STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

BEFORE THE ILLINOIS WORKERS COMPENSATION COMMISSION

Mark James Egan,
Petitioner,

vs.

Nos. 11WC 40046 & 14WC026079
15IWCC0474

City, Water, Light and Power,
Respondent.

ORDER

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

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

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

Stephen J. Mathis

DATED: JUL 10 2015

SJM/sj
44

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mark James Egan,

Petitioner,

vs.

NO. 11 WC 40046 &
14WC026079
15IWCC0474

City, Water, Light and Power

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, prospective medical care, medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

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

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

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

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

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court. No bond is required for removal of this cause to the Circuit Court.

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

Stephen J. Mathis

Mario Basurto

David L. Gore

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

EGAN, MARK JAMES
Employee/Petitioner

Case# **11WC040046**
14WC026079

15IWCC0474

CITY WATER LIGHT AND POWER
Employer/Respondent

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

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

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

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

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

15IWCC0474

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

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

# ILLINOIS WORKERS' COMPENSATION COMMISSION
# ARBITRATION DECISION
19(b)

MARK JAMES EGAN,
Employee/Petitioner

v.

CITY WATER, LIGHT AND POWER,
Employer/Respondent

Case # 11 WC 40046

Consolidated cases: 14 WC 26079

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen H. Pulia**, Arbitrator of the Commission, in the city of **Springfield**, on **10/14/14**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

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

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

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

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

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

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

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

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

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

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

ORDER

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

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

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

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

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

Signature of Arbitrator

11/7/14
Date

ICArbDec19(b)

NOV 14 2014

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

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

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

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

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

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

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

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