that her pain was worse with activity, especially bending, lifting, or twisting the spine. It was noted that Petitioner works in a factory and does very physical work. Petitioner reported only temporary partial relief in symptoms from her previous course of treatment. Physical exam showed tenderness in the paraspinal region, right side greater than left. Assessment was chronic back pain with minor disc bulge at L5-S1 with at least some pain related to work, which requires much physical lifting. Plan was for Petitioner to pursue pain management, as Dr. Michalow did not see a surgical lesion on the MRI. (PX 3, pgs. 107-108).

Petitioner presented to Dr. Juan Santiago-Palma at Oak Orthopedics on June 20, 2011 complaining of low back pain for the previous year. Petitioner described the pain as an aching sensation along the lower back without radiation into the lower extremities. Petitioner did not recall any specific precipitating event. She rated her pain as a 7 out of 10 in intensity and noted that her symptoms had been getting progressively worse. An MRI performed on May 20, 2011 was reviewed, which Dr. Santiago-Palma interpreted as showing disc degeneration at L5-S1 and a right posterior disc bulge with minimal encroachment upon the right S1 nerve root. Petitioner had not been working because of her symptoms. It was noted that Petitioner smokes 20 cigarettes per day. Physical exam revealed tenderness to palpation along the mid and lower paraspinals. Extension and right and left lateral rotation of the lumbar spine reproduced low back pain. Straight leg raise was negative. Clinical impression was lower back pain and lumbar degenerative disc disease. Treatment plan was for Petitioner to undergo facet joint injections along the right and left L3-L4, L4-L5, and L5-S1 facet joints. (PX 3, pgs. 120-121).

Dr. Santiago-Palma performed intraarticular lumbar facet joint injections at L3-L4, L4-L5, and L5-S1 on June 24, 2011. (PX 3, pgs. 90-91).

Petitioner returned to PA-C McCord on July 1, 2011. She reported that her back pain had improved after the facet joint injections. Petitioner still had pain with certain movements, such as bending, sitting too long, or lying down. She reported that she had been exercising daily and that she wanted to quit smoking. She was to continue to follow up with pain management. Petitioner was kept off work until her next appointment with Dr. Santiago. (PX 1, pg. 31).

Petitioner returned to Dr. Santiago-Palma on July 12, 2011 for follow up. She reported about 50 percent improvement in her symptoms for one week following the injections. She rated her pain as a 6 to 7 out of 10. Treatment plan was to proceed with an epidural steroid injection at L5-S1. (PX 3, pgs. 122-123).

Dr. Santiago-Palma performed an epidural steroid injection at L5-S1 on July 26, 2011. (PX 3, pgs. 92-93).

Petitioner returned to Dr. Santiago-Palma on August 11, 2011 and reported significant relief of symptoms from the epidural injection. She rated her pain as a 1 out of 10. A home exercise program was recommended, and Petitioner was to return in two months. (PX 3, pgs. 124-125).

Petitioner returned to Dr. Santiago-Palma on October 11, 2011. Her low back pain had returned. She rated her pain as a 7 out of 10. Treatment plan was to perform another epidural injection at L5-S1. (PX 3, pgs. 133-134) A questionnaire Petitioner completed indicated that she was working in her regular job but felt unable to work due to her symptoms. (PX 3, pgs. 128-129). Petitioner was given work restrictions of no lifting over 10 pounds. (PX 3, pg. 135).

Dr. Santiago-Palma performed another epidural steroid injection at L5-S1 on October 14, 2011. (PX 3, pgs. 94-95).

Petitioner returned to Dr. Santiago-Palma on November 4, 2011 and reported significant relief of symptoms from the epidural injection. She rated her pain as a 1 out of 10. She was to continue her home exercise program and follow up in two months. (PX 3, pg. 136).

Petitioner returned to Dr. Santiago-Palma on December 19, 2011. Her low back pain had again returned, and was rated as a 7 out of 10 in intensity. Petitioner had obtained only temporary relief from the epidural injections. Treatment plan was for Petitioner to undergo median branch blocks along the bilateral L2-L3, L3-L4, L4-L5, and L5-S1 facet joints. If this provided significant relief, radiofrequency ablation would be considered. (PX 3, pgs. 146-147).

Dr. Santiago-Palma performed a diagnostic median branch block of the lumbar facet joints on January 3, 2012. (PX 3, pgs. 96-97),

Petitioner returned to Dr. Santiago-Palma on January 5, 2012 and reported about 70 percent improvement in her symptoms during the anesthetic phase of the median branch blocks. Treatment plan was to proceed with radiofrequency ablation. (PX 3, pgs. 148-149).

Dr. Santiago-Palma performed a radiofrequency median branch facet neurotomy on January 11, 2012. (PX 3, pgs. 98-99).

Petitioner returned to Dr. Santiago-Palma on January 19, 2012, complaining of worsening pain along the left side of her lower back along the sacroiliac joint region. Treatment plan was physical modalities for the pain

and Tylenol as needed. She was to follow up in two weeks. She was allowed to return to work without restrictions. (PX 3, pgs. 150-151).

Petitioner returned to Dr. Santiago-Palma on February 2, 2012 and reported that all her symptoms had resolved. She rated her pain as a 0 out of 10. She was to continue home exercises and was to follow up as needed. (PX 3, pg. 152).

Petitioner returned to Dr. Santiago-Palma on March 30, 2012 complaining of worsening low back pain radiating into the right lower extremity. Petitioner also reported numbness along the posterior aspect of the right side. Treatment plan was for Petitioner to undergo another epidural injection at L5-S1. (PX 3, pgs. 161-162).

Dr. Santiago-Palma performed another epidural steroid injection at L5-S1 on April 3, 2012. (PX 3, pgs. 100-101).

Petitioner presented to Dr. Ashraf Darwish at Oak Orthopedics on April 5, 2012. Dr. Michalow referred her to Dr. Darwish. Petitioner complained of low back pain radiating into her right buttock and right posterior thigh, which had been getting progressively worse for the last year. Petitioner described her job as a manual labor position in which she is required to bend over and lift objects weighing approximately 17 pounds continuously for eight hours per day. She reported working in that capacity for the last ten years. Petitioner rated her pain as a 7 out of 10 in her leg and a 8-9 out of 10 in her low back. Sitting, lying down, arising from a chair, and physical activity, aggravates her pain. Physical exam revealed a positive sitting root test on the right side, reproducing pain in the right buttock and posterior thigh. Lying root test was positive on the right side and negative on the left. X-rays were reviewed, which showed loss of normal lumbar lordosis and mild loss of disc height at L5-S1. An updated MRI was recommended because Petitioner's last MRI was over a year ago and her symptoms had become progressively worse since that time. Work restrictions were given, which included no sleeving or running the press, no lifting more than 10 pounds, no repetitive motion, minimum bending, stooping, twisting and squatting. (PX 3, pgs. 167-169).

An MRI performed on April 16, 2012 showed L5-S1 circumferential annular disc bulging, right paramedian/pre-foraminal disc extrusion impinging the right S1 nerve root, and minor degenerative disc disease. (PX 3, pg. 104).

Petitioner returned to Dr. Santiago-Palma on April 17, 2012 and reported about 50 percent improvement in her symptoms after the most recent injection. She rated her pain as a 2 out of 10. An MRI performed on April 16, 2012 was reviewed, which Dr. Santiago-Palma interpreted to show circumferential disc bulging at L5-S1 as well as degenerative changes. Dr. Santiago-Palma advised Petitioner to follow up with Dr. Darwish. She was to follow up with Dr. Santiago-Palma on a p.r.n. basis. (PX 3, pg. 170).

Petitioner returned to Dr. Darwish on April 19, 2012 complaining of ongoing low back pain and right lower extremity radiculopathy. Petitioner stated that her back pain is worse than her right lower extremity radiculopathy and that it was preventing her from being active. Petitioner's pain was worse with activity, especially when lifting things off the ground at work. The recent MRI was reviewed, which Dr. Darwish interpreted as showing L5-S1 disc desiccation with mild decrease in disc height. A circumferential annular disc bulge with right paramedian disc herniation causing impingement on the right S1 nerve root was present. Assessment was lumbar spondylosis without myelopathy and L5-S1 degenerative disc disease with a right paramedian disc protrusion causing right-sided neuroforaminal stenosis. Dr. Darwish discussed surgical and non-surgical interventions with Petitioner. He believed Petitioner should continue weighing her options before deciding on a lumbar fusion, due to her young age. Dr. Darwish stated that he believes the reason Petitioner had degenerative disc disease at such a young age is due to the repetitive lifting that she has been doing at work for

quite a while. Petitioner was to try not to lift anything off the ground over 20 pounds. She was to continue seeing Dr. Santiago for conservative management. If her symptoms did not improve, a lumbar fusion would be considered. (PX 3, pgs. 171-172).

A work status report from Dr. Darwish dated April 19, 2012 indicated that Petitioner's injury was the result of her job, which is bending and lifting all the time. Work restrictions were given, which included no sleeving or running the press, no lifting from floor up, no repetitive motion, minimum bending, stooping, twisting and squatting. (PX 3, pg. 173).

Petitioner returned to Dr. Santiago-Palma on June 7, 2012 complaining of pain in her low back and right lower extremity, as well as numbness along the posterior aspect of her right thigh. She rated her pain as a 7 out of 10. She reported using Mobic, which provided some relief of her symptoms. Treatment plan was for Petitioner to undergo a right transforaminal epidural steroid injection at L5-S1. (PX 3, pgs. 182-183).

Dr. Santiago-Palma performed a right transforaminal epidural steroid injection at L5-S1 on June 13, 2012. (PX 3, pgs. 102-103).

Petitioner returned to Dr. Darwish on June 26, 2012, complaining of continued low back pain and right lower extremity radiculopathy that had not improved with conservative management. Petitioner reported that she was currently unable to work due to the pain in her low back and right lower extremity. Petitioner stated that she was unable to live with the type of pain she had. Dr. Darwish had a long discussion with Petitioner regarding treatment options. Petitioner advised that she wished to proceed with surgical intervention. She was to be scheduled for an L5-S1 anterior lumbar interbody fusion with posterior instrumented fusion. Because of a past hysterectomy, Petitioner was to see Dr. Lang, an exposure surgeon, for evaluation. If Dr. Lang was able to provide exposure for the fusion procedure, then Dr. Darwish would proceed with surgery. (PX 3, pgs. 184-185).

Petitioner returned to Dr. Santiago-Palma on July 3, 2012 for follow up. Dr. Santiago-Palma indicated that Petitioner had exhausted conservative care and she should follow up with Dr. Darwish. (PX 3, pgs. 186-187).

Petitioner presented to Dr. Anthony Rinella at the Illinois Spine and Scoliosis Center on July 12, 2012, complaining of tenderness in her back extending into her right buttock. Petitioner reported that the pain began in late 2009. Dr. Rinella reviewed the MRI performed on April 16, 2012 and interpreted it as showing disc desiccation at L5-S1 and a right-sided disc herniation at L5-S1. Dr. Rinella concurred with the surgical recommendation of Dr. Darwish and indicated he would be willing to perform the procedure. (PX 5, pgs. 212-213).

Dr. Robert Bernardi examined Petitioner at the request of Respondent on October 23, 2012. Petitioner provided a history of low back pain beginning in September of 2010. She indicated that her low back pain was not the result of any specific incident and that she attributed her symptoms to the repetitive nature of her work. Petitioner described her work as involving feeding pieces of metal into a press, which would emerge as circular can ends. She would then load the can ends into a sleeve and would place the full sleeves on a pallet. She described the sleeves as weighing between 11 and 17 pounds. When the factory was busy, it was not unusual for Petitioner's back to get sore during a workday. Petitioner reported that her pain was isolated to her lower back at first, but began radiating into her right buttock over time. She had also developed pain that radiated into the right leg. She described her symptoms as constant. Dr. Bernardi reviewed Petitioner's medical records and imaging studies. Dr. Bernardi also performed a physical examination, which revealed reduced extension of the lumbar spine, approximately 50 percent of normal. Range of motion of the right hip produced right buttock

pain. Straight leg raising on the left and right produced right buttock pain. Diagnosis was L5-S1 degenerative disc disease and right L5 radiculopathy. (RX 1).

Dr. Bernardi opined that Petitioner's back symptoms were not caused by her work activities on or about April 19, 2012. Dr. Bernardi offered two reasons for his opinion. First, the Petitioner had had a chronic history of back pain predating April of 2012, which was documented in her medical records. Second, there was nothing in Petitioner's medical records to suggest that there was any event at work on April 19, 2012 that might have caused, altered, or in any way exacerbated her pre-existing problem. Dr. Bernardi noted that recent research indicated that the role of occupational and recreational activities on the development and progression of degenerative disc disease is minimal, with the primary factor being genetic factors. Dr. Bernardi believed that Petitioner's pain was due to her L5-S1 degenerative disc disease and not the disc bulge at L5-S1. He disagreed with the radiologist's interpretation of the MRI performed on April 16, 2012. Dr. Bernardi felt that test showed degenerative findings, and disagreed with the radiologist's use of the term "disc extrusion," which he felt implied an acute abnormality. Dr. Bernardi reviewed the MRI report dated May 20, 2011 and noted the report described the same findings as were present in the MRI performed on April 16, 2012. Dr. Bernardi opined that because the findings at L5-S1 were present in May of 2011, they could not have been caused by any work activity that occurred on April 19, 2012. Dr. Bernardi agreed with the surgery recommended by Dr. Rinella. (RX 1).

Dr. Bernardi was deposed on November 16, 2012. Dr. Bernardi testified that he is a board certified neurosurgeon. He explained that a neurosurgeon differs from an orthopedic surgeon in that a neurosurgeon devotes a higher portion of his practice to spinal surgery. (RX 2, pgs. 5-7). Dr. Bernardi's diagnosis of Petitioner based on his examination as well as his review of the medical records was L5-S1 degenerative disc disease and right L5 radiculopathy. He opined that neither of his diagnoses were related to any work accident or work activities that may have manifested on April 19, 2012. Dr. Bernardi offered three reasons for his opinion. First, Petitioner had a documented history of back problems prior to April 19, 2012. Second, he interpreted Petitioner's imaging studies to show results that were entirely degenerative in nature. Third, Dr. Bernardi felt there was no significant change in Petitioner's condition after April 19, 2012. (RX 2, pgs. 14-16). Dr. Bernardi discussed a recent study that followed identical twins and ultimately found that the development of degenerative disc disease is almost entirely determined by genetic factors. That study concluded that the role of occupational activities was minimal and that application of loads to the spine on a repetitive basis does not adversely affect disc physiology. (RX 2, pgs. 16-18). Dr. Bernardi was asked to assume that Petitioner lifted 11 to 17 pounds at work on a repetitive basis and whether he believed that activity would aggravate degenerative disc disease. Dr. Bernardi opined that it would not, because the science on the subject does not suggest that life activities aggravate the process. (RX 2, pg. 19). Dr. Bernardi also opined that Petitioner's work activities did not cause the L5-S1 disc herniation diagnosed by her treating physicians. Dr. Bernardi disagreed that the MRI performed on April 16, 2012 showed a disc protrusion at L5-S1. He felt it showed a degenerative disc bulge. Additionally, Dr. Bernardi felt that the prior MRI performed on May 20, 2011 documented the same degenerative disc bulge and that it could not have laid dormant for over a year before causing leg pain. Dr. Bernardi opined that Petitioner's symptoms were not consistent with an L5-S1 disc extrusion, as that would cause pain straight down the back of the leg and calf. Petitioner's pain was more consistent with L5 disease. (RX 2, pgs. 22-24).

On cross examination, Dr. Bernardi testified that Petitioner's symptoms correlated with his physical exam findings as well as the findings on the MRI film he reviewed. Petitioner exhibited no signs of symptom magnification during her examination, and Dr. Bernardi felt she was very credible. Dr. Bernardi agreed that Petitioner was a candidate for the surgery proposed by Dr. Rinella. (RX 2, pgs. 25-26). Dr. Bernardi testified that exercise appears to have a beneficial effect on the lumbar discs, but acknowledged that exercise as most people do it is different than repetitive bending and twisting in an industrial environment. Dr. Bernardi was unaware of any studies showing a correlation between repetitive bending and twisting and the progression of

degenerative disc disease. Dr. Bernardi testified that if such studies exist, it could have an effect on his causation opinion if they were good studies. (RX 2, pgs. 29-30). Dr. Bernardi testified that he does not believe repetitive bending and twisting of the spine ever causes an acceleration of degenerative disc disease. (RX 2, pgs. 30-31). Dr. Bernardi did not know how many sleeves Petitioner loaded onto pallets each hour, or even each day. He also did not know the height of the machine from which Petitioner picked up the pallets or the height of the pallet on which she stacked them. (RX 2, pg. 32). Dr. Bernardi testified that he did not review the film of the MRI performed on May 20, 2011. He explained that without reviewing the film, he could not state, to within a reasonable degree of medical certainty, that the disc bulge at L5-S1 did not worsen between May 20, 2011 and April 16, 2012, the date of the most recent MRI. (RX 2, pgs. 35-36). Dr. Bernardi testified that his overall opinion is that the primary factor that influences the progression of degenerative disc disease is genetics, and that environmental factors such as repetitive work are only minor factors. He testified that Petitioner's job as she described it to him could be a small factor in the progression of her degenerative disc disease. (RX 2, pg. 38).

On re-direct, Dr. Bernardi clarified that while he felt Petitioner's work activities could be a small factor in the progression of her degenerative disc disease, he could not state that to within a reasonable degree of medical certainty. (RX 2, pg. 39).

Dr. Ashraf Darwish was deposed on February 8, 2013. Dr. Darwish is an orthopedic spine surgeon. His practice is essentially only spine surgery, as Dr. Darwish does not perform any other type of surgical procedures. He only treats patients with neck and back pain. (PX 6, pgs. 4-5). Dr. Darwish is board eligible, meaning he has passed his board examination, but still has to collect surgical cases for two years and submit them to the orthopedic board. After defending his cases in front of the board, he will become board certified. (PX 6, pg. 7). Dr. Darwish has performed between 150 and 200 spine surgeries within the past year. (PX 6, pg. 8).

Dr. Darwish testified that he sees patients who have lower back injuries and pain due to repetitive motion. (PX 6, pg. 9). He estimated that approximately 20 percent of his practice is treating patients with degenerative disc disease causing low back or lower extremity pain. (PX 6, pg. 11). Dr. Darwish first examined Petitioner on April 5, 2012. He took a history from Petitioner in which she indicated her job required her to repetitively bend over, grab an item weighing approximately 20 pounds, and move the item to another position. She did this over and over for eight hours per day, five days per week. (PX 6, pgs. 12-13). Dr. Darwish testified that Petitioner had findings consistent with degenerative changes or a herniated lumbar disc at the time of his first examination. He recommended initially that Petitioner continue with conservative management and obtain a new MRI. (PX 6, pg. 14). Dr. Darwish next examined Petitioner on April 19, 2012. The MRI obtained April 16, 2012 showed degenerative disc disease at the L5-S1 level with a disc protrusion or herniation on the right side compressing the right S1 nerve root. (PX 6, pg. 15). Dr. Darwish opined that Petitioner's repetitive work activities were a causative factor in the development of her lumbar spondylosis without myelopathy as well as her degenerative disc disease and disc herniation at L5-S1. (PX 6, pgs. 16-17). When Dr. Darwish examined Petitioner on June 26, 2012, her symptoms had worsened, and her pain was not well controlled with medication or injections. At that time, Dr. Darwish recommended proceeding with an anterior lumbar interbody fusion with a posterior instrumented fusion. (PX 6, pg. 20). Dr. Darwish opined that Petitioner's pain would likely worsen without surgery, and that continuing in her job with Respondent would also worsen her symptoms. (PX 6, pgs. 21-22). Dr. Darwish believed Petitioner could return to her regular employment within six to twelve months following surgery if a successful fusion was obtained. (PX 6, pgs. 34-35).

On cross examination, Dr. Darwish testified that he did not review the actual film of the MRI performed on May 20, 2011. Without reviewing the actual film, he could not say for certain whether there was any progression or changes between the May 20, 2011 MRI and the MRI performed on April 16, 2012. (PX 6, pgs. 23-24). Dr. Darwish testified that Petitioner told him that the weight of the objects she lifted at work varied, but

he did not know how much. He also did not know how many objects she lifted per hour, or where she had to place the objects. Dr. Darwish's understanding was that Petitioner was moving the objects all day, other than during lunch and breaks. (PX 6, pgs. 25-26). Dr. Darwish agreed that there are a number of things that can contribute to the development of degenerative disc disease. He also agreed that there was no way to date the disc herniation seen on Petitioner's MRI tests and that it could have been present for years. Dr. Darwish opined that it was unlikely that Petitioner's disc herniation and degenerative disc disease was the result of normal wear and tear, due to her young age. He explained that it is unlikely for a person in their 30s to have such advanced degenerative disc disease. (PX 6, pgs. 26-27). Dr. Darwish was unaware of any studies showing that degenerative disc disease is a genetic disease. (PX 6, pg. 28). Dr. Darwish testified that it would not be unreasonable to perform a fusion surgery on Petitioner, even though she is a smoker. He expected Petitioner would quit smoking prior to the operation, which was his recommendation. (PX 6, pgs. 35-36).

Conclusions of Law:

The Petitioner is claiming a repetitive trauma injury involving her lower back. Such an injury is considered "accidental" even though it develops gradually over a period of time if it is caused by the performance of one's job. See Cassens Transport Company, Inc. v. The Industrial Commission, 262 Ill. App. 3d 324 (1994) Petitioner must prove the injury was work related and not the result of normal aging. As stated below, the Arbitrator believes the Petitioner, a 35 year old female who worked for eight years in a job requiring repetitive lifting throughout the course of a normal work day, has met her burden of proof. The more interesting issue is whether the Petitioner has chosen a proper date of accident. The Arbitrator believes that she has.

There is no question that the Petitioner had lower back symptoms which she thought were job related prior to April 19, 2012. From October 4, 2010, she referred to her work duties in connection with her lower back treatments which she received from her various providers. There is also no question that she continued to perform her regular job for much of that time, and noticed an increase in her symptoms. When she was referred to Dr. Darwish by Dr. Santiago on March 30, 2012, she reported that her lower back pain had increased, and now extended down her right leg. (PX 4)

It wasn't until she was seen by Dr. Darwish, however, that she became aware of her condition. On April 5, her first visit, she discussed in detail her job duties with the doctor. On her second visit with Dr. Darwish on April 19, 2012, after her second MRI, she learned that she had right forminal stenosis at L5-S1 related to a degenerative disc. (PX 4, 4-19-12)

The proper date of accident due to repetitive trauma is the date when a reasonable person knows about her injury and its causal relationship to work. While the Petitioner knew that she had a problem related to her job prior to April 19, 2012, she didn't know what the problem was; i.e. her injury, until discussing it with Dr. Darwish on that date.

This case presents a fact pattern similar to that seen in the case of Durand v. The Industrial Commission, 224 Ill. 2d 53 (2006). There the petitioner had carpal tunnel symptoms in 1997 and told her supervisor in 1998 that she thought her problem was work related. As in the instant case, she kept doing her regular job and didn't learn of the diagnosis until electrical studies were performed on September 8, 2000. She chose that date as her date of accident. The Court reversed the Appellate Court's finding that the claim was time barred. They referred to the 1988 decision in Oscar Meyer to support their position. They said that it would be unfair to punish the petitioner by barring her claim because she chose to try and work through her problem as long as she could. The Court went on to say that the date of accident in a repetitive trauma case should be determined by using a flexible standard. There, as here, the date of accident could certainly be the date the Petitioner learned of her diagnosis.

The Arbitrator also finds that Petitioner's current condition of ill-being is causally related to the accident of April 19, 2012. Two conflicting medical opinions were offered into evidence. The doctors, who testified by way of deposition, had basically the same understanding as to Petitioner's job duties while she worked for the Respondent from 2004 through April 27, 2012. Dr. Darwish's office note of April 5, 2012 states that the Petitioner had worked ten years bending, lifting and twisting with objects weighing approximately 17 pounds over an eight hour shift. (PX 4) He gave basically the same testimony. (PX 6 at 13) Dr. Bernardi testified that the Petitioner lifted sleeves full of can lids weighing 11 to 17 pounds over the course of a normal work day. (RX 2 at 15)

Dr. Darwish opined that her repetitive work activities were a causative factor in the development of her lumbar spondylosis without myelopathy as well as her degenerative disc disease and disc herniation at L5-S1. He elaborated that it is unlikely that an individual of the Petitioner's age would have such advanced degenerative disc disease due to normal wear and tear. (PX 6 at 15,27)

Dr. Bernardi, on the other hand, did not believe Petitioner's low back condition was caused by her employment. Dr. Bernardi testified that he does not believe repetitive bending and twisting of the spine ever causes an acceleration of degenerative disc disease. However, Dr. Bernardi also testified that Petitioner's job as she described it to him could be a small factor in the progression of her degenerative disc disease. (RX 2 at 19, 38)

There is no claim or opinion that the Petitioner's condition is related to any other accident.

The Arbitrator adopts the opinion of Dr. Darwish. Dr. Darwish unequivocally testified that Petitioner's repetitive work activities were a causative factor in the development of her low back conditions. A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. Sisbro v. Industrial Comm'n, 207 Ill.2d 193 (2003). Even Dr. Bernardi acknowledged that Petitioner's work activities could be a contributing factor in the progression of her degenerative disc disease. Accordingly, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the accident of April 19, 2012.

The parties stipulated that all medical bills were paid by Petitioner's group health insurance. Respondent shall hold petitioner harmless from any claims for reimbursement from Petitioner's group health insurance carrier, as provided in Section 8(j) of the Act.

The Arbitrator finds that Petitioner is entitled to prospective medical care. Both Dr. Darwish and Dr. Rinella have proposed an anterior lumbar interbody fusion with a posterior instrumented fusion. Dr. Bernardi agreed that this procedure is reasonable and necessary to treat Petitioner's low back condition. Respondent is ordered to approve and pay for the surgery proposed by Dr. Darwish and Dr. Rinella, subject to the medical fee schedule.

Petitioner is awarded temporary total disability compensation benefits from April 27, 2012 through March 21, 2013, representing 47 weeks. Respondent stipulated that Petitioner was temporarily totally disabled during this time period, but denied liability for temporary total disability benefits. Based on the Arbitrator's findings with regard to accident and causal connection, petitioner is awarded temporary total disability benefits for the stipulated time period. Temporary total disability benefits are to continue as long as Petitioner meets the statutory requirements for those benefits.

The Arbitrator declines to impose penalties or attorney's fees on Respondent, due to the disputes regarding accident and causal connection. Although Petitioner has met her burden of proof regarding accident and causation, the Arbitrator cannot say that Respondent's defense of this claim was unreasonable and vexatious. Respondent relied on the opinion of Dr. Bernardi, and that reliance was not unreasonable.

The Arbitrator will allow Respondent's Exhibit 6, its updated response to penalties, into evidence. In the exhibit, the Respondent added to an earlier response the testimony of Dr. Bernardi, which was provided at a deposition which the Petitioner's attorney participated in. Certainly the Petitioner could not claim any surprise in the contents of the exhibit. It may have been filed late, but the Respondent's attorney contended that she did not receive a file stamped copy of the Petition for Penalties, which by rule would start the time in which her response had to be filed.

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 Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Nathanial Hollis,

Petitioner,

vs.

NO: 12 WC 13618

14IWCC0293

United Airlines, 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 causal connection, prospective medical treatment and temporary total disability and being advised of the facts and law, reverses the Decision of the Arbitrator on the issue of causal connection as stated below and remands this case to the Arbitrator for further proceedings for a determination 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).

Petitioner, a 44-year-old ramp serviceman, filed an Application for Adjustment of Claim alleging injuries to his left knee and groin occurring in the course of and arising out of his employment by Respondent on March 12, 2012. While kneeling inside the baggage hold of an aircraft, Petitioner was struck at his left knee and groin by some dislodged and falling baggage. (T. 13-18) Petitioner testified that he did not immediately realize that he sustained an injury, but approximately twenty-five minutes later when he attempted to stand he felt pain in his left knee and groin. (T. 19-21) He was able to continue working and did not seek immediate medical treatment. (T. 21) The following day, Petitioner was examined at Concentra Medical Center, where he was referred for a course of physical therapy for his left knee and issued light duty work restrictions. (PX 1) Petitioner's injury was subsequently evaluated by his primary care physician, Dr. Zapata. (PX 2) On referral from Dr. Zapata, Petitioner began treating with Dr. Nam at Chicago Orthopaedics and Sports Medicine. (PX 4) Dr. Nam recommended an

exploratory arthroscopic surgery with a partial medial meniscectomy and a potential microfracture of the medial femoral condyle depending on the arthroscopic findings. Prior to surgery, Dr. Nam cautioned that Petitioner's arthritic symptoms would not be alleviated by the arthroscopic surgery. Respondent authorized the treatment and Dr. Nam performed the surgery on June 23, 2012. (PX 4)

Petitioner continued to complain to Dr. Nam of severe pain and functional limitations, although the physical therapy records show that Petitioner progressed to full performance of the exercises with minimal complaints of pain. However, Dr. Nam found that Petitioner was a candidate for an osteochondral graft procedure or a total knee replacement based on the extent of his arthritis and his subjective symptoms. (PX 4) Petitioner sought authorization for treatment from Respondent and was examined by Dr. D'Silva pursuant to §12 on December 17, 2012. Dr. D'Silva opined that a total knee replacement was reasonably necessary treatment but that the advanced arthritic condition of Petitioner's left knee is unrelated to the work injury sustained on March 12, 2012. Dr. D'Silva opined that advanced avascular necrosis and osteoarthritis of the medial femoral condyle is not caused by acute injury. Dr. D'Silva furthermore doubted that any arthroscopic findings from the initial surgery on June 23, 2012 were post-traumatic in nature. In reviewing Dr. Nam's records and the operative report, Dr. D'Silva noted that the suspected subchondral impaction fracture did not exist. The operative findings were chondral fraying of the patellofemoral joint, large medial plica, grade two medial femoral condyle wear, a complex tear of the posterior horn and body of the medial meniscus, a tear in the body of the lateral meniscus and unstable chondral flaps of the lateral tibial plateau with superficial areas of underlying exposed bone. The only medical opinion interpreting the operative report with respect to causal connection is from Dr. D'Silva. Dr. D'Silva's opinion that a total knee replacement was medically necessary but unrelated to the accident is not rebutted. (RX 1) Respondent declined to authorize the surgery and disputed liability based on the opinion of Dr. D'Silva.

At the 19(b) hearing on May 16, 2013, Petitioner was still off of work recovering from his February 5, 2013 total knee replacement. On direct examination, Petitioner denied any left knee injuries prior to March 12, 2012 and denied any prior complaints of pain in the left knee or any symptoms such as he experienced after the accident. (T. 11-12; 22) On cross examination, Petitioner denied receiving a settlement in a prior workers' compensation case that included compensation for injuries sustained to his left knee. (T. 48) Petitioner was confronted with the settlement contract apportioning permanent partial disability for injuries sustained to the left and right legs as a result of a fall sustained on August 1, 2003. (T. 50; RX 9) Petitioner denied any knowledge that the 2005 settlement with Respondent encompassed the left knee. (T. 51) Petitioner was shown a treatment record from Dr. Treister dated November 3, 2004 that indicated an increase in left knee symptoms following right knee surgery. Petitioner then asked the Arbitrator for time to speak with his counsel before any further questioning. (T. 51-54) During continued cross-examination Petitioner admitted that prior to March 12, 2012 his left knee had in fact been symptomatic. (T. 55) On redirect examination, Petitioner testified that to the best of his recollection however, there could be no medical records relating to left knee symptoms or treatment since November 3, 2004. (T. 64-66)

Records submitted into evidence by Respondent include the radiologist's report of a left knee x-ray performed just two weeks prior to the March 12, 2012 accident. On February 27,

2012, the left knee x-ray, ordered by Dr. Zapata for the purpose of evaluating Petitioner's left knee pain, revealed degenerative joint disease and osteoarthritis, with narrowing of the medial compartment and an osteophyte at the patella. (RX 4)

In a June 25, 2013 Decision, the Arbitrator awarded the requested medical treatment and temporary total disability benefits. The Arbitrator found that while Petitioner had a left knee x-ray only two weeks prior to the accident, the totality of the evidence indicated only minor pre-existing complaints. The Arbitrator noted that Petitioner was able to perform his regular duties until the date of accident. However, the Arbitrator noted the lack of a causal connection opinion from Petitioner's surgeon with respect to the need for a total knee replacement. Dr. Nam was not deposed, and following the June 23, 2012 arthroscopy Dr. Nam's records are silent on causation. Nevertheless, the Arbitrator found that Petitioner proved the March 12, 2012 accident was at least a contributing cause in the exacerbation of Petitioner's preexisting conditioning and was therefore causally related to his need for a total knee replacement. We disagree.

The September 18, 2012 MRI arthrogram performed in advance of the total knee replacement, revealed advanced degenerative joint disease and osteoarthritis: "tricompartmental osteoarthritis, near complete cartilage loss at the weight-bearing portion of the medial compartment, dense sclerosis of the subchondral bone with surrounding edema in the medial femoral condyle and serpentine linear area immediately adjacent to the subchondral bone plate highly suspicious for focal subchondral osteonecrosis." Dr. Nam counseled Petitioner that he may not have a lasting result from an osteochondral graft, due to the size of his osteochondral lesion, and may require a total knee replacement for definitive treatment. (PX 4) Petitioner decided to pursue the total knee replacement because he knew that his knee was "steadily deteriorating." (T. 66) Following the February 5, 2013 total knee replacement, once again only Dr. D'Silva analyzed the surgical findings from a causal connection perspective. Dr. D'Silva found no evidence in operative report indicating that the condition of Petitioner's left knee was secondary to the accident. (RX 2)

Even when it is undisputed that an accident causes a claimant's condition to become symptomatic, or more severely so, it is not necessarily true that any condition subsequent to the accident is causally connected to it. See, *Sorenson v. Industrial Comm'n., 281 Ill.App.3d 373, 666 N.E.2d 713, 217 Ill.Dec. 44 (1996)* In *Sorenson*, the Appellate Court affirmed the Commission's decision finding that a claimant's need for lumbar surgery was not related to the injury even though the claimant sustained a compensable back strain and was awarded temporary total disability, medical benefits and permanent partial disability benefits. After considering the entire record in the case at hand, we find that Petitioner failed to meet his burden of proving causal connection with respect to the need for a total knee replacement. Without a credible causal connection opinion from a medical expert, and furthermore considering Petitioner's unreliable testimony and the lack of persuasive evidence in the record; we find that the Arbitrator's Decision is not supported by a preponderance of the evidence.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on June 25, 2013 is hereby reversed and the Arbitrator's award is vacated. This case is remanded to the Arbitrator for a further hearing and determination of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399

14IWCC0293

N.E.2d 1322, 35 Ill.Dec. 794 (1980).

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.

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 2 3 2014
RWW/plv
o-2/20/14
46

Ruth W. White

Charles J. DeVriendt

Stephen J. Mathis

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

HOLLIS, NATHANIEL
Employee/Petitioner

Case# **12WC013618**

UNITED AIRLINES INC
Employer/Respondent

14IWCC0293

On 6/25/2013, 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:

0700 GREGORIO & ASSOCIATES
SEAN C STEC
TWO N LASALLE ST SUITE 1650
CHICAGO, IL 60602

0560 WIEDNER & MCAULIFFE LTD
ASALYAL L AKHMEROVA
ONE N FRANKLIN ST SUITE 1900
CHICAGO, IL 60606

14IWCC0293

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)

Nathaniel Hollis
Employee/Petitioner

v.

United Airlines, Inc.
Employer/Respondent

Case # **12** WC **13618**

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 **Svetlana Kelmanson**, Arbitrator of the Commission, in the city of **Chicago**, on **May 16, 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. [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. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On the date of accident, **3/12/2012**, 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 **$29,851.66**; the average weekly wage was **$621.91**.

On the date of accident, Petitioner was **44** years of age, ***married*** with **1** dependent child.

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

The parties stipulate Petitioner was temporarily totally disabled from **March 28, 2012**, through **December 18, 2012**.

Respondent shall be given a credit of **$15,838.02** for TTD, and **$4,501.32** for PPD advance, for a total credit of **$20,339.34**.

Respondent is entitled to a credit of **$70,179.20** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner further temporary total disability benefits of **$414.61**/week for **21 2/7** weeks, commencing **December 19, 2012**, through **May 16, 2013**, as provided in Section 8(b) of the Act.

Respondent shall pay related medical bills in Petitioner's Exhibit 6 pursuant to sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for the sums it or its group insurance carrier paid toward these bills, and Respondent shall hold Petitioner harmless from any claims by the group insurance carrier, as provided in Section 8(j) of the Act.

Respondent shall provide necessary and related prospective medical care recommended by Dr. Nam, pursuant to sections 8(a) and 8.2 of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of 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

6/25/2013
Date

ICArbDec19(b)

JUN 25 2013

14IWCC0293

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner testified that he worked for Respondent for almost 14 years. At the time of the work accident, he had recently been promoted to a lead ramp serviceman, having worked as a ramp serviceman for 13 years prior to the promotion. His job duties included loading and unloading baggage, and fueling aircraft. Petitioner denied prior injuries, medical care or missing time from work because of problems with the left knee. Petitioner testified that on March 12, 2012, he injured his left knee while unloading luggage out of a plane. Petitioner explained that he was kneeling in the belly of the plane, turning and removing bags from a stack of luggage, when the bags collapsed on top of him. The falling bags struck him in the left knee and the groin. At first, Petitioner only noticed "a little pinching in the leg." When he finished unloading and stood up approximately 15 minutes later, he felt "a rush of pain" in the left leg and some pain in the groin. Petitioner notified his supervisor and finished the shift. Petitioner testified that at the end of the shift, the left knee felt sore and achy. The following day, the knee was very swollen and hurt a great deal. Petitioner went to work and completed an accident report. Respondent then sent him to Concentra Medical Centers (Concentra), the company clinic.

The medical records from Concentra show that on March 13, 2012, Petitioner described the accident consistently with his testimony. Dr. Israel diagnosed contusion of the left knee, sprain/strain of the medial collateral ligament, and inguinal strain. He prescribed physical therapy and released Petitioner to return to work on restricted duty. He also instructed Petitioner to see his primary care physician about a non-work related incidental finding. Petitioner followed up with Dr. Israel on March 16, March 23 and March 28, 2012, reporting no improvement with physical therapy. On March 28, 2012, Dr. Israel referred Petitioner to Dr. Mercier, an orthopedic surgeon.

Petitioner testified that on March 15, 2012, he saw his primary care physician, Dr. Zapata, who addressed his non-work related conditions. On March 28, 2012, Petitioner followed up with Dr. Zapata, mainly complaining of pain in the left knee and groin. Dr. Zapata ordered MRI studies of the left knee and left hip. An MRI of the left knee, performed March 29, 2012, showed: "osteochondral lesion versus a subchondral impaction fracture along the articular weightbearing surface of the medial femoral condyle," with findings suggestive of a developing unstable fragment; large bone contusions within the distal femur and proximal tibia; "[s]ignificant" tears of the medial meniscus and meniscal root with extrusion of the medial meniscus into the medial gutter; suspected tears of the meniscofemoral and meniscotibial ligaments; grade I to II medial collateral ligament sprain with prominent bursitis; and advanced underlying tricompartmental osteoarthritis with significant associated chondromalacia. An MRI of the left hip, performed April 3, 2012, was unremarkable. On April 5, 2012, Dr. Zapata referred Petitioner to Dr. Nam, an orthopedic surgeon.

The medical records from Dr. Nam show that on April 7, 2012, he examined Petitioner and reviewed the MRI studies. Dr. Nam opined that Petitioner's left knee and left hip conditions were causally connected to the work accident. He prescribed additional physical therapy and kept Petitioner off work. On May 11, 2012, Petitioner followed up with Dr. Nam, reporting improvement in the left hip, but not the left knee symptoms. Dr. Nam wanted to maximize conservative treatment, explaining that Petitioner might not get complete relief with arthroscopic

surgery because of his underlying osteoarthritis. Dr. Nam performed a cortisone injection into the knee and kept Petitioner off work. On May 25, 2012, Petitioner followed up with Dr. Nam, reporting only temporary relief after the cortisone injection. Dr. Nam discussed several treatment options, one of which was arthroscopic surgery with partial medial meniscectomy and microfracture of the medial femoral condyle. He cautioned that the surgery would not alleviate Petitioner's arthritic symptoms.

On June 23, 2012, Dr. Nam performed: a partial medial and lateral meniscectomy; chondroplasty of the medial femoral condyle, lateral tibial plateau and patellofemoral joint; and partial synovectomy. Intraoperatively, he noted chondral wear along the medial femoral condyle, but no fracture. Dr. Nam opted not to perform the microfracture procedure. Postoperatively, Petitioner underwent physical therapy, reporting significant persistent pain. On August 24, 2012, Dr. Nam performed another cortisone injection into the knee. On September 7, 2012, Dr. Nam performed X-rays, which showed a defined osteochondral lesion along the lower medial aspect of the medial femoral condyle, and patellofemoral arthritic changes. Dr. Nam ordered an MRI arthrogram and released Petitioner to return to work on sedentary duty. On October 1, 2012, Petitioner continued to complain of persistent pain. Dr. Nam reviewed the MRI arthrogram, noting that it showed diffuse cartilage loss along the medial femoral condyle and patellofemoral joint, with an area of probable osteonecrosis along the subchondral bone of the medial femoral condyle. Dr. Nam discussed several treatment options, including a knee replacement.

On December 17, 2012, Dr. D'Silva, an orthopedic surgeon, examined Petitioner at Respondent's request. Petitioner complained of persistent pain in the left knee, which significantly limited his activities of daily living. Dr. D'Silva reviewed the operative report and the MRI reports, and performed X-rays, which showed marked narrowing of the medial compartment and evidence of osteonecrosis with surrounding subchondral sclerosis of the medial femoral condyle. Dr. D'Silva attributed Petitioner's ongoing symptoms to osteonecrosis of the medial femoral condyle with tricompartmental arthritis. Regarding causal connection, Dr. D'Silva opined:

> "[The patient's] work-related injury is definitely unrelated to the osteonecrosis of his medial femoral condyle. The medical reason for this is that osteonecrosis of the knee is not caused by an acute injury. In regards to [the patient's] arthritis it is unrelated to the injury because it does not correspond to the mechanism of injury in that he was struck on the inner non weight-bearing aspect of his right [*sic*] knee not in the areas where his arthritis has been identified."

Dr. D'Silva declared Petitioner at maximum medical improvement, noting that Petitioner "would be limited to ground-level work or sitting job secondary to his avascular necrosis and underlying osteoarthritis."

On December 27, 2012, Petitioner followed up with Dr. Nam, complaining of persistent pain in the left knee. On January 28, 2013, Petitioner complained of severe pain and decided to proceed with a knee replacement.

On February 5, 2013, Dr. Nam performed a left total knee replacement surgery. Postoperatively, Petitioner began another course of physical therapy. On March 7, 2013, Petitioner reported to Dr. Nam that his pain was relatively well controlled. On April 4, 2013, Dr. Nam noted that Petitioner was making good progress, instructed him to continue physical therapy, and kept him off work.

On April 16, 2013, Dr. D'Silva issued an addendum report, agreeing that the knee replacement surgery was medically necessary. Dr. D'Silva's causal connection opinion remained unchanged.

Petitioner testified that he continues to treat with Dr. Nam. His left knee feels definitely improved, although he still has some pain. The groin pain has resolved. Petitioner further testified that after the accident, he worked on light duty until March 28, 2012. He has not returned to work since. Respondent paid temporary total disability benefits through December 18, 2012, and subsequently paid a permanent partial disability advance in the sum of $4,501.32.

Respondent introduced into evidence a certified Commission record of Petitioner's settlement in 2005 of a prior workers' compensation claim against Respondent for 27.5 percent loss of use of the right leg and 5 percent loss of use of the left leg. Respondent also introduced into evidence prior medical records relating to Petitioner's left knee. The medical records show that in November of 2004, Petitioner underwent surgery on the right knee. Postoperatively, Petitioner's treating physician, Dr. Treister, was concerned about the left knee "which has been symptomatic and is being made worse by being overstressed." However, during a follow-up visit in February of 2005, Petitioner voiced no complaints regarding either knee, and Dr. Treister released him to return to work full duty, instructing him to try to avoid kneeling. Petitioner testified that although Dr. Treister was concerned about the left knee, he did not prescribe any treatment or medication for the left knee condition. Petitioner denied any subsequent treatment for complaints related to the left knee until the work accident on March 12, 2012. Respondent then introduced into evidence an X-ray report dated February 27, 2012, showing that Petitioner underwent an X-ray of the left knee because of complaints of pain. The X-ray, which was ordered by Dr. Zapata, showed degenerative joint disease and osteoarthritis.

In support of the Arbitrator's decision regarding (F), is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

Petitioner contends that the work accident caused his previously mostly asymptomatic condition to become symptomatic, while Respondent contends that Petitioner failed to prove the work accident aggravated or exacerbated the underlying degenerative condition, necessitating the knee replacement surgery. Respondent further asserts that Petitioner is not credible because he denied prior problems with the left knee.

The Arbitrator notes that the medical records show Petitioner's left knee complaints in 2004 were fairly minor, compared to his complaints after the work accident on March 12, 2012. The 2005 settlement shows Petitioner settled the prior claim with respect to the left leg for 5 percent loss of use thereof. The medical records further show that Petitioner developed

degenerative joint disease and osteoarthritis of the left knee, which ultimately prompted him to consult Dr. Zapata, who ordered an X-ray. The X-ray was performed on February 27, 2012, two weeks before the work accident. However, Petitioner continued to work full duty, sustaining a work injury to the left knee on March 12, 2012, while unloading luggage out of a plane. The knee injury rendered Petitioner unable to perform his regular job duties because of persistent pain. Dr. Nam thought the pain was largely due to the underlying osteoarthritis, and had concerns that arthroscopic surgery might not sufficiently alleviate the pain. Dr. Nam decided to proceed with the arthroscopic surgery after the failure of conservative treatment. Postoperatively, Petitioner complained of significant persistent pain, and Dr. Nam performed a knee replacement surgery as a more lasting solution to Petitioner's pain complaints. Dr. D'Silva opined the need for the knee replacement surgery was due to the underlying osteoarthritis. Neither Dr. Nam nor Dr. D'Silva opined as to whether the work accident *accelerated* the need for the knee replacement surgery.

Based on the chain of events, the Arbitrator finds that the work accident accelerated the need for the knee replacement surgery because it caused a previously mildly to moderately symptomatic condition to become severely symptomatic, to the point where Petitioner could no longer perform his job duties, even after recovering from the arthroscopic surgery. See International Harvester v. Industrial Comm'n, 93 Ill. 2d 59, 63-64 (1982) ("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"); Twice Over Clean, Inc. v. Industrial Comm'n, 214 Ill. 2d 403 (2005) (The record must support a legitimate inference that the work activity was a causative factor in hastening the onset of the disabling condition); Engleking v. Ashland Chemical, 12 IWCC 1082 ("Based on petitioner's testimony, and the review of the available exhibits and with the standard enumerated by the Illinois Supreme Court, petitioner has clearly established by a preponderance of the evidence that the accident of May 18, 2007, and the related arthroscopic procedures are at least 'a contributing cause' in the worsening or acceleration of his preexisting osteoarthritic condition resulting in the need for bilateral knee replacement surgery").

The Arbitrator further finds that Petitioner has not yet reached maximum medical improvement.

In support of the Arbitrator's decision regarding (J), were the medical services that were provided to Petitioner reasonable and necessary, and has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

The Arbitrator awards related medical bills in Petitioner's Exhibit 6 pursuant to sections 8(a) and 8.2 of the Act, giving Respondent credit for the sums it or its group insurance carrier paid toward these bills. Respondent shall hold Petitioner harmless from any claims by the group insurance carrier, as provided in Section 8(j) of the Act.

The Arbitrator notes that Petitioner reserved the issue of medical bills not introduced into evidence at the arbitration hearing.

In support of the Arbitrator's decision regarding (K), is Petitioner entitled to any prospective medical care, the Arbitrator finds as follows:

The Arbitrator awards necessary and related prospective medical care recommended by Dr. Nam, pursuant to sections 8(a) and 8.2 of the Act.

In support of the Arbitrator's decision regarding (L), what temporary benefits are in dispute, the Arbitrator finds as follows:

The parties stipulate Petitioner was temporarily totally disabled from March 28, 2012, through December 18, 2012. The Arbitrator awards further temporary total disability benefits from December 19, 2012, through the date of the arbitration hearing on May 16, 2013.

In support of the Arbitrator's decision regarding (M), should penalties or fees be imposed upon Respondent, the Arbitrator finds as follows:

As noted, neither Dr. Nam nor Dr. D'Silva opined as to whether the work accident accelerated the need for the knee replacement surgery. Thus, a genuine dispute remained as to whether the knee replacement surgery is causally connected to the work accident. The Arbitrator further notes that the group insurance carrier paid for the knee replacement surgery, and Respondent advanced Petitioner permanency benefits in the sum of $4,501.32. The Arbitrator finds that penalties and attorney fees are not warranted under these circumstances.

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

Janice Davis,

Petitioner,

vs.

No. 11WC029372

14IWCC0294

Comfort Keepers,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, the necessity of medical treatment and prospective medical care, 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 found that Petitioner's condition of ill-being was causally related to the April 3, 2011, undisputed accident through November 21, 2011, the date of Dr. John Krause's initial section 12 examination report. The Commission disagrees.

On November 21, 2011, Dr. Krause performed a section 12 examination at Respondent's request. Dr. Krause assessed that Petitioner had a history of a right ankle contusion and symptom magnification, noting that there was no evidence of syndesmosis injury and he could not rule out a medial talar osteochondral lesion although Petitioner was asymptomatic. Dr. Krause also noted that he did not have Petitioner's May 4, 2011, right ankle MRI for review and he could not recommend future treatment with certainty until he reviewed the MRI. Dr. Krause recommended that Petitioner undergo a Functional Capacity Evaluation and a repeat MRI. On January 23, 2012, Dr. Krause reviewed Petitioner's May 4, 2011, MRI and generated an addendum to his initial section 12 report. Dr. Krause assessed that Petitioner had a history of a right ankle contusion, an asymptomatic medial talar osteochondral lesion and symptom magnification. Dr. Krause noted that Petitioner showed no evidence of syndesmosis injury, opined that Petitioner should not have surgery and reiterated his recommendation that Petitioner undergo a repeat MRI. On March 30, 2012, Petitioner underwent a repeat right ankle MRI. On August 13, 2012, Dr. Krause reviewed the 2012 MRI and opined that Petitioner required no additional medical treatment and should undergo a Functional Capacity Evaluation.

The Commission finds that Petitioner's right ankle condition was causally related to the undisputed accident through March 30, 2012, the date of Petitioner's repeat right ankle MRI. The Commission notes that Dr. Krause recommended Petitioner undergo a repeat MRI in his November 21, 2011, section 12 report and in his January 23, 2012, section 12 report addendum. After reviewing the repeat MRI, Dr. Krause opined that Petitioner required no additional medical treatment for her right ankle. The Commission finds that Petitioner underwent the March 30, 2012 MRI, only because Dr. Krause recommended it and Dr. Krause did not form a final opinion until he reviewed the 2012 MRI. The Commission awards Petitioner all medical treatment related to her right ankle and incurred on or before March 30, 2012. The Commission affirms the Arbitrator's credibility findings and denial of prospective medical care.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator filed on February 19, 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 related to her right ankle condition, incurred on or before March 30, 2012, under §8(a) and §8.2 of the Act and subject to the medical fee schedule.

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:
SM/db APR 2 3 2014
o-02/27/14
44

Stephen J. Mathis

David L. Moore

Mario Basurto

DAVIS, JANICE
Employee/Petitioner

Case# **11WC029372**

14IWCC0294

COMFORT KEEPERS
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:

0225 GOLDFINE & BOWLES PC
ATTN: WORK COMP DEPT
124 S W ADAMS ST SUITE 200
PEORIA, IL 61602

1256 HOLTKAMP LIESE ET AL
JOHN KAFOURY
217 N 10TH ST SUITE 400
ST LOUIS, MO 63101

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

- [ ] 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)

JANICE DAVIS,
Employee/Petitioner

v.

COMFORT KEEPERS,
Employer/Respondent

Case # 11 WC 29372

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 **Maureen H. Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **1/24/13**. 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. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] Is Petitioner entitled to any prospective medical care?
L. [ ] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [ ] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On the date of accident, **4/3/11**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$17,718.78**; the average weekly wage was **$340.75**.

On the date of accident, Petitioner was **39** years of age, ***married*** with **1** dependent child.

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

Respondent shall be given a credit of **$00.00** for TTD, **$00.00** for TPD, **$00.00** for maintenance, and **$880.00** for other benefits, for a total credit of **$880.00**.

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

ORDER

Respondent shall pay all reasonable and necessary medical services for petitioner's right ankle from 4/3/11 through 11/21/11, as provided in Section 8(a) and Section 8.2 of the Act. All treatment after 11/21/11 was not reasonable or necessary to cure or relieve the petitioner from the effects of the injury on 4/3/11.

Petitioner's claim for prospective medical treatment is denied.

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

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

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

Signature of Arbitrator

2/8/13
Date

ICArbDec19(b)

FEB 19 2013

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 39-year-old caregiver alleges she sustained an accidental injury that arose out of and in the course of her employment with respondent on 4/3/11. Petitioner's duties included taking care of elderly and handicapped people. She would help them get ready for bed, feed them, clothe them, bathe them, etc. Petitioner denied any problems with her right ankle before the injury on 4/3/11.

On 4/3/11 while working for respondent petitioner fell as she tried to jump over a bed to stop her client from falling. Petitioner testified that her client was standing with a walker on the opposite side of the bed and began to fall over the walker. Petitioner tried to jump over the bed in order to assist the client. As she attempted to jump over the bed she hit the bed rail with her right ankle and twisted it. Petitioner experienced immediate pain in her right ankle.

Petitioner sought treatment that day at the Methodist Medical Center of Illinois emergency room. The attending doctor was Dr. Diana Doll. Petitioner denied any history of falling. Petitioner reported that she injured herself about five hours ago. She gave a history of injuring herself lifting a patient onto bed at work. Petitioner complained of pain over the right ankle. She also described difficulty bearing weight due to the pain. Local soft tissue swelling was noted over the right ankle. The skin over the right lateral malleolus was intact without any lacerations or abrasions. X-rays of the right foot and ankle were taken. No radiographic evidence of an acute fracture was noted. Petitioner's primary diagnosis was a sprain/strain of the right lateral malleolus and difficulty walking. Petitioner was placed in an air cast. Petitioner was instructed to follow-up with an appointment at IWIRC.

After visiting the emergency room petitioner returned to work. She testified that she was doing pretty good but still had pain. Nonetheless she continued to work. As petitioner continued to work she noticed that it got harder and harder for her to perform the duties of her job and for respondent to find alternate work for her. As a result she quit her job with respondent and applied for Social Security disability. Petitioner was denied Social Security disability.

On 5/3/11 petitioner presented to IWRC for an initial evaluation of a right ankle contusion. Petitioner stated that the injury occurred on 4/3/11 at 7:35 PM. Petitioner reported that she hit the lateral border of her right ankle on the bed rail after jumping over the bed to keep a resident from falling. She rated her pain at a 6/10 on a scale of 10. She complained of intermittent numbness and tingling in the foot and ankle and all five toes, swelling, tenderness, and sharp pains. She stated that it felt like her foot was starting to turn inward. She stated that she had been taking over-the-counter ibuprofen and icing her ankle for symptom relief. Petitioner reported that she did not recall twisting her right ankle. An examination

revealed palpable tenderness along the distal fibula and over the lateral malleolus, mildly limited dorsiflexion, audible pop over the lateral ankle at end dorsiflexion, lateral ankle pain with ankle dorsiflexion and inversion, and an altered gait favoring the right lower extremity. Petitioner was assessed with a right ankle contusion with no improvement since the injury. An MRI of the right ankle was ordered. Petitioner was instructed to continue wearing the air cast and not take more than two pills of ibuprofen every eight hours for pain. She was released to resume her full duty job without restrictions.

On 5/4/11 petitioner underwent an MRI of the right ankle. The impression was osteochondral injury of the medial talar dome without unstable fragment; low-grade deltoid ligament sprain; minimal posterior tibialis and flexor digitorum longus tenosynovitis; small posterior subtalar joint effusion; and low-grade chronic dorsal talonavicular ligament strain.

On 5/6/11 petitioner returned to IWIRC for evaluation of her right ankle and to review the results of the MRI. Petitioner noted no improvement. She reported that she was taking ibuprofen every 6 to 8 hours. Petitioner complained of continual lateral ankle pain, most notable with weight-bearing. She denied any prior injury to her ankle, but noted a fractured toe several years ago. Her examination remained unchanged. The results of the MRI revealed osteochondral injury at the medial talar dome, without unstable fragment; and mild sprain to the deltoid ligament. Petitioner was assessed with a right ankle contusion – osteochondral injury medial talar dome, and sprain to the deltoid ligament of the right ankle. Petitioner was referred for orthopedic consultation regarding the osteochondral injury. Use of her air cast was discontinued. She was provided with a lace up ankle brace that she was to wear when up and about. She was continued on ibuprofen. She was also directed to continue her regular work duties. Petitioner was directed to return to IWIRC after her orthopedic consultation.

On 5/17/11 petitioner presented to Dr. D'Souza. Petitioner gave a history of injuring her right ankle on 4/3/11 while she is working. Petitioner reported that the client she was working with started to fall after pulling back the curtain. She stated that she jumped over the bed to grab the client and hit her right ankle and twisted it at the same time. She gave a history of her treatment to date. Petitioner reported no improvement in her pain level since the date of injury. She reported her pain as a 5/10. She noted that it was well localized inconsistently along the anterolateral aspect of her ankle. She also reported some pain radiating more proximally up the ankle. She denied any numbness or tingling. She reported previous injuries in the past to her right ankle, and also reported toe fractures some years ago. Petitioner reported that pressure on the right ankle makes it worse and creates a radiating pain anterolaterally. Petitioner reported some improvement when her foot is elevated or she has not been walking it. An examination

revealed exquisite tenderness over the anterolateral joint line, as well as over the distal tib-fib joint. This pain was also reproduced by abduction and external rotation. No tenderness was noted medially. No effusion or crepitus with range of motion was noted. Drawer testing was a Grade 1. Her motor exam was intact. An x-ray revealed extreme increase in the distal tib-fib space. Dr. D'Souza was concerned that petitioner might have a chronic syndesmotic injury. Dr. D' Souza noted that this did not really show up very well on the MRI but felt that based on her level of symptomatology and history on physical exam, an examination under anesthesia would be warranted. If instability was noted at the distal tib-fib joint, he recommended an ORIF with plates and screws. He further indicated that he would undertake an ankle arthroscopy at the same time to evaluate the chondral surfaces and address the medial OCD. Petitioner was released to full duty work. On 5/26 /11 petitioner notified Dr. D'Souza that the recommended surgery had not been authorized by respondent.

On 5/20/11 petitioner returned to IWIRC for an evaluation. She reported that her condition was unchanged. She indicated that she had been seen by Dr. D'Souza and was anticipating surgery on 5/27/11. She was also wearing a cam walking boot prescribed by Dr. D'Souza. Petitioner was examined and her assessment remained the same. Petitioner was instructed to continue wearing the cam boot and follow-up with Dr. D'Souza as scheduled. She was continued on full duty work.

On 6/3/11 and 7/1/11 petitioner returned to IWIRC. Petitioner stated that she was waiting for workers' compensation to approve her surgery. She was still wearing a walking air cast. She noted that her condition remained unchanged. Petitioner was examined and the plan of care remained unchanged.

On 6/14/11 petitioner returned to Dr. D'Souza. Petitioner reported that she was still having significant pain in her ankle. She stated that she was wearing a cast boot, but was having a lot of difficulty weight-bearing even with the boot. An examination revealed no effusion and a profound tenderness over the lateral talus, the lateral joint line, as well as over the distal tib-fib joint and pain with external rotation adduction. Dr. D'Souza informed petitioner that they were in a bit of a holding pattern based on the lack of surgical authorization. Dr. D'Souza was of the opinion that petitioner's current condition of pathology was attributable to her injury in April 2011. He instructed her to follow-up once the surgery had been approved. He again recommended an ankle arthroscopy along with an open reduction internal fixation of the syndesmosis if the x-ray showed demonstrable instability at the tib-fib joint.

On 8/24/11 and 8/31/11 petitioner was re-examined and was returned to work with restrictions. These restrictions included no prolonged walking over three minutes without a three minute rest.

On 11/21/11 the petitioner underwent a section 12 examination performed by Dr. John Krause at the request of the respondent. Petitioner's chief complaint was right ankle pain. She gave a history of working as a caretaker for Comfort Keepers. She stated that she was working at a retirement center on 4/3/11 when she was helping a patient get up from bed. As she saw the patient begin to fall she jumped across the bed to catch her. In the process, she hit her right ankle against the rail and twisted her ankle. She stated that she was unable to keep up that day and was seen at Methodist Medical Center emergency room. Thereafter she followed up with IWIRC and Dr. D'Souza. Petitioner noted difficulty weight-bearing in her short boot. She believed her symptoms were worsening. Dr. Krause performed a record review and physical examination. His assessment was history of right ankle contusion; cannot rule out medial talar osteochondral lesion albeit symptomatic; no evidence of syndesmosis injury either clinically or radiographically; and symptom magnification. Dr. Krause noted that petitioner had multiple red flags regarding any type of aggressive treatment. Dr. Krause did not believe that any type of surgical treatment was warranted at that time. Dr. Krause did not have the MRI images available for review. Given the fact that it was over six months old he was of the opinion that she would need a new MRI. Dr. Krause found no evidence of syndesmosis instability on examination. He was uncertain how this diagnosis was made. He was of the opinion that he would definitely not recommend a syndesmosis reconstruction. He could not explain why the petitioner could not bear weight or was unwilling to bear weight. Dr. Krause was of the opinion that after reviewing the MRI, if it is unremarkable, he would recommend a functional capacity evaluation. Based on his examination findings and the x-ray he took he saw no reason that petitioner could not be working at least on light duty.

On 1/23/12 Dr. Krause drafted an addendum report following receipt of the MRI images dated 5/4/11. He reviewed all the images and was of the opinion that petitioner had changes in the medial talar dome consistent with an osteochondral lesion, and the syndesmosis was normal. His assessment was history of right ankle contusion; asymptomatic medial talar osteochondral lesion of unknown age; no evidence of syndesmosis injury; and, symptom magnification. Dr. Krause was of the opinion that osteochondral lesions can cause significant symptoms in some patients. However, when he examined the petitioner she did not appear to have symptoms related to her medial talar dome. Dr. Krause reiterated that petitioner had multiple red flags when he examined her including an inability to bear weight. He was of the opinion that the osteochondral lesion that was seen on the MRI would not lead a patient to be unable to bear weight, but may cause some pain with weight-bearing and with activities. Dr. Krause again recommended a repeat MRI and a functional capacity evaluation. Dr. Krause saw no evidence of syndesmosis injury on the MRI or when he examined the petitioner. As such, he did not recommend a

major syndesmosis reconstruction. He was also of the opinion that he would not rush into a surgical procedure based on the petitioner's symptom magnification. Dr. Krause reiterated his belief that petitioner could be working at least a light duty. He noted that she may have difficulty with standing for eight hours per day and should be able to do standing work with intermittent standing.

On 1/24/12 petitioner followed up with Dr. D'Souza. She reported that she had undergone an IME and that the doctor was of the opinion that no surgery was indicated. She reported that she continues to have pretty severe pain. Petitioner was still wearing her cam boot. An examination revealed continued pain over the lateral joint line. A grade 2 drawer was noted with both plantar flexion and dorsiflexion. Her external rotation adduction test was negative with no tenderness proximally along the tib-fib joint. Some tenderness and swelling over the peroneals with reproducible pain by inversion was noted. A new MRI was recommended to evaluate the lateral chondral surfaces, the lateral ligament complex, and the peroneal tendons. Dr. D'Souza was of the opinion that it was reasonable for petitioner to maintain sedentary work restrictions.

On 3/30/12 petitioner underwent a repeat right ankle MRI. The conclusions were small, low-grade capital OCD involving the medial aspect of the talar dome with prominent surrounding marrow edema.

On 4/26/12 petitioner returned to Dr. D'Souza. It was noted that the repeat MRI of the right ankle confirmed an osteochondral defect medially and attenuation of lateral ligaments. The peroneal tendons appeared normal. An examination demonstrated a positive drawer which reproduced pain primarily along the lateral side. She also had a trace amount of tenderness medially. Dr. D'Souza noted that petitioner continued to smoke on a daily basis. He discussed with her how this affects her pathology and prognosis. He recommended an injection with cortisone and lidocaine, and instructed her to stop smoking. He continued her on sedentary duty, and dispensed and ASO brace to help with some of her instability and allow her to come out of her cast boot which she had been utilizing pretty often. On 6/26/12 petitioner followed up with Dr. D'Souza. She reported that her condition was unchanged and that the injection helped for about two months. Dr. D'Souza recommended an arthroscopic debridement with potential retrograde drilling and cartilage transplantation if necessary, and a lateral ligament reconstruction. Petitioner reported that she had stopped smoking.

On 9/7/12 the evidence deposition of Dr. Krause was taken on behalf of the respondent. Dr. Krause is an orthopedic surgeon that specializes in lower extremities, knees, legs, feet, and ankles. Dr. Krause was of the opinion that the ankle contusion he diagnosed was causally related to the injury petitioner sustained, but had resolved by the time he had examined her. With respect to the bone bruise,

or the medial talar osteochondral lesion, he was of the opinion that this too was related to the injury, but since it was asymptomatic he did not recommend any further treatment for it. Dr. Krause was of the opinion that the symptoms petitioner was having when he examined her were not causally related to the injury she suffered on 4/3/11, or the abnormality he saw on the MRI.

On cross examination Dr. Krause indicated that the only reason he believed petitioner was not capable of working full duty the first time he saw her was that he did not have all the information with regard to her diagnostic tests. He indicated that had he had that information the first time he examined her he would have found her capable of working full duty. Dr. Krause was of the opinion that petitioner's osteochondral lesion was asymptomatic because she did not have pain when he pushed on that area, which was the inside part of the ankle at the ankle joint. He noted that the syndesmosis is on the outside part of the ankle, just above the ankle joint. Dr. Krause was of the opinion that Dr. D'Souza's findings were also consistent with an osteochondral lesion. Dr. Krause was of the opinion that petitioner's symptom magnification is what was causing her symptoms. He was of the opinion that her magnified symptoms were not localized to one specific area, she had normal MRIs on the lateral side of the ankle, and she had a negative stress view. For these reasons Dr. Krause with of the opinion that petitioner did not need any surgery. Dr. Krause noted that upon review of the MRIs he did not notice any significant pathology in the ligaments that warranted treatment. Dr. Krause was of the opinion that since petitioner had no symptoms related to the medial talar osteochondral lesion that surgery was not indicated.

On 8/13/12 Dr. Krause drafted a second addendum report. This report was based on a receipt of a new MRI dated 3/30/12. He was of the opinion that the images showed what appeared to be persistent edema in her medial talus. He saw no other distinct bony injury, but noted that it was a low quality MRI. His assessment was history of right ankle contusion; history of symptom magnification; right medial talar osteochondral lesion versus bone bruise, asymptomatic; no radiographic or objective evidence of syndesmosis pathology; and symptom magnification. He stated that the new MRI did not change his opinion that the petitioner should not have surgical reconstruction. He noted that she did not have pain localized to her medial talar osteochondral lesion, and had no objective findings of syndesmosis instability. He was of the opinion that if there is a suggestion that petitioner needs a syndesmosis reconstruction he would try to demonstrate that objectively with either a CT scan or MRI showing both ankles and showing the abnormality. He was of the opinion that to do a syndesmosis reconstruction for a subjective finding has a very guarded prognosis especially in someone with symptom magnification. Dr.

Krause was of the opinion that petitioner needed no further treatment other than a functional capacity evaluation, and that she could return to full duty work without restrictions.

On 12/6/12 the evidence deposition of Dr. D'Souza, an orthopedic surgeon that specializes in foot and ankle reconstruction, was taken on behalf of the respondent. Dr. D'Souza wanted to perform an examination under anesthesia to ascertain whether the tibia and fibula were moving apart from each other. If they where this would imply the ligaments to connect these two bones have been either stretched beyond normal or totally torn. If the ligaments were damaged Dr. D'Souza wanted to perform a surgery to stabilize the bones and get the ligaments to heal properly. When asked why he could not perform this examination during his physical examination he indicated that it would hurt too much to do it. Dr. D'Souza testified that the only change from the first time he saw her and the last time he saw her on 1/24/12 was that the instability had increased a little bit. Dr. D'Souza was of the opinion that the instability noted on 1/24/12 was with respect to a different set of ligaments. It was not directly related to the syndesmotic ligaments. He further noted that the other improvement he saw on 1/24/12 was that petitioner was not having pain on the provocative tests anymore, and the tenderness that she had six month earlier was also improving. Dr. D'Souza ordered an MRI that showed an osteochondral defect. He could not give an opinion on whether or not this defect was causally related to the accident. He was of the opinion that based on the fact that there was bone bruising or edema in the region where there was a chondral defect implies that there is a new injury. Dr. D'Souza noted that there is debate in the literature as to whether you can ever tell if one of those chondral injuries is something acute or something chronic. He was of the opinion that typically it is related to a causal event like somebody getting hurt and still having some bruising a few weeks later.

On 4/26/12 Dr. D'Souza noted that petitioner had had a stroke and therefore he wasn't rushing in to do surgery on her. He also noted that she was still smoking, and discussed with her how smoking affects treatment recommendations. At that time Dr. D'Souza was not recommending surgery. On 6/26/12 petitioner told Dr. D'Souza that she had stopped smoking and felt better after the injection, but was still complaining of instability in the ankle. Based on these complaints and the fact that she had failed to improve with the brace and injections, Dr. D'Souza was recommending surgery that would address the cartilage defect, any instability in the ankle joint, and any instability in the lateral ligaments at the ankle joint itself.

Dr. D'Souza opined that the osteochondral defect was causally related to the accident given that it was a new injury and there was bruising there. He further opined that the syndesmotic instability in the

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tibia fibular area and the lateral ligament instability are causally related to the accident that occurred on 4/3/11. Dr. D'Souza opined that surgery for all these three conditions would be causally related to the accident. Dr. D'Souza was of the opinion that if the petitioner did not undergo the recommended surgeries she would be at maximum medical improvement. On the other hand if she underwent the recommended surgery petitioner would have a 75% chance of getting better. Dr. D'Souza was of the opinion that petitioner's physical complaints were consistent with his diagnosis.

On cross examination Dr. D'Souza noted that he did not know which side of petitioner's ankle she hit at the time of the injury. He was of the opinion that osteochondral defects can occur from a myriad of mechanisms, and a direct blow is one of them. He further stated that the most common cause for defect to occur is a twisting injury that causes the bones to impact each other in a way that they normally should not. Dr. D'Souza opined that if petitioner did not have the instability and pain on the lateral side of her foot, and the osteochondral lesion was her only problem, he would not initially recommend surgical intervention to fix the problem. Dr. D'Souza admitted that petitioner was asymptomatic on the medial aspect of her ankle originally, and it wasn't until eight months later that he noted that petitioner had some mild tenderness in that area. He was of the opinion that these findings correlate to the natural history of osteochondral defects. Dr. D'Souza was of the opinion that petitioner was not very symptomatic on the inside of her ankle when he first saw her. He noted that the majority of her symptoms were on the lateral side of the ankle joint. He stated that it was not unusual that a sprain to the deltoid ligament be asymptomatic at first and then start to hurt a year later. Dr. D'Souza was of the opinion that all the findings as seen on the MRI were not related to the anterior ligaments or the syndesmosis. He was further of the opinion that these types of injuries may not be seen on an MRI done within a couple weeks of the injury. However if a repeat MRI is done six months or year later you will see the ligaments just sort of start to melt away. Dr. D'Souza could not opine that petitioner has a syndesmotic injury without performing an examination under anesthesia. He was of the opinion that the MRI and x-rays were inconclusive as to whether or not petitioner had a syndesmotic injury. However, based his physical findings and her subjective complaints, Dr. D'Souza was of the opinion that petitioner may have a syndesmotic injury. He was further of the opinion that although patients tend to over magnify their symptoms they cannot fake instability.

Respondent offered into evidence medical records from Methodist Medical Center of Illinois dated 6/26/10 where petitioner presented with toe pain. Petitioner stated that she dropped a board on her right foot last night and her three middle toes were bothering her. She complained of pain affecting the right

foot. She described it as throbbing in nature and localized. No radiation of pain was noted. She was examined and diagnosed with a contusion of the dorsum of the toes of the right foot. No other prior medical records related to the right ankle were offered into evidence.

Petitioner testified that her ankle is currently very unstable. She testified to problems with bearing weight on her right foot. Despite the different braces prescribed by Dr. D'Souza petitioner testified that she still limps and has pain. She further testified that she has trouble stepping down and bearing weight on her right foot. She stated that when she does this she has severe pain. Petitioner testified that she would like to undergo the surgery recommended by Dr. D'Souza, but public aid has indicated that they would not pay for the surgery because it was too expensive.

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

It is unrebutted that petitioner sustained an accidental injury that arose out of and in the course of her employment on 4/3/11. However, the issue as to whether or not her current condition of ill-being is causally related to that injury, and what her actually condition is, are in dispute.

Between 1/6/08 and 4/3/11 petitioner visited the emergency room of Methodist Medical Center 34 times. Some of these visits did involve an injury to petitioner's right foot. However, none of them resulted in any extensive treatment or any restrictions.

The mechanism of injury on 4/3/11 is a bit unclear. In some records petitioner noted that she twisted her ankle, and in others she denied any twisting injury. What is not in dispute is that petitioner had soft tissue swelling over the right ankle, without any lacerations or abrasions. X-rays showed no fracture. She was diagnosed with a sprain/strain of the right lateral malleolus and difficulty walking.

At her initial visit at IWIRC petitioner reported that she did not recall twisting her right ankle. She was assessed with a right ankle contusion and no improvement since the injury. The first MRI showed osteochondral injury of the medial talar dome without unstable fragment; low-grade deltoid ligament sprain; minimal posterior tibialis and flexor digitorum longus tenosynovitis; small posterior subtalar joint effusion; and low grade chronic dorsal talonavicular ligament strain.

When petitioner presented to Dr. D'Souza she reported that she twisted her ankle when she injured it. This was inconsistent with what she reported at IWIRC. She complained that the pain was localized inconsistently along the anterolateral aspect of the ankle. She denied numbness and tingling. She still had pain when she put pressure on the right ankle. Although Dr. D'Souza was concerned that petitioner might have a chronic syndesmotic injury, he noted that it did not show up on the MRI. Based on her level

of symptomatology, history and physical exam, Dr. D'Souza wanted an examination under anesthesia, and then surgical intervention if warranted. If he found instability at the distal tib-fib joint, he wanted to do an ORIF with plates and screws. He also wanted to undertake an ankle arthroscopy at the same time to evaluate the chondral surfaces and address the medial OCD.

On 11/21/11 when petitioner presented to Dr. Krause she gave a history of hitting her ankle against the rail and twisting her ankle. Dr. Krause could not rule out a medial talar ostechondral lesion that was asymptomatic, but did not see any evidence of a syndesmosis injury or instability either clinically or radiographically. For this reason he definitely was against any syndemosis reconstruction. He could not explain why the petitioner could not bear weight or was unwilling to bear weight, but did note symptom magnification. When Dr. Krause had the opportunity to review the actual MRI images he was of the opinion that petitioner had changes in the medial talar dome consistent with an osteochondral lesion, but the syndesmosis was normal. Given the fact that the medial talar osteochondral lesion was asymptomatic, and the syndesmosis was normal, and petitioner demonstrated symptom magnification, Dr. Krause was of the opinion that no surgical intervention was necessary.

Petitioner returned to Dr. D'Souza on 1/24/12 and was still complaining of pain over the lateral joint line. An examination revealed that her external rotation adduction test was negative with no tenderness proximally along the tib-fib joint. A new MRI of the right ankle was recommended. The conclusions were small, low grade capital OCD involving the medial aspect of the talar dome with prominent surrounding marrow edema. Dr. D'Souza believed that these findings confirmed an osteochondral defect medially and attenuation of lateral ligaments. On 6/26/12 Dr. D'Souza was recommending an arthroscopic debridement with potential retrograde drilling and cartilage transplantation if necessary, and a lateral ligament reconstruction. On 12/6/12 Dr. D'Souza opined that the instability on 1/24/12 was to a different set of ligaments.

At his deposition Dr. Krause was of the opinion that petitioner's ankle contusion had resolved and was causally related to the injury. He was further of the opinion that petitioner's bone bruise, or medial talar osteochondral lesion, was related to the injury, but since it was asymptomatic he did not recommend any further treatment for it. Dr. Krause did not believe that petitioner's current symptoms were causally related to the accident on 4/3/11, or the abnormality seen on the MRI. Dr. Krause noted that when he pushed on the area where the osteochondral lesion was located the petitioner did not have any pain. Dr. Krause was of the opinion that petitioner symptom magnification is what was causing her symptoms, and they were not related to one specific area. Dr. Krause noted that after reviewing the MRIs he did not

notice any significant pathology in the ligaments that warranted treatment. Dr. Krause was of the opinion that if there was any suggestion that petitioner needed a syndesmosis reconstruction he would try to demonstrate that objectively with either a CT scan or MRI showing both ankles and showing the abnormality.

Alternatively, Dr. D'Souza wanted to perform an examination under anesthesia to ascertain whether the tibia and fibula were moving apart from each other. He stated that if they were this would imply that the ligaments to connect these two bones had been either stretched beyond normal, or totally torn. If he found the ligaments were damaged he wanted to perform surgery to stabilize the bones and get the ligaments to heal properly. When asked why he could not perform this during his physical examination, Dr. D'Souza indicated that it would hurt too much to do it. Dr. D'Souza was of the opinion that the instability he noted on 1/24/12 was with respect to a different set of ligaments, and not related to the syndesmotic ligaments. Dr. D'Souza noted that other improvement he saw on 1/24/12 was that the petitioner was not having pain on the provocative tests anymore, and the tenderness that she had had six month earlier was also improving. Dr. D'Souza could not give an opinion on whether or not the osteochondral defect was causally related to the accident.

On 6/26/12 Dr. D'Souza was recommending surgery that would address the cartilage defect, any instability in the ankle joint, and any instability in the lateral ligaments at the ankle joint itself. On this date Dr. D'Souza opined that the osteochondral defect was causally related to the accident given that it was a new injury and there was a bruising there. He further opined that the syndesmotic instability in the tibia fibular area and the lateral ligament instability are causally related to the accident that occurred on 4/3/11, and surgery for these conditions would be causally related to the accident.

During his deposition Dr. D'Souza admitted that he did not know which side of the petitioner's ankle she hit at the time of the injury. He also admitted that osteochondral defects can occur from the myriad of mechanisms, and a direct blow is one of them. He further stated that the most common cause is a twisting injury. He was of the opinion that if petitioner did not have instability and the pain on the lateral side of her foot, and the osteochondral lesion was her only problem, he would not recommend surgical intervention to fix a problem. Dr. D'Souza admitted that the petitioner was originally asymptomatic on the medial aspect of her right ankle, and it wasn't until eight months later that she reported any mild tenderness in that area. Dr. D'Souza believed that these findings correlate to the natural history of osteochondral defects. He was of the opinion that all of the findings on the MRI were not related to the anterior ligaments or the syndesmosis. He stated that these types of injuries may not be seen

on an MRI done within a couple weeks of the injury, however if a repeat MRIs done six months or year later you see the ligaments disorder start to melt away. He also admitted that he could not opine that petitioner had a syndesmotic injury without performing an examination under anesthesia since the MRIs and x-rays were inconclusive.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that her current condition as it relates to her right foot is causally related to the injury she sustained on 4/3/11. The arbitrator finds it significant that the mechanism of petitioner's injury is inconsistent in the records as to whether or not she actually twisted her ankle when she had the injury. The arbitrator also notes inconsistencies between the diagnostic findings and petitioner subjective complaints. Additionally the arbitrator finds the opinions of Dr. D'Souza appear to be based primarily on assumptions that are not supported by the credible medical evidence. Dr. D'Souza admitted that there was no objective evidence to support a syndesmotic injury, and had inconsistent opinions on the cause of the osteochondral defect. On 1/24/12 Dr. D'Souza could not give an opinion on whether or not the osteochondral defect was causally related to the accident, and then on 6/26/12 was of the opinion that the osteochondral defect was causally related to the accident given that if was a new injury and there was bruising there. However, the arbitrator notes that Dr. D'Souza admitted that he did not know which side of the petitioner's ankle she hit at the time of the injury. Although he was of the opinion that the most common cause is a twisting injury, the evidence is inconsistent as to whether or not petitioner twisted her ankle at the time of the injury.

Alternatively, Dr. Krause was of the opinion that petitioner sustained an ankle contusion that was causally related to the injury, but had resolved. He was also of the opinion that petitioner's medial talar osteochondral lesion was also related to the injury, but noted that it was asymptomatic and did not require any further treatment. He noted that despite petitioner's subjective complaints, when he pushed on the area where the osteochondral lesion was located the petitioner had no pain.

Lastly, the arbitrator finds Dr. Krause's opinion that petitioner had a problem with symptom magnification is supported by her prior medical records. After initially denying it, petitioner admitted that it was possible that she had presented to the emergency room 34 times in a three year period preceding the injury.

The arbitrator finds the opinions of Dr. Krause more credible in that they are more consistent with the credible medical evidence than those of Dr. D'Souza. The arbitrator finds the opinions and

recommendations of Dr. D'Souza are based on petitioner's subjective complaints, which are inconsistent with the objective findings, and possibly related to her symptom magnification.

The arbitrator adopts the opinions of Dr. Krause and finds that as a result of the injury on 4/3/11 petitioner sustained a sprain/strain of the right lateral malleolus that had resolved, and a medial talar osteochondral lesion, that was asymptomatic.

J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

Having adopted the opinions of Dr. Krause with respect to the issue of causal connection, the arbitrator finds all medical treatment after 11/21/11, the date Dr. Krause examined petitioner and offered his opinions, was not reasonable and necessary to cure or relieve petitioner from the effects of the injury on 4/3/11. The arbitrator finds the subjective symptoms petitioner has, and continues to experience are inconsistent with the diagnostic tests that have been performed. The arbitrator finds the petitioner has a history of symptom magnification based on her 34 visits to the emergency room in the three year period preceding the accident.

Based on the above as well as the credible evidence the arbitrator finds the respondent shall pay all reasonable and necessary medical expenses petitioner incurred for her right ankle from 4/3/11 through 11/21/11 pursuant to section 8(a) and 8.2 of the Act. The arbitrator denies all medical treatment after 11/21/11 finding it was not reasonable or necessary to cure or relieve the petitioner from the effects of the injury on 4/3/11.

K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

Throughout the medical evidence Dr. D'Souza has outlined various surgeries that he might perform on petitioner while performing an examination under anesthesia. The arbitrator finds these surgeries are not based on any credible objective evidence and therefore are not reasonable or necessary to cure or relieve petitioner from the effects of the injury she sustained on 4/3/11. The arbitrator finds Dr. D'Souza's decision to perform surgery is based more on petitioner's subjective complaints than on the credible objective evidence, and given petitioner's history of symptom magnification the arbitrator finds this troubling. The arbitrator also notes that Dr. D'Souza could not opine that petitioner has a syndesmotic injury, and stated that if the osteochondral lesion was petitioner's only problem he would not recommend surgical intervention to fix the problem. Given that there is no credible diagnostic evidence to support a finding that petitioner has a syndesmotic injury the arbitrator finds the surgery recommended by Dr. D'Souza is not reasonable or necessary.

Based on the above as well as the credible evidence the petitioner's claim for prospective medical treatment in the form of an examination under anesthesia with the possibility of unconfirmed additional surgical procedures by Dr. D'Souza is denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Illinois Workers' Compensation Commission,
Insurance Compliance Division,
Petitioner,

vs. No. 10 INC 00592

14IWCC0295

David L. Greer, Individually & President, and JW Berry, Individually & Secretary, d/b/a/ Big D Enterprises, Inc., d/b/a Desperado's Lounge,
Respondents.

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the Illinois Workers' Compensation Commission, Insurance Compliance Division, brings this action, by and through the office of the Illinois Attorney General, against the above-captioned Respondents, alleging violation of Section 4(a) of the Illinois Workers' Compensation Act. Proper and timely notice was provided to Respondents David Greer and JW Berry, and a hearing was held before Commissioner Donohoo in Mt. Vernon, Illinois on November 14, 2013. Respondents did not appear, and the hearing proceeded *ex parte*.

Petitioner alleged that Respondents knowingly and willfully lacked workers' compensation insurance coverage from October 3, 2007, through April 5, 2011, which is 1,280 days. Petitioner sought a fine of $500.00 per day or $640,000.00. Respondents' last annual premium for workers' compensation insurance was $1,018.00, which equates to $2.79 per day. The daily rate times 1,280 days equals $3,571.20, so the total fine for non-compliance sought by Petitioner was $643,571.20. The Injured Workers' Benefit Fund paid out $4,803.73 to Respondent's injured worker, DeLynn Willett, pursuant to the Commission's July 27, 2012 Decision, which reversed Arbitrator Nalefski's denial of the claim.

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After considering the entire record, the Commission finds that Respondent knowingly and willfully violated Section 4(d) of the Act and Section 7100.100 of the Rules Governing Practice before the Illinois Workers' Compensation Commission for a period of 299 days, from June 12, 2010, the date of Ms. Willett's accident, through April 6, 2011, the date Respondent obtained workers' compensation insurance coverage. The Commission finds that, as a result of Respondent's non-compliance, he shall be held liable and pay the following: (1) a fine of $100.00 per day for every day of non-compliance or $29,900.00; (2) the amount of premium saved by Respondent's non-compliance, $2.79 per day for 299 days, or $834.21; (3) plus the amount paid out to Ms. Willett by the Injured Workers' Benefit Fund, $4,803.73, for a total fine of $35,537.94, pursuant to Section 4(d) of the Act and Section 7100.100(b)(1)(2) of the Rules for the reasons set forth below:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner presented Joseph Stumph, an investigator for the Insurance Compliance Division of the Illinois Workers' Compensation Commission, as a witness at hearing before Commissioner Donohoo on November 14, 2013.

2. Investigator Stumph testified that he checked Big D Enterprises in INCI and other relevant databases and found no current insurance. An inquiry in the POC database showed no coverage from October 3, 2007 to April 6, 2011.

3. On February 28, 2011, Petitioner issued a Notice of Non-Compliance, demanding proof of Workers' Compensation insurance. A Notice of Insurance Compliance Hearing followed on March 28, 2011, setting a hearing date for November 14, 2013. PX2. Respondent Greer phoned Investigator Stumph and advised him that he had purchased the business in September 2006; he denied having any employees and stated that Ms. Willett was drunk, engaged in horseplay, and was not on duty when she fell behind the bar on June 12, 2010, breaking her right wrist in two places.

4. Respondents subsequently obtained insurance, effective April 6, 2011 through April 6, 2012.

5. On July 14, 2011, DeLynn Willett and Respondents tried her injury case before Arbitrator Nalefski in Herrin, Illinois. PX4. Arbitrator Nalefski issued his decision on September 6, 2011, denying Ms. Willett's claim for failure to prove her employee status at the time of accident. The Arbitrator found that although Ms. Willett was employed as manager/bartender of Respondent, she failed to prove that she was on duty at the time of her injury or that she was not engaged in horseplay, so that her injury did not arise out of her employment as bartender.

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6. On September 27, 2011, Respondent Greer agreed to a $6,000.00 fine for non-compliance with Section 4(d) of the Act, payable at $500.00 per month for one year, and to accept liability for Petitioner's workers' compensation benefits related to her wrist injury. PX3. Respondent made payments to the State of $500.00 on November 1 and November 25, 2011, but failed to make any other payments.

7. Ms. Willett appealed the denial of her injury claim to the Commission, which issued its Decision on July 27, 2012, reversing Arbitrator Nalefski's denial. The Commission found that, although Ms. Willett was not scheduled to work the night of June 12, 2010, she was called in to assist the bartender. She slipped on water underneath the sink and fell onto her right hand, resulting in a compound fracture. Respondents argued that Ms. Willett was intoxicated and engaged in horseplay at the time of her injury. The Commission found there was no reliable evidence that Petitioner was drinking or involved in horseplay and awarded her medical expenses and 7.5% loss of use of the right hand. PX5. Neither party appealed the Commission decision.

8. Investigator Stumph testified that Respondent Greer closed the business in February 2012; its workers' compensation insurance was cancelled on February 18, 2012 for nonpayment of premiums. PX6.

9. On October 23, 2013, Investigator Stumph received a phone call from Respondent Greer, who stated he had received notice of the review hearing, but was very ill, almost blind, and could not attend. Stumph advised Respondent Greer that the hearing would proceed on November 14, 2013, whether or not he was present. Neither Respondent Greer nor Respondent Berry appeared at hearing before Commissioner Donohoo.

Section 4 of the Act, providing for penalties and fines for non-compliance, was codified July 1, 2005. The Commission finds that Respondents are subject to the Act as employers. Section 4 of the Act requires all employers within the purview of the Act to provide workers' compensation insurance for the protection of their employees. The Commission finds that Respondents were in violation of Section 4(d) of the Act for a period of 299 days, from June 12, 2010, the date of accident, through April 6, 2011, the date Respondents obtained workers' compensation insurance coverage.

The Commission further finds that Respondents willfully and knowingly failed to acquire workers' compensation insurance for 299 days after receiving notice of non-compliance. It is evident that Respondents were aware that they were operating a business without the workers' compensation insurance coverage required by the Act. After reviewing all of the evidence, the Commission finds that Respondents did not provide a persuasive reason for their failure to obtain workers' compensation insurance after a notice of non-compliance was issued. The Commission also notes that Respondent Greer entered into a settlement agreement with the State for $6,000 plus the cost of Petitioner's benefits due under the Act, and paid only $1,000 before defaulting on the agreement. Therefore, the Commission orders Respondents to pay $100.00 per day for

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every day of non-compliance with the Act, or $29,900.00; plus the amount of the premium saved by Respondents' non-compliance, $2.79 per day for 299 days, or $834.21; plus the amount paid out to Ms. Willett by The Injured Workers' Benefit Fund, $4,803.73, for a total fine of $35,537.94. Respondents shall receive credit for the $1,000.00 paid toward the settlement agreement, leaving $34,537.94 due and owing.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, David Greer and JW Berry, individually and as officers, doing business as Big D Enterprises, Inc. and Desperado's Lounge, pay to the Illinois Workers' Compensation Commission the sum of $34,537.94, as provided in Section 4(d) of the Act and Section 7100.100(b)(1)(2) of the Rules.

Bond for the removal of this cause to the Circuit Court by Respondents is hereby fixed at the sum of $35,000.00. 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: APR 2 4 2014

Daniel R. Donohoo

Charles J. DeVriendt

Ruth W. White

drd/dak
r-11/14/13
68

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Harold Flynn,
Petitioner,

vs.

NO. 11 WC 01237

14IWCC0296

Cerro Flow Products, Inc.,
Respondent.

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, causal connection, prospective medical expenses and penalties and attorneys' 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 on March 14, 2013 is hereby affirmed and adopted.

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: APR 2 4 2014

David R. Donohoo

Daniel R. Donohoo

Kevin W. Lamborn

o-02/25/14
drd/wj
68

14IWCC0296

DISSENT

I respectfully dissent from the majority who affirmed and adopted the decision of Arbitrator Granada, which held Petitioner failed to meet his burden of proof regarding the issue of causal connection between Petitioner's psychiatric and psychological condition and his accident of January 5, 2009. Petitioner, who had worked for Respondent for 25 years as an electrical supervisor, slipped and fell on oil while walking toward a furnace on January 5, 2009. He sustained injuries primarily to his lower back, and also complained of neck and right shoulder pain. Petitioner was able to perform all of his work activities without issue up to the date of the accident. He was responsible for the electrical and telephone systems of the entire plant. In addition to supervising the electricians of the plant, his duties required him to stand, walk, twist, turn, push, pull, bend, stoop, lift, carry, crawl and climb on cranes and ladders. He had no prior injuries to his back or neck, and no prior history of depression or psychological treatment.

Petitioner sought medical treatment shortly after his work related injury. On March 17, 2009, Petitioner saw Dr. Rutz, an orthopedic surgeon, for a spinal consultation in conjunction with his back and neck problems. Petitioner testified he began experiencing depression within the first two months following the accident. He reported his depression to his treating physician, Dr. Rutz. However, Dr. Rutz was concentrating on his back problems. Over the course of nearly three years, he performed a total of three surgeries on Petitioner's lower back, fusing L3-S1. Dr. Rutz never placed him at maximum medical improvement or released him from low back care. Dr. Rutz has yet to initiate any treatment of the neck.

In September 2011, Petitioner testified he attempted to return to work with significant limitations and restrictions of four hours a day, per Dr. Rutz's orders. Petitioner testified that on October 4, 2011, while attempting to work a four hour day within Dr. Rutz's restrictions, he was suffering from severe pain and depression. Petitioner testified that on that date he "just lost it." He was teary eyed, could not think, felt like life was over and was in extreme and unrelenting pain. Petitioner stated that while he was only expected to perform sedentary work, he simply could not work or concentrate due to the severe fatigue, depression and pain.

On that same day, Petitioner's wife secured an appointment for him to see his primary care physician, Dr. Hollie. Dr. Hollie examined him, diagnosed acute stress reaction, referred Petitioner to pain management and took him off work. As a result of his condition, Petitioner was unable to attend the functional capacity evaluation, which was scheduled for the following day. Petitioner contacted Dr. Rutz's office and was told to call back after he was doing better and they would reschedule the functional capacity evaluation. They did not reschedule it. Subsequently, all medical benefits were eliminated by the workers' compensation carrier. Petitioner made multiple attempts to return to Dr. Rutz for treatment, as well as, to reschedule the functional capacity evaluation. However, all attempts were denied.

On October 17, 2011, Dr. Hollie issued a report, which among other conditions, noted that Petitioner's once-controlled hypertension was now uncontrolled due to his pain and mood disturbances. Multiple requests were made to Respondent to provide Petitioner treatment as requested by Dr. Hollie. Yet, Petitioner never received the necessary treatment.

In light of his declining condition, on January 17, 2012, Petitioner was referred to Dr. Stillings by his attorney for a psychiatric Section 12 exam. Dr. Stillings is a practicing board certified psychiatrist. In addition to his private practice, Dr. Stillings does independent psychiatric examinations in workers' compensation matters on behalf of both petitioners and respondents. Notably, Dr. Stillings testified that on several occasions he has provided Section 12 exams and testified on behalf of respondents' insurance carriers. Dr. Stillings testified that at the time of his evaluation, Petitioner complained of severe low back pain, rating it 7-10/10. He reported sleeplessness, poor appetite, a 50 pound weight loss, spontaneous crying spells, insomnia, poor concentration, fatigue, feelings of helplessness, worthlessness, and thoughts that life was not worth living. Dr. Stillings testified that he performed psychiatric testing. In addition to revealing anxiety and depression, the testing also showed a high degree of psychological distress and a low degree of psychological efficiency. He stated that Petitioner had experienced "serious personality deterioration." Dr. Stillings further found Petitioner's condition to be poor; he had cognitive impairment, disorganized thinking and slow mental processing speed. These were all symptoms of Petitioner's clinical depression. Based on Dr. Stillings' review of the medical records, deposition testimony, testimony of Petitioner's primary care physician, the history provided by Petitioner, as well as, the psychological testing and mental status examination, Dr. Stillings opined Petitioner's current condition was *causally related* to the January 5, 2009, work injury. He diagnosed Petitioner with a mood disorder and a pain disorder. Dr. Stillings stressed Petitioner had no preexisting psychiatric problems. Dr. Stillings testified Petitioner was unable to work due to his psychiatric condition. Dr. Stillings concluded that Petitioner "absolutely" required aggressive psychiatric treatment.

Petitioner saw Dr. Hollie again on March 9, 2012. Dr. Hollie noted that Petitioner's condition was "worsening." Petitioner's weight was now down to 147 pounds. Again on May 23, 2012, Dr. Hollie's notes reflect continued complaints of back pain, sleep disturbance and decreased concentration. He testified that Petitioner had always been a "very upbeat, happy-go-lucky guy" and that he had never seen Petitioner so depressed. Noting Petitioner's blood pressure was out of control, Dr. Hollie opined this was a result of the pain and that Petitioner was unable to work.

But for the appeal process and the ability to scribe a dissent, this case illustrates the utter breakdown in the system. Despite uncontradicted and unrebutted evidence to the contrary, the arbitrator erroneously found there was no causal connection between the admitted work accident and the resulting psychiatric/psychological condition of Petitioner. Unlike so many cases that turn on which expert is to be believed, this case has only the testimony of one psychiatric expert witness, Dr. Stillings, a board certified psychiatrist. He is indeed independent as he has previously testified as much for respondents as he has for petitioners. Dr. Stillings opined that Petitioner's current psychiatric condition is causally related to the January 5, 2009 work injury. Dr. Stillings diagnosed Petitioner with a mood disorder and a pain disorder. He noted that Petitioner had no preexisting psychiatric problems. Dr. Stillings testified quite credibly that Petitioner is unable to work due to his psychiatric condition. Dr. Stillings opinion was buttressed by the testimony of Dr. Hollie, Petitioner's primary care physician since 2005. Dr. Hollie repeatedly commented on Petitioner's downward spiral.

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In his depressive state, Petitioner felt he could not attend the functional capacity evaluation, but was told by the orthopedic surgeon office that Petitioner could reschedule it when he was feeling better. That did not happen, the office would not reschedule. All medical and temporary total disability benefits were cut off when Petitioner attempted to reschedule his functional capacity evaluation. The functional capacity evaluation was scheduled by his orthopedic surgeon, who coincidentally was provided by Respondent's insurance carrier. Petitioner was initially referred to this orthopedic surgeon office by Respondent; the office that would not reschedule the functional capacity evaluation. Also from a purely physical/medical view, Petitioner has never reached maximum medical improvement. Petitioner clearly requires additional medical treatment. Respondent obviously erred when it cut off Petitioner's treatment.

Once Petitioner's temporary total disability benefits were cut off, he attempted to apply for short term disability. But Petitioner's condition was viewed as workers' compensation and he was denied. Consequently, Petitioner was getting neither temporary total disability benefits nor short term disability. Petitioner is financially suffering because of Respondent's actions.

Petitioner undoubtedly met his burden and proved that his mental and physical conditions of ill-being are causally connected to his work related injury. Dr. Stillings provided the only and unrebutted opinion regarding Petitioner's psychological issues. He diagnosed Petitioner with several disorders and opined these were a direct result of the work injury. For all of the reasons stated above, I dissent from the majority.

Thomas J. Tyrrell

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

FLYNN, HAROLD
Employee/Petitioner

Case# **11WC001237**

CERRO FLOW PRODUCTS INC
Employer/Respondent

14IWCC0296

On 3/14/2013, 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 0.11% 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:

HENNESSY LAW FIRM LLC
CYNTHIA HENNESSY
425 N NEW BALLAS RD SUITE 280
ST LOUIS, MO 63141

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
THEODORE J POWERS
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Harold Flynn
Employee/Petitioner

v.

Cerro Flow Products Inc.
Employer/Respondent

Case # 11 WC 1237

Consolidated cases: n/a

14IWCC0296

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, IL**, on **November 14, 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 **Whether Petitioner engaged in any injurious practice**

14IWCC0296

FINDINGS

On the date of accident, **January 5, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned **$105,245.40**; the average weekly wage was **$4,407.90**.

On the date of accident, Petitioner was **62** 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 **$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 failed to meet his burden of proof regarding the issue of causal connection between his psychiatric or psychological condition and his accident from January 5, 2009.

Petitioner's claim for TTD benefits are denied.

Petitioner's claim for prospective medical care as they relate to his psychiatric or psychological condition are denied.

Petitioner's Petition for Penalties under Section 19(k) and 19(d) and Petition for Attorney's Fees 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.

Signature of Arbitrator

2/26/13
Date

ICArbDec19(b)

MAR 14 2013

14IWCC0296

Findings of Fact

There is no dispute that the Petitioner was injured while working on January 5, 2009. At the time, Petitioner was an electrical supervisor, whose job duties included the supervision of employees and being responsible for the entire electrical system. Additionally, he would assist electrical workers, which would involve standing, lifting, carrying items and utilizing cranes and ladders. On January 5, 2009, Petitioner slipped and fell, landing on his buttocks. He complained of pain to his right shoulder, neck, low back, radiating down his right leg. Petitioner continued to work for weeks following this incident.

On March 17, 2009, Petitioner saw Dr. Rutz, an orthopedic specialist. On November 20, 2009, Dr. Rutz performed L3-4 and L4-5 decompression and discectomy. The post-operative diagnoses were L3-4 and L4-5 lumbar spine stenosis and lumbar radiculopathy. The surgery relieved Petitioner's leg pain and he was able to return to light duty work three weeks later with a 20-pound lifting restriction. Petitioner later continued to experience leg and back pain. On February 11, 2010, an MRI revealed grade one retrolisthesis of L3, L4 and L5 unchanged. Noting that his leg pain had returned, Dr. Rutz planned to perform an L3-5 revision decompression and TLIF. This surgery was performed on April 7, 2010. Dr. Rutz allowed Petitioner to return to sedentary duty on June 14, 2010. Reporting low back pain with prolonged sitting, Mr. Flynn was restricted to work only four hours a day. On August 15, 2010, Petitioner reported pain and numbness in his lower back, radiating to his anterior thighs. Dr. Rutz ordered a CT myelogram. The myelogram showed an L2-3 retrolisthesis with broad-based disc bulge, facet arthropathy, and ligamentous hypertrophic changes, resulting in moderate central canal stenosis and moderately severe bilateral neural foraminal encroachment. Petitioner then had a third surgery. On November 17, 2010, Dr. Rutz performed an L2-3 TLIF with a prosthetic inter-body device, removal of posterior instrumentation at L3-4, placement of posterior instrumentation L2-3, L3-4, and L4-5, posterior fusion at L2-3, and right iliac crest bone grafting. Petitioner followed up with Dr. Rutz on December 2, 2010 and reported his leg pain was gone.

James Coyle, M.D. conducted an IME on behalf of the Respondent on July 20, 2011. Noting multiple potential sources of pain, Dr. Coyle opined Mr. Flynn was incapable of working in more than a very sedentary capacity with intermittent sitting and walking and no significant lifting.

Petitioner followed up with Dr. Rutz on September 13, 2011 and reported progressively increasing back pain. Dr. Rutz noted that the facet blocks did not provide any improvement to his back pain. Dr. Rutz ordered an FCE and told Petitioner he could work four- hour days in a sedentary capacity, and instructed him to return to the office following the FCE.

Petitioner did not attend the FCE and testified that he tried to re-schedule the IME. Dr. Rutz testified that Petitioner did not attend the follow-up appointment scheduled after the FCE. Dr. Rutz opined that Petitioner was close to being at MMI as of September 29, 2011. Petitioner testified that he tried to return to work in September, 2011 with the restrictions of a four hour work day in a sedentary capacity, but he felt depressed and pain.

Instead of returning to Dr. Rutz, Petitioner saw his primary care physician, Dr. Hollie. He complained of poor appetite, weight loss, depression, and anxiety. Dr. Hollie took Petitioner off work, referred him to pain management and diagnosed weight loss, acute stress reaction and sleep disturbance. On October 17, 2011, Dr. Hollie issued a report stating that Mr. Flynn was suffering from an acute stress reaction and

14IWCC0296

sleep disturbances resulting in weight loss, attributing it to the pain incurred as a result of the back injuries and ensuing surgeries.

On referral by his attorney, Petitioner saw Dr. Stillings for a psychiatric consultation on January 17, 2012. Dr. Stillings diagnosed Petitioner with a mood disorder and a pain disorder – both of which he opined was related to his January 5, 2009 work accident. He further opined that the Petitioner was totally disabled as a result of his psychiatric conditions.

Petitioner testified that he no longer enjoys his outdoor hobbies of fishing, hunting or working on his own cars. He confirmed that although he is still an employee of the Respondent, he cannot work there because of his depression, inability to focus and his complaints of pain.

On cross-examination, Petitioner confirmed that he did not receive any referrals for psychiatric treatment from Dr. Rutz, Dr. Hollie or Dr. Coyle.. He further confirmed that the first psychiatric treatment with Dr. Stilling was arranged through his attorney. Petitioner also admitted that he has been able to shoot deer from his window, despite his inability to hunt. Respondent also offered into evidence a video showing Petitioner spending time at a Mercedes Benz dealership, where he is seen socializing, eating and having some refreshments.

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

1. Petitioner failed to meet his burden of proof regarding the issue of causation as it relates to his alleged psychiatric condition. While there is no doubt that the Petitioner sustained a serious injury involving his back that required 3 surgeries, the Petitioner's psychiatric condition of depression and anxiety was never raised by his treating physicians or the Respondent's IME in almost three years following his accident. The Arbitrator notes that Petitioner's psychiatric condition did not become a debilitating condition until he was on the verge of being placed at MMI by his own treating physician, Dr. Rutz. In fact, when Dr. Rutz ordered an FCE to determine Petitioner's ability to return to work, Petitioner did not attend the FCE and instead went to his primary care physician, who noted among other various conditions, an "acute stress reaction." And instead of being referred for psychiatric treatment by any of his treating physicians, the Petitioner was referred by his attorney to Dr. Stillings for a psychiatric IME in what appears to be a not-so-subtle attempt to establish permanent total disability based on a psychiatric condition. It bears repeating that the Petitioner's psychiatric condition did not become a bar to returning to work until Petitioner was sent for an FCE by his own treating orthopedic surgeon. All of these facts, lead the Arbitrator to conclude that there is a serious lack of credibility on the part of the Petitioner regarding the issue of causation.

2. Petitioner failed to prove he is entitled to TTD beyond September 29, 2011. Again, the Arbitrator questions the Petitioner's credibility on this issue based on the dubious timing of events. In this case, Petitioner was scheduled by his own treating orthopedic surgeon, Dr. Rutz to undergo an FCE to determine what, if any, work Petitioner could possibly perform. Petitioner chose not to attend the FCE and instead went to his primary care physician with complaints of anxiety, depression, etc. Petitioner is then taken off work based on these psychiatric complaints, despite the fact that the primary care physician does not make any referral for psychiatric treatment. Petitioner does not return to Dr. Rutz, who had been treating him for his back condition for years, and instead goes to see a doctor referred by his attorney for a psychiatric IME. The Arbitrator also notes the blaring

inconsistencies between what the Petitioner testified he could not do, and what was revealed on cross-examination. This includes the ability to shoot deer from his kitchen window, despite Petitioner's testimony that he could no longer hunt. Also, the Petitioner claimed he could not sit for longer than 20 minutes, yet he was able to sit through the arbitration hearing that lasted well over an hour, as well as drive the long distance from his home in Missouri to the hearing site. Petitioner is also seen a number of times socializing at a Mercedes Benz dealership, which is in stark contrast to his testimony that made it sound like he was relegated to spending all day on his back. Based on the lack of credibility, the Arbitrator denies the Petitioner any TTD beyond September 29, 2011, which is the date Petitioner's treating physician, Dr. Rutz testified the Petitioner was near MMI. Because of the Petitioner's credibility issues, it is difficult to determine if the Petitioner is entitled to any TTD.

3. Based on the findings above, the Petitioner's request for prospective medical care as it relates to his psychiatric condition is hereby denied.

4. The Petition for Penalties and Attorney's fees is denied, based on the findings above.

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

Kent McFall,

Petitioner,

14IWCC0297

vs.

NO: 12 WC 39335

The Sygma Network, 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 sole issue of nature and extent, 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 his Statement of Exceptions, Petitioner argues that the Arbitrator "failed to fully address the nature and extent of Petitioner's injury" and asks the Commission to modify the permanency award to be more consistent with prior Commission decisions. After a complete review of the record, the Commission finds that the Arbitrator did fully address the full nature and extent of Petitioner's injury and awarded permanency benefits based on the evidence provided and the American Medical Association (hereinafter "AMA") guidelines, as required by the Workers' Compensation Act (hereinafter "Act"). However, the Commission finds that Petitioner suffered a greater degree of permanent disability than assessed by the Arbitrator.

As noted by the Arbitrator, Petitioner's accident occurred after the September 1, 2011 changes to the Act establishing the following criteria for the determination of permanent partial disability:

> "(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of

> medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
>
> (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order." 820 ILCS 305/8.1b (2013)

In his Statement of Exceptions, Petitioner lists several Commission decisions by which claimants with a neck injury who underwent fusion surgery were awarded between 20% and 35% loss of use of the person as a whole. These Commission decisions are, as are the AMA guidelines, simply one more component to consider in deciding the issue of permanent disability. In determining Petitioner's permanent disability, we must, as did the Arbitrator, consider each part of Section 8.1b of the Act, as well as the evidence provided at hearing and prior Commission decisions.

In following the criteria laid out in Section 8.1b, the Commission notes that:

- Petitioner's treating physician, Dr. Stephanian, found, per the AMA guidelines, that Petitioner was "doing extremely well" and had "complete resolution of the pain in his neck, shoulder and arm" with only "very minimal and occasional discomfort at the base of the neck." (RX1) Petitioner reported during that November 16, 2012 visit that he had "marked improvement in his strength as well as range of motion." Dr. Stephanian found that Petitioner had "had a nice outcome from his recent anterior cervical interbody fusion" and released Petitioner to return to work without restrictions.

  During a prior visit, on October 19, 2012, Dr.

Stephanian declared Petitioner to be at maximum medical improvement and determined that Petitioner "has approximately a 10% impairment of the whole person for this particular injury based on standard AMA guidelines." (PX3,RX2) Dr. Stephanian released Petitioner to return to work without restrictions and indicated that Petitioner is "able to drive commercial vehicles with no issues. Able to do line haul work."

- Petitioner returned to work as a truck driver, the same job he held, pre-accident, with Respondent. (T.14, 32)

- Petitioner was 41 years old at the time of the accident. (AX1, AX3)

- Petitioner testified that he continues to have left arm pain and loss of strength and continues to take pain medication. (T.33, 35) However, Dr. Stephanian specifically found that Petitioner's "residual aches and pains in the arms...are unrelated to the surgery" and suggested that Petitioner might want to see a rheumatologist "at some point in the future to look into this further." (PX3, RX2) Furthermore, Petitioner admitted that the pain medications he takes are from his 1st surgery, which was for his low back and is unrelated to the March 15, 2012 accident. (T.35) This is further supported by the medical records which indicate that Petitioner was taking these medications before the March 15, 2012 accident. (PX1) Finally, as mentioned earlier, on November 16, 2012, Dr. Stephanian specifically found that Petitioner's neck, shoulder and arm symptoms had completely resolved. (RX1)

The Commission further notes that while Petitioner's neck pain has resolved overall, during his last visit with Dr. Stephanian, Petitioner was still complaining of "occasional discomfort at the base of the neck." (RX1) And while Petitioner has been able to return to work as a truck driver, his pre-accident occupation, he admitted that he now drives shorter distances as a truck driver for a new employer. (T.33) Finally, the Commission notes that Petitioner continues to take pain medication, and while it is the same pain medication he was taking prior to the March 15, 2012 accident for an unrelated low back issue, Petitioner also takes it for his occasional neck symptoms. (T.33, 35) Considering the substantial neck injury Petitioner suffered, the fact that he had to undergo a C7-T1 fusion surgery with instrumentation, that he has returned to work without restrictions, that he continues to suffers from occasional neck symptoms, and the amounts traditionally awarded in cases such as these, the Commission finds that Petitioner suffered a 22-1/2% loss of use of the person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the

14IWCC0297

Arbitrator filed on October 18, 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 $492.51 per week for a period of 112.5 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 the person as a whole.

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 $55,500.00. 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: APR 2 8 2014
MJB/ell
o-04/08/14
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0297

McFALL, KENT
Employee/Petitioner

Case# 12WC039335
13WC000294

THE SYGMA NETWORK INC
Employer/Respondent

On 10/18/2013, 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 0.15% 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:

1608 MOSS & MOSS PC
DAVID MOSS
122 WARNER CT PO BOX 655
CLINTON, IL 61727-0655

2965 KEEFE CAMPBELL & BIERY ASSOC LLC
JOHN CAMPBELL
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

14IWCC0297

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
NATURE AND EXTENT ONLY

KENT MCFALL
Employee/Petitioner

v.

THE SYGMA NETWORK, INC.
Employer/Respondent

Case # **12** WC **039335**

Consolidated cases: **13 WC 000294**

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Urbana, Illinois**, on **August 22, 2013**. By stipulation, the parties agree:

On the dates of accident, March 15, 2012 and April 9, 2012, Respondent was operating under and subject to the provisions of the Act.

On these dates, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of the accidents was given to Respondent.

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

In the year preceding the injuries, Petitioner earned **$46,684.00**, and the average weekly wage was **$820.85**.

At the time of the injuries, Petitioner was **41** years of age, ***married*** with **1** dependent child.

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

In 13 WC 000294 (D/A: 4.9.12) Respondent shall be given a credit of **$14,228.76** for TTD, **$255.38** for TPD, **$0** for maintenance, and **$0** for other benefits. With regard to that case Petitioner was temporarily totally disabled from **4.22.12 to 10.20.12** (a period of 26 weeks) and temporarily partially disabled from **4.17.12 to 4.21.12** (a period of 5/7 weeks).

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 **$492.51**/week for a further period of **87.5** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **17.5% permanent loss of use of the man as a whole.**

Respondent shall pay Petitioner compensation that has accrued from **March 15, 2012** through **August 22, 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

October 14, 2013
Date

ICArbDecN&E p.2

OCT 18 2013

These cases were consolidated at the time of arbitration and the attorneys requested that one decision issue for both cases.

The Arbitrator finds:

Petitioner began working for Respondent on January 5, 2009. Petitioner is employed as a truck driver. Petitioner testified that his job duties involve driving a semi-tractor trailer rig as an over-the-road truck driver.

Petitioner testified that on March 15, 2012 (12 WC 39335), he was getting out of his truck when he tripped over computer wires which were running through his truck cab, and he fell out of the cab, a distance of approximately 5 ½ feet, landing on his left side and left shoulder. At that time, Petitioner experienced a burning sensation and pain between his shoulder blades. Petitioner testified that he gave notice of this incident to Mike Durant. Petitioner testified that he continued to work his regular job duties following this incident. There was no medical treatment incurred as a result of this incident.

Petitioner testified that as he continued to work, he also continued to notice pain.

On April 9, 2012, (13 WC 000294), Petitioner, while in Indianapolis, was reaching up to open trailer doors. As Petitioner was opening the trailer doors, he experienced extreme pain down his left arm. Petitioner called Respondent and reported this incident. Following his call to Respondent, Petitioner drove from Indianapolis, Indiana to Danville, Illinois. On April 9, 2012, Petitioner was seen at Carle Clinic in Danville, Illinois. At that facility, Petitioner was seen by Dr. Allison Jones, M.D., through the Occupational Medicine Department (PX 1). Petitioner was released to modified work and told to use a TENS Unit, which he had from a prior back surgery. Petitioner was also prescribed physical therapy at UAP Clinic.

Physical therapy commenced at UAP Clinic on April 13, 2012. On April 16, 2012, Petitioner returned to Dr. Jones. At that time, modified work was continued and an MRI was prescribed. (PX 2)

On April 23, 2012, Petitioner was seen by Dr. Chen. Dr. Chen renewed the prescription of an MRI and instructed Petitioner to not work. The MRI was performed on May 3, 2012. In follow up on May 10, 2012, Dr. Chen interpreted the MRI as revealing a large herniated nucleus pulposus at C7-T1, and a central protrusion at C5-C6 or C6-7[1]. Petitioner was prescribed to be off work. Petitioner was also prescribed an injection. Petitioner underwent an epidural steroid injection at that time. In follow up on July 12, 2012, Petitioner was continued off work and received his second epidural steroid injection. (PX 2)

On August 17, 2012, Petitioner was again seen by Dr. Chen, who continued to assess neck pain and noted a disc herniation at C6-C7 and C7-T1. Petitioner was continued off work. Physical therapy was prescribed at Union Hospital. Physical therapy began September 25, 2012.

Petitioner was referred by Dr. Chen to Dr. Stephanian (PX 3) Petitioner was initially seen by Dr. Stephanian on August 30, 2012. At that time, Petitioner was prescribed surgery for a herniated disc at C7-T1. On September

[1] The MRI report states C6-7 in the Findings; C5-6 in the Impression. (PX 3)

12, 2012, Petitioner underwent an anterior cervical microdiscectomy at C7-T1, interbody fusion with allograft bone, anterior spinal instrumentation with Orion plate. The surgery was performed at Union Hospital and there were no complications. (PX 2) Petitioner followed with Dr. Stephanian on September 21, 2012. At that time, Petitioner was released to return to work light duty restrictions and prescribed physical therapy. Follow-up examinations were performed through October 2012. At the time of the October 12, 2012 appointment Petitioner was still experiencing severe pain in both his arms. Petitioner described it as diffuse pain bilaterally and did not associate the pain with any joints or experience any numbness or subjective weakness. There was no evidence of infection on examination. Petitioner's neck range of motion was good and his upper limbs were noted to have excellent strength and no sensory deficits. Reflexes were normal throughout. Recent x-rays showed no problems. Authorization for an MRI was pending. Dr. Stephanian could not explain the etiology of Petitioner's complaints but did not attribute them to his recent operation. Petitioner appeared neurologically intact and the doctor noted a referral to a rheumatologist might be appropriate. (PX 3)

Another cervical MRI was performed on October 13, 2012 due to ongoing complaints of neck pain and bilateral arm soreness. It revealed post-operative changes and mild spondylosis with mild left foraminal compromise at C5-6 and might right foraminal compromise at C4-5. (PX 3) A note on Dr. Stephanian's copy of the MRI report states "MRI reviewed. Looks good. Patient advised 10/16/12 may need referral to [rheumatologist]. Patient to call if wants appointment." Petitioner was also advised his labwork was good and that if he wished to go to a rheumatologist, it would no longer be "work comp." (PX 3)

When re-examined on October 19, 2012, Petitioner reported some mild residual aches and pains in both arms but complete resolution of his radicular left arm pain. Petitioner also reported a marked improvement in the strength of his left arm and hand. He had completed a full course of postoperative therapy which had been of marked benefit. Dr. Stephanian remarked that Petitioner had a "good outcome" from his surgery and he noted Petitioner's residual aches and pains in his arms were unrelated to Petitioner's prior surgery. He recommended Petitioner consider a consultation with a rheumatologist regarding those complaints. Dr. Stephanian also indicated Petitioner was able to drive commercial vehicles with no issues and could perform line haul work. (PX 3) On October 19, 2012, Dr. Stephanian found Petitioner to be at maximum medical improvement and rendered a 10% man as a whole impairment based on "standard AMA guidelines." (PX 3)

Petitioner returned to Carle Clinic for a DOT Fitness Determination on October 25, 2012 at which time he received his certificate valid through October 25, 2013. (PX 1)

In a final follow-up visit with Dr. Stephanian on November 16, 2012, Petitioner was noted to be doing "extremely well" with complete resolution of his neck, shoulder, and arm pain with marked improvement in his strength and range of motion. Occasional discomfort at the base of his neck was noted. Petitioner was allowed to return to work with no restrictions. (RX 1)

Petitioner testified that, in fact, he did return to his regular job duties driving for Respondent.

Petitioner also testified that he was unable to work from March 2012, through May 22, 2012, due to a cardiac condition. Petitioner testified that he did not consider the cardiac condition to be an element of this workers' compensation claim. On May 22, 2012, after his heart attack, Petitioner left the employment of Respondent and began working at Schopmeyer Farm Supply. Petitioner testified that he is driving trucks for this company. Petitioner drives shorter distances now; otherwise, his job duties remain unchanged. Petitioner testified that he continues to experience loss of strength in his arms, especially the left one. He also testified to daily pain/discomfort.

Petitioner testified that he has not received any medical bills and that all medical bills have been paid. Petitioner received temporary partial disability for the period April 17, 2012, through April 21, 2012. Petitioner received temporary total disability for the period April 22, 2012, through October 20, 2012 (RX 3).

Regarding the nature and extent of Petitioner's injury, the Arbitrator concludes:

Petitioner's accidents occurred on March 15, 2012 and April 9, 2012. As such, the claims are subject to Section Sec. 8.1b of the Illinois Workers' Compensation Act, which provides that for accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

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

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. (Source: P.A. 97-18, eff. 6-28-11.)

In accord with Section 8.1b of the Act, the Arbitrator has considered the following factors when reaching her decision regarding the issue of permanency:

(i) The reported level of impairment pursuant to subsection (a):

Dr. Stephanian, Petitioner's treating surgeon, issued an impairment rating of 10% MAW based on "standard AMA guidelines." There is no mention of a QDash report in his October 19, 2012 office note wherein he expressed his opinion on the impairment rating. The office note contains no specific measurements as described in paragraph (a) of Section 8.1b. Rather, Petitioner's range of motion is described as "excellent," his strength as "good," and triceps and hand strength is "mark[edly improved.]." (PX 3) Dr. Stephanian did not indicate whether or not he used the 6th edition of the AMA Guides.

(ii) The occupation of the injured employee:

Petitioner returned to work at his pre-injury occupation as a truck driver.

(iii) The age of the employee at the time of the injury:

Petitioner was 41 years of age at the time of his injuries. While young, no evidence was presented as to how Petitioner's age might affect his disability.

(iv)The employee's future earning capacity:

Petitioner returned to his pre-injury occupation of a truck driver and no evidence was presented as to how Petitioner's injury might affect his future earning capacity. Petitioner has been able to find other employment as a truck driver with no indication of a negative impact on his earning capacity.

(v) Evidence of disability corroborated by the treating records:

After undergoing epidural steroid injections and physical therapy, Petitioner underwent an anterior cervical microdiscectomy at C7-T1, interbody fusion. He was released to return to his regular job with no restrictions and has been working without the need for any further medical treatment since November of 2012. While he initially returned to work for Respondent he voluntarily found employment with another employer in the same line of work. While Petitioner testified to occasional discomfort in his arm, Dr. Stephanian advised Petitioner that such discomfort was unrelated to his back surgery.

The Act provides that no single enumerated factor shall be the sole determinant of disability. While Petitioner has undergone surgery, he has no permanent work restrictions and there is no evidence of reduction in his earning capacity or suggestion of a hindrance to his earning capacity as a result of his injury. By all accounts, Petitioner has had a very good outcome with Dr. Stephanian noting "complete resolution of the pain in his neck, shoulder, and arms." (PX 3) Petitioner's ongoing complaints of occasional arm discomfort, however, do not appear to be related to his injury.

On the basis of the foregoing, the Arbitrator awards Petitioner 17.5% loss of use of the man as a whole, pursuant to Section 8(d)2 of the Act. Respondent shall pay Petitioner permanent partial disability benefits of $492.51 a week for 87.5 weeks because the injuries sustained caused the 17.5% loss of a man as a whole as provided in Section 8(d)2 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	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKER COMPENSATION COMMISSION

Ron Mullenix,
Petitioner,

Vs.

14IWCC0298

NO: 11 WC 18990

Berglund Construction,
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, temporary total disability, permanent disability, and 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 August 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.

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 2 8 2014

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB:bjg
0-4/8/2014
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0298

MULLENIX, RON
Employee/Petitioner

Case# **11WC017522**
11WC018990

BERGLUND CONSTRUCTION
Employer/Respondent

On 8/1/2013, 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 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

4129 WOLFE LAW PC
KENNETH WOLFE
200 W ADAMS ST SUITE 2200
CHICAGO, IL 60606

2337 INMAN & FITZGIBBONS LTD
JACK SHANNAHAN
33 N DEARBORN ST SUITE 1825
CHICAGO, IL 60602

14IWCC0298

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

Ron Mullenix,
Employee/Petitioner

v.

Berglund Construction,
Employer/Respondent

Case # **11** WC **17522**

Consolidated cases: **11 WC 18990**

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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Chicago**, on **6/12/13**. 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 _____

14IWCC0298

FINDINGS

On **10/12/10**, 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 **$75,296.00**; the average weekly wage was **$1,448.00**.

On the date of accident, Petitioner was **54** years of age, ***married*** with **no** 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 **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$0.00**.

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $669.64 per week for 10 weeks, because the injuries sustained caused the 2% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

Signature of Arbitrator

7/31/13
Date

ICArbDec p. 2

AUG 1 - 2013

STATEMENT OF FACTS:

Petitioner, a 54 year old laborer foreman and safety champ, testified that he had been hired by Respondent in 1989. Petitioner indicated that his job duties including walking around the construction perimeter checking proper fencing and signage and making sure that employees were following safety regulations.

Petitioner alleged that he injured his left foot on August 16, 2010. See decision for companion claim 11 WC 18990 for findings of facts and conclusions of law with respect to this alleged left foot incident.

With respect to the current undisputed accident (11 WC 17522) , Petitioner testified that on October 12, 2010, he was working for the Respondent flagging a forklift, while walking down the street, when he was hit from behind by the forklift knocking him to his knees. Petitioner did not seek medical treatment at that time but was already on pain medication for his foot.

Petitioner continued working for the Respondent full-time thereafter, including a lot of overtime, until December 2010. Petitioner testified that he had constant pain in his foot and back at that time. He was taking pain medications while working. Petitioner began a winter layoff in December 2010.

Petitioner continued to treat for his left foot injury thereafter. See decision with respect to claim 11 WC 18990.

With respect to his back, Petitioner noted that it currently still bothers him, especially when he gets up after sitting for a while. He indicated that he did not have these issues with his back prior to the injury in question.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner testified that he had no back problems prior to the accident of October 12, 2010 when he was struck from behind by a forklift, knocking him down. He did not seek medical treatment but was already taking pain medications for his foot injury, which is the subject of the companion case.

He was able to continue working until the end of the season in December. He testified to constant pain in his low back continuing to the present time. He also testified to difficulty standing after sitting for a long time, and pain upon arising in the morning.

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner's current condition of ill-being with respect to his back is causally related to the undisputed accident of October 12, 2010.

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

Although Petitioner lost no time from work due to this accident and had no treatment other than pain medication, he did credibly testify to ongoing complaints ever since. Specifically, he testified that his low back hurts when he gets up after sitting for a while and that he had not experienced any such back related complaints prior to the accident.

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

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 denied
☒ Modify down	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GLENDA PERRY,

Petitioner,

vs.

14IWCC0299

NO: 06 WC 15927

SPEEDWAY SUPER AMERICA,

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, medical, and permanent partial disability 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 finds that Petitioner failed to prove that she is permanently and totally disabled as the result of her work-related injury of December 15, 2005. The Commission finds that Petitioner sustained sixty-five percent loss of use of the person-as-a-whole as the result of her injuries. All else if affirmed and adopted.

On December 15, 2005, Glenda Perry was employed as a cashier for Speedway. On this date, she was walking from an outside storage shed with an armful of cups and anti-freeze. As she descended the ramp, she slipped on ice and fell onto her back. She had immediate onset of pain in her low back, neck, and right shoulder. Prior to the accident, the Petitioner underwent a performance evaluation on November 15, 2005. Petitioner's work was described as outstanding. However, Speedway wanted Petitioner to be more flexible in her work schedule especially working weekends. PX.28.

Dr. Patrick Sweeney performed a C5-C6 anterior cervical diskectomy and fusion with

kinetic place, peak cage and grafton on November 27, 2006. PX.3.

Dr. Sweeney then performed an L4-L5, L5-S1 right decompressive hemilaminectomies, complete facetectomies and diskectomies on May 14, 2007. Dr. Sweeney also performed an L4-L5, L5-S1 transforaminal lumbar interbody fusion with hourglass cages and an L4-L5 and L5-S1 posterior fusion with pilot instrumentation. PX.3.

Petitioner was seen by Dr. Sweeney on May 24, 2007. She had spasms in her low back and in her lower right extremity. The pain radiated down her right posterior thigh and calf. Her cervical range of motion showed bilateral rotation of 70 degrees, full flexion and extension of 25 degrees. She was at MMI for her cervical fusion. PX.1.

Petitioner underwent an IME with Dr. Andrew Zelby on January 28, 2008. He opined that the herniated discs at C5-C6 were related to her work injury. The cervical surgery was reasonable and necessary and related to her work accident. Her lumbar injury was nothing more than a lumbar strain in the face of modest degenerative disc disease. The lumbar fusion was not reasonable or necessary. Her ongoing complaints and need for treatment were not related to the accident. RX.3.

Dr. Harel Deutsch performed a revision of her lumbar fusion on September 29, 2009. He also performed hardware removal, L3-S1 posterolateral instrumented fusion and autograft removal, and application over spinous and transverse processes. The post-operative diagnosis was L4-L5 pseudoarthrosis and construct failure. PX.2.

Petitioner underwent an FCE at St. Mary's Medical Center on July 6, 2010 that was performed by physical therapist, Tina Doctor. The FCE revealed that Ms. Perry did not complete all the activities required in the FCE. She performed a few static lifts then refused to perform any further lifting tests. Ms. Doctor noted that it was possible Petitioner could have done more than what she stated. The grip strength demonstrated a submaximal and inconsistent effort. She completed 4 out of the 9 levels of lifting. She refused to perform the dynamic lifting due to severe low back pain. She was not able to complete the cardiovascular condition as she was unable to perform the required frequency of steps. She did not perform the carry, push, pull, stoop, crouch and crawl testing. The FCE revealed that Petitioner could perform at the sedentary level. She demonstrated diminished ability to participate in 8 hours of work that required lifting, standing, bending, stooping, kneeling, sitting, climbing and walking with frequent positional changes. The test revealed that she may not be able to perform any lifting during 8 hours of work. However, this was not a full representation of her functional abilities since she was not able to perform all required activities. RX.2. Ms. Perry testified that she could not perform all the activities due to her pain. T.55.

Ms. Perry presented to Dr. Deutsch on July 16, 2010. Her back pain was 3 out of 10 following the surgery. He noted that the Petitioner continued to have some degree of back pain, but her pain had improved dramatically. Dr. Deutsch noted that the FCE indicated some inconsistent effort and difficulty with lifting due to complaints. The FCE found that the Petitioner could work at a sedentary level with 10 pound lifting restrictions. Dr. Deutsch noted that the restrictions were permanent. She was at MMI and was to follow-up in 6 months. PX.4.

Petitioner was seen by Dr. Deutsch on September 3, 2010. She was one year post-op of the revision of her lumbar fusion. She was at MMI and did not need further care or physical therapy. She required continued medication for her ongoing pain. PX.4.

Petitioner underwent an initial vocational rehabilitation with Monika Dabrowiecjka from Forte on November 3, 2010. The case was referred from Triune. Petitioner reported that she enjoyed being active and involved in various activities with her grandchildren. However, she no longer enjoyed those activities due to her injury. She had a GED. She had worked as a waitress, a clerk, a cashier and in daycare. She had previously operated her own daycare for 3 years, but had to close due to emotional attachment to the children. She lacked computer skills. Petitioner reported that she was motivated to seek employment, but was unsure of the type of work for which she would be qualified. The consultant noted Petitioner's employability was limited due to her light duty restrictions and lack of computer skills. She could work in light assembly or cashier positions. PX.10.

Petitioner was seen by Dr. Deutsch on December 13, 2010. She was at MMI and could work at a sedentary level lifting up to 10 pounds. She reported continued neck pain. She was currently looking at unemployment. She wanted the doctor to indicate that she could work in security as sitting was okay for her. She also wanted the doctor to indicate that she could work up to 4 hours and that she continued to be on medication. He prescribed her Flexeril instead of Robaxin. PX.4.

Ms. Perry underwent vocational rehabilitation with Ms. Dabrowiecka. The vocational process was discussed with the Petitioner. A "how to interview" session was held and they discussed her resume. She could work in assembly, desk security, teller, retail such as a cashier and sales positions. The consultant noted that given the restrictions and lack of computer skills, the job market would be limited. The Petitioner reported that she was not qualified to work in assembly due to her neck pain. She also reported that she was not able to work 8 hour days due to her pain, but could manage a 4 hour shift. She also reported that she could not stand in one place for more than 5 to 10 minutes and could not drive long distances. The consultant noted that none of the limitations were prescribed by a doctor. The Petitioner noted that she was going to her doctor on January 28, 2011 and may have additional restrictions. The consultant noted that the restrictions from December 13, 2011 included lifting up to 10 pounds, change positions as needed, avoid ladders, and minimal twisting/bending. Ms. Dabrowiecka noted that the Petitioner was imposing limitations which may not have been documented. The self-imposed limitations may seriously hinder her chances of being selected for employment. PX.10.

Petitioner underwent a CT scan of the lumbar spine on January 28, 2011. The CT scan revealed no evidence of disruption of the hardware since the revision. There was interval placement of bone graft along the posterior elements. There was evidence suggesting some continuity of the L5-S1 disc space and across the posterior elements from L3 through L5. PX.4.

Petitioner was seen by Dr. Deutsch on January 31, 2011. Petitioner was over one year post-op from the L3-S1 fusion. Examination revealed that she wore a back brace and walked well. She had excellent placement of the instrumentation. She was at MMI and the FCE revealed that she could work at a sedentary level lifting up to 10 pounds. Petitioner reported trouble with

prolonged sitting and she had difficulty sitting for more than two hours. She felt that working more than 4 hours would be too difficult. PX.4.

According to the March 1, 2011 vocational report, Petitioner received a call from Instead Senior Care. The counselor contacted the company and it was revealed that Ms. Perry indicated on her application that she was able to work first shift only. Petitioner confirmed this to the counselor and indicated she was willing to work first shift only as she would become tired at the end of the day. PX.10. Petitioner told Ms. Dabrowiecjka that she does not work on Sundays as this is the day she goes to church. T.61.

According to the March 28, 2011 vocational report, Ms. Perry received a call from American Income Life Company for a customer service position. The employer noted the position was full-time and Petitioner noted she could work part-time only. PX.10.

According to the April 25, 2011 vocational report, Petitioner had an interview on April 21, 2011 for a bench assembly position and with ISM security. The employer at ISM security disclosed that Ms. Perry was interviewed; however, he was not able to place her in any of the positions. The employer stated that Petitioner seemed too fragile in order for him to hire her. He noted that Ms. Perry provided too much information voluntarily such as her back injury and her inability to drive due to taking morphine. The employer at Paramount Staffing reported that Petitioner disclosed her back injury on her application. Petitioner was advised to not disclose too much information. According to the May 3, 2011 report, Petitioner stated she was not able to drive while on morphine. The consultant noted that there was no physician that prescribed driving restrictions. PX.10

According to the May 6, 2011 vocational report, Ms. Perry stated she was willing to secure employment, but the counselor noted that Petitioner displayed behaviors that were contradictory to her stated willingness. She continued to self impose limitations which had not been documented by her physician, such as the inability to work second or overnight shift and no driving due to taking morphine. The counselor noted that the Petitioner appeared to sabotage her chances of employment as evidence by the feedback from Paramount Staffing and ISM Staffing. PX.10.

On June 7, 2011, Ms. Dabrowiecka noted Petitioner was asked to attend a job fair on June 8, 2011. The employer reported that desk security/customer service positions were available and the employer would conduct interviews on the spot. Ms. Perry stated that she was not physically able to attend the job fair due to her computer class in the evening and that she was suffering from the stomach flu. Petitioner reported that she could not juggle both activities in one day due to her back pain. PX.10.

On July 1, 2011, Petitioner's attorney referred Ms. Perry to Grzesik and Associates for a vocational rehabilitation assessment. The evaluation was conducted by Thomas Grzesik. He opined that the Petitioner was unable to perform the duties of her pre-injury occupation as a cashier. She was unable to perform work activities of any occupation that she was otherwise qualified to perform. She was unemployable and met the criteria for odd-lot permanent total disability. PX.11.

Mr. Grzesik performed a telephone interview on July 20, 2011. He reviewed the depositions and records from Triune and FCE. He noted that Triune's placement efforts failed. His opinion that she was not employable remained unchanged. She met the criteria for odd lot permanent total disability. PX.11.

According to Forte's vocational report dated August 17, 2011, Petitioner was enrolled in Intro to Computers and a keyboarding class. She had perfect attendance and received a satisfactory grade in computers, but a non-satisfactory grade in keyboarding. The consultant noted that Petitioner's work restrictions with the ability to work a 4 hour shift with additional limitations of no driving due to medication considerably limited her job search. PX.10.

According to the vocational rehabilitation report prepared on September 19, 2011, Mr. Dabrowiecka noted that Petitioner received a non-satisfactory grade in typing as she needed to be able to type 30 words per minute. She was typing at 11 words per minutes. Ms. Dabrowiecka noted that this was considered a major improvement from her lack of typing skills. PX.10.

Ms. Dabrowiecka prepared a vocational progress report on January 12, 2012. The report was for the period of December 10, 2012 through January 12, 2012. It was noted that Petitioner was searching for employment and placing follow-up calls. The report indicated that the consultant asked the Petitioner if she was disclosing her restrictions before inquiring about the position. She was reminded to discuss her qualifications at the interview and ask about requirements first and then accommodations. The report further indicated that Petitioner was looking for work on her own. The consultant contacted 15 employers where Petitioner had submitted an application. Only 3 employers agreed to provide information and all 3 said they received her application. The consultant noted that she verified Petitioner's sheets to verify if the employers were not hiring and the information Petitioner provided was accurate. The consultant noted that the job search was considerably limited due to the sedentary restrictions with the ability to work 4 hour shifts only and no driving. PX.10.

Petitioner was seen by Dr. Deutsch on February 17, 2012. Examination revealed that the neck rotated to 80 degrees in both directions. The cervical paraspinal muscles showed no spasms and were normal in bulk. The Spurling test was negative. She had a negative bilateral straight leg raise. Examination of the lower back revealed no tenderness to palpation. The paraspinal muscles were normal in bulk and her range of motion included flexion up to 90 degrees and extension up to 20 degrees. Her legs demonstrated no tenderness to palpation. She had a solid fusion at L3 to S1. The diagnosis was low back pain and degeneration of lumbar or lumbosacral intervertebral sac. The Petitioner rated her back and leg pain as 5 out of 10. She experienced more pain with activity and with sitting greater than 2 hours. Dr. Deutsch placed her at MMI with permanent restrictions as defined by the FCE. PX.4.

Petitioner was seen by Dr. Satish Dasari on April 5, 2012. She had been seen on a monthly basis for medication refill. She had unresolved pain in the right low back and leg. Her right hip pain was more pronounced. She was able to lie on her right side for an hour only. She had been walking one block twice a day. She was diagnosed with failed back surgery syndrome and right lumbar radiculopathy. She was to continue taking Neurontin 300 mg, MS Contin 30 mg, Naprelan 500 mg daily, Amitiza 24 mcg daily, Baclofen 10 mg and she was prescribed an

LSO brace. PX.6.

Respondent filed a Petition for Rehabilitation Plan on April 27, 2012. The Respondent noted that Petitioner had permanent restrictions that Respondent could not accommodate. She underwent vocational rehabilitation for over a year. The Respondent was not satisfied with the efforts of its vendor and terminated the relationship. The Respondent hired Vocamotive as its new vocational counselor. The Respondent was confident that Vocamotive would be able to identify employment for Petitioner. RX.7.

Petitioner testified that she worked with Forte/Triune and there was nothing that made her believe working with a new company would help. T.68. She further testified that she declined the Respondent's offer of work-hardening and was not willing to go forward with work hardening. T.63.

Petitioner underwent an FCE on June 13, 2012 that was performed by Michael Hornbuckle of Flexeon Rehabilitation. Petitioner's attorney referred her to Flexeon. The test revealed that Ms. Perry gave a near full level of physical effort. The evaluator noted that Petitioner could do more physically at times than what she demonstrated. The FCE revealed that she should be limited to the sedentary physical demand level and handle up to 10 pounds occasionally for up to 2 hours with frequent rest breaks. She demonstrated the ability to stand, walk and sit for up to 2 hours at a time with frequent breaks of up to 5 minutes. She did not demonstrate the ability to be a competitive employee. She was unable to return to work on a full-time or part-time basis. She was a potentially difficult rehabilitation candidate due to her limited trunk and pelvic motion, and her poor ability to lift weights from the floor to knuckle height. She would perform best in an occupation that allowed frequent postural changes and little to no weight lifting for up to 2 hours a day. All placebo and special tests were negative. Petitioner noted that the next day her back hurt so bad that she had a hard time moving around and performing activities of daily living. PX.12.

Ms. Perry testified that she gets up around 8 to 9 o'clock in the morning. She only gets 2 hours of sleep at a time. She then stretches, has her coffee, takes a pain pill and a hot shower. T.35. The rest of the day she really does not do anything. Standing is the worse and causes her to lock up right away. She can walk for about 10 minutes. If she walks longer, then her sciatic nerve will kick in and the right side of her hip will start to lock up. T.36. She has a difficult time with the stairs in her house. Going up is better than going down. Prior to December 2005 she did not have any problems with physical activity. T.37. She used to enjoy mowing the grass and planting flowers. She also would ride her motorcycle with her husband. *Id.* If she rides her motorcycle for more than an hour now, she has to stop and walk around or else her back locks up. T.38. She currently notices that it is painful to sit, but if she keeps moving she can deal with it. T.44.

Dr. Harely Deutsch was deposed on April 20, 2012. He is board certified in neurological surgery. PX.13. He noted that the Petitioner exceeded his expectations in terms of recovery. Six months post surgery, her back pain went to 5 out of 10 and her right leg pain was 3 out of 10.

He saw her following the July 2010 FCE. The FCE indicated she was able to work at a

sedentary demand level. He agreed with the recommendation of lifting up to 10 pounds. PX.13. pg.15. He thought the restrictions were permanent. *Id.* He saw her on December 13, 2010 and noted Ms. Perry asked for restrictions that she could work 4 hours per day only. PX.13. pg.18.

He last saw Ms. Perry on February 17, 2012. Petitioner had resolution of most of her neck pain, but was complaining of lower back pain. He opined that her restrictions have remained the same. PX.13. pg.25.

On cross-examination, Dr. Deutsch noted that as of September 3, 2010, he was of the opinion that Petitioner could work a full 8 hour workday at a sedentary level. He did not restrict her from driving due to the medications. PX.13. pg.30. He noted that the Petitioner requested a 4 hour work restriction. He did not know if the 4 hour restriction was permanent, but it was reasonable given how long she had been off work. PX.13. pg.32. He opined that she was not permanently and totally disabled. *Id.*

Dr. Satish Dasari was deposed on April 24, 2012. He is board certified in anesthesiology. PX.14. pg.6. He noted that he saw the Petitioner every four to five weeks as opioids could not be refilled. PX.14. pg.42. He last saw the Petitioner on April 15, 2012. Petitioner's pain remained unchanged. She was taking Advil for increased right hip pain. She was taking Neurontin and her MS Contin and Morphine Sulfate remained the same. They took her off Advil and prescribed her Naprelan. They ordered a new back brace. PX.14. pg.50.

He stated that the Petitioner's pain levels from February 2011 through his last visit would be considered intractable pain. PX.14. pg.51. He stated that her current pain medication is opioid based and will remain in her system for an extended period of time. PX.14. pg.52. He noted that the Petitioner's condition is permanent. He stated that it was very unlikely Petitioner could return to work at the present time. *Id.* He stated that the diagnosis is failed back surgery syndrome.

On cross-examination, he testified that during the October 9, 2008 lumbar examination, her motor strength was difficult to evaluate due to her poor effort. PX.14. pg.57. He stated that with failed back syndrome, typically the spine looks good, their exam looks good but their pain is still present. So the dilemma is how to treat the person. PX.14. pg.59. He never reviewed the FCE. PX.14. pg.66. He agreed that Dr. Deutsch would be in the best position to make the determination as to her permanent restrictions. *Id.* From February 24, 2011 through the present, the Petitioner never indicated that her activities of daily living were diminished or decreased as a result of her prescription medication. PX.14. pg.68.

An employee is totally and permanently disabled when he is unable to make some contribution to industry sufficient to justify payment of wages to him. *A.M.T.C. of Illinois, Inc., Aero Mayflower Transit Co., Inc., v. Industrial Comm'n, 77 Ill. 2d 482, 487, 397 N.E.2d 804, 34 Ill. Dec. 132 (1979).* However, the employee need not be reduced to total physical incapacity before an award of PTD benefits may be granted. *Ceco Corp. v. Industrial Comm'n, 95 Ill. 2d 278, 286, 447 N.E.2d 842, 69 Ill. Dec. 407 (1983).* Rather, the employee must show that he is, for all practical purposes, unemployable, *i.e.*, he is unable to perform any services except those that are so limited in quantity, dependability, or quality that there is no reasonably stable market

for them. *Alano, 282 Ill. App. 3d at 534; Marathon Oil Co. v. Industrial Comm'n, 203 Ill. App. 3d 809, 815, 561 N.E.2d 141, 148 Ill. Dec. 835 (1990).* Therefore, if an employee can work without seriously endangering his health or life, he is not entitled to PTD benefits. *A.M.T.C. of Illinois, Inc., 77 Ill. 2d at 488.*

In this case, there is no medical evidence that the Petitioner was permanently and totally disabled. Rather, Dr. Deutsch testified that Petitioner was not permanently and totally disabled. Dr. Deutsch also noted that Petitioner exceeded his expectations in terms of recovery. The February 17, 2012 examination by Dr. Deutsch further supports that the Petitioner is not permanently and totally disabled. The examination of the cervical paraspinal muscles revealed no spasms and was normal in bulk. She had a negative Spurling test and a negative bilateral straight leg raise. The examination of the low back revealed no tenderness to palpation. The paraspinal muscles were normal in bulk and her range of motion included flexion up to 90 degrees and extension up to 20 degrees. Her legs demonstrated no tenderness to palpation. She had a solid fusion at L3 to S1.

Further, the FCE from July 6, 2010 revealed that Petitioner could perform at the sedentary level. The Commission finds the FCE of July 6, 2010 more credible than the June 13, 2012 FCE that was performed at the request of Petitioner's attorney. The June 2012 FCE concluded Petitioner was unable to return to work on a full-time or part-time basis. This finding is in direct conflict with the medical records. Dr. Deutsch was of the opinion that Petitioner could work with restrictions. Mr. Hornbuckle, who administered the FCE, acknowledged that Petitioner could do more physically than what she was demonstrating. Despite this admission, Mr. Hornbuckle still found that Petitioner was unable to work full or part-time. The Commission is not persuaded by this opinion. The Commission notes that the Petitioner refused to complete all the activities required during the July 6, 2010 FCE. The July 2010 FCE was not a full representation of Petitioner's abilities due to her self-limiting behavior; however, she was still found to be able to perform work at the sedentary level. It is the Commission's opinion that the Petitioner intentionally restricted her capabilities during the FCEs.

The Commission finds no objective evidence to support Petitioner's subjective complaints. There is no evidence that the Petitioner cannot work without endangering her health or life or that she is permanently and totally disabled.

If the employee's disability is limited in nature so that he is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the burden is upon the employee to establish by a preponderance of the evidence that he falls into the "odd lot" category, that is, one who, though not altogether incapacitated to work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market. *Westin Hotel v. Workers' Compensation Comm'n*, 372 Ill. App. 3d 527, 544, 865 N.E.2d 342, 310 Ill. Dec. 18 (2007). An employee satisfies his burden of proving that he falls into the odd-lot category by showing either (1) a diligent but unsuccessful attempt to find work or (2) that because of his age, skills, training, and work history, he will not be regularly employed in a well-known branch of the labor market. *Westin Hotel*, 372 Ill. App. 3d at 544. Once the employee establishes that he falls into the odd-lot category, the burden shifts to the employer to prove that some type of regular and continuous employment is available to the employee. *City of Chicago v. Workers'*

Compensation Comm'n, 373 Ill. App. 3d 1080, 1091, 871 N.E.2d 765, 313 Ill. Dec. 38 (2007); *Westin Hotel*, 372 Ill. App. 3d at 544; *Alano*, 282 Ill. App. 3d at 538. Whether the employee has met his burden of establishing that he falls into the odd-lot category and whether the employer has shown that some type of regular and consistent employment is available to the employee are questions of fact for the Commission. *E.R. Moore & Co. v. Industrial Comm'n*, 71 Ill. 2d 353, 361, 376 N.E.2d 206, 17 Ill. Dec. 207 (1978); *Alano*, 282 Ill. App. 3d at 538.

The Commission finds that the Petitioner failed to prove that she falls into the "odd lot" category of disability. She failed to prove a diligent but unsuccessful job search and she failed to prove that she is not able to be regularly employed in the labor market.

The Commission finds that the record is replete with instances where Petitioner intentionally restricted her ability to secure employment. The records revealed that Petitioner indicated to the vocational counselor that she had an inability to drive due to her medication. This is of interest as the Petitioner testified she is able to ride her motorcycle for an hour before her back locks up. She offered no testimony about her medication impairing her ability to ride her motorcycle in her leisure time; rather, her impairment is only when she needs to drive for employment. Dr. Dasari testified that Petitioner never indicated that her activities of daily living were diminished or decreased as a result of her prescription medication. The Commission finds Petitioner's statement about her driving not credible and is a deliberate attempt to sabotage her job search.

Additionally, the Petitioner was informed of a job fair where an employer would be interviewing on the spot. However, the Petitioner could not attend due to the stomach flu and because she had class that night. She alleged that this was "too much for her to juggle in a day." The Commission is not persuaded by this allegation and finds that it is another intentional act to restrict her ability to secure employment.

The record also establishes that she was using her disability as a barrier to employment. The evidence establishes that she voluntarily informed employers of her condition and restrictions, despite being advised to address those questions at a later date. In one instance, she received a call from one employer who told her about full-time work; however, Ms. Perry indicated she could only work part-time. One employer interviewed the Petitioner and noted that Ms. Perry voluntarily informed him of her back condition and her inability to drive due to morphine use. Another employer noted that Petitioner disclosed her back injury on her application.

There is also evidence that Petitioner was not willing to work second shift, the overnight shift and would not work Sundays. She argues that second or overnight shifts are difficult due to her back pain and she cannot work Sundays as this is the day she attends church. One employer noted that Petitioner indicated that she was able to work first shift only. The Commission is not persuaded by her allegation that her back condition prohibited her from working shifts other than first. The Petitioner offered no medical documentation indicating that she had to work first shift only. Also, her argument that she could not work Sundays due to church is incredulous. Church is not offered on Sundays only. She could attend church any other day of the week. Her job evaluation prior to her injury lends support that Petitioner was not willing to work shifts other

than first. The evaluation revealed that the employer wished she was more flexible in her work schedule especially working weekends. The Commission views her unwillingness to work other shifts or Sundays and her willingness to voluntarily disclose her restrictions as a deliberate attempt to sabotage her job search.

Furthermore, and as stated above, the FCEs revealed that Petitioner did not give a maximum effort. Despite this, she was placed at sedentary level. Ms. Perry then asked her doctor to limit her work to no more than 4 hours per day. She refused to undergo work hardening and refused to undergo a second vocational rehabilitation. The Petitioner is intentionally restricting her ability to secure employment.

The Commission finds the vocational opinions from Grzesik and Associates not persuasive. Mr. Grzesik was hired by Petitioner's attorney. Mr. Grzesik met with the Petitioner on one occasion only and held one telephone conference with her. Mr. Grzesik was of the opinion that Petitioner was unable to perform work activities of any occupation and met the criteria for odd-lot permanent total disability. Given Petitioner's credibility issues coupled with her self-limiting behavior, the Commission gives no weight to Mr. Grzesik's opinion.

The Commission modifies the Decision of the Arbitrator and finds Petitioner is not permanently and totally disabled. She is entitled to sixty-five percent loss of use of the person-as-a-whole for the injuries sustained on December 15, 2005.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on December 27, 2012, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $236.43 per week for a period of 69-5/7 weeks, commencing July 10, 2010 through November 11, 2011, that being the period of maintenance under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $213.00 per week for a period of 325 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the Petitioner sixty-five percent loss of use of the person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $11,225.82 for medical expenses under §8(a) of the Act, subject to the fee schedule.

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 $12,200.00. 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: APR 2 8 2014

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

MJB/tdm
O: 4-8-14
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0299

PERRY, GLENDA
Employee/Petitioner

Case# 06WC015927

SPEEDWAY SUPERAMERICA LLC
Employer/Respondent

On 12/27/2012, 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 0.13% 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:

1658 SAUNDERS CONDON & KENNY
JAMES J KENNEY
111 W WASHINGTON ST SUITE 1001
CHICAGO, IL 60602

0766 HENNESSY & ROACH PC
GUY N MARAS
140 S DEARBORN ST 7TH FL
CHICAGO, IL 60603

14IWCC0299

STATE OF ILLINOIS)
)SS.
COUNTY OF Will)

- [ ] 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

Glenda Perry
Employee/Petitioner

v.

Speedway SuperAmerica, LLC
Employer/Respondent

Case # **06** WC **15927**

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, IL**, on **November 14, 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. [ ] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [ ] 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 _____

14IWCC0299

FINDINGS

On **December 15, 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 **$18,460.00**; the average weekly wage was **$355.00**.

On the date of accident, Petitioner was **45** years of age, ***single*** with **0** children under 18.

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 **$84,699.05** 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 $11225.82, as provided in Section 8(a) of the Act, subject to the fee schedule. Respondent to receive credit for all sums previously paid hereunder.

Maintenance

Respondent shall pay Petitioner maintenance benefits of $236.43/week for 69-5/7 weeks, commencing July 10, 2010 through November 11, 2011, as provided in Section 8(a) of the Act.

Permanent Total Disability

Respondent shall pay Petitioner permanent and total disability benefits of $404.37/week for life, commencing **November 12, 2011**, as provided in Section 8(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) 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

December 12, 2012
Date

DEC 27 2012

14IWCC0299

STATE OF ILLINOIS)
)
COUNTY OF WILL)

Nature and Extent TTD; MEDICAL;

GLENDA PERRY,)
)
Petitioner,)
)
vs.) I.C. #06 WC 15927
)
SPEEDWAY, LLC)
)
Respondent.)

MEMORANDUM OF DECISION OF ARBITRATOR

An Application for Adjustment of Claim was filed in this matter and notice of hearing mailed to each party. The matter was heard by an Arbitrator designated by the Commission in the City of Joliet, Illinois said County and State, on November 14, 2012. After hearing the proofs and allegations of the parties and having made careful inquiry in this matter the Arbitrator concludes:

A hearing in this matter was previously heard on June 21, 2006 pursuant to Section 19(b) of the Workers' Compensation Act. At that time, a hearing was necessitated due to a dispute whether Respondent was required to provide additional medical surgical and hospital services for injuries suffered by Petitioner that arose out of and in the course of her employment with Respondent. At this hearing it was stipulated that on December 12, 2005, the Respondent, SPEEDWAY, was operating under and subject to the provisions of the Illinois Workers' Compensation Act; and on this date the relationship of employee and employer existed between the Petitioner, Glenda Perry, and said Respondent; on the above mentioned date the Petitioner sustained accidental injuries which arose out of and in the course of the employment by the Respondent; timely notice of this accident was given the Respondent; the earnings of the Petitioner during the year next proceeding the injury were $18,510.77 and the average weekly wage was $355.00; Petitioner at the time of injury was 43 years of age, married and had no child under 18 years of age.

The issues in dispute at this hearing were:

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

(J) Were the medical services that were provided to the Petitioner reasonable and necessary?

(K) What amount of compensation is due for temporary total disability?

(O) Whether the surgery prescribed by Patrick Sweeney, M.D. is necessary to cure and treat Petitioner's condition of ill-being.

Petitioner, Glenda Perry was the sole witness to testify at trial. Medical records from Patrick Sweeney, MD, Jalil Piska, MD, St. James Occupational Health were introduced into evidence. Respondent presented no witnesses but did submit a medical report prepared by Dr. Orth following his Section 12 examination of Petitioner. On September 28, 2006, following the conclusion of this hearing, Arbitrator Dollison issued a decision, which states in pertinent part:

"In support of the Arbitrator's decision relating to disputed issues F, J, K and O, the Arbitrator finds the following facts:

On December 12, 2005 Petitioner sustained accidental injuries to her neck, left shoulder and low back due to an injury at work. In her employment, she ran a register, cleaned the store and refilled stock and products. The accident occurred when Ms. Perry was walking from an outside storage shed with an armful of cups and antifreeze. As she descended a ramp from the storage shed, Petitioner slipped on ice and fell backward, landing on her back. She felt an immediate onset of pain in her low back, neck and right shoulder.

The following day, Ms. Perry presented to St. James Occupational Health Clinic complaining of left shoulder, neck and low back pain. After x-rays were taken, Petitioner was released to return to work on a light duty basis. Respondent accommodated this restriction. Over the course of the next few days her symptoms worsened and radicular pain was reported. She returned to St. James Occupational Health and was prescribed a course of physical therapy. Therapy was not successful. On January 12, 2006, MRIs of the cervical and lumbar spine revealed the presence of a paracentral disc herniation at C5-6, bulging disc at C6-7 and a herniated disc at L5-S1 with mild encroachment and disc bulging at L4-5 with ligamentum flavum hypertrophy.

On January 26, 2006, Petitioner presented to Patrick Sweeney, M.D. complaining of severe neck and low back pain; radiating pain into right arm, parasthesias in the right arm. He prescribed epidural steroid injections to both the cervical and lumbar spine. Dr. Sweeney authorized the Petitioner off work. The injections, administered by Dr. Piska to Petitioner's cervical and lumbar spine provided no relief.

At Respondent's direction, Ms. Perry was evaluated by Dr. Orth on March 6, 2006 for an IME. Dr. Orth agreed with the diagnostic finding of the radiologist but disagreed that a causal relationship existed between the herniated discs and Petitioner's fall on December 15, 2005. Dr. Orth opined that Petitioner's complaints were due to degenerative disk disease in the cervical and lumbar spine and unrelated to the December, 2005 accident. Dr. Orth stated that Petitioner was at maximum medical improvement and could return to work without restrictions.

On April 10, 2006, Petitioner reported for work as directed by her employer. Ms. Perry began working the cash register. After working in a standing position for approximately one hour, Petitioner's low back and neck pain worsened and severe spasm developed in her cervical and lumbar spine. Petitioner left work and presented to the Emergency Room at St. James Medical Center. She received an injection which relieved her symptoms.

Ms. Perry returned to Dr. Sweeney who advised that surgery would be needed. To be sure, a myelogram was performed at St. James Medical Center which corroborated the herniated discs at C5-6 and at L4-5, L5-S1 with slight compression of the thecal sac and nerve roots. Ms. Perry experienced severe headaches as a sequellae of the myelogram. She presented to the emergency room at St. James and was provided with a blood patch. Petitioner then returned to Dr. Sweeney on May 11, 2006 for a review of the myelogram. Based upon these findings as well as prior diagnostic test results, Dr. Sweeney recommended that Ms. Perry first undergo an anterior cervical diskectomy with fusion at C5-6..."

Following the hearing, the Arbitrator found that the Petitioner sustained accidental injuries that arose out of and in the course of her employment on December 15, 2006 and that said injuries have resulted in severe injuries that require surgical intervention and which may, in the future require additional surgical care. As the Petitioner was released to return to work with significant sedentary restrictions which have increased her symptoms, the Arbitrator found that Petitioner was not able to return to work. As such Petitioner had demonstrated an entitlement to receive temporary total disability benefits from January 27, 2006 through the date of Arbitration. In addition, the Arbitrator agreed with the medical opinion of Dr. Sweeney that a causal connection exists between Petitioner's fall at work and her condition of ill-being in the cervical and lumbar spine. The Arbitrator found the prescription for surgical intervention at C5-6 to be reasonable and necessary and ordered that Respondent provide such care. Finally, the Arbitrator found that the emergency medical care received by Petitioner on March 1, 2006, April 10, 2006 and May 8, 2006 at St. James Medical Center; as well as the physical therapy charges from March 1 through March 31, 2006 and the myelogram performed at St. James to be reasonable and necessary.

Following the Award of the Arbitrator, Respondent chose to pay the award and agreed to provide further medical care.

Petitioner continued treatment with Dr. Sweeney. Dr. Sweeney prescribed a cervical fusion at C4-5, C5-6 as well as a fusion at L4-5, L5-S1. Due to the complexity of the lumbar fusion, Dr. Sweeney chose to perform the cervical fusion first. Because Ms. Perry smoked, Dr. Sweeney advised her to stop smoking prior to her surgery. Ms. Perry complied with this advice. The cervical fusion surgery was performed on November 26, 2006 at St. Margaret Hospital. Following this surgery, Ms. Perry noted a reduction in her neck pain and radicular symptoms. Postoperatively, Dr. Sweeney prescribed Norco, vicodin and flexeril to control Petitioner's pain. Petitioner returned to Dr. Sweeney periodically so that he could monitor the progress of the fusion. Petitioner refrained from smoking and Dr. Sweeney noted that the fusion was healing.

While Petitioner noted an improvement in her cervical complaints, she continued to experience severe low back pain. When Dr. Sweeney examined her on December 12, 2006, he administered a trigger point injection in the PSIS junction. A second injection was administered to this region in April, 2007. Overall Sweeney was satisfied with the union of the cervical fusion.

Dr. Sweeney had obtained authorization from the carrier to perform a discogram. This study, performed in April, 2007, was provocative at L4-5 and L5-S1 and confirmed the need for surgery. The carrier authorized the lumbar surgery which was scheduled for May 14, 2007. As before, Dr. Sweeney advised Ms. Perry to stop smoking prior to the lumbar surgery. Again Ms. Perry complied and stopped smoking prior to the surgery. Dr. Sweeney performed the lumbar fusion with instrumentation on 2007 at St. Margaret Hospital. Postoperatively, Petitioner returned to Dr. Sweeney so that he could assess the healing of the fusion. When she returned to Sweeney's office 10 days after the lumbar fusion, Petitioner was complaining of spasm in the low back and pain radiating into the right posterior thigh into the calf. Dr. Sweeney prescribed Norco and Neurontin. He reported that Ms. Perry had reached maximum medical improvement with regard to the cervical spine. The neurontin helped control Petitioner's radicular complaints. Dr. Sweeney reported that x-rays demonstrated good alignment of the lumbar fusion.

In June, 2007, Dr. Sweeney prescribed a course of physical therapy. This therapy, performed at Minimally Invasive Spine Rehab Center over a three month period, consisted of exercise and stretching. It was reported that Petitioner could tolerate walking on a treadmill for 13 minutes and could tolerate sitting for 1 ½ hours. Petitioner continued to complain of experiencing muscle spasm radiating down her right leg several times per day with an increase in her low back pain. In July, Petitioner reported to Dr. Sweeney that she was taking 4 vicodin per day as well as the Norco. Although she was able to lie in bed all night, she was only able to sleep 1 ½ to 2 hours per night. In August, Petitioner complained of increased low back pain when lifting heavier weights at therapy. She had resumed smoking and Dr. Sweeney advised her to stop. Petitioner followed this advice. He also suspended physical therapy until he was sure the fusion was healing. On October 18, 2007, Petitioner advised Dr. Sweeney she had stabbing pain in her back while descending stairs. X-rays showed the screws were in good position. Petitioner was advised t wear her lumbar brace. When she returned in November, Petitioner reported her low back pain had improved. X-rays demonstrated loosening of the L4 pedicle screw. Dr. Sweeney prescribed a bone stimulator to promote bone formation in the fusion. Petitioner was having difficulty stopping smoking for any extended period. She advised Dr. Sweeney she had an appointment with her family doctor to obtain a prescription for Chantix.

On December 24, 2007, Petitioner advised Dr. Sweeney she was using the stimulator four hours per day as instructed. Petitioner obtained the prescription for Chantix but developed severe chest pains which caused her to go to the Emergency Room at St. Margaret Hospital on December 5, 2007. X-rays demonstrated that the fusion had failed. When Ms. Perry returned in January there was no change in the x-rays.

Respondent directed Petitioner to be examined by Andrew Zelby, MD on January 28, 2008, for a Section 12 examination. Following this examination, Dr.Zelby opined that Petitioner's low back condition was due to a degenerative disc condition in the lumbar spine and

not related to the work accident of December 15, 2005. A similar opinion, stated by Dr. Orth in March 2006, was expressly rejected by the arbitrator in his September 28, 2006 award. Arbitrator Dollison ruled that Petitioner established that the accident of December 15, 2005 caused Petitioner to suffer herniated discs at C5-6, L4-5 and L5-S1 Zelby stated a fusion was not an appropriate procedure to treat degenerative disk disease. He agreed the fusion in the cervical spine was appropriate and that Petitioner had reached maximum medical improvement. She was capable to return to work with a 30 pound restriction.

Dr. Zelby further stated in his January, 2008 report and its addendum dated April 7, 2008, that the lumbar fusion did not heal and that pseudoarthrosis occurred. While Petitioner required a second fusion, surgery was inappropriate due to Petitioner's inability to stop smoking and that only smoking cessation and the use of a bone stimulator would achieve a solid arthrodesis in the lumbar spine.

Based upon the report of Dr. Zelby, Respondent refused to authorize any further surgery unless Petitioner stopped smoking. Petitioner was in severe pain and the pseudoarthrosis and spinal instability was the source of such pain. Because Dr. Sweeney was not provided with authorization to perform the necessary surgery to relieve Petitioner's symptoms, he referred Petitioner to Dr. Dasari, a pain specialist who could provide palliative care. Dr. Dasari began to provide treatment to Petitioner in 2008.

Petitioner sought an orthopedic consultation with Harel Deutsch, MD. Dr. Deutsch examined Ms. Perry on April 5, 2008 and agreed with Dr. Sweeney that Petitioner required surgery. He proposed using a morphogenic protein during surgery which would stimulate bone growth. According to Dr. Deutsch, use of this protein would give a smoker the same level of success as a non-smoker. Still Respondent refused to authorize surgery. Petitioner filed an emergency Petition for medical care pursuant to Section 8(a) of the Act.

Petitioner participated in numerous programs to help her stop smoking. She had been smoking for more than thirty years. Over the course of the next year, Petitioner participated in various programs to help her stop smoking. She had laser treatment, hypnosis, accupuncture as well as programs promoted by Respondent to help her stop smoking. On October 17, 2008, Petitioner was evaluated by Jody Reed, a psychologist. In this examination, Dr. Reed reported that Petitioner was suffering from major depression, dysthemic disorder and a chronic pain syndrome. It was hoped Petitioner would benefit from psychotherapy to help her stop smoking On February 25. 2009, Respondent directed Ms. Perry to Dr, Galetzer-Levy for a psychological evaluation. Dr. Galetzer-Levy found that Petitioner was suffering from severe depression which was caused in part by her work accident. He reported that she was motivated to return to work and that he found no indication of secondary gain or malingering behaviors. Petitioner had also participated in a smoking cessation program sponsored by the University of Chicago.

Petitioner remained under the care of Dr. Dasari and Dr. Deutsch. Deutsch, like Sweeney before him, was not given authorization to perform surgery. Because Petitioner suffered from a mechanical failure in her lumbar spine, Dr. Deutsch only had a surgical option to treat this

condition. Dr. Dasari continued with his palliative care, attempting to provide pain relief until a surgical option could be achieved. Dasari reported that Petitioner's pain level was consistently 8-9/10 and she reported occasional bladder control issues. She was having difficulty thinking. Dasari had been prescribing Lidoderm patches, Opana, Neurontin and Amitiza. He also advised that Petitioner use her LSO brace.

During this time Petitioner's physical and psychological condition continued to deteriorate. Her case proceeded to trial in April, 2009. As in the earlier hearing, Ms. Perry was the only witness to testify. Petitioner testified as to the intractable low back pain she experienced, muscle spasm and bilateral leg radicular symptoms. She acknowledged her struggles trying to stop smoking. She had success prior to her cervical fusion when she utilized nicotine patches and substitutes. The emotional stress caused by her relentless physical pain and inability to obtain pain relief was compounded by the demand that she stop smoking. Following this testimony, this matter was continued to May, 2009 to close proofs and submit medical records and reports. The case was further continued. In June, 2009, the Illinois Appellate Court, Workers' Compensation Division rendered a decision in the case of *Global Products v. Illinois Workers Compensation Commission*, (2009) 329 Ill.App3d 408; 911 N.E.2d 1042; 331 Ill.Dec. 812 In this case, the Court ruled that an employer could not reasonably deny a repeat fusion surgery to an injured worker on the basis that the worker smoked. Following the publication of this decision, Respondent authorized the repeat lumbar fusion. Proofs were never closed in this matter - no medical records or reports were submitted into evidence and the Arbitrator never rendered a decision.

Dr. Deutsch performed the repeat lumbar fusion on September 29, 2009 at Rush. He removed the hardware which had loosened. He utilized the morphogenic protein and replaced the instrumentation. The fusion site extended from L3 to S1. Upon her discharge from Rush Hospital, Dr. Deutsch prescribed neurontin, opana, amitiza, xanax, celexa, protonics, flector and Lidoderm patch. Following surgery, Ms. Perry noticed the radicular pain in her legs had improved although her back pain persisted. Ms. Perry returned to Dr. Deutsch for post-operative visits. Dr. Deutsch ordered x-rays to be performed to monitor the progress of the bone healing at the fusion site. Satisfied with the progress of her bone growth and the stability of the lumbar spine, Dr. Deutsch prescribed physical therapy.

Petitioner participated in physical therapy and reported further improvement. Deutsch continued the pain medications and prescribed aqua therapy. This treatment, which was performed in a pool helped support Petitioner's weight, reducing stress on her back and lower extremities. In July, 2010, Petitioner underwent a CT scan at Rush University which mild levoscoliosis at L4-5; L4-5 hemilaminectomy defect at location of screw removal, L5-S1 hemilaminectomy and a left lateral disc herniation at L3-4. Dr. Deutsch prescribed that Petitioner participate in an FCE. This study was performed at St. Mary Medical Center on July 6, 2010. The charge for this study, $1,001.00, was never paid by Respondent. Petitioner was experiencing difficulty with the lifting aspects of the test. When she started the test, her pain level was 4/10. Thereafter it increased to 10/10. This study demonstrated that Petitioner was capable of working only at a sedentary level. Based upon the results of the FCE, Dr. Deutsch discharged her from

care and placed permanent restrictions of no lifting in excess of 10 pounds. He stated Petitioner was at maximum medical improvement and would not benefit from further care. He did however continue the Petitioner's pain medications.

Based upon this statement, Respondent refused to provide any further medical care, including prescriptions. Petitioner returned to Dr. Deutsch in September, 2010. Dr. Deutsch clarified his statement regarding Petitioner's need for further medical care. While Petitioner would not benefit from further surgery or therapy, she does continue to require continued medications. He prescribed Norco and Robaxin. Ms. Perry was to return to him in 3 - 6 months.

As Petitioner had been terminated by Respondent in 2006, there was no sedentary work available with Respondent. Following her release to return to work in a sedentary capacity, Petitioner began her own job search, contacting various prospective employers near her home in Crete, Illinois. Petitioner submitted applications for employment to more than fifty prospective employers. She was not successful in obtaining employment. A copy of the job search records was submitted into evidence.

In October, 2010, Respondent sought to provide vocational rehabilitation services to Petitioner. Petitioner was a 50 year old woman with a GED. After high school, she had no other formal education. In her adult life she worked in a number of unskilled labor jobs. At Speedway, Petitioner had been a clerk/associate for several years. She did not have any office skills or experience, she had no typing skills, no computer skills. Respondent assigned Triune to administer the vocational rehabilitation of Ms. Perry. Monika Dabrowiecka, MA was the vocational person assigned to assist Ms. Perry. From November 2010 to January, 2012, Petitioner submitted more than 500 applications for employment. Petitioner went on several job interviews without success. In addition, Petitioner participated in basic computer skills classes as well as typing classes to improve her chances at becoming employed. Petitioner met with Ms. Dabrowiecka on a weekly basis at the Crete Public Library to review job leads and employment opportunities and review the submissions made by Petitioner. In January, Respondent terminated the vocational efforts of Triune. Respondent did not utilize the services of a Certified Rehabilitation Specialist with regard to the vocational plan implemented by Respondent.

Petitioner returned to Dr. Deutsch on December 2010. While she had enjoyed some improvement following the repeat fusion, she was still having significant difficulties with her day to day activities. Ms. Perry was capable of sitting or standing for no more than an hour at a time. She was unable to sleep for more than 2 - 3 hours at a time. She continued to take the medication prescribed by Dr. Deutsch and employed home remedies such as taking hot showers several times a day. These measures only provided temporary relief. Based on these complaints, she advised Dr. Deutsch she could only perform work type activities for 4 hours at a time. Dr. Deutsch prescribed a repeat CT scan, Flexeril and advised Ms. Perry to return to see him in January, 2011.

Ms. Perry returned on January 31, 2011 at which time he reviewed the results of the CT scan with Petitioner. This study indicated mild degenerative changes at L2-3; mild disc bulge at L3-4;

Residual canal narrowing at L4-5 due to diffuse disc bulge and thickening of the ligamentum flavum and impingement on the thecal sac posteriorlaterally at L5-S1. Petitioner reported having trouble with prolonged sitting or standing more than 2 hours. He restricted her activities to 4 hours. He also advised Petitioner to return to Dr. Dasari to treat her chronic pain condition.

Petitioner returned to Dr. Dasari on February 24, 2011. She reported that she had the repeat fusion. At the time of this visit she reported pain levels of 4-7/10. She was having trouble thinking. Dr. Dasari prescribed a duragesic patch, and Robaxin. Petitioner returned to Dr. Dasari two weeks later stating she had an allergic to the duragesic patch. She was then prescribed Embeda and she tolerated this medication. When she returned two weeks later, MScontin was also prescribed. Dr. Dasari provided a topical analgesic for Petitioner to apply to her back. MScontin was an opioid. Despite the medications prescribed by Dr. Dasari, Petitioner was never pain free. The MScontin controlled her back pain and the muscle spasms in her legs were controlled by Robaxin or Amitiza. Petitioner continued to see Dr. Dasari on a monthly basis through the date of hearing. At the time of hearing, Petitioner was taking the following medications: MScontin, Flexeril; Baclofen, Amitiza and advised that Ms. Perry continue with her LSO brace. Dr. Dasari would prescribe periodic blood tests to measure the medication levels in Petitioncr's system.

In July 2011, Petitioner was evaluated by Thomas Grzesik, a Certified Rehabilitation Counselor who maintained an office in Schererville, IN. Mr. Grzesik interviewed Ms. Perry at her home. Mr. Grzesik reviewed Petitioner's medical records, her vocational records from Triune, reviewed her medications and conducted a face to face interview with Petitioner. It was Mr. Grzesik's opinion that Ms. Perry was not employable based upon her limited education, her limited work experience, her lack of transferrable skills, her personal/physical limitations and her use of opiate based medications which prevented her from operating a motor vehicle when such medications were in her system.

In June, 2012, Petitioner participated in another functional capacity evaluation with Flexeon Physical Therapy. This test which lasted several hours required Ms. Perry to perform a number of simulated work-like activities. The examiner found that Ms. Perry provided good effort. Ms. Perry was found to be unable to perform any work activities more than two hours per day.

In July, 2012, Thomas Grzesik had an opportunity to review the depositions of Dr. Deutsch and Dr. Dasari. He also had the opportunity to review the Functional Capacity Evaluation performed at Flexeon.

This matter proceeded to trial on November 14, 2012. At this hearing it was stipulated that on December 12, 2005, the Respondent, SPEEDWAY, was operating under and subject to the provisions of the Illinois Workers' Compensation Act; and on this date the relationship of employee and employer existed between the Petitioner, Glenda Perry, and said Respondent; on the above mentioned date the Petitioner sustained accidental injuries which arose out of and in the course of the employment by the Respondent; timely notice of this accident was given the

Respondent; the earnings of the Petitioner during the year next proceeding the injury were $18,510.77 and the average weekly wage was $355.00; Petitioner at the time of injury was 43 years of age, married and had no child under 18 years of age. It was further stipulated that Petitioner had been temporarily totally disabled from December 29, 2005 to November 14, 2012 and that the sum of $84,699.05 had been paid in temporary total disability benefits.

The issues in dispute were:

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

(J) Were the medical services that were provided to the Petitioner reasonable and necessary?

(N) Nature and extent of Petitioner's claimed injury

(O) Whether Respondent may be permitted to pursue further vocational rehabilitation.

As before, Ms. Perry testified at hearing. In addition, Dr. Deutsch and Dr. Dasari testified pursuant to Respondent's Dedimus Postestatum. Dr. Deutsch'e evidence deposition was taken on April 20, 2012 and Dr. Dasari's evidence deposition was taken on April 24, 2012. At trial Petitioner submitted the medical records of Dr. Sweeney, St. Margaret Hospital, Dr. Deutsch, Dr. Dasari, Dr. Reed, Dr. Galetzer-Levy, Mary Lee, RN, PsyD, Forte/Triune (vocational rehabilitation) and reports of Flexeon Physical Therapy (June 2012 FCE) and reports of Thomas Grzesik, MS, MA, CRS, LCPC. Respondent presented no witnesses at hearing. Respondent submitted records from St. Mary Hospital (FCE); Forte/Triune; Reports from Dr. Zelby (1-28-08; 4-07-08); Dr. Orth (1-13-06); Dr. Galetzer-Levy(3-4-09) ; Utilization Review (01-20-09)

At Hearing, Petitioner testified that although the repeat fusion greatly reduced her lower extremity pain, she was never pain free. The back pain was always present. She was taking morphine to control her day to day low back pain and provide her with some level of comfort. She continued to experience spasm in her legs several times per day which she controlled taking baclofen or robaxin. She described an inability to sleep through the night. When she rises in the morning, it takes 15-20 minutes each morning stretching her body so that she could get to her feet. Petitioner described her inability to sit for more than two hours at a time and her inability to stand for any extended length. She often feels fatigued taking her medication but it does provide enough pain relief to allow her to make through the day. She testified that in July, 2010, Avizent, the workers' compensation carrier for Respondent refused to pay any medical expenses for treatment she received from Dr. Deutsch, Dr. Dasari, prescription expenses, lab work. It was necessary for her husband's union Health & Welfare Fund to pay for medical care, prescription expenses and lab work. Petitioner submitted billing statements from the following medical providers; EMPI $1,523.05; LabCorp $387.00; Rush University Med. Group $177.00; Lake Imaging $ 85.00; Informed Mail $270.00; Millenium Labs $ 36.96; Pain Management Specialists $267.74; Midwest Interventional Spine $618.40; Dr. Zavala $230.00; DiaTri $ 345.00; Subrogation Local 731 $6,698.80. In addition Petitioner paid the following out of pocket costs:

cane $23.09; Laser $270.00; St. Margaret $293.85;

In his evidence deposition, Dr. Deutsch testified that the lumbar fusion surgery he performed was causally related to Petitioner's work injury of December 2005. Dr. Deutsch described his use of the morphogenic protein during the second lumbar surgery. This protein enhanced bone growth at the fusion site which ultimately healed to a solid fusion. Dr. Deutsch further clarified that although Petitioner had reached maximum medical improvement in July, 2010, he did opine that Petitioner required further pain medication and other palliative care to make her pain levels tolerable. While he acknowledged that Petitioner could likely perform some type of work based upon her physical limitations, he acknowledged that he possessed no expertise in vocational rehabilitation. He admitted that Petitioner's use of presciption opiate medications would interfere in her ability to operate a motor vehicle. While he was satisfied that Petitioner was limited to working four hours per day, he stated it was possible that a work hardening program could improve her stamina. He could not offer any particular protocol and would defer to a therapist. He never changed Petitioner's restrictions. From a pain management standpoint, he would defer to Dr. Dasari who was Petitioner's treating physician.

Dr. Dasari was more blunt in his testimony. Petitioner's resulting physical condition which developed as a result of her work injury required the use of morphine and other heavy duty medications to control her pain. Based upon Petitioner's pain level and the use of the opiates described, he felt that it was very unlikely that Petitioner would be able to work.. According to Dr. Dasari, Petitioner would always require pain medication to control her pain.

In support of the Arbitrator's decision relating to disputed issues F, J, K and O, the Arbitrator finds the following facts:

On December 12, 2005 Petitioner sustained accidental injuries to her neck, left shoulder and low back due to an injury at work. This accident caused Petitioner to sustain a herniated disc at C5-6; and herniated discs at L4-5 and L5-S1 which arose out of and in the course of her employment with Respondent. Petitioner underwent a cervical fusion at C5-6 which was reasonable and necessary to cure her condition of ill-being in her cervical spine. Respondent has paid all reasonable and necessary medical expenses pertaining to Petitioner's cervical spine fusion. Petitioner reached maximum medical improvement in the cervical spine in May 2007.

With regard to treatment Petitioner received to her lumbar spine, Petitioner underwent a lumbar fusion at L4-5 to L5-S1 which was reasonable and necessary to treat her condition of ill-being in her lumbar spine. The lumbar fusion surgery performed by Dr. Sweeney on May 14, 2007 was appropriate to treat the herniated discs at L4-5 and L5-S1. The arbitrator finds that the fusion did not heal. Although Petitioner was a smoker, she was a smoker long before she had been employed by Respondent. The Arbitrator finds that he is bound to reject the argument that Petitioner engaged in an injurious practice and adheres to the rationale of the appellate court in *Global Products v. Illinois Workers Compensation Commission.* 329 Ill.App3d 408; 911 N.E.2d 1042; 331 Ill.Dec. 812 Despite Petitioner's inability to stop smoking, Petitioner demonstrated a willingness to follow medical advice. She continued to attempt to stop her smoking. The Arbitrator further notes that the repeat lumbar fusion was also reasonable and necessary to treat

Petitioner's condition of ill-being. Dr. Deutsch, performed the second fusion using a morphogenic protein. This protein enhanced bone growth and created a solid fusion from L3-S1.

The testimony of Dr. Deutsch credibly established that Petitioner suffered from severe permanent restrictions in her lumbar spine following two fusion procedures. The restriction place by Dr. Deutsch were consistent with Petitioner's resulting physical condition, her continuing physical complaints, her description of her physical capabilities and the results of the July 2010 FCE and later study performed in 2012. The arbitrator also finds the testimony of Dr. Dasari compelling. The Arbitrator finds that the level of pain medication required by Petitioner was reasonable and necessary to control her pain and that such opiate based medications prevent Petitioner from safely operating a motor vehicle under Illinois law.

Petitioner testified credibly before the Arbitrator. As the medical evidence proved that Petitioner was capable to return to work only in a sedentary capacity, her self-directed efforts to find work were appropriate and taken in good faith. Thereafter, when Respondent provided vocational rehabilitation services, the Arbitrator finds the Petitioner cooperated fully with such efforts, submitting more than 500 applications/jobsearches.

The Arbitrator finds that the medical bills submitted by Petitioner were causally related to Petitioner's injury, It was improper for Respondent to refuse to pay such medical expenses based upon Dr. Deutsch's statement that Petitioner had reached maximum medical improvement. Both Dr. Deutsch and Dr. Dasari testified as to Petitioner's need for palliative medical care and Respondent provided no medical evidence that such care was either unnecessary or not causally related to the work accident. As such the Arbitrator awards the following medical bills: EMPI $1,523.05; LabCorp $387.00; Rush University Med. Group $177.00; Lake Imaging $ 85.00; Informed Mail $270.00; Millenium Labs $ 36.96; Pain Management Specialists $267.74; Midwest Interventional Spine $618.40; Dr. Zavala $230.00; DiaTri $ 345.00; Subrogation Local 731 $6,698.80. In addition Petitioner paid the following out of pocket costs: cane $23.09; Laser $270.00; St. Margaret $293.85;.

Finally, the Arbitrator concludes that based upon the totality of the evidence that Petitioner has demonstrated that she is permanently and totally disabled. Medical records indicate that Petitioner's condition had reached maximum medical improvement on July 10, 2010. She thereafter commenced a self directed job search and then in November of 2010 began formal vocational rehabilitation as directed by Respondent. This lasted until November 11, 2011 at which time Respondent apparently terminated vocational rehabilitation efforts after Petitoner had made more than 500 job contacts and not obtained a single interview.. In March of 2012 Respondent offered to restart voc rehab but this was apparently declined by Petitioner. Based on the record as a whole, the Arbitrator finds that Petitioner is awarded maintenance benefits from July 10, 2010 through November 11, 2011, in the amount of $236.43 per week and that thereafter the Petitioner is entitled to receive permanent total disability benefits in the amount of $404.37 per week that have accrued since said date and continuing.

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

David Ghezzi,

Petitioner,

vs.

NO: 12 WC 31556

14IWCC0300

Spectrum Contracting,

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, notice, temporary total disability, medical expenses, prospective medical expenses, benefit rates 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 July 10, 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.

14IWCC0300

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 $14,500.00. 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: APR 2 8 2014

MB/mam
O:4/17/14
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Mario Basurto

David L. Gore

Stephen Mathis

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

GHEZZI, DAVID
Employee/Petitioner

Case# **12WC031556**

14IWCC0300

SPECTRUM CONTRACTING
Employer/Respondent

On 7/10/2013, 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:

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

0532 HOLECEK & ASSOCIATES
LINDSAY REINER
161 N CLARK ST SUITE 800
CHICAGO, IL 60601

14IWCC0300

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
19(B) & 8(A) DECISION

David Ghezzi
Employee/Petitioner

v.

Spectrum Contracting
Employer/Respondent

Case # 12 WC 31556

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 **04-30-13**. 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. [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. [x] 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. [ ] 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. [x] Other **prospective medical**

FINDINGS

On **07-21-12**, 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.

In the year preceding the injury, Petitioner earned $ **32,942.00**; the average weekly wage was $ **633.50**.

On the date of accident, Petitioner was **57** years of age, ***married*** with **2** dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner temporary disability benefits of $ 422.33 /week for 23.286 weeks, commencing 11-19-12 through 04-30-13, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $ 4,534.00.

Prospective medical care is awarded in the form of cortisone injections prescribed by Dr. Domb.

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

07-10-13
Date

JUL 10 2013

FINDINGS OF FACT

Testimony of David Ghezzi:

Petitioner testified that he is a 58 year old male that has made a career as a laborer, mason, and real estate developer. Petitioner testified that up until the economic down turn a few years ago, he was a principal at Ghezzi Masonry, LLC, a unionized residential masonry company. Petitioner testified that this was a large successful masonry company that was started in the 1950's by his dad. Petitioner testified that as a result of the economic downturn, new work dried up as builders went out of business. Petitioner testified that to make a living, he started to use his laborer's card to get work from a couple of different Unions as well as any other side work including home remodels. Petitioner testified that prior to 7/21/12 he was in great physical shape. Petitioner testified that he would regularly take 15-30 mile bicycle rides as well as jog on average 20 miles / week. Petitioner testified that he was struck by a car when he was four years old injuring his right hip which resulted in a permanent limp. However, Petitioner testified that he had no pain, no treatment, and no disability from the hip for over 50 years. Petitioner testified that on July 21, 2012, prior to going to work, he took a 15 mile bicycle ride with his friend Wayne Borg. Petitioner testified that he has not gone for any bicycle rides or runs since he was injured on 7/21/12 while working on the Metra line for Respondent.

Petitioner testified that on July 20, 2012 he received a call from Mark LaPore, a Union Representative. Mr. LaPore offered Petitioner a 2 day job working on concrete repair and membrane installation on a bridge located on the Metra line in Chicago. The job was to start on 7/21/12 at 5:00 P.M. and work through the night into Sunday until all work was completed. Salary for the job was $36.20 / hour base, $54.30 / hour for Saturday at time and a half, and $72.40 / hour for Sunday at double time. The job required them to be done and off the tracks

before rush hour on Monday, 7/23/12. Mr. LaPore supplied Petitioner with the cellular numbers of the two supervisors on the job, Rob Stelter and Kurt Wessel. Mr. LaPore asked Petitioner to give a ride to the jobsite to another worker, Tom McDermott. Petitioner was not friends with Tom McDermott and had only met him on one prior occasion when he gave him a ride to a different job site. (Transcript P. 13). On the afternoon of July 21, 2012 Petitioner picked up Tom McDermott at his home in Orland Park to travel to the jobsite.

Petitioner arrived at the jobsite, parked, and contacted Kirk Wessel, a supervisor for Respondent. Petitioner and Tom McDermott met up with Kirk Wessel and the other supervisor, Rob Stelter. Petitioner was immediately directed to move his car to a different location. Tom McDermott stayed at the jobsite. When Petitioner returned to the jobsite, he was given a bright yellow safety vest and gloves. Petitioner did not sign any safety training forms and did not attend any safety training. No other safety gear was issued to Petitioner.

Petitioner and Tom McDermott testified that they worked together during the entire job. Petitioner testified there first task was to grind down concrete. After doing that for a few hours they were given primer to apply to all the concrete. The concrete was being primed so that a membrane could be installed. The process included using power sprayers in which Petitioner would be down on his hands and knees holding the membrane in place while chemical primer was being sprayed over his shoulder causing chemical to splash onto the back of his neck. Petitioner and Tom McDermott testified that after working with the primer for about an hour they started to burn on the back of their necks. Both Petitioner and Tom McDermott testified that this was not a sun burn as it was dark out the majority of the time they worked with the primer. Petitioner and Tom McDermott testified that they approached the supervisors on three separate occasions to complain about the burns. Petitioner and Tom McDermott testified that

they were not sure which supervisor was Kirk Wessel and which was Rob Stelter, but they knew they were the supervisors. On each occasion they were told that the primer does not have anything in it that would cause a burn. Petitioner testified that about 3:00-4:00 in the morning he went searching for a rag to put water on so he would wipe down the back of his neck. Petitioner testified that he felt like his neck was on fire. Petitioner testified that he walked about 30-40 feet away from Tom McDermott on a bridge in search of a rag. As Petitioner walked there was a plank covering a hole in the ground. Petitioner testified that he tripped on the plank landing on his right side striking his hip, lower back and head. As a result of the fall, Petitioner began to bleed from his nose and a cut on his head. Petitioner testified that he used his work issued safety vest to wipe the blood. The Respondent issued vest with all the dried blood was presented and viewed by all parties at the hearing. The vest was identified as the one that was provided at the jobsite and appeared to be stained with significant amounts of dried blood. Petitioner testified that after a few seconds he stood up and walked past Tom McDermott who inquired if he was OK and then over to one of the two supervisors. Petitioner testified that he advised the supervisor that he had fallen and asked if they had anything to help stop the bleeding. At this point Petitioner was using his safety vest. Petitioner testified that he was offered no assistance. Petitioner then walked back past Tom McDermott in search of something other than vest to control the bleeding. Petitioner testified that he found a rag, got the bleeding under control, and returned to work. Petitioner and Tom McDermott testified that the burning on their necks continued to get worse.

About 7:00 A.M. Petitioner and Tom McDermott again complained to the supervisor about their necks burning. Tom McDermott testified that during this conversation Petitioner also complained that his hip still hurt from his fall on the jobsite. Tom McDermott said he could not

handle the burning anymore and left the jobsite to sit in Petitioner's car. Tom McDermott did not return to the job site. About 10:00 Petitioner testified that he could no longer take the burning or the hip / back pain and he advised the supervisors that he was leaving. Petitioner returned to his car and Tom McDermott drove home because Petitioner was in too much pain.

After dropping Tom McDermott off, the Petitioner called his primary care physician, John Oliveri, M.D. on his cell phone. As of July 22, 2012, at all times while treating the Petitioner, Dr. Oliveri was a board certified licensed internal medicine medical doctor in the State of Illinois. Dr. Oliveri regularly gave his cell phone number to his patients to call when the need arose. Dr. Oliveri advised Petitioner to meet him at the office that afternoon. On the afternoon of July 22, 2012 Dr. Oliveri's records clearly lay out the fact that Petitioner had an accident at the Metra Station while working sustaining an injury to his right hip and back as well as chemical burn. Dr. Oliveri's records along with his evidence deposition were admitted into evidence. Dr. Oliveri examined Petitioner, diagnosed the chemical burn and the hip / back pain. Dr. Oliveri testified that based on the fact that they were working at night and the fresh blistering and oozing appearance of the burn, he concluded that it was a fresh chemical burn sustained while working Dr. Oliveri gave Petitioner cream for the burn and offered prescription pain meds which Petitioner turned down instead opting to use Advil for pain. Petitioner testified that he turned down the pain medication at this point as he tries to avoid narcotics because he has hepatitis. As directed, Petitioner returned to Dr. Oliveri on 7/25/12 reporting that the chemical burn was improving but the hip / back pain was not. Petitioner deferred a pain prescription but accepted samples of Celebrex for pain. Petitioner reported that the burn was improving but the hip and lower back were still very painful. Dr. Oliveri gave Petitioner more cream for the burn and gave him Celebrex samples for the pain. On August 21, 2012 the Petitioner was hired by the

Union to work at the BP Amoco Plant where he was given the job of fire watcher. Petitioner's job was to sit on a stool and watch for fires. Petitioner did no physical labor on this job. Petitioner testified that this job lasted about 2 months. Petitioner testified being unable to get a workers' compensation claim set up and not having enough hours into get group insurance through the Union, he attempted to deal with the pain. At trial we heard tape recorded phone calls the Petitioner had in August 2012 with each supervisor again requesting workers compensation assistance. No assistance was offered or given. Petitioner returned to see Dr. Oliveri on September 25, 2012. Petitioner reported that the pain in the hip and back was not improving. Dr. Oliveri gave Petitioner steroid and xylocaine injection in the right hip, took more X-Rays, and directed him to follow-up in a week. Petitioner testified he was now taking vicodin provided by Dr. Oliveri for the pain. Petitioner testified that the pain was not improving and Dr. Oliveri recommended that Petitioner follow-up with an orthopedic. Dr. Oliveri referred Petitioner to Hinsdale Orthopedics. With a workers' compensation claim finally opened by Respondent, an agreement was eventually worked out with workers' compensation that allowed Petitioner to get an orthopedic consultation at Hinsdale Orthopedics. On November 19, 2012 Petitioner was seen by Benjamin Domb, M.D. at Hinsdale Orthopedics. Dr. Domb is a board certified orthopedic surgeon specializing in hip injuries. Petitioner gave the same history to Dr. Domb of a chemical burn and injury to the hip back, and head while working in July. Dr. Domb's assessment was a right hip injury in July and lumbar spinal radiculopathy. Dr. Domb further stated that there was a clinical indication of a possible labral tear vs. arthritis vs. other intra articular derangement. Dr. Domb took the Petitioner off of work, administered an intra-capsular injection into the right hip, ordered a lumbar MRI, referred Petitioner to Dr. Lorenz or Dr. Zindrick for a spinal consultation, and directed him to return in 6 weeks. The lumbar MRI

was completed on November 23, 2013. Petitioner attempted to schedule a follow-up with Dr. Domb but Respondent would not approve a return visit. Petitioner testified that the right hip injection helped for 2-3 weeks before wearing off, which confirms the diagnosis of a labral tear – a condition frequently caused by trauma.

Testimony of Tom McDermott:

Tom McDermott testified that he is 22 years old and currently works as a booking officer at the Chicago Ridge Police Department. Tom McDermott testified that he starts the Police Academy in September 2013 and will be a police officer by next summer. Tom McDermott testified that on July 20, 2012 he also received a call from Mark LaPore, a union representative. Mr. LaPore offered Tom McDermott the same 2 day job he had offered Petitioner. Tom McDermott advised Mr. LaPore of transportation issues and coordinated with Petitioner to give him a ride to the jobsite. Tom McDermott was not friends with Petitioner and had only met him on one prior occasion when he gave him a ride to a different job site. On the afternoon of July 21, 2012 Tom McDermott was picked up by the Petitioner at his Orland Park home and traveled to the jobsite.

Tom McDermott testified that he arrived at the jobsite with the Petitioner, parked, and contacted Kirk Wessel, a supervisor for Respondent. Tom McDermott testified that he and Petitioner met up with Kirk Wessel and the other supervisor, Rob Stelter. While Petitioner moved his car, Tom McDermott stayed at the jobsite. When Petitioner returned to the jobsite, he was given a bright yellow safety vest and gloves. No other safety training or gear was issued to Tom McDermott either. Tom McDermott testified that he did not remember signing any safety logs but did confirm his signature on all but one page when presented with the log.

Tom McDermott testified that he worked with the Petitioner during the entire job. Tom McDermott testified there first task was to grind down concrete. After doing that for a few hours they were given primer to apply to all the concrete. The concrete was being primed so that a membrane could be installed. The process included using power sprayers in which Tom McDermott and Petitioner would be down on their hands and knees holding the membrane while a chemical was being sprayed over their shoulders causing chemical to splash / spray onto the back of their necks. Tom McDermott testified that after working with the primer for about an hour he started to burn on the back of his neck. Both Petitioner and Tom McDermott testified that this was not a sun burn as it was dark out the majority of the time they worked with the primer. Tom McDermott further described the burn as coming from underneath the skin. Tom McDermott testified that he and Petitioner approached the supervisors on three separate occasions to complain about the burns. On each occasion they were told that the primer does not have anything in it that would cause a burn. Tom McDermott testified that about 3:00-4:00 in the morning Petitioner advised him that he was going to search for a rag to put water on so he would wipe down the back of his neck. Tom McDermott testified that Petitioner walked about 30-40 feet away from him on a bridge. As Petitioner walked towards a bridge, there was a plank covering a hole in the ground. Tom McDermott testified that he watched Petitioner trip on the plank and land on his right side striking his hip, lower back and head. Tom McDermott testified that as Petitioner stood up there was blood coming down his face from his nose and from a cut on his head. Tom McDermott testified that he watched Petitioner use his work issued safety vest to wipe the blood. The vest with all the dried blood was presented and viewed by all parties at the hearing. Tom McDermott testified that after a short time Petitioner stood up and walked past him. Tom McDermott testified that as Petitioner walked by he inquired if he was OK. Tom

McDermott testified that Petitioner walked straight over to one of the two supervisors. Tom McDermott testified that he does not know what Petitioner said to the supervisor but that Petitioner was wiping the blood from his face at the time. Tom McDermott testified that Petitioner next walked past him again stating that he needed to find something to control and wipe the bleeding. Tom McDermott testified that Petitioner came back to the site a short time later with the blood all over his vest and returned to work. Tom McDermott testified that he wrote down all the events of this job within days of the job ending. Tom McDermott testified that he did this because when: significant events such as your skin burning or when you see someone fall and hurt their hip, that's something worth writing down. (Transcript P. 94).

Tom McDermott testified that the burning on his neck continued to get worse and at about 7:00 A.M. he decided he could not handle it anymore. Tom McDermott testified that he and Petitioner went up to the supervisors who again said that the chemical will not burn you and if you wanted to leave that was fine. At that point Tom McDermott testified he could not handle it anymore so he left the area and went to Petitioner's car where he sat with the air conditioning going on full attempting to cool the burns. Tom McDermott testified that Petitioner returned to the car about 10:00 A.M. and asked him to drive home because he was in too much pain. Tom McDermott testified that does not and did not drink any energy drinks prior to or on this job site and did not vomit at any time.

Testimony of Wayne Borg:

Wayne Borg testified that he is a friend and a neighbor of Petitioner. Wayne Borg testified that the Petitioner was in excellent physical shape prior to 7/21/12. Wayne Borg testified that he used to regularly take 15-20 mile bicycle rides with the Petitioner prior to this

accident. Wayne Borg further testified that he would regularly see the Petitioner jogging around the neighborhood prior to 7/21/2012. Wayne Borg further testified that he went on a 15 mile bicycle ride with the Petitioner on the morning of 7/21/12. Wayne Borg testified that he has not taken any bicycle rides or seen Petitioner jogging in the neighborhood since 7/21/12.

Testimony of Robert Stelter:

Robert Stelter testified that he was a supervisor for Respondent on the Metra job. Mr. Stelter remembers the Petitioner from the job. Mr. Stelter denies that anyone could have sustained a burn while working with the chemical primer on the job. Mr. Stelter admits that Petitioner complained once to him about his neck burning from the chemical, but denies that Tom McDermott ever complained. (Transcript P.122). Interestingly however, Mr. Stelter does admit that lots of the people's necks on the Metra Job were red and burned. (Transcript P.122). Mr. Stelter denies that Petitioner ever reported an injury to him or ever seeing him with a bloody nose or bloody vest. Mr. Stelter confirms his mobile number of 414-349-3892 and multiple phone calls post-accident with the Petitioner first on Monday, July 26, 2012 at 2:48 P.M. and at 3:16 P.M. Mr. Stelter claims that there was no conversation in any of the phone calls regarding an accident while working at the Metra site. Mr. Stelter claims all the phone calls were Petitioner calling him looking for work but then admits that is not the protocol of how employees get hired to work at companies like Respondent's. (Transcript 129). When pressed, Mr. Stelter admits during the conversation on 8/3/12 that Petitioner may have complained to him about an on the job injury. (Transcript P. 127).

Testimony of Kirk Wessel:

Kirk Wessel testified that he was a supervisor for Respondent on the Metra job. Mr. Wessel remembers the Petitioner from the job. Mr. Wessel denies that anyone could have sustained a burn while working with the chemical primer on the job. Mr. Wessel denies that Petitioner or Tom McDermott ever complained to him about their necks burning while working. Mr. Wessel denies that Petitioner ever reported an injury to him or ever seeing him with a bloody nose or bloody vest. Mr. Wessel denies ever speaking to Petitioner about an injury on the Metra Job. Then, even though Mr. Wessel denies ever speaking to the Petitioner about an injury, at 4:30 A.M. at the Metra Job he questioned Petitioner about his limp and asked him if he was ok. Next, Mr. Wessel confirms his work mobile number of 414-349-6234 but denies any phone calls with the Petitioner after the job for about 2 months. (Transcript P.148). However, the AT&T records of Mr. Ghezzi confirm otherwise. Specifically, on July 23, 2012 at 12:18 P.M. Mr. Wessel calls Petitioner. Then on July 26, 2012 at 3:17 P.M. Mr. Wessel speaks with Petitioner again and has a 2 minute conversation. Then we hear a longer conversation Kirk Wessel has with the Petitioner that clearly discusses details of the accident. These three calls alone when Kirk Wessel denies contact with Petitioner for two months destroys Mr. Wessel's credibility for any memory of what occurred on this job. This conclusion is further supported by the fact that Kirk Wessel cannot get his story straight about whether or not he saw Tom McDermott throw up. Please see the transcript page 53:

Question:	Were you there when – you told us earlier that it was your understanding that Tom McDermott had thrown up. Did you witness him throwing up.
Answer:	No. I said my understanding was that he drank a lot of energy drinks, which then made him get sick.
Question:	Did you witness him throwing up?
Answer:	Yes, I did; and I took him a bottle of water.

Kirk Wessel testifies to two diametrically opposite answers to the same question. First he says he did not see Tom McDermott throw up and then in the next questions he says he did. Most important – Tom McDermott denies ever drinking any energy drinks or throwing up.

CONCLUSIONS OF LAW

The Arbitrator makes the following findings on the issue of (C):

Did an accident occur out of and in the course and scope of Petitioners employment by the respondent?

Petitioner testified that he began to experience a burning pain in the back of his neck about an hour after starting to work with the chemical primer. The process included using power sprayers in which Petitioner would be down on his hands and knees holding the membrane while chemical primer was being sprayed over his shoulder causing chemical to splash onto the back of his neck. Both Petitioner and Tom McDermott testified that this was not a sun burn as it was dark out the majority of the time they worked with the primer. Petitioner and Tom McDermott testified that they approached the supervisors on three separate occasions to complain about the burns. On each occasion they were told that the primer does not have anything in it that would cause a burn. Petitioner testified that about 3:00-4:00 in the morning he went searching for a rag to put water on so he would wipe down the burn on the back of his neck. Petitioner testified that he walked about 30-40 feet away from Tom McDermott on a bridge in search of a rag. As Petitioner walked there was a plank covering a hole in the ground. Petitioner testified that he tripped on the plank landing on his right side striking his hip, lower back and

head. All medical records are consistent with this rendition of the facts. Tom McDermott testified as an independent occurrence witness. Tom McDermott was not friends nor did he have any relationship with the Petitioner prior this accident. Tom McDermott is as independent as a witness comes. Tom McDermott witnessed Petitioner's trip on the plank and fall on his right side only 30-40 feet away. Tom McDermott witnessed Petitioner's stand with blood pouring from his nose and head. Tom McDermott witnessed as Petitioner use his safety vest to cover his nose and try to control the bleeding. Tom McDermott witnessed Petitioner walk back past him and go straight to the supervisor while holding his nose with his safety vest. There was nothing that Respondent's counsel was able to do with Tom McDermott on cross examination to undermine the consistency or credibility of his testimony.

We also received testimony from Wayne Borg regarding the excellent physical condition of Petitioner on July 21, 2012 before going to work. Wayne Borg further testified that he would regularly see the Petitioner jogging around the neighborhood prior to 7/21/2012. Wayne Borg testified that he took a 15 mile bicycle ride with the Petitioner on the morning of 7/21/12. Wayne Borg testified that he has not taken any bicycle rides or seen Petitioner jogging in the neighborhood since 7/21/12. It would seem logical to conclude that Petitioner would not be working on the Metra site if he had a pre-existing hip injury that caused significant pain. Accordingly, it would seem further logical to conclude that an injury happened on the jobsite if he was riding his bicycle hours before going to the job and now he has not gone bicycle riding or jogged since the accident.

Next we have the testimony of the two supervisors. Rob Stelter claims that Petitioner never told him he was burned on his neck yet openly admits that everyone's neck was red and burned. Next Rob Stelter testified that the 3 calls that Petitioner made to him after the accident

were strictly about Petitioner seeking work and included no discussion on an injury on the Metra site. This is completely inconsistent with the fact that according to Petitioner and Tom McDermott, because the only way to get hired on a Union job is through the Union Steward, in this case Mark LaPore. Furthermore, this is inconsistent with the tape recorded phone call with Rob Stelter sometime in August 2012 where Petitioner is again asking him for help. Kirk Wessel claims that Petitioner never told him he was burned on his neck or fell injuring his hip / lower back yet he admits to asking Petitioner about 4:30 A.M. why he is limping and if he was OK. Kirk Wessel does admit contrary to Rob Stelter that people were complaining of their necks burning. (Transcript P.150). Next Kirk Wessel denies talking to Petitioner for two months after the accident yet he called him on 7/23/12 – the next day. According to Petitioner, Mr. Wessel called him, they spoke for 2 minutes, and he asked how he was doing. They then spoke again on July 26, 2012 and in August 2012. This is confirmed by the Petitioner's AT&T bill and the tape recording we heard at trial. Kirk Wessel's claims are completely inconsistent with Petitioner's phone bill which was admitted into evidence proving one incoming phone call from Mr. Wessel to Petitioner and two other calls with Mr. Wessel from Petitioner's phone. Furthermore, this is inconsistent with the tape recorded phone call with Kirk Wessel sometime in August 2012 where Petitioner is again asking him for help. Based on this evidence it is more probably than not the Petitioner sustained an accident in the course and scope of his employment on 07-21-12 and 07-22-12 while working for the Respondent on the Metra jobsite.

The Arbitrator makes the following findings on the issue of (F):

Is Petitioner's present condition of ill-being causally related to the injury?

The medical records from Dr. Oliveri and Dr. Domb corroborate that the Petitioner sustained a hip injury and chemical burns to his neck while working for Respondent on 07-21-12 and 07-22-12. Respondent presented no medical evidence to refute or challenge the opinion of Dr. Oliveri that the chemical burn and the hip / lower back injury is causally related to the injury while working for Metra. Dr. Oliveri testified that the burn he treated on the back of Petitioner's neck on 07-22-13 was a fresh burn based on the fact that it was oozing and blistered. In addition, Petitioner was in great physical shape up until the time he left for the Metra job on 07-21-12. Petitioner testified along with Wayne Borg that they used to regularly to on 15-20 mile rides together and that they went on a 15 mile ride on the morning of 07-21-12. Petitioner testified that he used to jog on average of 20 miles / week. Petitioner testified that he has not gone bicycle riding or jogging since this accident. Wayne Borg testified that he used to see Petitioner regularly jogging around the neighborhood. Wayne Borg testified that he has not gone bike riding or seen the Petitioner jogging around the neighborhood since July 21, 2012. Based on the medical entered into evidence, there can be no dispute to this fact. Respondent has offered no evidence to provide an alternative explanation of the cause of injury.

The Arbitrator makes the following findings on the issue of (E):

Was timely notice of the accident given to the respondent of this injury?

Petitioner testified that as soon as he fell, he stood up, walked back past Tom McDermott and straight to either Rob Stelter or Kirk Wessel. This was witnessed by Tom McDermott – a fact that was not successfully challenged on cross examination. That is the first notice of

accident. Then, at around 7:00 A.M., Tom McDermott and Petitioner approached one of the supervisor's, Tom McDermott testified that he listened as the Petitioner advised the supervisor of the injury – again. That is the second notice of accident. Then on 7/23/12 Kirk Wessel calls Petitioner. Petitioner testified that he called to see how he was doing following his fall. Kirk Wessel has no other explanation for the call. That is the third notice of accident. Next, Rob Stelter confirms his mobile number of 414-349-3892 and four phone calls post-accident with the Petitioner. The first call on Monday, July 26, 2012 at 2:48 P.M. The second call on July 26, 2012 at 3:16 P.M. The third on August 3, 2012 at 9:14 A.M.. Mr. Stelter claims that in all of these calls, there was no conversation regarding an accident while working at the Metra site. Mr. Stelter claims all the phone calls were Petitioner calling him looking for work. This claim of Mr. Stelter is very convenient based on the circumstances. First Mr. Stelter denies that Petitioner or Tom McDermott reported that their necks were burning after using the priming chemical but then admits that everyone else had burned necks. That calls his credibility into question. Second, when confronted with the post-accident phone calls, Mr. Stelter would have us believe that all conversations were about Petitioner seeking work. The problem with this claim is the fact that the fourth call from August 2012 that was heard at trial clearly discusses and injury while working. In addition, according to Tom McDermott and Petitioner, the protocol is clear. In order to get work on a union job you get hired by a union representative – not the employer. That protocol is exactly what happened in this situation as both Petitioner and Tom McDermott were hired by Mark LaPore from the union. Accordingly, any claim by Rob Stelter that the phone calls from the Petitioner were to seek work seems less unlikely. These are the fourth, fifth, sixth, and seventh notice of accident. Finally, Tom McDermott saw the Petitioner go up to one of these supervisors right after he fell while he was controlling his bleeding with his work

vest. Clearly a presentation of this nature would include the reasoning of the blood. That is the eighth notice of accident. Based on all these contacts, there can be no valid claim that the Respondent did not receive valid timely notice of accident.

The Arbitrator makes the following findings on the issue of (G):

What were petitioner's earnings during the year preceding the accident?

Petitioner was hired to work a two-day job on the weekend. As a result, he is a "seasonal employee" under the Act and a not full-time. Sylvester v. Industrial Commission 197 Ill.2d 225 (2001). As a result, his average weekly wage would be calculated by multiplying the hours he worked that week (17.5) by his rate of pay $ 36.20, with the understanding that overtime at the straight time rate is included, then dividing that sum by the number of weeks worked (1). The above analysis results in an AWW of $ 633.50.

The Arbitrator makes the following findings on the issue of (J):

Were the medical services that were provided to the petitioner reasonable and necessary?

The Petitioner's first treatment was within 12 hours of the accident with Dr. John Oliveri. Dr. Oliveri is board certified in Internal Medicine. At all treatment dates (07-22-12, 07-25-12, 09-25-12, and 10-04-12) Dr. Oliveri was a licensed medical doctor in good standing in the State of Illinois. While it is true that Dr. Oliveri had some licensure issues that occurred in February 2013 that were discussed at his deposition, that has nothing to do and is irrelevant to the treatment dates and the care provided in 2012. Dr. Oliveri's records lay out the same consistent

history as his testimony, the testimony of Tom McDermott, the physical shape / disability testimony of Wayne Borg. Dr. Oliveri's charges for the four visits is $710.00 and there is no evidence that this is not reasonable and necessary.

The second doctor the Petitioner saw was from Hinsdale Orthopedics. This visit was authorized by the Respondent. Petitioner saw Dr. Benjamin Domb on November 19, 2012. Dr. Domb's records report the same consistent history of an accident that we have from all other evidence. Dr. Domb diagnosed the Petitioner with a possible labral tear and administered and hip injection. The Petitioner testified that injection helped for a few weeks which confirms the diagnosis. Dr. Domb took the Petitioner off of work, ordered a lumbar MRI, and referred Petitioner to Dr. Lorenz who he saw on December 17, 2012. Dr. Lorenz's records also record the same consistent history of a burn injury and fall over a plank while working in July 2012. The total bill from Hinsdale Orthopedics at this point is $3,824.00 and there is no evidence that this is not reasonable and necessary.

The Arbitrator makes the following findings on the issue of (K):

What amount of compensation is due for Temporary Total Disability?

The parties stipulated to the dates of TTD of 11-19-12 to 04-30-13 but Respondent contested liability. The evidence reveals that the Respondent authorized the Petitioner to see Dr. Domb on 11-19-12. It was at this visit that Dr. Domb took the Petitioner off of work. Petitioner has not worked since Dr. Domb took him off. Respondent presented no evidence that the Petitioner could work during this time. Respondent presented no evidence Petitioner's lost time

is not compensable. Accordingly Petitioner is due 23 2/7 weeks of back TTD and TTD going forward as he continues to treat for these injuries.

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

Matthew Piagnarelli,
Petitioner,
vs.

NO: 12 WC 43507
14IWCC0301

Paec High School,
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, permanent partial disability, causal connection, 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 6, 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: APR 2 8 2014

MB/mam
O: 4/17/14
43

Mario Basurto

David L. Gore

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PIAGNARELLI, MATTHEW
Employee/Petitioner

Case# **12WC043507**

14IWCC0301

PAEC HIGH SCHOOL
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:

0544 LOSS & PAVONE PC
JOSEPH J LOSS
1920 S HIGHLAND AVE SUITE 203
LOMBARD, IL 60148

0863 ANCEL GLINK
ERIN BAKER
140 S DEARBORN ST 6TH FL
CHICAGO, IL 60603

14IWCC0301

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

MATTHEW PIAGNARELLI
Employee/Petitioner

v.

PAEC HIGH SCHOOL
Employer/Respondent

Case # **12** WC **43507**

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 **April 24, 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. **XXX 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. **XXX** ☐ 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. ☒ **XXX 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. **XXX 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 **November 16, 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 $**53,105.26**; the average weekly wage was $**1327.63**.

On the date of accident, Petitioner was **35** years of age, ***married*** with **3** dependent children.

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

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

ORDER

For the reasons set forth in the attached conclusions of law, the Arbitrator finds that Petitioner sustained an accidental injury on November 16, 2012 which arose out of and in the course of his employment by Respondent. The Arbitrator further finds that Petitioner established a causal connection between that accidental injury and his current right foot condition of ill-being.

Medical Benefits

Respondent shall pay reasonable and necessary medical expenses of $2,711.50 (PX 4), subject to the fee schedule. In accordance with the parties' stipulation (Arb Exh 1), Respondent is entitled to Section 8(j) credit for any payments made by its group carrier toward these expenses. Respondent shall hold Petitioner harmless against any claims made by its group insurance carrier.

Permanent Partial Disability

Respondent shall pay Petitioner permanent partial disability benefits of $712.55 a week for a period of 25.05 weeks because the injury sustained caused the 15% loss of use of the right foot as provided in Section 8(e)(11) of the Act.

THE ATTACHED STATEMENT OF FACTS AND CONCLUSIONS OF LAW ARE INCORPORATED HEREIN.

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.

Molly C Mason
Signature of Arbitrator

May 6, 2013
Date

MAY - 6 2013

Matthew Piagnarelli v. PAEC High School
12 WC 43507

Arbitrator's Findings of Fact

Petitioner testified he has worked as a teacher for Respondent for ten years. His teaching assignments have varied over the years but he has never taught physical education. As of the hearing, he was teaching pre-algebra and world history. He is based at a high school attended by students who have learning disabilities and emotional disorders. Some of the students at this school are in the "low cognitive" category. Gang rivalry is an issue at the school. Petitioner testified he "always has to be conscious" of this rivalry. Physical confrontations are not unusual. The school is equipped with wall and floor restraints. The school also has an "isolation area" and an "isolation room," which is akin to a padded cell. Petitioner testified that, while he does not fear for his own safety, due to his years of experience at the school, he has to "take students down" on a regular basis.

Petitioner testified that the school has a multi-function room that is used as a cafeteria, a gymnasium and an auditorium. The floor of this room is composed of tile over concrete. Although someone usually sweeps up after lunch, the floor is usually dirty and sticky.

Petitioner denied injuring his right foot prior to November 16, 2012. Petitioner testified that the school's physical education teacher was absent that day and he was asked to supervise three classes of students during gym period. Petitioner's co-worker, Jack Fleming, was also supervising. Gym was conducted in the multi-function room. Petitioner testified this room has two exits. The classes were playing basketball in different areas of the room. A ball got loose from one group of students. The ball started rolling toward the south exit, near another group of students. Petitioner testified that "it can be an issue" if equipment begins to drift toward an exit. Petitioner also testified that he has seen students get very upset over relatively trivial matters, such as tripping over a loose ball. When he saw the ball rolling toward the south exit and the other group of students, he started running in order to retrieve the ball and thus head off any possible problem. He testified he felt it necessary to retrieve the ball so as to keep the various groups of students contained. He made a sudden turn and pivoted off of his right foot in order to turn left. As he did this, he felt a "pop" and a sharp pain in his right foot.

Petitioner testified this incident occurred on a Friday, near the end of the school day. He "thought [he] could tough it out" and finished the day. He completed an accident report that day. When he got up the next day, a Saturday, he realized he could not put weight on his right foot. He went to the Emergency Room at Adventist LaGrange Memorial Hospital.

The Emergency Room records of November 17, 2012 reflect that Petitioner complained of pain in the outside of his right foot. The records also reflect that Petitioner was "playing basketball yesterday" when he felt a "pop." Right foot X-rays revealed an "isolated, minimally displaced 2 transverse fracture of the tuberosity of the base of the right fifth metatarsal bone." The radiologist described this as a "pseudo-Jones fracture, likely related to an avulsion injury at

the insertion of the peroneus brevis tendon, with mild overlying soft tissue swelling." PX 1, pp. 3, 19. The right foot was placed in a cast. Petitioner was provided with crutches and was instructed to avoid weight bearing and see Dr. Vucicevic in two to three days. The Emergency Room physician restricted Petitioner to desk work "until cleared by orthopedist." PX 1, pp. 5, 15.

Petitioner testified he followed up with Dr. Robyn Vargo at Hinsdale Orthopaedics on Monday, November 19, 2012. The doctor's records contain a multi-page "patient assessment" form signed by Petitioner on that date. A "history" section on the first page of this form reflects that Petitioner injured his right foot on November 16, 2012 when he "ran after basketball." This section also reflects that Petitioner denied any previous right foot problems. PX 2, p. 1. Dr. Vargo's typed note of November 19, 2012 reflects that Petitioner "work[s] as a coach, ran to get a ball and fell the wrong way." PX 2, p. 6. The note also reflects that Petitioner "ran to get a ball at work and moved the wrong way and twisted his right foot and ankle." PX 2, p. 7. Dr. Vargo reviewed the X-rays taken at the Emergency Room and interpreted them as confirming a "proximal third fifth metatarsal fracture [with a] Jones type pattern." On right foot examination, she noted point tenderness at the fifth metatarsal and a little bit of varus in stance. She placed Petitioner in a boot and told him to continue using crutches for four weeks. She instructed Petitioner to return to her in four weeks for repeat X-rays. She warned Petitioner that "there is a chance this will not heal without surgical intervention, which would be by way of screw fixation." PX 2, p. 7.

Petitioner testified he resumed working after seeing Dr. Vargo, despite being on crutches, but avoided performing any "take downs." He does not claim any temporary total disability. Arb Exh 1.

On November 27, 2012, Dr. Vargo issued a note excusing Petitioner from "any physical activity as he is non weight bearing by way of boot and crutches until his next follow-up appointment 12/17/12." PX 2, p. 8.

Petitioner returned to Dr. Vargo on December 17, 2012. The doctor noted decreased swelling. She indicated Petitioner denied having pain while wearing the boot and using crutches. She obtained new X-rays and interpreted them as showing "some radiolucency to suggest some bone re-absorption prior to healing." She instructed Petitioner to continue wearing the boot but gradually wean off the crutches. She issued another note excusing Petitioner from any physical activity for an additional four weeks. PX 2, p. 11.

Petitioner returned to Dr. Vargo on January 14, 2013. The doctor described the swelling and bruising as "cleared." She noted no tenderness on palpation. She obtained repeat right foot X-rays and interpreted them as showing "still incomplete union but significant change in a positive direction with further callus formation." PX 3, p. 3. She described the fracture as 80% healed. She directed Petitioner to start wearing a "laterally posted" gym shoe and maintain low impact activity for another four to six weeks. PX 3, p. 3. She again restricted Petitioner from physical activity. PX 3, p. 4.

Petitioner next saw Dr. Vargo on February 11, 2013. The doctor noted Petitioner was "back in a shoe and trying a little bit of a light jog without too much trouble." She obtained a new set of X-rays and interpreted them as demonstrating further callus formation. She instructed Petitioner to "ramp up impact activity per pain tolerance" and return to her in May for final X-rays. PX 3, p. 1.

At the April 24, 2013 hearing, Petitioner testified he has an upcoming appointment with Dr. Vargo. He can walk fairly well on flat surfaces but experiences pain when traversing uneven surfaces. He typically plays softball in the summer but anticipates being limited in that regard. He typically stands while teaching. His right foot discomfort is at its worst at the end of a workday. In the past, he would be the one at his school to chase students who might try to run out of the building. He no longer does this since it would involve running on uneven ground. He has trouble keeping up with his three children, who are 7, 5 and "almost 2" in age. He applies ice to his foot from time to time. He takes Ibuprofen for pain.

Under cross-examination, Petitioner testified he was in the gym for about fifteen minutes before the accident occurred. During that fifteen minutes, he was off to the side, observing. He identified his handwriting and signature on RX 1, an "Employee's Report of Injury." He completed and signed RX 1 the Monday after the accident. RX 1 sets forth an accurate account of his injury. [On RX 1, Petitioner indicated a "ball got loose from students" and his foot broke when he ran to get the ball.] Before the accident, he did not notice anything unusual about the gym floor other than that the floor was dirty. He had eaten lunch with his students in the same room, which is known as the "café-gym-itorium", before the accident took place. It was when he turned to run after a loose ball that he was injured. He denied tripping over his own feet or falling. He was wearing gym shoes when the accident occurred. Since he is not a doctor, he is not sure why the injury occurred.

On redirect, Petitioner testified he made a sudden turn after seeing that the ball had gotten away from a group of students. The injury occurred as he turned to run after the ball.

Jack Fleming testified on behalf of Respondent. Fleming testified he has worked for Respondent since August of 2010. He is a "program assistant" at the same high school where Petitioner works. He and Petitioner have worked together since August of 2010. As a program assistant, he provides "behavior management" and academic support.

Fleming testified that he and Petitioner were in the gym, on the sidelines, before Petitioner was injured. A ball rolled. Petitioner went to retrieve this ball and "came up limping." Fleming was leaning against the padded wall of the gym when Petitioner was hurt. The accident happened about twenty minutes after he and Petitioner began working in the gym.

Fleming testified he did not notice any floor stickiness or other safety hazard in the gym before Petitioner's accident. Fleming identified RX 2 as a witness statement he completed and

signed in connection with the accident. He completed and signed RX 2 the "next day or so" after the accident, per Respondent's protocol. [RX 2, a witness statement completed by Fleming on November 19th, reflects that Petitioner "seemed to hurt his foot" on November 16th when he "ran after loose ball." It also describes the condition of the accident area as "fine."]

Under cross-examination, Fleming acknowledged that the students at the high school get into confrontations on a daily basis. One of his responsibilities is to control student behavior. Petitioner was trying to prevent a loose ball from going into a hallway at the time of the accident. Petitioner did this to avoid students running out into the hall after the ball and to prevent any student who might be out in the hall from gaining access to the ball. Fleming stated that, if the ball had entered the hallway, it would be anyone's guess as to what would happen next. It seemed to him that Petitioner was injured while running. Petitioner's accident was unavoidable and a consequence of bad luck. The gym floor can get dirty but a student usually "dry sweeps" the floor after lunch.

On redirect, Fleming testified that, while no students were misbehaving at the time of the accident, "staying ahead of the game is what we're shooting for."

Under re-cross, Fleming testified that, if a student had gained access to the loose ball, that student could have used the ball as a weapon against another student.

In response to questions posed by the Arbitrator, Fleming testified that there were about 15 to 20 students in the gym when the accident occurred. The other employees who were present at that time included Petitioner, the physical education teacher and "maybe others."

Arbitrator's Credibility Assessment

Petitioner was an articulate and credible witness, as was Fleming. They gave varying estimates as to the number of students present in the gym at the time of the accident but otherwise described their responsibilities and the tense atmosphere of the school in a very consistent manner.

Did Petitioner sustain an accident on November 16, 2012 arising out of and in the course of his employment?

There is no question that Petitioner's claimed accident occurred in the course of his employment. Petitioner and Fleming testified that the accident occurred on school premises during work hours.

The Arbitrator further finds that the accident arose out of Petitioner's employment. Petitioner was performing a work-related task at the time of his injury and was subject to an increased risk of injury by virtue of his unusual employment. Petitioner's formal job title may

be "teacher" but it is clear he also functions as a guard. His duties include maintaining order and preventing altercations. Immediately before the accident, he was trying to "take down" a loose ball so as to avoid having to "take down" students. Petitioner was attempting to "stay ahead of the game," to use the words of Respondent's witness, Jack Fleming. Because the ball had gotten loose from one group of students and was rolling toward another group, as well as the exit, Petitioner had a reasonable fear of a fight breaking out and made a sudden motion so as to run after the ball. It was when he made this motion that he got hurt. Fleming, a physically imposing individual whose duties include "behavior management," completely legitimized Petitioner's fear when he played out various scenarios under cross-examination. Fleming went so far as to say that, had a student in the hallway gotten his hands on the ball, he could have used it as a "weapon" against another student.

In finding in Petitioner's favor on the issue of "arising out of," the Arbitrator notes that "the clear rule in Illinois is that a claimant's risk [of injury] is to be compared to the general public" rather than to individuals in the vicinity of the accident. Illinois Institute of Technology Research Institute v. Industrial Commission, 314 Ill.App.3d 149, 162 (2000). To paraphrase Professor Larson, the risk of attack faced by a lion tamer is not to be compared with that faced by others in the cage. Rarely has Larson's analogy been more appropriate. Petitioner is a "lion tamer" of sorts. Under Illinois law, the risk he faced cannot be compared with that faced by Fleming. It can only be compared with that faced by someone outside the "cage." Members of the general public are not called upon to pivot abruptly and begin running so as to pre-empt an altercation. [Also see Wilts v. State of Illinois, 12 IWCC 291, a case in which the Commission (Latz, Gore and Basurto) upheld the Arbitrator's finding of accident in a case in which a "security therapy aide" injured her knee when she "turned the wrong way" and felt her knee pop as she started to run in order to provide aid to a co-worker during an altercation between two inmates.]

Did Petitioner establish causal connection?

The Arbitrator finds that Petitioner established a causal connection between his work accident of November 16, 2012 and his current right foot condition of ill-being. In so finding, the Arbitrator notes that Petitioner denied having any problems with his right foot prior to the accident. The Arbitrator has no reason to question this denial. Neither Petitioner's accident report nor the treatment records describe any pre-accident right foot problems. RX 1. PX 1, p. 27. PX 2, pp. 1, 6. The Arbitrator also notes that the accident resulted in an abrupt change in Petitioner's right foot condition. Petitioner testified to feeling a sharp pain in his foot immediately after pivoting. By the next morning, he was having trouble walking. The histories set forth in his treatment records are largely consistent with his testimony concerning the mechanism of injury. Right foot X-rays confirmed an injury consistent with trauma, i.e., a fracture. The record as a whole supports a finding of causation in this case.

Is Petitioner entitled to medical expenses?

At the hearing, Petitioner offered into evidence an itemized Emergency Room bill totaling $1,803.50 and an itemized Hinsdale Orthopaedics bill totaling $908.00 for services provided by Dr. Vargo from November 19, 2012 through February 11, 2013. PX 4. Respondent did not object to either of these bills.

Petitioner also offered into evidence various "Explanation of Benefit" forms reflecting payments made by his group carrier, Blue Cross/Blue Shield. PX 5. Respondent did not object to these forms.

The parties stipulated that, if the Arbitrator found the claim compensable and awarded the bills, Respondent would be entitled to credit under Section 8(j) for "all related payments made by its group insurance carrier," with Respondent holding Petitioner harmless against any claims made by said carrier. Arb Exh 1.

Having found that Petitioner established a compensable accident and causal connection, and there being no objection to the bills in PX 4, the Arbitrator awards Petitioner reasonable and necessary medical expenses totaling $2,711.50, subject to the fee schedule. In accordance with the parties' stipulation, Respondent is entitled to Section 8(j) credit for the amounts its group carrier paid toward these awarded expenses, with Respondent holding Petitioner harmless against any claims made by the group carrier in connection with those payments.

Is Petitioner entitled to permanent partial disability benefits?

The medical records reflect that Petitioner sustained a "Jones type" proximal third fifth metatarsal fracture as a result of his accident. PX 2, p. 7. Dr. Vargo elected to treat the fracture conservatively, via a boot and crutches, but warned Petitioner there was a chance he would require surgery with screw fixation. PX 2, p. 7. The last treatment record in evidence, Dr. Vargo's note of February 11, 2013, reflects that the fracture was still not fully healed but that Petitioner was generally doing well. PX 3, p. 1. Petitioner credibly testified he experiences pain after standing at work all day and when walking on uneven surfaces. Petitioner also credibly testified he no longer performs student "take downs" since that would require him to run at top speed. Petitioner testified he applies ice to his foot from time to time and takes Ibuprofen as needed.

In Luttrell v. Thomas Pallet Rebuilders, 12 IWCC 877, the Commission (Donohoo, Lamborn and Tyrell) upheld an award of 20% loss of use of the foot in a case in which the claimant required surgery after sustaining a "Jones type" fifth metatarsal fracture that failed to heal with booting. In the instant case, healing occurred with mobilization and Petitioner ended up not needing surgery. The Arbitrator awards permanency equivalent to 15% loss of use of the right foot, or 25.05 weeks at the applicable weekly rate of $712.55, under Section 8(e).

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

IBRAHIM M. RAMIREZ,

Petitioner,

14IWCC0302

vs.

NO: 12 WC 03817

CITY OF ROCK ISLAND POLICE DEPT.,

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 nature and extent, 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 had been a Police Officer for Respondent for 8 years at the time of accident. On April 5, 2011 he conducted a traffic stop on an individual who was driving erratically. The individual attempted to flee, but eventually pulled over in an alley. Once out of his own car, Petitioner noticed the individual was out of his car as well. Petitioner noticed that the individual was highly intoxicated, and he immediately began a physical altercation with Petitioner. In wrestling the individual to the ground, Petitioner absorbed the body weight of the individual on his right shoulder. He fractured his shoulder and also suffered scrapes and bruises on his elbow.

2. The next morning, Petitioner presented at Trinity Medical Center and underwent x-rays and an MRI. That same day Petitioner visited Concentra and met with a Nurse Practitioner named Katie Murphy. She examined Petitioner, prescribed medication, recommended physical therapy and took him off of work.

3. After 2-3 therapy sessions Petitioner preferred to continue it at his home. He was given the requisite equipment. On April 11, 2011 a nurse named Sullivan released Petitioner back to work and terminated his therapy. However, Petitioner stated that his pain and limited range of motion were still present.

4. On May 12, 2011 Petitioner returned to Concentra complaining of a clicking sound in his right shoulder and swelling in his elbow. He was referred back to Practitioner Murphy on May 20th. An arthrogram MMR was performed on May 26th, which finally revealed that Petitioner had suffered a fractured shoulder.

5. On June 1, 2011 Dr. Mendel, an orthopedic specialist, performed a cortisone injection. This helped for a few months. Petitioner followed up on July 16, 2011, but was encouraged to do exercises and was released from care. Petitioner followed up again one year later on July 27, 2012. At that time his pain had returned.

6. Currently, Petitioner still has range of motion limitations, although his pain has somewhat subsided. He has difficulty raising his arm above 90 degrees, however. He is not experiencing any elbow difficulty. He is right-handed. He demonstrated his limited range of motion at trial.

7. Petitioner is back working full duty.

The Commission modifies the Arbitrator's ruling on nature and extent. The Commission views the evidence slightly different than the Arbitrator, and finds that, while Petitioner's injuries do command the 7.5% loss of a man as a whole award, they do not justify the 10% loss of use of his right arm award. Petitioner himself testified that he currently has no elbow difficulty, thus it cannot be said that the 10% loss of use award was awarded due to any elbow injury.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner is entitled to a 7.5% loss of a man as a whole award under §8(d)(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.

14IWCC0302

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:
O: 2/27/14
DLG/wde
45

APR 2 8 2014

David L. Gore

Mario Basurto

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RAMIREZ, IBRAHIM M
Employee/Petitioner

Case# **12WC003817**

14IWCC0302

ROCK ISLAND POLICE DEPT
Employer/Respondent

On 8/5/2013, 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 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

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

2506 BETTY NEUMAN & McMAHON PLC
MARK WOOLLUMS
111 E THIRD ST SUITE 600
DAVENPORT, IA 52801

STATE OF ILLINOIS)
)SS.
COUNTY OF ROCK ISLAND)

☐ 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

14IWCC0302

Ibrahim M Ramirez
Employee/Petitioner

v.

Rock Island Police Department
Employer/Respondent

Case # 12WC 03817

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 **Edward Lee**, Arbitrator of the Commission, in the city of **Rock Island**, on **6/11/2013**. By stipulation, the parties agree:

On the date of accident, **04/05/2011**, 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 **$54,080.00**, and the average weekly wage was **$1,040.00**.

At the time of injury, Petitioner was **39** years of age, ***married*** with **3** children under 18.

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

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**. Petitioner's salary continued.

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 **$624.00**/week for a further period of **62.8** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **10% loss of use of the right arm and 7 1/2% loss of use of body as a whole.**

Respondent shall pay Petitioner compensation that has accrued from **4/5/2011** through **6/11/2013**, 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.

Edward Lee
Signature of Arbitrator

7/31/13
Date

AUG 5 - 2013

STATE OF ILLINOIS)
) SS
COUNTY OF ROCK ISLAND)

14IWCC0302

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

IBRAHAM RAMIREZ,	)	
	)	
Petitioner,	)	
	)	
v	)	IWCC: 12WC 03817
	)	
ROCK ISLAND POLICE DEPARTMENT,	)	
	)	
Respondent.	)	

FINDINGS OF FACTS APPLICABLE TO ALL ISSUES

Petitioner, a Rock Island Police Officer, late in the evening of April 5, 2011, chased down a speeder. The individual was intoxicated. When the driver exited his car an altercation ensued. During the course of the melee, the Petitioner and the violator fell to the pavement with the Petitioner and the violator both landing on Petitoner's right shoulder and elbow. The Petitioner is right handed. He has never had an injury to the right shoulder or arm prior to this occurrence.

He initially received conservative care from Concentra for what was diagnosed as a soft tissue injury. He did well in physical therapy initially and was discharged from care on April 11, 2011. However, he still had restriction of motion and pain in his shoulder.

Petitioner returned to Concentra and was sent for an MRI arthrogram. Thereafter, he was referred to an orthopedic surgeon, Dr. Tuvi Mendel. The diagnosis was that of a non-displaced fracture of the greater tuberosity of the right humerus and mild right shoulder impingement with mild insertional tendonopathy. A cortisone injection was administered which helped him for a couple of months. Petitioner was last seen by Dr. Mendel on July 27, 2012. He indicated that the treatment took away 70% or 80% of his complaints.

The Petitioner demonstrated with his left arm the motions that currently cause him pain in the right arm. Those motions involved raising the arm and abduction to

horizontal but no further without pain. At the opposition of the arm at horizontal, bringing the arm forward towards his chest caused discomfort and pain. He tried throwing tennis balls to his dog and that caused pain. He, however, returned to work without restriction.

The Petitioner's credible recitation of his complaints and demonstration of his level of motion which generated complaints of pain, the Arbitrator concludes that he has sustained permanency to the degree as found based upon both the arm and the shoulder injury.

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
X Modify down	X None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Timothy Knop,

Petitioner,

14IWCC0303

vs.

NO: 09 WC 21676

State of Illinois,
Menard Correctional Center,

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, notice, 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 FACTS AND CONCLUSIONS OF LAW

- Petitioner is a 49 year old employee of Respondent, who described his job as a correctional officer, sergeant, lieutenant. Petitioner began working for Respondent in 1984 as a correctional officer and was promoted in about five years to sergeant and then to lieutenant (Lt) at just under 20 years. Petitioner is now retired (July 2011) from Respondent and not currently employed. Petitioner reviewed DVD's of the job of a correctional officer and other materials. Petitioner also reviewed the DVD regarding a correctional lieutenant. and the Job Site Analysis of a correctional officer and a Lt. Petitioner stated that he saw the DVD 3-4 times but it had been a couple years since he last viewed it. As to the duties of correctional officer, Petitioner testified that his

impression was that the video was close but it was not an everyday scenario; he stated there is a lot more activity going on than just what that was shown on the video. He stated there is a lot more cell door opening, confrontations, checking doors, etc. As to frequency, he stated it does not show the full daily activity of a correctional officer. As to intensity/force, Petitioner stated it was more like a show than real life scenarios. Petitioner stated that as a correctional officer he rapped bars. Petitioner stated to do that you have a bar about a foot long that you rap that against the other bars on the doors. Petitioner testified that there are about 50-60 bars per cell and between 48-52 cells depending on the gallery. Petitioner stated that as a correctional officer he had to do that on a daily basis. Petitioner testified when he did that he experienced a great tingling sensation by the time he was at the end of the gallery as he would have hit the bars several hundred times by the time he was done. Petitioner testified as a correctional sergeant he rapped bars 2-3 times per week to show his staff what he meant by rapping bars. Petitioner testified that he experienced the same sensation. Petitioner testified that he rapped bars as a correctional lieutenant (Lt) the same way as officers do; he showed the officers the way he wanted the bars rapped. Although it was noted that the job site analysis indicated Lt's did not rap bars, Petitioner stated that it still did not show every day activities. He stated that was a show put on to inform people that do not understand what happens in a maximum security joint.

- Petitioner testified that as a correctional lieutenant he led by showing what he wanted done and how to do it. Petitioner stated that he was on the gallery every day. Petitioner stated that he checked out his own keys, opened cell doors and showed them how to check the doors, pull each shut, double check it. Petitioner stated that he relieved officers on the yards for lunch hours/breaks and when they were short staffed. He stated there was no one else to relieve them so the cell house lieutenant, Petitioner, did. He stated he stayed in the cell house, worked the galleries, and showed officers what he wanted them to do; he worked side by side with them. Petitioner indicated that he used Folger-Adams keys (large, 5-6 inch keys). Petitioner stated that to use them you are turning your whole wrist over and usually holding your thumb as the key has a big wing on it and that is where the pressure is to turn the keys. He stated there is a bar inside the door that pushed the lock up. He testified it requires force to use the keys and many doors you have to use both hands to open them up. Petitioner testified there are several times the doors and keys malfunction and you have to leave the door on deadlock and call the locksmith to take the door apart and try to repair it.

- Petitioner was asked about a crank officer. He stated that the crank officer goes to the end of the gallery, and opens a crank box which opens half of the gallery. He stated that the officer would be in contact via radio with the gallery officer, sergeant, or lieutenant whoever called it to be cranked. He stated that the officer would open the door and the crank falls down and it would open half the gallery at a time. He testified that this required use of the hands. He stated it is a cranking motion with the wrist and thumb to crank it open and then to crank it closed again. Petitioner stated it requires force and on occasion, if the lock would not hold up, use of both hands. Petitioner testified that he

performed that activity as a sergeant and also as a lieutenant. Petitioner stated again that he viewed the Job Site analysis for a correctional officer and that the tasks of an officer and a sergeant are shown on the analysis. Petitioner indicated that the doors at Menard are all steel and physically have to be pulled open. Petitioner stated that required force and sometimes the use of both hands. Petitioner stated they are hard to pull open; sometimes stick, and lock because it is metal on metal. Petitioner stated that they are old and get rusty and do not slide very well at all. Petitioner testified he performed those duties daily as a correctional officer, sergeant, and lieutenant. Petitioner indicated it is not easy to open a lock in slow motion (like on the video); he stated most of them will stick and you want to twist extremely hard to make it. He stated if you turn slowly it will bind up. Petitioner testified that he personally turned the locks multiple times every day. He stated he showed his staff. He stated if he cannot do it then he cannot make his staff do it. Petitioner testified that he relieves officers when they are walking passes, on lunch and breaks. Petitioner stated that he relieved them on the gallery and did the exact same job as an officer; he stated that he believed that is the cell house lieutenant's job. Petitioner testified that they had to pull on doors to make sure they were locked down and shut. He testified that that required force with every cell door. Petitioner testified that in his career he had rapped bars tens of thousands of times, as well as turning keys and pulling on cell doors. Petitioner stated that he was doing it until the day he retired.

- Petitioner testified that lockdown meant that there would be no crank rolled. The cells are on deadlock and every cell has to be taken off deadlock (top lock), then the key inserted into the bottom lock to actually open the door and then the officer would have to pull the door open himself. Petitioner testified that when the facility is on deadlock the officers, sergeants, and Lt's will be instructed to do everything; feed the inmates, give them their trays, pick up the trash, deliver mail, pick up laundry, pass out laundry. Petitioner stated that at that time, there was absolutely no inmate help; the officers, sergeants, and Lt.'s did everything. Petitioner testified that the trays passed to the inmates are heavy. Petitioner stated that the trays are carried upstairs as there are no elevators there; the same for the laundry and trash, it has to be carried.

- Petitioner testified that when he was promoted to Lt. his duties changed in that he had greater responsibilities, but his every day activity did not change as to his elbows and wrist usage. Petitioner reviewed the testimony of Major Durham (a 24 year employee of Menards) for Respondent (PX18) and testified that he did agree with that testimony. Petitioner had the opportunity to review the decision from Taylor v. State of Illinois and noted the testimony of Major Durham in that decision. Petitioner stated he agreed with that testimony as well. Petitioner testified that in addition to the physical duties of a correctional lieutenant he also had to do more writing, and typing (computer usage) which required use of his wrists, hands and fingers. Petitioner testified he could not think of any part of his job that did not involve use of his hands and arms as it is a very hands-on job. Petitioner testified as an officer and a sergeant he had to cuff and un-cuff inmates; Petitioner stated that some cuffs operate smoothly and others are worn out and did not operate very well at all. As to cuffing, Petitioner testified that if the handcuffs are on

deadlock you have to twist it all one way to unlock it, take the deadlock off, and then twist it in the opposite direction to actually uncuff it. Petitioner stated that he performed cuffing and uncuffing as a Lt. although that was not indicated in the job description. Petitioner explained that certain inmates were on deadlock or in their cells for basically not behaving. Petitioner stated that if the prison or cellblock is on deadlock, each inmate that comes out of their cell has to be cuffed. As a Lt., Petitioner stated they did not have the staff to just tell an officer or sergeant to cover all of that. Petitioner stated he is a cell house Lt. so he was going to be right there with his staff. Petitioner stated that a cell house Lt. works with staff controlling inmates in and out of their cells and as compared to a front gate Lt., or a yard Lt. who basically monitors line movement. Petitioner testified that he periodically relieved the other Lt. positions but 99% of his duties had been as a cell block Lt.

- Petitioner testified that over the course of performing his job duties he developed symptoms in his hands and arms. Petitioner stated that he did not realize it was happening as it was gradual, gradual aches and pains. Petitioner testified that after opening just 4-5 cells his thumb would get extremely numb and his wrist would start aching to where he would have to switch to using his left hand to key the cells or cuff. Petitioner stated that a lot of the cells did not open and he had to use both hands. Petitioner testified that prior to seeing Dr. Brown in April 2009 he never saw a doctor for problems with his hands or wrists. Petitioner's attorney sent him to Dr. Brown and Brown referred him to Dr. Phillips for diagnostics (EMG/NCV) of his hands. Petitioner stated that prior to that time that he never had or even heard of that test. Petitioner testified that was the first date that he understood that he had a work-related condition. Petitioner testified at that point he filled out the accident/incident report in the WC docket log (PX 9). Petitioner stated that he noted (in the incident report) that the duties he was performing at the time of the incident were, 'turning keys, running lines, laundry bags, and lunch trays. Petitioner indicated that after he filled out the report he received correspondence from the State saying he was approved for compensation. Petitioner testified that he reviewed an e-mail (PX11) from his attorney from Ms. Zellers. Petitioner stated that his understanding of that letter was that the State initially accepted him but then put him on hold and that was why he was told not to do it for a while.

- Petitioner testified that he ultimately did have surgery and that the surgery helped his condition considerably. Petitioner stated that since the surgeries he has movement, can grip and his hand does not fall asleep; some of the symptoms have been alleviated. Petitioner testified he still has occasional soreness and pain with increased activities. Petitioner stated he does perform activities with his arms and wrists. Petitioner stated that he retired from being a volunteer firefighter. Petitioner stated that when he was a fireman he had to pull hoses and when he did that his wrists would get very fatigued. Petitioner testified that now that he is retired he does enjoy bowling and golfing and he noticed it is now a lot more pleasurable; his hands/wrists do not hurt and his thumbs are not going numb from gripping anything. He testified that his night pain was completely gone. His activities, now that he is retired, involve golfing and bowling and he helps with a little

construction and farming; just little activities to keep himself busy. Petitioner testified that in doing those activities his hands feel better in the beginning of the day, but with age and everything he gets worn out and his arms will tire out. Petitioner indicated that when he worked that was the problem doing the activities. Petitioner testified that his grip strength had increased since the surgeries. He stated before surgery he could not grip anything for a very long time at all. Petitioner testified that he did not have diabetes, gout, hypothyroidism or rheumatoid arthritis. Petitioner testified that his weight has been steady.

- Petitioner testified that he had never met Dr. Sudekum and would not know him if he walked in. Petitioner read the report and the deposition of Dr. Sudekum. Petitioner stated that he did not did not agree with Dr. Sudekum's report. Petitioner stated that he did not believe that Dr. Sudekum looked at it like an eight hour day; doing that constantly every day, eight hours a day. Petitioner testified that he was extremely happy with the medical care from Dr. Brown and Dr. Paletta. Petitioner stated that he reviewed the medical bills in PX 1 and the medical records (PX 3-PX 8) regarding his care. Petitioner testified that those were the records of his care and treatment in this case. Petitioner testified that his elbows are fine, they had never bothered him; it was just his wrists that have given him a problem.

- Petitioner indicated that he recognized Major Cowen (at hearing) who had been his supervisor. Petitioner testified that Major Cowen had been a correctional lieutenant, officer, and sergeant and that he had enjoyed working for him.

- Mr. Cowan testified for Respondent, he had been at Menard for 29 years. He had been a correctional officer for 8-9 years, promoted to sergeant for about 6 months and then promoted to lieutenant and was for about 10 years. Witness testified that he was then a captain for about 3 years and when that position was eliminated he went back to lieutenant for another 4 years. He testified as correctional officer, sergeant, Lt., captain, and major he worked in the cell houses, primarily North II. He was familiar with the other cell houses and uppers and lowers. Mr. Cowan testified he was familiar with the job duties of a correctional officer at Menard, as well as the job duties of a sergeant and a Lt. Mr. Cowan testified the duty of a Lt. is primarily supervision of line staff and the inmates in the assigned area. Mr. Cowan reviewed the Job Site Analysis (RX 4) and testified in his opinion it showed the job duties of a Lt. He heard Petitioner's testimony and agreed the Lt. supervised the correctional officers. He agreed there are occasions the Lt. may have to do some of the correctional officer duties. He testified that was periodic; the Lts would choose to do it, they were not bound to do it. He testified that bar rapping was not normally done by Lt's. Mr. Cowan testified a Lt. on the 7-3 shift supervises the staff and inmates, makes sure time schedules coordinate on a movement, makes sure the staff and inmates follow procedures. Mr. Cowan testified that normally meal breaks are provided, but certain times the supervisors will chip in and help out. They would have to relieve an officer to let them off the gallery.

- Mr. Cowan testified when the institution is on lockdown the duties of correctional lieutenant changes somewhat, depending on the level of the lockdown. In a level I lockdown they have to provide more of the service that the inmate workers would provide; deliver food, pick up laundry, tasks that are generally done by line staff/correctional officers. A Lt. is not considered line staff. A Lt. could help out if needed. Mr. Cowan testified a Lt. is usually with the staff in the cell house, on the gallery or outside. He testified that normally an officer will cuff and un-cuff inmates but there would be occasions that a lieutenant would do that but not nearly as much as the officers do. Mr. Cowan testified that he agreed with the job analysis that 80% of a correctional lieutenant time is supervision, but the demands are walking, observing, mentally processing information, making decisions, and prompting staff in critical emergency situations. He agreed that a Lt. would often, in line movement, discuss with inmates problems they may have; that helps with resolving problems in the cell house. He agreed with the Lt. job analysis that gross hand manipulation, grasping, and twisting is required 2-4 hours per day. He indicated that normally the crank officer or sergeant turns the cranks on the lines. He testified the lieutenant does not do it nearly as much as the others (depends on the particular cell house set up), but normally it is done by an officer or sergeant.

The Commission finds that Petitioner's testimony is essentially not rebutted. The evidence in this record finds a pretty consistent history of Petitioner's daily hand intensive, repetitive activities through his duties as an officer, sergeant, and lieutenant. Respondent's witness while indicating that a Lt. is a supervisory position, acknowledged that they can and do the duties along side of the correctional officers as Petitioner described. The DVD is of such a limited and directed fashion that it does not appear to reflect in any way what would be considered done regularly. Respondent's Dr. Sudekum found no causal relationship to even an aggravation of the CTS. Dr. Sudekum's view is partially based on the limited view DVD and job analysis but does not consider any of Petitioner's history of essentially doing the same duties as a correctional officer (his report was only a records review). Dr. Sudekum's view is clearly biased with his many IME's and records reviews for Respondent. Dr. Brown and Dr. Paletta both treated Petitioner with Paletta eventually performing the surgery. Drs. Brown and Paletta are both known for their expertise with both even taking care of the players for the St. Louis Cardinals. The opinions of the treating doctors clearly express a more detailed and fact based opinion. Also Dr. Brown sees very few State employee workers compensation patients since 2010-2011 when the State started denying repetitive trauma cases. The evidence and testimony finds that Petitioner met the burden of proving accident that arose out of and in the course of employment with his repetitive, forceful, hand intensive duties over his 25 year employment. Petitioner met the burden of proving causal connection to at least an aggravation/acceleration due to his hand intensive work duties from officer through lieutenant. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence and herein, affirms and adopts the Arbitrator's finding of accident and causal connection.

14IWCC0303

The Commission finds that the evidence and testimony proves that Petitioner became aware, then knew, or should have known, his condition was related to his work activities in April 2009 when he first sought medical treatment for the pain, tingling, and numbness in his hands and was diagnosed with carpal tunnel syndrome (CTS). Clearly the thumb arthritis is not shown to be related. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence and herein, affirms and adopts the Arbitrator's finding of timely notice.

The Commission finds regarding the issue of temporary total disability (TTD), that the issue is moot regardless of the other findings as Petitioner continued to work until he retired and did not have surgery until after retirement so no TTD would be at issue in any event. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence, and herein, affirms and adopts the Arbitrator's finding as to no total temporary disability award.

The Commission finds regarding the issue of medical expenses that the evidence and testimony proves that the treatment had been reasonable and necessary, particularly given the fact that Petitioner had great improvement bilaterally post surgery. The evidence and testimony finds Petitioner met the burden of proving entitlement to the medical expenses as awarded. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence, and herein, affirms and adopts the Arbitrator's finding as to medical expenses.

The Commission further finds, with the findings on the issues above in addition to Petitioner's somewhat limited current complaints of ill-being, that the award regarding Petitioner's dominant right hand is clearly consistent with prior Commission decisions and the current state of the law on such cases. The Commission, however, finds that the permanent partial disability (PPD) award regarding the non-dominant, left hand to be excessive as the Commission views the evidence differently with the very limited left hand complaints which warrants a reduction in the award to 10% loss of the left hand. The evidence and testimony, finds Petitioner met the burden of proving entitlement to a PPD award. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence as to the dominant right hand, and herein, affirms and adopts the Arbitrator's finding as to Permanent partial disability of the right hand of 15% loss of use; further, herein, the Commission modifies the PPD award to the non-dominant left hand to a loss of 10% loss of use.

IT IS THERFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $664.72 per week for a period of 51.25 total weeks, as provided in §8(e)(9) of the Act, for the reason that the injuries sustained caused the loss of use of 15% of the dominant right hand (30.75 weeks) and the loss of use of 10% of the non-dominant left hand (20.5 weeks).

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IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of the reasonable and necessary medical services as identified in PX 1, for medical expenses under §8(a) of the Act and subject to the fee schedule. Respondent shall be given credit of amounts paid for medical expenses and Respondent shall hold Petitioner harmless from any claims of providers for which Respondent is receiving credit under §8(j) of the Act.

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

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

DATED: APR 2 8 2014
o-2/27/14
DLG/jsf
45

David L. Gore

Stephen Mathis

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KNOP, TIMOTHY
Employee/Petitioner

Case# **09WC021676**

14IWCC0303

SOI/MENARD CORRECTIONAL CENTER
Employer/Respondent

On 8/15/2013, 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 0.07% 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

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY
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
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

AUG 15 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

141WCC0303

Timothy Knop
Employee/Petitioner

v.

State of Illinois/Menard Correctional Center
Employer/Respondent

Case # 09 WC 21676

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 William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on June 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 _____

14IWCC0303

FINDINGS

On April 27, 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 $74,856.08; the average weekly wage was $1,439.54.

On the date of accident, Petitioner was 49 years of age, married with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

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

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability of $664.72 per week for 61.5 weeks because the injuries sustained caused the 15% loss of use of the right hand and the 15% loss of use of the left hand as provided in Section 8(e) of the Act.

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

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

William R. Gallagher, Arbitrator

August 12, 2013
Date

AUG 15 2013

This case was tried in Herrin on June 13, 2013. At that time, counsel for both Petitioner and Respondent tendered into evidence various exhibits and, at the conclusion of the trial, both Petitioner and Respondent rested and the Arbitrator closed the record in the case.

Shortly after the trial of the case, Petitioner's counsel filed an emergency motion to reopen proofs for the sole purpose of admitting the previously taken deposition of Dr. David Brown. Dr. Brown was deposed on May 14, 2013, approximately one month prior to the trial and, at the time of the trial, the transcript of his deposition testimony had not been prepared. Petitioner's counsel did not make a motion at the time of trial to leave the record open to submit this deposition transcript into evidence.

Respondent's counsel opposed Petitioner's motion to reopen proofs and a hearing regarding this motion occurred on July 16, 2013, in Collinsville. At that time, Petitioner's counsel stated that the court reporter had not prepared the deposition transcript until the same date of the trial, June 13, 2013. Petitioner's motion had an Affidavit from the court reporter attesting to that fact. Petitioner's counsel acknowledged that he did not make a motion to keep the record open at the time of the trial and stated it was merely an oversight.

Respondent counsel's position was that the record was closed and that no motion had been made by Petitioner's counsel to keep the record open. Further, Respondent's counsel referred to a motion made by his office in the case of Craig Mitchell v. State of Illinois/Menard Correctional Center, 12 WC 35386, in which he made a motion to supplement the record with a set of medical records that he did not have at the time the case was tried. This motion was denied by the Arbitrator. A copy of the motion filed by Respondent's counsel in that matter was tendered and it noted that the case was tried on March 12, 2013, Respondent had tendered a subpoena to Dr. Jay Pickett on March 8, 2013, for medical records. The medical records were received by Respondent's counsel on March 18, 2013.

Petitioner's counsel argued that there was a distinction between the two factual situations. In the Mitchell case, Petitioner did not have the opportunity to review the records and testify regarding any statements contained therein. In the instant case, Respondent's counsel was well aware of the fact that Dr. Brown had been deposed and he cross-examined Dr. Brown at the time of the deposition.

After hearing the oral argument of both counsel for Petitioner and Respondent, the Arbitrator granted Petitioner's motion and received the deposition testimony of Dr. Brown into evidence. In making this ruling, the Arbitrator stated that the granting of this motion did not prejudice the right of the Respondent because Respondent's counsel was present when Dr. Brown was deposed and Respondent's counsel conducted a lengthy cross-examination of Dr. Brown.

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Application alleged a date of accident (manifestation) of April 27, 2009, and that Petitioner sustained repetitive trauma to his right and left hands and right and left wrist. Respondent

disputed liability on the basis of accident, notice and causal relationship. Petitioner sought a final award in this case.

Petitioner worked for Respondent from 1984 to when he retired in July, 2011. Petitioner worked as a Correctional Officer from 1984 to 1989 when he was promoted to Correctional Sergeant. He served as a Correctional Sergeant from 1989 to 1993 when he was promoted to Correctional Lieutenant. Petitioner then worked in that capacity until the time he retired in July, 2011.

Petitioner testified that as a Correctional Officer, Correctional Sergeant and Correctional Lieutenant, he performed various duties that required the repetitive use of his arms and hands. This included bar rapping which involved the repetitive striking of a steel bar against metal bars which caused a numb/tingling sensation in his hands and arms. Petitioner also used Folger-Adams keys to open steel doors which many times required the use of both hands. Petitioner testified that these keys were many times difficult to operate, that force was required and that the locks would either stick or malfunction in some way. The doors were difficult to open and required the use of both hands to both open and close. Petitioner was also required to operate the "crank box" which is a device that opens 24 cell doors at one time. The cranking motion required the use of both hands and the forceful use of the wrist and thumbs.

When the facility was on lockdown, Petitioner's job duties increased because he and the other officers there had to perform tasks that the inmates did such as collecting food trays, disposing of trash, laundry, etc. Even though Petitioner was promoted to both Sergeant and Lieutenant, he testified that this did not result in any appreciable difference in regard to the repetitive use of his hands and arms. At trial, Petitioner's counsel tendered into evidence a transcript of the testimony of Major Joseph Durham in the case of Taylor v. State of Illinois, 11 WC 04798. Major Durham worked at Menard Correctional Center for 24 years and served as a Correctional Officer, Correctional Sergeant, Correctional Lieutenant and Correctional Major. He testified that the job tasks performed by all of the ranks were both repetitive and strenuous.

Petitioner tendered into evidence a "Demands of the Job" and "Job Site Analysis" for a Correctional Officer at Menard Correctional Center, both of which were prepared by the Respondent. Both of these described repetitive use of the arms/hands that was consistent with Petitioner's testimony. Petitioner also tendered into evidence a DVD depicting the actions of a Correctional Officer at Menard Correctional Center which showed a variety of tasks including bar rapping, opening/closing doors, use of Folger-Adams keys, opening/closing chuckholes, turning gallery cranks, etc. Petitioner testified that he watched the DVD and it did not show the frequency or intensity of these activities performed by the Correctional Officers.

Respondent tendered into evidence a "Demands of the Job" form and a DVD regarding the job duties of a Correctional Lieutenant. The DVD depicted a Correctional Lieutenant as performing mainly supervisory tasks and only showed the infrequent use of the hands/arms as compared to a Correctional Officer. Petitioner testified that it was his practice to work side-by-side with the Correctional Sergeants and Correctional Officers working under his supervision so that he could show them the proper way to do things and to lead by example.

Over a period of time, Petitioner developed symptoms of numbness and tingling in both of his arms and hands. On April 27, 2009, Petitioner was seen by Dr. David Brown, an orthopedic surgeon. At that time, Petitioner informed Dr. Brown that he began developing numbness and

tingling in both hands approximately one year prior. He also informed Dr. Brown of his use of Folger-Adams keys, locking/unlocking cells, carrying trash, trays and laundry, etc. Dr. Brown's findings on clinical examination were benign; however, Dr. Brown opined that Petitioner had symptoms consistent with carpal tunnel syndrome. He referred Petitioner to Dr. Dan Phillips for nerve conduction studies and opined that Petitioner's job duties for Respondent would be a contributing factor in the development of carpal tunnel syndrome.

On April 27, 2009, Petitioner had nerve conduction studies performed by Dr. Dan Phillips. The study was not described as being impressive for right carpal tunnel syndrome and revealed a very mild median sensory neuropathy on the left side. After Petitioner received his diagnosis from Dr. Brown, he returned to work and filled out and signed a "Workers' Compensation Employee's Notice of Injury" dated May 15, 2009, which stated Petitioner had sustained injuries to his left and right wrist as result of turning keys, running lines, moving laundry bags and carts trays/racks. Petitioner testified that April 27, 2009, was the first time he was aware of having a work-related condition.

Petitioner was seen by Dr. Brown on June 8, 2009, and Dr. Brown reviewed the findings of the nerve conduction studies with them. Again, findings on clinical examination were benign and Dr. Brown recommended Petitioner take some medication and return to him on an as needed basis. Petitioner was subsequently seen by Dr. Brown over one year later, on July 26, 2010, and Petitioner stated that he had noted increased numbness since his last visit. Again the findings on examination were benign and Dr. Brown recommended Petitioner undergo repeat nerve conduction studies. On July 26, 2010, Dr. Phillips performed nerve conduction studies for the second time and the study revealed a mild-moderate median neuropathy across the carpal tunnel bilaterally. There was also a finding of a mild ulnar neuropathy across the left elbow. Dr. Brown saw Petitioner on July 28, 2010, and recommended continued conservative care with night time splitting and medication. When Dr. Brown saw Petitioner on September 13, 2010, he reported no improvement in his condition and symptoms. Dr. Brown opined that Petitioner had chronic bilateral carpal tunnel syndrome that failed conservative treatment. He recommended that Petitioner undergo surgery.

Because of another health issue, Petitioner deferred getting surgery and when he was seen by Dr. Brown on February 7, 2011, Dr. Brown restated his surgical recommendation; however, by that time Respondent had made a decision to deny the claim. Because Dr. Brown did not take Petitioner's group health insurance, he referred Petitioner to Dr. George Paletta, an orthopedic surgeon associated with him. Dr. Paletta saw Petitioner on August 29, 2011, (shortly after Petitioner retired) and Petitioner provided Dr. Paletta with essentially the same work history that he had previously provided to Dr. Brown. Dr. Paletta examined Petitioner and reviewed both Dr. Brown's medical records and the reports of the nerve conduction studies. Dr. Paletta also opined that Petitioner had chronic bilateral carpal tunnel syndrome and that surgery was appropriate. He also opined that Petitioner's condition was related to his work activities. Dr. Paletta performed carpal tunnel surgical releases on the right and left wrist on August 23, and September 22, 2011, respectively.

Dr. Anthony Sudekum reviewed Petitioner's medical treatment records through February, 2011 (Petitioner's last visit with Dr. Brown), the "Job Site Analysis", "Demands of the Job" and DVD of the duties of a Correctional Lieutenant. Dr. Sudekum opined that Petitioner's job duties did not cause or aggravate the bilateral carpal tunnel syndrome. Dr. Sudekum was deposed on May 24,

2012, and his deposition testimony was received into evidence at trial. When he testified, Dr. Sudekum reaffirmed his opinion that Petitioner's job duties as a Correctional Lieutenant did not cause or aggravate the carpal tunnel syndrome. However, Dr. Sudekum agreed that if the duties of a Correctional Lieutenant and a Correctional Officer were the same or similar, that the job duties would play a role in the development of a bilateral compressive neuropathy.

Dr. Brown was deposed on May 14, 2013, and, as is noted herein, his deposition testimony was received into evidence when the Arbitrator granted Petitioner's motion on July 16, 2013. Dr. Brown's testimony was consistent with his medical records and he reaffirmed his opinion that Petitioner's bilateral carpal tunnel syndrome was related to his work activities. When he was deposed, Dr. Brown testified that he had reviewed Dr. Sudekum's report and he disagreed with his conclusion as to the etiology of Petitioner's condition.

Petitioner testified that his condition improved following the surgery but he still has some symptoms depending on his level of activity, in particular, loss of strength and grip when performing household tasks. Even though Petitioner is retired, he still works as a volunteer firefighter and has some difficulties when pulling on heavy fire hoses.

Major Joseph Collins testified on behalf of the Respondent. Collins testified that he has worked for Respondent for 29 years and that he was familiar with the job duties of both a Correctional Sergeant and Correctional Lieutenant. Collins testified that a Correctional Lieutenant would generally supervise the Correctional Officers and would do very little bar rapping. Major Collins was present during all of Petitioner's testimony and, when cross-examined, he stated that he did not have any particular issue or dispute with Petitioner's description of his work duties.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury to both of his upper extremities arising out of and in the course of his employment with Respondent that manifested itself on April 27, 2009, and that his current condition of ill-being in regard to his upper extremities is causally related to same.

In support of this conclusion the Arbitrator notes the following:

The Petitioner credibly testified about the repetitive use of his arms and hands as a Correctional Officer, Correctional Sergeant and Correctional Lieutenant While Petitioner was promoted, this did not result in any appreciable change in the repetitive use of his arms and hands. This was corroborated by the testimony of Major Joseph Dunham whose testimony from the case of Taylor v. State of Illinois was tendered into evidence at trial. Further, Respondent's witness, Major Collins, testified that he did not have any particular issue or dispute with Petitioner's description of his work duties.

The Arbitrator notes that both of Petitioner's treating physicians, Dr. Brown and Dr. Paletta, opined that Petitioner's condition of ill-being was causally related to his work activities. While Dr. Sudekum opined that the duties of a Correctional Lieutenant did not cause the carpal tunnel

syndrome, he did agree that if the duties of a Correctional Lieutenant were the same or similar to that of a Correctional Officer, that his opinion in respect to causality would be different.

In regard to disputed issue (E) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner gave notice to Respondent within the time prescribed by the Act.

In support of this conclusion the Arbitrator notes the following:

Petitioner first became aware that he had a work-related condition on April 27, 2009, and he provided notice to Respondent on May 14, 2009, which is within the time limit for providing notice as prescribed in the Act.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills associated therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid 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.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 15% loss of use of the right hand and 15% loss of use of the left hand.

In support of this conclusion the Arbitrator notes the following:

Petitioner had bilateral carpal tunnel syndrome which required surgical releases. Petitioner's condition improved following the surgeries; however, Petitioner still experiences a loss of grip and strength especially when performing household tasks. Further, although he has retired Petitioner continues to work as a volunteer firefighter and has experienced difficulties when pulling on heavy fire hoses.

William R. Gallagher, Arbitrator

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

Michael Kane,

Petitioner,

vs.

No. 09WC048862

14IWCC0304

Arcelor Mittal Steel,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both parties herein and notice given to all parties, the Commission, after considering the issues of benefit rates, wage calculations, causal connection, medical expenses, permanent disability, "Failure to rule on 19(f)" and "8(d)1," 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 found that the work-related injury Petitioner sustained caused permanent partial disability to the extent of 50 percent of the person as a whole. The Commission views the evidence as to permanency differently, and finds that Petitioner's right shoulder injury caused permanent partial disability to the extent of 35 percent of the person as a whole.

In its brief, Respondent acknowledges that "petitioner has sustained a loss associated with his right arm as a result of the loss and has been given permanent restrictions by the treating physicians." However, Respondent asserts that Petitioner failed to prove his entitlement to wage differential benefits. The Commission agrees, and finds that Petitioner failed to prove he is entitled to a wage differential award pursuant to section 8(d)(1) of the Act.

In order to qualify for a wage differential award under section 8(d)(1), a claimant must prove: (1) a partial incapacity which prevents him from pursuing his "usual and customary line of employment;" and (2) an impairment in earnings. 820 ILCS 305/8(d)(1); *Gallianetti v. Industrial Comm'n,* 315 Ill. App. 3d 721, 730, 734 N.E.2d 482, 489 (3d Dist. 2000).

In regards to the first requirement, the Commission finds that Petitioner presented ample evidence to prove he is partially incapacitated and unable to return to his "usual and customary line of employment" as an electrician. Dr. Mitchell released Petitioner to work with permanent right arm restrictions of occasional above-the-shoulder lifting up to 7 pounds, occasional desk to chair lifting up to 24 pounds, occasional carrying up to 52 pounds and no ladder climbing, based on the May 18, 2009, Functional Capacity Evaluation (FCE). Petitioner's job description shows that occasional lifting and carrying up to 50 pounds, occasional stair and ladder climbing, and occasional working at heights are requirements of his position. The Commission finds that based on the FCE and Petitioner's job description, Petitioner is unable to perform the usual and customary job duties of an electrician for Respondent. The Commission notes that it is unclear whether the September 2009 job offer fell within Petitioner's work restrictions in light of Ms. Wagner and Petitioner's testimonies about the nature and location of the work. The Commission also notes that voluntary retirement does not preclude a wage differential award. See *Wood Dale Electric v. Illinois Workers Compensation Comm'n*, 2013 IL App (1st), 113394WC, ¶¶ 21-22, 986 N.E.2d 107, 113-114 (2013).

With respect to the second requirement, the Commission finds that Petitioner failed to prove an impairment in earnings. Mr. Pagella's opinion that Petitioner could earn only $10.00 per hour in an unskilled job is not sufficient to prove an impairment of earnings. Ms. Bose opined that Petitioner could obtain other electrical types of positions, such as that of an electrical inspector, electrical subcontracting clerk, and a shop electrician. Neither Petitioner nor Mr. Pagella testified as to whether Petitioner could obtain other electrical jobs such as those suggested by Ms. Bose. In addition, Petitioner's testimony about his job search was vague and he did not provide details about the types of positions for which he applied. Finally, there is no Labor Market Survey on which the Commission may rely to assess whether Petitioner can obtain other electrical work and how much he is capable of earning in light of his occupational skills.

In its brief, Respondent also contends that based on *Gallianetti*, Petitioner is not entitled to a permanency award under any section of the Act because he failed to prove entitlement to a section 8(d)(1) award and "did not specifically request benefits under Section 8(d)(2)." The Commission finds that Respondent's argument is unpersuasive and misplaced. Prior to *Gallianetti*, the appellate court in *Freeman United Coal Mining Co. v. The Industrial Comm'n (Louis Selmo)*, 283 Ill. App. 3d 785, 670 N.E.2d 1122 (5th Dist. 1996), found that a claimant's failure to present evidence proving his entitlement to a wage differential award demonstrated that the claimant "chose not to prove up a wage-differential award, thereby electing to waive such award and proceed under the provision authorizing a percentage-of-the-person-as-a-whole award." *Freeman United*, 283 Ill. App. 3d at 791. Neither *Gallianetti* nor other subsequent case law has overturned *Freeman United.* Turning to the case at bar, the Commission finds that Petitioner's failure to prove entitlement to a wage differential award pursuant to section 8(d)(1),

constituted a waiver of benefits under section 8(d)(1) and an election to pursue a permanency award under section 8(d)(2).

Lastly, the Commission notes that neither party raised the issues of benefit rates, wage calculations, medical expenses or "Failure to rule on 19(f)" in their briefs. A review of the record shows that there is no basis for disputing the same issues.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator filed on November 28, 2012, is 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 $593.40 per week for a period of 175 weeks, as provided in §8(d)2 of the Act, because the injuries sustained caused permanent partial disability equivalent to 35 percent loss of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay 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.

APR 29 2014

DATED:
SM/db
o-02/27/14
44

Stephen J. Mathis

David L. Gore

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

KANE, MICHAEL
Employee/Petitioner

Case# 09WC048862

ARCELOR MITTAL STEEL
Employer/Respondent

14IWCC0304

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:

0190 LAW OFFICES OF PETER F FERRACUTI
JENNIFER L KIESEWETTER
110 E MAIN ST
OTTAWA, IL 61350

1872 SPIEGEL & CAHILL PC
MILES P CAHILL
15 SPINNING WHEEL RD SUITE 107
HINSDALE, IL 60521

14IWCC0304

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
CORRECTED ARBITRATION DECISION

MICHAEL KANE
Employee/Petitioner

v.

ARCELOR MITTAL STEEL
Employer/Respondent

Case # 09 WC 48862

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 **Ottawa**, on **July 2, 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 **6/14/08**, 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 **$51,428.00**; the average weekly wage was **$989.00**.

On the date of accident, Petitioner was **57** years of age, *married* with **1** children under 18.

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 50% of a personas a whole pursuant to Section 8(d)(2) of the Act at a rate of $593.40 for 250 weeks.

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

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

Signature of Arbitrator

November 27, 2012
Date

NOV 28 2012

14IWCC0304

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL KANE	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 09 WC 48862
	)	
ARCELOR MITTAL - HENNEPIN	)	
	)	
Respondent.	)	

In support of the arbitrator's decision relating to **causal connection** the arbitrator finds the following facts:

The petitioner in this matter had previously testified in the 19(b) petition which was the subject of a petition review before the Commission. Based upon the principles of res judicata as well as a review of the medical records introduced in this matter the arbitrator finds that petitioner's current condition of ill-being is causally related to the accident of June 14, 2008.

In support of the arbitrator's decision relating to **wage differential benefits** and **nature and extent** of the injury the arbitrator finds the following facts.

The petitioner in this cause had previously testified in his 19(b) hearing relating to his need for restrictions and the change in his work status. In his previous 19(b) petitioner had

specifically testified concerning his pursuit of work activity and indicated he had looked for work locally because he did not want to move from his home area. In his previous petition the petitioner had prayed for maintenance benefits from the time from his layoff after the plant closing up to the time of trial. The Commission specifically noted petitioner would not be entitled to maintenance benefits noting that his testimony was vague and also noting the petitioner's failure to introduce any documentation substantiating a diligent job search. In the decision the Commission specifically found that the petitioner failed to meet his burden concerning a diligent self-directed job search that would entitle him to maintenance benefits. (See Decision of Commission dated April 15, 2011)

Subsequent to the trial of June 28, 2010, the petitioner has allegedly attempted to return to work in some capacity; however, his testimony in this present hearing was as or more vague than the testimony presented at the time of the first hearing. The petitioner did not provide any documentary evidence concerning his pursuit of work activities or any evidence concerning his effort to return to work. The arbitrator finds that the lack of evidence concerning the petitioner's pursuit of work activities precludes a finding of a wage differential based on the lack of any competent evidence concerning what wage the petitioner could have claimed in the terms of other suitable employment.

The arbitrator further notes that the respondent in this matter had requested that Julie Bose, a vocational rehabilitation expert contact the petitioner in order to provide a program for vocational assistance. Ms. Bose testified via deposition concerning the effort to contact the petitioner's counsel in order to schedule an evaluation. According to Ms. Bose' testimony the petitioner's attorney refused to allow a vocational interview. Ms. Bose testified that the petitioner's counsel refused to meet with her because the petitioner was not receiving maintenance benefits. Ms. Bose further testified that Mr. Kane had the option of returning to work with the Mittal organization if he was willing to transfer within the organization. Ms. Bose indicated that transfers of that type in an attempt to place someone within a company would be consistent with the principles of vocational rehabilitation and that Mr. Kane's failure or refusal to complete an application for transfer impacted the ability to limit any wage loss. However even given this fact, the nearest Respondent facility that Petitoiner could have returned to work at was over 100 miles from Petitoner's home.

Ms. Bose also testified that the conduct of the attorney from Mr. Feracutti's office in disallowing the ability of Mr. Kane to participate in vocational rehabilitation prohibited her from being able to further provide vocational assistance in order to find alternative work for the petitioner that would have mitigated the impact of the work injury. Ms. Bose specifically indicated as an expert that if the petitioner had participated in the application process and attempted to return to work that the petitioner could have returned to work if he had a desire

to do so. This finding is consistent with the petitioner's completion of paperwork in this matter with his retirement benefit program in which he specifically indicated that he did not intend to return to work during his retirement in his application for retirement.

It is axiomatic that a decision of the Commission must rely on facts and cannot be based on speculation and conjecture. The finding of a wage differential award in this matter would require a showing of the wages that a petitioner could have earned in full performance of his work duties less the wages that he would be able to earn in other suitable employment. In this instance petitioner has failed to provide any evidence of earnings that he would have had a full performance of his former duties, failed to cooperate with an offer of vocational rehabilitation assistance, failed to diligently pursue work within his purported restrictions, and has specifically indicated in his retirement paperwork that he intended not to return to work after his retirement. Based upon the foregoing it would be mere speculation and conjecture to presume what the petitioner's earnings would have been in other suitable employment. Accordingly, the arbitrator finds that an award of wage differential benefits would not be appropriate.

The petitioner has sustained a significant loss associated with his right arm as a result of the loss and has been given permanent restrictions by the treating physicians. The arbitrator finds that the petitioner had sustained a loss associated with his injury and that the loss does

require some element of restrictions. The Arbitrator finds that per the clear testimony of both vocational rehab counselors Petitioner could not have returned to work as an electrician. Based on the record as a whole, the Arbitrator finds that Petitioner has sustained a loss of occupation. Accordingly, the arbitrator finds that the petitioner has sustained a loss to the person payable under Section 8(d)(2) rather than a specific loss associated with the right arm and shoulder or under Section 8(d)(1). The arbitrator finds that petitioner has sustained a loss to the extent of 50% loss of use of a person as whole 250 weeks of compensation and a benefit rate of $593.40 per week.

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

Norma Ruiz,

Petitioner,

vs.

No. 08WC041154

Nuevo Leon Restaurant,

14IWCC0305

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 the duration of temporary disability, the nature and extent of Petitioner's disability, penalties pursuant to sections 19(l) and 19(k), and attorney fees pursuant to section 16, and being advised of the facts and law, modifies 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 Arbitrator found that the work-related injuries Petitioner sustained caused permanent partial disability to the extent of 60 percent of the person as a whole. The Commission views the evidence as to permanency differently, and finds that Petitioner's injuries caused permanent partial disability to the extent of 20 percent of the person as a whole.

In addition, the Arbitrator awarded penalties pursuant to sections 19(l) and 19(k) as well as attorney fees pursuant to section 16. After reviewing the evidence, the Commission concludes that Respondent's failure to pay benefits after February 24, 2010, was not deliberate, vexatious, or frivolous, and did not result from bad faith or improper purpose. As such, the Commission declines to award penalties pursuant to section 19(k) and attorney fees pursuant to section 16. The Commission affirms the Arbitrator's award of penalties pursuant to section 19(l).

With respect to corrections, the Commission notes that the second period of temporary total disability is from October 30, 2009, through February 24, 2010, as stipulated by the parties on the Request For Hearing form. The Commission also notes that the second period of temporary partial disability is from December 6, 2010, through December 24, 2010, as shown in Petitioner's Exhibit One, the wage records from Scelebrations.

Lastly, the Commission elects to decide Respondent's October 2, 2013, motion to strike Petitioner's response brief with the issues on review. The Commission notes that while Petitioner acknowledges she filed her response brief nine days late according to the time limits established in section 7040.70 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission, the rules do not provide for the sanction of striking a brief. In addition, the Commission finds that *Shannon v. Industrial Comm'n*, 160 Ill. App. 3d 520, 513 N.E.2d 525 (4th Dist. 1987) is instructive. In *Shannon*, the appellate court found that a party's one-day delay in filing a statement of exceptions and supporting brief did not burden or prejudice any party, including the Commission. The court reasoned that the Commission's rationale for the rule, which was to avoid unreasonable and unnecessary burdens upon the high-volume work of the Commission as well as other parties and to allow an opposing party the opportunity to meaningfully respond to the issues, was not served by rendering such a harsh result. *Shannon*, 160 Ill. App. 3d at 523. In the instant case, Respondent has failed to allege prejudice when it timely filed its statement of exceptions and brief before Petitioner's response brief was due. Applying the reasons set forth in *Shannon*, the Commission denies Respondent's motion to strike Petitioner's response brief.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator filed on March 13, 2013, is hereby modified and corrected as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary partial disability benefits of $256.67 per week for 6-3/7 weeks, from October 4, 2010, through October 29, 2010, and from December 6, 2010, through December 24, 2010; and additional temporary partial disability benefits of $359.35 per week for 2/7 weeks, from December 27, 2010, through December 28, 2010, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $366.67 per week for 129-1/7 weeks, from August 19, 2008, through January 5, 2009; October 30, 2009, through February 24, 2010; February 25, 2010, through October 3, 2010; October 30, 2010, through December 5, 2010; and from December 29, 2010, through January 20, 2012, which are the periods of temporary total disability for which compensation is payable.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of $330.00 per week for a period of 100 weeks, as provided in Section 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.

14IWCC0305

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of $16,919.23 in penalties pursuant to Section 19(k), and award of $6,767.92 in attorney fees pursuant to Section 16 are hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner additional compensation in the amount of $6,040.00, as provided in Section 19(l) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent's October 2, 2013, motion to strike Petitioner's response brief is hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay 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.

DATED: APR 29 2014
SM/db
o-03/06/14
44

Stephen J. Mathis

David L. Gore

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RUIZ, NORMA
Employee/Petitioner

Case# 08WC041154

14IWCC0305

NUEVO LEON RESTAURANT
Employer/Respondent

On 3/13/2013, 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:

0125 COHN LAMBERT RYAN & SCHNEIDER
MICHAEL R SCHNEIDER
500 W MADISON ST SUITE 2300
CHICAGO, IL 60661

MARIA GUITERREZ, INDIVIDUALLY
& D/B/A RESTAURANTE NUEVO LEON
1705 S LAFLIN ST
CHICAGO, IL 60608

0210 GANAN & SHAPIRO PC
ELAINE T NEWQUIST
210 W ILLINOIS ST
CHICAGO, IL 60654

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

Norma Ruiz
Employee/Petitioner
v.
Nuevo Leon Restaurant
Employer/Respondent

Case # **08** WC **41154**

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 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. ☒ 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 18, 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 **$28,600.00**; the average weekly wage was **$550.00**.

On the date of accident, Petitioner was **34** years of age, *single* with **3** children under 18.

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 **$13,514.00** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$13,514.00**.

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

ORDER

Respondent shall pay Petitioner temporary partial disability benefits of **$256.67** /week for **7** weeks, commencing **October 4, 2010** through **October 29, 2010** and from **December 6, 2010** through **December 26, 2010** and an additional **$359.35**/week for **2/7^{ths}**/week, commencing **December 27, 2010** through **December 28, 2010** as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$366.67** /week for **129 1/7th** weeks, commencing **August 19, 2008** through **January 5, 2009**, from **October 15, 2009** through **February 24, 2010**, from **February 25, 2010** through **October 3, 2010**, from **October 30, 2010** through **December 5, 2010**, and from **December 29, 2010** through **January 20, 2012** as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from **August 19, 2008** through **January 20, 2012**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of $ **13,514.40** for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits of **$330.00** /week for **300** weeks, because the injuries sustained caused the **60** % loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay to Petitioner penalties of **$6,767.92**, as provided in Section 16 of the Act; **$16,919.23**, as provided in Section 19(k) of the Act; and **$6,040.00**, as provided in Section 19(l) 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

March 13, 2013
Date

MAR 13 2013

PROCEDURAL HISTORY

This is the third hearing before this Arbitrator. The first arbitration was an emergency proceeding heard on the issues of causal connection, medical expenses, temporary total disability, prospective medical treatment, and penalties. This Arbitrator's decision of April 26, 2009 made a finding of causation and awarded medical expenses, temporary total disability, prospective medical treatment, and penalties. Both parties filed reviews.

Thereafter there were additional pretrial arbitration proceedings, which resulted in some agreement. Pursuant to the parties' agreement, Respondent authorized and Petitioner attended one follow up visit with a University of Illinois Medical Center physician, Petitioner had a Section 12 examination with Dr. Anthony Rinella, and Respondent paid a $1,650.00 advance.

While the reviews were pending, the second emergency arbitration was heard February 24, 2010 on subsequent issues of causal connection, temporary total disability, prospective medical treatment, and penalties. After the second arbitration hearing had been concluded, the Commission issued a detailed review decision for the first proceeding in Commission case number 10 IWCC 403, modifying the awards of temporary total disability and penalties, but affirming all else.

This Arbitrator's second decision, dated May 11, 2010, made another finding of causation and awarded additional temporary total disability, further prospective medical treatment consisting of a functional capacity evaluation, and additional penalties. Petitioner filed another review.

In a subsequent decision filed under Commission case number 11 IWCC 789, a majority of the Commission panel extended the award of temporary total disability to the arbitration hearing date of February 24, 2010, ordered Petitioner to cooperate with the functional capacity evaluation the results of which were to be communicated to Dr. Engelhard and Dr. Rinella for their review, and affirmed all else. The dissenting Commissioner would have affirmed and adopted the second arbitration decision in its entirety.

There have been no further appeals.

STATEMENT OF FACTS

Petitioner underwent the ordered functional capacity evaluation on October 4, 2011. The functional capacity evaluation included "significant musculoskeletal findings", "functional performance", "functional simulation", "functional joint mobility test" and "consistency/validity". The report stated that Petitioner put forth maximum effort (PX2).

Dr. Rinella received that report. In his January 20, 2012 report, Dr. Rinella stated that the functional capacity evaluation showed Petitioner could work at a light duty level per the United States Department of Labor Statutes. Dr. Rinella stated that light duty includes maximum lifting and carrying capacity of 20 pounds from the floor to the waist. Dr. Rinella stated that Petitioner's permanent restrictions should be based on the October 4, 2011functional capacity evaluation (PX3).

Petitioner testified that she lives with pain and that her right leg goes numb.

Petitioner worked for a short time at the dress shop, known as Scelebrations, which is owned by a friend. The friend had opened an ethnic orientated dress, party and gift shop for special events. Petitioner testified to the accuracy of payment records subpoenaed from Scelebrations (PX1). The payment records show that she was employed 20 hours per week for a four week period from October 4, 2010 through October 29, 2010 at $165.00 per week, that then she was employed 20 hours per week for a three week period from December 6, 2010 through December 24, 2010 at $165.00 per week, and that finally she was employed two days on December 27,

2010 and December 28, 2010 for $66.00. (PX1). No taxes were withheld by Scelebrations. A 2010 Form 1099 shows $1,221.00 (PX1).

Petitioner described her activities there as being light and that for many hours of the day socializing with the owner. Petitioner testified that the job offer was prompted by friendship more than her friend's need. Petitioner testified that her friend had full time employees and had requested Petitioner be there in order to get her out of the house and lift her spirits.

Respondent paid temporary total disability payments through February 24, 2010, as ordered by the Commission. Respondent disputes any further temporary compensation.

Petitioner has filed a document entitled "Election To Waive Rights To Recover Under Section 8(d) 1 Of The Act". That filed document and Petitioner's proposed decision requests permanent benefits under Section 8(d) 2 of the Act.

TEMPORARY TOTAL DISABILITY

The last Commission decision ordered that temporary total disability benefits were to be paid up to the arbitration date of February 24, 2010. Respondent has offered no medical evidence that there has been any change in Petitioner's physical condition. In the absence of any contrary medical evidence, temporary total disability benefits ought to have been continued in accordance with that Commission decision. Temporary benefits should have been paid through January 20, 2012, the date of Dr. Rinella's Commission ordered review.

Based upon the foregoing, the claimed temporary total disability benefits shall be awarded.

TEMPORARY PARTIAL DISABILITY

Petitioner's proposed finding asserts that she wishes to compute this benefit claim based upon gross earnings. The Arbitrator adopts Petitioner's proposed computation of subtracting $165.00 from the average weekly wage of $550.00, then awarding two thirds of the difference: for the third period, two days of work or two fifths of a week, the Arbitrator has subtracted the prorated amount for the two additional days worked on December 27th and December 28th from the average weekly wage of $550.00 per week and awarding two thirds

of that difference.

NATURE AND EXTENT

Based upon Petitioner's continuous credible testimony, the continuous medical records, and the continuous credible medical opinions of Dr. Rinella, Petitioner has lost her trade, of many years, as a waitress.

Therefore, the Arbitrator finds that Petitioner has sustained a 60% loss of the person as a whole.

PENALTIES

Despite credible medical evidence, despite prior Arbitration decisions and prior Commission decisions, and despite prior assessment of penalties, Am Trust Group, Respondent's workers' compensation insurance carrier, has been consistently dismissive of Petitioner's injuries. The history of this case, as demonstrated through three Arbitration hearings and two Commission reviews, shows a pattern of vexatious failure to pay and unreasonable delay occasioned by Am Trust Group. Therefore, penalties should be assessed.

Pursuant to Section 19(l) of the Act, Petitioner is entitled to a late fee penalty of $30.00 per day, which is hereby assessed for the third time. The time delays in commencing temporary total disability benefits have pierced the $10,000.00 cap. Prior Section 19(l) penalty assessments of $1,950.00 and $2,010.00 total $3,960.00, leaving a balance of $6,040.00 in Section 19(l) late fee penalties.

As explained above, the continuing failure to pay has been unreasonable and vexatious. Since the last Commission decision, there has been an accrual of 33,838.46 in unpaid temporary total disability benefits. Pursuant to Section 19(k) of the Act, a 50% penalty in the amount of $16,919.23 is assessed.

For the reasons stated in this decision, attorneys' fees shall be assessed on the accrual of 33,838.46 in unpaid temporary total disability benefits. Pursuant to Section 16 of the Act, attorneys' fees of 20% in the amount of $6767.92 are assessed.

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

ROBERT PARMELY, JR.,

Petitioner,

vs.

NO: 11 WC 30596

14IWCC0306

METROPOLIS NURSING & REHAB CENTER,

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 causal connection, medical expenses, temporary total disability and prospective medical, 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 Commission notes that the Petitioner's major current complaint appears to be medial knee pain, which is in the vicinity of where the MRI, per Dr. Jackson, showed a complex medial meniscus tear. While Dr. Jackson's uncertainty with regard to the efficacy of arthroscopic surgery is acknowledged, the Commission finds that the arthroscopic surgery should initially be attempted, as this could delay the need for a total knee replacement, given the Petitioner's relatively young age. If the arthroscopic surgery fails to cure or relieve the Petitioner from the effects of the February 21, 2011 accident, and Dr. Jackson opines that a total knee replacement is

14IWCC0306

still required, the Commission finds that such knee replacement surgery would remain causally related to the February 21, 2011 accident.

The Commission further modifies the Decision of the Arbitrator to indicate that the awarded period of temporary total disability, July 28, 2011 through June 26, 2013, totals 99-6/7 weeks, as opposed to the awarded period of 91 weeks. If any portion of this period of TTD was previously paid by Respondent, then Respondent is entitled to credit for same.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $241.71 per week for a period of 99-6/7 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 Respondent pay to Petitioner the sum of $1,755.46 for medical expenses under §8(a) of the Act, SUBJECT TO FEE SCHEDULE??

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorize arthroscopic right knee surgery as prescribed by Dr. Jackson pursuant to §8(a) of the Act.

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 is entitled to a credit in the amount of $5,818.93 under §8(j) of the Act; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

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

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

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.

14IWCC0306

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $20,200.00. 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: APR 29 2014
TJT: pvc
o 3/25/14
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

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

PARMELY, ROBERT
Employee/Petitioner

Case# **11WC030596**

METROPOLIS NURSING & REHAB CENTER
Employer/Respondent

14IWCC0306

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:

2546 FEIST LAW FIRM LLC
KREIG B TAYLOR
617 E CHURCH ST SUITE 1
HARRISBURG, IL 62946

1337 KNELL & KELLY LLC
PATRICK JENNETTEN
504 FAYETTE ST
PEORIA, IL 61603

STATE OF ILLINOIS)
) ss.
COUNTY OF MADISON)

14IWCC0306

- ☐ 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)

ROBERT PARMELY
Employee/Petitioner

v.

METROPOLIS NURSING & REHAB CENTER
Employer/Respondent

Case # 11 WC 30596

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 **June 26**, on **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, **2/21/2011**, 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 $; the average weekly wage was **$241.71**.

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 is entitled to a credit of **$5,818.93** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $241.71/week for 91 weeks, commencing 7/28/11 through 6/26/13, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $1,755.46, as provided in Section 8(a) of the Act.

Respondent shall authorized the prospective medical treatment as indicated by Petitioner's treating physician.

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

8/6/13
Date

ICArbDec19(b)

AUG 7 - 2013

14IWCC0306

FINDINGS OF FACT

On February 21, 2011, Robert Parmely, hereinafter referred to as "Petitioner," slipped on a wet floor and injured his right knee while employed by Metropolis Nursing and Rehab Center, hereinafter referred to as "Respondent." Petitioner continued to work on that date, and finished his shift.

On February 24, 2011, Petitioner went to the Emergency Room at Massac Memorial Hospital at which time Petitioner was prescribed pain medications and placed on crutches.

After continuing to experience pain in his right knee, Petitioner went to his primary physician, Dr. Thomas Staton, on February 28, 2011. On that date, Dr. Staton ordered an MRI scan of the right knee and continued Petitioner on crutches. Dr. Staton referred Petitioner to Dr. Stephen Jackson, an orthopedic specialist.

Dr. Jackson saw Petitioner for examination treatment on March 17, 2011. On that date he found that Petitioner was tender along the medial joint line, that he had no lateral instability, that the anterior and posterior drawer tests were negative and that Petitioner had a positive McMurray test along the medial joint line. Dr. Jackson reviewed x-rays which revealed a significant medial compartment narrowing of Petitioner's knees with bone on bone findings bilaterally. He also reviewed an MRI which indicated a complex tear of the medial meniscus as well as a low grade sprain of the medial collateral ligament. Dr. Jackson injected the right knee and scheduled a follow up. Dr. Jackson continued to treat Petitioner conservatively, providing injections and a brace. Dr. Jackson has recommended an arthoscopic debridement which has not been approved. On February 8, 2013 Dr. Jackson's deposition was taken at which time he testified that Petitioner's complaints regarding his right knee were aggravated by his injury at work.

Petitioner continues to use crutches and since the date of the accident has at times used a walker and wheelchair to become mobile.

On July 7, 2011, Petitioner attended an Independent Medical Evaluation, performed by Dr. August Ritter. Dr. Ritter opined that Petitioner had bilateral knee degenerative arthritis and a resolved medial collateral ligament strain in his right knee which was related to his work injury. Dr. Ritter believed that Petitioner had reached maximum medical improvement in regards to his work related injury and that his impairment was directly related to the underlying degenerative arthritis of his knee. Dr. Ritter's opinion is contrary to the opinion of Petitioner's treating physician, Dr. Jackson.

Petitioner has been off work since July 28, 2011 and has not received any temporary total disability benefits.

Petitioner has outstanding medical bills in the amount of $1,755.46

CONCLUSIONS OF LAW

1. Petitioner has met his burden of proof regarding causation. In that regard, the Arbitrator finds the testimony of the treating physicians persuasive. Petitioner's testimony was also credible and unrebutted regarding his accident, his complaints and his subsequent medical care.

2. Based on the Arbitrator's findings regarding causation, the Petitioner is awarded temporary total disability benefits from July 28, 2011 through June 26, 2013.

3. Petitioner's medical treatment thus far has been both reasonable and necessary. Accordingly, the Respondent is ordered to pay Petitioner's outstanding medical bills and is directed to authorize treatment with Dr. Stephen Jackson including, but not limited to, the previous treatment and tests recommended by him. Respondent shall receive a credit for any medical expenses it has already paid.

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

PETER AHN,

Petitioner,

14IWCC0307

vs.

NO: 00 WC 49859

CIRCUIT CITY STORES,

Respondent.

DECISION AND OPINION PURSUANT TO 19(H)/8(A)

This claim comes before the Commission on a Petition for Review under Sections 19(h) and 8(a), filed by Petitioner on October 29, 2007. No question has been raised concerning the timeliness of Petitioner's Petition. Commissioner Lamborn conducted a hearing in this matter on December 18, 2008.

After considering the issues and being advised of the facts and law, the Commission denies Petitioner's Petition for Review under Section 19(h) and 8(a) and finds that Petitioner failed to prove a material increase in his work-related disability since the date of Arbitration, April 13, 2005.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. On September 14, 2000, Petitioner filed an Application for Adjustment of Claim for May 11, 2000 work-related injuries to his head, neck, back, chest, and alleged headache, neck pain, backache, blurry vision, chest pain, hypertension, dizziness and disorientation as a result of the work related automobile accident.

2. An Arbitration hearing was held on April 19, 2005, before Arbitrator Lee. Issues in dispute at the time of hearing were causal connection, medical expenses, temporary total disability, permanent partial disability, penalties and attorney fees, and credit. Petitioner's work accident of

May 11, 2000 is undisputed. On that day, Petitioner, a service technician for Respondent, was driving a minivan when he was struck from behind by another motorist, Peter Jansma. Petitioner testified he "blanked out" and spit up broken teeth, but admitted he did not strike his head on the dashboard or steering wheel, and the motorist that struck him from behind, Jansma, testified Petitioner denied having sustained any injury, and that Petitioner exhibited no signs of injury. Petitioner and Jansma drove to the police station and completed an accident report immediately after the accident. Petitioner continued working for Respondent for several days thereafter, but testified he experienced headaches as well as back and neck pain. Petitioner stopped working for Respondent and then sought no medical treatment until June 1, 2000, 21 days after the accident, when he was seen by Dr. Ikuhara.

3. On June 1, 2000, Dr. Ikuhara noted Petitioner was suffering from hypertension and ordered an MRI of the brain, the results of which were negative. Dr. Ikuhara diagnosed "post-concussion" and subsequently changed Petitioner's diagnosis to "heart murmur." An October 9, 2000 echocardigram was found to be within normal limits. During that same period of time, Petitioner sought medical treatment with five other medical providers. On October 9, 2000, P was seen by Dr. Brilla, at Respondent's request, who diagnosed possible whiplash and persistent neck pain. Thereafter Petitioner began treating with Dr. Vern, and underwent an EMG of the upper extremities, which showed mild radiculopathy at C8 of unknown cause, and a cervical MRI which demonstrated degenerative changes.

4. On March 8, 2001, Dr. Skaletsky examined Petitioner at the request of Respondent and diagnosed cervical, thoracic, and lumbar pain without any objective basis. In May of 2003, Dr. Vern noted Petitioner had nothing new on examination, and that he had nothing more to offer Petitioner. Petitioner subsequently began treating with Dr. Baehr, who had Ph.D. in philosophy and Masters of Arts Degree with a specialty in psychology, undergoing 75 office visits, for neurofeedback and cognitive therapy. Dr. Baehr referred Petitioner to Dr. Catellani, a general internist with no hospital privileges. Dr. Catellani treated Petitioner from May 2001 through May of 2004, and made numerous diagnoses: chronic headaches based upon Petitioner's subjective complaints, neck and back pain, hypertension, visual disturbance, aortic insufficiency, and right cervical radiculopathy. Dr. Catellani also diagnosed tinnitus during the course of Petitioner's treatment. However, Petitioner was examined by Dr. Clemis on January 4, 2002 with regard to his tinnitus complaint, and noted Petitioner "exhibited strange behavior throughout her entire office visit and … began surreptitiously tape recording some of my comments to him without any discussion and/or without my permission;" Dr. Clemis concluded that he "found nothing wrong with him and no diagnosis could be established… a trial of histamine only for his subjective symptoms of tinnitus could be tried."

5. Dr. Hartman, a Board Certified neuropsychologist specializing in diagnostic issues related to brain function and psychotherapy, examined Petitioner on October 28, 2003, at the request of the defendant in Petitioner's civil case related to this motor vehicle accident. On that date, Dr. Hartman conducted an all day evaluation, and opined the treatment rendered by Dr. Baehr was unreasonable, unnecessary, in appropriate and possibly unethical. Dr. Hartman opined Petitioner was not suffering from post-concussion syndrome, but from hypertension unrelated to the accident. Dr. Hartmand also opined Petitioner was suffering from malingering, noting that Petitioner was "faking every test that I gave him" and that there was no evidence of any

traumatic brain injury. Dr. Hartman opined Petitioner was only suffering from malingering, and that there was no pathology related to central nervous system as result of his work-related injury. Dr. Hoffman opined Petitioner's hypertension should be brought under control prior to his return to work, but that there was no neuropsychological sequelae precluding Petitioner's return to work.

6. The Arbitrator issued a decision on July13, 2005, finding that Petitioner was entitled to temporary total disability benefits for a period of 32 weeks, from September 19, 2000 through May 1, 2001, at the rate of $723.33 per week, that Petitioner incurred permanent partial disability to the extent of 15% loss of use of the person as a whole under Section 8(d)2 of the Act, that penalties and attorney's fees were not warranted based upon Respondent's good and just cause in denying payment of additional temporary total disability benefits and medical benefits claimed by Petitioner, that Respondent was entitled to credit under Section 8(j) for medical bills paid by Respondent's group carrier, that Petitioner's complaints of cervical pain and largely resolved soft tissue/post-whiplash injury were causally related to the work accident, but that the remainder of Petitioner's complaints and symptoms were either not supported by the objective and diagnostic studies or were related to non-work-related and pre-existing conditions. (PX8). The Arbitrator found that the Petitioner's condition of cervical pain was causally related to the accident, but that his condition was largely resolved per his treating physician, Dr. Vern, as of May 22, 2003. At time of the Arbitration hearing Petitioner complained of difficulty in concentration, tunnel vision, dizziness, right side paralysis, and nervousness, however the Arbitrator found that those complaints were not substantiated by any objective or diagnostic studies, and were only based upon Petitioner's subjective complaints.

7. On July 27, 2005, Petitioner appealed the Decision of Arbitrator Lee, raising issues of casual connection, temporary total disability benefits, medical expenses, permanent partial disability, and penalties and attorney's fees. On August 29, 2007, the Commission affirmed and adopted the Arbitrator's July 13, 2005 Decision. (PX9).

8. On October 29, 2007, Pro Se Petitioner filed a Petition for Review under Sections 19(h)/8(a).

9. A hearing under Sections 19(h) and /8(a) was held on December 18, 2008 before Commissioner Lamborn. Petitioner's medical records reflect the following treatment:

> On July 21, 2005, Petitioner underwent a CT Angiogram of the coronary arteries, neck & brain. The study found no brain abnormality or intracranial aneurysm, and very mild pulmonary venous congestion. (PX2).
>
> On August 15, 2005, Dr. Ernest Mhoon from the University of Chicago Department of Surgery, Section of Otolaryngolgy, examined Petitioner, on referral by Dr. Catallani. Petitioner provided a history of intractable, high frequency tinnitus in both ears approximately of five years duration. Petitioner further reported the onset of tinnitus correlated with head trauma he received that resulted in a brief loss of consciousness, that initially he had severe headaches, neck, back and chest pains, and occasional dizziness, and that all the symptoms except for tinnitus improved. Petitioner further admitted that no abnormalities were found on CT, MRI, or MRA scans. Petitioner's otolaryngologic

examination on August 15, 2005 was found to be unremarkable, with normal hearing in both ears between 250 and 4000Hz, and beyond 4000Hz a decrease in hearing in the right ear extending to 55dB at 6 and 8KHz. Petitioner's speech discrimination scores were further found to be within normal limits, as was tympanogram, but that otoacoustic emissions were absent in both ears. Dr. Mhoon opined Petitioner had a history and findings consistent with bilateral intractable tinnitus of probably post-traumatic origin. He opined there were no reliable methods of treatment for this form of tinnitus, that masking and tinnitus retraining have been met with some success, but that failing that, some patients have responded to tranquilizer or antidepressant. Dr. Mhoon recommended Petitioner follow up if symptoms changed in the future.

10. No other medical records were tendered into evidence. No physical testimony was presented at the time of the 19(h)/8(a) hearing.

11. At the 19(h)/8(a) hearing on December 18, 2008, Petitioner testified that with regard to his Section 8(a) Petition, he had no medical bills with him to submit at the time of hearing, and that he submitted no medical bills to Respondent for payment. (T6-8). Petitioner testified that most of his body pain and symptoms have improved since his work-related injury, but that his brain function was still a problem, that he was incapable of handling the stress and financial numbers associated with his Chicago Board of Trade job, and that he has been told to find another place to work. Petitioner testified that through the filing of his 19(h)/8(a) Petition he was attempting to secure authorization for additional treatment for his brain function and tinnitus. (T20-24).

CONCLUSION

After consideration of the facts in this case, the Commission denies Petitioner's 8(a) Petition on its face, finding Petitioner failed to submit any medical bills for consideration under Section 8(a).

With regard to Petitioner's 19(h) Petition, the Commission further finds that Petitioner failed to prove a material increase in his work-related physical disability since the Arbitration hearing on July 13, 2005. In Gay v. Industrial Commission, 178 Ill. App. 3d 129, 132 (1989), the Illinois Supreme Court explained that: "[t]he purpose of a proceeding under section 19(h) is to determine if a petitioner's disability has "recurred, increased, diminished or ended" since the time of the original decision of the Industrial Commission. (Ill. Rev. Stat. 1985, ch. 48, par. 138.19(h); Howard v. Industrial Commission (1982), 89 Ill. 2d 428, 433 N.E.2d 657.) To warrant a change in benefits, the change in a petitioner's disability must be material. (United States Steel Corp. v. Industrial Commission (1985), 133 Ill. App. 3d 811, 478 N.E.2d 1108.) In reviewing a section 19(h) petition, the evidence presented in the original proceeding must be considered to determine if the petitioner's position has changed materially since the time of the Industrial Commission's first decision. (Howard, 89 Ill. 2d 428, 433 N.E.2d 657.)

The Commission notes that by Petitioner's own admission, at the time of December 18, 2008 hearing, and in the August 15, 2005 medical report of Dr. Mhoon, submitted at the time of the December 18, 2008 hearing, his cervical pain/whiplash condition improved following the original arbitration hearing. The evidence in the record fails to show any material change in his

cervical pain/whiplash condition of ill-being. Furthermore, in reviewing Petitioner's testimony regarding the effect of his condition on his daily life since the arbitration hearing, it is clear to the Commission that there is nothing to indicates his cervical pain/whiplash condition and symptoms have changed since the time of the original arbitration hearing. Instead, Petitioner's unrelated conditions of tinnitus and "brain function" appear to be the basis for his 19(h) and 8(a) Petition. Petitioner failed to prove any worsening of his cervical pain/post whiplash injury, which was the only condition found to be causally related to his work injury. Petitioner presented no credible evidence of any material change in his physical condition, work restrictions, employment status, or medical condition, as it relates to his work related injury. The record contains no evidence to support Petitioner claim that his disability recurred or increased. The only medical records tendered into evidence, that were not presented at the prior April 19, 2005 Arbitration hearing, was a July 2, 2005 CT Angiogram of the coronary arteries, neck & brain, and an August 15, 2005 report of Dr. Mhoon. The July 2, 2005 CT Angiogram of the coronary arteries, neck & brain was noted to be within normal limits, except for very mild pulmonary venous congestion. Petitioner offered no treating records or medical opinions causally connecting this testing or findings to his May 11, 2000 work-related injury condition- cervical pain, post-whiplash. The Commission further notes that while Dr. Mhoon, in his August 15, 2005 consultation report, concluded Petitioner has tinnitus and opined that Petitioner has trauma induced tinnitus, this opinion was based upon the history Petitioner provided to Dr. Mhoon, and there was no indication objectively that Petitioner's tinnitus condition somehow worsened between the April 2005 arbitration hearing and August 2005 consultation with Dr. Mhoon. Furthermore, the Commission previously found Petitioner's tinnitus condition was to be unrelated to his work-related injury based upon the January 4, 2002 evaluation of Dr. Clemis, who concluded Petitioner had "nothing wrong with him and no diagnosis could be established… a trial of histamine only for his subjective symptoms of tinnitus could be tried."

Therefore, the Commission finds that Petitioner failed to prove a material change in his disability, or entitlement to an award of medical care, and denies Petitioner's claim for compensation pursuant to Section 19(h) and Petitioner's claim for medical care pursuant to Section 8(a) of the Act.

14IWCC0307

Based on the above, the Commission denies Petitioner's Petition pursuant to Sections 19(h) and 8(a).

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition under Sections 8(a) and 19(h) is hereby denied.

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 2 9 2014
KWL/kmt
O-04/08/14
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

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

Charles Bellizzi,
Petitioner,

vs.

NO: 08 WC 10502

14IWCC0308

United Parcel Service,
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(s) 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 April 5, 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 $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: APR 2 9 2014
KWL/vf
O-4/8/14
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0308

BELLIZZI, CHARLES
Employee/Petitioner

Case# **08WC010502**

UNITED PARCEL SERVICE
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:

1414 O'CONNOR LAW GROUP LLC
BRYAN J O'CONNOR
221 N LASALLE ST SUITE 1050
CHICAGO, IL 60601

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
BETH DOLEHIDE
20 N CLARK ST SUITE 1000
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 14IWCC0308

Charles Bellizi
Employee/Petitioner

v.

United Parcel Service
Employer/Respondent

Case # 08 WC 10502

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 **February 20 and 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. ☐ 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 8, 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 as explained *infra*.

In the year preceding the injury, Petitioner earned **$70,081.63**; the average weekly wage was **$1,622.25**.

On the date of accident, Petitioner was **53** years of age, ***married*** with **no** dependent children.

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

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

Respondent shall be given a credit of **$151,729.50** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$151,729.50**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act. *See* AX1.

ORDER

Medical Benefits

As explained more fully in the Arbitration Decision Addendum, Respondent has no further liability to Midwest Academy of Pain & Spine for medical expenses pursuant to Sections 8(a) and 8.2 of the Act.

Permanent Partial Disability: Person as a whole

Respondent shall pay Petitioner permanent partial disability benefits of $636.15/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.

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 4, 2013
Date

APR 5- 2013

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Charles Bellizi
Employee/Petitioner

v.

United Parcel Service
Employer/Respondent

Case # **08** WC **10502**

Consolidated cases: **N/A**

14IWCC0308

FINDINGS OF FACT

The issues in dispute include causal connection, medical bills, and the nature and extent of Petitioner's injury. Arbitrator's Exhibit ("AX") 1. The parties have stipulated to all other issues. AX1.

Background

Petitioner testified that he has been a truck driver for Respondent since April 1, 1991. Since October of 2007, he worked as a road feeder driver moving loads to other hubs across states. Petitioner had a regular route five days per week from Palatine, Illinois to Davenport, Iowa to Peru, Illinois and back to Palatine, Illinois.

On October 8, 2007, Petitioner testified that he was walking into through the Palatine hub building when a cargo bar struck him in the head causing bleeding and knocking him to one knee. *See also* PX2 at 14; PX20a-e. Petitioner testified that he was stunned and confused. The accident was witnessed and another driver assisted Petitioner. Petitioner also reported the accident to a manager and he rested for some time before he went to the emergency room for medical attention.

Petitioner testified that he had tongue cancer in the 1990s requiring surgery, but that he had no neck injuries since that time. He also testified that he had no pain complaints, limitations, disabilities, or other prior head injuries in 10 years prior to his accident at work. The medical records reflect that Petitioner also has a history of a total hip replacement. PX1 at 8, 10.

Medical Treatment

On October 8, 2007, Petitioner went to the emergency room at Alexian Brothers Medical Center ("Alexian"). PX1. He reported being hit in the head with a metal bar, loss of consciousness, jaw pain, and ringing in his ears. PX1 at 8. Petitioner underwent CT head scans which were negative, received pain medication and was placed off work for two days. PX1 at 7, 12-17.

Petitioner followed up with his primary care physician, Dr. Demke, on November 5 and 12, 2007 reporting headaches, pain, blurred vision, throbbing, light sensitivity, noise sensitivity, dizziness, worsened headaches with certain activities, neck stiffness and pain that worsened after his accident with radiation into the bilateral upper extremities with paresthesias and numbness. PX2 at 11-22. Dr. Demke noted that Petitioner's work injury caused left sided headaches, and generalized headaches, dizziness, and confusion with progressively worsening headaches, neck and shoulder pain, and bilateral upper extremity paresthesias and numbness. *Id.* He diagnosed Petitioner with: (1) posttraumatic headaches; (2) left zygomaticotemporal neuralysis and occipital neuralysis; (3) whip lash injury and cervicalgia; (4) cervical radiculopathy; and (5) neuropathic pain into the arms and hands. PX2 at 19. Dr. Demke ordered an MRI of the head without contrast, which Petitioner

underwent and was normal. PX2 at 9, 21; PX3. He ordered medication management, but recommended nerve blocks if that conservative treatment failed. PX2 at 21-22.

Dr. Demke referred Petitioner to Dr. Elborno for the nerve blocks. PX2 at 23. On November 20, 2007, Dr. Elborno performed a left zygomaticotemporal nerve block and left occipital nerve block under fluoroscopy guidance. *Id.* Pre- and postoperatively, Dr. Elborno diagnosed Petitioner with the following: (1) left zygomaticotemporal nerve neuralgia; (2) left occipital nerve neuralgia; and (3) intractable headache. *Id*; PX5 at 1-3.

Petitioner followed up with Dr. Demke on November 27, 2007 reporting continued headaches of shorter duration, neck pain, and shoulder pain. PX2 at 27-31. He ordered continued and additional medications and diagnosed Petitioner with cervicalgia, a cervical strain/sprain, cervical radiculopathy, associated muscle spasms, nerve disorders, trigeminal neuralgia, and headaches with resistance to medication. PX2 at 29-31.

On December 4, 2007, Dr. Elborno performed a left cervical medial branch block at C3-C7 on the left side under fluoroscopy guidance. PX2 at 33-34. Pre- and postoperatively, Dr. Elborno diagnosed Petitioner with left cervical spondylosis at C3-C7. *Id.*

On December 13, 2007, Petitioner returned to Dr. Demke reporting lessened, but continued, symptomatology. PX2 at 39-51. Dr. Demke ordered continued and additional medications and diagnosed Petitioner with cervicalgia, a cervical strain/sprain, cervicogenic headaches, headaches, and trigeminal neuralgia. PX2 at 43.

On December 17, 2007, Petitioner returned to Dr. Demke with continued symptomatology. PX2 at 53-54. He maintained Petitioner's diagnoses and added a diagnosis of left arm numbness, paresthesias, and dysthesias. *Id.* The following day, Petitioner underwent a second left cervical medial branch block from C3-C7 with Dr. Elborno. PX2 at 55-57; PX5 at 5-7. He maintained his diagnosis of left cervical spondylosis at C3-C7. *Id.*

On December 27, 2007, Petitioner returned to Dr. Demke with continued symptomatology. PX2 at 61-66. He ordered a cervical spine MRI which showed multiple disc herniations, the largest at C5-C6, and several levels of left neural foramen stenosis. PX2 at 67-69; PX4. Dr. Demke diagnosed Petitioner with cervicalgia, cervical radiculopathy, arm pain and paresthesias, and shoulder pain. PX2 at 61.

On January 3, 2008, Petitioner saw Dr. Demke with persistent left sided temporal pain and left sided neck and arm pain. PX2 at 71-73. He referred Petitioner to Dr. Suwan. *Id.* On January 7, 2008, Dr. Suwan performed an NCS/EMG to test for carpal tunnel syndrome and ulnar neuropathy, cervical radiculopathy, brachial plexopathy, and to rule out neuropathy. PX2 at 77-81. She concluded that Petitioner's test results were abnormal showing bilateral median neuropathy at the wrist (carpal tunnel syndrome) worse on the left, and C5-C7 radiculopathy on the left. *Id.*

Petitioner returned to Dr. Demke on January 10, 2008 at which time he diagnosed Petitioner with cervicalgia, cervical radiculopathy, HNP (herniated nucleus pulposus), spinal stenosis, carpal tunnel syndrome, migraine headaches, zygomaticotemporal neuralgia, [illegible] neuralgia, and occipital neuralgia. PX2 at 87-95. Petitioner continued to report that his symptoms in the neck and arm began after his accident at work. PX2 at 89. Dr. Demke noted that Petitioner's neck and arm symptoms were likely an aggravation of a pre-existing medical condition "because the spinal and foraminal stenosis and HNP would develop over time[.]" *Id.* He did not relate Petitioner's carpal tunnel syndrome to the injury at work on October 8, 2007. *Id.* Dr. Demke

recommended a series of injections to treat the cervical condition, medication to manage Petitioner's headaches, and a nerve block for the neuralgia if necessary. PX2 at 91-92.

Petitioner underwent cervical epidural steroid injections with Dr. Elborno for the bilateral cervical radiculopathy, HNP/herniated disc at C5-C6, and degenerative disease on January 15, 2008, February 12, 2008, and February 26, 2008. PX2 at 105-107, 119-121, 137; PX5 at 11-13, 25. Petitioner followed up with Dr. Demke on January 28, 2008, February 19, 2008, and February 29, 2008 during which time Petitioner reported some relief with the injections, but that his symptoms returned. PX2 at 109-115, 127-135, 143-147.

On January 28, 2008, Dr. Demke noted that Petitioner's multilevel herniated discs and degenerative changes in the neck or likely related to repeated lifting and prolonged driving they were also aggravated by Petitioner's injury at work. PX2 at 111-112. He also prescribed a cervical collar for Petitioner. PX2 at 115. On February 19, 2008, Petitioner requested a referral to an orthopedic surgeon for a second opinion. PX2 at 129-130; PX5 at 19-22.

Petitioner saw Dr. Montella at Midwest Sports Medicine and Orthopedic Surgery ("Midwest Sports") on February 20, 2008. PX11 at 21-25. Petitioner reported that he sought an evaluation for a work injury when he was struck in the head by a bar. *Id.* Petitioner reported a lot of headache and neck pain as well as discomfort into the left arm with numbness and tingling. *Id.* He also reported that the symptoms were daily and constant, and he reported worsening low back pain. *Id.* On examination, Dr. Montella noted limited cervical spine range of motion, tenderness to deep palpation, loss of spinal rhythm, mild loss of lumbar range of motion, and pain down through the neck, shoulders, and bilateral arms, left worse than right. *Id.* Dr. Montella ordered including chiropractic care, anti-inflammatory and pain medications, and placed Petitioner off work through his next appointment. *Id.*

On February 29, 2008, Dr. Demke gave Petitioner a referral to a neurosurgeon for his neck pain and cervical radiculopathy which Petitioner declined and he requested continued physical therapy. PX2 at 143-144; PX5 at 27-30. Dr. Demke ordered an additional nerve block which was administered by Dr. Elborno on March 4, 2008 for left atypical fascial pain and left migraine headache. PX2 at 143-144, 157-159; PX5 at 35-37.

Petitioner underwent physical therapy at The Centers for Physical Therapy beginning on February 29, 2008 through May 21, 2009. PX11(a).

Petitioner returned to Dr. Demke on March 31, 2008 reporting significant improvement in his left sided symptomatology, but persistent neck and left arm pain. PX2 at 167-169. On April 14, 2008, Petitioner reported additional improvement with the last nerve block, but continued neck and arm pain. PX2 at 175-179. Dr. Demke ordered continued medication management and diagnosed Petitioner with posttraumatic headaches/migraines, left zygomaticotemporal neuralgia, cervicogenic headaches, and occipital neuralgia. *Id.*

First Section 12 Examination – Dr. Gutierrez

On April 10, 2008, Petitioner underwent an independent medical evaluation with Dr. Gutierrez at Respondent's request. RX1 at 6-8. Petitioner provided a history of his accident reporting that he was hit on the left side of the head by a bar, suffered a small laceration and brain concussion, and lost consciousness for a few seconds. *Id.* He also provided a history of his emergency room care, pain complaints including headaches, and diagnostic testing and treatment with Drs. Demke and Elborno. *Id.* Petitioner also reported having been athletic all his life, participating in marathons, and a medical history including neck surgery for squamous cell carcinoma, a

total hip replacement in 2004, and medical treatment for right knee problems. *Id.* Dr. Gutierrez examined Petitioner and concluded that Petitioner had cervical spondylosis characterized by degenerative disc disease at multiple levels and a herniated cervical disc at C5-C6 and to a lesser degree at C6-C7. *Id.* He opined that Petitioner's neck pain and radiating upper left extremity pain were related to his cervical pathology and the accident at work which aggravated his condition. *Id.* Dr. Gutierrez also opined that Petitioner's headaches could have initially been related to his concussion sustained on October 8, 2011, but he saw no correlation between Petitioner's then-current headache complaints which were attributed to traumatic temporal nerve irritation (temporal arteritis). *Id.* He recommended physical therapy for the neck, various medications, and possibly surgical intervention if those conservative measures failed. *Id*; *see also* RX1 at 5.

Continued Medical Treatment

On April 16, 2008, Petitioner saw Dr. Montella reporting ongoing symptomatology including a lot of discomfort and numbness in his hand consistent with cervical disc herniation. PX11 and 26-29. Dr. Montella noted that Petitioner's physical examination was unchanged from his last visit. *Id.* He ordered continued physical therapy, anti-inflammatory and pain medications, and kept Petitioner off work through this next appointment. *Id.*

In a letter addressed to an insurance adjuster, Ms. Knapp, and dated on or about May 5, 2008, Dr. Suwan agreed with Dr. Gutierrez's opinion that Petitioner had posttraumatic headaches caused by his accident at work and a pre-existing degenerative disc disease of the cervical spine which was aggravated by Petitioner's accident at work. PX2 at 3. However, she noted that Petitioner was never diagnosed, "worked up," or treated for temporal arteritis or headaches related to temporal arteritis. *Id.*

On May 9, 2008, Petitioner saw Dr. Ross at Midwest Neurosurgery and Spine Specialists ("Midwest Neurosurgery") per Dr. Suwan's referral. PX8. Petitioner provided a history to Dr. Ross who performed a physical examination and reviewed Petitioner's cervical spine MRI. *Id.* Dr. Ross opined that Petitioner's neck and left arm symptoms were due in large part to his pre-existing cervical spondylosis, disc herniations, and foraminal stenosis; however, he noted that Petitioner was asymptomatic with regard to these conditions prior to his injury at work and symptomatic afterward. *Id.* He noted that Petitioner was a surgical candidate for an anterior cervical discectomies and fusion from C4-C7 after additional conservative treatment including cortisone injections and physical therapy. *Id.*

On May 28, 2008, Petitioner returned to Dr. Montella reporting continued difficulty with neck and back pain consistent with cervical and lumbar disc herniations which Dr. Montella noted were work-related. PX11 at 30-33. Again, Dr. Montella noted that Petitioner's physical examination remained unchanged. *Id.* He ordered continued physical therapy, anti-inflammatory and pain medications, and kept Petitioner off work through this next appointment. *Id.*

On July 9, 2008, Petitioner saw Dr. Montella reporting difficulties with cervical disc herniation and radiculitis but no profound or progressive neurologic impairment. PX11 at 34-36. Again, Dr. Montella noted that Petitioner's physical examination remained unchanged. *Id.* He ordered continued physical therapy, anti-inflammatory and pain medications, epidural injections which had been previously anticipated if other conservative measures failed, and kept Petitioner off work through his next visit. *Id.*

Petitioner returned to Dr. Montella on August 6, 2008 reporting activity related neck pain. PX11 37-40. Dr. Montella noted that Petitioner's presentation was consistent with cervical and lumbar discogenic pain and radiculitis with no profound or progressive neurologic impairment. *Id.* Again, Dr. Montella noted that

Petitioner's physical examination remained unchanged. *Id.* He ordered continued physical therapy, anti-inflammatory and pain medications, epidural injections, and kept Petitioner off work through his next visit. *Id.*

On September 10, 2008, Petitioner reported continued symptomatology in the neck with radiating arm pain. PX11 at 42-47. Again, Dr. Montella noted that Petitioner's physical examination remained unchanged. *Id.* He ordered continued physical therapy, anti-inflammatory medication, referred Petitioner to Dr. DiGianfilippo for a neurosurgical consultation in anticipation of an anterior cervical discectomy and fusion, and kept Petitioner off work through his next visit. *Id.* Petitioner also reported an injury of the knee at work and Dr. Montella ordered concurrent physical therapy for Petitioner's knee condition. PX11 at 41, 46. The Arbitrator notes that Petitioner does not claim any knee injury in his above-captioned case.

On September 29, 2008, Petitioner returned to Dr. Montella after arthroscopic knee surgery at which time Dr. Montella noted that Petitioner was considering neck surgery. PX11 at 47. Dr. Montella ordered a repeat cervical MRI, anti-inflammatory and pain medications, continued physical therapy for the neck and knee, and kept Petitioner off work until his next appointment. PX11 at 47-49.

On October 15, 2008, Dr. Montella noted that Petitioner's physical examination remained unchanged, reiterated his referral for a neurosurgical consult, ordered continued physical therapy for the neck and knee, and kept Petitioner off work. PX11 at 53-56.

Petitioner saw Dr. DiGianfilippo at West Suburban Neurosurgical Associates ("West Suburban") for an initial consultation on October 17, 2008. Dr. DiGianfilippo recommended a decompressive laminectomy with bilateral foraminotomies from C4-C7. PX9 at 3.

Petitioner followed up with Dr. Montella on November 12, 2008 at which time he noted that Petitioner's physical examination remained unchanged. PX11 at 60-63. Dr. Montella ordered continued physical therapy for the neck and knee, and kept Petitioner off work. *Id.*

Second Section 12 Examination – Dr. Gutierrez

On December 11, 2008, Petitioner underwent a second evaluation with Dr. Gutierrez at Respondent's request. RX1 at 3-4. Dr. Gutierrez agreed that the surgery recommended by Dr. Montella was proper. *Id.*

Continued Medical Treatment

Petitioner underwent preoperative testing and then the recommended surgery with Dr. DiGianfilippo on December 16, 2008 for pre- and postoperative diagnoses of cervical radiculopathy and cervical spondylosis. PX9 at 15-17; PX10. Petitioner also saw Dr. Brar for post-surgical medical management. PX9 at 5-7. He examined Petitioner and noted depression, tingling in the fingers, neck pain, and headaches on examination. *Id.*

On January 15, 2009, Petitioner saw Dr. Montella postoperatively who, again, noted that Petitioner's physical examination remained unchanged. PX11 and 65-67. He ordered a postoperative course of physical therapy, anti-inflammatory medication, and kept Petitioner off work until his next visit. *Id.* Petitioner followed up with Dr. Montella on February 12, 2009, March 17, 2009, April 13, 2009, May 18, 2009, and July 1, 2009. PX11 at 68-86. Dr. Montella ordered continued physical therapy, anti-inflammatory medication, narcotic and non-

narcotic pain medications, a tens unit, and "rehab." *Id.* He also kept Petitioner off work through his next appointment, which was estimated to be 4 to 6 weeks after each visit. *Id.*

Third Section 12 Examination – Dr. Gutierrez

On September 10, 2009, Petitioner underwent a third evaluation with Dr. Gutierrez at Respondent's request. RX1 at 1-2. At that time, Petitioner continued to complain of some muscle spasm in the cervical area with pain. *Id.* Dr. Gutierrez examined Petitioner and found no evidence of radiculopathy or myelopathy. *Id.* He diagnosed Petitioner as status post cervical laminectomy and foraminotomy with persistent muscle spasm in the cervical area and agreed with the recommendation for physical therapy for an additional four weeks to be followed by work hardening. *Id.* He also noted that Petitioner should be able to return to full duty after completing the work hardening program. *Id.*

Petitioner testified that he returned to work on December 3, 2009 and that he had limited mobility, but he wanted to work. *See also* PX12 at 5.

Continued Medical Treatment

Approximately six months after his last visit, Petitioner returned to Dr. Montella on January 28, 2010. PX11 at 87-94. Petitioner reported that his symptoms worsened since his last visit. *Id.* On examination of the neck, Dr. Montella noted normal cervical alignment, paracervical tenderness, and decreased range of motion for flexion/extension/axial rotation. *Id.* He ordered physical therapy including chiropractic care, various medications, and returned Petitioner to work full duty without restrictions. *Id.*

Petitioner returned to Dr. Montella on March 11, 2010 reporting the same symptomatology. PX11 and 95-97. Dr. Montella's examination notes of Petitioner's neck were identical to those at Petitioner's last visit. *Id.* He ordered continued activity modification, anti-inflammatory and pain medications, physical therapy including chiropractic care, and continued to allow Petitioner to work full duty without restrictions. *Id.*

On July 30, 2010, Petitioner saw Dr. Zelby at Neurological Surgery and Spine Surgery ("Neurological Surgery"). PX12 at 5-8. Petitioner provided an accident history as well as constant, plateaued pain and stiffness in his neck radiating to both shoulders down the mid thoracic spine, occasional shooting pain in the left arm and hand, intermittent numbness in the left hand, left arm weakness, and exacerbated pain at the end the week with lifting and chiropractic manipulations. *Id.* On examination, Dr. Zelby noted mild tenderness with deep palpation of the cervical spine, diminished pin sensation in the third and fifth fingers but preserved in the forearm, diminished deep tendon reflexes in the upper and lower extremities except for an absent right biceps reflex, and severely limited range of motion of the cervical spine. *Id.* Dr. Zelby noted that Petitioner had neck pain from degenerative cervical spondylosis which improved after surgery, but plateaued, and worsened with work activities. *Id.* With the exception of numbness in the fingers of the left hand, Petitioner was neurologically normal. *Id.* He ordered an updated cervical spine MRI and allowed Petitioner to continue to work full duty. *Id.*

On August 23, 2010, Petitioner returned to Dr. Zelby. PX12 at 9-11. He reported continued pain in the neck that intermittently radiated to his anterior left arm, intermittent numbness in the left hand, and left arm weakness. *Id.* Petitioner's physical examination was almost identical to that at his last visit. *Id.* Dr. Zelby reviewed Petitioner's August 4, 2010 MRI showing that the spinal canal was widely patent, degenerative disc disease at C5-C7 with loss of disc space height at both levels, a broad-based bulging disc at C3-C4, left on

contra vertebral joint hypertrophy with moderate left foraminal stenosis at C4-C5, a broad-based disc/osteophyte complex with partial defacement of the ventral CSF at C5-C6 and C6-C7, and mild to moderate left foraminal stenosis at C6-C7. *Id.* Dr. Zelby recommended an anterior cervical decompression and fusion ("ACDF") after consulting with Dr. Petruzelli (Dr. Montella's partner at West Suburban and the surgeon that performed Petitioner's cancer operation years before). *Id.* Petitioner was allowed to continue working full duty. *Id.*

On September 22, 2010, Dr. Zelby authored a letter to Colleen Gorski in which he explained the recommended two-level ACDF procedure and anticipated postsurgical requirements and recovery time. PX12 at 15.

Dr. Montella was notified in a letter dated November 22, 2010, that his order for 18 additional cervical physical therapy visits was not certified pursuant to a utilization review. PX11 at 104.

Approximately three months after his last visit, Petitioner returned to Dr. Zelby on January 17, 2011. PX12 at 16-17. Petitioner reported continued neck pain, pain in the posterior aspect of both forearms and hands left worse than right, and occasional numbness in the same distribution but no weakness. *Id.* Petitioner also reported suboccipital headaches and additional chiropractic treatments only exacerbated his pain. *Id.* Petitioner wanted to proceed with the recommended surgery. *Id.*

On May 26, 2011, Petitioner underwent pre-operative testing and the recommended surgery. PX12 at 19-23; PX13. Specifically, he underwent the following procedures: (1) partial corpectomies C5-C6-C7 with C5-C6 and C6-C7 discectomies and decompression of the neural elements; (2) anterior cervical arthrodesis C5-C6 and C6-C7 with PEEK lordotic cages and osteocel plus; (3) anterior cervical instrumentation C5-C6-C7 with a 44 mm helix mini plate; (4) real-time intraoperative C-arm fluoroscopy with image guidance; (5) real-time intraoperative motor evoked potentials and nerve monitoring with rerunning EMG; and (6) right sided neck dissection following cancer, radical neck dissection and radiotherapy by Dr. Doshi. *Id.* Pre- and postoperatively, Dr. Zelby diagnosed Petitioner with a herniated discs at C5-C6 and C6-C7. *Id.*

Petitioner testified that he went home the following morning. *See also* PX13 at 155. He testified that when he arrived at home he had chest pain and collapsed. He also testified that he was taken to the emergency room at St. Alexis and admitted for several days with pulmonary embolism and placed on Coumadin for six months.

The medical records reflect that Petitioner was admitted at St. Alexis on June 3, 2011 under the care of Dr. Demke and referred to Dr. Sakka for a pulmonary consultation. PX14 at 10, 80. Petitioner reported anterior chest and neck pain since his discharge from surgery the previous Saturday which he thought were just postsurgical symptoms. PX14 at 26. Petitioner reported tripping and falling on the edge of the sidewalk on June 2, 2011 while looking around outside his house. PX14 at 10, 79-80, 101-102. Petitioner reported jarring his neck somewhat, but he did not hit his head. *Id.* He then reported experiencing increased neck and anterior chest pain. *Id.* Petitioner's emergency room workup included a chest x-ray and CT scan which showed a small pulmonary emboli in the right lower lobe along a 3 mm nodule. PX14 at 10, 79-80, 88-90. Dr. Demke noted that Petitioner was on Flexeril, Ambien and Norco, and that he was supposed to be on metformin and Synthroid, but he stopped at some time before his recent surgery. PX14 at 80. Dr. Demke diagnosed Petitioner with pulmonary emboli, a lung nodule, past history of squamous cell carcinoma of the neck, cervical disc disease, hypothyroidism, and diabetes. PX14 and 81. Dr. Sakka performed a pulmonary consultation and diagnosed Petitioner with pulmonary emboli, a lung nodule, and past history of squamous cell carcinoma of the neck. PX14 at 82-83. Dr. Sakka ordered an anticoagulant regimen including heparin and Coumadin. *Id.* Petitioner was to follow up with Dr. Sakka for any pulmonary issues. PX14 at 79. Petitioner was discharged on June 7,

2011 with various prescription medications including pain medications, muscle relaxants, and anticoagulants. PX14 at 18-22.

Petitioner did follow up with Dr. Sakka for his pulmonary condition on July 6, 2011, August 3, 2011, October 4, 2011, and November 10, 2011. PX17. Petitioner was discharged from his care on November 10, 2011. PX17 at 9.

On June 10, 2011, Petitioner returned to Dr. Zelby postoperatively at which time he reported an aching and soreness in the neck radiating across his left greater than right shoulders, no pain or numbness in the arms, and no weakness. PX12 at 24-28. Petitioner also reported his pulmonary embolism, several-day hospitalization, and current use of Coumadin. *Id.* Dr. Zelby recommended that Petitioner gradually begin to increase activities as tolerated, ordered a cervical spine x-rays to be taken prior to his next visit, and kept Petitioner off work until his next appointment. *Id.*

On July 13, 2011, Petitioner saw Dr. Zelby and reported aching and soreness in the neck which radiates to the right thoracic paraspinal muscles, but no pain or numbness in the arms. PX12 at 27-28. Dr. Zelby ordered four weeks of physical therapy and kept Petitioner off work until his next appointment. *Id*; PX15 at 4. Petitioner testified that he began physical therapy three days per week, or requested that he began to four days per week. On August 24, 2011, Dr. Zelby ordered an additional four weeks of physical therapy. PX15 at 5. On September 26, 2011, he ordered work hardening for four weeks. *Id.*

On October 26, 2011, Petitioner saw Dr. Zelby and reported aching and soreness in the neck, but felt that it was improving. PX12 at 29-30. Petitioner also reported that he was not taking any pain medication. *Id.* Dr. Zelby ordered an additional four weeks of progressive work conditioning, x-rays to be taken just prior to his next appointment, a prescription for Ambien, and kept Petitioner off work until his next appointment. *Id*; PX15 at 6. In addition, Dr. Montella ordered work hardening on November 14, 2011. PX15 at 7.

On November 28, 2011, Petitioner returned to Dr. Zelby reporting feeling well overall with no significant pain except for some mild intermittent pain in the intrascapular area. PX12 at 31-33. Petitioner reported that he felt able to perform his usual job duties. *Id.* Dr. Zelby placed Petitioner at maximum medical improvement and returned him to work without restrictions effective December 5, 2011. *Id.* Dr. Zelby also ordered a functional capacity evaluation. PX15 at 9.

Petitioner underwent a functional capacity evaluation on December 1, 2011, which was deemed valid and found that Petitioner was able to work at the medium physical demand level for all lifting/carrying activities. PX16.

Petitioner testified that after he was released back to work by Dr. Zelby he had the same job duties, but on a different route. Petitioner testified that he has a "day run" now with about 30-40 miles less than he drove before his accident.

Regarding his current condition, Petitioner testified that he experiences pain in neck and upper back area while he works and that he becomes more uncomfortable as his work week progresses. Petitioner described his pain as a nagging toothache-type pain that he experiences daily. Petitioner testified that he takes over-the-counter pain medicine occasionally, has less strength in his arms than he did prior to his accident, and the pain affects his ability to sleep. Petitioner further testified that he had several weightlifting medals previously and that he now avoids lifting because of his limitations; he also has not tried to lift anything over shoulder or head level.

Petitioner is no longer on Coumadin. He testified that he stays active and is limited, but he still jogs and uses weight machines as tolerated. Petitioner did run in a park district race. Petitioner testified that he no longer uses free weights. Finally, Petitioner testified that he has and still uses his TENS unit occasionally, approximately 1-2 times per month, to relieve neck, trapezius and rhomboid area pain.

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 hearing the parties' witness testimony, 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 (F), whether the Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

The Arbitrator finds that Petitioner's claimed current condition of ill-being in the neck is causally related to the injury sustained at work on October 8, 2007. In so finding, the Arbitrator relies upon the credible testimony of Petitioner and the plausibly described mechanism of injury resulting in an undisputed accident which is supported by both treating medical records and portions of Respondent's Section 12 examination reports.

To recover in a preexisting condition case, a claimant need only establish a causal connection between his work-related injury and claimed current condition of ill-being by showing that his injury aggravated or accelerated the preexisting disease. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 204-206, 797 N.E.2d 665, 278 Ill.Dec. 70, (2003) (*citing Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36-37, 65 Ill. Dec. 6, 440 N.E.2d 861 (1982) (an accidental injury will be deemed compensable if it can be shown that the employment was also a causative factor)). It has long been held that an employer takes its employees as it finds them. *Sisbro*, 207 Ill. 2d at 205 (*citing Baggett v. Industrial Commission*, 201 Ill.2d 187, 199, 775 N.E.2d 908 (2003)). As in this case, even where an employee has a pre-existing condition that renders him more vulnerable to an injury, "recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor." *See Sisbro*, 207 Ill. 2d at 205 (*citing Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d at 36; *Williams v. Industrial Commission*, 85 Ill. 2d 117, 122, 51 Ill. Dec. 685, 421 N.E.2d 193 (1981); *County of Cook v. Industrial Commission*, 69 Ill. 2d 10, 18, 12 Ill. Dec. 716, 370 N.E.2d 520 (1977)).

While Petitioner had prior surgery to the neck for cancer and the medical records reveal that Petitioner had degenerative disc disease that had developed prior to his injury at work, Petitioner was essentially asymptomatic until after his accident and Petitioner's treating physicians, along with Dr. Gutierrez, opine that Petitioner's accident aggravated his underlying cervical spine condition. Thus, the Arbitrator finds that Petitioner's current condition of ill-being in the neck is causally related to the injury sustained at work on October 8, 2007.

The Arbitrator further finds that Petitioner's pulmonary emboli and low back conditions are not causally related to his October 8, 2007 injury at work. In so finding, the Arbitrator does not find Dr. Montella's opinion that Petitioner's low back condition is causally related to his injury at work to be supported by objective evidence. Petitioner did not report any mechanism of injury to his low back as a result of his October 8, 2007 accident to any treating physicians, including Dr. Montella. Thus, Dr. Montella's opinion that Petitioner's lumbar disc herniations were work-related is not persuasive and the Arbitrator finds that Petitioner's low back condition of ill being is not causally related to his accident at work on October 8, 2007.

Similarly, the Arbitrator finds that Petitioner's pulmonary emboli condition, which resolved, is not causally related to his injury at work. While the medical records reflect that Petitioner had chest pain after his cervical fusion surgery, there is no evidence that the pulmonary emboli developed as a result of the surgery or any treatment of Petitioner's neck as a result of his October 8, 2007 accident. Indeed, no physician opined that Petitioner's pulmonary condition was causally related to the surgery or Petitioner's ongoing neck treatment and the record reflects that Petitioner suffered from various other conditions, including diabetes and hypothyroidism, for which he took various prescription medications and underwent medical treatment concurrently during his treatment for his neck condition. Based on all of the foregoing, the Arbitrator finds that Petitioner failed to prove that his pulmonary emboli condition, which resolved, was causally related to his injury at work.

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:

Respondent does not dispute the reasonableness and necessity of Petitioner's medical expenses and the parties have stipulated that Respondent will pay certain medical bills that remained unpaid before the first date of trial. *See* February 20, 2013 Arbitration Hearing Transcript; PX18-18(a). However, Respondent disputes whether the medical expenses listed in Petitioner's Exhibit 18 for treatment rendered by Dr. Suwan or Dr. Elborno at Midwest Academy of Pain & Spine totaling $7,575.49 should have been paid at the fee schedule rate in the Act, which is higher than the rate negotiated by the provider and the insured. *Id.*

Section 8(a) of the Act provides as follows in pertinent part:

> The amount of compensation which shall be paid to the employee for an accidental injury not resulting in death is: (a) The employer shall provide and pay the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury. If the employer does not dispute payment of first aid, medical, surgical, and hospital services, the employer shall make such payment to the provider on behalf of the employee. The employer shall also pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto. If as a result of the injury the employee is unable to be self sufficient the employer shall further pay for such maintenance or institutional care as shall be required. 820 ILCS 305/8 (Lexis 2007).

Section 8.2 of the Act provides as follows in pertinent part:

> (e) Except as provided in subsections (e-5), (e-10), and (e-15), a provider shall not hold an employee liable for costs related to a non-disputed procedure, treatment, or service rendered in connection with a compensable injury. ....
>
> ....
>
> (f) Nothing in this Act shall prohibit an employer or insurer from contracting with a health care

provider or group of health care providers for reimbursement levels for benefits under this Act different from those provided in this Section. 820 ILCS 305/8.2 (Lexis 2007).

Respondent's Exhibit 4 reflects that payments were made to Midwest Academy of Pain & Spine under codes providing that services were reviewed in accordance with the provider's contract with the insurance company and certain bills were reduced according to the Act's fee schedule. RX4 at 9-20. Based on all of the foregoing, the Arbitrator finds that Respondent has paid all reasonable and necessary medical bills to Midwest Academy of Pain & Spine as contracted and allowed by the Act and, thus, that Respondent has no further liability to this provider for such medical expenses.

In support of the Arbitrator's decision relating to Issue (L), the nature and extent of Petitioner's injury, the Arbitrator finds the following:

Based on the record as a whole—which reflects two reasonable and necessary multi-level cervical spine surgeries, years of physical and occupational therapies, and Petitioner's credible testimony about his continued pain, limitations, and symptomatology in the neck after his injury at work—the Arbitrator finds that Petitioner has established permanent partial disability to the extent of 30% loss of use of the person as a whole pursuant to Section 8(d)(2).

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

Lisa Petty,

Petitioner,

14IWCC0309

vs.

NO: 09 WC 16701

Heyl, Royster, Voelker & Allen,

Respondent.

DECISION AND ORDER ON REMAND FROM THE CIRCUIT COURT

On February 14, 2011, Arbitrator Nalefski issued a Decision finding that Petitioner sustained accidental injuries arising out of and in the course of her employment on March 9, 2009, that Petitioner was temporarily totally disabled for a period of 4-1/7 weeks, October 15, 2009 through November 13, 2009, at the rate of $448.53, that Petitioner is entitled to $16,348.51 for necessary medical expenses under Section 8(a) and subject to the medical fee schedule, and that Petitioner is permanently disabled to the extent of 20% of the use of the left hand and 20% loss of use of the right hand under Section 8(3) of the WC Act.

On March 10, 2011, Respondent timely filed a Petition for Review, raising issues of accident, causal connection, notice, medical expenses, temporary total disability, and permanent partial disability. Oral arguments were heard by Commissioners Lamborn, Tyrrell, and Donohue on November 15, 2011. On December 23, 2011, the Commission issued a Decision finding that Petitioner failed to provide any type of notice, defective or otherwise, of her repetitive trauma injuries, relying on Peoria County Bellwood v. IC, 115 Ill.2d 524, 505 N.E.2d 1026(1987), and dismissed Petitioner's claim for lack of subject matter jurisdiction. The Commission concluded the evidence in the record indicated Petitioner knew of her injury and its causal link to her work as early as January of 2009, and that Petitioner failed to provide notice of her injury until four months later, with the filing of her Application for Adjustment of Claim on April 16, 2009.

14IWCC0309

Petitioner appealed the December 23, 2011 Commission Decision. On August 7, 2012, Judge Crowder of the Third Judicial Circuit Court of Madison County concluded the Commission's Decision was not supported by the facts or law, reversed the Commission's finding, and the matter was "remanded to the Commission for further proceedings."

Respondent appealed the August 7, 2012 Circuit Court Order. On June 7, 2013, the Appellate Court Firth District dismissed this matter for lack of jurisdiction, finding that the Circuit's Court Order remanding the matter back to the Commission for resolution of questions of law and fact was an interlocutory order and not appealable. The Court further noted that the Circuit Court did not reinstate the Decision of the Arbitrator, but simply stated that "this case is remanded to the Commission for further proceedings."

The Commission, based upon the August 7, 2012 Circuit Court Remand Order, and after reviewing the entire record, reverses itself on the issue of notice, modifies the award of permanent partial disability benefits, and otherwise affirms and adopts the February 14, 2011 Decision of Arbitrator Nalefski, finding that Petitioner sustained her burden of proving that she sustained accidental injuries arising out of and in the course of her employment on March 9, 2009, that Petitioner provided timely notice of accident to Respondent, that a causal relationship exists between those injuries and her current condition of ill-being for her right and left hands, that Petitioner was temporarily totally disabled from October 15, 2009 through November 13, 2009, a period of 4-1/7 weeks, and that Respondent shall pay reasonable and necessary medical services of $16,348.51 as provided in Section 8(a) of the Act.

However, with regard to the issue of permanent partial disability, and pursuant to the instructions remanding the matter for further proceedings, the Commission modifies the Arbitrator's permanent partial disability award of 20% loss of use of each hand, and finds that Petitioner is entitled to 15% loss of use of the right hand, and 15% loss of use of the left hand, as provided in Section 8(e) of the Act. In so finding, reducing the permanent partial disability award from 20% to 15% loss of use of each hand, the Commission relies upon similar prior commission decisions, Petitioner's release to full duty work one month post operatively, her uncomplicated recovery, and lack of any medical documentation of continuing residual symptoms.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission's prior decision on Review is vacated and that the February 14, 2011 Decision of Arbitrator Nalefski, as modified herein, is affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $448.53 per week for a period of 4-1/7 weeks, from October 15, 2009 through November 13, 2009, that being the period of temporary total incapacity for work under §8(b) of the Act.

14IWCC0309

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $403.68 per week for a period of 61.50 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 15% loss of use of the left hand, and 15% loss of use of the right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $16,348.51 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 $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: APR 2 9 2014
KWL/kmt
R-04/08/14
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

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

Darrin Ceska,

Petitioner,

14IWCC0310

vs.

NO: 11 WC 22605
12 WC 30544

City of Chicago,

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, temporary total disability, causal connection, benefit rates, 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 August 27, 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.

14IWCC0310

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: APR 29 2014

David L. Gore

Stephen Mathis

Mario Basurto

DLG/gal
O: 4/17/14
45

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

14IWCC0310

CESKA, DARRIN
Employee/Petitioner

Case# **11WC022605**

12WC030544

CITY OF CHICAGO
Employer/Respondent

On 8/27/2013, 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 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

2988 CUDA LAW OFFICES
ANTHONY CUDA
6525 W NORTH AVE SUITE 204
OAK PARK, IL 60302

0766 HENNESSY & ROACH PC
AUKSE GRIGALIUNAS
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
19(b)

14IWCC0310

Darrin Ceska
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # 11 WC 22605

Consolidated cases: 12 WC 30544

Applications for Adjustment of Claim were filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Svetlana Kelmanson**, Arbitrator of the Commission, in the city of **Chicago**, on **July 9, 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 _____

14IWCC0310

FINDINGS

On **5/18/2011 and 8/27/2012**, 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 **5/18/2011**, Petitioner *did* sustain an accident that arose out of and in the course of employment.

On **8/27/2012**, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of the accident on **5/18/2011** *was* given to Respondent.

Petitioner's current condition of ill-being *is in part* causally related to the accident on **5/18/2011**.

In the year preceding the injury, Petitioner earned **$71,468.80**; the average weekly wage was **$1,374.40**.

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

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

Respondent is entitled to a credit of **$48,674.74** for TTD, **$11,015.86** for maintenance, and **$8,990.15** for non-occupational disability benefits.

Respondent is entitled to a credit of **$59,833.83** for medical expenses under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$916.27**/week for **25 2/7** weeks, commencing **May 18, 2011**, through **November 10, 2011**, as provided in Section 8(b) of the Act. Respondent shall be given a credit for the temporary total disability, maintenance and non-occupational disability benefits paid to Petitioner. To receive credit for the non-occupational disability benefits, Respondent must hold Petitioner harmless from any claims by the provider of the non-occupational disability benefits, as provided in Section 8(j) of the Act.

Respondent shall pay the medical bills in evidence that Petitioner incurred from May 18, 2011, through October 6, 2011, pursuant to sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for the sums it or its group insurance carrier paid toward these bills. To receive credit for the payments made by the group insurance carrier, Respondent must hold Petitioner harmless from any claims by the group insurance carrier in connection with these bills, as provided in Section 8(j) 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

8/27/2013
Date

ICArbDec19(b)

AUG 27 2013

14IWCC0310

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner testified that he worked for Respondent as a motor truck driver for 18 years. On May 18, 2011, his work hours were 7 a.m. until 3 p.m. Petitioner's first assignment was to pick up traffic cones from Hollywood Avenue and Sheridan Road. While Petitioner was stopped in northbound traffic on Lake Shore Drive on the way to his first assignment, his work pickup truck, a Ford F 250, was rear-ended "full blast speed" by a Jeep Cherokee. The force of the impact caused Petitioner, who was wearing a seatbelt, to first jerk forward really hard and then jerk back, striking the left side of his head on the headrest and the right side of his head on the rear window. Additionally, the rearview mirror detached and struck him in the forehead. It took Petitioner some time to collect himself and radio for help. Eventually, someone helped him get out of the truck. Petitioner felt nauseous and vomited. He then sat on the curb while a tow truck separated the two vehicles. Petitioner explained that the front of the Jeep became caught in his truck's rear hitch. Petitioner introduced into evidence a photograph of the Jeep, showing damage to the front fender, grille and driver's side headlight, and slight bending of the hood. No other damage is visible. Petitioner further testified that his foreman, Marvin Browder, came to the scene of the accident and took him to Advanced Occupational Medical Specialists for drug and alcohol testing and then to MercyWorks for treatment.

Petitioner admitted that he was involved in a non-work related car accident on February 22, 2011, explaining that after the accident he had some complaints related to his neck and back and treated with Chiropractor Lovell. Petitioner introduced into evidence post-accident photographs of his car, showing some crumpling of the trunk. Petitioner further testified that he returned to work full duty on March 12, 2011. Petitioner denied being under any restrictions on May 18, 2011. However, he admitted he was still treating with Dr. Lovell, explaining that the symptoms in his neck and back were improving.

The medical records in evidence show that Petitioner tested negative for drugs and alcohol. On May 18, 2011, Petitioner complained to Dr. Ali at MercyWorks of neck pain and occipital headache. On physical examination, there was mild to moderate tenderness over the paracervical and trapezius muscles. Petitioner had a full range of motion in the neck, with discomfort. Physical examination was otherwise unremarkable. X-rays of the cervical spine did not show any fracture or dislocation. Dr. Ali prescribed Motrin, Flexeril and Norco, and took Petitioner off work. On May 20, 2011, Petitioner followed up with Dr. Ali, rating his neck pain a 7-8/10 and denying radicular symptoms. He also complained of headaches. On physical examination, there was diffuse tenderness over the cervical spine and paracervical muscles. The range of motion was decreased. Dr. Ali kept Petitioner off work. On May 23, 2011, Petitioner followed up with Dr. Diadula at MercyWorks, rating his headache a 7-8/10 and neck pain an 8/10, with radiation to the right shoulder. Physical examination was essentially unchanged. Dr. Diadula diagnosed cervical and right shoulder strain, and posttraumatic headaches. He ordered an MRI of the cervical spine and kept Petitioner off work. The MRI, performed May 26, 2011, was interpreted by the radiologist as showing a small central disc protrusion at C4-C5 causing mild indentation on the anterior spinal cord, without abnormal spinal cord signal. On June 1, 2011, Petitioner followed up with Dr. Diadula, rating his neck pain a 6/10 and complaining that it was shooting down the shoulders (or right shoulder), without numbness or tingling in the arms and hands. He also continued to complain of headaches. Dr. Diadula noted the MRI findings

and kept Petitioner off work. Petitioner indicated he would seek treatment with Dr. Lorenz, his choice of medical provider.

On June 9, 2011, Petitioner consulted Dr. Lorenz[1] at Hinsdale Orthopedics, complaining of neck pain with radiation to the right shoulder and significant headaches, and giving a history consistent with his testimony. Dr. Lorenz diagnosed a disc herniation at C4-C5 "secondary to the motor vehicle accident on May 18, 2011" and "[r]adicular irritation with post-concussion syndrome." Dr. Lorenz prescribed a Medrol Dosepak and physical therapy, referred Petitioner to a neurologist, and kept him off work.

On June 30, 2011, Petitioner saw Dr. Bijari, a neurologist, on a referral from Dr. Lorenz. Petitioner complained of persistent, severe headaches after the work accident, describing them as "behind eyes and ears," with nausea and photophobia. Neurologic examination was unremarkable. Dr. Bijari diagnosed postconcussive syndrome, prescribed Elavil, ordered an MRI of the brain, and kept Petitioner off work.

On July 8, 2011, Petitioner sought emergency care at Hinsdale Hospital for redness in the eyes. Petitioner testified that his eyes became "bloody" and he developed a very bad headache after riding a stationary bike in physical therapy, and the physical therapist advised him to seek emergency care. Emergency room records from Hinsdale Hospital show the consulting physician thought the redness was "unlikely to be anything neurologic *** since headache symptoms have been since mva with no other neuro findings." Petitioner was referred to Dr. Ticho for follow up. Petitioner introduced into evidence contemporaneous photographs of his eyes, showing redness and irritation in the outside corners.

On July 11, 2011, Petitioner underwent an MRI of the brain, which was normal. On July 12, 2011, Petitioner saw Dr. Ticho, who prescribed eye drops. Petitioner testified that the redness did not recur and he did not return to Dr. Ticho.

On July 20, 2011, Petitioner followed up with Dr. Lorenz, complaining of persistent neck pain with radiation to the right arm and reporting no relief with Medrol Dosepak and minimal relief with physical therapy. Dr. Lorenz recommended a discectomy at C4-C5 and referred Petitioner to Dr. Fronczak, a neurosurgeon, for a second opinion. In the alternative, Dr. Lorenz recommended a functional capacity evaluation. He kept Petitioner off work. On July 25, 2011, Petitioner consulted Dr. Fronczak, complaining of neck pain with radiation and weakness in the right shoulder and providing a history consistent with his testimony. Dr. Fronczak diagnosed "C4-C5 cervical spondylosis with resulting right C5 radiculopathy" and stated that "surgery would be a reasonable option," qualifying that he had only reviewed the MRI report and had not reviewed the MRI films/disc.

On July 28, 2011, Petitioner followed up with Dr. Bijari and reported that the headaches had decreased in frequency, but not the severity. Dr. Bijari expected the headaches to resolve "over the next few weeks to months" and kept Petitioner off work.

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[1] During his course of treatment at Hinsdale Orthopedics, Petitioner saw Dr. Lorenz or Dr. Lorenz's physician's assistant, T. Lindley Pittman, who practiced under the supervision of Dr. Lorenz. For the sake of simplicity, all visits are referred to as the visits to Dr. Lorenz.

On August 1, 2011, Dr. Graf, a spine surgeon, examined Petitioner at Respondent's request. Petitioner complained of constant neck pain radiating to the right shoulder, which he rated a 5-6/10, and described the accident consistently with his testimony. On physical examination, the range of motion in the cervical spine was full, but painful. Petitioner also complained of tenderness to palpation. The Spurling sign was positive on the right. Physical examination was otherwise unremarkable. Dr. Graf interpreted the cervical MRI as showing a very small left paracentral disc bulge at C4-C5, without foraminal stenosis or nerve root compression. Dr. Graf opined that Petitioner was not a surgical candidate and recommended an epidural steroid injection. Regarding Petitioner's work status, Dr. Graf opined that Petitioner could return to work on sedentary duty.

On August 2, 2011, Dr. Lazar, a neurologist and physical medicine/rehabilitation specialist, examined Petitioner at Respondent's request. Petitioner complained of headaches beginning at the base of the neck and radiating to the right ear and behind the eyes, with associated photophobia. He related that the headaches had been decreasing. Petitioner also reported the episode involving his eyes and showed Dr. Lazar pictures of his inflamed eyes. Dr. Lazar opined the pictures "depict an acute conjunctivitis in both eyes, likely to be toxic or viral." On physical examination, Dr. Lazar noted a sustained tremor of the arms and, to a much lesser degree, the feet. Dr. Lazar thought the tremor was non-parkinsonian, benign and unrelated to the accident on May 18, 2011. Physical examination was otherwise unremarkable, with full range of motion in the cervical spine. Dr. Lazar opined that Petitioner sustained a soft tissue injury resulting in spasms of the neck and paracervical muscles, causing headache and neck pain. Dr. Lazar did not think Petitioner suffered a concussion or postconcussive syndrome. Regarding causal connection, Dr. Lazar opined that the accident on May 18, 2011, aggravated preexisting whiplash injury from the non-work related accident on February 22, 2011. Dr. Lazar strongly disagreed that the disc protrusion at C4-C5 was a pain generator, noting that the protrusion was midline, whereas Petitioner complained of right-sided pain. Dr. Lazar further noted that Petitioner had not undergone any electrodiagnostic studies. Dr. Lazar therefore "adamantly" opposed the proposed surgery, stating that Petitioner "would get zero benefit, and have all of the risks of a major surgical procedure." Rather, Dr. Lazar concurred with Dr. Bijari's plan of care, further recommending continuing physical therapy. Dr. Lazar noted that Petitioner was still taking Norco, amongst other medications. Dr. Lazar discouraged long-term use of Norco because of addiction potential, suggesting alternative medications. Lastly, Dr. Lazar suspected "motivational issues" in the event Petitioner did not significantly improve in four to six weeks.

On September 7, 2011, Petitioner followed up with Dr. Bijari, reporting improvement in the frequency and severity of the headaches. Dr. Bijari expected the headaches and postconcussive syndrome to resolve "over the next few weeks" and kept Petitioner off work.

On September 14, 2011, Petitioner followed up with Dr. Lorenz, rating his neck pain a 5-7/10. Dr. Lorenz continued to recommend surgery and kept Petitioner off work.

On October 6, 2011, Petitioner followed up with Dr. Bijari, reporting having only two bad headaches during the past month. Dr. Bijari thought Petitioner's "neck issues are

contributing to his headaches." From the neurological standpoint, Dr. Bijari released Petitioner to return to work full duty.

On November 11, 2011, Drs. Lorenz and Fronczak performed a discectomy and fusion at C4-C5. Postoperatively, on November 28, 2011, Petitioner reported to Dr. Lorenz he was very pleased with the result and had only mild neck discomfort. However, he noted difficulty swallowing after the surgery. On December 8, 2011, Petitioner followed up with Dr. Bijari, reporting that his headaches were "nearly resolved," "minor" and "minimal," and indicating significant improvement in his neck symptoms with the surgery. Dr. Bijari declared Petitioner at maximum medical improvement with respect to postconcussive syndrome and discharged him from care. When Petitioner followed up with Dr. Lorenz on December 12, 2011, he rated his neck pain a 7/10 and reported taking six to eight Norco tablets a day. He also complained of occasional tingling in the right arm and persistent difficulty swallowing. Dr. Lorenz refilled Norco, prescribed Valium, prescribed physical therapy, referred Petitioner to an ear, nose and throat specialist, and kept him off work.

On January 5, 2012, Petitioner saw Dr. Girgis in a referral from Dr. Lorenz for difficulty swallowing. Dr. Girgis noted swelling in the left and right submandibular glands, which he thought was postoperative, also noting evidence of gastroesophageal reflux disease.

On January 18, 2012, Dr. Graf reexamined Petitioner. Petitioner rated his neck pain a 5-6/10 and also reported having headaches in cold weather when the cervical "plate" became cold. Dr. Graf opined that the surgery was not medically necessary, noting that postoperatively Petitioner continued to complain of neck pain and headaches.

On January 23, 2012, Petitioner followed up with Dr. Lorenz, rating his neck pain a 6-7/10 and complaining that it was worse with physical therapy. Dr. Lorenz refilled Norco and Valium, prescribed Naprosyn, ordered a CT scan of the cervical spine, and kept Petitioner off work. The CT scan, performed February 14, 2012, showed normal postoperative changes. On March 5, 2012, Petitioner followed up with Dr. Lorenz, rating his neck pain a 3-7/10, usually a 5/10, and complained that increasing weights in physical therapy made the neck pain worse. He reported taking Norco and Valium sparingly. Dr. Lorenz reviewed the CT scan, noting progressing fusion at C4-C5. On physical examination, Petitioner complained of pain with range of motion testing, but had an almost normal range of motion. Dr. Lorenz discontinued physical therapy, ordered a functional capacity evaluation, and kept Petitioner off work.

On March 7, 2012, Petitioner followed up with Dr. Girgis, reporting no improvement and complaining of fatigue. Physical examination findings were unchanged. Petitioner testified that he did not return to Dr. Girgis after that visit.

A functional capacity evaluation, performed March 22, 2012, placed Petitioner at the light physical demand level. On April 4, 2012, Petitioner followed up with Dr. Lorenz, reporting significant improvement in his neck pain and complete resolution of the headaches and "arm pain." He also reported no longer having difficulty swallowing. Dr. Lorenz declared Petitioner at maximum medical improvement and released him to return to work at the light physical demand level in terms of lifting, a permanent restriction.

On April 16, 2012, Steven Blumenthal, a vocational rehabilitation counselor, interviewed Petitioner at the request of his attorney. In a report dated May 17, 2012, Mr. Blumenthal noted that Petitioner exhibited pain behaviors, such as standing up to stretch and holding his hand to his throat frequently. Furthermore, Petitioner complained of daily pain, which he rated a 5-8/10, and migraine headaches "if his cervical plate becomes cold." Petitioner reported taking Hydrocodone mostly at night, unless the pain was a 6-7/10, in which case he also took it during the day. Further, Petitioner reported taking Naprosyn three times a day. Petitioner described significant physical limitations due to his neck and low back conditions, including difficulty driving. Mr. Blumenthal performed vocational testing, noting that Petitioner was a high school graduate, with no specialized certifications other than a CDL class A driver's license. Mr. Blumenthal opined that Petitioner's most direct opportunity to return to work would be as a dispatcher.

On May 23, 2012, Petitioner followed up with Dr. Lorenz, complaining of neck pain, which he rated a 5-6/10. Physical examination was grossly normal, with some discomfort on cervical extension and flexion and mild pain on rotation. Dr. Lorenz kept Petitioner's permanent restrictions and refilled Norco and Naprosyn.

Petitioner submitted into evidence his job search logs, indicating he began looking for work on June 25, 2012. Petitioner testified that on August 24, 2012, Respondent offered him a temporary job, starting the following Monday. Petitioner advised Respondent of his restrictions and medications. Respondent assigned Petitioner to Roaming Control, which required driving a van or a truck eight hours a day. Petitioner introduced into evidence an e-mail from Angie Matos in the Personnel Division of Respondent's Department of Streets and Sanitation, stating that Petitioner's temporary assignment was within the restrictions imposed by Dr. Lorenz. However, Petitioner testified the assignment "broke [his] doctor's restrictions." Petitioner explained that since he held a class A CDL license, he was not supposed to drive under the influence of medication. Respondent told him to take his medications after the work hours.

Petitioner further testified that he reported for work the following Monday, August 27, 2012, after he stopped taking his medications. He was "having withdrawal symptoms really bad" and did not feel he could drive a large vehicle all day. Petitioner described the alleged accident on August 27, 2012, as follows:

> "I reinjured my neck driving the van. We were going through alleys and over speed bumps and through the city streets. Because the van was heavy and it's a very heavy duty van, it vibrates a lot. The vibrations and the bounciness totally killed my neck. I wasn't on medicine that I'm normally on every day; so it really, really messed my neck up.
>
> Q. So between the bouncing and hitting speed bumps, what did you notice about yourself?
>
> A. I started getting pain in my neck, swelling up and, later in the day, I had a really bad headache."

Petitioner called his supervisor and stated he could not drive anymore because of the pain. When he got to the garage, "they threw [him] off the property" and "told [him] that they were not taking [him] to the doctor, they wouldn't write a report saying [he] was reinjured." Petitioner went home, and his wife drove him to Hinsdale Hospital for emergency care.

Respondent introduced into evidence an unsigned Injury on Duty Report, prepared by Jonathan Fah on September 5, 2012, stating:

> "Employee was just reinstated for duty within his restrictions per MercyWorks. Employee states while performing duties for Bureau of Rodent Control, driving laborer around in cargo van. Employee was bounced about, driving over pot holes & speed bumps around 70th & Fairfield. Inturn causing pains in neck, right shoulder, & lower back. Employee states that he informed immediate supervisor George Esquivel & Pearlesa Ford of injuries, they refused to write-up occupational injury report or give blue card for medical treatment. They told employee to sign out and to vacate the property immediately.
>
> Notes: I have a written statement from Mrs. Ford that on 8/27/12 at around 13:15, Mr. Esquivel (Asst. Commissioner), informed me that employee was not feeling well, and that Mr. Esquivel told employee to bring truck in. Mrs. Ford & Mr. Esquivel went to meet employee in the lot. Mrs. Ford asked employee if he was injured. He stated no, but that he was in pain, and was not allowed to take his pain medication after 14:30. Mrs. Ford told employee if he was not injured that he would have to see his own doctor. Employee was then told to fill out edit and go home."

The medical records from Hinsdale Hospital show that on August 27, 2012, Petitioner sought emergency care for right-sided neck pain, stiffness and muscle spasm after driving a van over bumps at work. He also related that he was unable to take his pain medication at work. X-rays showed normal postoperative changes. The attending physician prescribed Norco, ibuprofen and Flexeril and instructed Petitioner to follow up with his primary care physician. On August 29, 2012, Petitioner saw his primary care physician, Dr. Miran, who prescribed a Medrol Dosepak, took Petitioner off work, and instructed him to see a spine surgeon.

On September 17, 2012, Petitioner followed up with Dr. Lorenz, complaining of neck pain, which he rated a 7/10 and attributed to driving all day at work on August 27, 2012. Dr. Lorenz ordered an MRI and a CT scan, prescribed physical therapy and kept Petitioner off work.

On October 20, 2012, Dr. Graf issued an addendum report after reviewing additional medical records showing that Petitioner complained of neck pain and headaches after the non-work related car accident on February 22, 2011, and before the work accident on May 18, 2011.[2] Dr. Graf noted that Petitioner reported progressive improvement with chiropractic treatment during that time period. Dr. Graf further noted that on May 20, 2011, Chiropractor Lovell noted

[2] These medical records are in evidence.

no new complaints and stated that Petitioner reported a great deal of improvement in his neck symptoms and significant improvement in his headaches. Dr. Lovell opined that Petitioner was approaching maximum medical improvement and discharged him from care.[3] Dr. Graf stated:

> "The records produced and summarized *** clearly show ongoing pain and disability related to a non-work related motor vehicle accident in February 2010 [*sic*] with treatment up to and beyond the date of the work injury in question. In my opinion [Petitioner] appears to be misleading in his documentation of pain and abruptly discontinues months of treatment for claimed pain and disability to apparently pursue a work related accident claim. It is my opinion the records demonstrate that [Petitioner] is not only intentionally misleading his treating providers, but appears to be intentional in his actions and contradictory statements. It is my opinion that [Petitioner's] claimed pain is in no way related to the May 18, 2011 accident in question. Further, it is my opinion this case be referred for review to the State of Illinois Workers' Compensation Fraud Investigation Unit."

On November 12, 2012, Petitioner followed up with Dr. Lorenz, reporting his neck pain a 4-7/10 after undergoing physical therapy. Petitioner stated he had not undergone the diagnostic studies because of lack of authorization. Dr. Lorenz discontinued physical therapy, kept Petitioner off work, reordered the diagnostic studies, and refilled Norco, Valium and Naprelan. The MRI and CT studies of the cervical spine, performed November 14, 2012, showed normal postoperative changes. Additionally, the CT scan showed uncovertebral joint hypertrophy with a moderate degree of left-sided neuroforaminal narrowing at C5-C6. On January 9, 2013, Petitioner followed up, complaining of neck pain, but being more concerned about "the spasms in the front of his neck and tremors in his arms." Physical examination was grossly normal, except Petitioner exhibited "some essential tremors in the upper extremities." Dr. Lorenz kept Petitioner off work, refilled Norco and Valium, and referred him to Dr. Bijari. On February 21, 2013, Petitioner followed up with Dr. Lorenz, reporting no improvement in his neck pain. On physical examination, he had a good range of motion in the cervical spine. Dr. Lorenz released Petitioner to return to work on sedentary duty and instructed him to follow up as needed. On March 25, 2013, Petitioner followed up with Dr. Lorenz, rating his neck pain a 5-6/10 and stating that he was unable to work because of the pain. On physical examination, Petitioner had a full range of motion in the cervical spine and "a mild tremor in both arms." Petitioner indicated he had not received an authorization to see Dr. Bijari. Dr. Lorenz declared Petitioner at maximum medical improvement and stated the sedentary duty restriction was permanent.

On May 21, 2013, Dr. Lorenz issued a narrative report at the request of Petitioner's attorney, explaining that he had recommended surgery after Petitioner "failed conservative care," in that he had "no benefit from either physical therapy or [oral] steroid." The reason for the surgery was "ongoing severe and disabling neck pain with radiation toward the right upper extremity [and] the MRI finding of a disk herniation at the C4-C5, with indentation of the cord." Dr. Lorenz opined the surgery was reasonable and necessary. Regarding Petitioner's tremors, Dr. Lorenz stated they "had nothing to do with the neck injury" and were "non-pathologic."

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[3] Dr. Graf noted that Dr. Lovell made the same assessment and recommendation on April 22, 2011. However, Petitioner continued to come in for chiropractic treatment.

Regarding causal connection, Dr. Lorenz opined: "[T]he patient's condition of ill-being, that is in particular a disc herniation at C4-C4 was caused by the motor vehicle accident of May 18, 2011. I further believe that the patient's neck pain that started when driving a box truck on August 27, 2012, was a temporary and minor aggravation of his cervical condition that subsequently reverted to baseline." Lastly, Dr. Lorenz stated he imposed permanent restrictions consistent with Petitioner's functional capacity evaluation.

Petitioner testified that he continues to suffer from persistent neck pain and takes Norco, Valium and Naprosyn every day. He has difficulty lifting more than eight to10 pounds, performing repetitive motions, or driving a car that does not have a smooth ride. Petitioner wants Respondent to provide him with a job within his restrictions.

In support of the Arbitrator's decision regarding (C), did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The Arbitrator notes that the accident on May 18, 2011, is not in dispute. Respondent disputes the alleged accident on August 27, 2012.

The Arbitrator does not find Petitioner credible. The record shows that Petitioner exaggerated the severity of the collision on May 18, 2011, and his symptoms in an attempt to game the system. Dr. Lazar suspected "motivational issues," while Dr. Graf suspected fraudulent conduct. The Arbitrator further notes that Petitioner has been taking addictive prescription pain medication since late May of 2011. Petitioner tried to avoid returning to work by complaining of persistent, severe symptoms before and after the surgery and describing significant physical limitations during his vocational assessment with Mr. Blumenthal. The medical records show Petitioner's complaints escalated during doctor's visits following his release to return to work on restricted duty.

Regarding the mechanism of the alleged accident on August 27, 2012, the Arbitrator does not see why Petitioner would not have been able to control his speed while driving over bumps and potholes to minimize the bouncing. The Arbitrator notes that after receiving emergency treatment on August 27, 2012, and following up with Dr. Miran on August 29, 2012, Petitioner did not receive any other treatment until seeing Dr. Lorenz on September 17, 2012, at which time his complaints were essentially no different than they were on April 16, 2012 to Mr. Blumenthal and May 23, 2012 to Dr. Lorenz.

For the foregoing reasons, the Arbitrator finds that Petitioner failed to prove he sustained a work accident on August 27, 2012.

In support of the Arbitrator's decision regarding (F), is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

Petitioner testified that a Jeep Cherokee rear-ended his stopped work pickup truck, a Ford F 250, at "full blast speed" on Lake Shore Drive. The force of the impact caused him to first jerk

forward really hard and then jerk back, striking the left side of his head on the headrest and the right side of his head on the rear window. In addition, the rearview mirror detached and struck him in the forehead. Petitioner indicated he needed help to get out of the truck. He felt nauseous and vomited. Then he sat on the curb for a period of time. The photograph of the Jeep shows damage to the front fender, grille and driver's side headlight, and slight bending of the hood. Petitioner testified his work truck was equipped with a rear hitch, which caused damage to the front of the Jeep. Petitioner did not introduce into evidence a photograph of the damage to his work truck. Nor did Petitioner introduce into evidence a police report. The Arbitrator would have expected to see far greater damage to the Jeep from a "full speed" collision with a stopped Ford F 250. The Arbitrator also wonders why no one called an ambulance if Petitioner's description of the accident and his condition immediately thereafter is to be believed.

The Arbitrator finds that Petitioner exaggerated the nature of the accident and his condition after the accident. Drs. Lorenz and Fronczak recommended a highly invasive surgery based almost exclusively on Petitioner's complaints. The Arbitrator notes that the cervical MRI was interpreted by the radiologist as showing a small *central* disc protrusion at C4-C5. Dr. Graf interpreted the cervical MRI as showing a very small *left paracentral* disc bulge at C4-C5, without foraminal stenosis or nerve root compression. Dr. Lorenz did not comment on the lack of correlation between the MRI findings and Petitioner's *right*-sided complaints and did not order electrodiagnostic studies to help determine the origin of Petitioner's complaints. Furthermore, Dr. Lorenz did not attempt any type of meaningful pain management, such as injections, instead hastily concluding that Petitioner failed conservative care because he had "no benefit from either physical therapy or [oral] steroid." Dr. Fronczak, to whom Dr. Lorenz referred Petitioner for a "second opinion," recommended surgery without reviewing the MRI films/disc, having only reviewed the MRI report. Dr. Fronczak, like Dr. Lorenz, did not comment on the lack of correlation between the MRI findings and Petitioner's right-sided complaints.

The Arbitrator gives a great deal of weight to Dr. Lazar's thorough report. Further, the Arbitrator gives substantial weight to the opinions of Dr. Graf that the cervical fusion surgery was medically unnecessary and Petitioner was dishonest about his complaints. The Arbitrator gives no weight to the opinions of Drs. Lorenz and Fronczak, as they lack sound basis.

The Arbitrator finds that the accident on May 18, 2011, caused or aggravated soft tissue injuries to the neck and paracervical muscles and aggravated Petitioner's preexisting headaches. Petitioner reached maximum medical improvement by October 6, 2011, when Dr. Bijari released him to return to work full duty from the neurological standpoint, which was eight weeks after the examination by Dr. Lazar, who expected Petitioner's neck symptoms to stabilize within four to six weeks.

In support of the Arbitrator's decision regarding (J), were the medical services that were provided to Petitioner reasonable and necessary, and has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

The Arbitrator awards the medical bills in evidence that Petitioner incurred from May 18, 2011, through October 6, 2011, pursuant to sections 8(a) and 8.2 of the Act, giving Respondent credit for the sums it or its group insurance carrier paid toward these bills. To receive credit for the payments made by the group insurance carrier, Respondent must hold Petitioner harmless from any claims by the group insurance carrier in connection with these bills, as provided in Section 8(j) of the Act.

All other medical bills are denied.

In support of the Arbitrator's decision regarding (K), what temporary benefits are in dispute, the Arbitrator finds as follows:

In its proposed decision, Respondent states that Petitioner is entitled to temporary total disability benefits from May 18, 2011, through November 10, 2011, the day before his surgery. The Arbitrator awards temporary total disability benefits accordingly, giving Respondent credit for the temporary total disability, maintenance and non-occupational disability benefits paid to Petitioner. To receive credit for the non-occupational disability benefits paid to Petitioner, Respondent must hold Petitioner harmless from any claims by the provider of the non-occupational disability benefits, as provided in Section 8(j) 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	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Moreci,

Petitioner,

14IWCC0311

vs.

NO: 12 WC 30891

USF Holland, 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 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. 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 September 6, 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.

14IWCC0211

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 $20,500.00. 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: APR 2 9 2014

DLG/gal
O: 4/17/14
45

David L. Gore

Stephen Mathis

Mario Basurto

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

MORECI, RICHARD
Employee/Petitioner

Case# **12WC030891**

14IWCC0311

USF HOLLAND INC
Employer/Respondent

On 9/6/2013, 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 0.05% 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
JAMES J NAWROCKI
1 E WACKER DR SUITE 3900
CHICAGO, IL 60601

0766 HENNESSY & ROACH PC
DANIEL S WELLNER
140 S DEARBORN ST 7TH FL
CHICAGO, IL 60603

☐	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)

14IWCC0311

ILLINOIS WORKERS' COMPENSATION COMMISSION

19(b) ARBITRATION DECISION

RICHARD MORECI
Employee/Petitioner

Case #12 WC 30891

v.

USF HOLLAND, 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 August 2, 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. ☐ Should penalties or fees be imposed upon the respondent?

M. ☐ Is the respondent due any credit?

N. ☐ Prospective medical care?

FINDINGS

- On August 21, 2012, 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 earned $42,640.00; the average weekly wage was $820.00.
- At the time of injury, the petitioner was 63 years of age, *married* with no children under 18.
- The parties agreed that the respondent paid $3,694.47 in temporary partial disability benefits.
- The parties agreed that the petitioner is entitled to temporary partial disability benefits for 8-5/7 weeks, from August 23, 2012, through September 8, 2012, and from September 16, 2012, through October 30, 2012.

ORDER:

- The respondent shall pay the petitioner temporary total disability benefits of $546.67/week for 39-3/7 weeks, from on October 31, 2012, through August 2, 2013, which is the period of temporary total disability for which compensation is payable.
- The medical care rendered the petitioner for his left shoulder through August 2, 2013, was reasonable and necessary. The respondent shall pay the medical bills in accordance with the Act and the medical fee schedule. 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.
- The respondent is given a credit for $1,160.39 pursuant to Section 8(j) of the Act.

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

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

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

Robert Williams

9/6/13
Date

SEP 6 - 2013

FINDINGS OF FACTS:

On August 21, 2012, the petitioner injured his left shoulder when he slipped while loading, fell and struck his left shoulder. He sought treatment the next day at Concentra Medical Center, where he reported the inability to raise his left hand over his shoulder or straight out. He was treated with medication and work restrictions for a diagnosis of shoulder strain. An MRI on August 24th revealed findings consistent with a full-thickness rotator cuff tear involving the supraspinatus tendon, superior labrum tear and biceps tendinosis. He reported some improvement in pain relief on August 31st but a continued inability to raise his left arm. The petitioner saw Dr. Butler on September 1st, who recommended a rotator cuff repair.

At the request of respondent, Dr. Charles Carroll evaluated the petitioner on October 24th. The doctor later opined on January 30, 2013, that the petitioner's rotator cuff tear was a degenerative condition.

The petitioner worked light duty until October 31, 2012. On December 7, 2012, Dr. Butler performed a left acromioplasty and rotator cuff repair. The petitioner was started on physical therapy. At a follow-up on July 17, 2013, Dr. Bulter noted that the petitioner was doing well and that his strength and endurance were improving and after a few more weeks of work conditioning requested by the petitioner, it was hopeful that the petitioner could return to work. The petitioner testified he has no pain or no limitation of movement. Dr. Butler opined on December 13, 2012, that during his clinical examination on September 1, 2012, he found that the petitioner's ability to function had significantly changed.

The petitioner's prior medical care for his left shoulder began on July 30, 2011, with complaints to Dr. Rachel Zurek of left shoulder pain for four to six months. An MRI of his left shoulder on August 24, 2011, showed a supraspinatus tendinosis, a small partial-thickness articular surface tear of the distal tendon, moderate acromioclavicular joint arthritic changes, a suspicious signal abnormality at the superior labrum and biceps tendinosis. Dr. Thomas Regan opined on September 12, 2011, that the MRI was consistent with rotator cuff disease. The petitioner saw Dr. Butler on June 23, 2012, for left shoulder pain in the anterior and lateral aspect of the left shoulder that interfered with his sleep. He received an injection into his left shoulder, which provided relief. On August 6, 2012, the petitioner returned to Dr. Butler and requested another shoulder injection and reported a sharp stabbing pain in his shoulder. Dr. Butler felt that the petitioner may have torn some additional fibers in his rotator cuff. An MRI on August 7, 2012, showed tendinitis of the supraspinatus tendon with progression of a high grade partial articular surface tear versus a small full thickness tear in the distal supraspinatus tendon since the last MRI, tendinosis of the biceps tendon and findings comparable with a small SLAP tear similar to the last study. On August 8, 2012, Dr. Bulter noted that in a telephone call with the petitioner that there was a change in the MRI done on the 7th and that there may be a full thickness tear. On August 9, 2012, the petitioner repeated his request to Dr. Butler for a cortisone injection.

FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:

The medical care rendered the petitioner for his left shoulder through August 2, 2013, was reasonable and 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 proved that his current condition of ill-being with his left shoulder is causally related to the work injury. The petitioner's pre-existing left shoulder condition was aggravated by the work injury on August 21, 2012. It is undisputed that the petitioner had pre-existing, longstanding, left shoulder problems and pain for which he received treatment, medication and injections up to and just prior to his work injury. However, after the work injury the petitioner complained of an inability to lift his arm and weakness. A full-thickness rotator cuff tear was apparent after the petitioner's work injury, whereas there was uncertainty as to the degree of the tear two weeks earlier. The preponderance of the evidence establishes that the work injury sustained by the petitioner resulted in more than a temporary aggravation of his pre-existing condition of ill-being with his left shoulder.

FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:

Dr. Bulter took the petitioner off of work on October 31, 2012. The petitioner was unable to work and has not worked since. The respondent shall pay the petitioner temporary total disability benefits of $546.67/week for 39-3/7 weeks, from on October 31, 2012, through August 2, 2013, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner.

FINDING REGARDING CREDIT FOR MEDICAL PAYMENTS:

The respondent's group health carrier, the Local 710 Welfare & Pension Fund, paid $1,160.39 for medical care stemming from the work injury. Pursuant to Section 8(j) of the Act, the respondent is given a credit for $1,160.39. The respondent shall hold the

petitioner safe and harmless from any and all claims or liabilities that may be made against the petitioner by reason of having received such payments only up to the extent of such credit.

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

Michelle Guzman,

Petitioner,

14IWCC0312

vs.

NO: 12 WC 32078

Yorkville School District #115,

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 causal connection, temporary total disability, 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. 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 September 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.

14IWCC0312

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: APR 2 9 2014

DLG/gal
O: 4/17/14
45

David L. Gore

Stephen Mathis

Mario Basurto

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

GUZMAN, MICHELLE
Employee/Petitioner

Case# **12WC032078**

14IWCC0312

YORKVILLE SCHOOL DISTRICT #115
Employer/Respondent

On 9/19/2013, 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 0.03% 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:

0926 LEONARD LAW GROUP LLC
JOSEPH LEONARD
300 S ASHLAND AVE SUITE 101
CHICAGO, IL 60607

0075 POWER & CRONIN LTD
JOHN FASSOLA
900 COMMERCE DR SUITE300
OAKBROOK, IL 60523

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
ARBITRATION DECISION
19(b)
CORRECTED

14IWCC0312

MICHELLE GUZMAN
Employee/Petitioner

v.

YORKVILLE SCHOOL DISTRICT #115
Employer/Respondent

Case # 12 WC 32078

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 **Gregory Dollison**, Arbitrator of the Commission, in the city of **Geneva, Illinois**, on **May 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. ☒ 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 14IWCC0312

On the date of accident, **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 **$33,031.96**; the average weekly wage was **$635.23**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **3** dependent children.

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

Respondent shall be given a credit of **$5,819.95** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$5,819.95**.

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

ORDER

Respondent shall pay the Petitioner in the amount of $423.52/week from August 29, 2012 through December 6, 2012 and from December 19, 2012 through May 7, 2013, representing 34-2/7 weeks, pursuant to Section 8(b) of the Act.

Respondent shall pay medical expenses, pursuant to the Fee Schedule, to the following providers, in the following amounts, with the understanding, pursuant to the Stipulation of the parties, that Respondent shall have credit for amounts previously paid:

Castle Surgicenter	$1,473.15
Valley Imaging	$55.00
Walgreens (prescription)	$6.57

Respondent shall further authorize the treatment regimen as prescribed by Dr. Singh.

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

9/18/13
Date

ICArbDec19(b)

SEP 19 2013

14IWCC0312

STATEMENT OF FACTS

Petitioner testified she worked for Respondent for the previous four (4) years as a custodian. Petitioner denied ever seeing a doctor, chiropractor, emergency room physician or family physician for cervical or low back pain during the years of this employment.

On July 11, 2012 Petitioner slipped while waxing a hallway at work. Petitioner testified she initially slipped, caught herself, but then slipped again landing on her buttocks. She reported her injury immediately to Brian Debolt. Respondent stipulated to accident.

Petitioner testified she felt pain in her lower and middle back and felt stiff. Petitioner testified she took it easy the rest of the day, punched out, and went home. Petitioner sought medical treatment the following day at Rush Copley Medical Center Occupational Clinic. She testified this facility was recommended by Respondent and that they treat school district employees.

Petitioner presented to Rush Copley Medical Center Occupational Clinic on July 12, 2012. Records show she presented with complaints of pain at the left and posterior neck as well as pelvis and tailbone pain. Records also show Petitioner provided a history of a prior cervical spine injury secondary to a motor vehicle accident. (PX1 and 2) Petitioner testified that she had physical therapy "across [her] shoulders" fourteen (14) years prior to the date of accident.

At the initial visit, at Rush Copley Medical Center, Petitioner was diagnosed with sacrococcygeal sprain and cervical strain. Work restrictions and a course of conservative care was prescribed. Petitioner returned to occupation clinic on July 12, July 20, July 30, August 16, August 21, and August 28, 2012. Petitioner was provided with work restrictions following each of these visits and was allowed to work at her full-time position within her restrictions. (PX 2) Petitioner also received physical therapy at Atlas from August 9, 2012 through August 20, 2012. (PX 6) On her August 28, 2012 visit, at the occupational clinic, it was noted Petitioner continued with symptoms and had not tolerated physical therapy. Petitioner was referred for orthopedic consult. (PX 2) Petitioner testified that therapy did not provide much relief.

Petitioner testified that Respondent refused to allow her to work modified duty beyond August 28, 2012 and she was sent home. Petitioner indicated Respondent provided her with FMLA commencing August 29, 2012. Petitioner testified she started to receive temporary total disability benefits starting August 29, 2012.

Pursuant to referral Petitioner presented to Dr. Thomas McGivney at Castle Orthopedics on September 25, 2012. Petitioner complained of pain in the lower back, which radiated up her spine. Dr. McGivney maintained her restrictions and recommended an MRI and also referred her for epidural injections. (PX 3)

Petitioner underwent the MRI scan on October 10, 2012. On October 16, 2012, Dr. McGivney noted the MRI showed a central disk herniation at L5-S1 with no significant thecal impingement. The doctor noted that although the MRI did not show any coccyx fracture, he felt Petitioner still had a portion of this as coccydynia. He also noted same could be referred pain from the lower back. He referred Petitioner to pain management for an epidural injection. (PX 3)

On November 8, 2012, Petitioner presented to Aurora Pain Clinic where she saw Dr. Bathina. According to the medical records admitted into evidence, Petitioner gave a complaint of lower back pain

radiating all the way up to her neck, with pain greater on the right side of her neck. Dr. Bathina planned to administer a lumbar epidural steroid injection upon approval. (PX 3)

At Respondent's request, Petitioner underwent a Section 12 examination with Dr. Kornblatt on November 29, 2012. The report of Dr. Kornblatt indicates she complained of pain in her tailbone and central low back pain, but denied any complaints of symptoms into her legs or arms. (RX 1) Petitioner testified that she told Dr. Kornblatt about numbness in both legs and feet, as well as tingling in the right side of the body and down her right arm to her hand. After reviewing medical records and performing an examination, Dr. Kornblatt diagnosed minor cervical strain, lumbosacral strain and contusion and coccygeal contusion. The doctor felt those conditions were causally related to July 2012 accident. Dr. Kornblatt wrote that Petitioner did not present with objective findings referable to the cervical spine, lumbar spine and coccyx. He felt the MRI scan was consistent with L5-S1 degenerative disc disease which was not caused, aggravated or accelerated by the July 2012 accident. Dr. Kornblatt felt Petitioner was not at maximum medical improvement. He indicated Petitioner could return to work with a 30lb. lifting restriction noting that after a four (4) week period she could resume working in a full duty capacity. (RX 1)

Petitioner testified that following the Section 12 examination, she was notified by Respondent that she was to return to work. Petitioner testified that she was asked by Jim Humbers to return to work on December 6, 2012. She testified she went back to work and swept floors and wiped tables. Jim Humbers told her to take it easy.

Petitioner testified that she was working on December 7, 2012 and was assigned to mopping. She was told not to pick up anything over her weight restrictions. Petitioner testified as the kids were getting out of school one of the boys knocked over the bucket and she had to clean it up. She testified that her neck and back flared up again while mopping and that she was in a lot of pain.

Petitioner testified she called the district offices immediately to inform them that she had a flare up of her pain. Petitioner testified that she was told to either speak to Frank Bogner head of Human Resources, or to Debbie Cool. Petitioner testified she was not connected to either of these individuals when she called but left a voicemail message for Debbie Cool. Petitioner testified she was never contacted by Debbie Cool or anyone from the district after that date.

Petitioner testified that she tried to go back to Rush Copley on December 7, 2012 but was refused treatment as they needed the workers' compensation case number and did not have it. As a result she instead saw Dr. McGivney on December 12, 2012.

Dr. McGivney examined Petitioner and cleared her to return to work, but changed her restrictions to no lifting greater than 20 pounds, no use of the right arm, and no bending. Petitioner testified she returned the following day on December 13, 2012 and worked that day wiping down tables and sweeping. She testified she worked up until December 18, 2012 within her light duty restrictions.

Petitioner testified she was asked to attend a meeting on Tuesday, December 19, 2012 at the request of Jim Humbers. The meeting was held at the District offices. Present at the meeting was Jim Humbers and Frank Bogner. The meeting was held in Frank's office. Petitioner testified they told her that due to her work restrictions, the district was unable to keep her there any longer and that they would have to let her go. Thereafter, Petitioner received a termination letter dated January 30, 2013. (PX 8)

The epidural injection previously ordered by Dr. McGivney was eventually approved by Respondent and on January 8, 2013 it was administered by Dr. Betvinia of Castle Orthopedics. (PX 5) Petitioner testified she experienced little improvement in her pain after the injection.

At Respondent's request, Petitioner underwent a second Section 12 examination with Dr. Kornblatt The exam took place on January 10, 2013. Dr. Kornblatt felt that Petitioner again presented with no objective findings to justify her ongoing subjective complaints. He felt that the epidural steroid injection was unrelated to the work accident as same was performed secondary to a degenerative condition of the lumbar spine. He indicated Petitioner had reached maximum medical improvement regarding her cervical and lumbosacral strains. (RX 2)

On February 11, 2013, Petitioner saw Dr. Kern Singh at Midwest Orthopedics at Rush for a second opinion. Records show the doctor performed an examination and review the October 2012 MRI which he felt showed decrease in signal intensity and height and disk space collapse at L5-S1 with a central disk protrusion with a right paracentral component at L5-S1. Dr. Singh diagnosed degenerative disk disease L5-S1 and right greater than left L5-S1 foraminal stenosis. The doctor recommended operative treatment in the form of an L5-S1 fusion. Dr. Singh noted that Petitioner had exhausted all conservative care in the form of physical therapy, medical management and epidural injections. Dr. Singh also provided that Petitioner was unable to work at that time.

Petitioner testified the treatment of Dr. Singh has not been approved. Petitioner testified she had group insurance through the school district up to December but opted out of Cobra as she could not afford to pay for same.

Petitioner testified she did not receive any workers' compensation benefits after her termination on December 20, 2012. Petitioner testified her quality of life has changed. Petitioner testified she has pain particularly in the tail bone area, in the middle of the back, and the lower back bottom. She testified she feels pain all the time and does take Flexeril and Tylenol with codeine on occasion.

ON THE DISPUTED ISSUE (F) WHETHER PETITIONER'S CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE ACCIDENT OF JULY 11, 2012, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner testified she began her employment as a custodian for Respondent four years prior to arbitration. She did not seek treatment to her low back or cervical spine during that entire four year period. She worked for Respondent during that four year period without difficulty and without incident. This was unrebutted.

On July 11, 2012 she slipped and fell while mopping and landed on her buttocks. Accident was not in dispute. Since that date she has had unabated back and mid back pain. She has attempted physical therapy, modified duty, and injection therapy without relief. Petitioner testified she did not sustain any intervening accidents from the time of this injury to the date of arbitration.

The opinions of Dr. Kornblatt that she has reached maximum medical improvement from the effects of this injury and that any ongoing condition of ill-being is purely degenerative in nature and unrelated is not persuasive.

Even though an employee has a preexisting condition which may make him/her more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. Caterpillar Tractor v Industrial Comm'n, 92 Ill. 2d 30 (1989). Furthermore, proof of a prior state of health and a change following and continuing after an injury that necessitates off work and medical care may establish that a claimant's impaired condition was due to the injury. Navistar Intern. Transp. Corp. v Industrial Comm'n, 734 N.E. 2d 900 (1st Dist. 2000)

Following the accident Petitioner was referred by Rush Copley Medical Center, the employer's occupational facility, to Dr. Thomas McGivney who examined her and ordered an MRI. The MRI demonstrated a herniated disc at L5-S1. Dr. McGivney then referred Petitioner for injection treatment. Petitioner testified the injection treatment provided little relief at which time she sought a second opinion with Dr. Singh.

Dr. Singh's records reference the accident as the mechanism of Petitioner's injury, and after a consultation and review of the MRI scan, suggested surgical intervention as Petitioner exhausted conservative treatment consisting of lite duty, therapy, and epidural injection. The chain of events in this case warrants a finding of causal connection. See Peabody Coal Co. v. Industrial Comm'n, 571 N.E.2d 1182 (5th Dist. 1991) Also see Cook vs Industrial Comm'n, 176 Ill.App.3d 545 (1988)

The Arbitrator finds Petitioner's testimony that she still suffers from the effects of this injury to be credible and supported in the medical records. For this reason the Arbitrator finds a causal relationship between the accident of July 11, 2012 and Petitioner's current condition of ill-being as it relates to her low back, the diagnosis of an HNP at L5-S1, and the treatment she has received to date.

ON THE DISPUTED ISSUE (L.) TEMPORARY TOTAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent stipulated to accident. Respondent stipulated that Petitioner was temporary and totally disabled from August 29, 2012 through December 5, 2012 a period of 13-5/7 weeks. In Dr. Kornblatt's report dated December 3, 2012, he opined that Petitioner needed a 30 lb lifting restriction and that after 4 weeks of restricted duty she could return to work full duty. Dr. Kornblatt also opined that Petitioner was not at maximum improvement. Rather than allow Petitioner to continue working with these restrictions, Respondent terminated her on December 19, 2012.

The Arbitrator finds the opinions of Dr. Singh of Midwest Orthopedics at Rush, who examined Petitioner and opined she is in need of additional treatment and should be off work until such treatment is provided or explored is credible and reasonable and consistent with her diagnosis of HNP at L5-S1.

Petitioner testified she had no prior treatment to her low back during her four years as a custodian with Respondent. She had no symptomatic pre-existing condition and was not suffering from any pre-existing condition to her low back.

Since the accident Petitioner has undergone medical treatment by way of physical therapy, medication, epidural injection, MRI testing, modified duty and lifestyle modification, and now has a recommendation for surgery.

The uninterrupted chain of events since the injury date of July 12, 2012 supports a continuing disability based upon the preponderance of the evidence.

For this reason, the Arbitrator finds Petitioner temporarily and totally disabled from August 29, 2012 through December 6, 2012 and from December 19, 2013 through May 7, 2013, a period of 34 and 2/7 weeks.

Respondent shall receive a credit in the amount of $5,819.95 for TTD benefits paid to date.

ON THE DISPUTED ISSUE (K.) PERSPECTIVE MEDICAL, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner seeks an order compelling Respondent to pay for the treatment recommended by Dr. Singh or at least accept a consultation with Dr. Singh to determine if he believes she is still a surgical candidate. (Arb. Ex 1)

The Arbitrator finds Petitioner did sustain an acute injury on July 11, 2012 and as of the date of Arbitration the preponderance of credible evidence suggests that she is still suffering from the effects of this injury.

For this reason the Arbitrator orders Respondent to pay for all reasonably related medical treatment that Dr. Singh opines is necessary based on a re-evaluation which Respondent is ordered to pay.

The Arbitrator finds the opinions of Dr. Singh more credible than Dr. Kornblatt based on the chain of events and the preponderance of evidence. If after a reevaluation with Dr. Singh, surgery to the L5-S1 disc is recommended, Respondent is hereby ordered pay all causally related and reasonable/necessary charges as per the applicable fee schedule.

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 Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

David Fitzpatrick,

Petitioner,

vs.

NO: 11 WC 31734

Illinois Central Management Services,

14IWCC0313

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, 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 September 6, 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.

DATED: APR 30 2014
TJT:yl
o 4/22/14
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FITZPATRICK, DAVID A
Employee/Petitioner

Case# **11WC031734**

IL CENTRAL MANAGEMENT SERVICES
Employer/Respondent

14IWCC0313

On 9/6/2013, 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 0.05% 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 & BLUE
GREGORY SGRO
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0639 ASSISTANT ATTORNEY GENERAL
CHARLENE C COPELAND
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0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
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SPRINGFIELD, IL 62794-9255

0499 DEPT OF CENTRAL MGMT SERVICES
WORKMENS COMP RISK MGMT
801 S SEVENTH ST 6 MAIN
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

SEP 6 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

14IWCC0313

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

David A. Fitzpatrick
Petitioner

v.

Illinois Central Management Services
Respondent

Case # 11 WC 031734

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 **Springfield**, on **July 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. [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. [ ] 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. [ ] 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. [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 _____

14IWCC0313

FINDINGS

On **January 14, 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*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$58,135.50** the average weekly wage was **$1,117.99**.

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 **$0.00** 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** in medical bills paid through its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

Petitioner failed to prove he sustained an accident on January 14, 2010 that arose out of and in the course of his employment with Respondent or that his conditions of ill-being in his hands/wrists and thumbs is causally related to his employment with Respondent. Petitioner's claim for compensation 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.

Nancy Lindsay
Signature of Arbitrator

September 3, 2013
Date

SEP 6 - 2013

The Arbitrator finds:

Petitioner has worked for the State of Illinois in several capacities. Petitioner initially worked for Respondent in Data Entry and then went to work as a benefits administrator for the State Board of Education. Petitioner was in that position for approximately 10 years and 3 months before returning to Respondent in 2009 as a liability claims adjuster. Petitioner testified that he worked 7.5 hours per day for a total of 37.5 hours per week. Petitioner also worked overtime and in the last five years he believed he worked about 1 to 1.5 hours of overtime per day. As a claims adjuster, Petitioner reviewed new files/claims as they came in, entering notes into a system called Web Opus and making a determination as to whether the claim was compensable or not. Petitioner estimated he spent approximately 25% of his work day on the telephone and will cradle the phone and take notes on his keyboard.

Petitioner presented to his family physician, Dr. Steven Bowers, on January 13, 2010 with complaints of bilateral thumb pain. While he denied any specific injury he did report performing lots of computer work. According to a patient questionnaire completed by Petitioner, Petitioner had been experiencing symptoms, including pain, tingling, numbness, and cramping to both his thumbs and hands for over three years. Petitioner had also been diagnosed with diabetes. Dr. Bowers performed a physical examination and assessed Petitioner's condition as bilateral thumb tenosynovitis. Petitioner was told to use ice and given prescriptions for medications. (PX 1)

Thereafter, Petitioner was examined by Dr. Wottowa on February 3, 2010 regarding his bilateral thumb pain. Petitioner reported increasing pain over the base of the thumbs for the preceding 2-3 years and pain with gripping, grasping, and repetitive activity. Petitioner reported he had tried rigid shelf braces for awhile and found them helpful but they were no longer providing any relief. Petitioner also noticed cramping and shooting pain throughout his forearms and hands with occasional numbness and tingling to his second and third fingers on the right – frequently during the day and also at night. Petitioner's upper extremities were examined and x-rays were taken of Petitioner's thumbs with the latter showing advanced degenerative changes at the first CMC joint bilaterally and an old avulsion fracture at the left thumb proximal phalanx. Dr. Wottowa's diagnoses were carpal tunnel syndrome and localized primary osteoarthritis of the carpometacarpal joint (ie., bilateral basilar joint arthritis). He prescribed wrist splints and injected Petitioner's left basilar joint. Petitioner was asked to return in six weeks for further evaluation. (PX 3)

Petitioner followed up with Dr. Bowers on February 15, 2010. While the records are somewhat difficult to read, it appears a discussion was held regarding Dr. Wottowa's visit and Petitioner's thumb joints and the presence of carpal tunnel syndrome were also noted. (PX 1)

As instructed Petitioner returned to Dr. Wottowa on March 22, 2010 reporting a good result from the left-sided injection as he was continuing to experience a relief in his symptoms on that side. Petitioner also thought his right side was a "little bit" better than previously but he continued experiencing right thumb pain with pinching, gripping and grasping activities. The splints were also reportedly helping with

Petitioner's symptoms. Petitioner requested a right thumb injection which was performed. He was told to return as needed. (PX 3)

Petitioner returned to see Dr. Wottowa on May 12, 2010 – this time regarding his carpal tunnel. Petitioner reported he wore the braces at night but still experienced numbness and tingling during the night and it would wake him up. Petitioner found the left side worse than the right and believed his symptoms were interfering with both his work and activities of daily living. On examination, Dr. Wottowa noted a positive Phalen's on both hands and a positive Tinel's on the left. Petitioner demonstrated more pain along the median nerve in the midline of the left hand, just proximal to the carpal canal which was a bit of a change from prior exams. Petitioner also had occasional clicking and popping, especially for the left thumb more reflective of triggering than arthritis. Petitioner was scheduled for nerve testing with Dr. Gelber. (PX 3)

Petitioner underwent an emg/ncs with Dr. David Gelber on May 20, 2010, the results of which suggested very mild carpal tunnel syndrome. According to the history portion of Dr. Gelber's report Petitioner was complaining of tingling in his hands (primarily the second, third, and fourth fingers bilaterally) and performed a lot of keyboarding with his job. Petitioner had been wearing wrist splints with no noticeable improvement. (PX 2)

Thereafter Petitioner returned to Dr. Wottowa's office where they reviewed the nerve test results. Petitioner was still complaining of the right side and Dr. Wottowa suggested continued splinting and observation or surgery. Petitioner opted for surgery. (PX 3)

On July 22, 2010 Petitioner underwent a right carpal tunnel release and right thumb CMC joint arthrosis. (PX 3)

Petitioner followed up with Dr. Wottowa on July 30, 2010. Petitioner was doing well with no signs of infection and normal instrinsic hand function on the right. Petitioner was told he could return to work on a light duty basis with no lifting with the right upper extremity and no use of the right hand. Petitioner was noted to still have numbness and tingling on the left side but Petitioner wished to see how his right hand responded to surgery before proceeding with further treatment on the left. (PX 3)

As of August 25, 2010 Petitioner was still doing well and reporting only a little occasional discomfort over the palmar region. Petitioner still had left hand numbness and tingling. Petitioner was advised the palmar pain should continue to improve over the next couple of months. Petitioner wished to proceed with surgery on the left side. (PX 3)

Petitioner underwent a left carpal tunnel release and left thumb basilar joint arthrosis on September 21, 2010. (PX 3)

Post-operatively Petitioner did very well with complete resolution of his right-sided numbness and tingling and a little bit of palmar pain on the right hand. Petitioner was advised on October 1, 2010 that he could return to regular duty on "Monday" and then return one more time for a final check. (PX 3)

Dr. Wottowa examined Petitioner on October 25, 2010 noting that the carpal tunnel incisions had healed up beautifully and Petitioner denied any numbness or tingling and was "very happy." Petitioner did still have some positive crepitation, grinding, and discomfort; however, Petitioner did not wish to have any work done on his thumbs for as long as possible which the doctor considered reasonable. Petitioner was deemed at maximum medial improvement, fully released, and told to return at anytime if needed. (PX 3)

Petitioner's claim was denied by workers' compensation. Petitioner's bills were paid by his personal insurance. The bills are found in PX 4.

Petitioner signed his Application for Adjustment of Claim on August 9, 2011, alleging repetitive trauma to both hands in the form of carpal tunnel syndrome. (AX 2)

Dr. Wottowa was deposed on May 21, 2012. (PX 3) Dr. Wottowa is an orthopedic physician, board certified in hand surgery and general orthopaedics. Dr. Wottowa testified consistent with his office notes as discussed above and further rendered an opinion on causal connection based upon a hypothetical posed to him by Petitioner's attorney. In that hypothetical, Dr. Wottowa was asked to assume that Petitioner had a twenty year employment history of which he sat in front of a computer 80 to 85 percent of his 7.5 hour day while typing or keyboarding and that he also wrote, used a calculator, and used a phone. Based upon that hypothetical set of facts Dr. Wottowa testified that he could not opine that Petitioner's job duties caused his carpal tunnel syndrome. He further explained that the activities which aggravate carpal tunnel syndrome tend to be activities in which there is a significant degree of forced gripping in a flexed position. "So it's fairly thin to say that his symptoms of typing on a keyboard were a significant contributing factor for carpal tunnel syndrome. He does complain that doing these activities made his symptoms worse, but the degree of which aggravation to the point of treatment is difficult to determine." (PX 3, pp. 18-19) Dr. Wottowa further testified that there is no test that shows use of a keyboard or a computer significantly increases the instance of carpal tunnel syndrome or increased pressure in the carpal canal. (PX 3, p. 19) When asked to consider the legal standard of whether the carpal tunnel syndrome might or could have been aggravated or contributed to by the job duties, Dr. Wottowa testified, "By his description, they could have been aggravated." (PX 3, p. 19)

On cross-examination Dr. Wottowa testified that he was speculating when he stated "could have." (PX 3, p. 19) Dr. Wottowa acknowledged he and Petitioner never discussed Petitioner's job duties with any particularity nor was the doctor ever provided with a demands of the job for Petitioner. Other than the information in the hypothetical, Dr. Wottowa acknowledged he did not know how many hours per day Petitioner was on the keyboard or worked on a calculator. He further acknowledged diabetes (which Petitioner has) can aggravate carpal tunnel syndrome as can cigarette smoking (which Petitioner also had a history of).

Dr. Wottowa testified Petitioner is right-handed but had more left-sided symptoms. (PX 3, p. 12) .

On redirect examination Dr. Wottowa was asked if a twenty year history of keyboarding for thirty hours per week would aggravate carpal tunnel syndrome to which the doctor replied it would be hard to

measure that. Dr. Wottowa again noted the absence of studies to support such a conclusion even with common sense telling us that people who perform repetitive activities tend to have more episodes of carpal tunnel syndrome but there simply aren't any studies linking it – ie., no studies showing keyboarding is an extrinsic factor for carpal tunnel syndrome. (PX 3)

At arbitration Petitioner testified regarding his duties as a Liability Claims Adjuster. Petitioner testified that he typed on his computer for eighty to eight-five percent of his work day or about thirty two hours per week. He testified that his elbows and wrists were typically bent while typing. Petitioner demonstrated the position of his hands and arms while working which showed his elbows to be bent, his forearms angled upward and forward resting on the edge of his desk, and his wrists bent while typing. He further testified that he did not have an adjustable chair, a wrist pad, or ergonomic equipment of any kind. Petitioner testified that his symptoms were markedly increased by his work duties and they were particularly troublesome "by the end of the (work) day." He testified that his symptoms would ease, but not completely go away on weekends and holidays and when he did not engage in keyboarding. While Petitioner had only worked for Central Management Services for approximately one year prior to the occurrence date, he had been transferred from the State Board of Education, also a Division of the State of Illinois, where his job duties were the same for a period in excess of ten years. Petitioner stated that his keyboarding duties and the nature of his positioning was the same throughout that eleven year period. While Petitioner stated that he had developed symptoms in his hands and fingers over a period of time extending backward for several years, he testified that he first sought medical treatment regarding the same in January, 2010.

Petitioner testified to occasional achiness in his hands and thumbs. He described himself as a borderline diabetic and denied taking any medication for his condition. On cross-examination Petitioner testified he initially noticed his symptoms while working for the State Board of Education.

The Arbitrator concludes:

1,2. Accident and Causal Connection.

Petitioner failed to prove he sustained an accident on January 14, 2010 that arose out of and in the course of his employment with Respondent or that his condition of ill-being in his thumbs and hands/wrists is causally related to his employment duties for Respondent. The significance of January 14, 2010 is somewhat vague. Petitioner's initial visit with his personal physician, Dr. Bowers, was on January 13, 2010. However, Dr. Bower's billing statement reflects a payment being made by Petitioner on January 14, 2010. Petitioner testified he filed a report on the 14th; however, that report is not in the record. Rather than dwell on whether the manifestation date should be January 13 or January 14, the Arbitrator will focus on "causation" and "arising out of" as those seem to be the issues disputed between the parties.

At the outset the Arbitrator notes that Petitioner's Application for Adjustment of Claim makes no mention of Petitioner's thumbs. Petitioner failed to prove his bilateral basilar joint arthritis in his thumbs was causally related to his employment with Respondent. Similarly, Petitioner failed to prove his bilateral carpal tunnel syndrome was causally related to his employment with Respondent. This

conclusion is based upon Dr. Wottowa's testimony. Dr. Wottowa had no direct knowledge of the details of Petitioner's job and had to base his causation opinion on a hypothetical set of facts. Even then, he acknowledged he was speculating as to whether Petitioner's job aggravated his carpal tunnel syndrome. Petitioner's testimony regarding the onset of his complaints and their relatedness to his work duties was not corroborated by the medical records. They never had a discussion of Petitioner's job duties.

Petitioner's claim for compensation is denied. No benefits are awarded. All other issues are moot.

****

STATE OF ILLINOIS)
) SS.
COUNTY OF MC LEAN)

☒ 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

Connie Wilson,

Petitioner,

vs.

NO: 10 WC 37841

14IWCC0314

The Salvation Army,

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, permanent partial disability, penalties, credit, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 22, 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.

14IWCC0314

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 30 2014
TJT:yl
o 4/21/14
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WILSON, CONNIE
Employee/Petitioner

Case# **10WC037841**

THE SALVATION ARMY
Employer/Respondent

14IWCC0314

On 7/22/2013, 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 0.07% 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:

0564 WILLIAMS & SWEE LTD
DIRK A MAY
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
SUYON FLOWERS
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

14IWCC0314

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

- [ ] 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

CONNIE WILSON,
Employee/Petitioner

Case # **10 WC 37841**

v.

Consolidated cases:

THE SALVATION ARMY,
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 **STEPHEN MATHIS**, Arbitrator of the Commission, in the city of **BLOOMINGTON**, 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. [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. [ ] 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

14IWCC0314

FINDINGS

On **August 3, 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 $**20,609.84**; the average weekly wage was $**396.34**.

On the date of accident, Petitioner was **50** 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 that include non-occupational indemnity disability benefits, for a total credit of $**0**. Respondent shall be given a credit of $**3,635.20** 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 entitled to a credit of $**3,635.20** under Section 8(j) of the Act.

ORDER

No benefits 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

7-15-13
Date

JUL 22 2013

STATE OF ILLINOIS)
) SS
COUNTY OF MCLEAN)

14IWCC0314

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CONNIE WILSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	IWCC 10 WC 37841
	)	
THE SALVATION ARMY,	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

This matter was tried before the Honorable Arbitrator Stephen Mathis on May 13, 2013, and proofs closed on May 13, 2013, pursuant to the Illinois Workers' Compensation Act. After reviewing all the evidence presented, the arbitrator hereby finds the following facts:

Accident

Petitioner, a 50 year old Kitchen Supervisor for The Salvation Army, alleges that on August 3, 2010, she injured her non-dominant left hand. Specifically, petitioner testified that while she was in the freezer moving boxes of frozen meat her arm began "tingling." Petitioner further testified that her arm started to hurt, became hot and she heard a "pop." Specifically, petitioner testified that she felt a "pop" in her left wrist and had an immediate onset of swelling, numbness and discoloration in her left hand. Petitioner gave no testimony of any pain in her right hand as a sequelae of her left hand injury.

Petitioner testified that she had been working in the freezer for approximately 25 minutes when she felt an onset of pain and her arm started to hurt. Petitioner testified that she had no problems with her left wrist or hand prior to working in the freezer. Petitioner testified that she initially sought treatment from Dr. Yee Chow and she was then referred to Dr. Newcomer for further treatment. Petitioner testified that she underwent surgery on June 29, 2012 for her left hand followed with physical therapy and several injections. She also testified that she wears a left wrist/hand brace and currently takes anti-inflammatories and pain medications.

Petitioner testified that the left hand symptoms she began to experience on August 3, 2010 continued until surgery on June 29, 2012, including numbness in three fingers, her

thumb and pain in the palm of her hand. Petitioner never testified that she had pain in her left arm or elbow.

Petitioner further testified that she had problems with grasping her fingers, food preparation, cutting and lifting large amounts of anything and that she usually serves 30 to 125 people even though she is working as a supervisor in the kitchen. Petitioner testified that her left wrist and hand hurt constantly all night and she would place ice and heat as well as use pain meds and she couldn't dress herself.

Petitioner testified that following the surgery on June 29, 2012, almost all her pain has gone but she still has some numbness, still currently is receiving injections, still has tingling off and on with lots of swelling after a day at work. She testified that she can touch but she cannot feel anything and still uses a brace when she works. She also testified that she does not wear her brace as much as she should and was not wearing the brace at trial. Finally, she testified that she takes Hydrocodone for pain three times a week. Finally, petitioner testified that she received other medical treatment for high blood pressure as well as her other medical conditions during the pendency of this claim from August 3, 2010 until approximately January 2013, when she underwent surgery for a non-occupational condition.

Prior Medical Treatment

Petitioner testified that she underwent right hand carpal tunnel surgery approximately ten years ago. Petitioner denied any bilateral carpal tunnel problems prior to the alleged date of accident of August 3, 2010.

The medical records show that prior to the alleged date of accident of August 3, 2010, petitioner sought medical treatment from her primary care physician, Dr. Richard Adams in October of 2008. Petitioner testified that she always gave her treaters a full complete history and she always told her doctors the truth about her injuries and complete medical history. The medical records show that on October 20, 2008, petitioner reported a history of bilateral carpal tunnel syndrome to Dr. Adams. (Rx. 8).

Further, petitioner testified that she had a previous workers' compensation claim regarding her left foot prior to the alleged date of accident. During the pendency of that claim, petitioner had an Independent Medical Examination with Dr. Kraft. (Rx. 4). In Dr. Kraft's IME report dated March 25, 2010, for a prior claim, petitioner reported that she had carpal tunnel surgery pending on her left hand.

Petitioner's History of Bilateral Carpal Tunnel Syndrome

Petitioner, who had been employed with The Salvation Army approximately one year prior to the alleged work injury on August 3, 2010, indicates that she felt an onset of pain in her left hand after moving packages of meat in and out of the freezer in preparation for kitchen duties. At trial, petitioner denied any history of bilateral carpal tunnel syndrome. However, the medical records from her own treater, specifically Dr. Adams

(Rx. 8), shows that petitioner has a history of bilateral carpal tunnel syndrome prior to the alleged date of accident on August 3, 2010.

Further, during petitioner's IME with Dr. Kraft for an unrelated claim approximately 5 months before the alleged date of accident, petitioner mentioned that she had carpal tunnel release surgery pending for her left hand. (Rx. 4).

Medical Treatment/Current Medical Condition/Work Status

Petitioner had an MRI on August 24, 2010 that revealed evidence of a volar ganglion cyst, but otherwise there was no other significant findings and no "median nerve edema" (Px. 1, p. 24; Px. 2; Rx. Ex's 2, 3).

Petitioner underwent an Independent Medical Examination with Dr. John Fernandez on December 9, 2010 (Rx. 2). Dr. Fernandez stated that although petitioner's left hand numbness and tingling is probably carpal tunnel syndrome and her left wrist has a volar carpal ganglion cyst, it is not work related. Dr. Fernandez opined that petitioner's right hand and wrist pain had an unknown etiology. Specifically, Dr. Fernandez opined that petitioner may have "popped" the left wrist volar ganglion cyst which meant that she had a pre-existing left wrist volar carpal ganglion cyst which was not caused or aggravated by her job. He further opined that the vast majority of individuals who develop these injuries usually have no symptoms whatsoever.

Dr. Fernandez recommended a carpal tunnel injection to the left side. He also indicated that if the EMG study shows significant evidence of carpal tunnel syndrome, then consideration will be given to a carpal tunnel release surgery and that petitioner was not yet at maximum medical improvement regardless of the causality. He also recommended that petitioner have a left wrist volar carpal ganglion cyst excision at the same time as the carpal tunnel release surgery.

Dr. Fernandez opined that within a reasonable degree of medical certainty that most likely petitioner had a left wrist volar carpal ganglion cyst in addition to an underlying case of carpal tunnel syndrome. He further opined that she suddenly "popped" the volar ganglion cyst which caused an increase in some temporary symptoms but did not aggravate the underlying pathologic or physiologic condition.

Petitioner underwent an EMG on April 1, 2011, which revealed moderate to moderately severe left median neuropathy and very "mild" right neuropathy (Px. 2; Rx. 3).

In his IME addendum report dated June 13, 2012, Dr. Fernandez reviewed the EMG studies and noted that it revealed moderate to moderately severe left median neuropathy as well as "very mild" right median neuropathy and confirmed carpal tunnel syndrome. However, he maintained his position as to causality. He again opined that petitioner's carpal tunnel syndrome was not work related. (Rx. 3)

Petitioner continued to work for The Salvation Army up until her surgery on June 29, 2012 (Px. 5). Following surgery, petitioner underwent physical therapy. (Px. 4). Petitioner testified that she currently receives injections to her left hand.

Petitioner was off work on August 12, 2010 then from December 17, 2010 to December 20, 2010 and after surgery from June 29, 2012 until August 4, 2012. Petitioner currently works as a kitchen supervisor with The Salvation Army full duty with no restrictions.

CONCLUSIONS OF LAW

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

The arbitrator finds no accident occurred arising out of and in the course of petitioner's employment on August 3, 2010. In doing so, the arbitrator relies upon the preponderance of the credible evidence in the record, as cited above.

The petitioner must show by a preponderance of the evidence that she sustained an accident arising out of and in the course of her employment. The petitioner must present direct evidence explaining the cause of the accident, i.e. that her employment condition significantly contributed to the injury by increasing the risk of the affects of her alleged work injury. Petitioner can do this by presenting evidence such as witness testimony; medical testimony; etc. Cooley v. MB Financial Bank, 08 WC 30356 (2009) ("finding a petitioner's contemporaneous medical records must corroborate the petitioner's history").

The petitioner's testimony is not credible, as it is inconsistent with and contrary to the overwhelming medical evidence in the file. All of the medical records prepared prior to the alleged date of accident, indicates that petitioner had a history of bilateral carpal tunnel syndrome. There is an IME report by Dr. Kraft from March 25, 2010, which was approximately five months prior to the date of accident where he indicates that petitioner has carpal tunnel release surgery for her left hand "pending."

Dr. Fernandez also opined that he saw no evidence of significant pathology regarding petitioner's claim of "overuse as to her right wrist and hand, which, ironically, she never testified to right hand pain or injury at trial.

As for the left hand treatment, Dr. Fernandez recommended a carpal tunnel injection and a left wrist volar carpal ganglion cyst excision at the same time as the carpal tunnel release surgery. Dr. Newcomer did not administer an injection or excise the ganglion cyst at the time of the carpal tunnel release surgery. Ironically, petitioner still reports pain in her left hand, including numbness and tingling following surgery and Dr. Newcomer currently administers injections every three months.

In his report, Dr. Fernandez relied upon the MRI scan from August 24, 2010 that revealed evidence of a volar ganglion cyst, but otherwise there was no other significant findings and no "median nerve edema." He also relied upon an IME dated March 25, 2010

where it is noted that the past medical history had carpal tunnel surgery on the left side was "pending". It was also noted that petitioner had undergone a prior right carpal tunnel release ten or eleven years prior.

Thus, Dr. Fernandez's opinion that most likely petitioner had a left wrist volar carpal ganglion cyst that suddenly "popped" and only caused temporary symptoms should be deemed credible.

Petitioner's testimony that she did not reveal to either Dr. Richard Adams, her own treater and the IME Dr. Kraft, that she did not have any history of bilateral carpal tunnel syndrome nor did she have a history nor did she have left hand carpal tunnel release surgery pending prior to the alleged date of accident, is not credible. It is not credible for the very purpose that petitioner testified that she does not lift any dishes or does any cooking at home and only eats cereal. Petitioner is well aware that cooking; moving dishes, and putting items in and out of the freezer are normal activities of daily living. Thus, petitioner's testimony that she does not lift dishes or cook at home is not credible.

Petitioner testified that she is always truthful when speaking with her treaters. However, she denied informing her treaters that she had "bilateral" carpal tunnel syndrome, specifically she indicated that she was confused. Petitioner's testimony is simply not credible. First, why would Dr. Adams, her primary care provider, indicate in her medical records that she had a history of "bilateral" carpal tunnel syndrome if she did not provide him with that information? Additionally, petitioner told Dr. Kraft, respondent's IME in an unrelated workers' compensation claim, approximately five months before the alleged work accident that she had left carpal tunnel surgery "pending" at fact which she also denied at trial. How would Dr. Kraft know that petitioner had current problems with left hand carpal tunnel syndrome if she did not provide him with that information, especially since he was an expert for her alleged work related foot injury? Petitioner's denial of providing these statements to her primary care provider and to Dr. Kraft is simply not credible.

Furthermore, petitioner's testimony that she had an onset of numbness and tingling in her left hand while moving kitchen items in the freezer is not an accident. Petitioner's testimony that she felt a pop in her left hand is consistent with Dr. Fernandez' opinion that she had a volar carpal ganglion cyst which pre-existed any alleged work accident. Thus, since the MRI report does reveal that there was a ganglion cyst and since petitioner still has the same identical symptoms following her carpal tunnel release surgery, then Dr. Fernandez' opinion regarding petitioner's alleged accident should be deemed credible.

Therefore, based on the preponderance of the credible evidence, the arbitrator finds that petitioner did not sustain an accident arising out of and in the course of her employment for the alleged work accident on August 3, 2010.

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

Because the arbitrator finds no accident occurred for the alleged accident date of August 3, 2010, whether the petitioner's current condition of ill being is causally related to her employment does not need to be addressed.

Nonetheless, the arbitrator finds that even if an accident occurred, the petitioner's current condition of ill being is not causally related to her alleged work accident from August 3, 2010, as cited above.

In finding such, the arbitrator notes that the petitioner failed to present any medical testimony supporting such a causal connection between her current condition and the alleged work accident to her left hand on August 3, 2010. Although Dr. Newcomer testified that petitioner's condition is related to the alleged work accident, in his testimony, Dr. Newcomer testified that he never reviewed any of petitioner's prior medical records, nor did he review a copy of Dr. John Fernandez' December 9, 2010 IME report or the June 13, 2012 addendum report (Px. 1, pp. 45, 46). This supports the position that Dr. Newcomer never had knowledge that petitioner had alleged bilateral carpal tunnel syndrome prior to the alleged work accident. Further, Dr. Newcomer testified that he did not know the frequency, the flexion, the weight or force that was used by petitioner to carry/lift the boxes of meat (Id. at pp. 32, 33). Further, Dr. Newcomer testified that petitioner's age, arthritis, and prior carpal tunnel syndrome in her other hand could contribute to the current carpal tunnel syndrome condition (Id. at pp. 26, 35, 36). Finally, Dr. Newcomer testified in his deposition that even though he was aware that petitioner was a chef/kitchen supervisor, he never saw a copy of her job description or job requirements, or viewed a job video, nor did he have any personal knowledge of her work station or work requirements (Id. at pp. 29-31). Finally, Dr. Newcomer testified that he relied upon the EMG nerve conduction study, and admitted that it did not indicate when her carpal tunnel syndrome manifested, how long she had carpal tunnel syndrome and the cause of the carpal tunnel syndrome. (Id. at pp. 27, 42, 45)

Thus, since the medical records, specifically the MRI report confirmed what Dr. Fernandez opined in his IME report that petitioner had a volar ganglion cyst, thus her current condition of ill being is not causally related to any alleged employment related accident. The "pop" petitioner felt was a result of her volar ganglion cyst "popping" when she was moving items in and out of the freezer while at work on August 3, 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?**

While the medical services provided to petitioner may have been reasonable and necessary to treat her left hand condition, the arbitrator finds that because no accident occurred arising out of and in the course of petitioner's employment, no medical benefits are due under the workers' compensation medical fee schedule. In addition, even if the arbitrator found that an accident occurred which arose out of and in the course of petitioner's employment, petitioner's current condition of ill being is not causally related to her employment. Therefore, no medical benefits are due under the workers' compensation medical fee schedule.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tamara Hopson,

Petitioner,

vs.

NO: 09 WC 29142

14IWCC0315

Caterpillar, 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 accident, causal connection, medical expenses, 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 15, 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.

14IWCC0315

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $25,100.00. 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: APR 30 2014
TJT:yl
o 4/21/14
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HOPSON, TAMARA
Employee/Petitioner

Case# **09WC029142**

11WC010001

CATERPILLAR INC
Employer/Respondent

14IWCC0315

On 8/15/2013, 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 0.07% 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:

1824 STRONG LAW OFFICES
TODD A STRONG
3100 N KNOXVILLE AVE
PEORIA, IL 61603

2994 CATERPILLAR INC
MARK FLANNERY
100 N E ADAMS ST
PEORIA, IL 61629-4340

14IWCC0315

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

TAMARA HOPSON,
Employee/Petitioner

v.

CATERPILLAR, INC.,
Employer/Respondent

Case # 09 WC 29142

Consolidated cases: 11 WC 10001.

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 **Peoria**, 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. ☒ 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: _____

14IWCC0315

FINDINGS

On **July 2, 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 alleged accident *was* given to Respondent.

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

In the year preceding the injury, Petitioner earned **$29,020.00**; the average weekly wage was **$580.40**.

On the date of accident, Petitioner was **31** years of age, *single* with **three** dependent children under 18.

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 **$5,042.31** for other benefits, for a total credit of **$5,042.31**.

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 **$386.93**/week for **16** weeks, commencing **July 23, 2009** through **November 11, 2009,** as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$348.24**/week for **12.3** weeks, because the injuries sustained caused the **6%** loss of use of her **right hand**, as provided in Section 8(e) of the Act.

Petitioner is now entitled to receive from Respondent compensation that has accrued from **July 2, 2009** through **February 21, 2013,** and the remainder, if any, of the award is to be paid to Petitioner by Respondent in weekly payments.

Respondent shall pay to Petitioner reasonable and necessary medical services of **$19,583.65,** as provided in Sections 8(a) and 8.2 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 **JOANN M. FRATIANNI**

August 9, 2013
Date

AUG 15 2013

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

Petitioner testified she was employed as a Material Specialist/Order Filler. Petitioner testified this job required her to assemble parts orders received for shipping. On July 2, 2009, she was assigned to a department called "System 76." In this department, she was provided with a large wheeled cart that was roughly in the form of an A-frame. Prior to 2010, these carts were made of steel, but in 2010 they were replaced with aluminum carts. Photographs of these carts were introduced into evidence. (Rx7) The carts have a stepladder on one side so that order fillers could climb them and pull parts out of bins set in racks. The racks were arranged in aisles. The opposite side of each cart had a platform. The order filler would place a pallet on that platform and then a tote to place parts in a cardboard box for shipping.

Mr. Dustin Wagoner, Respondent's facility manager, testified to the job description of Petitioner. Mr. Wagoner's testimony was in substantial agreement with Petitioner's testimony. Mr. Wagoner testified that upon receiving an order, Petitioner would build a shipping box using a staple gun to secure the bottom. The box was then placed on a pallet. The pallet was located on the platform in front of the cart. Once this task was performed, the order filler would travel down the aisle with the cart, pick parts out of the appropriate bins located on racks, and place them into the box. If an order was an emergency, the parts would be placed in a handled tote. Once an order was picked, the order filler would seal the box and place it on a conveyor for routing.

Petitioner testified the older steel carts were a lot heavier and more difficult to maneuver and push. Mr. Wagoner testified that a force study was performed which indicated that with an empty cart of the newer aluminum construction, 10 pounds of force was required to move it, 4 pounds once in motion. With 800 pounds of load, the standing still push force was 30-34 pounds, while the in motion force was 15-16 pounds. (Rx6) Mr. Wagoner testified these studies were also performed on older carts and they were comparable in terms of push and pull force. Mr. Wagoner further testified that over the 90 days prior to this Arbitration hearing, the average load of a cart was 173 pounds.

Petitioner testified that on July 2, 2009, she was pushing her cart up and down aisles filling orders when she experienced some pain in her right wrist. Petitioner reported to Respondent's medical department where she filled out an incident report indicating that she noticed pain in her wrist and a lump. (Rx1) A history was recorded at that time that Petitioner had been pushing a art with and order weighing approximately 600 pounds when she noticed the pain and then noticed the lump on her wrist. (Rx1)

The following day, Petitioner sought treatment at the emergency room of Methodist Medical Center. Petitioner at that time complained of mild to moderate joint pain with movement of the dorsum of her right wrist. She also complained of a lump on the dorsum of her right wrist, but no mass was found during examination. (Rx7)

Petitioner then sought treatment with Dr. Daniel Hoffman on July 10, 2009. She complained of pain and swelling to her right wrist. Dr. Hoffman during examination found a firm moveable nodule on the dorsal aspect of the right wrist. He then referred her to see Dr. Schlamberg. (Px8)

Petitioner first saw Dr. Schlamberg on July 23, 2009. Petitioner at that time complained of swelling on the back of her right wrist, and denied numbness, tingling or paresthesias. Dr. Schlamberg after examination diagnosed a right wrist dorsal ganglion and felt there was a causal relationship between the right wrist symptoms, the ganglion cyst found, and the work duties. Dr. Schlamberg prescribed surgery and referred her to see Dr. Edward Trudeau for electronic diagnostic testing. (Rx3)

Dr. Trudeau performed this testing on August 4, 2009 and also noted the ganglion cyst. Dr. Trudeau also recorded complaints of pain in the right wrist radiating in the hand and up towards the elbow with numbness in the ring and little fingers and abnormal sensation in the dorsal aspect of the right hand web space. Dr. Trudeau noted weakness in the right forearm. Electrodiagnostic testing revealed ulnar neuropathy at the right wrist or Guyon's syndrome, and right radial sensory neuropathy or Wartenberg syndrome. Dr. Trudeau found no evidence of ulnar neuropathy at the elbow and no evidence of other entrapment neuropathy. (Px9)

Petitioner underwent surgery for removal of the ganglion cyst with Dr. Schlamberg on August 14, 2009. (Rx3)

Post surgery, Petitioner remained under the care of Dr. Schlamberg. Petitioner was released to full duty work on November 12, 2009. At that time, Dr. Schlamberg noted negative Tinel's sign at the carpal tunnel as well as the Guyon canal. Dr. Schlamberg also noted the diagnosis of Wartenberg and Guyon's syndromes made previously by Dr. Trudeau. (Rx3)

Petitioner then sought treatment with Dr. Blair Rhode, an orthopedic surgeon. Petitioner first saw Dr. Rhode on December 3, 2009 with complaints of right palmar wrist pain with radiation to the thumb, index and long finger. Dr. Rhode during his examination found a positive Tinel's sign at the right wrist but negative Tinel's at the cubital tunnel. Dr. Rhode found evidence of a positive EMG for carpal and cubital tunnel syndromes and felt the subjective and clinical evidence was consistent with right carpal tunnel syndrome, but not with cubital tunnel syndrome. Dr. Blair prescribed surgery. (Px13)

On January 5, 2010, Petitioner underwent surgery in the form of a right carpal tunnel release with Dr. Rhode. Post surgery, Dr. Blair indicated that Petitioner underwent Guyon's surgery.

Post surgery, Petitioner continued to experience discomfort with extension of the wrist and complaints of slight numbness. On April 15, 2010, Dr. Rhode noted Petitioner was three months post-Guyon's tunnel release and that she continued to complain of ring and little finger numbness. Dr. Rhode found positive cubital tunnel Tinel's sign and administered a steroid injection.

When seen on May 16, 2010, Dr. Rhode noted the complaints moved back to right palmar forearm pain with pushing a cart along with left wrist pain. On July 10, 2010, Dr. Rhode noted right ring and little finger numbness. Dr. Rhode prescribed a repeat EMG with Dr. Trudeau. Dr. Trudeau performed that test the same day and noted right cubital tunnel syndrome with no evidence of other entrapment neuropathy, either carpal tunnel syndrome, Guyon's canal syndrome or Wartenberg's syndrome. (Px10) Following this EMG, Dr. Rhode prescribed surgery.

On March 15, 2011, Dr. Rhode performed surgery in the form of a right cubital tunnel release, and also excised a recurrence of the doral ganglion cyst on the right wrist. (Px15)

Post surgery, Petitioner was released to full duty work on July 16, 2011. At that time Dr. Rhode felt she had reached maximum medical improvement. (Px13)

Dr. Rhode testified the right carpal and cubital tunnel syndromes were causally related to the job duties Petitioner performed on behalf of Respondent. Dr. Rhode testified he did not review the report of Dr. Trudeau's EMG testing, but relied upon the history Petitioner gave him and her accounts of the prior diagnosis. Dr. Rhode testified the work duties he was informed of consisted of packing boxes and pushing 1,200 pound carts all day. Dr. Rhode felt the history of complaints and clinical examination findings for Petitioner were a "moving target" that differed amongst the several prior treating physicians. Dr. Rhode testified that if he were to do it all over, he would have performed a diagnostic right carpal tunnel injection prior to surgery. (Px17) He also noted that in general, EMG testing was falsely positive 20% of the time and falsely negative 30% of the time.

Dr. John Mahoney testified by evidence deposition (Rx2) on behalf of Respondent. Dr. Mahoney, an orthopedic surgeon, examined Petitioner on September 7, 2010. Dr. Mahoney diagnosed a ganglion cyst and ulnar neuropathy, unsure if it was at the wrist or elbow. Dr. Mahoney felt the ganglion cyst was caused by the work activities performed for Respondent, but did not feel the ulnar neuropathy was so related. Dr. Mahoney also felt the work performed did not involve significant repetitive elbow flexion or positioning of extreme hyperflexion for long periods of time in ruling out ulnar compression of the elbow as being work related. Dr. Mahoney also felt there was little evidence that Petitioner had carpal tunnel syndrome, noting that both EMG's were negative for that condition.

Based upon the confusing evidence presented by the parties in this matter, the Arbitrator makes the following findings:

(a) The diagnosed ganglion cyst and recurrent ganglion cysts that was aspirated on two occasions and required two surgeries, were causally related to this accidental injury;
(b) That Petitioner failed to prove that the condition of right carpal tunnel syndrome is causally related to this accidental injury;
(c) That Petitioner failed to prove that the condition of right cubital tunnel syndrome is causally related to this accidental injury;
(d) That Petitioner failed to prove the ulnar neuropathy to the right elbow is causally related to this accidental injury.

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 unpaid medical bills that were incurred after this accidental injury (Px21):

AAOC Surgery Care Center Anesthesia	$ 840.00
The Ambrose Group	$ 2,532.69
Central Illinois Radiological Services	$ 42.00
Dr. Daniel Hoffman	$ 770.00
IPMR	$ 1,367.00
Memorial Medical Center	$ 1,319.00
Methodist Medical Center	$ 873.00
North Shore Same Day Surgery	$ 5,460.00
Orland Park Orthopedics	$19,904.53
Orthopaedics of the North Shore	$ 6,969.34
Quest Diagnostics	$ 131.76
Bob Rady, Inc.	$ 4,180.00
Dr. Jonathan Renkas	$ 6,647.71
South Chicago Surgical Solutions	$39,090.80
Dr. Edward Trudeau	$ 7,960.00

These charges total $98,170.83.

See findings of this Arbitrator in "F" above.

Based upon said findings, the Arbitrator finds following medical bills represent reasonable and necessary medical care and treatment that is causally related to this accidental injury, and awards those charges to Petitioner, subject to the medical fee schedule as created by the Act. The charges so awarded are as follows:

AAOC Surgery Center Anesthesia	$ 840.00
Dr. Daniel Hoffman	$ 770.00
Methodist Medical Center	$2,192.00
North Shore Same Day Surgery	$5,460.00
Orthopaedics of the North Shore	$6,969.34
Quest Diagnostics	$ 131.76
South Chicago Surgical Solutions	$1,853.55
IPMR	$1,367.00

Total medical charges so awarded: $19,583.65.

All other charges not so awarded by this Arbitrator are hereby denied for the reasons cited in "F" above.

K. What temporary benefits are in dispute?

See findings of this Arbitrator in "F" above.

Petitioner claims that as a result of this accidental injury, she became temporarily and totally disabled from work commencing July 21, 2009 through January 18, 2010, and again from March 15, 2011 through June 19, 2011, and is entitled to receive benefits from Respondent for those periods of time.

The Arbitrator finds that Petitioner was temporarily and totally disabled only for the period of July 23, 2009 through November 11, 2009, based on the prescription by Dr. Schlamberg for that period of time for treatment of the ganglion cyst including surgery. Petitioner failed to prove she missed some time from work for removal of the recurrent ganglion cyst by Dr. Rhode.

Based upon the above, the Arbitrator finds that as a result of this accidental injury, Petitioner became temporarily and totally disabled from work commencing July 23, 2009 through November 11, 2009, and is entitled to receipt of benefits from Respondent for this period of time. All other claims of temporary total disability made by Petitioner in this matter are hereby denied.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "F" above.

Petitioner is still working for Respondent at her regular job of order filler. Petitioner testified that she experiences pain occasionally while pushing the carts that flares through her right wrist. Petitioner testified to experiencing difficulty picking up and handling pots and pans at home. Dr. Rhodes last saw Petitioner on July 13, 2011. At that time he indicated an inability to elicit pain from the right wrist during examination and found her to be at maximum medical improvement. (Px13)

Based upon the above, the Arbitrator finds the condition of ill-being to the ganglion cyst condition to be permanent in nature and awards compensation for permanent partial disability based only upon that condition in this matter.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tamara Hopson,

Petitioner,

vs.

NO: 11 WC 10001

14IWCC0316

Caterpillar, 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 accident, causal connection, medical expenses, 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 15, 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.

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 30 2014
TJT:yl
o 4/21/14
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HOPSON, TAMARA
Employee/Petitioner

Case# **11WC010001**

09WC029142

14IWCC0316

CATERPILLAR INC
Employer/Respondent

On 8/15/2013, 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 0.07% 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:

1824 STRONG LAW OFFICES
TODD A STRONG
3100 N KNOXVILLE AVE
PEORIA, IL 61604

2994 CATERPILLAR INC
MARK FLANNERY
100 N E ADAMS ST
PEORIA, IL 61629-4340

14IWCC0316

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

TAMARA HOPSON,
Employee/Petitioner

v.

CATERPILLAR, INC.,
Employer/Respondent

Case # 11 WC 10001

Consolidated cases: 09 WC 29142

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 **Peoria**, 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. ☒ 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: _____

14IWCC0316

FINDINGS

On **December 15, 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 alleged accident *was* given to Respondent.

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

In the year preceding the alleged injury, Petitioner earned **$22,672.00**; the average weekly wage was **$596.63**.

On the date of alleged accident, Petitioner was **32** years of age, ***single*** with **three** dependent children under 18.

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 **$ 0.00** for TTD, **$ 0.00** for TPD, **$ 0.00** for maintenance, and **$1,680.77** for other benefits, for a total credit of **$1,680.77**.

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

ORDER

Petitioner failed to prove that she sustained accidental injuries arising out of and in the course of her employment by Respondent on December 15, 2010.

Petitioner further failed to prove that the condition of ill-being alleged is causally related to any work activities performed on behalf of this Respondent.

All claims for compensation are thus, 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.

Signature of Arbitrator JOANN M. FRATIANNI

August 9, 2013
Date

AUG 15 2013

14IWCC0316

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

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

Petitioner testified she was employed as a Material Specialist/Order Filler. Petitioner testified this job required her to assemble parts orders received for shipping. On July 2, 2009, which concerns the subject matter of the companion file no. 09 WC 29142, which was consolidated and heard with this matter. she was assigned to a department called "System 76." In this department, she was provided with a large wheeled cart that was roughly in the form of an A-frame. Prior to 2010, these carts were made of steel, but in 2010 they were replaced with aluminum carts. Photographs of these carts were introduced into evidence. (Rx7) The carts have a stepladder on one side so that order fillers could climb them and pull parts out of bins set in racks. The racks were arranged in aisles. The opposite side of each cart had a platform. The order filler would place a pallet on that platform and then a tote to place parts in a cardboard box for shipping.

Mr. Dustin Wagoner, Respondent's facility manager, testified to the job description of Petitioner. Mr. Wagoner's testimony was in substantial agreement with Petitioner's testimony. Mr. Wagoner testified that upon receiving an order, Petitioner would build a shipping box using a staple gun to secure the bottom. The box was then placed on a pallet. The pallet was located on the platform in front of the cart. Once this task was performed, the order filler would travel down the aisle with the cart, pick parts out of the appropriate bins located on racks, and place them into the box. If an order was an emergency, the parts would be placed in a handled tote. Once an order was picked, the order filler would seal the box and place it on a conveyor for routing.

Petitioner testified the older steel carts were a lot heavier and more difficult to maneuver and push. Mr. Wagoner testified that a force study was performed which indicated that with an empty cart of the newer aluminum construction, 10 pounds of force was required to move it, 4 pounds once in motion. With 800 pounds of load, the standing still push force was 30-34 pounds, while the in motion force was 15-16 pounds. (Rx6) Mr. Wagoner testified these studies were also performed on older carts and they were comparable in terms of push and pull force. Mr. Wagoner further testified that over the 90 days prior to this Arbitration hearing, the average load of a cart was 173 pounds.

Petitioner testified that on July 2, 2009, she was pushing her cart up and down aisles filling orders when she experienced some pain in her right wrist. Petitioner reported to Respondent's medical department where she filled out an incident report indicating that she noticed pain in her wrist and a lump. (Rx1) A history was recorded at that time that Petitioner had been pushing a art with and order weighing approximately 600 pounds when she noticed the pain and then noticed the lump on her wrist. (Rx1)

The following day, Petitioner sought treatment at the emergency room of Methodist Medical Center. Petitioner at that time complained of mild to moderate joint pain with movement of the dorsum of her right wrist. She also complained of a lump on the dorsum of her right wrist, but no mass was found during examination. (Rx7)

Petitioner then sought treatment with Dr. Daniel Hoffman on July 10, 2009. She complained of pain and swelling to her right wrist. Dr. Hoffman during examination found a firm moveable nodule on the dorsal aspect of the right wrist. He then referred her to see Dr. Schlamberg. (Px8)

Petitioner first saw Dr. Schlamberg on July 23, 2009. Petitioner at that time complained of swelling on the back of her right wrist, and denied numbness, tingling or paresthesias. Dr. Schlamberg after examination diagnosed a right wrist dorsal ganglion and felt there was a causal relationship between the right wrist symptoms, the ganglion cyst found, and the work duties. Dr. Schlamberg prescribed surgery and referred her to see Dr. Edward Trudeau for electronic diagnostic testing. (Rx3)

Dr. Trudeau performed this testing on August 4, 2009 and also noted the ganglion cyst. Dr. Trudeau also recorded complaints of pain in the right wrist radiating in the hand and up towards the elbow with numbness in the ring and little fingers and abnormal sensation in the dorsal aspect of the right hand web space. Dr. Trudeau noted weakness in the right forearm. Electrodiagnostic testing revealed ulnar neuropathy at the right wrist or Guyon's syndrome, and right radial sensory neuropathy or Wartenberg syndrome. Dr. Trudeau found no evidence of ulnar neuropathy at the elbow and no evidence of other entrapment neuropathy. (Px9)

Petitioner underwent surgery for removal of the ganglion cyst with Dr. Schlamberg on August 14, 2009. (Rx3)

Post surgery, Petitioner remained under the care of Dr. Schlamberg. Petitioner was released to full duty work on November 12, 2009. At that time, Dr. Schlamberg noted negative Tinel's sign at the carpal tunnel as well as the Guyon canal. Dr. Schlamberg also noted the diagnosis of Wartenberg and Guyon's syndromes made previously by Dr. Trudeau. (Rx3)

Petitioner then sought treatment with Dr. Blair Rhode, an orthopedic surgeon. Petitioner first saw Dr. Rhode on December 3, 2009 with complaints of right palmar wrist pain with radiation to the thumb, index and long finger. Dr. Rhode during his examination found a positive Tinel's sign at the right wrist but negative Tinel's at the cubital tunnel. Dr. Rhode found evidence of a positive EMG for carpal and cubital tunnel syndromes and felt the subjective and clinical evidence was consistent with right carpal tunnel syndrome, but not with cubital tunnel syndrome. Dr. Blair prescribed surgery. (Px13)

On January 5, 2010, Petitioner underwent surgery in the form of a right carpal tunnel release with Dr. Rhode. Post surgery, Dr. Blair indicated that Petitioner underwent Guyon's surgery.

Post surgery, Petitioner continued to experience discomfort with extension of the wrist and complaints of slight numbness. On April 15, 2010, Dr. Rhode noted Petitioner was three months post-Guyon's tunnel release and that she continued to complain of ring and little finger numbness. Dr. Rhode found positive cubital tunnel Tinel's sign and administered a steroid injection.

When seen on May 16, 2010, Dr. Rhode noted the complaints moved back to right palmar forearm pain with pushing a cart along with left wrist pain. On July 10, 2010, Dr. Rhode noted right ring and little finger numbness. Dr. Rhode prescribed a repeat EMG with Dr. Trudeau. Dr. Trudeau performed that test the same day and noted right cubital tunnel syndrome with no evidence of other entrapment neuropathy, either carpal tunnel syndrome, Guyon's canal syndrome or Wartenberg's syndrome. (Px10) Following this EMG, Dr. Rhode prescribed surgery.

On March 15, 2011, Dr. Rhode performed surgery in the form of a right cubital tunnel release, and also excised a recurrence of the doral ganglion cyst on the right wrist. (Px15)

Post surgery, Petitioner was released to full duty work on July 16, 2011. At that time Dr. Rhode felt she had reached maximum medical improvement. (Px13)

Dr. Rhode testified the right carpal and cubital tunnel syndromes were causally related to the job duties Petitioner performed on behalf of Respondent. Dr. Rhode testified he did not review the report of Dr. Trudeau's EMG testing, but relied upon the history Petitioner gave him and her accounts of the prior diagnosis. Dr. Rhode testified the work duties he was informed of consisted of packing boxes and pushing 1,200 pound carts all day. Dr. Rhode felt the history of complaints and clinical examination findings for Petitioner were a "moving target" that differed amongst the several prior treating physicians. Dr. Rhode testified that if he were to do it all over, he would have performed a diagnostic right carpal tunnel injection prior to surgery. (Px17) He also noted that in general, EMG testing was falsely positive 20% of the time and falsely negative 30% of the time.

Dr. John Mahoney testified by evidence deposition (Rx2) on behalf of Respondent. Dr. Mahoney, an orthopedic surgeon, examined Petitioner on September 7, 2010. Dr. Mahoney diagnosed a ganglion cyst and ulnar neuropathy, unsure if it was at the wrist or elbow. Dr. Mahoney felt the ganglion cyst was caused by the work activities performed for Respondent, but did not feel the ulnar neuropathy was so related. Dr. Mahoney also felt the work performed did not involve significant repetitive elbow flexion or positioning of extreme hyperflexion for long periods of time in ruling out ulnar compression of the elbow as being work related. Dr. Mahoney also felt there was little evidence that Petitioner had carpal tunnel syndrome, noting that both EMG's were negative for that condition.

Petitioner in this particular case is claiming an injury date of December 15, 2010, basically from performing the same types of tasks for Respondent as in the companion case, 09 WC 29142, which was consolidated and heard with this matter. There is no real evidence of an injury occurring to Petitioner at work on December 15, 2010 in this matter.

Based upon the above, the Arbitrator finds that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment by Respondent on December 15, 2010.

Based further upon the above, the Arbitrator finds that Petitioner failed to prove that her current conditions of ill-being as alleged above are causally related to any employment activities performed on behalf of this Respondent.

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?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made by Petitioner for medical expenses in this matter are hereby denied.

K. What temporary benefits are in dispute?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made by Petitioner for temporary total disability benefits in this matter are hereby denied.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made by Petitioner for permanent partial disability benefits in this matter are hereby denied.

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

Richard Paquin,
Petitioner,
vs.

14IWCC0317
NO: 10 WC 43127

Steak N Shake,
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, medical expenses permanent partial disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 19, 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 $22,600.00. 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: APR 30 2014
KWL/vf
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Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0317

PAQUIN, RICHARD
Employee/Petitioner

Case# **10WC043127**

STEAK N SHAKE
Employer/Respondent

On 11/19/2013, 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 0.10% 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:

1824 STRONG LAW OFFICES
SEAN OSWALD
3100 N KNOXVILLE AVE
PEORIA, IL 61603

1832 ALHOLM MONAHAN KLAUKE ET AL
GEORGE F KLAUKE JR
221 N LASALLE ST SUITE 450
CHICAGO, IL 60601

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 14IWCC0317

RICHARD PAQUIN,
Employee/Petitioner

v.

STEAK N SHAKE,
Employer/Respondent

Case # 10 WC 43127

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 **Maureen Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **10/24/13**. 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 _____

14IWCC0317

FINDINGS

On **10/26/10**, 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 as it relates to his bilateral hands and bilateral elbows *is* causally related to the accident.

In the year preceding the injury, Petitioner earned $**16,990.48**; the average weekly wage was $**326.79**.

On the date of accident, Petitioner was **57** years of age, ***single*** with **no** 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 $**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 $220.00/week for 23 weeks, commencing 12/15/10 through 5/24/11, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services related to petitioner's bilateral hands and bilateral elbows, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $220.00/week for 20.5 weeks, because the injuries sustained caused the 10% loss of the right hand, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $220.00/week for 20.5 weeks, because the injuries sustained caused the 10% loss of the left hand, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $220.00/week for 18.975 weeks, because the injuries sustained caused the 7.5% loss of the right arm, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $220.00/week for 18.975 weeks, because the injuries sustained caused the 7.5% 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

11/12/13
Date

ICArbDec p. 2

NOV 19 2013

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 57 year old cook, alleges that he sustained accidental injuries to his bilateral hands and elbows, and his right shoulder due to repetitive work activities that arose out of and in the course of his employment by respondent that manifested itself on 10/26/10. Petitioner worked for respondent from May 2009 to on or about 11/14/10. Petitioner testified that he worked five days a week for a total of approximately 50 hours.

Petitioner testified that his duties involved cooking and helping with anything else that needed to be done in the store. Petitioner testified that he performed stocking duties every day. He stated that when he arrived at the restaurant in the morning, whatever was not on the line, he would go to the cooler and get it. He would then put what he needed from the walk-in cooler into the cooler near the cooking line. Petitioner testified that he would also need to lift a pot of chili, at or above shoulder level, that held 30 gallons and was 14 inches in diameter. He testified that the pot of chili weighed 70 to 80 pounds. He testified that he would take it from the mixing stand and carry it 4 feet to the steam table. Petitioner testified that he also moved boxes of french fries weighing 30 pounds and 25 pounds of meat at waist level and set them on the shelf, and put them in the coolers. To put these items in the cooler petitioner would lean over and extend his arms.

When petitioner was working the grill he would place the hamburgers on the grill and with a spatula press them down. He would then use the spatula to flip the burgers. After the burgers were cooked he would scrape the grill clean before he started another set of patties. Petitioner testified that the hamburgers that he grilled were preformed. As the burgers would heat up he would mash them down with the spatula and the fork until they were paper thin. Petitioner testified that this task was not really difficult unless the hamburgers had not been thoroughly thawed out. Petitioner would use both hands to perform this task. Petitioner would flex, extend, and twist his wrists while performing this task. During an average shift petitioner would cook eight pans of burgers. Each pan contained 140 burgers. On average petitioner testified that he cooked 1000 hamburgers per shift.

Petitioner testified that when he was grilling hamburgers he would hold the tools in his right hand. To clean the grill petitioner would use both hands and a lot of force. Petitioner cleaned the grill approximately 3 times a day, and scraped the grill between each run of burgers. Petitioner testified that there were four runs of burgers on one grill, and two runs on the other grill. The busier it was, the faster the petitioner would perform these tasks. Petitioner testified that after about 10 months to a year of performing these tasks his hands and arms began to bother him. Petitioner testified that scraping the grill, flipping the burgers, and smashing the burgers hurt his hands. He further testified that scraping of the grill and lifting bothered his right shoulder.

Petitioner testified that he was fired by respondent after he called off sick due to the pain in his arm. He stated that he had gone to work and noticed that his name was off the shift list. Petitioner stated that he was not given any written or verbal warnings at that time by the general manager. Petitioner was a little bit fuzzy as to the actual dates of employment with respondent.

On 10/23/10 petitioner completed a job description form for his attorney. He noted that the constant repetition of the grill work, heavy lifting of supplies and rotating stock in the walk-in cooler and freezer caused or contributed to this condition. Petitioner estimated that the number of repetitions he used his hands and arms per minute was 50, per hour was 3000, and per day was 5000 to 6000.

On 10/26/10 petitioner signed his Application for Adjustment of Claim. On 11/4/10 petitioner's Application for Adjustment of Claim was filed. He alleged a repetitive trauma injury to both hands and arms/shoulders.

Petitioner testified that he was referred for treatment with Dr. Hoffman by his attorney. On 11/2/10 petitioner presented to Dr. Hoffman. He gave a history of working for respondent for the last two years doing repetitive work. He complained of pain in both arms radiating up to the elbows bilaterally over the last month. Dr. Hoffman assessed bilateral carpal tunnel syndrome and an EMG and NCV were ordered. Petitioner followed up with Dr. Hoffman on 11/9/10. He continued to have pain in both arms radiating up to the elbows.

On 11/14/10 petitioner completed a second job description form for his attorney. Petitioner identified repetitive actions consisting of pushing constantly with the shoulder, arm, and hand as what caused or contributed to this condition. On this form he estimated the number of repetitions he used his hands and arms was 1 to 24 per minute, 700 to 800 per hour and 2000 to 3000 per day.

On 11/18/10 petitioner underwent an EMG and NCV by Dr. Trudeau. He gave a history of doing repetitive motion work with constant grilling and cleaning of the grill with his upper extremities. The results revealed bilateral carpal tunnel syndrome, moderately severe on either side, right greater than the left. No evidence of cubital tunnel syndrome was noted.

On 11/26/10 petitioner followed up with Dr. Hoffman. His condition remained unchanged. Dr. Hoffman's diagnosis also remained the same. Petitioner was referred to Dr. Rhode.

On 12/18/10 petitioner presented to Dr. Rhode for consultation of his right shoulder pain, elbow pain, and wrist pain. He reported that his symptoms were secondary to an injury at work. Petitioner complained of medial cited elbow pain with radiation to the ring and little finger. He also complained of palmer wrist pain with radiation to the thumb and index fingers. He described his shoulder pain as lateral with weakness to

overhead. He gave a history of being a cook at Steak and Shake until two weeks ago. He stated that he was terminated due to calling in on a Sunday. He stated that he had worked for respondent for approximately 2 years. He reported that he told his general manager about his symptoms about two and half months ago. He stated that his symptoms began about 6 to 8 months ago. He stated that his job duties required him to perform a significant amount of repetitive activity while cooking. Petitioner denied any prior symptomatology, history of diabetes, or thyroid dysfunction. Dr. Rhode examined petitioner and noted that his subjective and objective findings were consistent with right carpal and cubital tunnel syndrome. He noted that the EMG was positive for bilateral carpal tunnel syndrome with negative findings for cubital tunnel syndrome. Dr. Rhode was of the opinion that petitioner did not complain or demonstrate objective findings consistent with left carpal tunnel syndrome that day. He noted that petitioner told him that he was required to perform a highly repetitive and manual position while working as a grill cook over the course of two years. He noted that petitioner also demonstrated rotator cuff symptomatology with supraspinatus isolation strength loss. Dr. Rhode recommended an MRI of the right shoulder. He began treating petitioner's right carpal and cubital tunnel syndrome conservatively. He injected the right carpal tunnel. Petitioner experienced temporary relief with this injection.

On 12/20/10 Dr. Hoffman drafted a note that indicated that petitioner was able to actively search for work. On 12/29/10 Dr. Rhode placed petitioner on modified to sedentary work. On 1/12/11 Dr. Brody had petitioner off work.

On 1/16/11 petitioner returned to Dr. Rhode. He stated that he was unwilling to live with his current symptomatology. Dr. Rhode discussed that the EMG was negative for cubital tunnel syndrome, but that EMG correlation with cubital tunnel syndrome is not as accurate as it is for carpal tunnel syndrome. Petitioner expressed that he wished to proceed with surgical intervention.

On 2/10/11 petitioner underwent a right carpal and cubital tunnel release performed by Dr. Rhode. Petitioner followed-up postoperatively with Dr. Rhode. On 3/29/11 petitioner underwent left open carpal and cubital tunnel release. Again, he followed up postoperatively with Dr. Rhode. Petitioner's postoperative treatment included physical therapy. On 4/20/11 Dr. Rhode's was of the opinion that petitioner was doing well following his releases.

On 5/11/11 petitioner underwent an MRI of the right shoulder. The impression was proximal tendinosis of the biceps tendon with findings highly suspicious for slap tear; mild atrophy of the teres minor muscle and inferior glenohumeral ligament sprain suggestive of deep soft tissue injury; AC joint degenerative change; and rotator cuff tendinosis without rotator cuff tear. On 5/18/11 Dr. Rhode was of the opinion that petitioner was capable of working light duty. By 6/1/11 Dr. Rhode had again taken petitioner off work.

On 7/12/11 petitioner underwent a right shoulder video assisted subacromial decompression, arthroscopic rotator cuff repair, super scapular nerve block, and application of cold therapy. This procedure was performed by Dr. Rhode. Petitioner's postoperative diagnosis was right shoulder supraspinatus rotator cuff tear. Petitioner followed up postoperatively with Dr. Rhode. This treatment included physical therapy.

Petitioner's range of motion of his right shoulder was poor. On 11/30/11 Dr. Rhode recommended proceeding with the manipulation. His working diagnosis was postoperative arthrofibrosis process status post rotator cuff repair. On 2/7/12 Dr. Rhode performed a manipulation under anesthesia. Petitioner followed up post operatively with Dr. Rhode. This treatment included aggressive physical therapy.

On 2/24/12 petitioner presented to Dr. Newcomer for a Section 12 examination at the request of respondent. Dr. Newcomer noted that petitioner stated he was a line cook with respondent and about a year and a half into his employment started having pains in his wrist that would go to his elbows. He ultimately then had a sharp pain in his shoulder. Petitioner stated that he was let go by Steak and Shake in November 2010 for calling in. Petitioner stated that he sought out the assistance of a lawyer in order to get referred to a doctor and get an idea about what could be done with his arms. Dr. Newcomer did not have the operative reports to review. When asked about his current state of affairs petitioner stated that he was much better. He reported that he had excellent range of motion, good strength, and felt like he could return to work without much problem. He complained of occasional discomfort from the anterior aspect of the shoulder extending down along the biceps.

Following an examination, Dr. Newcomer addressed specific questions that were asked of him by respondent. Dr. Newcomer noted that prior to his work with respondent petitioner was a truck driver for eight years, and this would be considered a high demand job. He also noted that petitioner was also a carpenter for a long time prior to that, and that this was another occupation that would cause the propensity to develop these compressive neuropathies. Dr. Newcomer opined that he was not convinced that petitioner's job for respondent was causally related to the diagnosis, and that he never sought any occupational health physicians opinions before going to an attorney. He believed this was suspect for secondary gain. Dr. Newcomer was of the opinion that there was no specific incident that occurred that could have caused petitioner's shoulder rotator cuff tear. Dr. Newcomer admitted that he had not had an opportunity to review the MRI report for the right shoulder. He was also of the opinion that petitioner could work and had reached maximum medical improvement. He was of the opinion that petitioner was able to work full duty without restrictions. Dr. Newcomer was of the opinion that petitioner's medical treatment was reasonable and necessary, even though it was not related to his work activities. Dr. Newcomer stated that he was having a problem with regards to pinning petitioner's problems

completely and solely upon respondent as a contributing factor, and his decision to seek legal counsel prior to medical attention.

On 3/21/12 petitioner followed up with Dr. Rhode. Dr. Rhode was of the opinion that petitioner was plateauing. At that point he allowed petitioner to work at the medium level with overhead limits of 10 pounds frequently, 20 pounds maximum.

Petitioner continued to follow up with Dr. Rhode through 4/18/12. On that date petitioner continued to complain of moderate symptomatology. With respect to his wrist pain Dr. Rhode was of the opinion that petitioner had plateaued. He gave him restrictions for modified medium heavy duty work with an overhead restriction of 25/35 pounds. He was of the opinion that these restrictions were permanent. Dr. Rhode was of the opinion that he believed petitioner was at maximum medical improvement, and release him on an as needed basis. He further indicated that the petitioner required future oral medications.

On 8/6/12 Dr. Newcomer drafted an addendum report after having had the opportunity to look at the MRI of petitioner's shoulder. He was of the opinion that these findings could certainly be seen routinely in a man of petitioner's age. Dr. Newcomer was also of the opinion that the acromioclavicular joint degenerative change seen on the MRI certainly could have caused some impingement based on arthritis alone, rather than any occupation related repetitive trauma. Dr. Newcomer reiterated that he did not believe the shoulder condition was causally related to petitioner's job for respondent.

On 10/24/12 the evidence deposition of Dr. Rhode was taken on behalf of petitioner. Dr. Rhode was of the opinion that even though petitioner's diagnostic tests did not show any evidence of cubital tunnel syndrome, petitioner's physical findings were consistent with the diagnosis of cubital tunnel. Dr. Rhode was of the opinion that EMG studies are adjunctive tools. Dr. Rhode opined that petitioner's job exposure was causative to his symptoms in his bilateral hands and arms, and his right shoulder. Dr. Rhode further opined that the permanent restrictions he placed on petitioner as of 4/18/12 are related to the job activities that petitioner previously performed as a grill cook. Dr. Brody opined that the medical treatment he provided petitioner was reasonable and necessary.

On cross-examination Dr. Rhode reiterated that EMGs are adjunctive tools. He stated that he would not operate because of a positive one, and would not operate necessarily because of a negative one. Dr. Rhode opined that it is possible that petitioner would've gotten better just by having the carpal tunnel surgery performed and not the cubital tunnel surgery. Dr. Rhode stated that his credentials were higher than Dr. Newcomer's. He testified that he had URAC accreditation, and Dr. Newcomer did not. Dr. Rhode was of the

opinion that a grill chef at Steak and Shake is a highly manual position, and highly repetitive. He stated that it is a busy position and that the meat is not preform patties, so the grill cook has to form them themselves by pounding the patties, which are often semi frozen, into the form of a hamburger patty. He further stated that this job required a lot of forward reach in order to manage the cooking of the hamburger and other food items.

On 1/18/13 the evidence deposition of Dr. Newcomer was taken on behalf of respondent. Dr. Newcomer opined that as of the last time he saw petitioner on 2/24/12 that he was capable of returning to work without restrictions. Dr. Newcomer opined that petitioner's job for respondent as a line cook could potentially cause or aggravate carpal tunnel if he was doing them long enough. With respect to petitioner's cubital tunnel Dr. Newcomer was of the opinion that he would have first recommended conservative treatment prior to surgery. Dr. Newcomer opined that he did not see anything in the history to suggest that there was anything that petitioner did for respondent that caused his rotator cuff tear. Dr. Newcomer was of the opinion that he would keep someone off work for 4 to 6 weeks following carpal tunnel surgery, 6 to 8 weeks for cubital tunnel surgery, and for rotator cuff repair upwards of six months.

Currently petitioner's hands are fine about 90% of the time. He occasionally feels like they have arthritis in them. Petitioner denied any current problems with his elbows. Petitioner testified that he still has problems with his right shoulder when he lifts things. Over the last six months the muscles down the back of his arms feel like they are torn when his arms are hanging loose.

Petitioner gave a history of working as a truck driver from 1994/1995 to 2000. He testified that he then drove a forklift and motor trucks from 2000-2004. From 2004/2005 until 2007 petitioner again drove a forklift. When that last company went out of business petitioner applied for work with respondent. Petitioner testified that he has also worked as a carpenter off and on his whole life. The last time petitioner did any woodworking was in 2010. Petitioner's currently not employed and is looking for work off and on. Petitioner collected unemployment for a while before applying for SSDI. Petitioner has been receiving SSDI for about two years.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?
F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

As a general rule, repetitive trauma cases are compensable as accidental injuries under the Illinois Worker's Compensation Act. In Peoria County Belwood Nursing Home v. Industrial Commission (1987) 115 111.2d 524, 106 Ill.Dec 235, 505 N.E.2d 1026, the Supreme Court held that "the purpose behind the Workers' Compensation Act is best serviced by allowing compensation in a case … where an injury has been shown to be caused by the performance of the claimant's job and has developed gradually over a period of time, without

requiring complete dysfunction.." However, it is imperative that the claimant place into evidence specific and detailed information concerning the petitioner's work activities, including the frequency, duration, manner of performing, etc. It is also equally important that the medical experts have a detailed and accurate understanding of the petitioner's work activities.

Since petitioner is claiming an injury to his bilateral hands, bilateral elbows and right shoulder due to repetitive work activities, in Illinois, recovery under the Workers' Compensation Act is allowed, even though the injury is not traceable to a specific traumatic event, where the performance of the employee's work involves constant or repetitive activity that *gradually* causes deterioration of or injury to a body part, assuming it can be medically established that the origin of the injury was the repetitive stressful activity. In any particular case, there could be more than one date on which the injury "manifested itself".

Petitioner is alleging that he sustained an accidental injury to his bilateral hands, bilateral elbows and right shoulder as a result of his repetitive work activities that arose out of and in the course of her employment by respondent and manifested itself on 10/26/10.

Petitioner was employed with petitioner from May of 2009 to 11/14/10. During this period petitioner worked as a grill cook. Although petitioner spent time lifting items and filling the coolers, and making chili in a 30 gallon pot, the majority of petitioner's day was spent cooking hamburgers on the grill.

When petitioner was working the grill he would place the hamburgers on the grill and with a spatula press them down. He would then use the spatula to flip the burgers. After the burgers were cooked he would scrape the grill clean before he started another set of patties. Petitioner testified that the hamburgers he grilled were preformed. As the burgers would heat up he would mash them down with the spatula and the fork until they were paper thin. Petitioner testified that this task was not really difficult unless the hamburgers had not been thoroughly thawed out. Petitioner would use both hands to perform this task. Petitioner would flex, extend, and twist his wrists while performing this task. During an average shift petitioner would cook eight pans of burgers. Each pan contained 140 burgers. On average, petitioner testified that he cooked 1000 hamburgers per shift.

Petitioner testified that when he was grilling hamburgers he would hold the tools in his right hand. To clean the grill petitioner would use both hands and a lot of force. Petitioner cleaned the grill approximately 3 times a day, and scraped the grill between each run of burgers. Petitioner testified that there were four runs of burgers on one grill, and two runs on the other grill. The busier it was, the faster the petitioner would perform these tasks. Petitioner testified that after about 10 months to a year of performing these tasks his hands and

arms began to bother him. Petitioner testified that scraping the grill, flipping the burgers, and smashing the burgers hurt his hands. He further testified that scraping of the grill and lifting bothered his right shoulder.

Before seeking medical treatment petitioner presented to an attorney and completed a job description. He noted constant repetition of the grill work, heavy lifting of supplies and rotating stock in the walk-in cooler and freezer. He identified the repetitions of his hands and arms varied from 1-50 a minute, 700-3000 per hour, and 2000-6000 per day.

On 10/26/10 petitioner signed an Application for Adjustment of Claim that alleged repetitive trauma injury to both hands and arms/shoulders.

Petitioner first sought treatment on 11/2/10 with Dr. Hoffman. At that time petitioner complained of pain in both arms radiating up to the elbows bilaterally over the last month. Petitioner made no complaints regarding his right shoulder. Dr. Hoffman assessed bilateral carpal tunnel and bilateral cubital tunnel. Petitioner then underwent an EMG/NCV that revealed bilateral carpal tunnel, but no evidence of cubital tunnel.

Petitioner's first complaints regarding his right shoulder was not until 12/18/10 to Dr. Rhode. At that time petitioner complained of right shoulder pain, elbow pain, and wrist pain secondary to an injury at work. These right shoulder complaints came a little over a month after he last worked for respondent. Petitioner reported that his symptoms began about 6-8 months ago. However, the arbitrator notes that when petitioner presented to Dr. Hoffman he made no mention of complaints regarding his right shoulder.

Thereafter, petitioner underwent bilateral carpal tunnel releases, bilateral cubital tunnel releases, and a right shoulder subacromial decompression and arthroscopic rotator cuff repair. Following the right shoulder surgery petitioner also underwent a right shoulder manipulation.

Dr. Newcomer agreed that petitioner began having pains in his wrists that would go to his elbows. He then noted that this was followed by a sharp pain in his right shoulder. Dr. Newcomer noted that prior to working for respondent petitioner drove a truck for 8 years, and that this was "another" occupation that would cause the propensity to develop these compressive neuropathies. Based on this finding, Dr. Newcomer was not convinced that petitioner's job for respondent was causally related to his diagnosis, even though he was of the opinion that his treatment was reasonable and necessary. He also stated that he had a problem pinning petitioner's problems completely and solely upon respondent as a contributing factor. The arbitrator find these opinions speculative at best. Although petitioner may have been a truck driver and a carpenter, no evidence was offered to indicate when petitioner worked these jobs, or what his specifics duties were with respect to these jobs. Additionally, the arbitrator finds that it is not necessary for Dr. Newcomer to pin petitioner's problems

"completely and solely upon respondent" as a contributing factor, since petitioner's work for respondent need only be "a cause", not "the cause" of petitioner's condition.

In Dr. Newcomer's deposition he opined that petitioner's job for respondent as a line cook could potentially cause or aggravate carpal tunnel if he was doing it long enough. He did not see anything in petitioner's job history with petitioner to suggest there was anything that petitioner did for respondent that caused his rotator cuff tear.

Dr. Rhode opined that the job of a grill cook for respondent is a highly manual position that is highly repetitive. He described the job iss one whereby petitioner would need to form the preformed patties by pounding on the patties, which are often semi frozen, into the form of a hamburger patty. He also added that the job required a lot of forward reach in order to manage the cooking of the hamburger and other food items. Dr. Rhode opined that even though petitioner's diagnostic tests did not show any evidence of cubital tunnel syndrome, he was of the opinion that petitioner's job exposure was causative to his symptoms in his bilateral hands and arms, and his right shoulder.

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 an accidental injury to his bilateral hands and bilateral elbows due to repetitive activities that arose out of and in the course of his employment by respondent and manifested itself on 10/26/10. The arbitrator bases this opinion on the petitioner's testimony regarding his work duties, as well as Dr. Rhodes understanding of petitioner's job duties. The arbitrator finds the job of cooking over 1000 hamburgers a day in the manner described by petitioner, as well as his other duties sufficiently repetitive enough to cause an injury to petitioner's bilateral hands and bilateral elbows.

The arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that he sustained an accidental injury to his right shoulder due to repetitive work activities that arose out of and in the course of his employment by respondent and manifested itself on 10/26/10. The arbitrator bases this finding on the fact that petitioner did not mention any complaints with respect to his right shoulder until after he retained an attorney, had been off work for over a month, and had not mentioned any shoulder complaints to Dr. Hoffman when he saw him in October of 2010. Additionally, the arbitrator finds the petitioner has failed to offer into evidence any detailed information concerning his work activities that allegedly caused his right shoulder tear. The petitioner reported that he lifted a chili pot, stocked the freezer, and moved boxes of french fries, but failed to include the frequency, duration, and manner of performing these activities.

Having found the petitioner sustained an accidental injury to his bilateral hands and elbows due to repetitive work activities that arose out of and in the course of his employment by respondent and manifested itself on 10/26/10, the arbitrator also finds the petitioner has proven by a preponderance of the credible evidence that his bilateral hand and bilateral elbows are causally related to the injury petitioner sustained on 10/26/10. The arbitrator bases this finding on the causal connection opinions of Dr. Rhode, as well as the opinion of Dr. Newcomer who opined that truck driving was "another" occupation that would cause the propensity to develop these compressive neuropathies, and that petitioner's job for respondent as a line cook could potentially cause or aggravate carpal tunnel if he was doing it long enough. The arbitrator reasonably infers from these opinions of Dr. Newcomer that petitioner's job was an occupation that would cause the propensity to develop compressive neuropathies, and that petitioner's job duties for respondent were a contributing factor, albeit, not the sole factor, to his bilateral hand and elbow conditions.

J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY: HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

Having found the petitioner sustained an accidental injury that arose out of an in the course of his employment by respondent on 10/26/10, and that his current condition of ill-being as it relates to his bilateral hands and bilateral elbows is causally related to the injury he sustained on 10/26/10, the arbitrator finds the medical treatment petitioner received for his bilateral hands and elbows was reasonable and necessary to cure or relieve petitioner from the effects of his injury on 10/26/10. The arbitrator bases this opinion on the opinions of Dr. Rhode, and the opinion of Dr. Newcomer that petitioner's medical treatment was reasonable and necessary, even though he believed it was not causally related.

Based on the above, as well as the credible evidence, the arbitrator finds the treatment petitioner received for his bilateral hands and bilateral elbows was reasonable and necessary to cure or relieve petitioner from the effects of his injury, and respondent shall pay all reasonable and necessary medical services pursuant to Sections 8(a) and 8.2 of the Act.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Having found the petitioner sustained an accidental injury to his bilateral hands and elbows due to repetitive work activities that arose out of and in the course of his employment by respondent and manifested itself on 10/26/10, and that the petitioner has proven by a preponderance of the credible evidence that his bilateral hand and bilateral elbows are causally related to the injury petitioner sustained on 10/26/10, the arbitrator finds the petitioner was temporarily totally disabled from 12/15/10-5/24/10, a period of 23 weeks. The arbitrator bases this finding on the opinion of Dr. Newcomer who opined that he would keep someone off

work 6-8 weeks for cubital tunnel surgery. The arbitrator finds the periods petitioner was off work after that date was related to his right shoulder condition, which the arbitrator has found unrelated to this claim.

Based on the above, as well as the credible evidence the arbitrator finds the petitioner was temporarily totally disabled pursuant to Section 8(b) of the Act from 12/15/10 through 5/24/11, a period of 23 weeks.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

As a result of his injuries petitioner underwent bilateral carpal tunnel releases and bilateral cubital tunnel releases. Dr. Newcomer was of the opinion that petitioner could return to full duty work without restrictions. Dr. Rhode gave petitioner permanent restrictions for modified heavy duty work with an overhead restriction of 25/35. Petitioner offered no evidence to show that his job duties exceeded these restrictions.

Currently petitioner's hands are fine about 90% of the time. Occasionally feels like they have arthritis in them. Petitioner denied any current problems with his elbows.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner sustained a 10% loss of use of his right hand, 10% loss of use of his left hand, 7.5% loss of use of his left arm, and 7.5% loss of use of his right arm pursuant to Section 8(e) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLAMSON

☒ 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

Robert Rice,
Petitioner,
vs.

14IWCC0318
NO: 10 WC 16588

Big Ridge, Inc.,
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 temporary total 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 September 27, 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: APR 30 2014
KWL/vf
O-4/22/14
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

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

141WCC0318

RICE, ROBERT
Employee/Petitioner

Case# **10WC016588**

BIG RIDGE INC
Employer/Respondent

On 9/27/2013, 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 0.05% 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 PC
502 W PUBLIC SQUARE
PO BOX 366
BENTON, IL 62812

0693 FEIRICH MAGER GREEN & RYAN
PIETER N SCHMIDT
2001 W MAIN ST SUITE 101
CARBONDALE, IL 62903

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0318

Robert Rice
Employee/Petitioner

v.

Big Ridge, Inc.
Employer/Respondent

Case # 10 WC 016588

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 **Herrin**, on **07/12/13**. 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

14IWCC0318

FINDINGS

On the date of accident, **04/06/10**, 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 **$61,762.00**; the average weekly wage was **$1,211.02**.

On the date of accident, Petitioner was **58** 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 **$6,343.49** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of **$6,343.49**.

Respondent is entitled to a credit of **$10,618.87 for medical bills** under Section 8(j) of the Act.

ORDER

For reasons set forth in the attached decision, the incurred $662.00 in medical expenses (see PX8) and the prospective surgery and associated medical treatment for carpal and cubital tunnel syndrome requested by the claimant are denied as not causally related to the injury of April 6, 2010.

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

Sept. 26, 2013
Date

ICArbDec19(b)

SEP 27 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT RICE,	)	14IWCC0318
Petitioner,	)	
vs.	)	No. 10 WC 16588
BIG RIDGE, INC.	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

This matter was heard pursuant to Sections 8(a) and 19(b) of the Act. The petitioner had two other pending claims, 11 WC 20999 and 12 WC 12320, which are referenced in the records and depositions. Neither party requested consolidation of the three matters. The parties further indicated the other matters were pending settlement as of the time of the hearing.

STATEMENT OF FACTS

The claimant works as a ram car operator at the respondent's underground coal mine. A ram car is an industrial machine, approximately 38 feet long, which moves coal to the beltline. A photograph of the car was introduced as PX9. The ram car is powered by a 128 volt (128V) DC battery. The battery itself was described as approximately 4' wide, 10' long, and 3' high, weighing approximately 5000 pounds. One of the petitioner's job duties involved maintenance and charging of the battery as needed. He described machinery would lift the battery off the car in order to charge or replace the battery, and a new battery would be mechanically inserted.

On April 6, 2010, the petitioner was engaged in changing the battery. He had earlier in the shift been washing equipment and described himself as being wet from the waist down and was wearing steel toed boots. While the battery has a circuit breaker on the top of the battery, the petitioner reported this breaker was not functional. During the course of changing the battery, he touched the current source with his left hand and described being shocked for approximately twenty to thirty seconds.

The petitioner was taken by ambulance to Harrisburg Medical Center. See generally PX1. He reported having been shocked by between three and four thousand volts. He denied loss of consciousness, and on examination no entry or exit wounds were observed. He reported some numbness and tingling in the left arm but denied chest pain or shortness of breath. Radiographs of the left shoulder and chest were normal and EKG testing was negative. He was admitted for overnight observation. The next day it was

noted he had no neurologic deficits or complaints and he was discharged with instructions to follow up with a neurologist.

On April 8, 2010, he saw a primary care physician, Dr. Rider. See PX3. He reported the feeling in his arm was returning and the symptoms were improving. He was instructed to keep his pending follow-up with the neurologist and was kept off work pending that follow-up appointment.

On April 16, 2010, Dr. James Alexander at the Alexander Family Practice noted that he had received a note that the claimant had been hospitalized due to a DC battery shock. Dr. Alexander noted that he looked it up that day and found "nothing to be of concern" and was unsure as to why the petitioner was off of work. RX4.

The petitioner saw Dr. Sawar, a neurologist, on April 28, 2010. See PX2. He reported some improvement in the left arm and hand. Dr. Sawar prescribed MRI of the brain to rule out ischemic stroke and EMG studies. The EMG was done that day. It noted chronic radiculopathy into the legs stemming from the lumbar spine and mild right-sided carpal tunnel syndrome. The left arm and hand tested as normal. PX2. The MRI of the brain was conducted on May 5, 2010, and was negative for hemorrhage or any structural abnormality. PX2.

On May 6, 2010, the petitioner reported to Dr. Rider that while the EMG was normal, "he knows this is not the case" and requested a second opinion. Dr. Rider noted that the petitioner had a follow-up scheduled with Dr. Sawar but also provided a referral to Dr. Woeltz, a neurologist, and deferred work restrictions until Dr. Sawar's report arrived. See PX3.

On May 26, 2010, Dr. Sawar noted improved strength and reduced symptoms in the left arm. Strength was now rated at "5/5 in all four extremities." He recommended the petitioner continue current management and follow up in a month. PX2. Dr. Sawar's notes do not reflect any work restrictions, and the petitioner apparently returned to work on light duty as of May 31, 2010.

On June 23, 2010, Dr. Sawar noted increased symptoms in the left forearm, but no weakness was observed. He again assessed post electrical injury of the left upper extremity without evidence of motor neuropathy, and instructed him to follow up. On July 28, the petitioner reported no change in symptoms and Dr. Sawar recommended a referral to a neuromuscular specialist for further evaluation. PX2.

On December 8, 2010, Dr. Sawar noted the petitioner had not seen the neuromuscular specialist and assessed the petitioner with left arm pain of unclear etiology. While he instructed the petitioner to return in three months, the petitioner did not do so. PX2.

The claimant then presented to Dr. Kadiyamkuttiyil on January 24, 2011. Following examination, Dr. Kadiyamkuttiyil assessed possible cervical stenosis,

recommended vitamin deficiency testing and prescribed repeat EMG study. The repeat EMG was performed on February 22, 2011 and indicated severe left ulnar neuropathy and moderate to severe left carpal tunnel syndrome. The petitioner was thereafter referred to an orthopedic surgeon for evaluation. See PX4.

The petitioner saw Dr. Beatty, a hand surgeon, on April 25, 2011. Following examination, Dr. Beatty recommended surgical intervention to the elbow and wrist for carpal and cubital tunnel release. In correspondence to the petitioner's attorney thereafter, Dr. Beatty wrote that he believed a causal connection existed between the electrical shock and the carpal and cubital tunnel syndrome. PX5.

The respondent had the petitioner seen by Dr. Crandall pursuant to Section 12 of the Illinois Workers' Compensation Act on August 10, 2011. The claimant did not allow for hand testing or further EMG analysis. Dr. Crandall concurred with the diagnosis of carpal and cubital tunnel syndrome but opined that given the fairly low current and lack of significant damage to the surrounding tissues, there was no causal relationship between those conditions and the electrical shock on April 6, 2010. See RX2.

In October 2011, the petitioner sustained a work injury to his left wrist when he fell and struck a rock. He advised this injury did not require treatment and described it as a bruise. Dr. Rider's records note on November 3, 2011, the petitioner reported moderate, sharp, stabbing pain in the entire hand. Examination noted swelling, tenderness, abnormal mobility, and crepitus in the left hand. The diagnosis was a left hand sprain. The petitioner was involved in another work injury on March 27, 2012. He presented to Dr. Rider on March 30, 2012, for complaints of a neck strain and left shoulder pain that radiated into his left arm and hand.

The petitioner sought care with Dr. Morgan, an orthopedist, on April 11, 2012. See generally PX6. The petitioner apparently reported that the electrical shock knocked him unconscious and caused severe swelling to the left hand. He also reported a mass between the third and fourth fingers of the hand. Dr. Morgan noted that he was awaiting the EMG studies for review by expected surgical intervention would be required. On August 7 and September 21, 2012, Dr. Morgan recommended surgical releases to the carpal and cubital tunnels and resection of the lesion.

Depositions of Dr. Morgan and Dr. Crandall were conducted on January 17 and February 5, 2013, respectively. See PX7, RX2. The petitioner continued to work for the respondent until the mine closed; at the hearing date, he was employed at another mine.

OPINION AND ORDER

Causal Connection to the Injury

The initial injury is not in dispute, and the issue at present is whether the carpal and cubital tunnel conditions, as well as the left hand mass/lesion, are causally related to

the electrical shock of April 2010. When the question is one specifically within the purview of experts, expert medical testimony is mandatory to show that the claimant's work activities caused the condition of which the employee complains. See, e.g., *Nunn v. Industrial Commission*, 157 Ill.App.3d 470, 478 (4th Dist. 1987). In this case, the claimant has failed to prove to a medical and surgical certainty via expert testimony that his conditions are causally linked. Dr. Morgan did testify in support of a causal connection between the electrical shock and the surgical recommendation. However, examining his testimony in deposition further, it is notable that Dr. Morgan admitted:

> Q: And if the employee had sustained nerve damage from this alleged shock in April of 2010, would you not agree that there should have been some evidence of nerve damage on the EMG nerve conduction study that was taken approximately 1 month after the incident?
>
> A: I would think so.

See PX7, pp.48-49. No such findings were demonstrated. Dr. Morgan further acknowledged the petitioner's unrelated cervical spine and systemic deficiency conditions could be contributing or causing the symptoms. PX7, pp 50-52. Dr. Morgan did acknowledge that the mass, which the claimant asserted was present immediately following the incident, was not mentioned in any of the medical records prior to his seeing the petitioner. Dr. Morgan also apparently lacked substantial information regarding the intervening incidents, and, more significantly, appears to have been provided misinformation regarding the April 2010 injury, as the petitioner apparently told Dr. Morgan the electrical shock was severe enough to cause both severe swelling and loss of consciousness, facts belied by the treating medical records at the time of the hospitalization.

Dr. Crandall further makes several persuasive points. First, he concurs with Dr. Morgan that had the shock caused nerve damage, the initial EMG would have been positive for nerve damage, which it was not. Second, he notes that had the shock caused nerve damage, there would have also been damage to the radial nerve, and the asserted state of ill-being only involves the median and ulnar nerves; there is no evidence of a radial nerve injury in the records. Lastly, he observes that had the claimant suffered traumatic nerve damage, the symptoms would not have improved shortly following the incident. This improvement was in fact reported to the treating medical providers at the time; the claimant's testimony that his symptoms never receded is belied by multiple references in the treating medical records and lacks credibility.

The Arbitrator finds a lack of persuasive evidence to causally connect the electrical shock of April 2010 with the carpal and cubital tunnel syndrome. Moreover, the mass between the third and fourth fingers is not mentioned in the medical records prior to 2012 and was not apparent at the time of Dr. Crandall's evaluation. The emergency room records specifically note no entry or exit wound or burn that would correlate to the mass formation. Causal relationship between the electric shock and the mass formation is therefore denied as overly speculative.

Medical Services (Past and Prospective)

The medical services provided with regard to the hospitalization and treatment for the electrical shock at and temporally proximate to the initial injury appears to have been paid and the Arbitrator's review of the documents submitted show expenses incurred for such treatment to have zero balances. The $662.00 in disputed medical expenses (see PX8) are denied as not causally related to the injury of April 6, 2010. The prospective carpal and cubital tunnel surgery and excision of the lesion as requested by the claimant are likewise denied, due to the lack of a causal relationship.

Temporary Total Disability

The parties stipulated entitlement to TTD to from April 7, 2010, through May 31, 2010, inclusive. While the stipulation sheet refers to this as 3 & 3/7 weeks, the Arbitrator notes this as a typographical error. TTD benefits are awarded for the above period, being 7 & 6/7 weeks. At the appropriate rate of $807.35, a total liability of $6,343.46 results. The respondent is credited $6,343.49 in disability previously paid against this amount, satisfying their liability for TTD benefits to the present.