ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC021761
Case Name	Mariusz Lis v. Eco Food Distribution LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0458
Number of Pages of Decision	23
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Peter Wachowski
Respondent Attorney	John O'Grady

DATE FILED: 12/6/2022

/s/ Deborah Baker, Commissioner

Signature

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 Vacate Penalties and Attorney's Fees	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARIUSZ LIS,

Petitioner,

vs. NO: 21 WC 21761

ECO FOOD DISTRIBUTION, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission pursuant to a timely Petition for Review under §19(b) filed by the Respondent herein. The Commission notes Respondent's Petition for Review identifies its issues on Review as employment relationship, accident, causation, wage calculation, temporary disability, outstanding medical expenses, prospective medical treatment, and penalties and attorney's fees; however, in its Statement of Exceptions as well as during oral arguments, Respondent only challenged the award of §19(l) and §19(k) penalties and §16 attorney's fees, and thereby forfeited arguments on all other issues. Notice given to all parties, the Commission, after considering whether Petitioner's petition for penalties and attorney's fees was properly raised as an issue at arbitration, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

FINDINGS OF FACT

On August 3, 2021, an Application for Adjustment of Claim was filed alleging Petitioner sustained injuries to his back on July 8, 2021 while working for Respondent, Eco Food Distribution LLC. The matter was assigned to Arbitrator Raychel Wesley.

On August 30, 2021, Counsel for Petitioner filed a Petition for Hearing under §19(b) for the Arbitrator's September 17, 2021 status call. After a pre-trial on September 27, 2021, the §19(b) petition was ultimately set for hearing on December 2, 2021.

On October 28, 2021, Counsel for Petitioner filed "Petitioner's Petition for Penalties and Fees Under Sections 16, 19(k), 19(l)." The Notice of Motion reflects the petition would be presented at the Arbitrator's January 10, 2022 call.

On December 2, 2021, the parties appeared before Arbitrator Wesley to proceed on the §19(b) petition. Prior to the hearing, counsel for both parties submitted a Request for Hearing form to the Arbitrator. Arb.'s Ex. 1. The parties' signed Request for Hearing form reveals that the Act's penalty and attorney's fees provisions were not at issue, and this was confirmed when the Arbitrator reviewed the Request for Hearing for the record: "The parties have jointly submitted a Request for Hearing form indicating the following issues in dispute… Number 11, there is no claim for attorney's fees or penalties, and no petitions are pending." T. 5-7. The matter was tried to completion on December 2, 2021, but according to the parties' briefs on Review, sometime after proofs were closed, Counsel for Petitioner emailed a copy of the October 28, 2021 Petition for Penalties to the Arbitrator and requested that the Arbitrator consider the petition in her decision for the concluded §19(b) hearing.

The Decision of the Arbitrator was issued on March 3, 2022. Therein, the Arbitrator rendered findings on the disputed issues identified at trial: employment relationship, accident, causation, wage calculation, medical expenses, temporary disability, and prospective medical treatment. In addition, however, and without explanation, the Decision also found penalties and attorney's fees were at issue during the hearing and awarded same.

CONCLUSIONS OF LAW

Commission Rule 9030.40 provides as follows: "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 9030.40*. The Appellate Court considered this language in *Walker v. Industrial Commission*, 345 Ill. App. 3d 1084, 1088 (4th Dist. 2004), and confirmed that "the request for hearing is binding on the parties as to the claims made therein." Here, the Request for Hearing form establishes that Petitioner's Counsel elected to not prosecute his penalties petition at the December 2, 2021 hearing (Arb.'s Ex. 1), and this was verbally confirmed prior to the taking of evidence. The Commission emphasizes that based on the reasoning in *Walker*, an email to the trier of fact after the close of proofs cannot and does not alter the parties' stipulations on the Request for Hearing form. The Commission finds Petitioner's petition for penalties and attorney's fees was not raised as an issue at trial and therefore was not properly before the Arbitrator. The Commission notes that Petitioner's October 28, 2021 petition for penalties and attorney's fees remains pending and may be prosecuted in the future for any benefits that have accrued after the December 2, 2021 hearing. The Commission vacates the awards of penalties pursuant to §19(l) and §19(k) and attorney's fees pursuant to §16.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 3, 2022, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $506.37 per week for a period of 21 weeks, representing July 9, 2021 through December 2, 2021, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), 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 $385.87 for out of pocket medical payments as well as $21,530.00 in outstanding medical expenses as provided in Section 8(a) and subject to Section 8.2.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of §19(l) penalties in the amount of $10,000.00 is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the award §19(k) penalties in the amount of $9,700.05 is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of §16 attorney's fees in the amount of $6,509.92 is vacated.

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 the 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 the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $32,600.00. 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.

December 6, 2022

/s/ *Deborah J. Baker*

DJB/mck

O: 11/9/22

/s/ *Stephen J. Mathis*

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/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC021761
Case Name	LIS, MARIUSZ v. ECO FOOD DISTRIBUTION LLC
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Peter Wachowski
Respondent Attorney	Kelly Kamstra

DATE FILED: 3/3/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 1, 2022 0.67%

/s/ Raychel Wesley, Arbitrator

Signature

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)

Mariusz Lis
Employee/Petitioner

v.

Eco Food Distribution LLC
Employer/Respondent

Case # **21** WC **021761**

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 **Raychel Wesley**, Arbitrator of the Commission, in the city of **Chicago**, on **12/02/2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **07/08/2021**, 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 $**41,729.91**; the average weekly wage was $**759.56**.

On the date of accident, Petitioner was **54** 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 $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of **$21,530.00** and reimburse Petitioner for out-of-pocket expenses in the amount of **$385.87**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$506.37**/week for **21** weeks, commencing **07/09/2021** through **12/02/2021**, as provided in Section 8(b) of the Act.

Respondent shall pay to Petitioner penalties of $**6,509.92**, as provided in Section 16 of the Act; $**9,700.05**, as provided in Section 19(k) of the Act; and $**10,000.00**, as provided in Section 19(l) of the Act.

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

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

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/ *Raychel A. Wesley* **MARCH 3, 2022**

Signature of Arbitrator

ICArbDec19(b)

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mariusz Lis, Employee/Petitioner	)	
v.	)	Case No. 21 WC 021761
Eco Food Distribution LLC, Employer/Respondent	)	

ARBITRATOR'S DECISION

STATEMENT OF FACTS:

This action was pursued under the Illinois Workers' Compensation Act by Mariusz Lis (hereinafter "Petitioner") and sought relief from Eco Food Distribution (hereinafter "Respondent"). This matter proceeded to hearing on December 2, 2021 in Chicago, pursuant to Petitioner's 19(b) Petition for Immediate Hearing. The issues in dispute are: employer/employee relationship, accident, causal connection, average weekly wage, medical bills, temporary total disability benefits and ongoing medical treatment.

Petitioner testified he was employed by the insured as both a delivery driver and a warehouse worker. (Trial Transcript, "TX" 15.) Eco Food Distribution is a company that imports food from Poland. TX 11. Ryszard Ziaja and his son Kuba Ziaja own and manage the company. *Id* at 12. Petitioner was hired in June 2019 and worked through July 2021. *Id* at 13.

As a delivery driver, Petitioner would load each delivery on the truck using a pallet jack. TX 25. He would drive to the customer location. *Id.* He was also responsible for unloading the merchandise from the truck using a pallet jack and bring those items into the store. *Id.* When asked to describe how heavy these pallets weighed, Petitioner testified that one layer of juice boxes would weigh 250 kg (approximately 551 pounds), and there would be four layers of juice boxes on some pallets. TX 27. He would not lift these items by himself but would use the pallet jack to move them towards the edge of the truck bed. *Id.* He would often use a forklift to then transport these items into the store. *Id* at 27-28. In the warehouse, he would put together the next day's orders and shrink wrap the merchandise on the pallets. *Id* at 43. In addition to these responsibilities, on cross-examination, Petitioner admitted he also started doing inside sales for the company. *Id* at 78. He received

commissions for this work. *Id.* He was paid for his sales separately from his hourly wages as a driver and warehouse employee. *Id* at 79. To elaborate on this aspect of his work, Petitioner at first testified that he started doing sales in April 2021, then he stated he received commissions in March as well. *Id* at 80. Petitioner further testified he started making sales in February 2021. *Id* at 82. He testified he would go to three stores, twice a month to make sales. *Id* at 83.

According to Petitioner, both Ryszard and Kuba would check in on his work each day. TX 23. There were company meetings, where both men would instruct the employees on what needed to be done and how to do each task. TX 24. Petitioner further stated that the Respondent's salespeople would call different clients to see if they were satisfied with how Petitioner performed his deliveries. *Id* at 65. Petitioner testified he did not supply any equipment for his job and did not receive any training. *Id* at 71. He further stated he made these deliveries by himself.

His starting wage was $15.00 an hour with the opportunity for subsequent raises. *Id* at 16. On July 8, 2021, he was earning $18.00 an hour. *Id.* Petitioner was on payroll initially and was paid an hourly rate. TX at 17. Taxes were withheld from his paycheck. *Id.* Any overtime worked was reflected in these checks. TX at 19. Petitioner was never paid in cash. *Id.* He did state that at some point, his overtime was paid to his company. *Id* at 19. He was not clear on when that specifically started.

On direct-examination, Petitioner testified that he started a company after having a conversation with Ryszard Ziaja. TX 20. During this conversation, Petitioner requested a raise. *Id.* Mr. Ziaja indicated that he would extend the requested raise, but only after Petitioner started a business. *Id.* According to Petitioner, his regular hours were paid through normal payroll, however, his overtime hours were issued to his company, MARDAM, Inc. *Id.* This timeline if contradicted by Petitioner's testimony on cross-examination, when he stated this conversation took place in April 2021KJ. He opened his company in April 2020. *Id* at 21. Petitioner testified that his job responsibilities did not change at this time. *Id.* In April 2021, Petitioner testified he stopped receiving payroll checks and only started to receive checks through his company. *Id* at 57. On direct-examination he admitted he requested this. *Id* at 59. He clarified that the Respondent told him that either he could receive checks through his company or receive cash. *Id* at 57, 99. Petitioner testified that no benefits or taxes were withheld from these checks. *Id* at 86.

Petitioner testified that he had worked previously for another import company doing very similar work as what he was asked to do for ECO Food Distribution and had this sort of experience.

Petitioner testified that he has had dealings with ECO Foods and that he worked there from June 2019 until July of 2021. He was hired by the owner, Ryszard Ziaja, and the owner's son, Jakub ("Kuba") Ziaja, was the manager. He met with the owner, and they had a conversation, and they discussed how he was going to be paid and how he was going to work, and he was hired. He believes that the son, the manager, Kuba, was present when that occurred. Petitioner believes that he filled the position and began working approximately two days later. He was a warehousing manager.

It was a full-time position where he would work 8 to 10 hours per day, five to six days per week. Overtime was required and was worked on a regular basis. Petitioner was paid for overtime hours at 1.5 times his hourly rate.

Petitioner testified that he could be fired at any time by the owner. He testified that the owner's son was also his manager/supervisor. Petitioner testified that both the owner and the manager/supervisor would come and check up on his work and check up on him from time to time. He described his relations with the owner and son as good until the accident occurred. The owner and manager/supervisor would instruct him how to perform his duties. Petitioner worked the morning shift starting at 6:30 a.m. and normally would work until 3:00 p.m., but sometimes would also work as late as 7:00 p.m. to 8:00 p.m.

The work performed by the Petitioner was that he would stock various foods at the warehouse. He would load various food items onto pallets and then onto a truck for delivery. He would then deliver pallets of various imported Polish foods, including juices, jarred cucumbers, and other ethnic foods to various locations/stores.

He would use a pallet jack to remove pallets or move pallets on the truck to the edge of the truck and then received help at various locations where the food was being delivered with a forklift taking those pallets off. Then he would move those items around using the pallet jack at various locations after they were removed from the truck by forklift. These were normal duties every day.

On July 8, 2021, what had occurred is that the Petitioner had delivered a truckload of food on pallets over to KD Market-Krystyna's Deli located at 1102 South Roselle Road in Schaumburg, Illinois. Petitioner testified that the truck was on a little bit of an incline, which would make it easier to pull pallets on pallet jacks from the front of the truck to the back of the truck. Petitioner testified that there was a very heavy pallet containing probably two layers of juices and other items. Petitioner testified that each layer of juices weighed probably 250 kilograms. Petitioner testified that he believed that the load was over one ton.

Petitioner testified that the pallet jack had worn out wheels, and as such, would get stuck. He yanked on the pallet jack, pulling it towards himself. It broke free and started rolling towards him, towards the end back of the truck. In order to stop the pallet from rolling off of the truck, he used his body to push the pallet jack as hard as he could to stop it from rolling off the truck. Petitioner testified that his back bent backwards and something popped in his back. This happened at approximately 11:00 a.m. Petitioner testified that at that point, that is how he was injured. Petitioner testified that as a result of this occurrence, he fell onto his side in the truck and laid there for up to 10 minutes. Petitioner testified that there was a forklift operator, a young man, over at Krystyna's Deli, who was sitting there waiting for the pallet to get to the end of the truck, to remove it off of the truck, who witnessed this accident. This individual then helped him get up. Petitioner testified that he was injured and felt pain at that time.

Petitioner testified that when he started to work that morning, he felt great. He had no problems with his back. Petitioner testified that this accident occurred during his regularly scheduled shift and workday. Petitioner testified that he was able to identify stopping of this pallet jack as the immediate cause of his injury. Petitioner testified that he had lower back pain, that he felt pain radiation down into his buttocks and into his right leg as a result of the accident. Petitioner testified that he experienced numbness in his right leg as a result of the accident.

This accident occurred on July 8, 2021. It was brought to the Arbitrator's attention that it appears the Application for Adjustment of Claim was filed on August 2, 2021, and a green card was shown that certified mail of the Application for Adjustment of Claim was received by ECO Food Distribution, LLC on August 6, 2021.

Petitioner testified that he gave notice of the accident via text and/or cell phone call to both Ryszard Ziaja, the owner, and to Kuba Ziaja, the son of the owner and the manager/supervisor, within two hours of the incident.

Petitioner testified that he sought medical treatment for the first time on July 10, 2021, with his family doctor, Dr. Beata Danek. (Dr. Danek gave Petitioner an off work slip). She is a general practitioner. Petitioner testified that he obtained an MRI. Petitioner chose to see Dr. Beata Danek and then subsequently made a second choice of doctors and went to go see Dr. Mark Sokolowski, an orthopedic surgeon. Petitioner first saw Dr. Sokolowski on August 10, 2021.

Petitioner testified that he could not complete work on the date of accident of July 8, 2021. Petitioner was not taken by ambulance.

Petitioner testified that Dr. Sokolowski has suggested that the Petitioner have epidural injections, and that in the future, surgery may be required.

Dr. Sokolowski provided continuous off work slips, and the last off work slip given allowed the Petitioner to be off of work until January 13, 2022, at which time he had his next scheduled visit. Petitioner testified that he has not completed all of his medical treatment. Petitioner is undergoing physical therapy at the present time.

Petitioner testified that he has lost time from work because of the injury. He missed time from work after the accident from approximately 12:00 p.m. on July 8, 2021, until the present time. Petitioner has not received any payment for temporary total disability (TTD) benefits whatsoever from the Respondent. No medical bills whatsoever have been paid on behalf of the Petitioner by the Respondent.

Petitioner has not been sent to see any independent medical examination doctors by the Respondent.

Petitioner testified that he has received medical bills from everyone providing any sort of treatment for him. Some of the bills were paid out-of-pocket.

Petitioner testified that if he were able to return to work, he would be ready to return to work. Petitioner testified that he was fired from his employment by the Respondent on or about July 20 or 21, 2021, and that there was an exchange of text messages going back and forth. The Respondent demanded that Petitioner hand in his keys for the warehouse.

On cross-examination Petitioner testified that he was injured on the date of accident of July 8, 2021, and specifically, injured his lower back. He explained that he has pain, numbness, and radiating pain. Petitioner testified that the pain is constant and that the severity can be anywhere between 5/10 to 9/10. This pain is experienced continuously every day. Petitioner testified that he did not experience symptoms of this severity ever before the accident of July 8, 2021. Petitioner testified that he previously had an injury to his right knee meniscus.

Petitioner did testify that approximately two weeks before this accident, he twisted his back and had to rest Thursday through Sunday and returned to work full-duty on Monday with no pain whatsoever and had fully recovered from whatever had occurred two weeks prior to July 8, 2021. Petitioner testified that his back injury in this case occurred on July 8, 2021 and caused his symptoms. Petitioner testified that his back was healthy prior to July 8, 2021.

Petitioner testified that his health was very good prior to the accident of July 8, 2021 and that this changed immediately following the injury of July 8, 2021. Petitioner testified that he is not able to do many things as a result of the injury that he presently is suffering from. Petitioner has had no accidents since the accident of July 8, 2021 and had no prior back injuries.

Petitioner testified that part of his pay was for commission. Petitioner testified that he would work every other Saturday on a commission basis. Petitioner testified that originally when he started working as a salesperson, every other Saturday twice a month, that he was paid hourly, and then what happened is he started making sales that would exceed his hourly rate, and so then he expected to be paid the commission amount instead of the hourly amount because the commission amount exceeded his hourly rate. Petitioner testified that he opened his corporation, Mardam, LLC because he was asked to do this by the owner so that overtime hours were paid not through payroll checks but into his company. Petitioner testified that even when he was additionally working sales, he was still working hourly all week from Monday through Friday and was getting paid hourly the entire time, and he was only working as a salesperson on the two Saturdays a month from April 2021 through July 2021. In the beginning, the time spent for sales and commission were being put on his regular payroll checks that would be reflected on the W-2. Petitioner testified he was still working in the warehouse from April 2021 through July 2021. He was only being paid any sort of commission from April 2021 through July 2021 for the two Saturdays per month. He never became solely a sales person, it was just extra income on top of his regular hourly rate. Petitioner testified that absolutely nothing changed about his work or work performed after he opened his corporation and overtime was paid to the corporation. Work stayed exactly the same.

Petitioner testified that he was not provided any breaks at work. There was no lunch time. He would have to eat in the truck while driving between locations. Petitioner testified that his first, most important duty, was as a warehouse worker. His second responsibility was as a driver.

Petitioner was given detailed instructions on what needed to be done and how his work was supposed to be performed. His work was supervised. The Respondent would go to worksites to check up on his work. Salespeople for the Respondent would check on his work and report back. Petitioner could never go and come as he pleased. He had regular hours that he needed to work and worked those hours continuously for the employer. Petitioner never worked for anyone else during his entire employment from June 2019 until his last day of work. The employer provided him with a W-2. Petitioner testified that he could be discharged at will. Petitioner testified that all materials and equipment were always supplied and that he personally never needed to supply anything on his own.

His schedule was set. His work locations were set. Where he needed to be and when he needed to be there were all dictated by the employer.

The employer has refused to pay proper compensation to the Petitioner and medical benefits. Petitioner received no medical treatment for the accident from a medical provider selected by the employer. Petitioner notified the employer that he could not work. Petitioner testified that he needs further treatment.

All of Petitioner's testimony was uncontroverted and credible. Respondent presented no live testimony.

Exhibits:

Petitioner submitted 13 exhibits. Respondent objected to the following exhibits:

Exhibit 9 Checking Account Records

Exhibit 11 Punch-in Cards

Exhibit 12 Synopsis of Exhibits 7, 8 & 9

Exhibit 13 Photographs of Equipment Used.

All 13 exhibits were admitted, including the four exhibits to which the Respondent objected.

EXHIBIT NO. 1 MEDICAL RECORDS & BILLING OF BEATA DANEK, M.D.

Petitioner's Exhibit Number 1 are the medical records and an itemized bill from Dr. Beata Danek. Petitioner first saw his primary care physician, Dr. Beata Danek, on July 10, 2021. At that time, Petitioner reported that two days prior he had strained his back with pushing/pulling heavy loads at work and fell down from the load pushing into him. He complained of back pain radiating to his buttocks. Dr. Danek prescribed Norco, physical therapy and stretching exercises, and asked Petitioner to follow-up in 2-3 weeks. Petitioner reported back to Dr. Danek on July 26, 2021 and complained of pain radiating to his buttocks and stated that that he was unable to stand for a prolonged period of time, worse with bending forward and walking. Dr. Danek gave Petitioner a script for an MRI of the lumbar back. Petitioner received an off work slip and was placed off work and told to start physical therapy. The bill from Dr. Danek has total charges in the amount of $765.00. Petitioner seeks payment of said bill and reimbursement for out-of-pocket payments in the amount of $250.38.

EXHIBIT NO. 2 MEDICAL RECORDS OF CHICAGO MEDICAL IMAGING

Petitioner's Exhibit Number 2 is an MRI of the Lumbar Spine was performed on August 2, 2021.

1. The MRI shows a broad-based posterior and left foraminal protrusion of L4-5 disk with annular tear, causing mild narrowing of the central canal and neural foramina, bilaterally. The protrusion measures approximately three mm in size. That was number one.

2. Diffuse protrusion of L5-S1 disk, with right foraminal annular tear, causing mild narrowing of the central canal. The protrusion measures approximately three mm in size.

3. Diffuse bulge of L3-4 disk, without any significant central canal or neural foraminal narrowing. The bulge measures approximately two mm in size.

4. Mild facetal arthropathy at L3-4, L4-5, and L5-S1 levels.

EXHIBIT NO. 3 MEDICAL RECORDS OF MARK SOKOLOWSKI, M.D.

Petitioner's Exhibit Number 3 are the medical records of Dr. Mark Sokolowski. The last note visit is from November 16, 2021, showing a chief complaint of lumbar pain with radiation to the buttocks and the right leg subsequent to a work injury. The records state that the Petitioner has pains of 5-9/10 with radiation to his right leg at 5-9/10 and his symptoms increase with exertion, that Petitioner is open to lumbar epidural steroid injection if additional therapy proves insufficiently effective.

Dr. Sokolowski's assessment plan and diagnoses causally related to the work injury are as follows:

1. Lumbar pain.

2. Lumbar radiculopathy.

Recommendations are as follows:

1. Physical therapy helps limit pain and is slowly improving Mr. Lis' function.

2. He is open to lumbar epidural steroid injection at the next step if additional physical therapy proves insufficiently effective.

3. Continue his current analgesic regimen. He had an adequate supply today, and no refills were provided.

4. Off work to realize the benefit of additional physical therapy

5. Reevaluation in approximately eight weeks.

There is an off work slip keeping the Petitioner off of work until January 13, 2022, and it is recommended that he continue with physical therapy.

EXHIBIT NO. 4 MEDICAL BILLS OF CHICAGO MEDICAL IMAGING

Petitioner's Exhibit Number Four are the medical bills of Chicago Medical Imaging, indicating that the total cost of the MRI was $325.00, and there is a receipt showing that Petitioner paid this out-of-pocket, for which he seeks reimbursement from Respondent.

EXHIBIT NO. 5 MEDICAL BILLS OF MARK SOKOLOWSKI, M.D.

Petitioners' Exhibit Number Five are the medical bills of Dr. Mark Sokolowski to which Petitioner testified. The total outstanding bills for Dr. Sokolowski as of the trial date of December 2, 2021 were $20,765.00, for which the Petitioner seeks payment.

EXHIBIT NO. 6 OUT-OF-POCKET PRESCRIPTION EXPENSES

Petitioner's Exhibit Number Six were out-of-pocket expenses for medications purchased at Walgreens Pharmacy, which total $60.87.

EXHIBIT NO. 7 COPIES OF PETITIONER'S PAYCHECKS TO HIM INDIVIDUALLY

Petitioner's Exhibit Number Seven are copies of all the checks that Petitioner received for one year prior to the accident, therefore, from approximately July 8, 2020 through July 8, 2021. Said

checks were payroll checks. They were made out to him personally, and deductions were taken out for taxes.

EXHIBIT NO. 8 COPIES OF PETITIONER'S CHECKS PAID FOR OVERTIME

Petitioner's Exhibit Number Eight were copies of all the checks that were made out to Petitioner's corporation, Mardam, Inc., and these checks reflect overtime payments that were made to the Petitioner as well as subsequently, payments that were made to the Petitioner after April of 2021, when the conditions of employment changed. Petitioner testified that he was given the ultimatum of either getting paid only on his corporation or he would not be able to work any longer and would have to give two weeks' notice. Because of the pandemic, Petitioner agreed to get paid in this fashion, and it was agreed that this form of payment would end after the pandemic.

EXHIBIT NO. 9 CHECKING ACCOUNT

Petitioner's Exhibit Number Nine showed five more payments that were made that were not included in Exhibit Number Eight because after June 1, 2021, direct deposits were made.

EXHIBIT NO. 10 2020 W-2

Petitioner's Exhibit Number 10 was a W-2 form received for the year 2020. Petitioner testified that he should also receive a W-2 for 2021 from the Respondent.

EXHIBIT NO. 11 PUNCH-IN CARDS

Petitioner's Exhibit Number 11 are timecards. Petitioner testified that he would have to punch in and punch out whenever he would work, and these were evidence of the same.

EXHIBIT NO. 12 SYNOPSIS OF EXHIBITS NUMBER 7, 8, 9

Petitioner's Exhibit Number 12 is a synopsis of exhibits number 7, 8, and 9. Said exhibit shows all the payments received over the one-year period prior to the accident from approximately July 8, 2020 until July 8, 2021, showing that Petitioner earned a total of $41,729.91.

EXHIBIT NO. 13 PHOTOGRAPHS

Petitioner's Exhibit Number 13 shows the forklift pallet jacks that were damaged and the dolly that was used for moving items at the various locations on behalf of the Respondent.

RESPONDENT'S EXHIBITS

Respondent submitted four (4) exhibits into evidence.

- Respondent's Exhibit No. 1 is Petitioners 2020 payroll paystubs, which shows money taken out for Medicare, federal withholding, and Social Security.

- Respondent's Exhibit No. 2 is Petitioner's 2021 payroll paystubs, which shows money taken out for Medicare, federal withholding, and Social Security.

- Respondent's Exhibit No. 3 is 2021 1099 checks.

- Respondent's Exhibit No. 4 are Petitioner's timecards for June and July 2021.

Respondent's Exhibit No. 4 illustrates that in June and July 2021, Petitioner still had to punch in and out for work as a regular employee. Also, Respondent's Exhibit No. 4 illustrates that Petitioner was not working solely on commission. Respondent's Exhibit No. 4 contains six (6) "timecards." Each of the six timecards count hours and they are handwritten. For example, the first page of Respondent's Exhibit No. 4 is a timecard for June 1, 2021 thorough June 4, 2021. There is a handwritten calculation of 34 x 18 = 612. Petitioner testified that he was earning $18.00 per hour. He testified that he was paid 1.5 x $18.00 per hour for overtime. The timecards have calculations for minutes. The timecards also calculate overtime at $27.00 per hour. 1.5 x 18 = 27. Every timecard shows mathematically payments for hours and minutes for regular time at $18.00 per hour and hours and minutes for overtime at $27.00 per hour. Said timecards illustrate hat Petitioner was being paid hourly.

FINDINGS OF LAW AND FACT

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

Eco Food Distribution LLC is a corporation lawfully incorporated, and as such, was subject to the Illinois Workers' Compensation and Occupational Diseases Act on the date of accident of July 8, 2021.

The Arbitrator finds that Eco Food Distribution LLC was operating under and subject to the Illinois Workers' Compensation and Occupational Diseases Act.

B. Was there an employee-employer relationship?

Petitioner testified credibly that he was an employee of Eco Food Distribution LLC and received payroll checks from Eco Food Distribution LLC as evidenced by a copy of the W-2 form furnished by Eco Food Distribution LLC to Petitioner for the year 2020 (Exhibit No. 10) as well as copies of payroll checks with deductions and overtime paychecks (Exhibit 7). All testimony of the Petitioner indicates that he under the direct control and supervision of Respondent and that he was an employee of Respondent. The Arbitrator finds that an employee-employer relationship did exist between Petitioner and Eco Food Distribution LLC.

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

Petitioner testified credibly and Petitioner's description of the accident demonstrates that his accident arose out of and in the course of Petitioner's employment by Respondent, Eco Food Distribution LLC. The records and testimony of the Petitioner clearly demonstrate that the Petitioner's current condition of ill-being is causally related to his July 8, 2021 work-related injury.

The Arbitrator finds that the Petitioner's accident arose out of and in the course of Petitioner's employment by Respondent, Eco Food Distribution LLC.

D. What was the date of the accident?

Petitioner's testimony and all medical records submitted into evidence corroborate that the accident took place on July 8, 2021. A text message sent by Petitioner to Respondent on July

8, 2021 placed Respondent on notice of an injury, which arose out of and in the course of employment that same day. Respondent did not dispute notice of the accident.

The Arbitrator finds that the accident took place on July 8, 2021.

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

Based on Petitioner's testimony and medical evidence submitted, the Arbitrator finds the Petitioner's current condition of ill-being to be causally related to the injury **pursuant to Dr. Sokolowski's SOAP note dated August 10, 2021, which states: "Mariusz Lis is a 55-year-old male with the following diagnoses, causally related to work injury.**

1. **Lumbar pain.**
2. **Features of lumbar radiculopathy. "**

G. What were Petitioner's earnings?

During the 52 weeks prior to the accident, the total amount of all payroll checks made out to Petitioner individually (Exhibit 7) was $27,576.60. The total of all overtime and payroll checks made out to Mardam, Inc. (Exhibit 8) for the same time period was $14,153.31. Petitioner agrees and concedes that this overtime should be calculated at straight time of $18.00 per hour with overtime pay reduced to straight time it comes to $11,920.42 at regular pay. The total earnings for this time period amount to $27,567.60 plus $11,920.42 for a total of $39,497.02. $39,497.02, divided by 52 weeks come to an average weekly wage of $759.56.

As such, the Arbitrator finds that Petitioner's average weekly wage amounted to $759.56.

Mariusz Lis		Hours	Total			Mardam			
7/20/2020	7/24/2020	40	$720.00			7/27/2020	$287.10		
7/27/2020	7/31/2020	35.46	$643.80			8/3/2020	$356.85		
8/3/2020	8/7/2020	40	$720.00			8/17/2020	$134.55		
8/10/2020	8/14/2020	37.04	$667.20			9/22/2020	$81.89		
8/17/2020	8/21/2020	34.35	$622.50			9/28/2020	$58.95		
8/24/2020	8/28/2020	30.13	$543.90			10/5/2020	$139.05		
8/31/2021	9/4/2020	40	$720.00			10/12/2020	$205.20		
9/8/2020	9/11/2020	40	$720.00			10/19/2020	$155.69		
9/14/2020	9/18/2020	40	$720.00			10/26/2020	$10.80		
9/21/2020	9/25/2020	40	$720.00			11/3/2020	$122.40		
9/28/2020	10/2/2020	40	$720.00			11/16/2020	$419.85		
10/5/2020	10/9/2020	40	$720.00			11/30/2020	$368.99		
10/12/2020	10/16/2020	40	$720.00			12/14/2020	$355.05		
10/19/2020	10/23/2020	40	$720.00			12/21/2020	$565.20		
10/26/2020	10/30/2020	33.34	$604.20			12/22/2020	$200.00	Christmas Bonus	
11/2/2020	11/6/2020	40	$720.00			12/28/2020	$532.34		
11/9/2020	11/13/2020	36.26	$655.80			1/18/2021	$144.45		
11/16/2020	11/21/2020	40	$720.00			1/25/2021	$84.59		
11/23/2020	12/25/2020	33.53	$609.90			2/1/2021	$196.19		
11/30/2020	12/4/2020	40	$720.00			2/15/2021	$135.45		
12/7/2020	12/11/2020	40	$720.00			3/1/2021	$94.05		
12/14/2020	12/18/2020	40	$720.00			3/8/2021	$192.15		
12/21/2020	12/23/2020	15.3	$279.00			3/15/2021	$11.25		
12/28/2020	12/29/2020	13.54	$250.20			3/29/2021	$161.55		
1/4/2021	1/8/2021	40	$720.00			4/6/2021	$200.25		
1/11/2021	1/15/2021	40	$720.00			4/12/2021	$98.99		
1/18/2021	1/22/2021	40	$720.00			4/26/2021	$138.59		
1/25/2021	1/29/2021	36.21	$654.30			5/3/2021	$179.99		
2/1/2021	2/5/2021	40	$720.00			5/4/2021	$383.44		
2/8/2021	2/12/2021	37.45	$679.50			5/17/2021	$126.44		
2/15/2021	2/19/2021	40	$720.00			5/21/2021	$221.24		
2/22/2021	2/26/2021	40	$720.00			5/24/2021	$617.99		
3/1/2021	3/5/2021	40	$720.00			6/1/2021	$1,012.49		
3/8/2021	3/12/2021	33.26	$601.80			6/7/2021	$963.89		
3/15/2021	3/19/2021	40	$720.00			6/14/2021	$613.49		
3/22/2021	3/26/2021	40	$720.00			6/14/2021	$344.98		
3/29/2021	4/1/2021	40	$720.00			6/21/2021	$755.55		
4/5/2021	4/9/2021	34.26	$619.80			6/28/2021	$381.17		
4/12/2021	4/16/2021	40	$720.00			6/28/2021	$1,024.65		
4/19/2021	4/23/2021	40	$720.00			7/6/2021	$612.29		
4/26/2021	4/30/2021	39.09	$704.70			7/12/2021	$803.24		
5/3/2021	5/7/2021	40	$720.00			7/19/2021	$218.24		
						7/19/2021	$442.80		
Total		1529.22	$27,576.60				$14,153.31		

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

The Arbitrator finds that the credible evidence and testimony prove that the medical treatment as provided in Petitioner's exhibits was clearly reasonable and necessary. The Arbitrator further finds that Respondent has not paid any of the appropriate charges for all reasonable and necessary medical services. The following bills have not been paid by Respondent and it is Respondent's obligation to immediately pay said bills for treatments that were reasonably required to cure and relieve the Petitioner from the effects of his accidental injury as recommended on behalf of Petitioner by his treating physicians:

Provider	Amount of Bill
Beata Danek, M.D.	$765.00
Chicago Medical Imaging	$325.00
Mark Sokolowski, M.D.	$20,765.00
Out-of-Pocket Prescription Medication	$60.87
Total	$21,915.87

K. Is Petitioner entitled to any prospective medical care?

Medical and physical therapy records of Dr. Mark Sokolowski prove that Petitioner is still off work, receiving medical treatment, and has not reached maximum medical improvement. Petitioner may require injection(s) and possibly a surgery down the road.

As such, the Arbitrator finds that Petitioner is entitled to prospective medical care.

L. What temporary benefits are in dispute?

TTD benefits are in dispute. Respondent, Eco Food Distribution LLC, shall pay Petitioner temporary total disability benefits of $506.37/week for 21 weeks, commencing on July 8, 2021 through December 2, 2021 for a total of $10,633.77, as provided in Section 8(b) of the Act.

M. Should penalties or fees be imposed upon Respondent?

Petitioner filed a Petition for Penalties and Fees Under Sections 16, 19(k), 19(l) on October 28, 2021. Petitioner requests that penalties be imposed on the Respondent based on the Respondent's refusal to pay TTD benefits and medical bills incurred as a result of this accident.

The Arbitrator finds that Respondent is ordered to pay any and all medical bills, reimburse the Petitioner for any and all out-of-pocket expenses incurred by the Petitioner and assesses penalties and fees against the Respondents under sections 16, 19(k) and 19(l) for failure to pay medical treatment expenses and temporary total benefits to Petitioner.

The Arbitrator finds that the credible evidence proves that penalties and fees are to be imposed upon Respondent. Respondent shall pay Petitioner penalties of $6,509.92 (unpaid TTD=$10,633.77 x 20% = $2,126.75) (unpaid medical = $21,915.87 x 20% = $4,383.17), as provided in Section 16 of the Act; $9,700.05 (unpaid TTD = $10,633.77 x 50% = $5,316.88) (unpaid medical = $21,915.87 x 20% = $4,383.17) as provided in Section 19(k) of the Act; and $10,000.00 as provided in Section 19(l) of the Act.

/s/ Raychel A. Wesley_____ March 3, 2022_____

Arbitrator Raychel A. Wesley Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC005457
Case Name	Robert Shultz v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0459
Number of Pages of Decision	14
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kenton Owens

DATE FILED: 12/6/2022

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT SHULTZ,
Petitioner,

vs. NO: 16 WC 5457

STATE OF ILLINOIS - CHESTER MENTAL HEALTH CENTER,
Respondent.

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 nature and extent, 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 4, 2022 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.

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

December 6, 2022
o: 12/01/22
CMD/ma
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC005457
Case Name	SHULTZ, ROBERT v. CHESTER MENTAL HEALTH CENTER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kenton Owens

DATE FILED: 4/4/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 29, 2022 1.05%

/s/ William Gallagher, Arbitrator
Signature

CERTIFIED as a true and correct
copypursuant to820 ILCS 305/14

April 1, 2022

/s/ Michele Kowalski

Michele Kowalski, 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

Robert Shultz
Employee/Petitioner

v.

Chester Mental Health Center
Employer/Respondent

Case # 16 WC 05457

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, Herrin Docket, on February 25, 2022. 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 4, 2015, 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 $42,242.71; the average weekly wage was $812.36.

On the date of accident, Petitioner was 38 years of age, single with 2 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. The parties stipulated TTD benefits were paid in full.

Respondent is entitled to a credit of $0.00 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 pay Petitioner permanent partial disability benefits of $487.42 per week for 212.5 weeks because the injury sustained caused 42 1/2% loss of use of the person as a whole, apportioning 30% loss of use of the person as a whole as a result of the cervical spine injury and 12 1/2% loss of use of the person as a whole as a result of the right shoulder injury, 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.

William R. Gallagher

APRIL 4, 2022

William R. Gallagher, Arbitrator
ICArbDec p. 2

Findings of Fact

Petitioner filed two Applications for Adjustment of Claim which alleged he sustained accidental injuries arising out of and in the course of his employment by Respondent. In case 16 WC 05457, the Application alleged that on January 4, 2015, Petitioner was "Attacked by unruly patient" and sustained an injury to his "Neck, right shoulder, MAW". In case 19 WC 35394, the Application alleged that on October 17, 2019, Petitioner was "Attempting to catch patient who fell" and sustained an injury to his "Neck, right arm, body as a whole" (Arbitrator's Exhibit 2). In both cases, Petitioner and Respondent stipulated Petitioner sustained accidental injuries, his condition of ill-being was causally related to same and temporary total disability benefits had been paid in full (Arbitrator's Exhibit 1).

In regard to the charges for medical services, Respondent disputed liability for a CT scan of the cervical spine without contrast ordered on June 17, 2017, and various prescription medications ordered by Dr. Matthew Gornet, an orthopedic surgeon, who was one of Petitioner's treating physicians. Respondent denied liability for the preceding based on Utilization Reviews which relied upon the Occupational Disability Guidelines (ODG) (Arbitrator's Exhibit 1; Respondent's Exhibits 5 and 6). At trial, Petitioner's counsel advised it was his understanding all of the medical bills had been paid.

Petitioner worked for Respondent as a security therapy aide. On January 4, 2015, Petitioner observed a patient who attacked another patient. Petitioner attempted to intervene and, when he did so, he was kicked and thrown into a wall. As a result of the accident, Petitioner sustained injuries to his neck and right shoulder.

Following the accident, Petitioner was evaluated at Logan Primary Care by Dr. Mark Smith. Petitioner complained of neck and right shoulder pain. Dr. Smith diagnosed Petitioner with neck pain and a trapezius strain. He prescribed medication and imposed work restrictions (Petitioner's Exhibit 3).

Petitioner subsequently sought treatment from Dr. Donald Griffin, his family physician. On January 7, 2015, Petitioner was seen by Natasha Youngblood, a Nurse Practitioner, associated with Dr. Griffin. At that time, Petitioner complained of neck and right shoulder pain. When NP Youngblood saw Petitioner on February 23, 2015, she ordered an MRI of Petitioner's cervical spine and physical therapy for Petitioner's right shoulder (Petitioner's Exhibit 4).

The MRI of Petitioner's cervical spine was performed on March 1, 2015. According to the radiologist, there were disc osteophytes at multiple levels of the cervical spine and an abutment of the exiting C7 nerve root (Petitioner's Exhibit 5).

Petitioner was evaluated by Dr. Griffin on March 19, 2015. At that time, Petitioner continued to complain of neck and right shoulder pain. Dr. Griffin ordered an MRI scan of Petitioner's right shoulder (Petitioner's Exhibit 4).

The MRI of Petitioner's right shoulder was performed on June 11, 2015. According to the radiologist, the MRI of Petitioner's right shoulder revealed a nondisplaced superior labral tear (Petitioner's Exhibit 5).

Dr. Griffin saw Petitioner on June 29, 2015, and reviewed the MRI scan. His interpretation of the MRI was consistent with that of the radiologist. He subsequently referred Petitioner to Dr. Alan Froehling, an orthopedic surgeon (Petitioner's Exhibit 4).

Dr. Froehling evaluated Petitioner on August 7, 2015. He reviewed the MRI and agreed it revealed a labral tear. He recommended Petitioner consider undergoing arthroscopic surgery, but noted he did not perform that type of surgery (Petitioner's Exhibit 6).

Petitioner continued to be seen by Dr. Griffin who continued to treat him conservatively. He subsequently referred Petitioner to Dr. Aaron Chamberlain, an orthopedic surgeon (Petitioner's Exhibit 4).

Dr. Chamberlain saw Petitioner on October 5, 2015. At that time, Petitioner informed Dr. Chamberlain of the accident of January 4, 2015. Petitioner also informed Dr. Chamberlain he had significant right shoulder pain since the accident. Dr. Chamberlain reviewed the MRI, but did not see a significant labral tear, and opined it may have been consistent with a low grade SLAP tear. Dr. Chamberlain noted some of Petitioner's symptoms may have been because of pathology in his neck. He ordered an injection into the glenohumeral joint of the shoulder, EMG/nerve conduction studies and an MRI arthrogram of the right shoulder (Petitioner's Exhibit 7).

On October 22, 2015, Petitioner underwent an injection in the right glenohumeral joint. EMG/nerve conduction studies were performed on November 10, 2015. They revealed a moderate denervation in the right C6-C7 nerve distribution (Petitioner's Exhibits 9 and 10).

Petitioner was seen by Dr. Chamberlain on December 2, 2015, and advised the injection provided him with no relief of his symptoms. Dr. Chamberlain reviewed the MRI and opined Petitioner's pain symptoms were from sources other than the shoulder and possibly the neck. He ordered an MRI scan of Petitioner's cervical spine (Petitioner's Exhibit 7).

The MRI of Petitioner's cervical spine was performed on December 4, 2015. According to the radiologist, the MRI revealed bilateral neural foraminal narrowing at C5 and C6-C7; right neural foraminal narrowing at C3-C4; and left neural foraminal narrowing at C4-C5 (Petitioner's Exhibit 11).

Petitioner receive conservative treatment in December, 2015, which included home exercises, physical therapy and a nerve root block at C7 (Petitioner's Exhibits 9 and 10). Petitioner was subsequently referred to Dr. Lukas Zebala, a spine surgeon.

Dr. Zebala evaluated Petitioner on March 2, 2016. He reviewed the MRI and opined it revealed disc herniations at C5-C6 and C6-C7, degenerative disc disease and foraminal stenosis. Dr. Zebala recommended Petitioner undergo cervical spine surgery consisting of a discectomy and fusion at C5-C6 and C6-C7 (Petitioner's Exhibit 14).

At the direction of Respondent, Petitioner was examined by Dr. Lyndon Gross, an orthopedic surgeon, on March 24, 2016. In connection with his examination of Petitioner, Dr. Gross was provided with copies of medical records and diagnostic studies by Respondent. Dr. Gross examined Petitioner in regard to both his neck and right shoulder; however, most of his findings/recommendations were in regard to Petitioner's right shoulder. He recommended Petitioner undergo an MRI arthrogram of the right shoulder and, if it confirmed Petitioner had a labral tear, arthroscopic surgery would be appropriate. In regard to Petitioner's cervical spine, Dr. Gross opined Petitioner should have his cervical spine treatment expedited (Respondent's Exhibit 3).

An MRI arthrogram was performed on Petitioner's right shoulder on May 10, 2016. According to the radiologist, it revealed a superior labral tear and mild supraspinatus tendinopathy (Petitioner's Exhibit 11).

Dr. Chamberlain saw Petitioner on May 31, 2016, and he reviewed the MRI arthrogram. His interpretation of it was consistent with that of the radiologist. Dr. Chamberlain opined Petitioner would ultimately require an arthroscopic biceps tenodesis; however, given the fact Petitioner's primary complaints were in regard to the cervical spine, he recommended Petitioner should initially undergo spine surgery (Petitioner's Exhibit 7).

Dr. Zebala saw Petitioner on July 13, 2016. At that time, Dr. Zebala renewed his recommendation Petitioner undergo cervical spine surgery (Petitioner's Exhibit 14).

On July 26, 2016, Dr. Zebala performed surgery on Petitioner's cervical spine. The procedure consisted of an anterior discectomy and fusion at C5-C6 and C6-C7 with instrumentation at C5 to C7 (Petitioner's Exhibit 8).

Dr. Zebala saw Petitioner on September 7, 2016, and November 9, 2016. Petitioner's neck condition improved and Dr. Zebala ordered physical therapy and work hardening. When he saw Petitioner on December 14, 2016, he opined Petitioner was at MMI in regard to the cervical spine condition; however, he noted Petitioner had a right shoulder problem for which he was being treated by Dr. Chamberlain (Petitioner's Exhibit 14).

Dr. Chamberlain saw Petitioner on December 20, 2016, and noted Petitioner had received conservative treatment for his right shoulder injury, but only experience temporary relief. Dr. Chamberlain recommended Petitioner proceed with arthroscopic surgery followed by an open subpectoral biceps tenodesis (Petitioner's Exhibit 7).

Dr. Chamberlain performed surgery on Petitioner's right shoulder on January 26, 2017. The procedure consisted of a diagnostic arthroscopy with subacromial bursectomy and open subpectoral biceps tenodesis (Petitioner's Exhibit 8).

Dr. Chamberlain evaluated Petitioner on February 6, 2017, and March 27, 2017. Dr. Chamberlain ordered physical therapy; however, Petitioner complained of numbness/tightness in the hand in the

C8 nerve distribution. Dr. Chamberlain opined that this could be related to his cervical spine condition and recommended Petitioner return to Dr. Zebala (Petitioner's Exhibit 7).

Dr. Zebala saw Petitioner on June 7, 2017. At that time, Petitioner complained of recurrent neck pain. Dr. Zebala recommended Petitioner undergo a cervical CT scan and cervical MRI scan to determine if there was a non-union of the fusion (Petitioner's Exhibit 14).

Petitioner was again seen by Dr. Chamberlain on August 7, 2017. At that time, Petitioner still had right shoulder complaints, but Dr. Chamberlain opined these symptoms would improve over time. He opined Petitioner was at MMI in regard to his right shoulder, but noted Petitioner continued to have cervical spine symptoms (Petitioner's Exhibit 7).

Because of his continued cervical spine symptoms, Petitioner saw Dr. Griffin on August 31, 2017. At that time, Dr. Griffin reviewed the most recent CT and MRI scans of Petitioner's cervical spine. Dr. Griffin referred Petitioner to Dr. Matthew Gornet, an orthopedic surgeon (Petitioner's Exhibit 4).

Dr. Gornet evaluated Petitioner on September 6, 2017. At that time, Petitioner complained of both cervical spine and right shoulder pain. Dr. Gornet reviewed the MRI scans of March 3, 2015, and December 4, 2015, and opined they revealed disc pathology in the cervical spine at multiple levels. He ordered a CT scan of Petitioner's cervical spine (Petitioner's Exhibit 17).

The CT scan was performed on September 6, 2017. According to the radiologist, the CT scan revealed a failed fusion at C5-C6 and C6-C7 and a disc protrusion at C4-C5 (Petitioner's Exhibit 19).

Dr. Gornet reviewed the CT scan and his interpretation of it was consistent with that of the radiologist. He ordered an MRI of the cervical spine and informed Petitioner he would require surgery at C5-C6 and C6-C7 and possibly at C3-C4 and C4-C5. Dr. Gornet also referred Petitioner to Dr. Nathan Mall, an orthopedic surgeon, for Petitioner's right shoulder condition (Petitioner's Exhibit 17).

Dr. Mall evaluated Petitioner on September 6, 2017, in regard to Petitioner's right shoulder condition. Dr. Mall recommended Petitioner undergo an MRI arthrogram of the right shoulder. Further, because of Petitioner's neurogenic complaints to his right arm, Dr. Mall ordered EMG/nerve conduction studies of the right upper extremity.

EMG/nerve conduction studies of Petitioner's right upper extremity were performed on October 23, 2017, by Dr. Daniel Phillips, a neurologist. The studies revealed a right lateral brachial cutaneous neuropathy, mild ulnar neuropathy at the elbow and mild median neuropathy across the wrist (Petitioner's Exhibit 20).

Dr. Mall saw Petitioner on October 23, 2017, and reviewed the MRI arthrogram and EMG/nerve conduction studies. He opined the MRI arthrogram revealed swelling at the AC joint and persistent labral tearing. He administered an injection into the AC joint. In regard to the EMG/nerve conduction studies, he opined they were positive for right lateral brachial cutaneous nerve injury,

cubital tunnel syndrome and carpal tunnel syndrome. He recommended conservative treatment for those conditions (Petitioner's Exhibit 18).

Petitioner was again seen by Dr. Mall on November 13, 2017. At that time, Petitioner advised the injection only provided temporary relief. Petitioner continued to have symptoms in his right shoulder, elbow and wrist. Dr. Mall ordered physical therapy and directed Petitioner to follow-up with Dr. Gornet for his cervical spine injury (Petitioner's Exhibit 18).

Petitioner was seen by Dr. Gornet on November 13, 2017. An MRI of Petitioner's cervical spine was performed that same day. Both the radiologist and Dr. Gornet opined it revealed disc herniations at C3-C4 and C4-C5. Dr. Gornet recommended cervical spine surgery consisting of redoing the fusion at C5-C6 and C6-C7 and disc replacement surgery at C3-C4 and C4-C5 (Petitioner's Exhibits 17 and 21).

At the direction of Respondent, Petitioner was examined by Dr. David Robson, an orthopedic surgeon, on April 3, 2018. In connection with his examination of Petitioner, Dr. Robson reviewed medical records and diagnostic studies provided to him by Respondent. Dr. Robson agreed with Dr. Gornet's surgical recommendations (Respondent's Exhibit 4).

Petitioner was again seen by Dr. Mall on May 30, 2018, in regard to his right shoulder. Dr. Mall noted that Petitioner's right shoulder condition had improved and opined Petitioner did not require any restrictions or further treatment in regard to his right shoulder (Petitioner's Exhibit 18).

Dr. Gornet performed surgery on Petitioner's cervical spine on October 23, 2018. The surgical procedure consisted of removal of hardware at C5 to C7; exploration of the fusion at C5-C6 and C6-C7; redoing the fusion at C5-C6; and disc replacement at C3-C4 and C4-C5. Dr. Gornet noted the surgery was difficult because of the scar tissue present from the prior surgery. He determined it was not necessary to redo the fusion at C6-C7 (Petitioner's Exhibit 24).

Dr. Gornet continued to treat Petitioner following surgery. Petitioner's condition gradually improved and Dr. Gornet authorized Petitioner to return to work without restrictions effective May 1, 2019 (Petitioner's Exhibit 17).

Because of continued back and right arm symptoms, Petitioner was treated by Dr. Adam Henson, a general practitioner, who treated Petitioner in June through September, 2019 (Petitioner's Exhibit 23).

On October 17, 2019, Petitioner was assisting a patient with a gait belt, the patient fell and Petitioner experienced an onset of pain in his right arm and a "pop" in his neck. Petitioner was seen by Dr. Henson on October 25, 2019, and was authorized to be off work (Petitioner's Exhibit 23).

Dr. Gornet saw Petitioner on October 31, 2019. At that time, Petitioner advised Dr. Gornet of the accident of October 17, 2019. Dr. Gornet ordered both x-rays and a CT scan of the cervical spine. He opined the x-rays revealed some potential changes of the prosthesis at C4-C5 and the CT revealed some subtle lucencies around the prosthesis at C4-C5. He ordered an MRI scan and authorized Petitioner to be off work (Petitioner's Exhibit 17). Dr. Gornet saw Petitioner on

February 13, 2020. At that time, he noted that MRI did not reveal any new disc herniations. He authorized Petitioner to return to work without restrictions effective February 17, 2020, but working no more than eight hours per day (Petitioner's Exhibit 17).

Dr. Gornet subsequently saw Petitioner on October 26, 2020. At that time, Dr. Gornet obtained x-rays of the cervical spine which he noted revealed no significant changes in either prosthesis. He opined the accident of October 17, 2019, was a "temporary aggravation" and Petitioner was back to "baseline." He opined Petitioner could work full duty (Petitioner's Exhibit 17).

Dr. Gornet last saw Petitioner on October 25, 2021. Petitioner had continued to work full duty, but still had neck and right shoulder/arm complaints. Dr. Gornet authorized Petitioner to continue to work without restrictions, but limited to 12 hours per day (Petitioner's Exhibit 17).

At the direction of Respondent, Petitioner was examined by Dr. Richard Katz, a physiatrist, on October 27, 2020. The examination was for the purpose of Dr. Katz providing AMA impairment ratings in respect to Petitioner's cervical spine and right shoulder conditions. Dr. Katz was informed of the most recent accident of October 17, 2019; however, he was not informed of the earlier accident of January 4, 2015. Dr. Katz was provided with medical records for treatment provided to Petitioner both before and after the accident of October 17, 2019 (Respondent's Exhibit 7).

On examination of Petitioner's cervical spine, Dr. Katz noted the range of motion was significantly reduced. Dr. Katz's examination of Petitioner's right shoulder was benign. He opined that, as a result of the accident of October 17, 2019, Petitioner had sustained a strain of the neck and right shoulder which had completely resolved. In regard to his AMA impairment rating of Petitioner's cervical spine, Dr. Katz opined Petitioner had a zero percent (0%) of the whole person as it related to the accident of October 17, 2019; however, he opined Petitioner had a pre-existing impairment of 15% of the whole person. In regard to Petitioner's right shoulder condition, Dr. Katz opined Petitioner had a zero percent (0%) impairment of the right upper extremity as related to the accident of October 17, 2019; however, he opined Petitioner had a pre-existing impairment of three percent (3%) of the right upper extremity (Respondent's Exhibit 7).

Dr. Katz was deposed on November 4, 2020, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Katz's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Specifically, Dr. Katz testified Petitioner had impairment ratings of 15% of the whole person in regard to the cervical spine and three percent (3%) of the right upper extremity in regard to the right shoulder (Respondent's Exhibit 8; pp 8-9).

On cross-examination, Dr. Katz admitted he had not reviewed many of the medical records regarding treatment Petitioner received prior to the accident of October 17, 2019. He did review Dr. Gornet's surgical report of October 23, 2018, but did not review either Dr. Zebala's or Dr. Chamberlain's surgical reports. He was unaware of the prior surgeries until the Petitioner informed him of same (Respondent's Exhibit 8; pp 16-19).

Dr. Katz agreed Petitioner completed a patient disability questionnaire in regard to the cervical spine, but not a QuickDASH in regard to the shoulder injury. He agreed that AMA guidelines

require the completion of a QuickDASH for the upper extremity (Respondent's Exhibit 8; pp 31-32).

Dr. Katz also agreed the AMA impairment ratings were not the same as disability because they did not take into consideration the specific job duties/demands of any particular job. He conceded an injury could be highly disabling in one occupation, but virtually not disabling in another (Respondent's Exhibit 8; pp 33-35).

On June 19, 2017, Respondent obtained a Utilization Review regarding the medical necessity of the cervical MRI and CT scans ordered by Dr. Zebala. The Utilization Review certified the MRI, but not the CT scan. This was based on the Occupational Disability Guidelines (ODG) (Respondent's Exhibit 5).

On November 12, 2018, Respondent obtained a Utilization Review regarding the medical necessity of various prescriptions ordered by Dr. Gornet. The Utilization Review did not certify various prescription medications based on the Occupational Disability Guidelines (ODG) (Respondent's Exhibit 6).

At trial, Petitioner testified he continues to experience a diminished range of motion in both his neck and right shoulder and continues to have neck/right shoulder pain, soreness and stiffness as well as occasional numbness/tingling in the fingers of his right hand. Petitioner also experiences headaches while driving.

Petitioner testified that he was able to return to his regular job with Respondent, but has to limit his working hours to the 12 hour restriction imposed by Dr. Gornet. He also testified that he has been mandated by Respondent to work beyond those restrictions and some type of disciplinary proceeding is currently pending. Petitioner stated he is no longer able to control physically aggressive patients the way he did prior to the accident because of his neck/shoulder symptoms. Petitioner also testified he does construction work and reads blueprints, and both of these activities have been adversely affected because of his injuries. Petitioner's recreational activities with his sons have also been adversely impacted by his injuries.

Conclusions of Law

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 incurred 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.

In support of this conclusion the Arbitrator notes the following:

The only disputed medical bills were those identified in the Utilization Reviews tendered by Respondent. Both Utilization Reviews non-certification of the medical charges were based on the Occupational Disability Guidelines (ODG). The Arbitrator is not persuaded by this evidence.

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 42 1/2% loss of use of the person as a whole, apportioning 30% loss of use of the person as a whole as a result of the cervical spine injury and 12 1/2% loss of use of the person as a whole as a result of the right shoulder injury.

In support of this conclusion the Arbitrator notes the following:

One of Respondent's Section 12 Examiners, Dr. Richard Katz, examined Petitioner and opined Petitioner had pre-existing impairments of 15% of the whole person in regard to the cervical spine, and three percent (3%) loss of use of the right upper extremity in respect of the right shoulder.

Dr. Katz examined Petitioner in regard to the subsequent accident of October 17, 2019, and he did not specifically attribute the impairment ratings to the accident of January 4, 2015; however, it is clear to the Arbitrator that this "pre-existing" impairments are attributable to the accident of January 4, 2015.

Dr. Katz's impairment rating of Petitioner's right upper extremity did not include the QuickDASH assessment as required by the AMA guidelines.

Dr. Katz agreed on cross-examination that impairment is not the same as disability because impairment does not take into account the specific duties and demands of any specific job.

The Arbitrator gives this factor minimal weight.

Petitioner was employed as a security therapy aide at the time of the accident and was able to return to work to that job. However, Petitioner testified he can no longer control physically aggressive patients the way he did prior to the accident. Further, Dr. Gornet has limited Petitioner to working no more than 12 hours per shift; however, Respondent is apparently not compliant with this restriction.

The Arbitrator gives this factor significant weight.

Petitioner was 38 years of age at the time of the accident and will have to live with the effects of the injury for the remainder of his working and natural life.

The Arbitrator gives this factor significant weight.

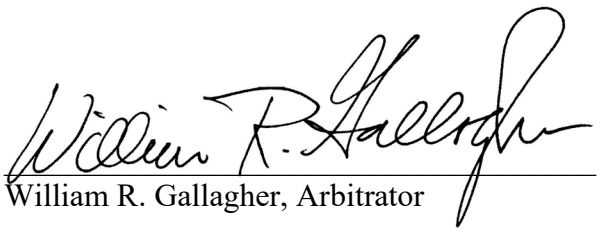
Petitioner's future earning capacity may be impacted because of the limitation of hours imposed by Dr. Gornet. Petitioner also has other potential loss of income from his construction and blueprint reading because of the injuries he sustained. However, there was no specific data as to how significant such a potential loss of future earnings may be.

The Arbitrator gives this factor moderate weight.

As a result of the accident of January 4, 2015, Petitioner sustained a significant injury to his cervical spine. Petitioner underwent fusion surgery at C5-C6 and C6-C7 which required metal hardware. The fusion failed and Petitioner underwent a subsequent surgery consisting of removal of the hardware, redoing of the fusion at C5-C6 and disc replacements at C3-C4 and C4-C5. Petitioner also underwent right shoulder surgery consisting of a diagnostic arthroscopy with subacromial bursectomy and open subpectoral biceps tenodesis.

Petitioner continues to have symptoms in regard to both the cervical spine and right shoulder consistent with the injuries he sustained.

The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	98WC059701
Case Name	Anna Smeltz v. Marriott International Inc
Consolidated Cases	99WC042393;
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	22IWCC0460
Number of Pages of Decision	7
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Peter Bobber
Respondent Attorney	Steven Jacobson

DATE FILED: 12/5/2022

/s/Marc Parker, Commissioner

Signature

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

Anna Smeltz,

Petitioner,

vs. No. 98 WC 059701

Marriott International,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §19(h) and §8(a)

This matter comes before the Commission on Petitioner's §19(h)/8(a) Petition, seeking additional permanent disability benefits due to a material increase in her disability since the Commission's June 7, 2011 decision. In that decision, (which was consolidated with the Commission's decision in Petitioner's companion claim number 99 WC 42393), the Commission affirmed and adopted the Arbitrator's award to Petitioner permanent partial disability of 20% person as a whole under §8(d)2 of the Act for the 98 WC 59701 claim, and an additional 40% person as a whole under §8(d)2 for claim 99 WC 42393. On September 7, 2011, Petitioner filed a timely Petition for Review of both claims under §19(h) and §8(a) of the Act. A hearing on that Petition was held before Commissioner Parker on June 15, 2022.[1] Petitioner, as she did in the original hearing, seeks odd-lot permanent-total benefits for both claims, claiming her disability has subsequently increased. The Commission has reviewed and considered all testimony and exhibits offered at the June 15, 2022 hearing, and issues separate decisions for Petitioner's two claims.

[1] At that hearing, Petitioner's counsel agreed the Petition was for §19(h) benefits only, not §8(a) benefits.

Findings of Fact:

Petitioner, a housekeeper employed by Respondent, injured her low back on July 9, 1998 (claim # 98 WC 59701) when she bent down to make a bed and felt back pain. The pain progressed to a stabbing sensation in her lower back and down her leg, causing her to fall to the floor. She treated with Dr. Levy in July 1998, and with Dr. Slack in November 1998. Dr. Slack noted Petitioner had bulging or protruding discs at L2-L5, and recommended conservative care and a functional capacity evaluation (FCE). The February 11, 1999 FCE found Petitioner able to frequently lift 13 pounds, with a maximum of 18 pounds. Dr. Slack suggested Petitioner return to work pursuant to the FCE guidelines, noting that her restrictions would be permanent. Petitioner returned to work as a housekeeper in July 1999.

On July 20, 1999 (claim # 99 WC 42393), Petitioner developed the same shooting pain in her back while bending and lifting a king sized mattress, and again fell to the floor. She has not worked since. She treated with Dr. Slack and Dr. Schwartz, and received injections to her back from Dr. Carobene. A May 1, 2000 MRI revealed herniated discs at L2-3, L3-4, L4-5 and L5-S1. On March 27, 2001, Dr. Schlueter performed an L5-S1 diskectomy, which helped Petitioner's right leg paresthesias, but not her low back pain. After an October 23, 2001 MRI revealed degenerative joint disease and herniations, most pronounced at L2-3, Dr. Schlueter referred Petitioner to Dr. Earman, who on April 3, 2002 performed an L2-3 laminectomy and L3 nerve root decompression.

Following the April 2, 2002 surgery, Petitioner's symptoms continued. She underwent four injections at the UIC Pain Center in 2003 and 2004. In January 2007, Dr. Slavin implanted a spinal cord stimulator; however, that provided little pain relief. In June 2007, Dr. Slack re-examined Petitioner and found her back condition to be permanent. He suggested an FCE, which on July 26, 2007, indicated Petitioner was able to work at a light physical demand level, carrying 10 pounds frequently and 20 pounds occasionally. The FCE noted Petitioner's right leg, "gave out" intermittently, and reported a decreased tolerance for repetitive stooping, twisting and prolonged walking. Dr. Slack found Petitioner to have permanent light duty restrictions, which prevented her from returning to her prior occupation as a housekeeper.

July 20, 2009 Hearing:

At the July 20, 2009 hearing, Petitioner testified that as a result of her injuries, her low back has not been the same, and because of the pain in her back and right leg, she can no longer perform activities which she used to do such as dancing, playing volleyball or bowling. She could not bend or twist like she used to, and her ability to clean, play with her grandkids, and sitting were all impacted. Petitioner testified she had trouble going up and down stairs, and carrying a gallon of milk. In 2009, her pain prevented her from dusting, vacuuming, and standing to shop or do dishes for longer than 15 minutes. Petitioner did not present job logs at the 2009 hearing.

In a decision dated February 16, 2010, the Arbitrator found Petitioner's injuries from her July 9, 1998 accident (98 WC 59701) resulted in a 20% loss of the person as a whole, and the injuries from her July 20, 1999 accident (99 WC 42393) resulted in a 40% loss of person as a whole. The Arbitrator expressly found that Petitioner had not met the burden of proving she fell into the category of an odd-lot permanent-total. On June 7, 2011, the Commission issued its decision on review of the Arbitrator's decision, correcting a typographical error regarding the period of temporary total disability awarded, but otherwise affirming and adopting the Arbitrator's decision.

On September 7, 2011, Petitioner filed a timely Petition for Review under §19(h) and §8(a) of the Act. That Petition was continued a number of times, and eventually came up for hearing before Commissioner Parker on June 15, 2022.

June 15, 2022 Review Hearing:

At the June 15, 2022 §19(h)/8(a) hearing, Petitioner testified that since her July 2009 arbitration testimony, she has been continuously under the care of doctors for her low back. She has fallen multiple times due to her back and legs giving out from pain and cramps. She has made several visits to the ER due to back pain.

In August 2011, Petitioner saw Dr. Neckrysh to calibrate her spinal cord stimulator; she also took more Vicodin than prescribed because it wasn't helping her pain. Dr. Slavin informed Petitioner in June 2013 that no further surgery would be indicated for her back, and recommended she follow-up with pain management.

Petitioner underwent a low back injection with Dr. Harvey in July 2014; that only helped for a couple of days. Dr. Harvey recommended a lumbar fusion in August 2014 but Petitioner did not receive medical clearance and undergo that surgery until 2017. On April 5, 2017, Dr. Harvey performed an anterior lumbar discectomy and fusion at L2-3 and L3-4 with interbody instrumentation. However, that procedure did not relieve her pain; she felt weak, and could not carry anything. She continued to see Dr. Harvey, who also treated and attempted surgery for an unrelated neck condition. That surgery had to be terminated because Petitioner's heart stopped. Thereafter, Petitioner was instructed to avoid all future elective surgeries, and she has not had any significant treatment or further procedures to her back.

Petitioner has not worked anywhere since her 1999 accident, but she wishes to work and has contacted employers. She acknowledged she has not documented her employer contacts.

Petitioner testified that her spinal cord stimulator does not work. Currently, she takes Norco twice a day, to ease the pain. In 2009, she had been taking 4 Vicodin's and two Soma muscle relaxers per day. While she is under the effects of Norco, Petitioner can only stand for up to 20 minutes without pain, and cannot walk or move around much. When she shops at Walmart,

she leans on her cart. She can only walk up to two blocks before she gets pain in her back shooting into her legs. However, there is no limit on how long she can sit; maybe an hour. Now, she is able to do dishes but needs to take breaks. She cannot do laundry or stand at the stove long enough to cook. Friends help her now.

Petitioner doesn't drive much; most of her driving is done locally, around town. Once, while driving to Chicago, she developed stabbing pain in her back down her legs, which cramped up. She couldn't feel anything. Petitioner doesn't do much with her grandkids. At night, she tosses and turns. Petitioner acknowledged that in 2009, her pain reached 10/10 when her stimulator was turned off. She admitted that in 2009, she had difficulty sitting for a long time, and trouble sleeping. Her ability to shop now is impacted by her condition, as it was back in 2009. Though she has help from her daughter now, she also received such help in 2009.

Dr. Sokolowski's Testimony:

At the request of Petitioner's counsel, Dr. Sokolowski examined Petitioner on October 8, 2019. At his June 15, 2020 evidence deposition, Dr. Sokolowski testified that Petitioner's current diagnosis was lumbar pain and ongoing lumbar radiculopathy. At his 2019 exam, Dr. Sokolowski found Petitioner had no lower extremity weakness and walked with a normal gait.

Petitioner's 2010 CT revealed spondylolysis at L2 and pars fractures at L2-L3. Those findings were the direct result of the "wide" L2-3 laminectomy which she underwent in 2002. Those fractures resulted in her instability at L2-3, and necessitated the two-level fusion she underwent in 2017. Following that procedure, Petitioner had the same lumbar pain and radiculopathy. Dr. Sokolowski testified that when he examined Petitioner in 2019, she had the same conditions of persistent, chronic low back pain and right leg radiculopathy as she had since 2009. He did not find that her lumbar pain and right leg pain had increased; rather, he found that they had "persisted." He testified, "so in terms of her pain complaints, they are about the same." While Petitioner reported her right leg would intermittently give out in 2007, she voiced no such complaint to Dr. Sokolowski in 2019. Dr. Sokolowski testified that the amount of Hydrocodone in the Norco which Petitioner was taking when he examined her in 2019, was consistent with the Hydrocodone dosage in the Vicodin she had been taking in 2009.

Dr. Sokolowski suggested that ideally, Petitioner would benefit from redoing her 2017 fusion surgery; however, she has been recommended to avoid surgeries. Dr. Sokolowski ordered an FCE in order to objectively ascertain her current level of function. He found that her 2019 FCE, which showed her able to work sedentary duty, indicated that her function has declined, when compared to her 2007 FCE, in which she was found to be able to work light duty. The 2019 FCE recommended Petitioner avoid kneeling, crawling, squatting and repetitive/sustained bending.

Although Dr. Sokolowski testified that Petitioner's function had declined, he acknowledged that based upon her 2019 FCE data, another qualified therapist could reasonably find Petitioner able to work at a light duty level. During Petitioner's 2019 FCE, the therapist found Petitioner's abilities fell into the light physical demand level in five f\of the six material handling tasks completed during the evaluation.

Conclusions of Law:

The purpose of a proceeding under section 19(h) is to determine whether a claimant's disability has, "recurred, increased, diminished or ended" since the time of the original decision by the Commission. To warrant a modification of the award, the change in petitioner's condition must be material. *Hardin Sign Co. v. Industrial Comm'n*, 154 Ill. App. 3d 386 (1987). *Gay v. Industrial Comm'n,* 178 Ill. App 3d 129, 132 (1989); *Motor Wheel Corp. v. Industrial Comm'n*, 75 Ill. 2d 230, 236 (1979). The original award is not to be brought into question, for it must be considered final. *Zimmerly Construction Co. v. Industrial Comm'n,* 50 Ill. 2d 343 (1972).

The Commission finds that while Petitioner has undergone substantial treatment since the Commission's 2011 award, and that her condition has changed, she has not proved a material increase in her disability. Her testimony concerning her current physical limitations is nearly identical to her 2009 testimony. Dr. Sokolowski's testimony also indicates Petitioner's disability has not materially increased. He testified that when he examined Petitioner in 2019, she had the same conditions of persistent, chronic low back pain and right leg radiculopathy as she had in 2011. He found her ability to stand and walk in 2019 to be roughly comparable to her ability in 2007. He did not find that her lumbar pain and right leg pain had increased in 2019; rather, he found that they had "persisted." He testified, "so in terms of her pain complaints, they are about the same." Finally, the Commission finds Petitioner's 2007 and 2019 FCE results to be similar.

Based upon the above factors and the record as a whole, the Commission concludes that Petitioner has not proved a material increase in her disability pursuant to §19(h).

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's §19(h) Petition in this case is denied.

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

December 5, 2022

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

MP/mcp
r-6-15-22
068

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	99WC042393
Case Name	Anna Smeltz v. Marriott International Inc
Consolidated Cases	98WC059701;
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	22IWCC0461
Number of Pages of Decision	7
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Peter Bobber
Respondent Attorney	Steven Jacobson

DATE FILED: 12/5/2022

/s/Marc Parker, Commissioner

Signature

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

Anna Smeltz,

Petitioner,

vs. No. 99 WC 042393

Marriott International,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §19(h) and §8(a)

This matter comes before the Commission on Petitioner's §19(h)/8(a) Petition, seeking additional permanent disability benefits due to a material increase in her disability since the Commission's June 7, 2011 decision. In that decision, (which was consolidated with the Commission's decision in Petitioner's companion claim number 98 WC 59701), the Commission affirmed and adopted the Arbitrator's award to Petitioner permanent partial disability of 20% person as a whole under §8(d)2 of the Act for the 98 WC 59701 claim, and an additional 40% person as a whole under §8(d)2 for claim 99 WC 42393. On September 7, 2011, Petitioner filed a timely Petition for Review of both claims under §19(h) and §8(a) of the Act. A hearing on that Petition was held before Commissioner Parker on June 15, 2022.[1] Petitioner, as she did in the original hearing, seeks odd-lot permanent-total benefits for both claims, claiming her disability has subsequently increased. The Commission has reviewed and considered all testimony and exhibits offered at the June 15, 2022 hearing, and issues separate decisions for Petitioner's two claims.

[1] At that hearing, Petitioner's counsel agreed the Petition was for §19(h) benefits only, not §8(a) benefits.

Findings of Fact:

Petitioner, a housekeeper employed by Respondent, injured her low back on July 9, 1998 (claim # 98 WC 59701) when she bent down to make a bed and felt back pain. The pain progressed to a stabbing sensation in her lower back and down her leg, causing her to fall to the floor. She treated with Dr. Levy in July 1998, and with Dr. Slack in November 1998. Dr. Slack noted Petitioner had bulging or protruding discs at L2-L5, and recommended conservative care and a functional capacity evaluation (FCE). The February 11, 1999 FCE found Petitioner able to frequently lift 13 pounds, with a maximum of 18 pounds. Dr. Slack suggested Petitioner return to work pursuant to the FCE guidelines, noting that her restrictions would be permanent. Petitioner returned to work as a housekeeper in July 1999.

On July 20, 1999 (claim # 99 WC 42393), Petitioner developed the same shooting pain in her back while bending and lifting a king sized mattress, and again fell to the floor. She has not worked since. She treated with Dr. Slack and Dr. Schwartz, and received injections to her back from Dr. Carobene. A May 1, 2000 MRI revealed herniated discs at L2-3, L3-4, L4-5 and L5-S1. On March 27, 2001, Dr. Schlueter performed an L5-S1 diskectomy, which helped Petitioner's right leg paresthesias, but not her low back pain. After an October 23, 2001 MRI revealed degenerative joint disease and herniations, most pronounced at L2-3, Dr. Schlueter referred Petitioner to Dr. Earman, who on April 3, 2002 performed an L2-3 laminectomy and L3 nerve root decompression.

Following the April 2, 2002 surgery, Petitioner's symptoms continued. She underwent four injections at the UIC Pain Center in 2003 and 2004. In January 2007, Dr. Slavin implanted a spinal cord stimulator; however, that provided little pain relief. In June 2007, Dr. Slack re-examined Petitioner and found her back condition to be permanent. He suggested an FCE, which on July 26, 2007, indicated Petitioner was able to work at a light physical demand level, carrying 10 pounds frequently and 20 pounds occasionally. The FCE noted Petitioner's right leg, "gave out" intermittently, and reported a decreased tolerance for repetitive stooping, twisting and prolonged walking. Dr. Slack found Petitioner to have permanent light duty restrictions, which prevented her from returning to her prior occupation as a housekeeper.

July 20, 2009 Hearing:

At the July 20, 2009 hearing, Petitioner testified that as a result of her injuries, her low back has not been the same, and because of the pain in her back and right leg, she can no longer perform activities which she used to do such as dancing, playing volleyball or bowling. She could not bend or twist like she used to, and her ability to clean, play with her grandkids, and sitting were all impacted. Petitioner testified she had trouble going up and down stairs, and carrying a gallon of milk. In 2009, her pain prevented her from dusting, vacuuming, and standing to shop or do dishes for longer than 15 minutes. Petitioner did not present job logs at the 2009 hearing.

In a decision dated February 16, 2010, the Arbitrator found Petitioner's injuries from her July 9, 1998 accident (98 WC 59701) resulted in a 20% loss of the person as a whole, and the injuries from her July 20, 1999 accident (99 WC 42393) resulted in a 40% loss of person as a whole. The Arbitrator expressly found that Petitioner had not met the burden of proving she fell into the category of an odd-lot permanent-total. On June 7, 2011, the Commission issued its decision on review of the Arbitrator's decision, correcting a typographical error regarding the period of temporary total disability awarded, but otherwise affirming and adopting the Arbitrator's decision.

On September 7, 2011, Petitioner filed a timely Petition for Review under §19(h) and §8(a) of the Act. That Petition was continued a number of times, and eventually came up for hearing before Commissioner Parker on June 15, 2022.

June 15, 2022 Review Hearing:

At the June 15, 2022 §19(h)/8(a) hearing, Petitioner testified that since her July 2009 arbitration testimony, she has been continuously under the care of doctors for her low back. She has fallen multiple times due to her back and legs giving out from pain and cramps. She has made several visits to the ER due to back pain.

In August 2011, Petitioner saw Dr. Neckrysh to calibrate her spinal cord stimulator; she also took more Vicodin than prescribed because it wasn't helping her pain. Dr. Slavin informed Petitioner in June 2013 that no further surgery would be indicated for her back, and recommended she follow-up with pain management.

Petitioner underwent a low back injection with Dr. Harvey in July 2014; that only helped for a couple of days. Dr. Harvey recommended a lumbar fusion in August 2014 but Petitioner did not receive medical clearance and undergo that surgery until 2017. On April 5, 2017, Dr. Harvey performed an anterior lumbar discectomy and fusion at L2-3 and L3-4 with interbody instrumentation. However, that procedure did not relieve her pain; she felt weak, and could not carry anything. She continued to see Dr. Harvey, who also treated and attempted surgery for an unrelated neck condition. That surgery had to be terminated because Petitioner's heart stopped. Thereafter, Petitioner was instructed to avoid all future elective surgeries, and she has not had any significant treatment or further procedures to her back.

Petitioner has not worked anywhere since her 1999 accident, but she wishes to work and has contacted employers. She acknowledged she has not documented her employer contacts.

Petitioner testified that her spinal cord stimulator does not work. Currently, she takes Norco twice a day, to ease the pain. In 2009, she had been taking 4 Vicodin's and two Soma muscle relaxers per day. While she is under the effects of Norco, Petitioner can only stand for up to 20 minutes without pain, and cannot walk or move around much. When she shops at Walmart,

she leans on her cart. She can only walk up to two blocks before she gets pain in her back shooting into her legs. However, there is no limit on how long she can sit; maybe an hour. Now, she is able to do dishes but needs to take breaks. She cannot do laundry or stand at the stove long enough to cook. Friends help her now.

Petitioner doesn't drive much; most of her driving is done locally, around town. Once, while driving to Chicago, she developed stabbing pain in her back down her legs, which cramped up. She couldn't feel anything. Petitioner doesn't do much with her grandkids. At night, she tosses and turns. Petitioner acknowledged that in 2009, her pain reached 10/10 when her stimulator was turned off. She admitted that in 2009, she had difficulty sitting for a long time, and trouble sleeping. Her ability to shop now is impacted by her condition, as it was back in 2009. Though she has help from her daughter now, she also received such help in 2009.

Dr. Sokolowski's Testimony:

At the request of Petitioner's counsel, Dr. Sokolowski examined Petitioner on October 8, 2019. At his June 15, 2020 evidence deposition, Dr. Sokolowski testified that Petitioner's current diagnosis was lumbar pain and ongoing lumbar radiculopathy. At his 2019 exam, Dr. Sokolowski found Petitioner had no lower extremity weakness and walked with a normal gait.

Petitioner's 2010 CT revealed spondylolysis at L2 and pars fractures at L2-L3. Those findings were the direct result of the "wide" L2-3 laminectomy which she underwent in 2002. Those fractures resulted in her instability at L2-3, and necessitated the two-level fusion she underwent in 2017. Following that procedure, Petitioner had the same lumbar pain and radiculopathy. Dr. Sokolowski testified that when he examined Petitioner in 2019, she had the same conditions of persistent, chronic low back pain and right leg radiculopathy as she had since 2009. He did not find that her lumbar pain and right leg pain had increased; rather, he found that they had "persisted." He testified, "so in terms of her pain complaints, they are about the same." While Petitioner reported her right leg would intermittently give out in 2007, she voiced no such complaint to Dr. Sokolowski in 2019. Dr. Sokolowski testified that the amount of Hydrocodone in the Norco which Petitioner was taking when he examined her in 2019, was consistent with the Hydrocodone dosage in the Vicodin she had been taking in 2009.

Dr. Sokolowski suggested that ideally, Petitioner would benefit from redoing her 2017 fusion surgery; however, she has been recommended to avoid surgeries. Dr. Sokolowski ordered an FCE in order to objectively ascertain her current level of function. He found that her 2019 FCE, which showed her able to work sedentary duty, indicated that her function has declined, when compared to her 2007 FCE, in which she was found to be able to work light duty. The 2019 FCE recommended Petitioner avoid kneeling, crawling, squatting and repetitive/sustained bending.

Although Dr. Sokolowski testified that Petitioner's function had declined, he acknowledged that based upon her 2019 FCE data, another qualified therapist could reasonably find Petitioner able to work at a light duty level. During Petitioner's 2019 FCE, the therapist found Petitioner's abilities fell into the light physical demand level in five f\of the six material handling tasks completed during the evaluation.

Conclusions of Law:

The purpose of a proceeding under section 19(h) is to determine whether a claimant's disability has, "recurred, increased, diminished or ended" since the time of the original decision by the Commission. To warrant a modification of the award, the change in petitioner's condition must be material. *Hardin Sign Co. v. Industrial Comm'n*, 154 Ill. App. 3d 386 (1987). *Gay v. Industrial Comm'n,* 178 Ill. App 3d 129, 132 (1989); *Motor Wheel Corp. v. Industrial Comm'n*, 75 Ill. 2d 230, 236 (1979). The original award is not to be brought into question, for it must be considered final. *Zimmerly Construction Co. v. Industrial Comm'n,* 50 Ill. 2d 343 (1972).

The Commission finds that while Petitioner has undergone substantial treatment since the Commission's 2011 award, and that her condition has changed, she has not proved a material increase in her disability. Her testimony concerning her current physical limitations is nearly identical to her 2009 testimony. Dr. Sokolowski's testimony also indicates Petitioner's disability has not materially increased. He testified that when he examined Petitioner in 2019, she had the same conditions of persistent, chronic low back pain and right leg radiculopathy as she had in 2011. He found her ability to stand and walk in 2019 to be roughly comparable to her ability in 2007. He did not find that her lumbar pain and right leg pain had increased in 2019; rather, he found that they had "persisted." He testified, "so in terms of her pain complaints, they are about the same." Finally, the Commission finds Petitioner's 2007 and 2019 FCE results to be similar.

Based upon the above factors and the record as a whole, the Commission concludes that Petitioner has not proved a material increase in her disability pursuant to §19(h).

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's §19(h) Petition in this case is denied.

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

December 5, 2022

MP/mcp
r-6-15-22
068

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC026223
Case Name	Augusta Kemp v. Nottus, Inc & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0462
Number of Pages of Decision	19
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Steven Hanagan,
Respondent Attorney	Shannon Rieckenberg,

DATE FILED: 12/6/2022

/s/Christopher Harris, Commissioner

Signature

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

AUGUSTA KEMP,

Petitioner,

vs. NO: 15 WC 26223

NOTTUS, INC., and
ILLINOIS 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 Respondent, the Injured Workers' Benefit Fund (IWBF), herein and notice given to all parties, the Commission, after considering the issues of employment relationship, Respondent's non-insured status, accident, notice, benefit rates, causal connection, medical expenses, temporary total disability (TTD), permanent partial disability (PPD), and whether Petitioner exceeded her choice of two physicians under the Act, 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 3, 2022 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.

IT IS FURTHER ORDERED BY THE COMMISSION that the Illinois State Treasurer, as *ex-officio* 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 Section 4(d) of this Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner 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.

CAH/tdm
O: 12/1/22
052
December 6, 2022

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC026223
Case Name	KEMP, AUGUSTA v. NOTTUS, INC AND ILLINOIS STATE TREASURER AS EX OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Steven Hanagan
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 3/3/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 1, 2022 0.67%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

Augusta Kemp
Employee/Petitioner

v.

Nottus, Inc. and Illinois State Treasurer, as ex officio Custodian of the Injured Workers Benefit Fund.
Employer/Respondent

Case # **15** WC **026223**

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 **Jeanne L. AuBuchon** Arbitrator of the Commission, in the city of **Herrin**, on **October 19, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **6/3/2015**, 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 $**N/A**; the average weekly wage was $**616.21**.

On the date of accident, Petitioner was **39** 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 ***$0*** for TTD***, $0*** *for TTD****, $0*** for maintenance***,*** and ***$0*** for other benefits paid.

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

Respondent was uninsured on the date of accident.

Petitioner did not exceed her choice of doctors under the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 11, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule and limited to the period from June 3, 2015 through July 29, 2016. Respondent shall be given a credit for all 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 hold Petitioner harmless for any claims by insurance carriers for reimbursement due. Respondent shall satisfy the existing Lien by the Illinois Department of Health and Family Services, as identified in Petitioner's Exhibit 12.

Respondent shall pay temporary total disability benefits of $**410.81**/week for the periods from 6/4/2015 through 6/29/2016 representing 56-0/7ths weeks, pursuant to Section 8(b) of the Act.

Respondent shall pay Petitioner the sum of $**369.73**/week for a period of **62.5** weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused **12.5%** loss of use of the person as a whole.

The Illinois State Treasurer, 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 Section 4(d) of this Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and

owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act.
Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer 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.

Jeanne L. AuBuchon **MARCH 3, 2022**
Signature of Arbitrator

ICArbDec p.2

PROCEDURAL HISTORY

This matter proceeded to trial on October 19, 2021, pursuant to Section 19(b) of the Illinois Workers' Compensation Act (the Act). The issues in dispute are: 1) whether the Petitioner and Respondent Nottus were operating under the Illinois Workers' Compensation Act on June 3, 2015, and their relationship was one of employee and employer; 2) whether the Petitioner sustained accidental injuries that arose out of and in the course of employment; 3) timely notice of the accident; 4) the causal connection between the accident and the Petitioner's right shoulder condition; 5) the Petitioner's average weekly wage; 6) liability for medical bills; 7) entitlement to TTD benefits from June 3, 2015, through June 29, 2016; 8) the nature and extent of the Petitioner's injury; 9) Respondent Nottus's non-insured status; and 10) whether the Petitioner's choice of doctors exceeded statutory limits.

The Petitioner filed an Amended Application on September 9, 2015, to add the Injured Workers' Benefit Fund as a Respondent. (AX2) This case was set for hearing on October 19, 2021, notice of which was sent to Respondent Nottus via its CEO, Jeff Sutton, and received by certified mail on August 2, 2021. (AX5) Neither Mr. Sutton nor any other representative of Respondent Nottus appeared. (T. 10) Respondent Nottus is hereby found to be in default.

Roguens Loriston, a proof of coverage analyst with NCCI Holdings, the parent corporation of the National Council on Compensation Insurance, prepared a certification stating that, based on research, there was no proof that Respondent Nottus had workers' compensation insurance on June 3, 2015. (PX4)

The Petitioner and the State of Illinois stipulated that the date the Petitioner achieved maximum medical improvement was June 29, 2016, and that any medical expenses incurred after that date would be the responsibility of the Petitioner. (T. 6) The Petitioner and the State also

agreed that any medical bills ordered to be paid by the fund would be paid directly to the providers, provided that the Petitioner submits the proper forms and codes to enable the state to pay. (T. 15, 17-18)

FINDINGS OF FACT

The Petitioner testified that in June 2014, she was hired by Respondent Nottus, an ambulance service, in Johnston City, Illinois, to work as an emergency medical technician. (T. 20-21) Respondent Nottus furnished the ambulance, tools of the trade and uniforms. (T. 21, 52). Respondent Nottus paid the Petitioner by the hour via a bank account in the name of Respondent Nottus, withheld taxes from the Petitioner's' pay, assigned work duties to the Petitioner and set the Petitioner's work schedule. (T. 21-22, 53) The Petitioner testified that in getting hired by Respondent Nottus, she completed an application, was interviewed and was told verbally that she was hired. (T. 45) She picked up her paychecks at Respondent Nottus's Johnston City location. (T. 47) From late June 2014 through December 31, 2014, the Petitioner earned $16,611.34. (T. 26-27, PX2) From January 1, 2015, through May 24, 2015, the Petitioner earned $14,607.05. (Id.) The Petitioner testified that she worked mandatory overtime and explained that if her shift ended during an involvement with a patient, she had to finish that involvement or until relief came – otherwise, she would lose her EMT license. (T. 28, 51) She continues to work as an EMT for Abbott EMS. (T. 42-43, 54)

On June 3, 2015, the Petitioner, who was 39 years old at the time, was loading a 300-pound patient into the back of an ambulance at Carbondale Memorial Hospital. (AX1, T. 23-24) When she lifted the patient on the gurney, she heard a pop in her right shoulder and felt excruciating pain. (Id.) The Petitioner filled out an injury report that day and gave it to her supervisor. (T. 25, PX1) She testified that prior to the accident, she had no problems with her right shoulder. (T. 40)

Also on that day, the Petitioner went to the emergency room at Southern Illinois Healthcare at Herrin Hospital, where she saw Physician Assistant Micah Oakley, underwent an X-ray, was diagnosed with shoulder pain, was given a non-steroidal anti-inflammatory injection and was prescribed medications. (T. 31, PX3)

The Petitioner continued her treatment with PA Oakley at Logan Primary Care Services, which is division of Southern Illinois Healthcare. (T. 31-32, PX13) A nurse's note from Logan Primary Care Services on June 4, 2015, stated that the Petitioner called and said she saw PA Oakley in the emergency room and was to follow up with PA Oakley. (PX13) PA Oakley responded to the note approving an appointment on June 8, 2015. (Id.) On that date, the Petitioner gave a history of her injury and said she had no prior history of shoulder pain. (Id.) A physical examination revealed global tenderness to the right shoulder, limited range of motion and positive apprehension and impingement tests. (Id.) She was diagnosed with "pain in unspecified shoulder." (Id.) PA Oakley ordered an MRI and wrote a letter keeping the Petitioner off work from June 8, 2015, until June 22, 2015. (Id.) During the Petitioner's care at Logan Primary Care Services, PA Oakley's treatment was supervised by Dr. Jeffrey Parks, a family medicine practitioner. (Id.)

The Petitioner underwent an MRI on June 18, 2015, at Herrin Hospital that showed: 1) findings consistent with a tear of the glenoid labrum with adjacent paralabral cyst formation; 2) rotator cuff tendinosis most pronounced along the supraspinatus with bursal surface fraying and tiny partial-thickness/intrasubstance tear involving the supraspinatus without a full-thickness tear or tendon retraction; 3) a small amount of fluid in the subacromial/subdeltoid bursa; 4) hypertrophic degenerative changes of the acromioclavicular joint with lateral downsloping of the acromion resulting in mild distortion of the underlying supraspinatus; and 5) mild degenerative

changes of the glenohumeral joint with rounded contour of the posterior glenoid, which may have represented mild congenital glenoid hypoplasia or sequela of old trauma. (PX3)

On June 19, 2015, PA Oakley read the MRI and referred the Petitioner to physical therapy. (PX13) The Petitioner underwent physical therapy at Rehab Unlimited from June 9, 2015, through June 19, 2015, for five visits. (PX3) On June 22, 2015, the Petitioner reported to PA Oakley that her pain did not improve with physical therapy. (PX13) A physical examination revealed the same results as on June 8, 2015. (Id.) PA Oakley continued his off-work order until the Petitioner's release by the orthopedic surgeon. (Id.)

The Petitioner stated that Logan Primary Care Services sent her to Dr. Treg Brown, an orthopedic surgeon at the Orthopaedic Institute of Southern Illinois. (T. 32) PA Oakley's records reflect that he referred the Petitioner to Dr. Brown. (PX13)

The Petitioner saw Dr. Brown on July 9, 2015, described her injury and stated that the physical therapy exacerbated her symptoms. (PX4) Dr. Brown read the MRI but said he was unable to fully evaluate the Petitioner's labrum because the study was a non-arthrogram MRI. (Id.) He did agree with the radiologist that there appeared to be some level of tear of the inferior labrum that appeared to be quite small. (Id.) He noted changes to the supraspinatus consistent with a small intrasubstance tear. (Id.) Although the radiologist did not note any pathology of the long head of the biceps, Dr. Brown said there may have been some changes of the biceps in the intertubercular groove. (Id.)

Dr. Brown believed the Petitioner had a marked biceps tendinosis that he felt was her major problem. (Id.) He did not feel the rotator cuff was symptomatic at that time and that the inferior labral tear was likely going to heal well with further time and therapy. (Id.) He recommended an injection of the bicipital sheath, but the Petitioner was not interested because of a fear of needles.

(Id.) He placed the Petitioner on light duty and continued her physical therapy at Rehab Unlimited, where the Petitioner attended underwent therapy from July 15, 2015, through August 19, 2015, for a total of 13 visits. (PX3, PX10) On August 13, 2015, the Petitioner reported to Dr. Brown that she had not improved with physical therapy or time, that she was ready to have surgery and was tired of waiting on conservative measures to improve her. (PX4) Dr. Brown wrote that the Petitioner's physical examination revealed tenderness diffusely about the shoulder, and the Petitioner had pain with virtually any provocative maneuver, which made it exceedingly difficult to determine the true source of her pain and reinforced Dr. Brown's desire to perform a diagnostic injection. (Id.) He said the Petitioner was adamant that she did not want to attempt an injection – not for fear of needles but because she did not believe the procedure was indicated. (Id.) Dr. Brown continued light duty restrictions and physical therapy orders on August 13, 2015. (PX4) The Petitioner testified that she turned down the injection because she "knew there was something going on." (T. 59-60) She wanted her shoulder "fixed" and felt that she was getting the run around – that Dr. Brown wasn't listening to her. (T. 62-63)

Due to the Petitioner's dissatisfaction with Dr. Brown's treatment, she sought treatment from Dr. Angela Freehill, an orthopedic surgeon at the Orthopedic Center of Southern Illinois. (T. 32-33) She saw Dr. Freehill on August 20, 2015, and complained of sharp, dull, throbbing, aching, stabbing and burning constant pain with popping, grinding, weakness, locking and catching. (PX5) Dr. Freehill reviewed the X-rays and MRI and diagnosed the Petitioner with right shoulder primary rotator curr acute tendonitis and secondary adhesive capsulitis. (Id.) She recommended injection therapy and gave the Petitioner a steroid injection in her shoulder that day. (Id.) Dr. Freehill prescribed medication and ordered the Petitioner off work. (Id.) She continued the Petitioner's physical therapy at Rehab Unlimited, which occurred from August 21, 2015, through October 21,

2015, for 27 visits. (PX10) Dr. Freehill performed another steroid injection on August 27, 2015. (PX5) The injections failed to provide relief, so on October 28, 2015, Dr. Freehill performed arthroscopic debridement of the anterior and posterior superior labrum and subacromial decompression and bursectomy. (Id.) She continued off-work orders throughout the Petitioner's treatment. (Id.) The Petitioner underwent another round of physical therapy from November 11, 2015, through January 5, 2016, for a total of 18 visits. (PX10)

The Petitioner testified that neither her pain nor range of motion improved after the surgery. (T. 34) At a follow-up visit on January 5, 2016, Dr. Freehill reviewed physical therapy records and reported that the Petitioner had significant deficits ongoing in range of motion as well as "self-limiting behaviors" and "inconsistencies" in her reported pain in her physiologic response to her pain. (PX5) She recommended another cortisone injection, manipulation under anesthesia and physical therapy, but the Petitioner did not want to proceed. (Id.) Dr. Freehill reported that the Petitioner and her husband were very frustrated and a little bit hostile. (Id.) Dr. Freehill said she saw no other indication for surgery, so she could not offer anything else. (Id.) She issued a work slip stating that the Petitioner's return to work was subject to a second opinion evaluation. (Id.)

Regarding Dr. Freehill's note about inconsistent pain responses during therapy, the Petitioner testified that her pain varied – at times having "somewhat" pain and other times, especially after physical therapy, having a lot of pain. (T. 66)

On February 8, 2016, the Petitioner saw Dr. Matthew Matava, an orthopedic surgeon at Washington University. (PX6) He examined the Petitioner and found impingement signs. (Id. He ordered an MRI and ordered the Petitioner off work until further notice. (Id.) The MRI was performed on February 15, 2016, and showed an anteroinferior right shoulder labral tear and mild chondrosis involving the anterior-inferior glenoid. (PX9) On the same day, Dr. Matava reviewed

the MRI and found evidence of attenuation of the long head of the biceps tendon. (PX6) He noted that Dr. Freehill's operative note indicated that she did not specifically treat the long head of the biceps tendon. (Id.) He gave the Petitioner a steroid injection and prescribed physical therapy, which the Petitioner attended from February 17, 2016, until March 3, 2016, for a total of five visits. (Id.) On April 1, 2016, Dr. Matava performed an anterior/inferior labral repair and debridement of the long-head biceps tendon. (Id.) The Petitioner underwent another round of physical therapy from April 5, 2016, through June 28, 2016, for a total of 31 visits. (PX10)

At a follow-up visit on May 23, 2016, Dr. Matava reported that the Petitioner had full and symmetric range of motion but mild tenderness to palpation over the right bicipital fossa. (Id.) Dr. Matava anticipated releasing the Petitioner to full duty at a return visit in six weeks, after having completed physical therapy. (Id.) On June 29, 2016, Dr. Matava noted that the Petitioner was very happy with her progress and stated that she was doing well. (PX7) No follow-up was scheduled, and the Petitioner was to return on an as-needed basis. (Id.) As noted above, the parties stipulated that the Petitioner reached maximum medical improvement on June 29, 2016.

It appears that PA Oakley may have referred the Petitioner to Washington University, as he was copied in on Dr. Matava's reports, and Dr. Matava wrote a letter to PA Oakley thanking him for allowing him to participate in the Petitioner's treatment. (PX6, PX7)

In his final note, Dr. Matava stated that the Petitioner apparently had not yet decided regarding return to work. (PX7) The Petitioner explained that she was deciding whether to go back to emergency medical services, do something different or go to school. (T. 67)

The Petitioner testified that she "did okay" after the surgery but was still having weakness in her right shoulder with lifting and reaching overhead and occasional pain with heavy lifting or lifting overhead. (T. 38, 41-42) She takes over-the-counter medicine and uses ice and heat to

relieve the pain and has limited the amount of overtime at work. (T. 43) She said that she was working full duty with no restrictions. (T. 69)

The Petitioner testified that while off work for her injury, she was not paid TTD, and no light duty work was available. (T. 39) She explained that she turned the work slip in to her supervisor, who told here there was no light duty available. (T. 60-61) She also stated that she provided Respondent Nottus with medical bills, but no one with Respondent Nottus has paid any of those. (T. 69)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below.

ISSUES (A) & (B): Was Respondent operating under and subject to the Illinois Workers' Compensation Act; Was there an employee-employer relationship?

The Arbitrator finds the Petitioner provided unrebutted testimony of the relationship between the Respondent Nottus and herself and in doing so established the Respondent Nottus was subject to the Act and an employee-employer relationship existed. The Petitioner testified as to how she was hired by the Respondent Nottus, that the Respondent Nottus supplied the equipment and materials necessary to perform her work duties, and that the Respondent Nottus directed her on what runs to make.

The Arbitrator finds the Respondent Nottus retained the right to control the manner in which the work was performed, retained the right to discharge, owned the equipment necessary to the work, and the relationship of the work performed conformed to the employer's purpose. The Arbitrator finds an employee-employer relationship and finds the Respondent Nottus was subject to the Workers' Compensation Act.

ISSUES (C), (D), and (E): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? What was the date of the accident? Was timely notice of the accident given to Respondent?

An injury is an accident when it is traceable to a definite time, place and cause and occurs in the course of employment, unexpectedly, and without affirmative act or design of the employee. *Matthiessen and Haegler Zinc Co. v. Industrial Commission,* 284 Ill. 378, 120 N.E.2d 249 (1918).

The Petitioner provided unrebutted testimony that on June 3, 2015, she was injured while lifting a patient on a gurney during a call, and she consistently reported this to her medical providers. She filled out an incident report that day and gave it to her supervisor. The Arbitrator finds the Petitioner sustained an accident on June 4, 2015, that arose out of and in the course of her employment by the Respondent Nottus, and timely notice of the accident was given to the Respondent Nottus.

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

Petitioner's unrebutted testimony and consistent reports to her medical providers showed that she suffered pain in her right shoulder after the accident. The medical records showed that the treatment provided was for injuries that resulted from the accident. The Arbitrator finds the Petitioner's current condition of ill-being is causally related to the injury.

ISSUES (G): What were Petitioner's earnings?

Petitioner provided unrebutted testimony and documentation of her earnings and that overtime was mandatory. From January 1, 2015, through her last pay date on May 29, 2015, the Petitioner was paid $13,556.64 for hourly wages, overtime and holiday pay for 11 two-week pay periods for which she was paid during that time. Therefore, the Arbitrator finds that the that the Petitioner's average weekly wage was $616.21.

ISSUE (O): Did the Petitioner exceed the number of healthcare providers as allowed in Section 8(a) of the Act?

The Act entitles Petitioners to recovery for reasonable and necessary medical services for emergency care, services from any first choice of physician and referrals therefrom, and services from any second choice of physician and referrals therefrom. 820 ILCS 305/8(a).

The Petitioner's treatment by PA Oakley at Logan Primary Care Services and any referrals therefrom, including treatment by Dr. Brown, were a continuation of the Petitioner's emergency room treatment and do not count towards the Petitioner's choice of doctors. At the emergency room, PA Oakley instructed the Petitioner to follow up, which she did to continue her treatment. Furthermore, Logan Primary Care Services is a division of Southern Illinois Healthcare. Dr. Freehill was the Petitioner's first choice of doctors. Dr. Matava would have been the second. However, there is strong evidence, as noted above, that the Petitioner was referred to Dr. Matava by PA Oakley.

The Arbitrator finds that the Petitioner did not exceed the number of healthcare providers as allowed in Section 8(a) of the Act.

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

Based on the above findings regarding causal connection and the medical records showing the providers' rationale for the services rendered, the Arbitrator finds that the medical expenses incurred through June 29, 2016, were reasonable and necessary in the care and treatment of the Petitioner's injuries. The Arbitrator finds that Petitioner is entitled to medical benefits itemized in Petitioner's Exhibit 11, not including charges for treatment after June 29, 2016. The Arbitrator finds the Respondent Nottus has not paid all charges relating to the Petitioner's reasonable and

necessary medical care. As a result, the Respondent Nottus shall pay these charges per to the medical fee schedule as provided in Section 8(a) and Section 8.2 of the Act. These charges shall be paid directly to the providers, provided that the Petitioner submits the proper forms and codes to enable the state to pay. The Respondents shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits, and the Respondents shall hold the Petitioner harmless from claims by any providers of the services for which the Respondents are receiving this credit, as provided in Section 8(j) of the Act.

ISSUE (K): Is Petitioner entitled to receive TTD benefits?

The medical evidence presented reflects that the Petitioner was taken off work or allowed to work light duty that was not accommodated by the Respondent Nottus from the date of the accident through June 29, 2016. The Arbitrator finds the Petitioner is entitled to 56 and 1/7ths weeks of temporary total disability benefits for the period from June 3, 2015, through June 29, 2016.

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

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (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. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** No AMA impairment ratings were produced, therefore the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner still works as an EMT and is subject to the same physical demands as before the accident. Therefore, the Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 39 years old at the time of the injury. She has many work years left during which time she will need to deal with the residual effects of the injury. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** The Petitioner testified that because of the injury, she is unable to work the same amount of overtime as before the accident. Therefore, the Arbitrator places some weight on this factor.

(v) **Disability.** The Petitioner testified that she still experiences occasional pain and weakness that she treats with over-the-counter medication, ice and heat. The Arbitrator puts significant weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 12.5 percent of the body as a whole as it pertains to the Petitioner's right shoulder.

ISSUE (O): Insurance Coverage

Petitioner filed an Amended Application on September 9, 2015, to add the Injured Workers' Benefit Fund as a Respondent. The Petitioner presented a certification from NCCI Holdings, the parent corporation of the National Council on Compensation Insurance, that there was no evidence that Respondent Nottus had workers' compensation insurance on June 3, 2015.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC033568
Case Name	Byron Rodgers v. City of Bloomington
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0463
Number of Pages of Decision	9
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Matthew Kennedy
Respondent Attorney	R. Mark Cosimini

DATE FILED: 12/6/2022

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

☐ 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

BYRON RODGERS,

Petitioner,

vs. NO: 19 WC 33568

CITY OF BLOOMINGTON,

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 and permanent partial disability (PPD) 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 Commission affirms the Arbitrator's Decision finding that Petitioner failed to prove that he sustained an accident arising out of and in the course of his employment by Respondent. Petitioner's claim for benefits under the Act is hereby denied. As such, Respondent is not entitled to a credit under Section 8(j) of the Act and the Commission strikes the award from the Arbitrator's Decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 1, 2022 is hereby modified as stated above and otherwise affirmed and adopted.

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. 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 the Circuit Court.

December 6, 2022

CAH/pm
O: 12/1/22
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC033568
Case Name	RODGERS, BYRON v. CITY OF BLOOMINGTON
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Matthew Kennedy
Respondent Attorney	R. Mark Cosimini

DATE FILED: 3/1/2022

THE INTERESST RATE FOR THE WEEK OF MARCH 1, 2022 0.67%

/s/Adam Hinrichs, Arbitrator

Signature

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

Byron Rodgers
Employee/Petitioner

v.

City of Bloomington
Employer/Respondent

Case # **19** WC **033568**

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 **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Bloomington**, on **January 28, 2022**. 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. [ ] 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 **January 28, 2019**, 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 accident.

In the year preceding the injury, Petitioner earned $**60,027.95**; the average weekly wage was $**1,177.02**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **zero** dependent children.

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

Respondent is entitled to a credit of $**9,385.24** under Section 8(j) of the Act.

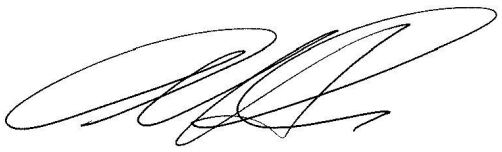
ORDER

Petitioner has failed to prove that he sustained an accident arising out of and in the course of his employment by the Respondent.

Petitioner's claim for benefits under the Act 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

FINDINGS OF FACT

Petitioner testified that on January 28, 2019, he conducted a brush and trash pick-up, and was called back in because it was supposed to snow. He then set up the trucks to prepare for plowing and salting. Petitioner testified that, as long as you knew what you were doing, the amount of physical exertion preparing the trucks for plowing and salting was not bad.

Petitioner further testified he was getting his truck together, checked the salt, and while stepping out of his truck, he felt a strain. He did not think anything of it and he thought it would go away. Petitioner finished his regular shift that day.

Petitioner testified that when he got home, he noticed it was swelling up. He called in the next day because he was not feeling right. He testified that when he tried to go back to work, it became very painful. He told his supervisor, and he was instructed to go to the doctor.

Petitioner first reported to Prompt Care January 30, 2019. Petitioner testified he told the nurse he was sitting in his truck and sneezed, and then when he stepped down from his truck, he felt a strain.

The treatment note from OSF Fort Jesse Prompt Care indicates Petitioner having a mass and pressure in his left groin with an onset two days earlier. The note reports that Petitioner first noticed the condition after sneezing multiple times in a row. The swelling was minimal the day before the office visit but was worse the day of the office visit. Petitioner described a pressure sensation in his groin, but denied any pain. Petitioner also indicated he stands and lifts at work and felt those activities made the bulge and pressure worse. Nurse Amanda Wackt diagnosed Petitioner with a hernia. (Px 1, Rx 1)

On February 1, 2019, Petitioner was evaluated by Dr. Michael Young, a surgeon. Dr. Young noted Petitioner had complaints of left groin pain and a bulge. Dr. Young's note indicates Petitioner had swelling and pain for the previous week which started after an illness that resulted in excessive coughing and sneezing. The history also reports that Petitioner does a lot of climbing in and out of trucks as part of his job, and he also works out and does heavy lifting. The history further indicates most of Petitioner's pain occurred with prolonged standing and heavy lifting. (Px 3, Rx 2). Petitioner testified that there is a little bit of exertion required to get into and out of his truck. (TX 14)

Following his evaluation of the Petitioner, Dr. Young recommended surgery consisting of a left inguinal hernia repair with mesh. (Px 3, Rx 2)

The visit with Dr. Young February 1, 2019 was a Friday. The following Monday, February 4, 2019, Petitioner called Medcor to report an accident. Medcor is a work place injury and triage reporting entity.

The notes from Medcor reflect an incident date of January 28, 2019, and a call-in date of February 4, 2019. The history indicates that seven days earlier, Petitioner was stepping out of a dump truck and felt a groin strain. It indicates Petitioner was treated and diagnosed with a hernia and surgery was recommended. (Px 7, Rx 3)

On February 11, 2019, Dr. Young performed a surgery consisting of a left inguinal hernia repair with mesh. In the operative report, Dr. Young notes that Petitioner "had an episode of illness that resulted in excessive coughing and sneezing and then developed pain in the left groin and was seen in the office." (Px 5).

Petitioner's final visit with Dr. Young was March 5, 2019. The treatment note indicates Petitioner was not having any pain. On exam, the hernia was no longer present, and Petitioner was not complaining of any tenderness. Dr. Young indicated Petitioner could increase his activities as tolerated, and he discharged Petitioner from care. Dr. Young wrote a note indicating Petitioner could return to work performing his regular duties as of March 25, 2019.

Petitioner testified he was able to perform his regular job duties just as before the injury. He also testified if he has to lift something which is too heavy, he will ask a coworker for assistance. On cross exam, Petitioner acknowledged he would have obtained help from a coworker with lifting something heavy even before sustaining the hernia. Petitioner testified that he had a good recovery from this injury and subsequent surgery, but he sometimes experiences stiffness.

Petitioner's medical bills were paid by his group health insurance through the Respondent, though Petitioner does pay a deductible and co-payments as part of his group health plan.

CONCLUSIONS OF LAW

Issue (C): Did Petitioner sustain accidental injuries arising out of and in the course of his employment by Respondent? The Arbitrator finds as follows:

Petitioner testified that on January 28, 2019, he was stepping down from his dump truck and felt a strain. (TX 14) The Application for Adjustment of Claim also alleges that Petitioner was exiting a dump truck as the nature of his accident. Arb. Ex. 1.

In contrast to Petitioner's testimony, the history contained in the first medical note from two days after the alleged accident, January 30, 2019, indicates Petitioner's hernia symptoms began after sneezing multiple times in a row. The note also indicates that Petitioner's standing and lifting at work made the bulge and pressure worse. The information documented by Nurse Amanda Wackt at Prompt Care does not include a history of Petitioner feeling a strain when he stepped down from his truck.

The second medical history was provided to Dr. Michael Young on February 1, 2019. Dr. Young noted Petitioner's symptoms began after suffering from an illness which resulted in excessive coughing and sneezing. Dr. Young noted the symptoms had been present for a week. Dr. Young also noted Petitioner climbs in and out of trucks as part of his job, and works out and does heavy lifting. The history documented by Dr. Young does not indicate that Petitioner climbing in and out of trucks was an incident that either caused, aggravated, accelerated, or precipitated the hernia.

On February 4, 2019, after Dr. Young had recommended surgery, Petitioner reported an accident to Medcor, the Respondent's injury reporting service. Petitioner provided a history of feeling a groin strain when he was stepping out of his dump truck.

On February 11, 2019, in Petitioner's operative report, Dr. Young again documented the reported history of excessive coughing and sneezing as the cause of Petitioner's hernia.

The medical evidence is clear that the treatment for Petitioner's hernia was based upon Petitioner's sneezing and coughing. There is no mention of Petitioner sustaining a hernia or aggravating a hernia as a result of stepping down from a truck. All of the treatment provided to Petitioner indicates it was for a hernia caused by sneezing and coughing brought on by an illness, not as a consequence of his work duties.

Based on the foregoing, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that he sustained accidental injuries arising out of and in the course of his employment by Respondent. Given this finding, all other issues are rendered moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC001670
Case Name	Angela Owens Smith v. Waltonville Community Unit School District #1
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0464
Number of Pages of Decision	18
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Keith Short
Respondent Attorney	Juan Arias

DATE FILED: 12/6/2022

/s/Christopher Harris, Commissioner

Signature

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

ANGELA OWENS SMITH,

Petitioner,

vs. NO: 20 WC 1670

WALTONVILLE CUSD #1,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, accident date, notice, causal connection, 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. The Commission hereby remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 8, 2022 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 receive a credit for all amounts paid, if any, to or on behalf of the 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.

Under Section 19(f)(2) of the Act, no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. 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 the Circuit Court.

December 6, 2022

CAH/pm
O: 12/1/22
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC001670
Case Name	SMITH, ANGELA OWENS v. WALTONVILLE CUSD #1
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Keith Short
Respondent Attorney	Juan Arias

DATE FILED: 2/8/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 8, 2022 0.58%

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Angela Owens Smith
Employee/Petitioner

v.

Waltonville CUSD #1
Employer/Respondent

Case # **20** WC **001670**

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 **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **11/8/21**. 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, **9/30/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**36,025.60**; the average weekly wage was $**692.80**.

On the date of accident, Petitioner was **50** 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 $**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 that Petitioner's date of accident/manifestation date is 9/30/19.

Respondent shall pay the medical expenses outlined in Petitioner's Exhibit 3, as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits.

Respondent shall authorize and pay for prospective medical treatment recommended by Dr. Ahn, including, but not limited to, bilateral carpal tunnel releases and post-operative treatment until Petitioner reaches maximum medical improvement.

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.

FEBRUARY 8, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) **SS**
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ANGELA OWENS SMITH,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 20-WC-001670
	)	
WALTONVILLE CUSD #1,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on November 8, 2021 pursuant to Section 19(b) of the Act. On March 11, 2020, Petitioner filed an Amended Application for Adjustment of Claim alleging injuries to her bilateral hands as a result of repetitive trauma on August 1, 2019 while working for Respondent. The issues in dispute are accident, notice, causal connection, manifestation date, medical bills, and prospective medical care. All other issues have been stipulated.

TESTIMONY

Petitioner was 50 years old, married, with no dependent children at the time of accident. Petitioner was hired by Respondent in May 2016 as a district bookkeeper/treasure. Prior to 2016, Petitioner worked as a bookkeeper for an insurance company. When she was hired by Respondent her direct supervisor was Interim Superintendent Mr. Estes who worked in the same office as her. Petitioner also worked with a co-worker that handled attendance in a connecting office. Petitioner testified that Ellie Rush was the next Superintendent for one year, and Mr. Estes became the Interim Superintendent again. He was replaced by Superintendent Melanie Brink. Petitioner testified that Mike Denault is her current supervisor who is now the Superintendent of Schools.

Petitioner testified that her job duties included payroll, invoicing, preparing board packets and quarterly financials. She performed computer data entry twice per month for 55 employees, inputted time records and payroll amounts for each employee depending on whether the employee was salary or hourly. Once a month Petitioner inputted data for approximately ten substitute teachers. Petitioner inputted two to three invoices per month for the entire district which included typing the invoice number, amount, description, and issuing checks. Petitioner typed the school board minutes once per month and prepared board packets. She prepared

quarterly reports for federal and local taxes four times per year, and for each employee payroll period she prepared state and retirement payments. Petitioner worked 8:00 a.m. to 4:00 p.m. five days per week. She stated that 90% of her workday was spent on the computer or writing checks manually. Petitioner testified that when Dr. Brink became Superintendent, she began doing title grants and preparing expense reports and spreadsheets for five grants. She inputted all funds spent by the district for each grant.

Petitioner testified she did not have any issues with her hands prior to working for Respondent. She began developing tingling and numbness in her hands in 2018, worse on the right, and initially sought treatment with Dr. Ahn on 8/27/18. Petitioner stated she noticed her hands would fall asleep while driving, working, and sleeping. Dr. Ahn prescribed wrist splints which she wore for approximately one year; however, her symptoms worsened. Petitioner stated her husband was diagnosed with Stage 4 cancer and she cared for him until his death, which interrupted her ability to seek treatment for her hands. Petitioner stated her hand symptoms never resolved during that time.

Petitioner testified there was a significant turnover in administration, and she told Dr. Brink about her symptoms when Dr. Brink was hired in 2019. Petitioner told Dr. Brink about her symptoms a second time in 2019 when she took off work for a follow up appointment with Dr. Ahn. Petitioner underwent an EMG/NCS on 10/22/19 and returned to Dr. Ahn who recommended surgery. She last saw Dr. Ahn on 8/23/21 who continues to recommend bilateral carpal tunnel releases. Petitioner testified her hands fall asleep more frequently. She experiences pain, tingling, and a shocking sensation through her hands. She continues to work full duty for Respondent.

Petitioner denied telling Dr. Ahn on 8/27/18 that her symptoms started one to two years prior. She stated she was not having issues with her hands prior to working for Respondent. She testified that her hands were getting pretty numb when she saw Dr. Ahn in August 2018, with an onset of approximately three months prior.

Petitioner reported her injuries on the online reporting system Company Nurse. When asked if she reported the claim on 10/21/19, she stated, “that sounds about right”. She was not sure if that was the date she reported her symptoms to Dr. Brink or if she reported them to her on the date she saw Dr. Ahn on 9/30/19. She stated she had to request time off work and that is when she would have informed Dr. Brink about her condition. Petitioner underwent the EMG/NCS the day after she filed out the accident report.

Petitioner testified she does not smoke cigarettes, has not been pregnant or had substantial weight gain or loss in the past five years, is not diabetic, and has not had any cervical spine injuries, systemic arthritis, thyroid, or blood pressure issues. Petitioner testified she does not have any hobbies that involve the use of vibratory tools or repetitive or frequent use of her hands.

Petitioner stated she is not typing every second of her work shift, but she is on the computer all day. The only time she is not on the computer is when she writes checks, answers the phone, or assists students. Petitioner stated she has not seen the ergonomic video recording of

herself typing. She testified that the ergonomic keystroke analysis was performed after they switched to a new computer system that requires more mouse clicking than keystrokes. The old computer program was a data entry program and the new system requires clicking options that are already in the system. She estimated the number of keystrokes she performed using the older program was double or triple the amount she performs with the new system.

Dr. Melanie Brink testified on behalf of Respondent. Dr. Brink is the Superintendent at Freeburg, District 70. She was the Superintendent for Respondent for two years beginning in the Fall of 2019. Dr. Brink could see Petitioner's desk from her office, and they were situated close enough to hear each other during the day. Dr. Brink testified that she added tax levy and grant work to Petitioner's job duties. Dr. Brink stated Petitioner's job involved keeping track of the district's budget and finances and taking minutes at board meetings. Dr. Brink prepared the board meeting agenda and Petitioner made copies and delivered the meeting packets. Petitioner typed the board minutes which were typically a couple of pages. Dr. Brink testified that all of Petitioner's job duties were on a computer and she could not guess what amount of time Petitioner spent typing or using her mouse. Dr. Brink stated Petitioner's job did not involve continuous typing as she looks at data and spreadsheets while performing financials. She stated the ergonomic keystroke analysis was performed during the summer when Petitioner was performing more typing for grant work and end of year financials. She stated she did not see what Petitioner was doing 100% of the time.

Dr. Brink testified she was not working for the school district when Petitioner initially treated with Dr. Ahn in August 2018. She was not aware of the activities performed by Petitioner when she first developed bilateral hand symptoms. Dr. Brink stated she was hired around the same time the district implemented the new computer system which made Petitioner's job more automated. She admitted Petitioner told her she had to go to the doctor but could not recall the exact date or whether it related to her hands. Dr. Brink was aware Petitioner went a couple of times to doctor's appointments. She stated she would not disagree with Petitioner's testimony that she reported she was going to the doctor for her hands in September or October 2019, but denied that Petitioner told her she had problems with her hands related to her job duties.

MEDICAL HISTORY

On 8/27/18, Petitioner was evaluated Dr. Ahn for complaints of right hand numbness and tingling for one to two years duration. Petitioner reported waking up in the morning with her hand completely numb, about three times per week. X-rays of the right wrist were obtained and showed no fracture or dislocation and no significant bony pathology. On examination, Dr. Ahn noted that Tinel's and Phalen's were positive at the carpal tunnel area. Dr. Ahn diagnosed right carpal tunnel syndrome. He recommended a night splint, an EMG/NCS, and prescribed Mobic. Petitioner was to return in one month.

On 9/30/19, Petitioner returned to Dr. Ahn with worsening symptoms. Petitioner reported right hand numbness and tingling for about a year plus in duration. Dr. Ahn noted that due to her husband's illness she did not undergo the EMG/NCS. Physical examination and diagnosis remained the same. Dr. Ahn again recommended an EMG/NCS which was performed on 10/22/19 by Dr. Nemani. Petitioner completed a Questionnaire prior to the study and reported

numbness/tingling/pain/weakness in both hands. The study indicates reports of paresthesia of the bilateral upper extremities. The study confirmed mild-to-moderate bilateral carpal tunnel syndrome, worse on the right, with no denervation changes.

On 11/6/19, Petitioner followed up with Dr. Ahn for bilateral hand numbness and tingling, with constant numbness in the radial three digits. Dr. Ahn indicated surgical decompression if Petitioner's symptoms were not tolerable. Petitioner elected to pursue surgery.

On 12/4/19, Petitioner was examined by Dr. R. Evan Crandall pursuant to Section 12 of the Act. Dr. Crandall noted Petitioner's complaints of numbness, tingling, pain, and shock pains, numbness in all fingers, worse on the right, difficulty with driving and sleeping. Dr. Crandall noted Petitioner worked for Respondent for three and a half years as the district treasurer. Petitioner reported her job involved typing on computers continually. She reported doing payroll and paying bills. She told Dr. Crandall she did not know how many keystrokes or pages she typed in one day. She stated she did most of her typing in payroll and expenses. Dr. Crandall diagnosed Petitioner with mild right and left carpal tunnel syndrome and indicated she would be a good candidate for surgery. Dr. Crandall stated that Petitioner's case would be work-related if she had enough typing to be considered hand intensive. He indicated that in order for her typing to contribute to or cause carpal tunnel syndrome, she would have to exceed 15,000 keystrokes per hour, or 4 hours of continuous typing per day. Dr. Crandall noted that it was very rare for financial positions to have high levels of keystrokes. Dr. Crandall indicated Petitioner could continue to work without restrictions.

On 12/13/19, Dr. Crandall provided an addendum report and indicated there was not enough information available to determine if Petitioner had enough typing to be considered hand intensive. Dr. Crandall indicated it would be reasonable to offer Petitioner surgery.

On 1/22/20, Petitioner returned to Dr. Ahn who noted Petitioner's workers' compensation claim had been denied. Dr. Ahn noted Petitioner worked as a bookkeeper and had performed constant typing and writing for the past two and a half years. He believed Petitioner's job was a significant contributing factor in causing carpal tunnel syndrome and that her condition was work-related.

On 5/13/20, Petitioner returned to Dr. Ahn and reported right elbow pain for the past two to three weeks. Petitioner reported a pulling sensation in the medial aspect of the forearm and elbow area and terminating at the triceps insertion of the olecranon tip. Dr. Ahn's diagnosis was benign right elbow exam. He noted Petitioner was waiting on approval for surgery.

On 6/10/20 through 6/18/20 an ergonomic keystroke analysis was performed by Matt Weirich at Athletico at the direction of Respondent. The analysis concluded that Petitioner's keystroke repetition and workload were significantly below threshold levels. It was noted that Petitioner would need to increase her data input by ten times in order to meet the risk threshold. The study indicated Petitioner typed 15 keystrokes per minute. The report suggested that a threshold of 165 keystrokes per minute would begin to expose the worker to increased risk.

On 8/3/20, Dr. Crandall submitted an addendum report after having reviewed the ergonomic keystroke and job analysis from Athletico, along with a job video of Petitioner typing. Dr. Crandall concluded that Petitioner's bilateral carpal tunnel syndrome was not causally related to her work as the levels of activity shown on the video and the ergonomic job description were substantially below any threshold that would be the basis for causing carpal tunnel syndrome. Dr. Crandall noted that the ergonomic evaluation showed Petitioner to be 91% below the repetition rate that would cause carpal tunnel syndrome as the study showed only 891 keystrokes per hour, which would be equivalent to one-third page per hour.

Dr. Crandall also submitted a separate report with a review of the job video. Dr. Crandall noted the video showed slow, intermittent use of the keyboard and occasional use of the mouse with the right hand. Dr. Crandall indicated that based on this level of typing, he did not believe it could cause or contribute to Petitioner's carpal tunnel syndrome.

On 8/23/21, Petitioner returned to Dr. Ahn with complaints of bilateral hand numbness and tingling, worse on the right, since September 2019. Petitioner reported waking up several times at night and dropping things. Dr. Ahn noted her symptoms were severe and he continued to recommend surgery.

Dr. Joon Ahn testified by way of evidence deposition on 10/5/20. Dr. Ahn is a board-certified orthopedic surgeon. Dr. Ahn was asked to assume that when he saw Petitioner she had been working for Respondent for at least three years in the capacity of a bookkeeper/treasurer and that her job duties require her to work five days a week, with at least six hours per day typing and doing bookkeeping entry, preparing tax forms, payroll, insurance, typing letters for the superintendent, doing financial reports, maintaining personnel files, etc. He was asked to assume Petitioner performed these duties on a continuous basis using both hands for approximately six to seven hours a day, and that after one to two years in this new position, she began to develop right-sided symptoms which later developed into bilateral conditions. Dr. Ahn testified that assuming the facts as set forth in the hypothetical, he believed that Petitioner's work was probably an aggravating factor in causing her bilateral carpal tunnel syndrome condition.

On cross-examination, Dr. Ahn acknowledged that if Petitioner's work was completely different than what she described, then his causation opinion would change. Dr. Ahn testified that in the majority of cases, the cause of carpal tunnel syndrome is idiopathic and related to the aging process. Dr. Ahn had not reviewed the reports of Dr. Crandall nor the keystroke analysis reports.

Dr. Richard Evan Crandall testified by way of evidence deposition on 11/3/20. Dr. Crandall is board-certified in plastic surgery and hand surgery. Dr. Crandall examined Petitioner on 12/4/19 for complaints of numbness, tingling, pain, and shock pains in both hands. Petitioner reported complaints while driving and at night. Dr. Crandall testified that he questioned Petitioner about her work and was told she had worked for a school district for three and a half years as a district treasurer. He understood that Petitioner did payroll, paid bills, and did data entry. Dr. Crandall asked her how much typing she did per day and Petitioner indicated she did not know. Dr. Crandall diagnosed Petitioner with right and left carpal tunnel syndrome and

recommended surgery. Dr. Crandall testified that at the time he was unable to give an opinion as to whether Petitioner's bilateral carpal tunnel syndrome was causally related to her work.

Dr. Crandall testified that he reviewed an Ergonomic and Keystroke Analysis Report from Athletico from June 2020. He noted that the study found Petitioner had an average of 891 keystrokes per hour and a total of 44,108 keystrokes over a one-week period. He testified that this amount of typing would not be sufficient to be a contributing factor to Petitioner's carpal tunnel syndrome as the amount of typing she did was equivalent to two pages per day. Dr. Crandall also reviewed a job video and testified that the video showed slow, intermittent use of the keyboard and was consistent with the values and numbers calculated in the ergonomic evaluation. The job video confirmed that Petitioner's job is safe and would have no relationship to cause carpal tunnel.

Dr. Crandall testified that following his review of the Ergonomic Keystroke and Job Analysis and the job video, he concluded that Petitioner's work was not a contributing or causal factor for her carpal tunnel syndrome because it did not have the stress and numbers that affect the hands that have been shown to contribute to carpal tunnel syndrome.

Dr. Crandall acknowledged that if the ergonomic study and video were inaccurate and not what Petitioner had been doing for one to three years when her symptoms developed, it could affect his causation opinion. Dr. Crandall agreed that the number of keystrokes required to cause or contribute to carpal tunnel syndrome was subject to some "discretion" when asked about the issue of individual susceptibility. Dr. Crandall testified that Petitioner would need to have ten times more typing than what was shown in the ergonomic analysis and job video to cause her carpal tunnel syndrome.

CONCLUSIONS OF LAW

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

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

In a repetitive trauma case, issues of accident and causation are intertwined. Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture, 99 I.I.C. 0961. In order to better define "repetitive trauma" the Commission has stated: "The term 'repetitive trauma' should not be measured by the frequency and duration of a single work activity, but by the totality of work activity that requires a specific movement that is associated with the development of a condition. Thus, the variance in job duties is not as important as the specific force, flexion, and vibratory movements requisite in Petitioner's job." Craig Briley v. Pinckneyville Corr. Ctr., 13 I.W.C.C. 0519 (2013).

"[I]n no way can quantitative proof be held as the sine qua non of a repetitive trauma case." Christopher Parker v. IDOT, 15 I.W.C.C. 0302 (2015). The Appellate Court's decision in Edward Hines Precision Components v. Indus. Comm'n further highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. Edward Hines, 365 Ill.App.3d 186, 825

N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." Id. at N.E.2d 780. Similarly, the Commission recently noted in Dorhesca Randell v. St. Alexius Medical Center, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. Randell citing All Steel, Inc. v. Indus. Comm'n, 582 N.E.2d 240 (1991) and Edward Hines supra.

The Appellate Court in Darling v. Indus. Comm'n held that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. Darling v. Industrial Comm'n, 176 Ill.App.3d 186, 195, 530 N.E.2d 1135, 1142 (1st Dist. 1988). The Appellate Court found that requiring specific quantitative evidence of amount, time, duration, exposure, or "dosage" would expand the requirements for proving causal connection by demanding more specific proof requirements, and the Appellate Court refused to do so. Darling, N.E.2d at 1143. The Court further noted, "To demand proof of 'the effort required' or the 'exertion needed' . . . would be meaningless" in a case where such evidence is neither dispositive nor the basis of the claim of repetitive trauma." Id. at 1142. Additionally, the Court noted that such information "may" carry great weight "only where the work duty complained of is a common movement made by the general public." Id. at 1142. The evidence shows that Petitioner's job duties involve the performance of tasks distinctly related to her employment as a Bookkeeper/Treasurer, specifically prolonged keyboarding that is not performed by the general public or in which the public would be equally exposed.

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

Under Illinois law, an injury need not be the sole factor, or even the primary factor of an injury, as long as it is a causative factor. Sisbro, Inc. v. Indus. Comm'n, 207 Ill.2d 193, 205, 797 N.E.2d 665 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, "[A] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." Fierke v. Indus. Comm'n, 309 Ill.App.3d 1037, 723 N.E.2d 846 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. Land & Lakes Co. v. Indus. Comm'n, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. A.C.& S. v. Industrial Comm'n,

710 N.E.2d 837 (Ill. App. 1st Dist. 1999) citing General Electric Co. v. Industrial Comm'n, 433 N.E.2d 671, 672 (1982). The Supreme Court in Durand v. Indus. Comm'n noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. Durand v. Indus. Comm'n, 862 N.E.2d 918, 925 (Ill. 2006).

The Arbitrator finds that Petitioner has met her burden on the issues of accident and causation. In support of this finding, the Arbitrator finds Petitioner's testimony credible and the causation opinion of Dr. Ahn to be more persuasive than the opinion of Dr. Crandall.

Petitioner has performed bookkeeping/treasurer duties for Respondent since May 2016. Petitioner's job duties include payroll, invoicing, preparing board minutes, quarterly financials, grant spreadsheets and expense reports, and other similar bookkeeping. Petitioner worked 8:00 a.m. to 4:00 p.m. five days per week. She stated that 90% of her workday was spent on the computer or writing checks manually. Petitioner and Dr. Brink testified that almost all of Petitioner's job duties are on the computer. Dr. Brink could not guess what amount of time Petitioner spent typing or using a mouse and agreed she did not know what Petitioner was doing 100% of the time. However, Dr. Brink did not think Petitioner's job involved continuous typing as she had to look at data and spreadsheets while performing her duties. Dr. Brink testified she did not work for Respondent when Petitioner first developed or treated for bilateral hand symptoms.

Dr. Brink was hired as the Superintendent for Respondent in the Fall of 2019. She stated she was hired around the same time the district implemented a new computer system which made Petitioner's job more automated. She is not aware of the activities performed by Petitioner prior to the Fall of 2019 or under the old data entry system. Petitioner testified she performed double to triple the number of keystrokes than what is required under the new system. No evidence was introduced to rebut Petitioner's estimation of keystrokes/mouse use for the period May 2016 trough the Fall of 2019 when she utilized the data entry computer system.

The Ergonomic Keystroke and Job Analysis was performed on 6/10/20 through 6/18/20. This study does not reflect Petitioner's keystroke/mouse usage performed during the three years prior to implementation of the new computer system that made Petitioner's job duties more automated. No evidence was introduced to rebut Petitioner's testimony as to the demands of her job duties prior to the Fall of 2019. Further, the study was performed during the summer when Petitioner performed more grant work and less of her other bookkeeping duties. Dr. Brink testified that grant work required reviewing data and spreadsheets and did not require continuous typing.

In December 2019, Dr. Crandall was not able to provide a causation opinion after taking a history from Petitioner and performing a physical examination. It was not until he reviewed the ergonomic study and job video in August 2020 that he opined Petitioner's bilateral hand condition was not caused or aggravated by her work duties. Dr. Crandall's opinion is based solely on the ergonomic study and video which does not reflect Petitioner's job duties from May 2016 through the Fall of 2019 when her symptoms manifested.

Further, Dr. Crandall testified that his causation opinion would change if the ergonomic study and video were inaccurate and not what Petitioner had been doing for one to three years when her symptoms developed. The medical evidence shows that Petitioner initially sought treatment with Dr. Ahn on 8/27/18 for right hand symptoms. Petitioner credibly testified that her treatment was interrupted by her husband's illness and ultimate demise and she was unable to return to Dr. Ahn until 9/30/19. At that time, Petitioner reported worsening right hand numbness/tingling. Although the initial record of 8/27/18 states an onset date of one to two years duration, Petitioner testified she did not have any symptoms in her hands prior to working for Respondent. There was no evidence introduced at hearing that Petitioner treated for bilateral hand symptoms prior to 8/27/18. Petitioner testified that her hands were getting pretty numb when she saw Dr. Ahn in August 2018, with an onset of approximately three months prior. Regardless of whether Petitioner's symptoms developed one to two years or a few months prior to Dr. Ahn's diagnosis in August 2018, Petitioner's job duties during that period were different than those reflected in the ergonomic study and job video that Dr. Crandall relied upon in forming his causation opinion. Based on Dr. Crandall's admission, his causation opinion would change if Petitioner's job duties were inaccurate and were not what she had been doing for one to three years when her symptoms developed.

The Arbitrator notes that Dr. Ahn's office note dated 8/27/18 does not contain a history of Petitioner's job duties or reference Petitioner's work in any manner. (RX3). The intake form requests Petitioner's employer and type of work. Petitioner disclosed Respondent's name and stated "Bookkeeper" as the type of work. The form does not request the patient to identify the cause of his/her symptoms or when the symptoms began. The bottom of the intake form is to be completed by the provider, which asks how the problem started and a history of complaint. The provider checked, "No injury, gradual onset", and did not check the box indicating "injury, work related". The History of Complaint section indicates "worsening symptoms 1-2 years" and does not reference Petitioner's work or any cause for her symptoms.

Petitioner returned to Dr. Ahn on 9/30/19 with worsening right hand numbness/tingling. The intake form is similar to the 8/27/18 intake form and Petitioner reported "hand numb most of the time (right)". Dr. Ahn noted no injury with a gradual onset of 1+ years. The office note and intake form do not mention Petitioner's job duties. Dr. Ahn again recommended an EMG/NCS. Petitioner testified she was experiencing symptoms in her left hand when she treated with Dr. Ahn prior to the EMG/NCS; however, her right hand symptoms were worse. Three weeks later, on 10/22/19, the history provided on the EMG/NCS indicates complaints of paresthesis in both upper extremities. The Questionnaire filled out by Petitioner at the time of the EMG/NCS study indicates tingling/numbness/pain/weakness in both of her hands for approximately one year.

On 11/6/19, Dr. Ahn diagnosed mild-to-moderate bilateral carpal tunnel syndrome based on the EMG/NCS findings and recommended surgery. It was not until 1/22/20 that Dr. Ahn recorded a history of injury. On that date, Dr. Ahn noted Petitioner performed constant typing and writing for the past 2 ½ years. He noted Petitioner's workers compensation claim was denied. Petitioner complained of constant numbness in all fingers of her right hand and intermittent numbness in the fingers of her left hand. Dr. Ahn opined that Petitioner's job duties were a significant contributing factor in her carpal tunnel condition. The Arbitrator notes that the

majority of the 2 ½ year duration was prior to the implementation of the new automated computer system used by Petitioner.

Petitioner agreed she reported her injury on Respondent's online reporting system Company Nurse. She stated that it sounded right that she reported it on 10/21/19; however, the report of injury was not introduced into evidence and it is unknown what date of accident Petitioner provided. Petitioner underwent the EMG/NCS on 10/22/19, approximately three weeks after her appointment with Dr. Ahn on 9/30/19.

Dr. Ahn was presented with a hypothetical of Petitioner's job duties over a three-year period as a bookkeeper/treasurer working five days a week, with at least six hours per day typing and doing bookkeeping entry, preparing tax forms, payroll, insurance, typing letters for the superintendent, doing financial reports, maintaining personnel files, etc. He was asked to assume Petitioner performed these duties on a continuous basis using both hands for approximately six to seven hours a day, and that after one to two years in this new position, she began to develop right-sided symptoms which later developed into bilateral conditions. Dr. Ahn testified that assuming the facts as set forth in the hypothetical, he believed that Petitioner's work was probably an aggravating factor in causing her bilateral carpal tunnel syndrome condition. Respondent did not provide any evidence to rebut Petitioner's job duties other than Dr. Brink who testified she did not think Petitioner typed continuously because she had to look at data and spreadsheets while performing her work. Dr. Brink could not state what percentage of time Petitioner spent typing and she did not observe Petitioner 100% of the time.

Based on the above evidence, the Arbitrator finds Petitioner has met her burden of proof on the issues of accident and causal connection and established that her current condition of ill-being in her bilateral hands is causally related to her employment with Respondent.

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

The date of an accidental injury in a repetitive trauma compensation case is the date on which the injury "manifests itself." Manifests itself means the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 505 N.E2d 1026, 1029, 106 Ill.Dec. 235 (1987).

On January 17, 2020, Petitioner filed an Application for Adjustment of Claim alleging a date of accident of 9/30/19. On March 11, 2020, Petitioner filed an Amended Application for Adjustment of Claim amending the date of accident to 8/1/19. Petitioner reported her injuries to Respondent by using the online reporting system Company Nurse. She stated it sounded about right that she made the report on 10/21/19. Again, the report of injury was not introduced into evidence and it is unknown what date of accident, if any, was provided by Petitioner. Dr. Ahn's medical records do not contain a history of injury or note Petitioner's job duties until 1/22/20. As early as 8/27/18, Petitioner reported her symptoms occurred in the morning when she woke, and she experienced them a few times per week. She did not report that her symptoms occurred while working, typing, driving, or any specific activity. Therefore, the Arbitrator relies on the testimony in determining a more accurate manifestation date.

Petitioner was aware her injuries were related to her work duties as of 10/21/19 as she allegedly reported the incident on that date. The Amended Application for Adjustment of Claim alleges a date of accident of 8/1/19. The Arbitrator is at a loss as to what occurred on 8/1/19. There is no evidence that this date was provided by Petitioner when she allegedly reported the accident electronically on 10/21/19. The date of 8/1/19 does not comport with any of the medical evidence or testimony at arbitration.

Petitioner testified she informed her supervisor about her symptoms on two occasions in 2019. She was not sure if she reported her symptoms to Dr. Brink when she filed her electronic report of injury on 10/21/19, or if it was when she requested time of work to follow up with Dr. Ahn. She stated she had to request time off work and that is when she would have informed Dr. Brink about her condition. Petitioner alleges on the Request for Hearing that she provided Respondent with notice of the accident on 9/30/19, specifically advising her supervisor Melanie Brink. The initial Application for Adjustment of Claim filed on 1/17/20 alleges a date of accident of 9/30/19. The only evidence the reflects a date on which both the fact of Petitioner's injuries and the causal relationship of her injuries to her employment is when she returned to Dr. Ahn on 9/30/19 with ongoing symptoms.

Therefore, the Arbitrator finds that the date of accident/manifestation date is 9/30/19.

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

Section 6(c) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(c)(2) states that "no defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." *820 ILCS 305/6(c)*.

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

Petitioner was asked if she recalled reporting her injuries through the online accident reporting system on 10/21/19. She replied, "that sounds right". Based on the above findings as to the date of accident of 9/30/19, the Arbitrator finds that Petitioner provided timely notice of her work injury to Respondent.

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): **Is Petitioner entitled to any prospective medical care?**

Upon establishing causal connection and the reasonableness and necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

Respondent disputes liability for medical bills based on causal connection. Based on the above findings as to accident, notice, and causation, the Arbitrator finds Petitioner is entitled to reasonable and necessary medical benefits. Respondent shall therefore pay the medical expenses outlined in Petitioner's Exhibit 3, as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits.

The Arbitrator further finds Petitioner is entitled to receive the additional care recommended by Dr. Ahn. Petitioner underwent conservative care that did not resolve her symptoms and she has not yet reached maximum medical improvement pursuant to the opinions of Dr. Ahn.

Therefore, Respondent shall authorize and pay for prospective medical treatment recommended by Dr. Ahn, including, but not limited to, bilateral carpal tunnel releases and post-operative treatment until Petitioner reaches maximum medical improvement.

This award shall in no instance be a bar to further hearing and determination of any additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

Arbitrator Linda J. Cantrell _____ DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC027612
Case Name	Alison Smith v. Vesuvius
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0465
Number of Pages of Decision	9
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Russell Haugen
Respondent Attorney	John Kamin

DATE FILED: 12/7/2022

/s/Maria Portela, Commissioner

Signature

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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ALISON SMITH,

Petitioner,

vs. NO: 18 WC 27612

VESUVIUS,

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, affirms and adopts, with the following changes, the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Regarding permanency factor (i) in §8.1b(b) of the Act, we note that Petitioner underwent a §12 examination with Respondent's physician, Dr. James Stiehl, on February 20, 2018. At that time, Dr. Stiehl recommended Petitioner complete the few remaining sessions of physical therapy but found Petitioner was at maximum medical improvement and that it was appropriate to issue an A.M.A. impairment rating ("rating"), which he did.

However, Petitioner subsequently underwent another surgery over a year and a half later on December 26, 2019. This is obviously a significant event that would call the previous rating into question. To overcome this, Respondent argues that since Petitioner testified that the second surgery improved her range of motion, then the initial rating should still be considered valid. We disagree. One of the aspects of determining an impairment rating is the physical examination and range of motion measurements performed by a qualified physician. We find it would be inappropriate to rely on a claimant's subjective interpretation of her range of motion as a substitute for a new examination by a physician opining about an A.M.A. impairment rating.

Therefore, although a rating was submitted, we find this was outdated and invalid for consideration under §8.1b(b)(i) of the Act and give it no weight.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 27, 2022 is hereby affirmed and adopted with the changes noted above.

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 the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $52,700.00. 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.

December 7, 2022

/s/ *Maria E. Portela*

SE/

O: 11/1/22

49

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC027612
Case Name	SMITH, ALISON v. VESUVIUS
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Russell Haugen
Respondent Attorney	John Kamin

DATE FILED: 5/27/2022

THE INTEREST RATE FOR THE WEEK OF MAY 24, 2022 1.53%

/s/Edward Lee, Arbitrator

Signature

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

- [ ] 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

ALISON SMITH
Employee/Petitioner

v.

VESUVIUS
Employer/Respondent

Case # **18** WC **27612**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Urbana, IL**, on **April 19, 2022**. 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. [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 **12/13/2016**, 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 $**78,000.00**; the average weekly wage was $**1,500.00**.

On the date of accident, Petitioner was **38** 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 reasonable and necessary medical services totaling $766.00, to the Petitioner, as provided in Sections 8(a) and 8.2 of the Act and subject to the medical fee schedule.

- Respondent shall pay Petitioner permanent partial disability benefits of $775.18/week for 66.8 weeks, because the injuries sustained caused the 40% loss of use of the left foot, as provided in Section 8(e)(11) of the Act.

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

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

Edward Lee
Signature of Arbitrator

MAY 27, 2022

FINDINGS OF FACT

Petitioner testified that she worked for Respondent as a mechanical engineer at the time of the undisputed, December 13, 2016, work accident.

On December 13, 2016, Petitioner slipped and fell on ice and snow in Respondent's parking lot. The accident occurred at approximately 8:00 a.m., while Petitioner was walking from her car into work that morning. Petitioner testified that her left foot got twisted underneath her as she fell to the ground.

Immediately following the accident, Petitioner was transported to Carle Emergency Department via ambulance. By history, Petitioner reported that she slipped on ice and rolled her ankle prior to arrival at the E.D. Petitioner was diagnosed with an acute bimalleolar left ankle fracture and dislocation. Petitioner underwent a closed reduction under sedation and a trauma splint was subsequently applied. The bilateral malleolar fractures demonstrated mild displacement in post-reduction radiographs of the left ankle. Petitioner was instructed to follow up with orthopaedics. (PX 1).

On December 15, 2016, Petitioner was evaluated by Dr. Sean Grambart at Carle. Dr. Grambart's assessment was left bimalleolar ankle fracture and recommended Petitioner to proceed with an open reduction and internal fixation of the left ankle. (PX 1).

On December 20, 2016, Petitioner underwent an open reduction and internal fixation by Dr. Grambart. Intraoperatively, Dr. Grambart found a long oblique fracture of the distal fibula which was reduced and temporarily fixated. A titanium plate with locking and non-locking screws was fixated into Petitioner's left lower extremity and ankle. Following the procedure, Petitioner was instructed to remain nonweightbearing for the next six weeks. (PX 1).

At the recommendation of Dr. Grambart, Petitioner underwent a physical therapy evaluation at Carle Therapy Services on March 9, 2017. Petitioner was recommended to undergo formal therapy to address her range of motion and strength deficits in her left foot and ankle. Between March 9, 2017 and October 3, 2017, Petitioner underwent a total of 32 sessions of formal physical therapy. (PX 1).

On October 23, 2017, Petitioner was reevaluated by Dr. Grambart. At that time, Petitioner reported ongoing limitations with her range of motion and indicated that she was not back to her regular activities. On examination, Petitioner had minor swelling and limited dorsiflexion in the left ankle. Dr. Grambart indicated that Petitioner had developed ankle impingement. Dr. Grambart recommended an injection into the ankle joint and further indicated that Petitioner may require an arthroscopic procedure depending on the results from the injection. (PX 1).

Petitioner underwent a second course of physical therapy which was completed at the Mettler Center. Petitioner underwent an initial consultation at the Mettler Center on November 14, 2017. Following this initial consultation, Dr. Grambart recommended Petitioner to proceed with additional therapy. From December 13, 2017 through April 18, 2018, Petitioner underwent 12 sessions of therapy. (PX 3).

On January 31, 2019, Petitioner was seen by Erica Shroyer, APRN, at Carle. At that time, Petitioner reported ongoing pain and frustration due to her lack of progress. She further reported that she had pain with running and most weightbearing activities. The assessment was left ankle pain and impingement. Petitioner was recommended to undergo an injection and a referral to an outside surgeon since Dr. Grambart was no longer with Carle. Petitioner was referred to Dr. Anish Kadakia. (PX 2).

On April 23, 2019, Petitioner was evaluated by Dr. Anish Kadakia at Northwestern Medicine. At that time, Petitioner provided a history of the work injury and the course of treatment that followed. She reported

ongoing pain and ongoing restrictions with movement of the ankle joint. Petitioner was recommended to obtain a CT scan of the left ankle. Petitioner was instructed to follow up after the CT scan. (PX 4).

Petitioner returned to Dr. Kadakia on May 14, 2019. Dr. Kadakia stated that Petitioner's ongoing issues with her left ankle were related to the work injury. Petitioner's limited range of motion affected her ability to be active in sporting activities and traversing uneven ground. Dr. Kadakia reviewed the CT scan which revealed obvious anterior osteophyte formation along the anterior tibia and the dorsomedial talus. Dr. Kadakia's diagnosis was anterior impingement status post trauma secondary to injury at work. He recommended an arthroscopic debridement with a possible excision of the talus and placement of amniotic membrane. (PX 4).

On December 26, 2019, Petitioner underwent a left ankle arthroscopy with debridement at the ankle joint by Dr. Kadakia. The procedure included an excision of the distal tibia and distal talus. Following surgery, Petitioner was instructed to remain nonweightbearing for two weeks and start physical therapy. (PX 4).

Petitioner underwent an additional course of physical therapy at the Mettler Center. From January 13, 2020 through September 2, 2020, she completed 42 sessions of skilled therapy for her left foot and ankle. At the time of her discharge, she continued to report edema, tightness, and fatigue in her ankle. (PX 3).

On September 4, 2020, Petitioner underwent a final evaluation with Dr. Kadakia. At that time, Petitioner reported pain with daily activities and limited motion. Dr. Kadakia indicated that the alignment of the ORIF was slightly off but not far enough off to justify a massive revision. Dr. Kadakia further indicated that Petitioner was at maximum medical improvement. He discussed additional treatment options to address her ongoing limited motion including an Ilizarov, a posterior open capsular release, or an Achilles lengthening procedure. Dr. Kadakia also indicated that her traumatic arthritis would progress, and she will eventually need an ankle replacement or ankle fusion at some point in the future. (PX 4).

At arbitration hearing, Petitioner testified at great length regarding her ongoing disability. She testified that she has ankle pain daily. When she wakes up or is not moving around, the ankle is stiff. She wears a compression sock every day on her left leg to minimize the swelling. She cannot lift her toes more than a few degrees off the ground. This causes her to trip over things and increases her risk of falling. Prior to the accident, she was an avid runner, competing in half marathon events. She is no longer able to run for long distances or compete in these types of events. Her ongoing disability has precluded her from coaching her kids' soccer teams, skiing, roller-skating, and participating in high-impact exercise classes. She is required to wear an orthotic-type shoe on most occasions. If she must wear fancy shoes or work boots, her foot and ankle pain increases. Her pain and disability limits her to a few hours of standing at one time. To help with these ongoing symptoms, she takes hot showers, uses a massage gun, applies ice to the ankle, and takes ibuprofen.

CONCLUSIONS OF LAW

Issue L: Nature and extent of Petitioner's injury.

With regard to the issue of nature and extent, the Arbitrator notes that pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using the five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a); (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 records. Applying this standard to the claim, the Arbitrator makes the following findings as listed below.

(i) **Impairment**. There was no impairment rating as discussed in subsection (a).
(ii) **Occupation**. Petitioner was employed as an engineer for Respondent at the time of the accident. Now, Petitioner is a strategy engineer manager for Caterpillar. She is required to occasionally wear work boots which increases her left foot pain. The Arbitrator gives some weight to this factor.
(iii) **Age**. Petitioner was 38 years old at the time of the accident. The Arbitrator gives some weight to this factor
(iv) **Future Earning Capacity**. Petitioner testified that she currently is earning similar wages as compared to her earnings at the time of the accident and therefore the Arbitrator gives no weight to this factor.
(v) **Evidence of Disability**. There was evidence of disability corroborated by the medical records. During her last visit with Dr. Kadakia on September 4, 2020, Petitioner complained of ongoing pain, limited motion, and difficulty with traversing uneven ground. Dr. Kadakia noted that the fracture was not anatomically aligned and he also noted the limited motion in the ankle joint. Dr. Kadakia further noted that Petitioner's ankle arthritis will progress which will require either an ankle replacement or ankle fusion at some point in the future. At hearing, Petitioner testified to daily pain and stiffness in the ankle. She further testified to her inability to run, as she did prior to the accident; perform high-impact exercises; ski; roller-skate; hike; coach her kids' soccer teams; and stand for a long period of time. She further testified that she wears a compression sock on her left leg daily to reduce the swelling in her left foot and left leg. When walking, she cannot lift her toes more than a few degrees off the ground which increases her risk of tripping and falling. She is no longer able to walk on uneven surfaces or slippery surfaces. She is required to wear an orthotic-type shoe, to limit her daily pain.

After considering the facts and following the criteria listed in Section 8.1b of the Act, the Arbitrator finds that Petitioner has suffered a 40% loss of use of the left foot under Section 8(e)(11) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC025009
Case Name	Robert Atchison v. The American Coal Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0466
Number of Pages of Decision	17
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Roman Kuppart
Respondent Attorney	Kenneth Werts, Julie Webb

DATE FILED: 12/8/2022

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Atchison,

Petitioner,

vs. NO: 16 WC 25009

American Coal Company,

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 permanent partial disability, causal connection, occupational disease, and Sections 1(d) through 1(f) of the Occupational Diseases Act, 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 8, 2022, is hereby affirmed and adopted.

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. 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.

December 8, 2022
MP:yl
o 12/1/22
68

/s/ *Marc Parker*
Marc Parker

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC025009
Case Name	ATCHISON, ROBERT v. THE AMERICAN COAL COMPANY
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Roman Kuppart
Respondent Attorney	Kenneth Werts

DATE FILED: 4/8/2022

/s/ William Gallagher, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 5, 2022 1.11%

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

Robert Atchison
Employee/Petitioner

v.

The American Coal Company
Employer/Respondent

Case # 16 WC 25009

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 [Herrin Docket], on February 24, 2022. 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 Sections 1(d)-(f) of the Occupational Diseases Act

FINDINGS

On November 13, 2015, 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 $50,284.00; the average weekly wage was $967.00.

On the date of accident, Petitioner was 60 years of age, married with 0 dependent child(ren).

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

Based upon the Conclusions of Law attached hereto, 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.

William R. Gallagher, Arbitrator

April 8, 2022

ICArbDec p. 2

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an occupational disease to his lungs and/or heart. The Application alleged a date of last exposure of November 13, 2015, and that Petitioner sustained the occupational disease as a result of "Inhalation of coal mine dust including but not limited to coal dust, rock dust, fumes & vapors for a period in excess of 37 years" (Arbitrator's Exhibit 2).

At the time of trial, Petitioner was 66 year old. Petitioner worked in the coal mines for approximately 40 years with 33 years being underground and seven years being above ground. Petitioner testified that he was regularly exposed to coal and rock dust. Petitioner's last day of coal mine employment was November 13, 2015, for Respondent at its Galatia mine. He was classified as a hoisting engineer. Petitioner testified that his main job was to get the people in and out of the mine. There was an electric hoist at the main shaft. He also had to haul equipment at the slope shaft which was a manual material shaft. He testified that sending supplies up and down out of the mine was also part of his job. Petitioner testified that he loaded supplies both manually and with a fork truck. Petitioner testified that on his last day of coal mine employment he was exposed to and breathed coal dust. Petitioner testified that his employment ended with Respondent that day because he was laid off. At the time of trial Petitioner was retired. He testified that he worked for approximately one year after being laid off from the coal mine for a tree trimming crew for an electrical company. He worked until he turned 62 and retired.

Petitioner testified that from 1974 to 1975 he worked at a gas station and from 1975 to 1976 he worked at Mt. Vernon Stove Foundry. From 1976 to 1977 he worked at a glass company in Tulsa, Oklahoma. Petitioner worked at Ziegler No. 5 mine from 1977 to 1985. From 1985 to 1989 Petitioner worked at Ziegler No. 11 mine. From 1989 to 1991 Petitioner worked at Old Ben 26. Petitioner testified that from 1991 to 1994 he worked for Boyd Brothers doing road construction. From 1994 to 2000 he did some residential construction and roofing with his son. From 2000 to 2003 he worked at Old Ben Mine 21. From 2003 until he was laid off in 2015, he worked for Kerr-McGee which eventually became Respondent.

While at Ziegler No. 5, Petitioner was a shot firer. Petitioner testified that he could not see his hand in front of his face due to the dust after he shot. Petitioner then became an electrician and worked underground on equipment all over the mine in all kinds of conditions. While at Ziegler No. 5, he pretty much ran every piece of machinery in the mine at some point. When Petitioner was at Ziegler No. 11, he started as a face boss. In that job he checked ventilation and methane and was running the unit and taking care of his crew. He testified that this job entailed a lot of walking to make sure that the men did what the laws required in the coal mine. This work was at the face of the mine where the coal was being produced. He held that job for approximately four years. At Old Ben 26 he was a face boss and mine manager. At Old Ben 21, Petitioner worked on the gob pile and was an electrician. Petitioner also ran equipment. Petitioner testified that the equipment had cabs, but there was coal dust in the cabs. He testified that any time he was around a coal mine there was dust. He testified one could not get away from it.

Petitioner worked as a laborer for a short time at Respondent when he started. He did whatever needed to be done in the mine whether it was fill in on the roof bolter, buggy or shovel. He testified that he did a lot of rock dusting. Petitioner transferred out of that job and became an examiner for about a year. Petitioner testified that he had to examine the old works and the

beltline to make sure the air quality was fine. Petitioner testified that he had to walk over a lot of debris and go around pillars to get to where he needed to go. Petitioner testified that the surface of the mine was sometimes dry and sometimes everyone had to wear rubber boots. Petitioner became a face boss at the Millennium Mine for Respondent. In that mine he had to walk in a lot of water which was often over his knees. Petitioner then transferred back to the Galatia mine as a laborer for about a year. He then became an examiner at the Galatia mine for approximately two years. In 2010 he transferred into the hoisting engineer job.

Petitioner testified that while working in the mine his jobs required medium to heavy labor most of the time including bending, stooping and squatting. He testified that while doing that he would have trouble breathing. He testified that he had trouble breathing once he got a little bit older in the mines as time went one. Petitioner testified that as of arbitration he had breathing problems. Petitioner testified that about 10 years after he was in the mines he first noticed breathing problems. Petitioner testified that his breathing problems occurred according to the job he was doing in the mine at the time. It would depend on whether the dust stuck with him on not. He would spit up black stuff for days and days. He testified that he would usually notice his breathing problems in the mines when he was doing more strenuous work such as roof bolting or shoveling. He testified that as an examiner walking bothered his breathing. He just had to pace himself and know the best routes. He testified that he had to take breaks. Petitioner testified that he could probably walk a couple of blocks if it was regular terrain before he noticed a change in his breathing. Petitioner testified that he could climb stairs, but it wears him down. He testified that he could climb 15 to 20 stairs before getting short of breath. Petitioner testified that from the onset of his breathing problems until the date of arbitration his breathing problems had gotten worse.

Petitioner was not taking any breathing medication. He testified that his breathing problems affect his activities of daily life. He testified that any physical labor bothers him. He testified that he fishes a lot and he had to put a wench up in his attic to crank his boat up and down. Petitioner testified that he gardens as a hobby. With regard to his gardening Petitioner testified that he can only do so much. He cannot go out there and spend a lot of time doing the gardening because he just wears out. Petitioner testified that he mows his own yard. He testified that he uses a riding mower to mow about three acres, but he push mows and weedeats to trim. He testified that he can only do so much weedeating and push mowing and has to take breaks from it.

While working in the mine, Petitioner had to stop and take breaks because of his breathing. He testified that he needed the help of co-workers to finish jobs. Petitioner testified that his treating doctors are at the Rea Clinic in DuQuoin. He testified that prior to Rea Clinic, his treating doctor was Dr. Rathert at the Sesser Clinic. Petitioner testified that he has never smoked. Petitioner testified that he is a diabetic and has high blood pressure. He also takes medicine for cholesterol. Petitioner testified that it was fair to say that when he ended his mining career, he was able to finish his job, but it was getting harder as time went on. Petitioner testified that as of arbitration he would not be able to do any of his former coal mining jobs.

Petitioner testified that the hoisting engineer job was a sought after job at the mine. He testified that at one point it was the number one position that everyone wanted, but it changed as years went on. He testified that he got the job because of his employment record and seniority. Petitioner testified that but for being laid off, he would have reported for his next shift in the coal mine. Petitioner testified that the mine where he worked is closed. Petitioner testified that the sister mine to the mine where he worked is also closed.

Petitioner testified that he applied for and received unemployment benefits after he was laid off. He received those benefits up until the time he went to work for Oil Field Electric. Petitioner's work at Oil Field Electric was as a tree trimmer. He testified that same was a medium to heavy job. He cut down trees and put them in a chipper. They would have to drag the limbs and put them in the chipper and then cut the logs up. He testified that the tree trimming and dragging and carrying was the most physical part of the job. He testified that once he hit age 62, he retired from that and signed up for Social Security.

Petitioner testified that from time to time while he was employed at the mine, he underwent NIOSH chest x-ray screening for black lung. After that they would write to him and tell him what his chest x-ray revealed. He testified that he did not bring any of those letters with him to arbitration. Petitioner testified that he was always honest with his primary care physicians about any breathing problems he had or did not have.

Petitioner testified that he fishes five to seven days a week when the weather is good. He maintains a 30 x 40 foot garden where he raises basically vegetables. He testified that during the winter he went to Florida and fished. Petitioner testified that he fishes on a fishing circuit which includes about seven tournaments in the summer.

Dr. Suhail Istanbouly examined Petitioner on December 20, 2016, at the request of his counsel (Petitioner's Exhibit 1, p 6). Dr. Istanbouly specializes in pulmonary medicine and critical care medicine (Petitioner's Exhibit 1, p 4). Dr. Istanbouly testified that 30% of his patient census deals with the care and treatment of coal miners. Dr. Istanbouly has been the medical director of the Pulmonary Department at Herrin Hospital since 2005. He is also the director of the Intensive Care Unit at Carbondale Memorial Hospital (Petitioner's Exhibit 1, pp 5-6). Dr. Istanbouly saw Petitioner one time to evaluate him in conjunction with his state black lung claim. He testified that he performs five to seven such examinations per month (Petitioner's Exhibit 1, p 18). He testified that those exams were always at the request of the Petitioner's attorney (Petitioner's Exhibit 1, p 19).

Dr. Istanbouly noted that Petitioner worked as a coal miner for a total of 37 years with 25 of those years being underground. Dr. Istanbouly recorded that in the last year of employment Petitioner was a bull dozer operator. Petitioner never smoked. His last month of employment was November 2015. Petitioner mentioned a chronic daily cough which was mild to moderate in intensity. He could not specify any triggering factors for his cough. The cough recently started to become productive of slight clear yellow sputum. Petitioner mentioned having exertional dyspnea and specified that walking for one block would make him short of breath (Petitioner's Exhibit 1, pp 7-8).

Dr. Istanbouly testified that his physical examination of Petitioner's chest was normal. He testified that it was not unusual to find no abnormalities on physical examination of the chest in someone with simple coal workers' pneumoconiosis, especially in early cases (Petitioner's Exhibit 1, p 9). Dr. Istanbouly testified that the pulmonary function tests he performed on Mr. Atchison were within normal limits (Petitioner's Exhibits 1, pp 9-10). Dr. Istanbouly testified that a person could have shortness of breath and a daily cough with normal pulmonary function studies (Petitioner's Exhibit 1, p 11). Dr. Istanbouly testified that he read a chest x-ray for Petitioner dated July 15, 2016 (Petitioner's Exhibit 1, p 11). Dr. Istanbouly testified that he diagnosed

Petitioner with coal workers' pneumoconiosis which was caused by long term coal dust inhalation. Dr. Istanbouly testified that the disease process of coal workers' pneumoconiosis was caused by fine particles being inhaled and reaching the deep parts of the airways ending in the alveoli creating a local irritation or inflammation that will end up with a tiny scar which were small round opacities seen on the x-ray (Petitioner's Exhibit 1, p 13). Dr. Istanbouly testified that every coal miner who is exposed to coal dust does not get coal workers' pneumoconiosis. Dr. Istanbouly testified that the scarring and fibrosis of pneumoconiosis are permanent and cannot carry on the function of normal healthy lung tissue. He testified that by definition if one has coal workers' pneumoconiosis, he has an impairment in the function of the lung at least at the site of the scar or fibrosis (Petitioner's Exhibit 1, p 14). Dr. Istanbouly testified that due to his coal workers' pneumoconiosis, Petitioner could not have any additional exposure to coal dust without endangering his health (Petitioner's Exhibit 1, p 16).

Petitioner related to Dr. Istanbouly that his cough was mostly dry until recently. Petitioner could not relate any triggers for his cough including smoke, dust or fumes. Dr. Istanbouly testified that dyspnea on exertion can be due to things other than pulmonary disease. He testified that deconditioning is something that can be associated with dyspnea on exertion (Petitioner's Exhibit 1, p 19). Dr. Istanbouly testified that Petitioner did not provide a history of ever having taken breathing medications. Dr. Istanbouly did not review any treatment records regarding Petitioner (Petitioner's Exhibit 1, p 20).

Dr. Istanbouly testified that he was provided a narrative report and B-reading by Dr. Henry K. Smith for the chest x-ray dated July 15, 2016. Dr. Istanbouly was not provided any other chest x-ray interpretations (Petitioner's Exhibit 1, pp 20-21). Dr. Istanbouly testified that Petitioner did not tell him he left the mine at the time he did due to respiratory disease or symptoms. Petitioner did not tell Dr. Istanbouly that he was unable to complete the physical requirements of his last job at the mine. Dr. Istanbouly testified that Petitioner had a normal forced vital capacity. There was no indication of restriction. He had a normal FEV1 and FEV1/FVC ratio (Petitioner's Exhibit 1, p 21). Dr. Istanbouly testified that there was no evidence of obstruction or hyperactive airways disease (Petitioner's Exhibit 1, p 22).

Dr. Istanbouly is not an A-reader or B-reader of films (Petitioner's Exhibit 1, p 11). Dr. Istanbouly testified that he does not use the ILO films when he interprets a chest x-ray for black lung. He does not provide a profusion for the film that he interprets. When he interprets a film for black lung, Dr. Istanbouly determines whether the film is positive or negative and if it is positive, he classifies it as early, moderate or severe. In this case he classified what he saw on Petitioner's chest x-ray as early or mild pneumoconiosis (Petitioner's Exhibit 1, pp 22-23). Dr. Istanbouly could not say whether the film he reviewed had a 1/0 or 0/1 profusion. Dr. Istanbouly's final assessment was simple coal workers' pneumoconiosis (Petitioner's Exhibit 1, p 23).

Dr. Henry K. Smith is a diagnostic radiologist (Petitioner's Exhibit 2, p 4). Dr. Smith has been board certified in radiology since 1973. He took the B-reading exam for the first time in 1987 and has been continuously certified as a B-reader since that time (Petitioner's Exhibit 2, p 11). Dr. Smith testified that he failed the B-reading exam twice somewhere around 1999. He testified that he failed because of overreading the films. He was finding more disease than was present on the standard film (Petitioner's Exhibit 2, pp 46-47). Dr. Smith received his Doctor of Osteopathic Medicine in 1968 from Kirksville College of Osteopathic Medicine (Petitioner's Exhibit 2, p 7, Deposition Exhibit 1). Dr. Smith did a rotating general internship at Carson City Hospital in

Carson City, Michigan and a radiology residency at Memorial Osteopathic Hospital in York, Pennsylvania (Petitioner's Exhibit 2, p 8). Dr. Smith operated his own private radiology practice from 1988 to 2016. Since leaving his practice, he has been doing consulting work in the field of radiology including a lot of B-readings (Petitioner's Exhibit 2, p 10).

Dr. Smith testified that in performing a B-reading, he starts with determining the quality of the film. The next step is to determine if there are small opacities present. If opacities are present, he determines if there are enough to be called pneumoconiosis. If so, then he determines whether they are round or linear opacities and categorizes them by size (Petitioner's Exhibit 2, pp 19-20). Dr. Smith testified that with coal workers' pneumoconiosis, the preponderance of those small opacities are round. He testified that with other kinds of pneumoconiosis, such as asbestos-related, they are linear or irregular opacities. In coal workers' pneumoconiosis, opacities occur primarily in the upper to mid lung zones (Petitioner's Exhibit 2, p 21). The next thing he considers is the profusion which is the concentration or density of the findings in the lungs (Petitioner's Exhibit 2, p 22). Dr. Smith testified that the profusion tells the reader what degree of involvement is present (Petitioner's Exhibit 2, p 23). Dr. Smith testified that the last thing included in completing the B-reading form is the obligatory findings which are things which need to be recorded other than the findings of black lung (Petitioner's Exhibit 2, p 25). Dr. Smith described an opacity as a small, abnormal density one would not see on a normal chest x-ray. It is often seen with people who have occupational lung disease or pneumoconiosis (Petitioner's Exhibit 2, pp 28-29).

Dr. Smith reviewed a chest x-ray of Petitioner dated July 15, 2016, at the request of Petitioner's counsel. Dr. Smith testified that the film was quality one. Dr. Smith testified that his findings were interstitial fibrosis of classification P/S in the bilateral mid and lower lung zones of a profusion 1/1. There were no other plaques or opacities (Petitioner's Exhibit 2, pp 35-36). Dr. Smith testified that Petitioner had coal workers' pneumoconiosis and had damage to his lungs as a result of same (Petitioner's Exhibit 2, p 36).

From 1988 to 2016 Smith Radiology was a freestanding diagnostic walk-in medical facility (Petitioner's Exhibit 2, pp 49-50). Dr. Smith testified that Smith Radiology made 1.25 million dollars in annual income after expenses. He testified that of that income maybe 10% was from medical legal exams or interpretations (Petitioner's Exhibit 2, pp 50-51). Dr. Smith testified that over the years he has interpreted chest x-rays for black lung for over 20 law firms. He testified that over 80% of those firms represented claimants (Petitioner's Exhibit 2, p 51). Dr. Smith testified that presently he is reviewing films for black lung for five firms that represent claimants. Dr. Smith testified that one of the firms was Petitioner's counsel. He has also reviewed films for Culley & Wissore. He testified that he has read more than 345 films for Culley & Wissore or Petitioner's counsel (Petitioner's Exhibit 2, pp 53-55). Dr. Smith testified that when he received films from Culley & Wissore he would get two or three films at a time on a frequency of twice a month. He might receive a tiny bit more than that from Petitioner's counsel (Petitioner's Exhibit 2, p 56). Dr. Smith testified that at his peak he was interpreting 2,000 films a year for law firms. Presently he is interpreting about 1,500 films year (Petitioner's Exhibit 2, p 57).

Dr. Smith has never sat on any committee with NIOSH. Dr. Smith has not held any office in any capacity with the College of Osteopathic Medicine or the Osteopathic Board of Radiology (Petitioner's Exhibit 2, p 59). Dr. Smith testified that the syllabus that he uses to study for the B-reading exam he pretty much takes as gospel. He testified that the panel that puts that together

are the peers that he aspires to be. He testified that he respects them highly. He testified that the leaders in the field have been chosen to put that syllabus together. Dr. Smith testified that a new syllabus has been authored for NIOSH and that Dr. Cris Meyer was one of the authors of that syllabus. Dr. Smith testified he agrees with the current B-reading syllabus that the small opacities associated with exposure to silica and coal dust are usually rounded (Petitioner's Exhibit 2, pp 60-61). Dr. Smith agreed with the B-reading syllabus that the small round opacities usually involve the upper lung zones first and as the dust exposure continues, all the lung zones may become involved. Dr. Smith testified that this has been his experience (Petitioner's Exhibit 2, p 64). Dr. Smith testified that the scarring that is reflected by opacities on chest imaging is permanent. He testified that the profusion and opacity size will not regress (Petitioner's Exhibit 2, p 64).

Dr. Smith testified that simple pneumoconiosis is unlikely to progress once the exposure ceases. He testified that pulmonary impairment is determined by appropriate pulmonary function testing and not by a chest x-ray. Dr. Smith testified that if one wants to know whether there is any functional impairment, and if present, the degree of same, he would want to have valid pulmonary function testing (Petitioner's Exhibit 2, p 65). Dr. Smith did not know whether the monitors he uses for interpreting chest x-rays were in compliance with the guidelines that are set forth in the Code of Federal Regulations. He did not know whether the equipment complied with the DICOM Standard that is set forth within the Code of Federal Regulations (Petitioner's Exhibit 2, pp 66-67).

Dr. Smith testified that profusion is the intensity of the overall predominance of the opacities seen in the image. He testified that adoption of profusion ratings was done to avoid imprecise descriptive terms of what was seen on the films, such as early, moderate or severe pneumoconiosis. (Petitioner's Exhibit 2, p 67). Dr. Smith testified that any A or B-reader knows what is meant by 1/0 profusion. He testified that describing 1/0 profusion is something different than saying early because what is early to one person may not be early to another. (Petitioner's Exhibit 2, pp 68-69).

Dr. Cristopher Meyer reviewed a PA radiograph from Ferrell Hospital dated July 15, 2016. He found the film to be quality 1 (Respondent's Exhibit 1, p 40). Dr. Meyer testified that there was a calcified granuloma in the left mid lung with calcified left hilar lymphnodes. He testified that the lungs were otherwise clear without small opacities. His impression was no radiographic findings of coal workers' pneumoconiosis (Respondent's Exhibit 1, p 40).

Dr. Meyer has been board certified in radiology since 1992 (Respondent's Exhibit 1, p 7). Dr. Meyer has been a B-reader since 1999 (Respondent's Exhibit 1, p 19). Dr. Meyer was asked to take the B-reading exam by Dr. Jerome Wiot who was part of the original committee that designed the teaching course which was called the B-reader program (Respondent's Exhibit 1, pp 19-21). Dr. Meyer testified that there are several ways to study for the B-reader examination. There is a module that contains a whole series of films that NIOSH will send to the physician or the American College of Radiology runs a B-reading course. Dr. Meyer testified that he has participated in the course previously while studying for the examination and was recently asked to have a more active academic role in helping with the B-reader course in the future. Dr. Meyer is on the American College of Radiology Pneumoconiosis Task Force which is engaged in redesigning the course, the exam and submitting cases for the training module and exam (Respondent's Exhibit 1, pp 31-32). Dr. Meyer testified that the B-reader training course was a weekend course in which there were a series of lectures describing the B-reader classification system. The teachers of the course would

go through standard examples of the various components of the B-reading system. The course participants would then review a series of practice examples with mentors overseeing the practice examples. Dr. Meyer testified that the faculty for the B-reading course is typically experienced senior level B-readers (Respondent's Exhibit 1, pp 32-33).

Dr. Meyer testified that typically after one takes the course, he would take the B-reading exam. Dr. Meyer testified that the certifying exam is six hours long with 120 chest x-rays to be categorized. The pass rate for the examination runs roughly 60%. Dr. Meyer testified that radiologists have a 10% higher pass rate on the B-reading exam than other specialties. In Dr. Meyer's opinion radiologists have a better sense of what the variation of normal is (Respondent's Exhibit 1, pp 33-34). Dr. Meyer testified that one of the most important parts of the B-reading training and examination is making the distinction between a 0/1 and 1/0 film (Respondent's Exhibit 1, pp 34-35).

Dr. Meyer testified that the B-reader looks at the lungs to decide whether there are any small nodular opacities and based on the size and appearance of the small opacities they are given a letter score (Respondent's Exhibit 1, p 22). Dr. Meyer testified that specific occupational lung diseases are described by specific opacity types. Coal workers' pneumoconiosis is characteristically described by small round opacities. Diseases that cause pulmonary fibrosis, like asbestosis, would be described by small linear opacities (Respondent's Exhibit 1, p 28). The distribution of the opacities is also described. Different pneumoconioses are seen in different regions of the lung. Coal workers' pneumoconiosis is typically an upper lung zone predominant process. Idiopathic pulmonary fibrosis or asbestosis is a basilar or linear process. The last component of the interpretation is the extent of the lung involvement or so-called profusion (Respondent's Exhibit 1, pp 22-23). Dr. Meyer testified that the profusion is basically trying to describe the density of the small opacities in the lung (Respondent's Exhibit 1, p 30). Dr. Meyer testified that a negative film for coal workers' pneumoconiosis does not necessarily rule out the disease. He agreed that many coal miners that have had negative chest x-rays for coal workers' pneumoconiosis actually had it pathologically (Respondent's Exhibit 1, p 45).
Dr. Meyer did not pass the B-reading test the first time he took it (Respondent's Exhibit 1, p 69). He testified that he was two years out of his residency, around 1994, when his commanding officer at the hospital told him he was to go take the B-reading exam. He had no idea that he was actually supposed to study for the exam so he showed up on a weekend, took the American College Radiology course and sat for the examination. Dr. Meyer testified that he became certified as a B-reader in 1999 and has not failed the B-reader exam since then (Respondent's Exhibit 1, p 69).

At the request of Respondent's counsel, Dr. James R. Castle reviewed medical records and a chest x-ray taken of Petitioner (Respondent's Exhibit 2, p 18). Dr. Castle is a pulmonologist and is board certified in internal medicine and in the subspecialty of pulmonary disease (Respondent's Exhibit 2, p 3). Dr. Castle practiced in Roanoke, Virginia for 30 years. His practice was limited to pulmonary disease and chest disease which encompassed critical care medicine (Respondent's Exhibit 2, p 6). Dr. Castle's practice included treating patients with occupational lung disease. He had some patients in his practice who had coal workers' pneumoconiosis (Respondent's Exhibit 2, pp 6-7). Dr. Castle was continuously certified as a B-reader from 1985 through June 30, 2017 (Respondent's Exhibit 2, p 12).

Dr. Castle reviewed a chest x-ray of Petitioner taken at Ferrell Hospital on July 15, 2016. Dr. Castle testified that the film was quality 1 and there were no parenchymal abnormalities consistent

with pneumoconiosis (Respondent's Exhibit 2, p 24). Dr. Castle testified that for a proper reading of a chest x-ray for pneumoconiosis one needs to compare the subject film to the standard ILO classification films looking for the presence or absence of any parenchymal abnormalities. The reader should indicate the location of those opacities and the profusion (Respondent's Exhibit 2, pp 24-25). Dr. Castle testified that the profusion is the amount of abnormality in an affected portion of the lung (Respondent's Exhibit 2, p 25). Dr. Castle testified that the importance of the distinction between a diffusion of 0/1 and 1/0 is that a 1/0 profusion indicates the most minimal changes present that would be considered positive for pneumoconiosis. The 0/1 profusion is a negative film for pneumoconiosis (Respondent's Exhibit 2, pp 26-27).

Dr. Castle agrees with the position of the American Thoracic Society that an older worker with a mild pneumoconiosis may be at low risk for working in currently permissible dust exposure levels in the mine until he reaches retirement age. He testified that it is very unlikely for simple pneumoconiosis to progress once the exposure ceases (Respondent's Exhibit 2, p 27). Dr. Castle testified that there is no clinical significance to subradiographic pneumoconiosis. He testified that subradiogrpahic means that there may be some macules or minimal changes seen on biopsy but they are not enough to be seen on x-ray. He testified that if there is a significant enough number of macules to cause an impairment in pulmonary function, that could show up first with a reduction in an individual's diffusion capacity (Respondent's Exhibit 2, p 28). Dr. Castle testified that Petitioner's diffusion capacity of 112% of predicted indicates that there is no impairment at the interstitial level of the lung and that the alveolar-capillary surface is intact. He testified that when pneumoconiosis causes impairment it would typically affect the lungs at the interstitial level (Respondent's Exhibit 2, pp 28-29).

Dr. Castle testified that the pulmonary function testing performed on Petitioner was normal. He testified that there was not any indication of restriction or evidence of obstruction in Petitioner. He testified that there was no impairment in gas exchange based upon the testing performed on Petitioner (Respondent's Exhibit 2, pp 29-30). Dr. Castle testified that Petitioner was capable of heavy manual labor from a respiratory standpoint. Dr. Castle testified that he is familiar with the *American Medical Association Guides to the Evaluation of Permanent Impairment, Sixth Edition*. He testified that if he applied the results from the pulmonary function testing on Petitioner to Table 5-4 of the *Guides*, Petitioner would fall in Class 0 impairment (Respondent's Exhibit 2, p 30).

Dr. Castle testified that based upon a thorough review of all the data including medical histories, physical examinations, radiographic evaluations, physiologic testing and other data, Petitioner does not suffer from any pulmonary disease or impairment occurring as a result of his occupational exposure to coal mine dust (Respondent's Exhibit 2, pp 30-31). He testified that Petitioner worked in or around the underground mining industry for a sufficient enough time to have possibly developed coal workers' pneumoconiosis if he were a susceptible host. Petitioner did not demonstrate any consistent physical finding indicating the presence of an interstitial pulmonary process. He did not have the consistent finding of rales, crackles or crepitations (Respondent's Exhibit 2, pp 30-31). Dr. Castle noted that Dr. Smith felt there were changes of pneumoconiosis with a profusion of 1/1 on the chest x-ray of July 15, 2016. Dr. Smith described findings in the middle and lower lung zones. Dr. Castle testified that a CT scan of the abdomen and pelvis revealed that the lung bases showed no abnormalities (Respondent's Exhibit 2, pp 31-32). Dr. Castle testified that the physiologic studies performed by Dr. Istanbouly were entirely normal and the diffusing capacity performed at Methodist Hospital was entirely normal. Petitioner had no

evidence of any respiratory impairment from any cause, including coal workers' pneumoconiosis (Respondent's Exhibit 2, p 32).

Dr. Castle testified that there was a very remote possibility that Petitioner could have coal macules in his lung that Dr. Castle could not see on the chest x-ray, but based on all the clinical tools utilized in this case there was nothing to indicate that Petitioner had coal workers' pneumoconiosis (Respondent's Exhibit 2, pp 37-38). Dr. Castle testified that his negative chest x-ray reading would not necessarily rule out subradiographic pneumoconiosis (Respondent's Exhibit 2, p 38). Dr. Castle testified that the lung tissue that has subradiographic scarring cannot perform the function of normal healthy lung tissue but impairment has to cause some actual measurable decline in function (Respondent's Exhibit 2, pp 40-41).

Dr. Castle testified that the standard films provided by NIOSH are used for determining profusion on a film. Dr. Castle testified that the syllabus used for studying for the B-reading course as well as the course itself stress how one determines profusion (Respondent's Exhibit 2, pp 42-43). Dr. Castle considers the distinction between a 1/0 profusion and 0/1 profusion to be the most difficult part of reading a film for pneumoconiosis. Dr. Castle testified that according to the *AMA Guides to the Evaluation of the Permanent Impairment, Sixth Editio*n, chest imaging is not a factor for determining impairment (Respondent's Exhibit 2, p 44). Dr. Castle testified that being tested by NIOSH to be qualified as a B-reader is intended to remove as much subjectivity from interpretation of films for pneumoconiosis as is possible. He testified that if somebody were to underread films for pneumoconiosis or overread films, they would be graded down for that in the B-reading test (Respondent's Exhibit 2, pp 46-47).

Medical records of Sesser Community Health Center were admitted into evidence. Petitioner was seen on February 27, 2013, regarding uncontrolled diabetes. Review of systems was positive for increased fatigue but negative for dyspnea. It was noted that Petitioner had worked as a coal miner for greater than 30 years and was a never smoker. Physical examination of the chest revealed the lungs clear to auscultation (Respondent's Exhibit 4, pp 119-123). Petitioner was seen on September 10, 2013. Physical examination of the chest revealed the lungs clear to auscultation (Respondent's Exhibit 4, pp 109-111). Petitioner was seen on October 2, 2013. Review of systems was negative for dyspnea. Physical examination of the chest revealed the lungs clear to auscultation (Respondent's Exhibit 4, pp 104-106). Physical examination of the chest again revealed lungs clear to auscultation on December 10, 2013, March 19, 2014, and June 24, 2014 (Respondent's Exhibit 4, pp 89-92, 95-97, 99-101). Petitioner was seen on October 20, 2014, in follow up for his chronic conditions. Review of systems respiratory was negative for cough or dyspnea. Physical examination of the chest revealed the lungs clear to auscultation (Respondent's Exhibit 4, pp 84-86). Petitioner was seen by Dr. Makhdoom on November 4, 2014, at which time he was scheduled for colonoscopy. On review of systems, Petitioner denied dyspnea with exercise, cough or shortness of breath with exercise. Physical examination of the chest revealed the lungs clear to auscultation (Respondent's Exhibit 4, pp 81-83).

Petitioner was seen on April 10, 2015. His physical examination of the chest revealed the lungs clear to auscultation (Respondent's Exhibit 4, pp 59-60). Petitioner was seen on July 23, 2015. He was doing well without complaints or concerns. Physical examination of the chest revealed the lungs clear to auscultation. They remained clear to auscultation on October 27, 2015 (Respondent's Exhibit 4, pp 39-40, 50-51).

Petitioner was seen on June 3, 2016. Physical examination of the chest revealed the lungs clear to auscultation (Respondent's Exhibit 4, pp 30-31). Petitioner was seen on July 5, 2016. Physical examination of the chest revealed the lungs clear to auscultation. Petitioner was seen by Southern Illinois Urology on July 12, 2016. Petitioner reported exercise intolerance in his review of systems but also noted no shortness of breath when walking or lying down. Physical examination of the chest revealed the lungs clear to auscultation (Respondent's Exhibit 4, pp 21-23). Petitioner was seen by urology again on September 6, 2016. He again denied shortness of breath when walking or lying down (Respondent's Exhibit 4, pp 12-14). Petitioner underwent CT of the abdomen and pelvis on August 24, 2016. Findings included that the lung bases were clear (Respondent's Exhibit 4, pp 15-16).

Medical records of Rea Clinic were admitted into evidence. Petitioner was seen on November 11, 2016, for follow up on chronic conditions. His review of systems respiratory was negative for breathing problems, shortness of breath, cough or wheezing. Physical examination of the chest revealed the lungs clear to auscultation (Respondent's Exhibit 5, pp 237-241). Petitioner was seen by Dr. David Knowles for urinary symptoms on December 27, 2016. Review of systems respiratory was negative for cough or difficulty breathing. Physical examination of the chest revealed the lungs clear to auscultation bilaterally (Respondent's Exhibit 5, pp 232-234). Petitioner was seen on April 14, 2017, for follow up. It was noted that he was busy outside and often went fishing. Review of systems respiratory was negative for breathing problems, cough, shortness of breath or wheezing. Physical examination of the chest revealed the lungs clear to auscultation (Respondent's Exhibit 5, pp 221-224). Petitioner was seen on July 21, 2017, for follow up for lab work and chronic conditions. Review of systems respiratory was negative for cough, shortness of breath or wheezing (Respondent's Exhibit 5, pp 204-209). Petitioner was seen on December 17, 2018, for one year follow up. Review of systems respiratory was negative for cough, shortness of breath or wheezing. Physical examination of the chest revealed the lungs clear to auscultation bilaterally (Respondent's Exhibit 5, pp 158-161).

Petitioner was seen on June 14, 2019, for six month follow up. Petitioner denied any issues. His review of systems respiratory was negative for cough, shortness of breath or wheezing. Physical examination of the chest revealed lungs clear to auscultation (Respondent's Exhibit 5, pp 145-148). Petitioner was seen on January 13, 2020, for follow up on chronic conditions. It was noted that he was doing well. Review of systems respiratory was negative for dyspnea on exertion or shortness of breath. Physical examination of the chest revealed the lungs clear to auscultation (Respondent's Exhibit 5, pp 124-127). Petitioner was seen on July 2, 2020, in follow up for his chronic conditions. He was doing well overall. Review of systems constitutional was negative for fatigue. Review of systems respiratory was negative for shortness of breath, cough or dyspnea on exertion. Physical examination of the chest revealed the lungs clear to auscultation (Respondent's Exhibit 5, pp 113-117).

Petitioner was seen on January 12, 2021, for routine follow up. Review of systems cardiovascular was negative for shortness of breath or dyspnea. Physical examination of the chest revealed the lungs clear to auscultation (Respondent's Exhibit 5, pp 107-110). Petitioner was seen on July 19, 2021, for routine follow up. Review of systems respiratory was negative for shortness of breath or cough. Physical examination of the chest revealed the lungs to be clear with no wheezes, rales or rhonchi (Respondent's Exhibit 5, pp 72-75). Petitioner was seen on October 22, 2021. Physical examination of the chest revealed the lungs to be clear with no wheezes, rales or rhonchi (Respondent's Exhibit 5, pp 20-23). Petitioner was seen on November 19, 2021. His review of

systems respiratory was negative for cough or shortness of breath. Physical examination of the chest revealed the lungs to be clear with no wheezes, rales or rhonchi (Respondent's Exhibit 5, pp 10-13).

Conclusions of Law

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

The Arbitrator concludes Petitioner failed to prove that he sustained an occupational disease arising out of and in the course of his employment and that his current condition of ill-being is causally related to occupational exposure.

In support of this conclusion the Arbitrator notes the following:

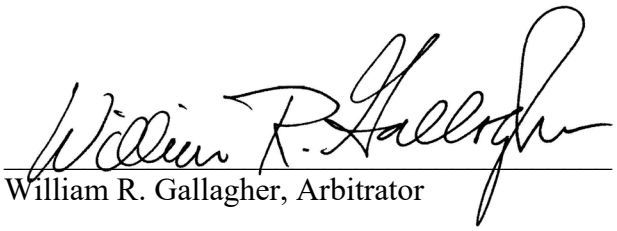
All of the physicians interpreted the chest x-ray of Petitioner dated July 15, 2016. Dr. Castle testified that for a chest x-ray to be positive for pneumoconiosis the profusion must be 1/0 or greater. Dr. Castle described the protocol for proper reading of a chest x-ray for pneumoconiosis. He testified that profusion is important because that is the determination of whether or not the x-ray is positive or negative. Dr. Istanbouly did not follow this protocol and did not know the profusion of the film that he reviewed.

Dr. Istanbouly is not an A-reader or B-reader of films. He cannot say whether the film he reviewed had a profusion of 1/0 or 0/1. Although one does not have to be a B-reader to interpret films for the presence of coal workers' pneumoconiosis, such certification lends credibility to a physician's interpretation. Dr. Istanbouly testified that when he interprets a film for black lung, he determines whether it is positive or negative and if it is positive, he classifies it as early, moderate or severe. In this case he classified what he saw on Petitioner's chest x-ray as early or mild pneumoconiosis. Dr. Smith testified that the adoption of profusion ratings was done to avoid imprecise descriptive terms of what was seen on the films such as early, moderate or severe pneumoconiosis. Dr. Smith testified that any A or B-reader knows what is meant by 1/0 profusion. He testified that what early pneumoconiosis means to one person may not be what early pneumoconiosis means to another. Based on the above, the Arbitrator gives no weight to Dr. Istanbouly's interpretation of Petitioner's July 15, 2016, chest x-ray.

Dr. Smith interpreted the chest x-ray of July 15, 2016, as positive for pneumoconiosis, profusion 1/1 with P/S opacities in the bilateral mid and lower lung zones. Dr. Smith, on his B-reading form, did not note any opacities in the upper lung zones. Dr. Meyer and Dr. Castle testified that there were not any findings of coal workers' pneumoconiosis on the July 15, 2016, chest x-ray. Furthermore, Dr. Meyer testified that coal workers' pneumoconiosis is typically an upper lung zone predominant process. Dr. Smith agreed with the B-reading syllabus that in coal workers' pneumoconiosis opacities occur primarily in the upper to mid lung zones. Dr. Smith's interpretation was not consistent with the general presentation and progression of coal workers' pneumoconiosis. Finally, CT of the abdomen and pelvis performed on August 24, 2016 caught the lung bases which showed no abnormalities. The *Guides to the Evaluation of Permanent Impairment, Sixth Edition* in Section 5.4b states in part that the standard CT and/or HRCT can provide greater accuracy as part of a thorough assessment of the pulmonary parenchyma. This interpretation is in accord with the interpretations of Drs. Meyer and Castle of the July 15, 2016 chest x-ray and in discord with the interpretations of the film by Drs. Smith and Istanbouly.

The Arbitrator finds the opinions of Dr. Meyer and Dr. Castle, as they pertain to whether or not Petitioner has evidence of coal workers' pneumoconiosis, more persuasive than the opinions of Dr. Smith and Dr. Istanbouly. The Arbitrator finds Dr. Meyer to be the most persuasive of the B-readers given that he is not only a board certified radiologist and B-reader, but he is also on the ACR Pneumoconiosis Task Force which is engaged in redesigning the B-reading course and exam and submitting cases for the training module and exam. Dr. Smith testified that the panel which authored the B-reading syllabus are the peers he aspires to be and that the leaders in the field have been chosen to put that syllabus together. He acknowledged that Dr. Meyer is one of the authors of the syllabus.

In regard to disputed issues (L) and (O) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusions of law in disputed issues (C) and (F).



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019490
Case Name	Vanessa Allen v. Hot Spot
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0467
Number of Pages of Decision	16
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Charles Edmiston
Respondent Attorney	Melissa McEndree

DATE FILED: 12/8/2022

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

☒ 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

Vanessa Allen,

Petitioner,

vs. NO: 21 WC 19490

Hot Spot,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, average weekly wage, 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 February 24, 2022, is hereby affirmed and adopted.

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the

Commission. 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.

December 8, 2022
MP:yl
o 12/1/22
68

/s/ *Marc Parker*
Marc Parker

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019490
Case Name	ALLEN, VANESSA v. HOT SPOT
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Charles Edmiston
Respondent Attorney	Melissa McEndree

DATE FILED: 2/24/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 23, 2022 0.7%

/s/Edward Lee, Arbitrator

Signature

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

- [ ] 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

Vanessa Allen
Employee/Petitioner

v.

Hot Spot
Employer/Respondent

Case # **21** WC **019490**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Quincy, IL**, on **November 3, 2021**. 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. [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. [ ] Other _____

FINDINGS

On **4/27/2021**, 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

Petitioner's injury did not arise out of and in the course of employment, and as such, Petitioner is unable to recover under the Act. All other disputed issues are moot based on the aforementioned finding.

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

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

Edward Lee
Signature of Arbitrator

FEBRUARY 24, 2022

State Of Illinois)
) SS
County Of Adams)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Vanessa Allen,	**)**	
	)	
Petitioner,	**)**	
	)	
Vs.	**)**	**No.: 21 WC 19490**
	)	**Arbitrator: Edward Lee**
Hot Spot,	**)**	**Hearing: 11/3/2021**
	)	**Quincy, Illinois**
Respondent.	**)**	

MEMORANDUM OF DECISION OF ARBITRATOR

FACTS OF CLAIM:

In support of the Arbitrator's decision related to: ***(C) Did an accident occur that arose out of and in the course of the Petitioner's employment by the Respondent; (F) Is Petitioner's current condition of ill-being causally related to the injury; (G) What were the Petitioner's earnings; (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? TTD***

The Arbitrator finds the following facts:

Vanessa Allen ("Petitioner") testified she worked for Hot Spot ("Respondent"), a gambling room, as an attendant for five years (T. 7). She descried her job as setting up for the costumers, cleaning, sweeping, carrying cases of pop and stocking coolers, (T 15). Her job also included opening the business and turning on off the alarm. (T-8-9) She worked part-time, 18 hours a week. (T. 8) She testified to pre-existing health problems and receiving Social Security Disability Benefits. (T. 22) Per the medical records, Petitioner has chronic kidneys disease and a foot injury that caused her to walk with a cane. (Res. Exh. 1)

On April 27, 2021, Petitioner present to work. (T-8) She testified that she entered the business, put her breakfast on the table and walked to turn off the alarm. (T 8) She

testified she did not hurry; she was walking fast. (T 8) She testified she never hurried as she always arrived to work early. (T- 28) She had 60 seconds to turn off the alarm and had enough time to enter the door, set down her breakfast and walk to the alarm. (T 9) On the alleged accident date, she fell while walking to the alarm. (T. 10) Per her testimony, Petitioner had nothing in her hand and did not trip on anything. She was not sure how she fell. (T-27) The medical records from that date document she tripped on her own shoes. (P. Exh. 1)

She injured her right side of her face when she fell on her right side. (T. 10) She landed on both hands, legs and face. (T-10) She crawled to the wall and pulled herself up. (T 10-11) As she never turned off the alarm until after she got up, a police officer arrived at the business. (T. 11) He saw her and called an ambulance. (T. 12) Petitioner did not admit the ambulance records into evidence.

Petitioner testified that she does not routinely fall, but the medical records supports she walked with a cane prior to the accident and document other falls before and after the work injury. (P. Exh. 1) (T-25)

Petitioner testified her left fingers, arm and shoulder hurt. (T 18) She specifically did not mention neck pain.

On April 27, 2021, Petitioner presented to the Carle Hospital Emergency Room. The history is "[A]t work pt. tripped on her shoes landing on her face." (P. Ex. 1) She had abrasion to the right side of her face and denied loss of consciousness, neck or back pain. (*Id.*) Petitioner complained of head pain and lower arms and hands bilaterally. (*Id.*) The doctors' performed a head CT scan and x-rays to her bilateral hands, bilateral forearms, and a check x-ray. (*Id.*) The head CT scan had no fractures with soft tissue swelling on her right forehead, but she had no fractures or acute abnormalities. (*Id.*) The left hand x-ray showed probable evidence of an old fracture and mild to moderate osteoarthritis changes. (*Id.*) The right hand x-ray showed no fractures and degenerative findings. (*Id.*) The left forearm x-ray showed no acute findings with degenerative findings. (*Id.*) The right forearm also had no acute finding and degenerative changes. The check x-ray was normal. The records do not include an off work note.

Petitioner next returned to Carle Clinic on May 12, 2021, 15 days after the emergency room treatment. (*Id.*) On this visit, she only complained of left and right forearm pain. (*Id.*) She did not mention her neck, wrist, or shoulder or any other body part. On this visit, she did not recall how she landed on the April 27, 2021 fall. (*Id.*) She testified at trial that she landed on her face both hands and legs. (T. 10) The doctor stated that her right and left elbow issues are most likely degenerative. (P. Exh. 1) He recommended elbow imaging as Petitioner complained of acute pain. (*Id.*) The provider referred her to occupational health for the bilateral elbow pain. (*Id.*) The records do not include an off work note.

Petitioner returned to Carle Hospital on May 13, 2021 for an unrelated condition, chronic kidney disease. (*Id.*) The note documented Petitioner had a fall on her left side and is receiving physical therapy. (*Id.*) No physical therapy records are included in the Petitioner's medical records before this date. (*Id.*) The provider listed her active problems as walking with a cane as of April 5, 2021, 22 days after the alleged fall. (*Id.*) She had osteoarthritis of her cervical spine as of October 18, 2016. (*Id.*) The records do not include an off work note.

On that same day, May 13, 2021, Petitioner present to Carl Hospital Physician Group. The history states Petitioner fell at home in a subsequent encounter. (*Id.*) Petitioner's chief complaint was upper extremity pain bilaterally after a fall. She mentions walking from the back room to turn off her alarm when she fell forward on her face, breaking her glasses. (*Id.*) Petitioner did not testify that she broke her glasses.

The records documents that Petitioner had just returned to work two days prior to the fall. (*Id.*) Petitioner testified she did not miss work for any other injuries. On this visit, she requested permission to return to work. (*Id.*) Petitioner complained of upper extremity, acute pain of her left shoulder and thought she could return to work with these symptoms. (*Id.*) Petitioner is complaining of left forearm and right forearm pain. (*Id.*) On examination, her left hand was swollen; supporting this was a new fall as Petitioner had right side face abrasions at the emergency room post the April 27, 2021 fall. (*Id.*) She also did not have a left swollen hand at the emergency room on April 27, 2021. (*Id.*) The doctor provided a work note for one week for recovery. (*Id.*) The note and the records do not mention the April 27, 2021 accident. (*Id.*) The fall is on the left side. (*Id.*)

On May 14, 2021, Petitioner presented to Carle Therapy Services. (*Id.*) Petitioner stated her left forearm hurt. (*Id.*) She could not make a fist with her left hand. (*Id.*) She returned to physical therapy on May 18, 2021. She complained of left sided hand pain 10/10 and adjusted to 8/10. (*Id.*) The therapist recommended she use her left hand and forearm or it will get worse. (*Id.*) On May 20, 2021, Petitioner presented for physical therapy. The records note Petitioner was unable to make a left-handed fist, was guarded with her left hand and forearm, but could carry a water bottle out of therapy with her left hand. (*Id.*) On her May 25, 2021 visit, she still remained guarded with her left hand and forearm. She made no mention of any other body parts. (*Id.*)

The May 27, 2021 office note mentions her chief complaint as her neck and shoulder pain with pain in both arms. (*Id.*) The prior treatment records did not mention neck or shoulder pain. The history documents a fall at home with subsequent encounter. (*Id.*) The provider tendered an off work note for two weeks, that would end on June 10, 2021. (*Id.*)

Petitioner retuned to physical therapy on June 1, 2021. She reported she was able to wash and dress herself. (*Id.*) She cannot sleep on her left side. (*Id.*) She continued to be guarded with her left hand. (*Id.*) Petitioner admitted to not performing home exercises. (*Id.*)

On June 2, 2021, Petitioner presented to Carle Neuroscience Institute for neck pain. (*Id.*) Petitioner did not testify at trial of having any neck pain. Petitioner had not treated for neck pain before this date and specifically did not complain of neck pain in the emergency room on April 27, 2021. (*Id.*) Petitioner provided the April 27, 2021 accident as she fell forward at Respondent's business where she worked as an attendant and fell forward. (*Id.*) For the first time, she described immediate neck pain and bilateral arm pain that radiates to her fingers. (*Id.*) This is five weeks after the April 27, 2021 accident. The doctor reviewed an x-ray that showed moderate restrictions in range of motion and severe restriction in lateral bending bilaterally. (*Id.*) The provider diagnosed, degenerative cervical disc disease and complex regional pain syndrome bilateral to the upper extremities. (*Id.*) He did not provide a causal connection opinion or find the work accident aggravated her pre-existing condition. (*Id.*) This provider did not provide an off work note.

Petitioner returned to physical therapy on June 3, 2021. She documented that she lays in bed all day and watches TV. (*Id.*) The plan documented she would start therapy for the neck. (*Id.*) This is a new finding, as she did not mention the neck in her initial treatment records. (*Id.*) She also did not testify to a neck injury at trial. She returned to physical therapy on June 7, 2021. Client admitted she is not performing her home exercise. (*Id.*) She watches TV but is able to wash and dress herself and hang her clothes out to dry. (*Id.*)

The June 8, 2021 therapy notes documents that the Petitioner had neck pain since April 27, 2021 that is not supported by the medical records. (*Id.*) She slipped and fell in a building where she worked. (*Id.*) She cannot use her left hand. (*Id.*) The pain is in the left side of her neck and down the left shoulder and her mid back. (*Id.*) She had pain in left forearm. (*Id.*) Now, just a day after the statement that she can dress herself, the medical record states her daughter must dress her and help with bathing, laundry and making her bed. (*Id.*) Just on June 7, 2021, Petitioner admitted she could wash herself, dress herself and hang her clothes out to dry. (*Id.*)

Petitioner also presented to a physical therapy Medicare Certification on June 8, 2021 at Carle Therapy Clinic. (*Id.*) This would not be related to a work accident, as it is a Medicare Certification. The doctor listed her primary diagnosis as degenerative disc disease to her neck when she had not mentioned her neck at the initial treatment. (*Id.*) She states her arm pain started six weeks ago at the work accident, but this is not

supported by the medical records. (*Id.*) She alleged on this date that he pain is on her thoracic spine and not her neck or her shoulder. (*Id.*) She did not testify to back pain.

On June 9, 2021 in therapy Petitioner confirmed she cooked. (*Id.*) On June 14, 2021 at therapy, she confirmed she is bathing and dressing herself and using her stress ball at home. (*Id.*) on June 15, 2021, at therapy she felt her pain was improving. (*Id.*)

On June 16, 2021, Petitioner followed up from Vascular Surgery on March 25, 2021 that saved her left upper extremity. (*Id.*) This was before the work accident. Petitioner had a left SFA stent and a left renal artery stent graft. (*Id.*) The stent graft saved her left upper extremity. (*Id.*)

Petitioner returned to therapy on June 17, 2021, June 21, 2021, June 22, 2021, and June 24, 2021. (*Id.*) On June 21, 2021, Petitioner said she could not pick anything up with her left hand, yet the therapy documented Petitioner tied her show laces, adjusted her glasses and mask with her left hand and had improved natural use of her left hand with less guarding a apprehension. (*Id.*)

She presented to her kidney disease doctor, Dr. Attia Abdel-Moneium on June 30, 2021. She told him she is well without complaints and denied any pain, headaches, dizziness, muscle or joint pain. (*Id.*) However, the next day at therapy she complaints the weather is affecting her pain and he left forearm, shoulder and fingers are worse. (*Id.*)

Petitioner continued with physical therapy on July 6, 2021, July 8, 2021, July 12, 2021, and July 15, 2021. (*Id.*) On July 6, 2021, she complained of her left upper extremity. (*Id.*) The provider noted she walked with a cane. The record documented that she did not meet the requirements for complex regional pain syndrome. (*Id.*) On July 8, 2021, she suggested returning to work light duty. On July 12, 2021, her left shoulder pain improved. (*Id.*) However, on July 15, 2021, she had issues with dizziness at therapy and went to the emergency room. (*Id.*)

At the emergency room on July 15, 2021, Petitioner denied back or neck pain. (*Id.*) She had normal range of motion in her back and neck. (*Id.*)

Petitioner presented to an MRI of her neck on July 17, 2021. It showed multilevel degenerative changes. (*Id.*)

She continued with physical therapy from July 20, 2021 and July 22, 2021. (*Id.*) She admitted to feeling better and doing a lot more work at home. (*Id.*) She confirmed she was cooking. She admitted to pain in her index finger into her elbow. (*Id.*)

On July 26, 2021, Petitioner presented for a Nephrology Clinic Progress Note. This was a follow up for her chronic kidney disease. (*Id.*) She did not mention neck or back pain and denied any muscle and joint pain. (*Id.*)

Petitioner documented a new fall in the medical record on July 27, 2021. She went to the Carle Hospital Emergency Room for a fainting spell at home. (*Id.*) She admitted this was the third time she had passed out in two weeks. (*Id.*) She had no complaints of left upper extremity pain for either shoulder, forearm, wrist of hand. (*Id.*)

On July 28, 2021, Carle Therapy Services – Occupational Therapy discharged her from care. (*Id.*) The Petitioner had left upper extremity pain all day without complaints of pain in shoulder or anterior arm. (*Id.*) The assessment stated she made excellent gains towards her goals. (*Id.*) However, the next day she return to Carle Physical Therapy with 8 or 10 shoulder pain from her anterior arm to her ring finger.

On August 4, 2021, Petitioner presented to Carle Hospital Family Medicine. She reports dizziness without falling. (*Id.*) She requested an off work note. (*Id.*) The note listed Petitioner has left elbow pain as unclear etiology. (*Id.*) The doctor provide a note light duty note from August 4, 2021 to September 4, 2021. (*Id.*)

Petitioner returned to physical therapy on August 5, 2021 and August 12, 2021. She was discharged from care on August 12, 2021 meeting 50 percent of her goals. She thought her left arm was sore because of the weather. (*Id.*) She admitted to improvement with therapy. (*Id.*) Her discharge documented that her range of motion of the left is equal to the right with less pain. (*Id.*) The strength is equal on both without pain and Petitioner is much less sensitive to touch of the upper left extremity and has become more active. (*Id.*)

On August 17, 2021, Petitioner presented to a brain and spine specialist, Dr. Victoria Johnson. Petitioner complained of left arm and neck pain. (*Id.*) Her pain was 10/10. (*Id.*) This doctor did not provide a causal connection opinion between the work injury and the April 27, 2021 fall. (*Id.*)

Petitioner presented to The Department of Interventional Pain Center on August 31, 2021. Petitioner walked with a cane. Her cervical spine range of motion was full and non-painful. (*Id.*) She had some cervical tenderness on the left side. (*Id.*) She had some allodynia over the left forearm. (*Id.*) Her handgrip was weaker on the side. (*Id.*) He mentioned an April 2021 fall at work without providing a causal connection opinion. (*Id.*)She was to follow up with Dr. Rauther in four months. (*Id.*) He did not provide Petitioner with an off work note.

Petitioner next treated with her family doctor on October 6, 2021. She is there for left arm pain. (*Id.*) She wanted an injection. (*Id.*) The doctor provided a restriction note for no lifting over 10 pounds from September 1, 2021 to December 31, 2021. (*Id.*) He did not provide a causal connection opinion. (*Id.*) This is the last medical records in the file from a doctor. (*Id.*) Petitioner returned to physical therapy on October 14, 2021 and October 21, 2021. (*Id.*) She admitted the prior therapy improved her condition.

Petitioner does not have a causal connection opinion from a spine specialist or a medical doctor in the medical records.

CONCLUSIONS OF LAW:

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING: (C) DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT; THE ARBITRATOR CONCLUDES AS FOLLOWS:

The Arbitrator finds that the Petitioner's accident did not arise out of the course of his employment with the Respondent. Petitioner failed to prove by a preponderance of the credible evidence that her fall at work on April 27, 2021 arose out of the course of her employment as walking is a personal risk and merely walking, not hurrying, furthered her employment. Petitioner, by her own testimony and by her medical records, support Petitioner did not have fall that resulted from her employment.

Petitioner testified that she could not explain her fall. This is an idiopathic fall. This accident is only related to her employment, if she can show her work created a hazard. Petitioner did not testify to any defect. She did not testify she was carrying any objects. She opened the door to the business, had plenty of time to turn off the alarm according to her testimony, put her breakfast down, walked to the alarm and fell. She was not sure how but she landed on her face. This is not a work related injury as Petitioner was walking and for some reasons, unrelated to her employment, she fell. Even when her attorney asked on multiple occasions if she was hurrying to turn off the alarm, each time she said no.

The Petitioner's medical records from the emergency room on April 27, 2021 document that Petitioner fell on her own two feet. This is an idiopathic fall as caused by something internal or inherent to the Petitioner. Whether she was dizzy, or tripped on her own two feet, merely walking at her work, even if walking to turn off a burglar alarm, does not rise to the level of a work related accident under the Act.

Based on Petitioner's testimony and her emergency room records, the Arbitrator finds Petitioner did not have a work related accident. All other issues are moot.

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

Having found that Petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury that arose out of and in the course of his employment by Respondent on April 27, 2021, the Arbitrator finds this point moot.

Alternatively, having found Petitioner had a work accident, Petitioner failed to prove by a preponderance of the credible evidence that her treatment after April 27, 2021 is related to the work accident.

Petitioner's medical records do not contain any causal connection opinion supporting her current condition is related to her work accident. Petitioner's attorney did not submit a causal connection opinion by any of Petitioner's treating doctors. Petitioner has no causal connection opinion that the work accident aggravated her pre-existing conditions. Petitioner did not submit a narrative report or an evidence deposition. It is the Petitioner's burden to prove a causal connection exists between the alleged accident and the Petitioner's current condition of ill-being. Only once the Petitioner had established a causal connect does the Respondent need an opinion to dispute the causal connection. In this case, Petitioner has documented pre-existing conditions in the current medical records to each alleged injury, her left elbow, neck and left shoulder.

The Arbitrator finds Petitioner not credible. Petitioner's testimony and history is not credible based on her own medical records. Her therapists ton multiple occasions point out that Petitioner has not provided a credible history of her symptoms. For example, Petitioner alleged she could not make a fist and the therapist documented that Petitioner walked out of therapy carrying a water bottle in her left hand. On another occasion, Petitioner advised she could not hold anything with her hand and the therapist documented she was able to tie her shoe, adjust her mask, and adjust her glass. On one date, Petitioner stated she could perform her own laundry and wash herself and the very next day advised that her daughter needed to help her with bathing and laundry. Finally, she also admitted on multiple occasions to not performing her home exercise programs and the therapist documented this was not helping her condition.

The medical records also have inconsistencies. The emergency room record does not mention a neck injury, but in later records, Petitioner stated in her treatment records that she had immediate neck pain following the accident.

Petitioner needed a causal connection opinion as the records support Petitioner has a procedure to her arm that "save her left arm" in March 2021. Petitioner's attorney did not provide an opinion that her work accident caused or aggravated her pre-existing condition. This is Petitioner's burden.

Petitioner also already had neck issues prior to the work accident as documented as starting in 2016.

Petitioner has stated a fall at work history in some of the medical records, and while the records document that history, no doctor provides a causal connection opinion relating that history to any of her current complaints and diagnosis. It is not enough for

Petitioner to think the fall caused her conditions. It is not enough to have a history in the medical, there needs to be a causal connection opinion.

The medical records also document the April 2021 accident occurred at home. If the medical records that mention falls at home were not correct and represent a clerical error, then Petitioner should have requested a correction or deposed the treating doctor for clarify. Otherwise, the records state the accident occurred at home. Petitioner is relying on the medical records as her only evidence for causal connection and we cannot assume a clerical error without the doctor's documented correction or an evidence deposition.

(G) What were the Petitioner's earnings?

Petitioner's average weekly wage in this case is $136.49. Petitioner earned $7027.88 in the previous 52 weeks. Petitioner testified that she worked part-time employed for five years. Petitioner testified she was receiving Social Security Disability Benefits. She testified that she missed no time from work due to any other health 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 that Petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury that arose out of and in the course of his employment by Respondent on April 27, 2021, the Arbitrator finds this point moot.

Alternatively, having found that Petitioner failed to prove a causal connection between Petitioner diagnosis and work accident, only the emergency room treating is related to the accident as Petitioner failed to provide a causal connection opinion to support the treatment after the initial treatment was related to the work accident and not a pre-existing degenerative condition. The Arbitrator does not award the ambulance bill, as the Petitioner did not submit the medical record with the bill as required.

Alternatively, having found Petitioner had a causally related work accident; only the treatment related to her left hand, left elbow and left shoulder is owed as Petitioner testified that she injured those body parts. She did not testify that she injured her neck. The Arbitrator also does not award the medical bills for treatment related to her pre-existing conditions and/or her unrelated injuries occurring after the April 27, 2021 fall.

(K) What temporary benefits are in dispute? TTD.

Having found that Petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury that arose out of and in the course of her employment by Respondent on April 27, 2021, the Arbitrator finds this point moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC003492
Case Name	Mary Hendrix-Holloway v. State of Illinois - Alton Mental Health
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0468
Number of Pages of Decision	8
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Todd Schroader, Mary Massa
Respondent Attorney	Caitlin Fiello

DATE FILED: 12/8/2022

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARY HENDRIX-HOLLOWAY,

Petitioner,

vs. NO: 20 WC 3492

STATE OF ILLINOIS - ALTON MENTAL HEALTH,

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, 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 May 9, 2022 is hereby affirmed and adopted.

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

December 8, 2022

o: 12/01/22
CMD/ma
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC003492
Case Name	HENDRIX-HOLLOWAY, MARY v. ALTON MENTAL HEALTH
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Todd Schroader
Respondent Attorney	Caitlin Fiello

DATE FILED: 5/9/2022

THE INTEREST RATE FOR THE WEEK OF MAY 3, 2022 1.42%

/s/ William Gallagher, Arbitrator
Signature

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

May 9, 2022

/s/ Michele Kowalski

Michele Kowalski, 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

Mary Hendrix-Holloway
Employee/Petitioner

v.

Alton Mental Health
Employer/Respondent

Case # 20 WC 03492

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 March 30, 2022. 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 November 12, 2019, 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 $64,004.72; the average weekly wage was $1,230.86.

On the date of accident, Petitioner was 59 years of age, married with 0 dependent child(ren).

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

Based upon the Arbitrator's Conclusions of Law attached hereto, 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.

William R. Gallagher, Arbitrator

MAY 9, 2022

ICArbDec p. 2

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 by Respondent on November 12, 2019. According to the Application, a "Rod hit right hand" which caused an injury to Petitioner's "Right hand" (Arbitrator's Exhibit 2). Respondent disputed liability on the basis of accident and causal relationship (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a security therapy aide. Petitioner testified that on November 12, 2019, she was in the supply room and was in the process of getting materials for the copy machine. When she opened a cabinet door, a metal bar fell striking her right hand.

It was not clear when the accident was reported to Respondent. On the date of accident, November 12, 2019, Petitioner completed and signed an "Extended Benefits Report" which noted she had sustained a work-related injury, but there were no details provided regarding same. On December 27, 2019, Petitioner completed and signed an "Employee's Notice of Injury" which described the accident of November 12, 2019, as having occurred when she opened a cabinet door to get copy paper, a metal rod fell on her right hand and she experienced throbbing pain thereafter (Respondent's Exhibit 1).

A "Supervisor's Report of Injury" was completed on November 27, 2019, which noted Petitioner sustained an injury on November 12, 2019, when she opened a cabinet door and a metal bar inside the door came loose from its housing and fell onto her right wrist (Respondent's Exhibit 1).

On November 8, 2019 (four days prior to the accident) Petitioner was evaluated by Dr. Randall Rogalsky, an orthopedic surgeon, for right hand complaints. Dr. Rogalsky's record of that date noted Petitioner had right hand symptoms of several weeks duration which had come on rather suddenly. Petitioner had been experiencing numbness/tingling in the volar thumb area, volar wrist pain and had been dropping objects. Dr. Rogalsky's findings on examination were positive for right carpal tunnel syndrome. He indicated he was going to order EMG/nerve conduction studies (Petitioner's Exhibit 1).

Petitioner did not seek any medical treatment following the accident and subsequently retired from her position. Because of Covid, Petitioner delayed getting the EMG/nerve conduction studies until July 8, 2020. The studies were positive for right carpal tunnel syndrome (Petitioner's Exhibit 2).

Petitioner was seen by Dr. Rogalsky on July 10, 2020; however, she did not inform him of the accident of November 12, 2019. Dr. Rogalsky reviewed the EMG/nerve conduction studies and opined they confirmed his diagnosis of right carpal tunnel syndrome. He recommended Petitioner undergo carpal tunnel release surgery (Petitioner's Exhibit 1).

Dr. Rogalsky performed carpal tunnel surgery on August 11, 2020. Following surgery, Petitioner received physical therapy. She was last seen by Dr. Rogalsky on October 12, 2020. Petitioner never informed Dr. Rogalsky of the accident of November 12, 2019 (Petitioner's Exhibits 1, 3 and 4).

Dr. Rogalsky was deposed on October 8, 2021. On direct examination, Dr. Rogalsky's testimony regarding his diagnosis and treatment of Petitioner's right carpal tunnel syndrome condition was consistent with his medical records. Petitioner's counsel then asked a hypothetical question wherein Dr. Rogalsky was asked to opine as to causality assuming that on November 12, 2019, Petitioner opened a door to a locker and a metal rod fell striking her right hand which caused throbbing pain in her right hand and, further, Petitioner

also performed other duties at work which required the use of her right hand. Dr. Rogalsky responded that carpal tunnel syndrome comes on "insidiously," but it can be "…exacerbated by a traumatic episode. And if a rod fell onto the volar aspect of her right wrist and hand, that could have been an incident in which the problem was exacerbated." (Petitioner's Exhibit 5; pp 8-10).

On cross-examination, Dr. Rogalsky agreed that because the carpal tunnel syndrome was diagnosed on November 8, 2019, the diagnosis of that condition was already "established" prior to the work incident of November 12, 2019. He also agreed there were other risk factors which could contribute to the development of carpal tunnel syndrome, including being female (Petitioner's Exhibit 5; pp 10-12).

At the direction of Respondent, Petitioner was examined by Dr. Ryan Calfee, an orthopedic surgeon, on October 27, 2021. In connection with his examination of Petitioner, Dr. Calfee reviewed medical records and reports regarding the accident provided to him by Respondent. When seen by Dr. Calfee, Petitioner informed him of the accident of November 12, 2019. She did not advise Dr. Calfee that she had been diagnosed with carpal tunnel syndrome four days prior to the accident; however, Dr. Calfee determined that fact when he reviewed the medical records. Dr. Calfee opined there was not a causal relationship between Petitioner's right carpal tunnel syndrome condition or the need for right carpal tunnel release surgery. He noted Petitioner had just been diagnosed with right carpal tunnel syndrome shortly before the accident and, while he agreed trauma can cause carpal tunnel syndrome, it is typically a more significant injury than what was sustained by Petitioner, namely, a fracture which causes permanent thickening in the soft tissues, not a blunt contusion to the hand/wrist (Respondent's Exhibit 3).

Dr. Calfee was deposed on January 7, 2022, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Calfee's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Specifically, he testified there was not a causal relationship between the accident of November 12, 2019, and Petitioner's right carpal tunnel syndrome condition. In explaining his opinion, he noted Petitioner had already been diagnosed with right carpal tunnel syndrome and he noted the accident of November 12, 2019, was a "…low energy mechanism of injury without major trauma to the hand producing things like fractures, or broken ligaments….” (Respondent's Exhibit 4; pp 13-14).

On cross-examination, Dr. Calfee was questioned about some of Petitioner's other job duties which required the use of her hand. He testified those job duties would not have caused carpal tunnel syndrome (Respondent's Exhibit 4; p 23).

Conclusions of Law

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

The Arbitrator concludes Petitioner sustained an accidental injury arising out of and in the course of her employment by Respondent on November 12, 2019.

In support of this conclusion the Arbitrator notes following:

While the Arbitrator notes the time Petitioner reported the accident to Respondent is unclear, her testimony regarding the circumstances of the accident of November 12, 2019, was unrebutted.

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

The Arbitrator concludes Petitioner's current condition of ill-being is not causally related to the accident of November 12, 2019.

In support of this conclusion the Arbitrator notes the following:

Petitioner was diagnosed with right carpal tunnel syndrome on November 8, 2019, four days before she sustained the accident on November 12, 2019.

Petitioner never informed Dr. Rogalsky, her primary treating physician, of the accident of November 12, 2019.

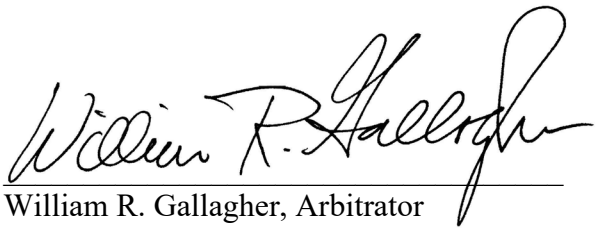
In response to a hypothetical question when he was deposed, Dr. Rogalsky testified the accident of November 12, 2019, could have exacerbated Petitioner's right carpal tunnel syndrome condition. This testimony was, at best, equivocal and further, Dr. Rogalsky's opinion was not based upon a reasonable degree of medical certainty.

Petitioner did not inform Respondent's Section 12 examiner, Dr. Calfee, of the fact she had been diagnosed with right carpal tunnel syndrome prior to the accident of November 12, 2019. He determined this fact when he reviewed the medical treatment records.

Dr. Calfee opined there was not a causal relationship between the accident of November 12, 2019, and Petitioner's right carpal tunnel syndrome condition, basing this opinion on the fact that the condition had been previously diagnosed and the accident of November 12, 2019, was not significant enough on its own to have caused carpal tunnel syndrome.

Based upon the preceding, the Arbitrator finds the opinion of Dr. Calfee in regard to causality to be more persuasive than that of Dr. Rogalsky.

In regard to disputed issue (L) the Arbitrator makes no conclusion of law as this issue is rendered moot because of the Arbitrator's conclusion of law in disputed issue (F).



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC022929
Case Name	Michael Usher v. Atkore International
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0469
Number of Pages of Decision	27
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Martha Niles
Respondent Attorney	Guy Maras

DATE FILED: 12/9/2022

/s/ Deborah Baker, Commissioner

Signature

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 Temporary Disability	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL USHER,

Petitioner,

vs. NO: 20 WC 22929

ATKORE INTERNATIONAL,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review under §19(b) having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues[1] of whether Petitioner's current condition of ill-being is causally related to the undisputed work injury, entitlement to temporary disability benefits, and entitlement to incurred medical expenses as well as prospective medical care, and being advised of the facts and law, modifies the Corrected Decision of the Arbitrator as stated below, but otherwise affirms and adopts the Corrected Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

PROLOGUE

The Commission observes Petitioner's personal identity information was unredacted from Petitioner's Exhibit 1 and Petitioner's Exhibit 3. The Commission cautions Counsel to adhere to Supreme Court Rule 138. *Ill. S. Ct. R. 138* (eff. Jan. 1, 2018).

[1] Petitioner's Petition for Review identifies "Evidentiary Rulings" as an issue, however no related arguments were made in his Statement of Exceptions or during oral arguments.

CONCLUSIONS OF LAW

I. Causal Connection

In concluding that Petitioner's current left knee condition of ill-being is causally related to his June 30, 2020 work accident, the Arbitrator found that although Petitioner's credibility was "compromised," the preponderance of the evidence, including Petitioner's pre-accident ability to work full duty, the imposition of restrictions immediately after the accident, an unsuccessful attempt to resume full duty thereafter, and the causation opinions of Dr. Najera and Dr. Sompalli, established an ongoing causal connection. The Commission's review of the evidence yields the same outcome, however, we write separately as our analysis differs.

A. Credibility

Initially, the Commission disagrees with several negative inferences in the Corrected Decision of the Arbitrator. Specifically, the Arbitrator found Petitioner's credibility was negatively impacted by his responses to certain areas of inquiry – his denial of prior knee problems, denial of obesity and weight loss discussions, denial of improvement with physical therapy, and Petitioner's statement that he submitted his off work slips directly to Respondent. We address each in turn. *See R & D Thiel v. Illinois Workers' Compensation Commission*, 398 Ill. App. 3d 858, 866 (1st Dist. 2010) (When evaluating whether the Commission's credibility findings which are contrary to those of the arbitrator are against the manifest weight of the evidence, "resolution of the question can only rest upon the reasons given by the Commission for the variance.")

The primary reservation about Petitioner's veracity is his denial of left knee problems prior to the undisputed accident. Petitioner testified he had no prior injuries to his left knee and had never sought left knee treatment before the work accident. T. 13. Noting Petitioner had pre-existing osteoarthritis, the Arbitrator indicated he shared the skepticism of Respondent's §12 physician, Dr. Charles Bush-Joseph, regarding Petitioner's denial of prior problems. In his November 11, 2020 report, Dr. Bush-Joseph memorialized that on "repeated questioning" Petitioner denied "prior injury, treatment, or trauma to the left knee," but on "subjective questionnaires" Petitioner "rates his function is poor prior to his knee injury." Resp.'s Ex. 5, Dep. Ex. 2. During his deposition, Dr. Bush-Joseph opined that Petitioner's osteoarthritis was of a severity that notwithstanding Petitioner's repeated denials of prior problems, Petitioner must have had "significant symptoms prior to [the work-related injury]." Resp.'s Ex. 5, p. 19. The Commission finds Dr. Bush-Joseph's assumption is belied by the evidence. Initially, we note there are no "subjective questionnaires" in the transcript that are consistent with Dr. Bush-Joseph's assertion that Petitioner professed he had poor knee function prior to the accident. The transcript contains only one intake form that would have been provided to Dr. Bush-Joseph, that being the July 14, 2020 physical therapy intake form, and therein, in response to "Have you ever had the problem(s) before?," Petitioner marked "No." Moreover, the Commission finds it unlikely that Petitioner had "significant symptoms" prior to the work accident, yet was able to heft his approximately 330-pound frame up and down the two-and-a-half-foot forklift step 40 to 60 times per day. T. 11-12; Resp.'s Ex. 5, Dep. Ex. 2. The Commission observes the treating records from Ingalls Occupational Medicine Clinic and Ingalls Memorial Hospital (Pet.'s Ex. 4), D.C. Hooton and Dr. Najera (Pet.'s Ex. 1), and Dr. Sompalli (Pet.'s Ex. 3) all uniformly document the absence of prior problems or treatment, and no medical

record was adduced to contradict Petitioner's testimony. In the Commission's view, given Petitioner's high functional level and the absence of direct evidence challenging Petitioner's testimony that his knee was asymptomatic prior to the accident, this negative inference was based on supposition.

The Arbitrator also found Petitioner's credibility was compromised by his denial that healthcare professionals at Ingalls Occupational Medicine Clinic spoke to him about weight loss and the effect of obesity on certain joints. Our review of the testimony, however, reveals Petitioner agreed that, to some extent, those discussions occurred:

Q. And the providers at Ingalls discussed with you what the side effects of your weight at the time were having on your joints, correct?
A. Yes. T. 48.

The Arbitrator further found Petitioner's credibility was impacted by his denial of improvement with therapy as reflected by the Ingalls records. On direct examination, Petitioner testified that when he was released from treatment on August 3, 2020, he "still had pain." T. 24. Asked if physical therapy "resolved" his symptoms, Petitioner responded, "No." T. 25. On cross-examination, there was detailed questioning about the individual physical therapy sessions, and Petitioner denied the decreasing pain levels memorialized in the records. T. 50-51. On re-direct examination, Petitioner reiterated that he believes the records are incorrect and explained why: "I never told them anything less than a five because I'm still in pain now." T. 71. While the Commission agrees that Petitioner's testimony on this issue conflicts to some degree with the Ingalls records, we do not find it to be wholly contradictory. Petitioner testified his symptoms did not resolve with physical therapy, and the Ingalls records document Petitioner reported ongoing and unresolved pain complaints, albeit at a level of 3/10 instead of 5/10 as testified to Petitioner. The Commission finds this minor difference to be immaterial.

Finally, the Arbitrator found Petitioner's statement that he provided his work status reports to Respondent was "not credible," and reasoned that his testimony was directly refuted by James Skalon ("Skalon"), who testified Respondent did not receive notice of Petitioner's off-work status. The Commission observes this is not an accurate recitation of the testimony. Petitioner testified he went to Respondent's facility and handed his off work notes to Jamie, the safety manager. T. 40-41. The Commission emphasizes that Skalon corroborated Petitioner's testimony and he repeatedly stated Respondent was aware Petitioner's physicians had restricted him completely from work. To be clear, on direct examination, Skalon testified that Petitioner delivered his doctors' notes to Respondent, and those notes authorized Petitioner off work:

Q. After the leave of absence or during the leave of absence in August of 2020, did he ever return with any off-work slips?
A. Yes.
Q. At that time was Atkore able to accommodate light duty?
A. Yes.
Q. Yet his off-work slip was to be completely off work, correct?
A. Yes. T. 83-84 (Emphasis added.)

During cross-examination, Skalon confirmed Respondent was aware of Petitioner's off work status:

> Q. And, if I understood your testimony correctly, you were aware that from September 24, 2020 he was taken completely off of work, not merely put on light duty; is that correct?
> A. Yes. T. 87.

As Petitioner's testimony on this issue was not rebutted, the Commission finds a negative inference against Petitioner based on these facts is not permissible.

B. Medical Evidence

Having found Petitioner was credible, our analysis then turns to the evidence specific to the causal connection issue. It is well established that an accident need not be the sole or primary cause—as long as employment is a cause—of a claimant's condition. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). Furthermore, an employer takes its employees as it finds them (*St. Elizabeth's Hospital v. Illinois Workers' Compensation Commission*, 371 Ill. App. 3d 882, 888 (5th Dist. 2007)), and a claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36 (1982). As the Appellate Court held in *Schroeder v. Illinois Workers' Compensation Commission*, 2017 IL App (4th) 160192WC, the inquiry focuses on whether there has been a deterioration in the claimant's condition:

> That is, if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Schroeder* at ¶ 28.

With this standard in mind, we turn to consideration of the competing causal connection opinions.

Respondent's expert, Dr. Bush-Joseph, opined the June 30, 2020 accident resulted in a knee contusion that resolved shortly thereafter and Petitioner achieved maximum medical improvement and a full duty release as of July 31, 2020. Resp.'s Ex. 5, Dep. Ex. 2. During his deposition, Dr. Bush-Joseph explained why he did not believe the work accident aggravated or exacerbated Petitioner's underlying osteoarthritis:

> …[Petitioner] had claimed that he had never had symptoms, treatment nor trauma of that knee prior to the work-related injury. You've got radiographic findings on both MRI and x-ray that would suggest that he had some - - more likely than not would have had some significant symptoms prior to that time. The wear was that severe. Resp.'s Ex. 5, p. 19.

Dr. Bush-Joseph confirmed it is possible that Petitioner had no knee complaints prior to the accident, but the doctor felt that was not probable. Resp.'s Ex. 5, p. 22-23. Based on his assumption

that Petitioner's left knee was already highly symptomatic, Dr. Bush-Joseph opined Petitioner fully recovered from the fall and returned to his pre-accident baseline. Resp.'s Ex. 5, p. 21.

Petitioner's treating physicians, in turn, concluded the accident aggravated Petitioner's pre-existing osteoarthritis and caused it to become symptomatic. In his September 28, 2020 initial evaluation report, Dr. Larry Najera memorialized that Petitioner had no symptoms requiring medical care prior to the accident but was complaining of persistent pain since. Dr. Najera's assessment was left knee strain and degenerative joint disease "with possible exacerbation of previously asymptomatic degenerative disease." Pet.'s Ex. 1. Dr. Najera ordered further workup with an MRI and authorized Petitioner off work. Pet.'s Ex. 1. The MRI was completed on October 20, and on review of the scan, Dr. Najera identified a ligament sprain and possible lateral meniscus tear, findings which the doctor opined "are causally related to and/or exacerbated by the incident noted in the initial visit" Pet.'s Ex. 1. Dr. Najera referred Petitioner for an orthopedic consultation and directed that Petitioner remain off work until cleared by the knee specialist. Pet.'s Ex. 1. Pursuant to that referral, Petitioner was evaluated by Dr. Chandrasekhar Sompalli on November 13, 2020. Dr. Sompalli noted Petitioner had no history of left knee pain or restricted motion until a work accident on June 30, 2020, when he tripped while dismounting his forklift, landed directly on his left knee, and had an immediate onset of pain which had yet to resolve. After an examination and review of the MRI, Dr. Sompalli diagnosed Petitioner with multiple left knee pathologies, including meniscal and tendon tears, "secondary to work injury 6/30/20," which he ultimately concluded required surgery. Pet.'s Ex. 3.

The Commission finds Dr. Najera's and Dr. Sompalli's opinions are persuasive and we adopt same. The Commission notes the doctors' conclusions are supported by the absence of any direct evidence showing Petitioner was symptomatic prior to the work accident. The Commission further finds Dr. Najera's and Dr. Sompalli's causal connection opinions are most consistent with the chain of events: Petitioner was able to work full duty at a high knee-stress job that required him to get on and off a forklift 40-60 times per shift until the June 30, 2020 work accident when Petitioner, weighing approximately 330 pounds, landed on his knee on a concrete floor. After the work accident, Petitioner was placed under sedentary restrictions for a short time, and when he attempted to resume his pre-accident full duty knee-bend-intensive job, he was unable to do so. The evidence demonstrates a clear deterioration in Petitioner's left knee condition after the work accident. The Commission finds Petitioner's current left knee condition of ill-being remains causally related to the work accident.

II. Temporary Disability

On the Request for Hearing, Petitioner alleged entitlement to Temporary Total Disability ("TTD") benefits from September 24, 2020 through July 12, 2021, and Temporary Partial Disability ("TPD") benefits from July 12, 2021 [*sic*] through August 30, 2021, the date of hearing. Arb.'s Ex. 1. The Arbitrator acknowledged Petitioner was authorized off work by his treating physicians but found Respondent was not provided with the required documentation and therefore denied all temporary disability[2] benefits. The Commission views the evidence differently.

[2] Petitioner did not challenge the denial of TPD benefits in his Statement of Exceptions or during oral arguments, and thus the Commission views the issue as forfeited.

As discussed above, the Corrected Decision's recitation of Skalon's testimony is inaccurate: Skalon did not testify that Petitioner failed to notify Respondent of his off work status; to the contrary, Skalon confirmed that Petitioner brought work status notes to Respondent's facility in person and Respondent was aware that Petitioner's physicians authorized him off work. Moreover, the medical records and work status reports reflect that D.C. Hooton (T123-125), Dr. Najera (T129, T135), and Dr. Sompalli (T164, T180-184) have continuously restricted Petitioner from work since September 24, 2020. Finally, the Corrected Decision's finding that Petitioner's medical records were not provided to Respondent prior to trial is contrary to the record and the Commission Rules. The Commission notes Respondent made no claim that it was not provided with Petitioner's post-September 24, 2020 treatment records. Furthermore, even assuming, *arguendo*, that Respondent had claimed that Petitioner failed to provide the full medical records prior to trial, Rule 9110.70(c) puts the onus on the employer to obtain the records ("the employer shall have the initial responsibility to promptly seek the desired information from those providers") via an authorization executed by the employee. *50 Ill. Adm. Code 9110.70(c)* (2016). The Commission finds nothing in the record to suggest Respondent was thwarted in an attempt to obtain the accompanying treatment records.

As the evidence establishes that Petitioner's treating physicians authorized him off work as a result of his work injury, the Commission finds Petitioner is entitled to TTD benefits from September 25, 2020 through July 12, 2021. The parties stipulated that Petitioner's average weekly wage is $818.40. Arb's. Ex. 1. This yields a TTD rate of $545.60. Therefore, the Commission finds Petitioner entitled to TTD benefits of $545.60 per week for a period of 41 4/7 weeks.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Corrected Decision of the Arbitrator filed March 4, 2022, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $545.60 per week for a period of 41 4/7 weeks, representing September 25, 2020 through July 12, 2021, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), 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 the reasonable, necessary and causally related medical expenses detailed in Petitioner's Exhibit 5, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Responent shall provide and pay for left knee surgery as recommended by Dr. Sompalli, including but not limited to any necessary pre-operative clearance and post-operative rehabilitative treatment, as provided in §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 the 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 the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $55,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

December 9, 2022

/s/ *Deborah J. Baker*

DJB/mck

O: 11/9/22

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC022929
Case Name	USHER, MICHAEL v. ATKORE INTERNATIONAL
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Martha Niles
Respondent Attorney	Guy Maras

DATE FILED: 3/4/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 1, 2022 0.67%

/s/Steven Fruth, Arbitrator

Signature

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
***CORRECTED* ARBITRATION DECISION**
19(b)

Michael Usher
Employee/Petitioner

v.

Atkore International
Employer/Respondent

Case # **20 WC 22929**

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 **Steven Fruth**, Arbitrator of the Commission, in the City of **Chicago**, on **August 30, 2021**. 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 **June 30, 2020**, 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 $**42,556.80**; the average weekly wage was $**818.50.**

On the date of accident, Petitioner was **36** years of age, **married** with **one** dependent child.

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 $ for other benefits, for a total credit of $**0**.

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

ORDER

Respondent shall pay all outstanding reasonable and necessary medical charges and expenses pursuant to §8(a) of the Act and adjusted in accord with the medical fee schedule provided in §8.2 of the Act.

Respondent shall authorize and pay for the prospective medical care recommended by Dr. Chandrasekhar Sompalli, as well as all reasonable and necessary postoperative medical and rehabilitative care.

Petitioner’s claims for Total Temporary Disability and Total Partial Disability benefits are denied.

In no instance shall this award be a bar to subsequent hearing and determination of an amount of 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.

march 4, 2022

Signature of Arbitrator

ICArbDec19(b)

Michael Usher v. Atkore International
20 WC 22929

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were: ***F:*** Is Petitioner's current condition of ill-being causally related to 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 prospective medical care?; ***L:*** What temporary benefits are in dispute?

It is disputed whether Petitioner is entitled to TTD from September 24, 2020 through July 12, 2021, 52 & 2/7 weeks, and TPD from July 13, 2021 through August 30, 2021, 7 weeks.

STATEMENT OF FACTS

Petitioner Michael Usher testified that in June 2020, he worked for Respondent Atkore International as a forklift driver. He testified that his work required him to get on and off the forklift numerous times a day, take pipe from a wall to the warehouse and stack it. Forklifts have a single step with an elevation of 2 ½ feet. Job duties required climbing the forklift 40 to 60 times per day. Petitioner began working for Respondent two years before his accident.

Petitioner testified that on June 30, 2020 he tripped over a piece of wood and fell onto the concrete floor, striking his left knee. He developed a lot of pain in the middle and left side of his left knee. It was painful to stand up. Petitioner testified that he had never injured his left knee or sought treatment to his knee before his accident.

Petitioner testified that he reported his accident to his supervisor, Richard Page. He testified Mr. Page referred him to the employee first aid on site. Petitioner was given an ice pack. He then spoke to "safety," Bryan Hart. Petitioner testified that Mr. Hart instructed him to return to work for a few days to see how things went with his knee. Mr. Hart said a co-worker would help him with his tasks that day so that he wouldn't have to get off the forklift. However, Petitioner testified he couldn't complete his workday because no help was provided. His knee was very painful when getting off the forklift. Petitioner went home and iced his knee and took ibuprofen.

Petitioner testified that Respondent shut down operations between June 30 and July 7, 2020. Petitioner returned to work on July 7 and reported to first aid again. He was given more ice and then referred to Ingalls Memorial Occupational Health ["Ingalls"]. Petitioner was evaluated by an Advanced Practice Nurse Buchanan and an X-ray was taken. He was also referred for physical therapy. Petitioner was given a knee brace and a cane. He testified he was also given light duty work restrictions, which Respondent honored. Petitioner testified that he continued to treat at Ingalls through August 3, 2020, when he was released to return to work full duty, although he still had pain.

Petitioner's Exhibit #4, Respondent's Exhibit #1, and Respondent's Exhibit #4 noted Petitioner's presentation to Ingalls on July 7, 2020. Petitioner complained of 6/10 left knee pain since an accident on June 30, 2020. He complained of mid patella pain, worse when stepping into and out of his work truck. He denied any prior injury to the knee. He had been working full time on regular duty.

On examination by APN Buchanan noted Petitioner was morbidly obese. He was noted to be able to move with no difficulty. There was no bruising or abrasion. There was pain to palpation and diminished range of motion. Strength and gait were normal, and there was no instability. There was no swelling. X-rays of the knee demonstrated mild to moderate tri-compartment degenerative joint disease without acute findings. Petitioner's blood pressure was elevated but there was no documentation of his weight or obesity or BMI.

APN Buchanan diagnosed contusion of the left knee. The APN ordered a knee immobilizer, a cane, and physical therapy. The effects of obesity on the joints and the benefits of weight loss were discussed. Petitioner was returned to restricted duty work. With Petitioner's permission the care plan was discussed with James Skalon. Petitioner was discharged with 4/10 pain.

There is a July 9, 2020 Telephone Record in PX #4 of a July 8 call with Bryan Hart regarding Petitioner's care plan. The notetaker signature was indecipherable. Mr. Hart questioned use of the knee immobilizer and cane and why Petitioner was given restricted duty when he had been driving a forklift for a week post injury. It was noted that Petitioner was morbidly obese with degenerative joint disease and with continued pain after a fall onto the knee. The care plan was approved by Regional Director Dr. Nazir.

Petitioner returned to Ingalls July 10, 2020 with 7/10 left knee pain when he was seen by NP Duncan. He denied swelling, numbness, or tingling in the knee. He continued to have pain with bending, standing, and bearing weight. He reported he was unable to maneuver up and down from a forklift. Findings on clinical examination were unchanged from before. A home exercise program was explained as were the effects of obesity on the

joints and the benefits of weight loss. Petitioner was directed to follow up with physical therapy and was discharged with 5/10 pain and continued with work restrictions.

Petitioner began physical therapy at Ingalls on July 14, 2020. He gave a history of the June 30 accident and injury consistent with prior reports. Petitioner denied any previous issues with his left knee. He reported worse pain when "on it a lot" and with bending. He also reported sleep disrupted with pain. Petitioner also gave a history of a previous right Achilles tendon repair three years before and the insidious onset of right knee pain which was diagnosed as a meniscus tear. Right knee aspiration and cortisone injection were performed four months before and surgery had been recommended. It was also noted that Petitioner's weight loss (gastric sleeve) surgery was scheduled for August 17, 2020. Neither his weight nor his BMI were noted.

Petitioner presented with 4/10 pain but noted the worst had been 7/10. He was a forklift driver but was currently on light-duty desk work. There was mild left knee swelling. Petitioner was able to perform bilateral heel and toe raising with only mild symptoms on the left. He had full left knee extension but slightly diminished flexion (10°). There was also mild loss of left knee strength. There was moderate-to-significant muscle weakness in both hips. However, the assessment was noted as unremarkable. Petitioner began a schedule of therapy three times a week for two weeks.

Petitioner returned to Ingalls NP Duncan July 17, 2020, noting he was a little better after his second physical therapy session. He continued to have pain with walking and bending. He also reported the knee brace did not "really help." Findings on examination and the diagnosis were unchanged. The effects of obesity on the joints and the benefits of weight loss were discussed again. It was noted Petitioner was on a weight loss program at that time. Petitioner was continued with work restrictions.

At therapy on July 17, 2020 Petitioner reported 4-5/10 intermittent pain. Petitioner was reported as improving with therapy at that time. On July 20, 2020 Petitioner reported his knee was a little better. It was noted that he was still on light duty work. On July 24, 2020 Petitioner tolerated treatment well and had no increased symptoms before or after treatment. His pain rating was 3-4/10. On July 30, 2020 Petitioner was noted to be walking without his knee brace. His pain rating was down to 3/10.

Petitioner returned to Ingalls APN Buchanan on July 31, 2020 with 2/10 pain. It was noted that he was significantly improved but that he had tightness sometimes. Findings on clinical examination and the diagnosis were unchanged from before. Petitioner was released for return to work at full duty following his last physical therapy session.

Petitioner was discharged from physical therapy to full duty work on August 3, 2020, having achieved 85% to 90% of his goals. At that time, he noted his knee pain was 0/10, although he still had some left knee pain when doing a lot of stairs or after trying to straighten the knee. He had normal range of motion and strength in the left knee and both hips. It was noted that he left knee was "unremarkable" on discharge.

Petitioner testified that he took six weeks of personal leave following his physical therapy for "personal" surgery on August 17. He then began care at Associated Medical Centers of Illinois ("AMCI") in South Holland, IL on September 24, 2020 (PX #1). He was initially seen by chiropractor Dr. Dale Hooton. Petitioner gave a history of his fall onto his left knee at work on June 30, 2020. He recounted his course at Ingalls Occupational Health including X-rays which revealed degenerative changes, as well as physical therapy. Petitioner reported that he had been on sedentary duty. He reported that he was discharged to full duty work but could only work four days before pain became so great he had to take time off. Petitioner had not returned to work due to being disabled for an "unrelated condition," presumably the gastric sleeve surgery.

Petitioner's history of hypertension, hypercholesterolemia, and gastric sleeve surgery on August 17, 2020 was noted. No vital signs were noted.

Petitioner presented with 8/10 left knee pain which increased with sitting, walking, rising from a seated position, and squatting. He denied any history of accident or trauma. He also complained of swelling and instability in the knee. Petitioner reported that over-the-counter medication provided inadequate relief. He also reported sleep disrupted by knee pain. He was taking medications for hypertension, asthma, and high cholesterol. On examination Dr. Hooton noted left leg limping, edema, grade 1+ tenderness and hypertonicity in the rectus femoris. There was pain at 90° of flexion. Dr. Hooton noted 4/5 muscle weakness due to pain in extension/flexion. Anterior drawer, and posterior drawer, varus stress, and valgus stress were positive for pain and instability.

Dr. Hooton diagnosed a left knee sprain and recommended physical therapy. Petitioner was given home exercise instructions. Dr. Hooton also took Petitioner off work pending an evaluation by Dr. Najera. Petitioner was also provided with COVID-19 pandemic supplies.

Dr. Larry Najera, III, MD at AMCI examined Petitioner on September 28, 2020 (PX #1). Petitioner presented with complaints and clinical findings essentially unchanged from September 24. Petitioner's history was consistent with prior reports. There was no note whether Petitioner had had prior complaints or injury with the left knee. Dr. Najera noted Petitioner's obesity but no vital signs including weight. On examination Dr. Najera

found great 1+ edema, tenderness, and hypertonicity of the rectus femoris and vastus lateralis. There was tenderness along the lateral patellar tendon joint line and pain on full extension and flexion at 90°. Plain X-rays revealed degenerative changes.

Dr. Najera diagnosed left knee sprain and degenerative joint disease. He ordered an MRI, four weeks of physical therapy, 60 of Tramadol 50mg, and Lidopro topical analgesic. He also kept Petitioner off work.

Petitioner had a left knee MRI on October 20, 2020 at Midwest Advanced Radiology (PX #2). The radiologist's report was incomplete but contained impressions noting mild effusion with marked edema and a loose body, anterior horn lateral meniscal tearing versus complex tear, grade 2 medial collateral ligament sprain, moderate to large dissecting cystic structure adjacent to the posteromedial capsule, patellar tendinitis with medial tearing, and peripheral sclerotic central fat/bone marrow lesion.

Petitioner received chiropractic care from Dr. Hooton at AMCI through October 26, 2020, although there are no clinical notes for October 26. Petitioner saw Dr. Najera again on October 26 with 6/10 knee pain. Petitioner reported that home exercises and physical therapy provided some improvement, but the knee remained painful at times. Dr. Najera noted the MRI findings were "causally related to and/or exacerbated by the incident" noted in history. He further noted that Petitioner might require surgery and an orthopedic consultation. Petitioner was noted to be disabled until cleared by a knee specialist and was discharged from care.

Petitioner then testified that he had a medical evaluation on November 11, 2020 at the request of Respondent with Dr. Charles Bush-Joseph.

On November 13, 2020 Petitioner saw Dr. (Chandrasekhar) Sompalli, MD, at Elite Orthopaedics and Sports Medicine ["Elite"] in Berwyn, IL (PX #3). Intake notes indicate Petitioner heard about the doctor from Martha Niles. Petitioner testified that Dr. Sompalli prescribed medication and therapy, as well as keeping him off work. Petitioner also had X-rays on November 24. Petitioner testified that he returned to Dr. Sompalli on December 12, 2020 when the doctor planned for surgery.

Dr. Sompalli's clinical note on November 13 documented Petitioner's complaint of 8/10 soreness and sharp left knee pain since falling onto his knee at work on June 30. Petitioner denied ever experiencing left knee pain or restricted range of motion prior to his June 30, 2020 injury. Petitioner reported that he had had six sessions of physical therapy. He had had an MRI. He reported he had been on light duty but had not worked since August 14, 2020. Petitioner was taking Tramadol and pain cream for the left knee.

Petitioner's history of hypertension and gastric by-pass was also noted. Petitioner's obesity was not noted, and no vital signs or BMI were documented.

Dr. Sompalli noted Petitioner walking with a limp and using a brace. The knee was tender to touch with weakness. There was numbness over the lateral aspect. Petitioner complained of instability, giving way, and locking. The doctor noted limited range of motion. Petitioner also complained of "popping and cracking". On examination Dr. Sompalli noted effusion, lateral tilt of the patella, intrapatella bursitis, loose body, grade 2 MCL sprain, ganglion cyst, lateral complex meniscal tear, and distal medial insertional tear of the patella tendon. There was a positive McMurray's sign.

Dr. Sompalli diagnosed pain in left knee, sprain of medial collateral ligament, effusion, and "prph" (peripheral) tear of the lateral medial meniscus. He recommended Petitioner see Dr. Gitelis for evaluation and possible surgery for excision of loose body, PLM debridement of bursa, and lateral release the patella medial reefing. Physical therapy was on hold and Petitioner was kept off work until December 11, 2020. The doctor also noted that Petitioner had had an IME November 11.

Petitioner returned to Dr. Sompalli December 12, 2020 with 8/10 soreness and pain. The doctor noted Petitioner had consulted with Dr. Gitelis and his diagnosis of a Baker cyst, not a bone lesion. Petitioner's presentation was essentially unchanged from November 13. There was swelling and another positive McMurray's. range of motion was 10° - 90° with lateral patella "tolt" (presumably "tilt"). Dr. Sompalli noted that the November 24, 2020 left knee X-ray demonstrated no acute fracture or dislocation but did demonstrate tricompartmental osteoarthritis. The doctor's assessment and diagnoses were unchanged. It was noted that "the dr is recommending surgery, left knee scope excision loose body, PLM debridement of bursa, and lateral meniscus release of patella medial reefing." The doctor again noted the November 11 IME but also noted it was not ready for review yet. Petitioner was to remain off work until January 9, 2021.

There are two off-work notes in the Elite records, PX #3, dated January 9 but with different end dates. There are no clinical notes for January 9, 2021. Petitioner's most recent visit at Elite was March 1, 2021 at which time surgery was recommended again.

Dr. Bush-Joseph's November 11, 2020 IME report is incorporated in the Elite records, PX #3, but without comment regarding findings or opinions. Dr. Bush-Joseph noted he had reviewed Petitioner's medical records from Ingalls Occupational Health Clinic and had conducted a clinical exam. He noted Petitioner was 5'8" tall and weighed 336 pounds. He noted full active left knee extension, but that flexion was limited by size. Dr. Bush-Joseph noted moderate patellofemoral crepitation and tenderness in the left patellofemoral region as well as the lateral joint line. Examination the right knee revealed

similar range of motion. Dr. Bush Joseph noted X-rays demonstrated moderate-to-severe patellofemoral arthritis and near bone-on-bone findings in the left knee. Dr. Bush-Joseph noted inconsistency in Petitioner's subjective reports but did note Petitioner described his knee function as poor.

Dr. Bush-Joseph noted moderate-to-severe pre-existing osteoarthritis in the left knee but opined that Petitioner had sustained a left a contusion from the June 30, 2020 work accident. He further opined that Petitioner had reached MMI and could return to full duty as of July 31, 2020.

Dr. Najera's AMCI notes were included in the Elite records. There are no notes from Dr. Gitelis in the Elite records.

At hearing, Petitioner testified that he still has pain in his left knee. Petitioner testified that his current pain level was 6 - 7/10. He also testified that the pain limits his ability to engage in activities of daily life such as running around, playing softball, or standing for long periods. He further testified that he cannot go to a fitness gym to get himself better. He testified that he is interested in having the surgery. He has not been released to return to work by Dr. Sompalli.

Petitioner also testified that he has not received temporary total disability benefits from Respondent.

Petitioner testified that on August 14, 18, and 23, 2020 he provided documentation to his employer about his injury. Petitioner testified that at the last attempt, he did not hear anything from his employer. The specifics of his voicemail communications were not provided.

On cross-examination Petitioner affirmed that he made several requests for medical leave during his employment with Respondent. He denied that he requested medical leave for a full year, from July 11, 2019 through June 20, 2020. Petitioner also denied telling the treaters at Ingalls that his pain was intermittent. Petitioner was unfamiliar with the meaning of his diagnosis of tricompartmental degenerative joint disease.

Petitioner also denied that the providers at Ingalls discussed the effects of his weight on his joints or his weight causing long-term damage to his joints. He further denied discussing his weight loss program with the treaters at Ingalls.

On further cross-examination Petitioner testified that when he first had physical therapy on July 14, 2020, he reported that his pain level was 7 on a 10-point scale. He

denied telling the providers at Ingalls that physical therapy was helping his pain level. Petitioner denied that telling providers at Ingalls on July 24, 2020 that his pain level had reduced to 3 to 4 on a 10-point scale. He further denied reporting that his pain level was down to 3 on a 10-point scale on July 30, 2020.

Petitioner testified that his last physical therapy visit at Ingalls was on August 30, 2020. Respondent waived continuing cross-examination to permit Petitioner's counsel to clarify Petitioner's testimony. Petitioner then testified that his last physical therapy treatment at Ingalls was on August 3, 2020.

Petitioner denied prior problems with his left knee but did have a torn right Achilles tendon in 2015. He confirmed that he had a right knee meniscus tear after the Achilles tendon rupture. Petitioner denied that surgery was recommended on the torn right meniscus but did admit that the knee had been drained. He denied favoring his left knee while his right knee was being treated.

Petitioner also testified that he was not working in December 2020. He admitted that he obtained a pair of work boots through a program provided by Respondent, even though he had not worked for four months at that time.

Petitioner also testified that when he went on FMLA leave in August 2020, when he had gastric sleeve surgery.

Respondent called James Skalon as a witness. Mr. Skalon is employed by Respondent as the Health & Safety Manager. He testified that he worked for Respondent for 42 years. Mr. Skalon described Respondent's FMLA policies and procedures. He also described Respondent's work accident reporting procedures. As the Health & Safety Manager, Mr. Skalon is responsible for the oversight of the work incident reporting system.

Mr. Skalon also described to Respondent's light duty work program. He testified that when an employee is diagnosed with a work-related condition and has restrictions, meetings are conducted with supervisors, managers, and the employee to make sure that everyone is clear on restrictions. The focus is to make sure that restrictions were not violated. Mr. Skalon confirmed that Respondent can accommodate almost any light duty restriction. He further affirmed that sedentary duty can be accommodated. Mr. Skalon described procedures for following light duty restrictions.

Mr. Skalon described the incident at issue when Petitioner reported his work injury. He noted that Petitioner returned July 7, 2020 with a doctor's note releasing him to light duty with restrictions of no kneeling, stooping, or crawling. Because of these

restrictions, Petitioner was provided sedentary work in the mail clerk office. Petitioner received his full pay while he was on light duty. He further testified that the restrictions remained in place for the entire month of July 2020. Mr. Skalon testified that Respondent was able to accommodate Petitioner with light duty at any time. He also testified that Petitioner never returned with any kind of doctor's note after his FMLA leave.

Mr. Skalon testified that Petitioner applied for a one-year leave of absence three months after he started working for Respondent. The leave was denied because Petitioner had not worked a full year of service in order to be eligible for a full year of medical leave.

Respondent called Jeffrey Sais as a witness. Mr. Sais is an investigator with Meridian Investigative. Mr. Sais authenticated surveillance video recordings of Petitioner he made on October 11 and November 11, 2020. The recordings were stored on a flash drive which was admitted in evidence. The recordings on each date were limited but showed Petitioner walking without any assistive devices or with a noticeably altered gait but for a gait often seen with obese people. The recordings showed Petitioner getting into and out of a SUV without apparent difficulty.

Dr. Charles Bush-Joseph testified at evidence deposition on March 17, 2021 (RX #5). Dr. Bush-Joseph is a board-certified orthopedic surgeon. In addition to conducting an IME of Petitioner on November 11, 2020 he reviewed Petitioner's medical records, as well as the original MRI imaging and X-rays taken the day of the IME. The doctor refreshed his memory with the narrative report he wrote on November 11 (DepX #2).

Dr. Bush-Joseph performs between four to eight IME type exams per month, approximately 80% on behalf of the respondent and about 20% on behalf of the plaintiff.

Dr. Bush-Joseph noted Petitioner was moderately obese with moderate-to-severe arthritis in both knees. The doctor noted the plain X-rays revealed evidence of moderate-to-severe lateral compartment joint space narrowing in both knees. There was near bone-on-bone findings in the left knee. There was also moderate-to-severe patellofemoral arthritis. The October 20, 2020 left knee MRI was consistent with chronic long-standing arthritis of the lateral compartment with subchondral cyst formation, osteophyte formation, and patchy to complete loss of articular cartilage. Dr. Bush-Joseph noted these findings were not typical of an acute traumatic injury to a prior normal or minimally conditioned. He testified that such changes do not occur over the course of three or four months or even seven to eight months.

Dr. Bush-Joseph noted that Petitioner denied prior symptoms or trauma or treatment with his left knee. He opined that the severe radiographic findings suggested that Petitioner would have had significant symptoms prior to the work-related injury.

Dr. Bush-Joseph diagnosed a knee contusion as a result of Petitioner's injury and fall and moderate-to-severe osteoarthritis. He noted that a remote trauma, obesity, and genetic make-up are factors which could cause patellofemoral arthritis, which he opined caused the patellofemoral arthritis. Dr. Bush-Joseph opined that Petitioner suffered a knee contusion with pre-existing osteoarthritis. He noted that the medical records did not document significant ecchymosis or dramatic swelling.

Dr. Bush-Joseph testified that Petitioners condition had been treated appropriately. He testified that there was no evidence of mechanical worsening of Petitioner's pre-existing condition due to the work injury. He further testified that Petitioner was at MMI by July 31, 2020 and could work full duty. He added Petitioner would likely require a total knee replacement but that would not be related to the work-related injury. Any future treatment to the left knee would not be related to the work injury but the result of the long-standing degenerative bone-on-bone arthritis. Dr. Bush-Joseph acknowledged that it was possible that Petitioner's accident could have permanently aggravated his pre-existing condition but that it was not probable.

On cross-examination Dr. Bush-Joseph repeated that approximately 80% of the IMEs he performs are for the defense. He charges $1,350 to $1,500 for IMEs and $2,000 for two-hour block time for depositions. He testified that less than 5% of his income is derived from IMEs and depositions.

Dr. Bush-Joseph confirmed that he found no evidence of prior injury or treatment of the left knee. He noted the records of the South Holland Medical Center of Associated Medical Centers of Illinois indicated Petitioner was referred by his attorney. Dr. Bush-Joseph further testified that Respondent's counsel referral letter contained a summary of Petitioner's medical care, including an August 3, 2020 physical therapy note he did not reference in his IME report. He further acknowledged that he did not reference to September 24, 28, and 29, 2020 AMCI visits in his IME report.

On further cross-examination Dr. Bush-Joseph testified that he was unaware of any medical care for Petitioner beyond the November 11 IME. However, he assumed that Petitioner did want to continue treatment. He repeated that it is possible that Petitioner could require further treatment for his left knee due to the accident.

On redirect examination Dr. Bush-Joseph reaffirmed his opinions.

CONCLUSIONS OF LAW

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

The Arbitrator finds that Petitioner proved that his current condition of ill-being is causally related to his work accident on June 30, 2020.

The evidence clearly demonstrated that Petitioner had pre-existing degenerative conditions in his left knee, bone-on-bone as revealed in certain radiographic imaging, at the time of his June 30, 2020 work accident. Petitioner testified that he had not injured his left knee before his June 30 work accident. In history to certain physicians, namely Dr. Bush-Joseph, Petitioner denied that he had had any prior problems or difficulties with his knee. Dr. Bush-Joseph noted his skepticism of that denial considering the moderate-to-severe nature of degeneration in Petitioner's left knee.

The Arbitrator shares Dr. Bush-Joseph's skepticism regarding Petitioner's denial of prior problems or difficulties with his left knee. This raises the question of Petitioner's credibility. However, the evidence is clear that Petitioner was working at full duty and without restrictions prior to the June 30, 2020 work accident. The evidence is also clear that Petitioner's credibility was compromised by his denial that healthcare professionals at Ingalls Memorial Occupational Health told him about weight loss and the effect of obesity on certain joints. Petitioner's denial of various documented reports of his improvement with therapy at Ingalls also calls his credibility into question.

Although these denials are not insignificant, they are not of the weight and nature as to totally discredit Petitioner's testimony and evidence. As stated, the evidence demonstrated that Petitioner had pre-existing chondromalacia and a degenerative meniscal tear at the time of his June 30, 2020 work accident. He was initially put on restricted duty which Respondent honored.

Upon his release to full duty Petitioner attempted full duty work unsuccessfully. He then came under the care of orthopedic surgeon Dr. Najera, who opined that Petitioner's condition was causally related and/or exacerbated by the work accident. Petitioner then came under the care of Dr. Sompalli whose diagnosis and recommendation for surgery, based on history, inferred causation.

Dr. Bush-Joseph confirmed the underlying diagnoses of Drs. Najera and Sompalli but disputed the causal relation to Petitioner's work accident. However, Dr. Bush-Joseph's opinion was based on his clinical IME and review of the Ingalls records only. Dr. Bush-Joseph did not review Petitioner's medical records from Associated Medical Centers

of Illinois (Drs. Hooton and Najera) or Elite Orthopaedics and Sports Medicine (Dr. Sompalli). Dr. Bush-Joseph did not have an opportunity to review the entire breadth of Petitioner's medical care. In addition, Dr. Bush-Joseph did not take into account that Petitioner had been working full duty without restrictions prior to his June 30 work accident but was thereafter put on restricted duty and after an unsuccessful attempt at full duty was completely taken off work.

As such, because Dr. Bush-Joseph relied on incomplete data the Arbitrator finds that his lack of causation opinion is not reliable or persuasive. Therefore, the Arbitrator adopts the causation opinions of Drs. Najera and Sompalli and finds that Petitioner proved that the pre-existing degenerative condition of his left knee was aggravated and exacerbated by the causally related work accident of June 30, 2020.

The Arbitrator notes that the surveillance videos did not assist in resolving this disputed 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?

In accord with the Arbitrator's finding above that Petitioner's current condition of ill-being is causally related to the June 30, 2020 work accident, the Arbitrator also finds that Petitioner proved that the medical care and services provided, and the professional charges for such services, were reasonable and necessary. This finding is in part supported by the opinions of Dr. Bush-Joseph the medical care provided up to the time of his IME was appropriate.

K: Is Petitioner entitled to prospective medical care?

The Arbitrator has found that Petitioner proved his current condition of ill-being is causally related to his work accident on June 30, 2020. It therefore follows that Petitioner proved that he is entitled to the prospective medical care recommended by Dr. Sompalli.

As noted above Petitioner had pre-existing degenerative conditions in his left knee. Despite those pre-existing conditions, Petitioner was able to work at full duty and without restrictions before his June 30 accident. The chain of events following Petitioner's failed attempt to return to full duty after release from care at Ingalls Occupational Health demonstrated that his degenerative left knee was aggravated and exacerbated to the point where further medical care was necessary and that surgical intervention was reasonable.

The Arbitrator's finding is supported by the testimony of Dr. Bush-Joseph conceding that surgery may be reasonably necessary.

L: What temporary benefits are in dispute?

Petitioner claims that he is entitled to Total Temporary Disability benefits beginning on September 24, 2020 through July 12, 2021 and Total Partial Disability benefits from July 13 through August 30, 2021. The Arbitrator finds that Petitioner failed to prove that he was entitled to the claimed TTD and TPD.

The Arbitrator noted above that Petitioner's credibility was questionable. As noted above Petitioner's questionable credibility as to causation of his claim current condition of ill-being was not such that it undermined that aspect of his claim. However, Petitioner's compromised credibility does not support his claim for TTD and TPD benefits. As noted above, Petitioner clearly denied being counseled about weight loss and the effect of his obesity on his joints that was clearly documented in medical records. In addition, Petitioner clearly denied improvement of his symptoms as documented in medical records. Petitioner was not credible in his denial to Dr. Bush-Joseph that he had had no prior problems or complaints with his left knee, despite chondromalacia and bone-on-bone osteoarthritis in that knee.

Petitioner was initially placed on restricted work duties of which Respondent was aware and in fact honored. After release to full duty unrestricted work Petitioner testified that he was unable to tolerate that unrestricted work and sought subsequent medical care at Associated Medical Centers of Illinois and Elite Orthopaedics and Sports Medicine.

Drs. Hooton and Najera of AMCI entered chart notes taking Petitioner off work starting on September 23, 2020. Likewise, Dr. Sompalli of Elite also took Petitioner off work. There were no off-work notes within the AMCI records, PX #1. There were two off work notes within the Elite records, PX #3, dated January 9, 2021. However, those notes were somewhat contradictory they had different end dates, which did not assist in resolving this disputed issue.

Petitioner testified that he communicated his off-work status to Respondent. Respondent's witness James Skalon, Respondent's Health and Safety Manager testified credibly that Respondent did not receive notice of Petitioner's off-work status. On this point, the Arbitrator finds that Petitioner's testimony was not credible. The only evidence of an off-work status note in any record admitted in evidence were the confusing and somewhat contradictory January 9, 2021 notes. There was no evidence that Petitioner's medical records documenting his off-work status were provide to Respondent prior to trial.

The Arbitrator finds that there was no credible evidence that Petitioner's off-work status was provided or communicated to Respondent. Accordingly, Petitioner's claim for TTD and TPD benefits is denied.

Steven J. Fruth, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC003229
Case Name	Keisha Thomas v. Whitehall of Deerfield
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0470
Number of Pages of Decision	14
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Stephen Smalling
Respondent Attorney	Guy Maras

DATE FILED: 12/9/2022

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

☒ 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

Keisha Thomas,

Petitioner,

vs. NO: 21 WC 3229

Whitehall of Deerfield,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 2, 2022, 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 $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.

December 9, 2022
o11/9/22
DLS/rm
046

/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/*Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC003229
Case Name	THOMAS, KEISHA v. WHITEHALL OF DEERFIELD
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Stephen Smalling
Respondent Attorney	Guy Maras

DATE FILED: 5/2/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 26, 2022 1.37%

/s/Gerald Napleton, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF MCHENRY)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Keisha Thomas
Employee/Petitioner

v.

Whitehall of Deerfield
Employer/Respondent

Case # **21 WC 03229**

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 Napleton, Arbitrator of the Commission, in the city of Woodstock, on March 2, 2022. 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, **02/08/2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $31,661.76; the average weekly wage was $608.88.

On the date of accident, Petitioner was 49 years of age, **married w**ith **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 $3,711.27 for TTD for a total credit of $3,711.27.

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 from American Center for Spine and Neuro and Advocate/Condell per Petitioner's Exhibit 5, as provided in Section 8(a) of the Act and pursuant to the Medical Fee Schedule

Respondent shall hold Petitioner harmless for any group health liens for medical bills pursuant to Section 8(a) and the Medical Fee Schedule.

Respondent shall receive credit for any amounts previously paid.

Respondent shall authorize and pay for the treatment recommended by Dr. Alzate consisting of physical therapy and epidural steroid injections.

Respondent shall pay Temporary Total Disability benefits of $405.92/week for 45 and 6/7 weeks from April 16, 2021 through March 2, 2022 as provided in Section 8(b) of the Act. Respondent shall be given a credit of $3,711.27 for TTD benefits paid.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of benefits or compensation for 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.

/s/ Gerald W. Napleton **MAY 2, 2022**

Signature of Arbitrator

KEISHA THOMAS V. WHITEHALL OF DEERFIELD
I.W.C.C. NO.: 21 WC 032292

FINDINGS OF FACT

The Petitioner is 49 years old and has worked for the Respondent since December 31, 2019, as a Certified Nurse's Aide. The Respondent operates a post-hospital rehabilitation facility. Petitioner's job duties consisted of assisting patients in all facets of their daily needs. The physical requirements of the job require lifting, bending, and twisting. The parties stipulated that Petitioner had an accident arising out of and in the course and scope of her employment on February 8, 2021, and that timely notice was given to the Respondent.

In March of 2020, roughly a year prior to the accident giving rise to the current claim, Petitioner was involved in an incident at work with a combative patient. She sought treatment for back pain the next day and underwent one session of physical therapy. On March 17, 2020, Petitioner was released to full duty work. Petitioner testified that since her return to full duty work in March of 2020, she was not subject to any physical work restrictions and was able to fully perform her job duties.

Petitioner testified that on February 8, 2021, Petitioner was lifting a patient that required assistance. The Patient was described as 110 pounds and did not want to utilize a lifting device to be placed into a wheelchair. Petitioner noticed an immediate onset of pain in the low back. Petitioner testified that she notified the nurse and HR in accordance with company policy.

Respondent called Carrie Lyons, Human Resource Director for Respondent, to testify. Ms. Lyons testified that she learned of Petitioner's accident from Triage Now, a

third-party agency that fields reports of work injuries sustained by employees of Respondent. She was notified on February 8, 2021. Notice of accident is not disputed.

Petitioner sought treatment with her PCP, Dr. Nispeanu. Dr. Nispeanu first examined Petitioner on February 11, 2021. Petitioner provided a history of low back pain after lifting a patient. X-rays demonstrated degenerative changes and grade 1 anterolisthesis of L4 with respect to L5. Petitioner was diagnosed with a lumbar strain and radiating back pain (acute on chronic). She was prescribed medication and referred for a neurosurgical evaluation. (P.X.2, pp. 53,57). Petitioner was restricted from work until March 6, 2021. (P.X.2 p 61).

On March 5, 2021, Petitioner was examined by Dr. Juan Alzate of the American Center for Spine and Neurosurgery. (P.X.1) The history relates she was suffering from low back pain radiating into the left lower extremity since her lifting a patient at work. Dr. Alzate reviewed the X-Rays and stated, "[m]ost likely this is a preexisting condition aggravated by her accident at work." (P.X.1. p 7). Dr. Alzate ordered an MRI, continued medication, and Petitioner was given a light duty restriction of no lifting more than 5lbs and no excessive bending, stooping, or lifting (PX1, p 25). Petitioner was diagnosed with lumbar pain, lumbar spondylosis, and spondylolisthesis of the lumbar region.

Ms. Lyons testified that on March 8, 2021, Petitioner was offered a light duty position within the restrictions issued by Dr. Alzate. The Petitioner declined to return to work within her restrictions.

An MRI was performed on March 19, 2021. The MRI revealed mild disc space narrowing and disc desiccation at L4-L5 with mild anterior subluxation of L4 and L5 and grade 1 anterolisthesis of L4 and L5. It also showed a slight abnormality at L4-L5

combined with mild disc bulge and facet arthropathy was noted to cause mild bilateral foraminal stenosis left greater than right secondary to shallow left foraminal protrusion.

On April 16, 2021, Petitioner saw Dr. Alzate again and complained of persistent lower back pain and intermittent radiation to the lower extremities. (PX1 p 35). Dr. Alzate examined Petitioner and reviewed the MRI. Dr. Alzate prescribed physical therapy and referral to pain management for epidural steroid injections. Dr. Alzate restricted Petitioner from all work until the therapy and injections had been completed due to severe pain. (P.X.1,p.35). Dr. Alzate stated a fusion surgery may be necessary. (Id.).

On June 9, 2021, Petitioner was examined by Dr. Kern Singh at the direction of the Respondent pursuant to Section 12 of the Act. (R.X. 3) Dr. Singh reviewed the Petitioner's treatment records, including records from Petitioner's March 2020 incident, and opined that the Petitioner was suffering from a muscle strain and pre-existing L4-5 degenerative spondylolisthesis. He believed her complaints of pain did not correlate with the findings on the MRI or his physical examination. He stated four weeks of physical therapy was warranted, she did not require any restrictions, and had only suffered a minor back strain as a result of the subject accident. Dr. Singh also noted that the MRI showed a Grade I degenerative spondylolisthesis at L4-L5, with a forward slippage of L4 on L5. He classified Grade I as being mild. According to Dr. Singh, Petitioner's complaints did not correlate with her exam and MRI findings. Dr. Singh did not note radiculopathy during his examination of Petitioner. Treatment and TTD were terminated after these findings of Dr. Singh.

Petitioner underwent therapy at Athletico (P.X.3) and attended nine sessions until physical therapy was no longer authorized. Petitioner was never authorized to consult with pain management and testified Dr. Alzate did not want to see her until such time as the injections and therapy had been completed. Petitioner followed up with Dr. Alzate's office on June 28, 2021, where Petitioner's off-work status was continued "TBD."

Dr. Alzate and Dr. Singh both provided testimony in this matter. Dr. Alzate is a board-certified neurosurgeon who testified via deposition on October 4, 2021 (P.X.4). Dr. Alzate related that Petitioner presented with back pain radiating into the left lower extremity following the subject accident. His review of x-rays revealed she was suffering from spondylosis and spondylolisthesis at L4-5. (P.X.4, p.8) This diagnosis was confirmed by an MRI. Dr. Alzate described these as degenerative conditions and opined that they had been aggravated by the lifting incident and were now symptomatic. (P.X. 4, p.10) Given the diagnosis, standard treatment protocol was to have her undergo physical therapy and see a pain management specialist for epidural steroid injections. (P.X.4, pp.12-13) Dr. Alzate felt that the initial muscle strain had resolved but the ongoing symptoms were attributable to the aggravation of the pathology at L4-5. (P.X.4, pp.17-18) Until such time as she completed this initial treatment, other options such as surgery, could not be addressed. Dr. Alzate initially restricted Petitioner to light duty and then removed her entirely on April 16, 2021. (P.X.1, p.19) That restriction remains in place.

Petitioner testified she continues to experience back pain daily but that she no longer experiences pain radiating to her legs. The pain impacts her ability to stand, sit and walk. She has been unable to complete the treatment prescribed by Dr. Alzate and desires

to do so. Petitioner testified she has sustained no other injury or trauma to her back since the date of the accident.

CONCLUSIONS OF LAW

Regarding Issue ("F"), whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

The Petitioner admitted to a history of a prior back injury in March 2020, which resolved shortly thereafter and required only one therapy session. She then returned to work full duty for the Respondent performing her regular job duties. There is no evidence in the record that she received any treatment, nor was she restricted, in the eleven-month period preceding the February 2021 accident. The evidence further establishes that she was fully capable of performing her job duties with the Respondent until February 8, 2021, when she sustained low back injuries in the undisputed accident. The MRI (P.X.1, pp.14-15) confirms Petitioner was suffering from degenerative conditions at L4-5 which were asymptomatic until this accident.

The fact that Petitioner had pre-existing conditions, even though the same result may not have occurred had the Petitioner been in normal health, does not preclude a finding that the employment was a causative factor. St. Elizabeth Hospital v. IWCC 371 Ill. App.3d 882, 885 (5th Dist. 2007). It is not necessary that Petitioner demonstrate that her injury was the sole or principal causative factor as long as it is *a* causative factor in the resulting condition of ill-being. See Land and Lakes Co. v. Industrial Comm'n (Dawson), 359 Ill. App. 3d 582 (2nd District. 2005) and Sisbro, Inc v. Industrial Comm'n (Rodriguez), 207 Ill. 2d 193, 2003.

The record as whole supports a finding of causal connection. This Petitioner had gone for a period of eleven months without symptoms, treatment or restrictions imposed on her activities. The last treatment having been performed in March 2020 with no follow up or work restrictions recommended. It is undisputed Petitioner was fully capable of performing her job duties until

the accident of February 8, 2021. Since that time, she has been treated by Dr. Nispeanu and Dr. Alzate who concurred treatment is necessitated for her back condition. There was no evidence that Petitioner sustained any other injuries or trauma to her back after the accident in question.

Petitioner testified credibly to her accident and her subjective complaints of pain and sought regular treatment in attempts to alleviate those complaints and wishes to pursue them further. Lifting a patient is a competent mechanism of injury that could result in low back pain. Further, Petitioner acknowledged and testified regarding her prior injury in March of 2020 which resulting her minimal treatment and a quick return to full duty work.

Dr. Alzate stated that Petitioner's lifting of the patient aggravated her pre-existing degenerative condition. Dr. Alzate noted that Petitioner did not complain about significant pain prior to this accident. The objective findings in the MRI support the position that Petitioner's spondylolisthesis and spondylosis are related to her accident. The record supports a finding that Petitioner's back pain that began in March of 2020 subsided quickly, returned to a baseline which allowed her to work a full duty job, and was aggravated by her accident in February of 2021.

The Arbitrator acknowledges the opinions of Dr. Singh but does not find them to carry more weight than the opinions of Dr. Alzate combined with Petitioner's testimony and the record as a whole. Dr. Singh states the Petitioner gave a good effort during his examination and there was no indication of any symptom magnification on her behalf. He acknowledged pain complaints are subjective and he could not say she was making them up. His diagnosis of a muscle strain which had resolved and that she was at MMI within a couple weeks following the accident is not supported by the evidence. The Arbitrator further notes Dr. Singh's testimony that pain management can be necessitated in the absence of radiculopathy. (R.X.4 p.15)

Accordingly, for the reasons mentioned above, the Arbitrator finds that the Petitioner's current condition of ill-being is causally related to her accident on February 8, 2021.

Regarding Issue ("J"), whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following:

Petitioner incurred medical expenses for treatment which are contained in Petitioner's Exhibit 5. Having found that the Petitioner's current condition of ill-being is causally related to the subject accident and that Dr. Alzate's opinion along with the evidence as a whole is more persuasive than the opinions of Dr. Singh, the Arbitrator finds that the treatment rendered in attempts to alleviate Petitioner's condition of ill-being to be reasonable and necessary.

Accordingly, Respondent is responsible for payment of the reasonable and necessary medical bills contained in Petitioner's Exhibit 5 to the American Center for Spine and Neuro and Advocate/Condell Medical Center, as provided in Sections 8(a) and the Medical Fee Schedule in Section 8.2 of the Act. Further, Respondent shall hold Petitioner harmless from any payments made by Petitioner's group health provider to these providers.

Regarding Issue ("L"), the temporary benefits are in dispute, the Arbitrator finds the following:

Following her accident, the Petitioner was examined by Dr. Nispeanu and immediately referred to Dr. Alzate, a neurosurgeon who imposed light duty restriction of no lifting greater than five pounds as of March 5, 2021. (P.X.1, p.25) According to Carrie Lyons, the Respondent could have accommodated those restrictions as of March 8, 2021, but Petitioner declined to return to work. On April 16, 2021, Dr. Alzate restricted Petitioner entirely from work due to her

severe pain and in anticipation of her undergoing the therapy and injections he prescribed. (P.X.1, p.19) This restriction of Dr. Alzate remained in place as of the date of hearing.

The medical evidence has established that the Petitioner has yet to reach maximum medical improvement for her injury. Having found that Petitioner's condition of ill-being is causally related, that the medical treatment she has received is reasonable and necessary, that Petitioner testified credibly, and that Dr. Alzate's opinions regarding her condition and treatment are credible, Petitioner is entitled to temporary total disability benefits. Based upon the foregoing, the Arbitrator finds that the Petitioner was temporarily and totally disabled for the period April 16, 2021, through March 2, 2022, the date of the hearing. Respondent is entitled to a credit for temporary total disability benefits already paid.

Regarding Issue ("K"), whether Petitioner is entitled to any prospective medical care, the Arbitrator finds the following:

The Arbitrator finds the testimony of the Petitioner to be credible as it relates to her ongoing symptoms. The MRI revealed degenerative changes at L4-5 which were aggravated by Petitioner's accident. Petitioner remains symptomatic and has been unable to complete the treatment prescribed by Dr. Alzate. Having found the opinions of Dr. Alzate to be credible and that Petitioner wishes to pursue the recommended treatment, the Arbitrator finds that the proposed therapy and injections prescribed by Dr. Alzate to be both reasonable and necessary to treat the Petitioner's back condition arising from her accident. Respondent shall authorize and pay for this and any required accompanying medical treatment pursuant to Section 8(a) and the Medical fee schedule.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC014827
Case Name	Terri Anderson v. Vulcan Materials
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0471
Number of Pages of Decision	13
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Andrew Purcell
Respondent Attorney	Jennifer Rizk-O'Lynnger

DATE FILED: 12/9/2022

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
KANKAKEE

☒ 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

Terri Anderson,

Petitioner,

vs. NO: 18 WC 14827

Vulcan Materials,

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 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 January 19, 2022, 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.

December 9, 2022

o11/9/22
DLS/rm
046

/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/*Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC014827
Case Name	ANDERSON, TERRI v. VULCAN MATERIALS
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Andrew Purcell
Respondent Attorney	Jennifer Rizk-O'Lynnger

DATE FILED: 1/19/2022

THE INTEREST RATE FOR THE WEEK OF JAMUARY 19, 2022 0.37%

/s/ Jessica Hegarty, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Kankakee)

☐ 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)

Terri Anderson
Employee/Petitioner
v.
Vulcan Materials
Employer/Respondent

Case # **18** WC **014827**

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 **JESSICA A, HEGARTY**, Arbitrator of the Commission, in the city of **KANKAKEE**, on **9/29/2021**. 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 entitled to prospective medical treatment pursuant to Section 8(a) of the Act?

FINDINGS

On the date of accident, **October 19, 2017**, 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's average weekly wage was $**804.35**.

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

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

ORDER

Respondent is liable for the following outstanding medical bills:

- Dr. Gary Koehn ($1,220.39)
- Accelerated MRI ($168.84)

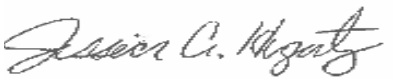
Respondent is also liable for any outstanding medical charges owed to Presence St. Mary's Hospital related to Petitioner's physical therapy and diagnostic imaging related to her neck and left upper extremity as provided in Section 8(a) of the Act.

Respondent shall authorize and pay for the anterior cervical disc fusion at C5-C6 and C6-C7 as recommended by Dr. Sampat along with any related pre- and/or post-operative treatment deemed necessary by Dr. Sampat.

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

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

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



Signature of Arbitrator

JANUARY 19, 2022

STATE OF ILLINOIS)
)
COUNTY OF KANKAKEE)

ILLINOIS WORKERS' COMPENSATION COMMISSION

TERRI ANDERSON,
Employee/Petitioner,

vs. Case # 18 WC 014827

VULCAN MATERIALS,
Respondent/Employer.

ADDENDUM TO THE DECISION OF THE ARBITRATOR

FINDINGS OF FACT

This matter proceeded to hearing on September 29, 2021, pursuant to section 19(b) of the Illinois Workers' Compensation Act. (Arb. 1).

The disputed issues are causal connection, unpaid medical bills, and prospective medical treatment pursuant to Section 8(a) of the Act. (Id.).

Respondent processes stone, sand, and gravel for use in road construction projects. (Tr. p.7-8). On the accident date, October 19, 2017, Petitioner was employed as a quality control process technician which required her to collect samples of material from Respondent's quarry and transport them to the lab for testing. (Id.).

Regarding her accident, the Petitioner was bending down to retrieve some buckets when her left shoe became caught on a rusty nail embedded in the wooden pallet she was standing on. While balancing on her right foot, the Petitioner began shaking her left leg when she fell backward 4 feet slamming into a pick-up truck, striking her neck, shoulders, and back. (Id. p.10-12). Petitioner testified that immediately after her fall, she felt pain in her neck, arms, and left shoulder blade but thought the pain would go away. (Id. p.12-13). Petitioner testified she called her boss later that evening to report her pain symptoms. She further testified that she was asked by her boss, Dan, and Jason Shea, the "safety guy" to do "R.I.C.E", which she understood to stand for "rest, ice" and "two other things" she did not remember[i]. (Tr. p.13, 51).

Petitioner testified she had no medical issues or treatment to her neck, left arm, or left shoulder prior to October 19, 2017, and has suffered no intervening injuries since the date of her workplace injury. (Id. p.36)

The Respondent completed an "Incident Announcement" (sometime after November 13, 2017) noting Petitioner "struck the back of her left shoulder (scapula) into the door" of a parked Ford F-150 pick-up truck on October 19,

2017. (PX 2, p. 96). The report further notes the Petitioner "attempted to perform R.I.C.E" for the next 3 weeks and continued to have full range of motion, and did not experience and loss of strength" (Id.). According to the document:

> On 11/13/17 [Petitioner] requested to see a doctor due to increased muscle spasms and numbness in her fingertips. The doctor diagnosed employee with a left trapezius/scapula strain, was given medication, and released to work without restrictions. This is a non-reportable injury. (Id).

Unrelated to her injury, Respondent fired Petitioner on May 10, 2018. (Tr. p.77-78).

TREATING MEDICAL RECORDS

On November 13, 2017 Kyle Denny, a physician assistant at Riverside Workforce Health, noted Petitioner's report of losing her balance, due to a nail becoming embedded in her shoe, causing her to fall backward "with a lot of force" into a vehicle striking her "left upper back/shoulder region". Petitioner reportedly thought she had a "bad bruise" that would resolve in time. (PX. 1, p.2). Petitioner complained of posterior left shoulder pain. Mr. Denny noted Petitioner pointed to the area in her left "trap/scapular region and posterior GH joint." (Id.). The report further states, "employer has been accommodating her since injury and having her avoid lifting with left arm and has been having her rest it. Pt *[sic]* presents for eval as she is concerned that pain is not getting better and has now been developing intermittent numbness/tingling into digits of left hand." (Id.). Petitioner reported her pain as 7/10 at rest and 10/10 with activity. Petitioner also reported intermittent radiating pain from her trapezius to left shoulder/upper arm and intermittent numbness/tingling into all digits, usually with reaching behind her head. (Id.). On exam, Petitioner denied neck pain but complained of a pulling sensation over her left trapezius region with right lateral bend and twist. (Id.). Mr. Denny noted Petitioner had full range of motion in her left shoulder but complained of pain with internal and external rotation. (Id

On November 21, 2017, Petitioner followed up at Riverside Workforce Health where Mr. Denny noted a history of "left trap/neck/scapular strain with paresthesia's into the left hand". (Id., p. 6). Petitioner complained of pain over her posterior left shoulder/scapular region and intermittent radiating pain from her trapezius to her left shoulder/upper arm. (Id.). She reported increased pain when reaching behind her head. Mr. Denny noted she denied neck pain "but admits to pulling sensation in left trap region with right bend and twist". Mr. Denny also noted she "has been at work w/o difficulty in performing job tasks." (Id.). Mr. Denny returned Petitioner to regular duties, referred her to physical therapy, and instructed her to follow up in two weeks. On the work status report, Mr. Denny noted a diagnosis of "left trapezius, scapular pain, left shoulder pain with paresthesia's, and left neck pain/tightness". (Id. p. 8). Mr. Denny recommended Petitioner begin physical therapy and continue her prescription NSAID twice per day. He also returned Petitioner to regular work duties. (Id.).

On November 30, 2017, Petitioner presented for initial evaluation at Athletico Physical Therapy where the following history was noted: "pt. is a 48 y/o female who sustained an injury to her L shoulder/scap/neck on 10/19/17 after falling into a truck (backwards)." (PX. 2, p.66). Petitioner indicated on her intake questionnaire that she had shoulder blade pain, numbness in fingers as well as "weakness/fatigue" and "numbness/tingling". She reportedly was working for Respondent in a light duty capacity. (Id., p. 98). The physical therapist noted a history of injury to her left "shoulder/scap/neck" on October 19, 2017 after falling into a truck backwards. (Id. p. 66). Petitioner reported the physical demands of her job for Respondent required occasional lifting of 50 lb. buckets from the floor to the waist and from waist to shoulder and occasionally carrying 50 lb. buckets with 2 hands for a distance of 100 feet. (Id. p. 66). The therapist noted a diagnosis of left scapula and left-sided neck pain. (Id.).

On December 4, 2017 Petitioner's complaints of a "[p]inching like sensation" over the left side of her neck was noted by her physical therapist at Athletico. (PX2 p. 60). On December 7, 2017 Petitioner's physical therapist noted complaints of a "[p]inching like sensation over (L) side of neck, and (L) shoulder". (Id.).

On December 14, 2017 Petitioner followed up at Riverside Workforce Health regarding "left trap/neck/scapular strain with paraesthesias into left hand". (Id., p. 9). Petitioner reportedly had completed 6 physical therapy visits to date noting improvement in her range of motion on her shoulder and neck although her pain "mostly remained unchanged". (Id.). She reportedly had "been written for normal work, but employer has been keeping [her] doing office work and no heavy lifting". She complained of persistent pain, soreness, and heaviness in her left arm with use as well as intermittent parasthesias into her entire left hand and intermittent radiating pain from her trapezius to left shoulder/upper arm. Mr. Denny noted she "denies midline neck pain, but admits to pain into [her] left trap/lateral region". (Id.). Petitioner report no previous history of left shoulder/trapezius/scapula issues or pain. Mr. Denny diagnosed Petitioner with left neck pain with left upper extremity parasthesia and left trapezius/shoulder strain. Petitioner was to continue her prescription NSAID and Biofreeze and begin Flexeril over the weekend.

On January 5, 2018, Riverside Workforce Health noted Petitioner presented with a history of "left trap/neck/scapular strain with parasthesia into left hand". (Id., p.12). Again, Mr. Denny noted that while Petitioner denied midline neck pain, she "admits to pain into left trap/lateral neck region". (Id.). On that date, Mr. Denny discharged Petitioner from Riverside Workforce Health clinic and referred her to OAK Orthopedics. (Id., p. 13-15).

On February 16, 2018 Petitioner presented for initial consult at OAK Orthopedics where Dr. Eddie Jones, an orthopedic surgeon, noted she had "pain in the left shoulder after work injury 4 mos. ago. Has had extensive therapy w/o improvement". (PX. 3 p. 17) Dr. Jones recommended an MRI/Arthrogram of Petitioner's left shoulder. (Id.).

On March 6, 2018 MRI/Arthrogram of Petitioner's left shoulder taken at OAK Orthopedics noted undersurface fraying of the superior labrum and mild supraspinatus tendinosis. (Id., p.24).

On March 28, 2018 Petitioner presented for consult with Dr. Eric Varboncouer, a shoulder specialist, pursuant to Dr. Jones recommendation. (Id., p. 7). On exam, the doctor noted "patient has limited extension of cervical spine and pain with motion especially extension." (Id.). Dr. Varboncouer noted the recent left shoulder MRI findings "might be a little bit of a red herring" in regards to Petitioner's symptoms. The doctor thought the more likely pain generator was cervical spine nerve compression. The doctor doubted that shoulder pathology would account for the numbness and tingling Petitioner had experienced since her accident. Accordingly, he recommended MRI of Petitioner's cervical spine to evaluate for possible nerve root impingement or compression. (PX. 3, p.7).

On March 30, 2018 MRI of Petitioner's cervical spine noted disc bulges at C5/C6 and C6/C7 resulting in mild central canal stenosis. (Id., p.21).

On April 4, 2018, Petitioner saw nurse practitioner David Fritz at OAK Orthopedics for her cervical spine MRI results. (Id., p.3). Nurse Practitioner Fritz noted her symptoms were related to her cervical spine. Follow up with a pain specialist was recommended. (Id., p.3-5).

As mentioned above, Respondent fired Petitioner on May 10, 2018. (Tr. p.77-78).

On October 10, 2018 Petitioner presented to Dr. Jennifer Nepomuceno at PMG Family Practice Bourbonnais. A history of neck and shoulder pain that started on October 19, 2017 was noted. (PX. 4, p.11). Dr. Nepomuceno recommended physical therapy, referred Petitioner to an orthopedic surgeon, and ordered a rheumatoid arthritis

diagnostic panel. (Id., p14). Dr. Nepomuceno's records indicate Petitioner had difficulty getting a referral to an orthopedic doctor who would be covered by her insurance. Dr. Nepomuceno eventually referral Petitioner to Dr. Chintan Sampat on October 29, 2018. (PX. 5, p.21-23).

Petitioner underwent physical therapy for her neck and left shoulder at Presence St. Mary's. She testified this therapy did not help. (Tr. p.27; PX. 5, p.4-13, 18-43). When Petitioner stopped attending therapy at St. Mary's on November 29, 2018, her therapist noted pain complaints of 6-7 out of 10. (PX. 5, p. 43).

On November 16, 2018 Petitioner presented to Dr. Chintan Sampat at Parkview Orthopaedic Group who noted a history of "neck pain radiating down the left upper extremity after a work injury with numbness, tingling and weakness." (PX. 6, p. 26). Petitioner completed a Patient Information Sheet diagram indicating pain in her neck and left shoulder with numbness in her left arm, and pins and needles sensation in her left hand. (Id., p.22). Dr. Sampat's physical examination noted neck pain with flexion and extension maneuvers. (Id., p.27). His sensory testing noted left arm numbness from her biceps into her forearm and tingling in all the fingers of her left hand. (Id.). Dr. Sampat reviewed the recent cervical MRI noting the radiologist had under-reported the degree of stenosis which, in his opinion, revealed mild to moderate stenosis at C5-C7 and mild stenosis at C4-5. He recommended the administration of therapeutic/diagnostic cervical epidural injections (CESI) and follow-up in four week's time. (Id., p. 28).

On December 18, 2018 Dr. Gary Koehn at Modern Pain Consultants, pursuant to Dr. Sampat's referral, administered the first CESI at C6-7 while the second injection was administered on January 15, 2019. (PX. 7, p.3, 6, 8). Petitioner, on February 5, 2019, reported no improvement in her symptoms and thought the tingling sensation had worsened. (Id., p. 10). Based on Petitioner's continued complaints of pain, Dr. Koehn recommended a repeat cervical MRI which was performed on February 13, 2019 at Accelerated MRI. The radiologist noted a 2-3 mm disc bulge at C5-6, causing partial effacement of the ventral subarachnoid space (pressure on the spinal cord) and with the same finding as to C6-7, as well as abnormal cervical lordosis (excessive inward curvature of the spine) (PX. 8, p.10).

On March 21, 2019 Dr. Sampat's reviewed the updated MRI films noting effacement of the thecal sac at C5-C6,C6-C7. (PX. 6, p.36). Dr. Sampat recommended surgical intervention consisting of ACDF (anterior cervical disc fusion) procedure at C5-C7 (Id.).

Dr. Sampat's testimony regarding Petitioner's history and treatment was consistent with the medical records in evidence. He opined that Petitioner's current condition of ill-being was causally connected to the accident at issue which necessitated his surgical recommendation.

IME EXAMS

Dr. Troy's First IME – January 22, 2018

Dr. Daniel Troy examined Petitioner, pursuant to Respondent's request, on January 22, 2018 (Dr. Troy's report erroneously states 2017 as the year of his exam). (RX. 6, Resp. Dep. EX. 2; PX 3, p. 26). Dr. Troy noted Petitioner presented "with a history of injury to the posterior aspect of the left shoulder and posterior aspect of the left side of her cervical spine." (RX. 6, Resp. Dep. EX. 2, p.2; PX. 3, p.27). Dr. Troy's summary of Petitioner's physical exam references her complaints of "pain to the left side of her cervical spine". (RX. 6, Resp. Dep. EX. 2, p.5; PX. 3, p.30). Dr. Troy noted that Petitioner's range of motion was less than normal "when rotating to the left secondary to the left-side paraspinals pain going into the left trapezial region" and noted that a Spurling's test accentuated pain to the cervical/trapezial junction." (Id.). Radiographs taken on that date noted "mild degenerative changes" to Petitioner's

left shoulder AC joint and "well-maintained disc space" of the cervical spine "except at the C5-6 level", which he labelled as "moderate degenerative changes." (RX. 6, Resp. Dep. EX. 2, p.6-7; PX. 3, p.31-32).

Dr. Troy diagnosed Petitioner with "left-sided periscapular pain with secondary pain in the left cervical paraspinalis and trapezial region". (Id., Dep. EX.2, p.7). Regarding causal connection, Dr. Troy opined that Petitioner's condition "appears to be casually connected based on the description of the injury that occurred and her subsequent symptomatology." (Id.) Dr. Troy did not feel there was a need for an MRI of Petitioner's shoulder, but did state she may need to undergo an MRI evaluation (not specified as to shoulder or cervical spine) if she did not make significant improvement in four weeks." (Id.). Dr. Troy stated that Petitioner should continue with physical therapy and if Petitioner did not make any significant progress in that four-week timeframe, "a specialist referral would be suggested." (Id.).

Dr. Troy's second IME – May 21, 2018

Respondent scheduled Petitioner for a second IME with Dr. Troy on May 21, 2018. (RX. 6, Resp. Dep. EX. 3). The "History of Present Illness" contained in Dr. Troy's second IME report of May 21, 2018 was virtually identical to that contained in his first report of January 2018 except for the removal of one sentence regarding the Petitioner asking to see a physician after three to four weeks with no improvement following her October 19, 2017 injury. (RX. 6, p.63-65; RX. 6, Resp. Dep. EX 3, p.2; RX. 6, Resp. Dep. EX.2, p.2). Dr. Troy's May 2018 report referenced the cervical MRI findings, including disc bulges at C5-6 and C6-7 and he testified that the fall Ms. Anderson described would be an atypical but possible cause of those disc bulges. (Rx. 6, p.67).

Dr. Troy's Third IME – June 15, 2020

Respondent requested that Dr. Troy conduct a third IME of Petitioner, which was done on June 15, 2020. (RX. 6, Resp. Dep. EX.4). By that time, Dr. Troy was aware that Dr. Sampat had recommended Petitioner undergo an anterior cervical discectomy and fusion. Dr. Troy's June 2020 physical exam referenced 50% range of motion in Petitioner's cervical spine with flexion and extension and reduced range of motion in her left shoulder, which Dr. Troy agreed could be a sign of worsening of the condition in her neck and left shoulder. (RX. 6, p.83-84). Dr. Troy attributed these findings to Petitioner "self-limiting her range of motion." (Id.). Dr. Troy also noted that Petitioner was still complaining of tingling and numbness in her left arm and hand, and had also developed right periscapular pain and tingling and numbness to her left leg. (Id., p.85).

Dr. Troy attributed Petitioner's symptoms to degenerative changes and/or rheumatoid arthritis. (Id., p.84-87).

CONCLUSIONS OF LAW

With respect to Respondent's objection regarding Petitioner's medical exhibits Number 4 (Tr. p.80-84), the Arbitrator notes the medical records were accompanied by copies of Petitioner's subpoenas for those records and the Arbitrator accepts the representation of Petitioner's attorney that unrelated records (visits for flu, etc.) from Petitioner's primary care physician, Dr. Nepomuceno, were properly removed. (Tr. p.80-81; PX.4). The Arbitrator notes Dr. Nepomuceno play a very minor role in treatment of Petitioner's claimed injury.

(F) IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO HER WORK ACCIDENT?

Based on a preponderance of the credible evidence contained in the record, the Arbitrator finds that Petitioner's current condition of ill-being is causally connected to the uncontested work accident at issue.

It is unrebutted that before this accident, Petitioner was physically able to perform her full, unrestricted, work duties for Respondent. Petitioner's testimony that she had no injuries or treatment to her left upper extremity and left cervical spine before the October 19, 2017 accident is also unrebutted and corroborated by the treating medical records. Regarding her condition of ill-being following the accident, Petitioner's testimony that she was unable to perform her regular work duties immediately following the accident and thereafter is supported by the treating medical records of Respondent's occupational provider who noted on November 17, 2017 that Respondent "has been accommodating her since injury and having her avoid lifting with left arm and has been having her rest it. (PX2, p. 6).

Although the records from Respondent's occupational clinic reference that Petitioner "denied neck pain", a close examination of these records reveals ongoing and consistent complaints of symptoms including neck/trapezius[ii] symptoms, beginning with her initial visit when the physician's assistant noted a diagnosis of "left shoulder pain with intermittent radiculopathy and paresthesia" and "left trap/scapula pain". (Id). The work status report on that date noted "left neck pain/tightness" (Id. p. 8). In her follow-up appointments at Riverside Occupational Health between November 21, and December 14, 2017, Petitioner's history and complaints are consistent with multiple references to pain in and around the neck. At her discharge from Riverside, on January 5, 2018, Petitioner presented with a history of "left trap/neck/scapular strain with parasthesia into left hand". (Id., p.12). Again, the physician's assistant noted that while Petitioner denied midline neck pain, she "admits to pain into left trap/lateral neck region". (Id.).

After Petitioner's discharge from Riverside Workforce Health clinic, the focus of her treatment shifted from her left shoulder to her cervical region. This shift in focus coincides with the shift in Petitioner's treatment providers - from a physician's assistant at Respondent's occupational clinic - to physicians specializing in orthopedics who employ diagnostic testing to correlate or refute clinical findings.

Petitioner's first visit to a medical doctor following her accident occurred on February 16, 2018 when she presented to Dr. Jones at OAK Orthopedics who recommended an MRI/Arthrogram of Petitioner's left shoulder which, on March 6, 2018, noted revealed undersurface fraying of the superior labrum and mild supraspinatus tendinosis. (Id., p.24). On March 28, 2018 Dr. Eric Varboncouer, a shoulder specialist, noted that Petitioner's history and clinical findings were inconsistent with shoulder pathology. Because he suspected Petitioner's injury was cervical in nature, Dr. Varboncouer, recommended a cervical MRI.

> I'm afraid that the [MRI] finding might be a little bit of a red herring in regards to her symptoms. I think more likely the source is either myofascial in nature or I think, more likely, referred pain from the cervical spine related to nerve compression. Shoulder pathology should not account for the numbness and tingling she has experienced since the injury. She has reportedly had a negative x-ray of her neck previously so I would recommend going to the mri of cervical spine next to evaluate for possible nerve root impingement or compression that could explain her clustering of symptoms. (PX. 3, p.7) (Emphasis added).

On March 30, 2018 MRI of Petitioner's cervical spine noted disc bulges at C5/C6 and C6/C7 resulting in mild central canal stenosis. (Id., p.21). Pursuant to his review, Dr. Sampat felt the radiologist underread the amount of stenosis, which he believed was mild to moderate at C5-C7 and mild at C4-5. After Petitioner underwent two courses of cervical steroid injections that failed to provide relief, she underwent a repeat cervical MRI at Accelerated MRI that noted a 2-3 mm disc bulge at C5-6, causing partial effacement of the ventral subarachnoid space (pressure on the spinal cord) and with the same finding as to C6-7, as well as abnormal cervical lordosis (excessive inward curvature of the spine) (PX. 8, p.10). Dr. Sampat reviewed the repeat MRI noting effacement of the thecal sac at C5-C6,C6-C7. (PX. 6, p.36). Dr. Sampat recommended Petitioner undergo surgery consisting of an ACDF (anterior cervical disc fusion) procedure at C5-C7 aimed at "decompressing the cervical neural elements and see if that would help

some of the radicular component." (Id.). Dr. Sampat opined that Petitioner's current condition of ill-being is causally connected to the accident at issue which necessitated his surgical recommendation.

The Arbitrator finds that the preponderance of credible evidence overwhelmingly supports the conclusion that Petitioner's current condition of ill-being is causally related to the accident at issue. Petitioner's testimony, combined with the medical records following her work injury, indicate ongoing and consistent complaints of symptoms involving her neck/trapezius beginning with her initial visit with Respondent's occupational provider in early November 2017. As her treatment progresses, the focus shifts from her left shoulder to the eventual diagnosis of objective cervical disc bulges at C5-C6 and C6-C7 which occurs within five months of the accident date. (PX. 3, p.21). The Arbitrator adopts the opinions of Dr. Sampat which she found to be compelling, persuasive, and corroborated by the treating medical records in evidence.

(J.) MEDICAL BILLS

Based on a preponderance of the evidence contained in the record, the Arbitrator finds the respondent is liable for the following unpaid medical bills:

Dr. Gary Koehn ($1,220.39)
Accelerated MRI ($168.84)

Respondent is also liable for any outstanding medical charges owed to Presence St. Mary's Hospital related to Petitioner's physical therapy and diagnostic imaging related to her neck and left upper extremity.

(O) PROSPECTIVE MEDICAL TREATMENT

Based on a preponderance of the credible evidence, including the treating medical records and the opinions of Dr. Sampat, the Arbitrator finds that Petitioner is entitled to the anterior cervical disc fusion at C5-C6 and C6-C7 as recommended by Dr. Sampat and any related pre- and/or post-surgical treatment recommended by Dr. Sampat.

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[i] R.I.C.E. - Rest, Ice, Compression, Elevation.

[ii] The paracervical area is the neck area, particularly the back of the neck. The sternocleidomastoid is a thick muscle located on each side of the neck which serves to turn and nod the head. The right trapezius is a wide, flat, superficial muscle that covers most of the right side of the upper back and the right side of the back of the neck. It extends longitudinally from the occipital bone to the lower thoracic vertebrae and laterally to the spine of the scapula (shoulder blade). Its functions are to move, rotate, and stabilize the right shoulder blade, to support the arm, and to extend the head at the neck.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC013442
Case Name	Anne Son v. Pie & Coffiee, LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0472
Number of Pages of Decision	34
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Karolina Zielinska
Respondent Attorney	Robert Harrington

DATE FILED: 12/9/2022

/s/ Deborah Simpson, Commissioner

Signature

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

Anne Son,
Petitioner,

vs. NO: 17 WC 13442

Pie & Coffee, LLC,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, permanent disability and 8(j) 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 March 2, 2022, 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 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.

December 9, 2022

o11/9/22
DLS/rm
046

/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/*Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC013442
Case Name	SON, ANNE v. PIE & COFFEE, LLC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	32
Decision Issued By	David Kane, Arbitrator

Petitioner Attorney	Karolina Zielinska
Respondent Attorney	Robert Harrington

DATE FILED: 3/2/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 1, 2022 0.67%

/s/ David Kane, Arbitrator

Signature

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

Anne Son
Employee/Petitioner

v.

Pie & Coffee, LLC
Employer/Respondent

Case # **17** WC **013442**

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 **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **1/27/2022**. 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. [ ] 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 **3/3/17**, 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 $**30,619.16**; the average weekly wage was $**588.83**.

On the date of accident, Petitioner was **33** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

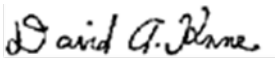
Respondent shall pay directly to Petitioner reasonable and necessary medical services of **$1,027.09**, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner a wage differential of **$224.00**/week commencing on 5/2/21 and continuing for the duration of Petitioner's disability per Section 8(d)1 of the Act.

Respondent shall pay Petitioner benefits that have accrued from March 3, 2017 through January 27, 2022, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Anne Son Case # **17** WC **013442**
Employee/Petitioner

v. Consolidated cases:

Pie & Coffee, LLC **Chicago/Kane**
Employer/Respondent

FINDINGS OF FACTS

At the time of the accident, Petitioner was a 33-year-old employee of Pie and Coffee, LLC (hereafter "Respondent") working as a Morning Baker. (Transcript "Tr." 8-9). Petitioner started her employment with Respondent in July of 2016. (Tr. 9). She was interviewed and hired by the owner of Pie and Coffee, Paula Haney. (Tr. 9 and 113). Petitioner attended a six-month program at a French pastry school and completed a pastry certification. (Tr. 9-10). As a morning baker, Petitioner whisked pie creams and egg whites, made and baked pies, biscuits, scones, muffins, cookies and sticky buns, sliced and cut fruit, and rolled out pie dough. (Tr. 10-11). Petitioner used both of her hands to whisk, switching hands when one became tired. (Tr. 11). She whisked for about two hours every day. (Tr. 11). She worked four consecutive days each week for 10 to 15 hours a day, earning $12.00 per hour. (Tr. 17-18). In order to make pies, Petitioner kneaded out dough using both of her hands into scaled out balls of dough, and then placed about 20 to 30 balls of dough onto a large sheet tray. (Tr. 12-13). Petitioner also pounded and rolled out the dough using both of her hands. (Tr. 14). Petitioner carried the tray of dough into coolers and placed the trays on shelves in the coolers. (Tr. 14-15). She also carried and stacked trays of pre-baked pie

shells and pies weighing approximately 20 to 25 pounds. (Tr. 16). Petitioner also stacked these items onto cooling rack shelves and oven shelves. (Tr. 17). Petitioner is 5'3" tall. (Px 1, p. 13). Petitioner testified she would have to reach overhead about 50 to 100 times a day to stack the trays on higher shelves. (Tr. 15). Petitioner's job duties are also listed in Petitioner's Exhibit "Px 11".

Lack of Pre-existing Medical Care or Subsequent Injuries

Before working for Respondent, Petitioner never injured her right wrist, left wrist nor right shoulder. (Tr. 48). She never sought medical care for her right wrist, left wrist, or right shoulder prior to 3/3/17. (Tr. 48-49). She did not experience any other accidents after 3/3/17. (Tr. 49).

Accident

On 3/3/17, Petitioner was performing her daily duties and kneading biscuits utilizing both of her wrists when her wrists became severely painful. (Tr.18-19). Petitioner testified her wrists started hurting in mid-February, but on 3/3/17 her pain became so severe that she had to stop working, and she told her boss about her wrist complaints. (Tr. 18). Petitioner went to her primary care doctor, Dr. Kulik-Carlos, the same day. (Tr. 19; see also Px 1, p. 13-14). Petitioner testified she injured her right shoulder while performing her work duties, however, her wrist pain was more severe and she admitted she did not report her right shoulder pain when she first presented to Dr. Kulik-Carlos on 3/3/17. (Tr. 55, 83-84).

Primary Care Physicians

Petitioner presented to Dr. Kulik Carlos on 3/3/17. (Px 1, p. 13-14). Petitioner reported bilateral wrist pain, worse on the right. *Id.* Dr. Kulik-Carlos noted that Petitioner worked as a baker and used her hands a lot when mixing, and as a result, her hands had become painful. *Id.* Petitioner denied complaints of neck or shoulder pain at this visit. *Id.* Dr. Kulik-Carlos diagnosed Petitioner with bilateral wrist tendonitis, right worse than left. *Id.* She recommended splinting both wrists, especially at night, and use of ibuprofen and ice packs as needed. *Id.* Dr. Kulik-Carlos advised Petitioner to follow up in two weeks. *Id.* Petitioner returned to Dr. Kulik-Carlos on 3/15/17. (Px 1, p. 15-16). Dr. Kulik-Carlos noted ulnar-sided right wrist pain with tingling and swelling in the fourth and fifth fingers. *Id.* She maintained Petitioner's off-work status for two more weeks and ordered x-rays of both wrists. *Id.* The x-rays were read as normal with no fractures. *Id.* at 45.

On 4/5/17, due to an insurance change, Petitioner followed up with a different primary-care doctor, Dr. Mai Phan. (Tr. 56; see also Px 2, p. 31). Petitioner provided a history of bilateral wrist pain, with her right side being worse than her left. (Px 2, p. 31). Petitioner noted her pain started with her entire right arm tingling. *Id.* Petitioner advised Dr. Phan she worked ten-hour days in a bakery and is not able to resume working. *Id.* Dr. Phan diagnosed Petitioner with wrist tendonitis and "tingling on right arm, may be due to radiculopathy." *Id.* at 32. Dr. Phan prescribed a Medrol Dosepak and maintained Petitioner off work. *Id.*

On 4/14/17, Dr. Phan noted Petitioner was suffering from bilateral wrist tendonitis which worsened when she moved her wrists and arms repetitively at work. (Px 2, p. 27). Dr. Phan took Petitioner off work for another three

weeks and advised her to follow up for her bilateral wrist pain. *Id.* at 28. On 5/9/17, Petitioner reported that her pain was "about 50% better" but still persistent. (Px 2, p. 22-24). Dr. Phan kept Petitioner off work for another three weeks (Px 2, p. 5) and referred her to an orthopedic physician for further evaluation of "wrist and arm pain". (Px 2, p. 22-24, 5).

Medical Care with Dr. John Fernandez, M.D.

On 6/1/17, Petitioner consulted an orthopedic hand surgeon, Dr. Fernandez, on referral by Dr. Phan. (Px 3, p. 104-111). Dr. Fernandez recorded a history of bilateral wrist pain, worse on the right, as well right shoulder pain. *Id.* at 109. Petitioner worked as a baker, and attributed the pain to her work activities since March of 2017, especially loading, rotation, pushing and pulling. *Id.* Her symptoms appeared to be getting worse. *Id.* Petitioner testified that her wrists were originally in such severe pain that it masked the pain in her right shoulder and she was not focused on her right shoulder pain. (Tr. 83-84). Dr. Fernandez' exam found subtle swelling on the ulnar side of both wrists and tenderness over the extensor carpi ulnaris (ECU) tendon, both worse on the right. (Px 3, p. 110). He diagnosed ECU tendonitis and ordered an MRI of the right wrist. *Id.* at 111. He also prescribed continued off work status and use of bilateral splints. *Id.* Dr. Fernandez referred Petitioner to a shoulder specialist. *Id.*

Petitioner underwent the right wrist MRI study the same day, 6/1/17. (Px 3, p. 256-257). The impression was a split tear of the ECU tendon with tendinosis. *Id.* On 7/13/17, Petitioner returned to discuss the MRI with Dr. Fernandez. *Id.* at 101-104. Dr. Fernandez recommended either a cortisone injection or immobilization in splints plus another round of oral steroids. *Id.* at 103. Petitioner chose the latter option. *Id.* Dr. Fernandez noted that

surgery should be considered if these conservative measures did not work. *Id.* Petitioner was kept off work. *Id.*

On 9/1/17, Petitioner returned to her original primary care physician, Dr. Kulik-Carlos, for follow up. (Px 1, p. 17). Petitioner reported right shoulder pain that started in March along with her bilateral wrist pain. *Id.* Petitioner described having numbness and tingling in her arm and heaviness in her shoulder. *Id.* She also felt locking. *Id.* Dr. Kulik-Carlos indicated her shoulder pain was likely due to rotator cuff tendinitis and ordered an MRI. *Id.* at 18.

Right Shoulder MRI and Treatment with Dr. Giannoulias

On 9/25/17, Petitioner underwent an MRI of her right shoulder at Swedish Covenant, ordered by Dr. Kulik-Carlos. (Px 1, p. 47-48). The impression was "1. Significant supraspinatus tendinopathy. At least high-grade partial thickness tear of the distal fibers without significant tendon retraction; 2. Moderate degenerative changes of the acromioclavicular joint; and 3. Mild subacromial/subdeltoid bursitis." (Px 1, p. 47-48). On 10/16/17, Dr. Kulik-Carlos cited the presence of a high-grade partial thickness rotator cuff tear along with significant tendinopathy which she attributed to repetitive motion and an overuse injury as well as heavy lifting. (Px 4, p. 9).

On 11/11/17, Petitioner presented for her initial consultation with orthopedic surgeon, Dr. Christos Giannoulias. (Px 4, p. 24). Petitioner was referred to a shoulder specialist by Dr. Fernandez. (Px 3, p. 111). Petitioner consulted with her prior counsel and decided to seek treatment with Dr. Giannoulias. (Tr. 28-29). Dr. Giannoulias noted a history of right shoulder pain "since March" which was related to repetitive activity as a baker. *Id.* His physical exam was positive for right shoulder impingement with pain on resisted flexion and some lateral tenderness over tuberosity. *Id.* Dr.

Giannoulias also reviewed the MRI films and diagnosed a partial-thickness rotator cuff tear. *Id.* He recommended a cortisone injection and Petitioner wished to discuss it with Dr. Fernandez prior to making a decision on how to proceed. *Id.* Dr. Giannoulias kept Petitioner off work. *Id.* at 25.

On 12/13/17, Petitioner returned for a follow up with Dr. Giannoulias and underwent a steroid injection in the right subacromial space. (Px 4, p. 26). She was kept off work. *Id.* at 27. On 1/10/18, Petitioner returned reporting that the injection had relieved her shoulder pain for about two weeks. (Px 4, p. 28). Dr. Giannoulias prescribed further treatment in the form of physical therapy, however, this was never authorized due to the opinions of Respondent's Section 12 Examiner, Dr. Phillips. (Px 4, p. 28; see also Rx 1).

Ongoing Medical Care with Dr. Fernandez

On 3/13/18, Petitioner returned to Dr. Fernandez. (Px 3, p. 74-77). She reported that her wrist pain was "about the same" at 5/10, and Dr. Fernandez noted that she continued to complain of shoulder pain. *Id.* at 76. Dr. Fernandez opined that further conservative treatment was unlikely to improve her wrist pain. *Id.* at 77. He recommended right wrist surgery to repair the ECU tendon tear but cautioned that her prognosis was guarded even with surgery. *Id.* If surgery was not performed, Dr. Fernandez considered her "MMI" for now with ongoing restrictions of 5 to10 pound maximum lifting and avoiding repetition. *Id.*

Ongoing Medical Care with Dr. Giannoulias and his Narrative Report

Petitioner continued to regularly follow up with Dr. Giannoulias from 3/14/18 through 11/14/19. (See Px 4, p. 30-54). At each visit, he prescribed

medical care for her right shoulder in the form of physical therapy. *Id.* It was never authorized by Respondent.

On 4/5/19, Dr. Giannoulias authored a narrative report confirming his opinion that Petitioner's right shoulder pain was causally connected to repetitive strain at work. (Px 7, Exhibit 2). Dr. Giannoulias disagreed with Respondent's Section 12 Examiner's, Dr. Phillips', opinion that Petitioner's pain was myofascial and located in the back. Dr. Giannoulias pointed out that the steroid injection into the subacromial joint space had effectively relieved her pain, if only temporarily. This frontal injection, he opined, would not have helped if there had not been impingement of the rotator cuff. Dr. Giannoulias again recommended physical therapy along with a second cortisone injection. He opined that Petitioner was currently not able to resume her bakery job, but could do sedentary work with a five-pound lifting limit and avoidance of overhead work. If further treatment for her shoulder was denied, he indicated Petitioner's restrictions would become permanent. (Px 7, Exhibit 2).

On 11/14/19, after two years of unapproved care, Dr. Giannoulias discharged Petitioner from his care. (Px 4, p. 53). His progress note explained that no physical therapy or other care had been authorized for Petitioner's shoulder in two years, and her symptoms had therefore remained unchanged. *Id.* Dr. Giannoulias opined that in the absence of further care, she should be considered at maximum medical improvement within her current restrictions. *Id.*

Petitioner's Right Wrist Surgery and Post-Operative Care

On 10/8/19, Dr. Fernandez expressed concern that Petitioner's

symptoms remained "moderately severe" after two years. (Px 3, 61-62). He ordered repeat MRIs of Petitioner's right and left wrists to confirm his diagnosis and surgical prescription. *Id.* On 12/12/19, he discussed the results with Petitioner. (Px 3, p. 46-47). Based on his review of the MRIs, Dr. Fernandez recommended right wrist surgery with debridement and stabilization of the ECU tendon; debridement of the TFCC tear; and a possible ulnar shortening osteotomy. *Id.* Petitioner agreed to proceed with surgery.

On 3/9/20, Dr. Fernandez performed surgery on Petitioner's right wrist. (Px 3, p. 139-141). Findings included a central tear of the lunotriquetrial ligament and a small tear of the TFCC cartilage, along with synovitis of the joint lining. *Id.* These were repaired arthroscopically. *Id.* An open incision was then made to repair the torn ECU tendon. *Id.* Dr. Fernandez found fibrosis and adhesions along the tendon, which also affected the sensory nerves. These were released, and a smaller tear near the ulnar styloid was repaired. *Id.*

On 3/24/20, Petitioner reported to Midwest Orthopedics, Dr. Fernandez' practice, for an initial occupational therapy session. (Px 3, p. 31-34). The evaluation consisted of fabrication of a custom post-operative splint along with instruction in home exercise. *Id.* Petitioner began a home exercise program due to Covid-19 restrictions at the time. *Id.* At her 4/28/20 follow-up, Dr. Fernandez noted Petitioner was still having pain with certain motions of the wrist. (Px 3, 28-30). He prescribed gradual discontinuation of splinting, and added basic strengthening to her home exercise program. *Id.* at 29. On 6/11/20, Dr. Fernandez referred Petitioner for formal physical therapy. *Id.* at 21.

On 6/18/20, Petitioner began in-person therapy at Athletico. (Px 5, p.

86-90). The therapist noted bilateral wrist pain rated at 5/10 on the right and 3-4/10 on the left at rest. *Id.* at 86. There was some swelling at the right wrist with sensitivity at the surgical site. *Id.* Petitioner also reported right shoulder pain. *Id.* at 87. By 7/14/20 Petitioner had attended eight formal physical therapy appointments. (Px 5, p. 53). The therapist reported that Petitioner's right shoulder pain was limiting her progress in wrist and hand strengthening and recommended physical therapy for the shoulder. *Id.* at 54-55.

On 7/16/20, Dr. Fernandez examined Petitioner and prescribed four more weeks of therapy for "a final push for strengthening." (Px 3, p. 17). He also advised that he would not recommend left wrist surgery at this time because the right wrist procedure had produced only limited improvement. *Id.* at 17-18.

Petitioner's final appointment with Dr. Fernandez was on 8/20/20. (Px 3, p. 12-13). Petitioner reported ongoing right wrist pain, especially at the surgical site. *Id.* Dr. Fernandez noted stiffness and weakness. *Id.* At the left wrist, he found tenderness over the ECU tendon and palpable clicking with movement. *Id.* Petitioner reported ulnar-sided pain in the left wrist that was worse with extension. *Id.* Dr. Fernandez found Petitioner to be at Maximum Medical Improvement (MMI) and prescribed permanent restrictions of maximum lifting of five to ten pounds, restrictions on repetition less than one third of the work day, and restrictions from use of tools, machines or material. *Id.* at 13. Dr. Fernandez noted Petitioner may require left wrist surgery in the future. *Id.* Petitioner's final evaluation at Athletico took place on 8/26/20. (Px 5, p. 10-13). Limited improvement in right wrist and hand function was noted. *Id.* Her range of motion remained limited with 40° of extension and 45° of flexion at the right wrist, compared to 50° and 65° at the left. *Id.* Grip

strength was measured at just eight pounds on the right with pinch strength of three pounds lateral and four pounds at the fingertips. *Id.* Strength limitations were similar in the left hand and strength testing elicited pain in both hands. *Id.* Petitioner also reported continued sensitivity at the surgical site. *Id.* The therapist noted that right shoulder pain, along with pain in the wrists, had significantly limited Petitioner's progress in therapy. *Id.* She consistently reported pain in her right shoulder with use of her right hand throughout her treatment. *Id.* Petitioner was discharged from therapy and prescribed a home exercise program for further strengthening. *Id.*

On 10/22/20, Petitioner presented to Dr. Giannoulias one final time. (Px 4, p. 58). Petitioner noted continued right shoulder pain and advised that she was released from care for her wrists and placed on permanent restrictions. *Id.* Dr. Giannoulias noted physical examination revealed impingements signs, positive Neer's and Hawkins, and tenderness over the AC joint. *Id.* He advised Petitioner that surgery is an option if her symptoms do not improve. *Id.* Petitioner testified that she does not wish to undergo right shoulder surgery because she has learned to manage her pain by living within her restrictions. (Tr. 24).

Petitioner's Testimony Regarding Her Permanent Medical Restrictions and Finding Work

Respondent was not able to accommodate Petitioner's permanent restrictions. (Tr. 32). Petitioner never returned to work for Respondent since her accident on 3/3/17. (Tr. 32). Instead, she put together a resume and began a job search for new, full-time employment. (Tr. 32-33 and 35; see also Px 11). Petitioner kept a log of every employer she contacted while

searching for a new job. (Tr. 34; see also Px 8). She started contacting employers on 8/26/20. (Tr. 35). Petitioner looked for work in the food industry, hotels, hospitality, retail, office jobs and anything that would work around her permanent medical restrictions. (Tr. 35). Petitioner searched for work mostly online, and also made phone calls to employers. (Tr. 35). According to her job logs, Petitioner made contact with approximately 370 employers from 8/26/20 until she secured new employment on 5/2/21. (Px 8). Petitioner also obtained assistance from vocational counselor, Caroline Ward, while looking for new employment. (Tr. 36-37; see also Px 9). She contacted employers on a regular basis and reached out to all leads proffered by Ms. Ward. (Tr. 35, 37). She was able to secure four interviews in eight months. (Tr. 36, Px 8). The first three job interviews did not work out because the positions were outside of her restrictions. (Tr. 36).

Petitioner's last contact with an employer was on 4/30/21 when she applied to Best Western. (Tr. 36). The vocational counselor, Caroline Ward, checked up on Petitioner's application by contacting Human Resources at Best Western. (Tr. 37; see also Px 13). Ms. Ward then emailed Petitioner advising her to contact "Selena in HR" at Best Western and to set up an interview. (Tr. 38-39; see also Px 13). Petitioner did as she was told and secured an interview spot. (Tr. 39-40; see also Px 13). Petitioner advised Ms. Ward via email that the position was only for 32 hours per week. (Px 13). Ms. Ward responded to Petitioner in an email stating, "Ok. Great. Good luck. That is ok with the hours." (Px 13). Soon after the interview, Petitioner received a phone call that she had been hired. (Tr. 40; see also Px 13).

Petitioner's New Job at Best Western

Petitioner began her job at Best Western on 5/2/21 and was still employed there at the time of trial. (Tr. 41). Her title is Front Desk Agent. (Tr. 41). Her duties as a Front Desk Agent are to check in customers with their reservations. (Tr. 41). Petitioner works 32 hours per week, from 11pm to 7am. (Tr. 41-42). Petitioner testified the front desk is not busy during these hours. (Tr. 42). Out of an eight-hour work day she spends about five minutes using a keyboard. (Tr. 42-43). Her job at Best Western is within her permanent restrictions. (Tr. 43). She has been working this job for approximately eight months and does not have increased pain in her wrists or her right shoulder by working this job. (Tr. 43). She earns $12.00 per hour. (Tr. 43). Petitioner's payroll for Best Western was introduced into evidence as Px 10 and accurately reflects her earnings. (Tr. 44). Petitioner testified that her job as a Front Desk Agent at Best Western was the best employment she could secure after obtaining her permanent medical restrictions. (Tr. 44). Petitioner's current average weekly wage at Best Western is $384.00 per week.

Current Earnings at Prior Position as Morning Baker

Petitioner testified that her position as a Morning Baker at Pie and Coffee is currently paying between $17.00 and $19.00 per hour based on a job listing she found online through culinaryagents.com. (Tr. 45-46; see also Px 12). Petitioner testified this job listing had the same duties outlined as her position did in 2017. (Tr. 47). Respondent's witness, Paula Haney, confirmed as the owner of Pie and Coffee that the Morning Baker position is currently paying $18.00 per hour. (Tr. 114). Thus, Petitioner's current wage as a Morning Baker would be, at minimum, $720.00 per week assuming she

would be earning $18.00 per hour and working 40 hours per week and not more.

Petitioner's Current Medical Condition

Petitioner testified that she has not returned to see Dr. Fernandez since August of 2020. (Tr. 49). She continues to follow his permanent restrictions in her every day life as well as at work. (Tr. 49-50). When she follows her medical restrictions, her wrists feel fine. (Tr. 50). However, when she engages in activities including household chores like vacuuming or dusting or laundry, then her wrists hurt from time to time. (Tr. 50). Her husband does the grocery shopping now. (Tr. 50). Petitioner used to do the grocery shopping before 3/3/17 but stopped because she cannot lift anything over five to ten pounds or she feels wrist and shoulder pain. (Tr. 51). When cooking at home, she is limited because she cannot lift certain pots or pans and needs to ask her husband for help. (Tr. 51-52). Before her 3/3/17 accident, she did not have any limitations with cooking. (Tr. 52). If she attempts any overhead cleaning, which she rarely does, she feels right shoulder pain. (Tr. 52).

Testimony of Alexander Ostapczuk

Medical records from Dr. Fernandez dated 12/5/17 indicate Petitioner was involved in a motor vehicle accident. (Px 3, p. 81-84; Tr. 81). Petitioner testified this is incorrect and a mix-up because she had never been involved in any motor vehicle accidents. (Tr. 81-82). In fact, Petitioner had discussed this error with Dr. Fernandez's office staff and they said they were going to fix it but never did. (Tr. 83). Petitioner's husband attended all of her doctor's visits with her and was also aware of this typo. (Tr. 82-83). Petitioner's

husband, Alexander Ostapczuk, testified at trial. (Tr. 89). Mr. Ostapczuk testified that his wife has not been involved in any motor vehicle accidents. (Tr. 89-90). He testified he was aware of the clerical error in his wife's medical chart because the receptionist at Dr. Fernandez's office told him that they assumed it was a motor vehicle accident because State Farm was listed as the insurance. (Tr. 90). Mr. Ostapczuk testified that State Farm was actually the workers' compensation carrier in this matter. (Tr. 90).

Testimony of Paula Haney

Paula Haney testified on behalf of Respondent. (Tr. 92). Ms. Haney works as a pastry chef and has been the owner of Hoosier Mama Pie Company d/b/a Pie & Coffee, LLC since 2013. (Tr. 93-94). In 2017, she employed approximately four to five bakers at her Evanston shop. (Tr. 96). As a baker she is able to see how tasks are being performed in the 1,000 square foot "back of the house" which includes the kitchen, dish area and storage. (Tr. 97-98).

Petitioner started working for Ms. Haney in August of 2016. (Tr. 98). The last day Petitioner worked was on 3/3/17. (Tr. 98-99). Ms. Haney testified Petitioner worked four consecutive 10 to 12 hour shifts. (Tr. 99-101). Ms. Haney testified that Petitioner never complained to her about Petitioner's right shoulder hurting. (Tr. 102). Ms. Haney did not agree that Petitioner "put pans up high into the coolers 50 to 100 times a day." (Tr. 104). She testified it would not be practical to lift sheet pans of pies overhead. (Tr. 104). The bakery would make 40 to 100 pies per day back in 2017. (Tr. 104). Ms. Haney testified the bakers would whisk cream for about an hour every day. (Tr. 108-109). 10 percent of a baker's day is overhead activities. (Tr. 110-111). There would not be a day where 50 to 60 percent of the work would be done

overhead. (Tr. 111).

On cross examination, Ms Haney testified she is the person in charge of the Evanston location and was likewise in charge in 2017. (Tr. 113). Ms. Haney hired Petitioner in 2016 and is in charge of hiring for the bakery. (Tr. 113-114). As of the day of hearing, 1/27/22, a Morning Baker was earning $18.00 per hour at the Evanston location. (Tr. 114). When she needs to hire a new employee, she would post a job listing online on websites such as Indeed and Glassdoor and Culinary Agents. (Tr. 115).

Ms. Haney further testified that a baker makes 40 to 100 pies a day and 4 to 5 pies fit on a baking sheet. (Tr. 115-116). That equates to 10 to 25 sheet pans per day. (Tr. 116). Ms. Haney affirmed that overhead shelves did exist in the cooler, on racks, and in the oven. (Tr. 106-108). Ms. Haney affirmed that each of those 10 to 25 sheet pans would need to be moved 4 to 6 times per day onto shelving into either the freezer, cooling rack or oven. (Tr. 116-117). Ms. Haney is 5'7" tall. (Tr. 114-115). The shelving units go higher than 5'7". (Tr. 117).

Opinions of Respondent's Section 12 Examiner - Dr. Phillips

Dr. Craig Phillips testified by evidence deposition regarding his three authored reports. (Rx 1). Dr. Phillips first evaluated Petitioner on 9/11/17 at the request of Respondent. (See Rx 1, Exhibit 2). Dr. Phillips' history noted bilateral wrist pain, worse on the right, along with right shoulder pain. The wrist pain was described as beginning in February 2017, while the shoulder pain had begun somewhat earlier but worsened in February 2017. Petitioner rated her wrist pain at 1-2/10 at rest and 5/10 with activity. She rated her right shoulder pain at 8/10 at rest and 9/10 with activity. She indicated her shoulder pain woke her up at night approximately three to four times a week.

Dr. Phillips' report described Petitioner's shoulder pain as posterior, noting that Petitioner pointed to her trapezius and shoulder blade area.

Dr. Phillips noted that Petitioner typically worked four 12-hour shifts per week, with some shifts extending to fifteen hours. Her job tasks included "multiple repetitive activities" with her hands, including rolling dough for pies and whipping cream and beating egg whites using a manual whisk. Petitioner's job also required periodic lifting. Petitioner loaded fillings into containers about ten times per shift and had to store the containers in the freezer. The freezer shelves ranged from knee level to overhead. Petitioner also lifted crates of fruit about two or three times per shift, which could weigh up to fifty pounds.

Dr. Phillips opined that Petitioner's bilateral wrist pain was causally connected to her work activities. His diagnosis was ECU tendonitis, for which he prescribed physical therapy and cortisone shots. Dr. Phillips opined wrist surgery would be reasonable if Petitioner's symptoms persisted. Regarding Petitioner's right shoulder complaints, Dr. Phillips' opined that Petitioner's right shoulder pain did not indicate a rotator cuff injury, but rather, was more likely "myofascial" in nature. Dr. Phillips described the pain as mainly posterior, around the shoulder girdle and scapula, rather than frontal or lateral. He also stated that Petitioner's work duties were performed mainly at waist level rather than at or above shoulder level, and such work would not cause shoulder impingement. Based on these facts, Dr. Phillips opined Petitioner's right shoulder pain was not causally related to her work activities. Regardless of causation, he agreed that further care, including injections and physical therapy for her right shoulder, would be reasonable.

On 3/27/18, Dr. Phillips authored an addendum to his Section 12 report without evaluating Petitioner again. (Rx 1, Exhibit 3). He confirmed his

opinion that Petitioner's wrist pain was due to tendonitis which was causally related to her work for Respondent. Dr. Phillips recommended a cortisone injection into the right wrist, and if it proved helpful, he likewise recommended that a left wrist injection should be considered. He opined right wrist surgery would be reasonable if Petitioner's problems persisted, and surgery on the left wrist could be considered if right-sided surgery were successful. In the interim, Dr. Phillips opined Petitioner could not return to her original job but could do light duty work with a five-pound lifting limit and use of bilateral wrist braces.

Dr. Phillips also reviewed Petitioner's 9/25/17 right shoulder MRI along with further medical records. Based on the MRI films, Dr. Phillips agreed that Petitioner did in fact have a right shoulder rotator cuff injury. However, he characterized the findings as "mild," adding that there was "no full-thickness tear" of the rotator cuff. Dr. Phillips repeated his impression that Petitioner's job duties as a baker had been performed mainly at countertop or waist level rather than overhead. Based on these facts, he opined that while her bilateral wrist tendonitis was causally related to her work, her rotator-cuff injury was not. Dr. Phillips characterized it as "probably degenerative" in nature. Respondent's insurer continued to deny treatment for Petitioner's right shoulder pain following these opinions from Dr. Phillips.

On 8/12/19, Petitioner was re-examined by Dr. Phillips at the request of Respondent and Dr. Phillips authored his third report. (Rx 1, Exhibit 4). Petitioner reported that Dr. Fernandez had recommended right wrist surgery, stating that her only alternative was to live with current symptoms. Petitioner was considering surgery. She continued to see Dr. Giannoulias for her shoulder. He had recommended physical therapy, and she was waiting for insurance authorization. Dr. Phillips noted that Petitioner had no history of

diabetes, thyroid disorder or fibromyalgia, and no history of arthritis or other inflammatory condition. He reviewed Dr. Fernandez' medical records in detail, including his prescription for right wrist surgery. Dr. Phillips also reviewed Dr. Giannoulias' medical records and noted findings of right shoulder impingement with positive Neer's and Hawkins' signs.

Dr. Phillips own physical examination on 8/12/19 did not include Petitioner's right shoulder, but was confined to her wrists. His findings confirmed his earlier diagnosis of ECU tendinopathy, causally related to Petitioner's work. Dr. Phillips opined if Petitioner chose not to undergo wrist surgery, then she would be considered at MMI. Dr. Phillips indicated Petitioner could not lift up to fifty pounds. Based on the grip strength scores he obtained, Dr. Phillips prescribed light duty with a 15-pound lifting limit. Dr. Phillips also noted Petitioner would require a five-minute break each hour to limit repetitive strain. Without wrist surgery, he opined these restrictions would be permanent.

Opinions of Petitioner's Treating Shoulder Specialist - Dr. Giannoulias

Dr. Giannoulias testified by evidence deposition on 12/9/19. (Px 7). Dr. Giannoulias is an orthopedic surgeon who is board certified in Sports Medicine. The bulk of his practice is treatment of shoulder and knee injuries. Dr. Giannoulias testified that his diagnosis of a partial-thickness rotator cuff tear was based on his physical examinations of Petitioner. He had noted tenderness at the lateral tuberosity where the rotator cuff tendons attach, and had also found positive Hawkins and Neer's signs, indicating shoulder impingement. Dr. Giannoulias defined impingement as a displacement of the rotator cuff so that the tendons are pinched against the acromion process.

He testified that Hawkins and Neer's tests are designed to elicit this pinching.

Dr. Giannoulias testified that Petitioner's September 2017 shoulder MRI had shown "at least a high-grade partial thickness tear" according to the radiologist's report. His own examination of the MRI films had confirmed such a tear. Dr. Giannoulias also disagreed with Dr. Phillips' report which had diagnosed Petitioner's shoulder symptoms as myofascial pain. He pointed out that a cortisone injection into the sub-acromial space had relieved Petitioner's pain at least temporarily, and this suggested that impingement at the acromion was the cause of her symptoms rather than posterior myofascial pain as Dr. Phillips had alleged. Dr. Giannoulias also commented that the "Jobe's test" conducted by Dr. Phillips was designed to test for instability caused by a labral tear or dislocation, not a rotator cuff tear. Dr. Giannoulias testified that he had ordered physical therapy for Petitioner because in his clinical experience partial tears could often be healed with physical therapy and injections. However, because Petitioner's rotator cuff tear had been untreated for so long, surgery might now be needed to repair it.

On cross examination, Dr. Giannoulias agreed that he had not taken a detailed history of Petitioner's job duties, and his initial note did not describe any work tasks above shoulder level. However, he testified that Petitioner had described stacking trays and that this would require reaching above shoulder level given her relatively short stature. Dr. Giannoulias also cited the activities listed in Dr. Phillips' report which included lifting heavy crates of fruit and stocking items on overhead shelves in the freezer. Dr. Giannoulias opined Petitioner's shoulder injury is consistent with and caused by the work that she was performing on or about 3/3/17. (Px 7, p. 26). Specifically, he noted that repetitive, forceful whisking as well as lifting above

shoulder level would cause her symptoms and complaints. *Id.*

CONCLUSIONS OF LAW

The Arbitrator incorporates by reference the preceding findings of fact, and concludes:

> **As to issue "C", whether an accident occurred that arose out of and in the course of Petitioner's employment with Respondent as it relates to Petitioner's right shoulder injury only; and as to issue "F", whether Petitioner's present condition of ill-being regarding her right shoulder is causally related to her injury, the Arbitrator finds as follows:**

Petitioner testified clearly and credibly to physical injuries that emerged in connection with her regular, repetitive tasks at work. Her medical records as well as the description of her work duties given to the physicians in this case corroborate her trial testimony. Moreover, causation in a workers' compensation case may be established by a chain of events showing prior good health, an accident and a subsequent injury. *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96-97, 631 N.E.2d 724 (1994); *see also Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 193, 530 N.E.2d 1135 (1988). The testimony and medical evidence in this case shows just such a chain of events.

Petitioner did not suffer any injuries to her right shoulder before 3/3/17 and did not have any prior medical care for her right shoulder before 3/3/17. (Tr. 48-49). Petitioner was able to work her full duty job until 3/3/17. As Petitioner's bilateral wrist injuries are not in dispute, the Arbitrator will focus on Petitioner's work duties as they relate to her alleged right shoulder injury only.

As a Morning Baker, Petitioner worked four consecutive days each week for 10 to 15 hours a day. (Tr. 17-18). In order to make pies, Petitioner kneaded out dough using both of her hands into scaled out balls of dough, and then placed about 20 to 30 balls of dough onto a large sheet tray. (Tr. 12-13). Petitioner also pounded and rolled out the dough using both of her hands. (Tr. 14). Petitioner carried the tray of dough into coolers and placed the trays on shelves in the coolers. (Tr. 14-15). She also carried and stacked trays of pre-baked pie shells and pies weighing approximately 20 to 25 pounds. (Tr. 16). Petitioner stacked these items onto cooling rack shelves and oven shelves. (Tr. 17). Petitioner is 5'3" tall. (Px 1, p. 13). Petitioner testified she would have to reach overhead about 50 to 100 times a day to stack the trays on higher shelves. (Tr. 15).

Petitioner admitted that she reported pain in both of her wrists only when she first presented to Dr. Kulik-Carlos on 3/3/17. (Tr. 55). Petitioner testified that her pain in her wrists was so severe it took precedent and masked her pain in her right shoulder. (Tr. 83-84). At her 4/5/17 visit with Dr. Phan, she reported that her problem began with "right arm pain and tingling" around the holidays, and Dr. Phan diagnosed Petitioner with wrist tendonitis and "tingling on right arm, may be due to radiculopathy." (Px 2, p. 31-32). Petitioner likewise advised Dr. Fernandez on 6/1/17 that she had right shoulder pain and attributed her pain to her work activities. (Px 3, p. 109). He immediately referred her to a colleague who specialized in shoulder injuries for further evaluation. (Px 3, p. 111). On 9/1/17, Petitioner reported to Dr. Kulik-Carlos that her right shoulder pain started in March 2017 along with her bilateral wrist pain. (Px 1, p. 17).

Petitioner's treating shoulder specialist, Dr. Giannoulias, opined that her work duties contributed to and caused her right shoulder injury. (Px 7,

p. 26 and Px 7, Exhibit 2). Respondent's examiner, Dr. Phillips, opined that Petitioner's right shoulder injury was not caused by her work duties. (Rx 1). The Arbitrator places greater weight on the testimony of Dr. Giannoulias rather than Dr. Phillips for multiple reasons.

First, the Arbitrator notes that at Petitioner's first IME, Dr. Phillips opined that Petitioner did not suffer from a rotator cuff injury, but rather, simply had myofascial pain. (Rx 1). Dr. Phillips was clearly incorrect in his diagnosis as Petitioner's right shoulder MRI taken just two weeks later demonstrated "at least a high-grade partial rotator cuff tear." (Px 1, p. 47-48). Moreover, the cortisone injection into the sub-acromial space that Petitioner underwent had relieved her pain at least temporarily. Dr. Giannoulias opined that this suggested that impingement at the acromion was the cause of her symptoms rather than posterior myofascial pain as Dr. Phillips had alleged. (Px 7). It is clear that Dr. Phillips had the incorrect diagnosis and this makes the Arbitrator place lesser weight on his opinions.

Secondly, the Arbitrator notes that Dr. Phillips was under the impression that Petitioner would only occasionally perform overhead activities, and it was based on this fact that Dr. Phillips opined that Petitioner's work at waist level would not cause her shoulder impingement. (Rx 1, Exhibit 2, p. 9). However, Dr. Phillip's understanding of Petitioner's work duties was incorrect. Petitioner did not lift overhead only occasionally. She testified that she had to place the trays on overhead shelves and lifted overhead approximately 50 to 100 times a shift. (Tr. 15). While Respondent's witness, Ms. Haney, testified that she did not agree that Petitioner would reach overhead 50 to 100 times a day, Ms. Haney also affirmed that overhead shelves did exist in the cooler, on racks, and in the oven. (Tr. 106-108). In fact, Ms. Haney agreed that the shelving units go higher than 5'7".

(Tr. 117). The Arbitrator notes Ms. Haney is 5'7" tall and Petitioner is 5'3" (Px 1, p. 13; and Tr. 114-115), and as such, Petitioner would have to lift overhead more times than Ms. Haney in order to utilize any shelving units higher than 5'3". Ms. Haney further agreed that about 10 percent of Petitioner's shift would require lifting overhead, which would amount to 1 to 1.5 hours of overhead lifting a day in a 10 to15 hour shift. (Tr. 110-111). The Arbitrator finds this significant. Additionally, Ms. Haney testified that Petitioner would have to carry 10 to 25 sheet pans of pies in a given shift and each of those pans was moved 4 to 6 times per day onto shelving into either the freezer, cooling rack or oven. (Tr. 116-117). Again, the Arbitrator finds it significant that Petitioner would have to carry and lift onto a shelf at minimum 40 pans and at maximum 150 pans per shift. This is consistent with Petitioner's testimony that on average she would lift overhead 50 to100 times a day, and the Arbitrator finds this testimony credible.

At his deposition, Dr. Giannoulias' testified that Petitioner had described stacking trays and that this would require reaching above shoulder level given her relatively short stature. (Px 7). Dr. Giannoulias also cited the activities listed in Dr. Phillips' report which included lifting heavy crates of fruit and stocking items on overhead shelves in the freezer. (Px 7). Dr. Giannoulias opined Petitioner's shoulder injury is consistent with and caused by the work that she was performing on or about 3/3/17. (Px 7, p. 26). Specifically, he noted that repetitive, forceful whisking as well as lifting above shoulder level would cause her symptoms and complaints. (Px 7, p. 26).

Given Dr. Giannoulias' causation opinion, in conjunction with the fact that Dr. Phillips' causation opinion was based on an underestimated value of Petitioner's repetitive, overhead lifting at work, the Arbitrator finds that Petitioner's right shoulder injury arose out of and in the course of Petitioner's

employment with Respondent. Additionally, the Arbitrator finds causal connection between Petitioner's work duties and work-related accident of 3/3/17 and her current condition of ill-being with regard to her right shoulder and her bilateral wrists (the latter of which is not in dispute).

As to issue "J", the reasonableness and necessity of medical care provided, the Arbitrator finds as follows:

The Arbitrator notes that no evidence was submitted which challenged the reasonableness and necessity of the care undergone by Petitioner for her bilateral wrists. In fact, Respondent's Section 12 Examiner pronounced it reasonable. (See Rx 1). With regard to Petitioner's right shoulder, Petitioner's treating physician opined the recommended care was reasonable and necessary, and Respondent's Section 12 examiner also agreed that physical therapy and injections would be reasonable. (See Px 7 and Rx 1). Respondent's denial for medical care was based on causation relating to Petitioner's right shoulder injury, and not reasonableness or necessity. Having found Petitioner's right shoulder condition to be causally related to her work accident, the Arbitrator therefore finds the medical charges in Px 6 totaling $54,537.07 with $1,027.09 outstanding to be Respondent's liability, subject to the medical fee schedule provisions of the Act.

As to issue "L", regarding the nature and extent of Petitioner's injury, the Arbitrator finds as follows:

To qualify for a wage differential award under section 8(d)(1), the Petitioner must prove (1) partial incapacity which prevents her from pursuing her usual and customary line of employment, and (2) a resulting impairment

of earnings. 820 ILCS 305/8(d)(1).

In *General Electric v. Industrial Comm'n*, 89 Ill.2d 432 (1982), our Supreme Court established a preference for wage loss awards under Sec. 8(d)(1) over "scheduled" awards based on loss to a specific body part under Section 8(e). The court noted that scheduled awards are often unfair in specific circumstances: "For example, partial loss of use of a finger may be an annoyance to some workers, but a catastrophe for a violinist." *Gen'l Electric*, 89 Ill.2d 432, 437. The Court, therefore, upheld a Commission decision to replace an arbitrator's award of 20% of a hand under Section 8(e) with one based on the claimant's wage loss pursuant to Section 8(d)(1). *Id.* The basis of the workers' compensation system, the Supreme Court said, should be loss of earnings. *Id.* at 437-438. Rather than being the standard, "scheduled" awards under Section 8(e) could be viewed as a presumed minimum loss in cases where the long-term impact of an injury on the worker's earning prospects was unknown. *Id.* However, when the worker could demonstrate an earnings loss greater than that presumed by the schedule, it should be awarded. *Id.*

In *Gallianetti v. Industrial Comm'n*, 315 Ill. App. 3d 721 (2000), a Commission award of 60% person-as-a-whole under Section 8(d)(2) was reversed and the case remanded to determine an 8(d)(1) wage loss award. The claimant's elbow injury had disqualified him from his former high-wage, unionized position, and a job search based on leads provided by the employer indicated he could expect to earn roughly one-quarter of his former wage. *Id.* The court ruled that when a claimant requests a wage differential award and proves that he qualifies, the plain language of Section 8(d) requires such an award. *Id.* Section 8(d)(2) could be substituted only where no wage loss is proven or the claimant waives his rights to a wage-loss

calculation. *Id.*

Subsequent decisions have affirmed the preference for wage-differential awards established in *General Electric*, ruling that they can be set aside only when the wage loss alleged by either the employer or the claimant is unproven. See, e.g. *Jackson Park Hospital v. IWCC*, 2016 IL App (1st) 142431WC (employer's sham job offer not valid for determining wage loss); *Euclid Beverage v. IWCC*, 2019 IL App (2d) 180090WC (claimant who "abandoned the job market" had failed to prove a wage loss).

The Arbitrator notes Petitioner elected proceeding under Section 8(d)1 at the time of hearing, and the Arbitrator finds that she has proven both, (1) partial incapacity which prevents her from pursuing her usual and customary line of employment, and (2) a resulting impairment of earnings. 820 ILCS 305/8(d)(1).

(1) Partial incapacity which prevents her from pursuing her usual and customary line of employment:

Petitioner's bilateral wrist injuries are not in dispute. Petitioner's final appointment with Dr. Fernandez was on 8/20/20. (Px 3, p. 12-13). Petitioner reported ongoing right wrist pain, especially at the surgical site. *Id.* Dr. Fernandez noted stiffness and weakness. *Id.* At the left wrist, he found tenderness over the ECU tendon and palpable clicking with movement. *Id.* Petitioner reported ulnar-sided pain in the left wrist that was worse with extension. *Id.* Dr. Fernandez found Petitioner to be at Maximum Medical Improvement (MMI) and prescribed permanent restrictions of maximum lifting of five to ten pounds, restrictions on repetition less than one third of the work day, and restrictions from use of tools, machines or material. *Id.* at 13. Dr. Fernandez noted Petitioner may require left wrist surgery in the

future. *Id.* Respondent's Section 12 Examiner likewise opined permanent restrictions were necessary and related to Petitioner's work accident. (Rx 1). Petitioner testified she was never accommodated at Pie and Coffee. (Tr. 32). Respondent did not offer any evidence nor testimony through its witness, Ms. Hanes, that a formal job accommodation was ever made.

(2) Resulting impairment of earnings. 820 ILCS 305/8(d)(1)

Following the imposition of her permanent medical restrictions by Dr. Fernandez due to her bilateral wrist injuries, Petitioner did not return to work for Respondent. As such, she immediately began a self-directed job search as of 8/26/20. (Tr. 32, 35). Petitioner also received assistance from vocational counselor, Caroline Ward. (Tr. 36-37; see also Px 9). Petitioner testified she kept a job log of every employer she contacted while searching for a new job, and the Arbitrator has reviewed the job log introduced into evidence as Px 8. (Tr. 34; see also Px 8). The Arbitrator finds Petitioner made a more than valid effort in looking for work by contacting employers in various industries. Her job logs included approximately 370 contacts to employers from 8/26/20 until she found new employment on 5/2/21. (See Px 8).

The Arbitrator also finds that Petitioner found suitable employment with her current position for Best Western. First, it is clear that Petitioner's restrictions and the fact that she was searching for work during the COVID-19 pandemic played a role in the difficulty of her finding new employment. Moreover, the Arbitrator finds it significant that the vocational counselor signed off on Petitioner's job with Best Western. In fact, after Petitioner secured her interview and was advised that she would be hired for 32 hours per week, she reached out to her vocational counselor in an email telling Ms. Ward that it was only for 32 hours per week. Ms. Ward respondent, "Ok.

Great. Good luck. That is ok with the hours." (Px 13). After 370+ job contacts and only four interviews in eight months, Petitioner was offered a job as a Front Desk Agent at Best Western and accepted.

Petitioner testified that her job as a Front Desk Agent was the best suitable job she could find within her permanent restrictions. (Tr. 44). Her duties as a Front Desk Agent are to check in customers with their reservations. (Tr. 41). Petitioner works 32 hours per week, from 11pm to 7am. (Tr. 41-42). Petitioner testified the front desk is not busy during these hours. (Tr. 42). Out of an eight-hour work day she spends about five minutes using a keyboard. (Tr. 42-43). Her job at Best Western is within her permanent restrictions. (Tr. 43). She has been working this job for approximately eight months and does not have increased pain in her wrists or her right shoulder by working this job. (Tr. 43). She earns $12.00 per hour. (Tr. 43). Petitioner's payroll for Best Western was introduced into evidence as Px 10 and accurately reflects her earnings. (Tr. 44). Petitioner's current average weekly wage is $384.00 per week.

Respondent's witness, Paula Haney, confirmed as the owner of Pie and Coffee that the Morning Baker position is currently paying $18.00 per hour. (Tr. 114). This is further confirmed by the job listing Petitioner found through culinaryagents.com. (Tr. 45-46; see also Px 12). Thus, Petitioner's current wage as a Morning Baker would be, at minimum, $720.00 per week assuming she would be working 40 hours per week and not her prior 40-60 hours per week that she testified she used to work as an employee in 2017.

Section 8(d)1 of the Illinois Workers' Compensation Act states:

> If, after the accidental injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in cases compensated under the specific schedule set forth in paragraph (e)

> of this Section, receive compensation for the duration of his disability, subject to the limitations as to maximum amounts fixed in paragraph (b) of this Section, equal to 66-2/3% of the difference between *the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident* and *the average amount which he is earning or is able to earn in some suitable employment or business after the accident*. (Emphasis Added).

The Arbitrator finds Petitioner has proven she is partially incapacitated from pursuing her usual and customary line of employment and as a result has suffered an impairment of earnings of $224.00 per week. ($720.00 (*the average amount which she would be able to earn in the full performance of her duties in the occupation in which she was engaged at the time of the accident*) - $384.00 (*the average amount which she is earning or is able to earn in some suitable employment or business after the accident*) = $336.00; $336.00 x 2/3 = $224.00). Petitioner started her new employment with Best Western on 5/2/21 and her maintenance benefits ended as of 5/1/21. (Tr. 41; see also Px 10). No additional benefits were paid by Respondent as of 5/2/21. As such, an 8(d)(1) award of $224.00 per week is appropriate, commencing on 5/2/21 and continuing for the duration of Petitioner's disability.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC017121
Case Name	Mary Ann Wilson v. University of Illinois - College of Medicine Peoria
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0473
Number of Pages of Decision	16
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Ian White
Respondent Attorney	Timothy Steil

DATE FILED: 12/12/2022

/s/Maria Portela, Commissioner

Signature

22IWCC0473

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARY ANN WILSON,

Petitioner,

vs. NO: 20 WC 17121

UNIVERSITY OF ILLINOIS,

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, causation, medical expenses, temporary total disability and nature and extent, and being advised of the facts and law, reverses the Decision of the Arbitrator on the issue of accident but includes the Decision, which is attached hereto and made a part hereof, for the Findings of Fact with the modifications noted below.

We find that Petitioner failed to prove her accident arose out of her employment. The Arbitrator found that Petitioner sustained a compensable accident because:

> the varied flooring surfaces and pattern approaching the top of the stairway placed Petitioner at an **enhanced risk** for sustaining a fall such as occurred on August 29, 2017. Petitioner's Exhibits #8 & #9 **support her allegation** that her **shoe got stuck on the edge** between the rectangular tile pattern and the larger irregular shaped piece of tile as there **appears to be a difference in height between the various surfaces**.

Dec. at 3 (Emphases added).

We initially note that "enhanced risk" is not the appropriate legal standard. Further, it is unclear whether the Arbitrator found there to be a hazardous condition on Respondent's premises

(i.e., an employment-related risk) or, rather, that Petitioner faced a neutral risk to a greater degree than the general public. This is a significant distinction as different evidence is required to prove each.

No Hazardous Condition

We find that Petitioner failed to prove there was a hazardous condition or defect on Respondent's premises. Although the Arbitrator interpreted the photographs (Px8 and Px9) as showing "a difference in height between the various surfaces," we disagree for several reasons.

First, Petitioner never testified that there was any height difference between the various tiles. Second, there was no evidence of any measurements having been taken to support a conclusion that there was any height difference. Third, it is speculative to rely solely upon a few photographs because photographs taken at certain angles can make it look like there are height differences when there really are none.

We also disagree with the Arbitrator's conclusion that these photos "support her allegation that her shoe got stuck on the edge between the rectangular tile pattern and the larger irregular shaped piece of tile." *Dec. at 3*. We note that Petitioner never testified her shoe got stuck on the edge between tiles. Instead, she testified:

> When I got close to the stairs my shoe kind of caught on the tile and I was -- I was holding on to the railing but when I slipped with the -- it was my left foot, it --
> it kind of put me into a spin.

T.14-15. In other words, her shoe "kind of caught on the tile" but she never testified that this was due to any height difference in the tiles. While one might be justified in inferring that this was a plausible mechanism of injury, Petitioner undermined this conclusion by testifying:

Q. Now concerning your accident, is it possible that you simply just took a misstep which caused you to fall?
A. I know my foot stuck on something, the floor.
Q. Do you know what your foot got stuck on?
A. Just the floor.

T.27. Therefore, Petitioner only testified that her shoe got "caught on the tile" and "stuck on something, the floor." The Arbitrator's statement that Petitioner alleged "her shoe got stuck on the edge between the rectangular tile pattern and the larger irregular shaped piece of tile" is not supported by Petitioner's testimony.

In fact, over time, Petitioner made several different statements about how and where her accident occurred. In the initial medical record (Advanced Medical Transport) dated August 29, 2017, Petitioner related that her "right shoe sole got caught on the carpet." *Px3, T.72*. This is inconsistent with her testimony that it was her left foot that got "caught on the tile." *T.14*. The emergency room (ER) record of the same date simply states "shoe stuck to the floor" without mentioning anything about carpet or tile.

The First Report of Injury (*Px2*), dated August 31, 2017, states "shoe stuck on tile," which seems consistent with the ER record but does not support any inference that her shoe got stuck on the edge between the tiles.

On her initial Application for Adjustment of Claim, dated June 23, 2020, Petitioner alleged "Shoe caught moving from carpet to tile." *Rx1*. She amended the Application on June 16, 2021 to reflect "Shoe caught on tile…." *Px1*. At the hearing, Petitioner testified:

> Q. Ma'am, usually I let the records speak for themselves but there's a certain page on Exhibit 3 and I just want to make sure you're agreeable with the language.
> It's on page 49 and it states patient relates that she was walking down steps and her right shoe sole got caught on the carpet. Would you have any reason to disagree if that was the history that was noted in that record?
> A. Yes, I do disagree because I wasn't on the carpet. I was not remembering the exact floor pattern but the floor that leads to the steps, I noticed when I saw the video and all that three years later, the tile floor leads directly to the steps.

T.25-26. Later, she testified:

> Q. … And then you recall that your attorney showed you the original Application for Adjustment of Claim, correct?
> A. (Witness nods head.)
> Q. And you agree that on that original Application for Adjustment of Claim you indicated that your shoe caught moving from carpet to tile; is that correct?
> A. I saw that too, yes, three years after the accident.

T.27. Therefore, Petitioner's memory of the event and exact location of her fall was apparently refreshed when she saw the surveillance video. *Px5*. This video shows Petitioner walking in the lobby toward the camera with a purse over her shoulder, carrying a bag in her left hand and a cup in her right hand. At approximately the 1:30 mark, Petitioner appears to fall forward out of view at the bottom of the camera. Unfortunately, this video is not very helpful because only her upper body is visible so one cannot see what happened to her feet at the time of her fall.

Even the photographs of the area, which were taken after the event, do not support the Arbitrator's finding that there was any height difference in the tiles. The second photos in *Px8, Px9 and Px10* are marked with an "X" where Petitioner testified her foot got caught. *T.18-19*. From our review of these photos, there does not appear to be anything particularly hazardous about this spot or grout line.

Based on the above, we do not believe a conclusion that there is a height difference between the surfaces on the floor where Petitioner testified that she fell is supported by the evidence. Again, Petitioner did not testify that there was *any* height difference at all let alone the approximate measurements of any such alleged height difference. Similarly, the photographs do not reflect any obvious height difference. Even if there is a slight height difference between the tiles, Petitioner failed to cite any case law to support a finding that grout lines in a properly designed and installed

tile floor constitute a hazardous condition or defect. She also failed to prove that any alleged height difference between one tile and another was outside the margin of acceptable tolerance for the proper installation of tile flooring. In other words, unless Petitioner could show that there was a defect in the installation or the tiles themselves, no hazardous or defective condition exists.

Merely because it is possible for someone wearing sandals to trip over a grout line does not mean a hazardous condition exists. Therefore, we find that Petitioner failed to prove that she was exposed to a distinctly employment-related risk based on the theory that there was a hazardous or defective condition on Respondent's premises.

Neutral-Risk Analysis

The Commission also finds that Petitioner failed to prove that her accident is compensable under a neutral-risk analysis because: 1) she was exposed to a risk faced by the general public (i.e., grout lines in a tile floor) and 2) she failed to prove that she was exposed to this risk to a greater degree than the general public.

First, there is nothing about the floor in Respondent's lobby that is unique to Petitioner's employment. Not only was this particular building open and accessible to visitors, the flooring itself is tile flooring similar to that encountered by the general public in the world at large. Granted, there is a change in the pattern of the tile near the stairs, but there is nothing about that area that would not be considered a "neutral risk" faced by the general public.

Second, Petitioner failed to prove that she was exposed to this risk to a greater degree than the general public either qualitatively or quantitatively. Petitioner testified that she was wearing dress sandals with straps that were less supportive than a tennis shoe and the tread was smoother than a tennis shoe. *T.30-33.* There is no evidence that Petitioner was required to wear this footwear as part of her employment. Petitioner also testified that she was carrying a purse on her shoulder, a lunch bag and a cup of coffee when she got to the steps. *T.17.* There is no evidence that she was carrying anything that was required as part of her job duties. Similarly, there is no evidence that Petitioner was rushing to perform a work task or traversed these stairs or lobby with any greater frequency than the general public or students who visited the building.

In short, there is no evidence that Petitioner faced the neutral risk of walking on a tile floor at the top of stairs to any greater degree than the general public.

Petitioner argues that her "vision was impaired by the co-workers and students walking in front of her immediately before the fall and her foot got caught causing her to trip and fall on the irregular and uneven tile and flooring pattern at the top of the stairs." *P-brief at 8.* However, there is no evidence that this condition of walking down the stairs behind other people was somehow a greater risk than that faced by the general public when a group of people are walking together or down a flight of stairs.

Personal Risk Analysis

In addition to Petitioner's failure to prove that her accident arose out of employment under either an employment-related risk (i.e., hazardous condition) theory or a neutral-risk theory, the evidence also strongly suggests that Petitioner's fall was caused by a personal risk.

The initial ER record, on August 29, 2017, includes a medical problem history of "chronic" cognitive and behavioral changes dating back to 2013 that included:

> Fatigue/lethargy
>
> Feels off balance - missteps during walking, falling while walking, difficulty riding a bicycle
>
> Feels "loopy" - almost like drunk, has slurred/slow speech, feels dizzy (spinning sensation upon standing up)
>
> The spinning sensation has occurred for a couple months; it occurs daily, sometimes lasting all day.

Px3, T.81. Although one could argue that these conditions date back to four years prior to her accident, we point out that Petitioner did not testify that these documented balance and dizziness issues were no longer a problem and there is no evidence in the subsequent medical records to indicate that they had resolved. To the contrary, the History & Physical Intake Form that Petitioner completed on August 31, 2017 at Midwest Orthopaedic Center reflects current conditions that included blurring eyes, double vision, weakness, loss of coordination and numbness and tingling sensation. *Px4, T.124*. Petitioner also testified:

> Q. Did you have -- was there a physical ailment that you had in 2010?
> A. 2010 I had sepsis and I was in a coma for two weeks and had muscle atrophy and everything so I had to learn to make everything work again, but the stairs always gave me trouble so I always used the railing.
> Q. After you recovered from that 2010 coma you'd always use a railing?
> A. Always use a railing, yes.

T.17. Therefore, Petitioner admitted that she continued to have trouble with stairs after her 2010 coma and always had to use a railing. In our view, this would tend toward a finding that Petitioner's fall was due to a personal risk (i.e., a chronic medical condition).

In conclusion, and for all the reasons outlined above, we reverse on the issue of accident and find:

1) Petitioner failed to prove that her accident was due to an employment-related risk.

2) Petitioner failed to prove that a hazardous condition or defect existed on Respondent's premises.

3) Petitioner failed to prove that she was exposed to a neutral risk to a greater degree than the general public.

4) The evidence supports the finding Petitioner's fall was caused by a personal risk.

Based on these findings, all other issues are moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitration Decision, filed December 17, 2021, is hereby reversed and all awards vacated.

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.

Pursuant to §19(f)(2) of the Act, Respondent is not required to file an appeal bond in this case. 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.

December 12, 2022

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

SE/
O: 11/1/22
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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC017121
Case Name	MARY ANN WILSON v. UNIVERSITY OF ILLINOIS - COLLEGE OF MEDICINE PEORIA
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Ian White
Respondent Attorney	Timothy Steil

DATE FILED: 12/17/2021

/s/Bradley Gillespie, Arbitrator
Signature

INTEREST RATE WEEK OF DECEMBER 14,2021 0.13%

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

December 17, 2021

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARY ANN WILSON
Employee/Petitioner

v.

UNIVERSITY OF ILLINOIS
Employer/Respondent

Case # **20** WC **17121**

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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Peoria** , on **06/16/2021**. 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 **08/29/2017**, 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 **$28,010.32**; the average weekly wage was **$538.66**.

On the date of accident, Petitioner was 59 years of age, single with 0 dependent children.

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

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

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

Respondent ***is*** entitled to a credit for any medical bills paid by Petitioner's group health insurance under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of $7,541.70, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $359.11/week for 4 and 2/7th weeks, commencing 8/30/2017 through 09/28/2017, as provided in Section 8(b) of the Act.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives little weight to this factor.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no opinion comporting with the specific requirements of §8.1b(a) was submitted into evidence. However, the Arbitrator has considered the doctor's comments as a factor in the evaluation of Petitioner's permanent partial disability as required by §8.1b(b)(i). The doctor noted Petitioner sustained a minimally displaced right patella fracture. Because of the nature of the injury, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 59 years old at the time of the accident. Because of Petitioner's ability to return to work after recovering from the accident, the Arbitrator therefore gives *little* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner was eventually released to work without restrictions and returned to her employment. Because of the release without restrictions, the Arbitrator therefore gives *little* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner's CT scan demonstrated a comminuted and mildly displaced right patella fracture

with lipohemarthrosis that was treated nonoperatively with knee immobilizing brace. Because of the nature of the fracture and injury, the Arbitrator therefore gives *greater* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 12.5% loss of use of leg pursuant to §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.

Bradley D. Gillespie **December 17, 2021**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS COMPENSATION COMMISSION
PEORIA, ILLINOIS

MARY ANN WILSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case NO.: 20 WC 017121**
	)	
UNIVERSITY OF ILLINOIS,	)	
	)	
Respondent.	)	

ADDENDUM TO DECISION OF THE ARBITRATOR

This matter proceeded to hearing on June 16, 2021 in Peoria, Illinois (Arb. 1). The following issues were in dispute:

- Accident
- Causal Connection
- Reasonableness and Necessity of Medical Bills
- TTD
- Credit under 8(j) of the Act
- Nature and Extent of Injuries

FINDINGS OF FACT

On August 29, 2017, Mary Ann Wilson [hereinafter "Petitioner"] was employed as an office manager in the Department of Student Affairs for the University of Illinois College of Medicine [hereinafter "Respondent"]. (Tr. p. 10, PX #2). Petitioner testified that she entered the building, stopped by the guard's desk to show her identification, and noted that she was in a line of five or six people heading toward the stairs. (Tr. p. 14) Petitioner stated that as she got close to the stairs, her shoe "kind of caught on the tile" causing her to fall. *Id.* She recalled that it was her left foot and that she had ahold of the handrail but was unable to maintain her grasp while falling onto her right knee on the second step. (Tr. pp. 14-15) She described spinning and rolling down the stairs coming to rest with her head toward the bottom of the stairs and her feet toward the top of the stairs. (Tr. p. 15) She testified that she immediate felt pain in her right knee. *Id.* Petitioner stated that it was approximately five minutes until 8:00 when she reached the top of the stairs. *Id.*

Surveillance video submitted as Petitioner's Exhibit # 5 depicts Petitioner entering the building and walking across the lobby toward the stairwell at 7:55 a.m. As Petitioner approaches the stairwell, the video shows her walking just behind three individuals. (PX #5, PX #6, & PX #7). Petitioner is carrying a mug of coffee in her right hand, a purse in her left hand, and an additional bag with a shoulder strap around her left shoulder. (PX #5, *see also* Tr. pp. 16-17) Petitioner testified that she had to switch things around in order to grab the railing. (Tr. pp. 16 -

17) She stated that she always used the railing due to an unrelated medical condition from 2010 which caused her to have trouble with stairs. (Tr. p. 17) The video does not display Petitioner as she reaches the stairwell and falls. (PX #5)

Petitioner's Exhibits # 8, #9, and #10, are photograph depictions of the flooring at the top of the stairwell. The Arbitrator notes that the top of the stairwell where the accident occurred is comprised of multiple and varied flooring patterns and surfaces. (PX #8) At the top of the stairwell, the first step's surface is a tightly woven carpet on top of concrete. *Id.* Several additional steps descend to the lower level of the medical school building. (PX #10) Preceding the top step is a small rectangular tile pattern consisting of twenty-one separate rectangular tiles with alternating grout lines. (PX #8 & PX #9) The rectangular tile pattern is bordered by larger irregularly shaped tiles. *Id.* Running alongside the irregularly shaped large tiles is a tightly woven carpet that extends across a large portion of the lobby. (*See* PX #5, PX #8 & PX #9)

Petitioner marked an X on the location where she believed her left foot got stuck at the time of the accident on copies of PX #8, PX #9, and PX #10 which were appended to the original exhibits. Petitioner placed a mark on each of the exhibits along a grout line between the smaller rectangular tiles and an adjacent larger tile near the top step. (*See* PX #8, PX #9, & PX #10)

Petitioner signed her initial Application for Adjustment of Claim on June 23, 2020, alleging that on August 31, 2017, her shoe got caught moving from carpet to tile. (RX #1). An Amended Application for Adjustment of Claim was filed prior to the hearing wherein Petitioner amended the date of accident to August 29, 2017 and alleged that her shoe caught on tile and her knee struck concrete/carpet step. (PX #1) Petitioner testified that when she returned to work in October of 2017, her employment with Respondent was terminated approximately two weeks later. (Tr. p. 12) Petitioner testified she has not returned to the building since her employment was terminated. (Tr. p. 23) Petitioner stated she had not seen the video or any photographs of the lobby until after the filing of her Application for Adjustment of Claim more than two and a half years after the accident. (Tr. p. 24)

Petitioner was transported via Advanced Medical Transport to the OSF St. Francis Medical Center Emergency Department. (PX #3 pp. 47-49) The history in the EMT narrative notes a 59-year-old female that fell down 6 steps. (PX #3 p. 49) The report states she was walking down the steps and her right shoe sole got caught on the carpet. *Id.* She related she did not hit her head, but her face slid down the carpeted steps. She related that her right knee hurt. *Id.*

At OSF St. Francis Medical Center Emergency Department, Dr. Emily Bounds noted that patient had a mechanical fall down the stairs just prior to presenting. (PX #3 p. 28) She reported pain in her right knee and right shoulder with her right knee pain being greater. *Id.* Physical examination revealed decreased range of motion of the right knee due to pain with swelling and bruising to the right knee. (PX #3 p. 31) X-rays and a CT of the right knee showed a comminuted and mildly displaced patella fracture. *Id.* at p. 32. The CT of the right knee also found a large lipohemarthrosis. *Id.* An X-rays of the right clavicle was performed with an impression of no acute fracture. *Id.* Petitioner was diagnosed with a closed nondisplaced comminuted fracture of the right patella, placed in a knee immobilizer, and was referred for follow up with orthopedics.

(PX #3 p. 33) A nurse's note states Petitioner related she was going downstairs when her shoe stuck to the floor and she fell down approximately six stairs. (PX #3 p. 37)

On August 31, 2017, Petitioner was examined by orthopedic surgeon Dr. Chukwunenye Osuji of Midwest Orthopedic Center in Peoria, Illinois. (PX #4) She presented with a chief complaint of a broken right kneecap sustained two days prior when she fell down stairs in a lobby at her work. (PX #4 p. 30) She was reported to be in a knee immobilizer and using crutches. *Id.* Dr. Osuji confirmed a minimally displaced right knee patella fracture and recommended non-operative treatment. (PX #4 p. 31) Petitioner was place off work beginning August 31, 2017 until cleared by Dr. Osuji. (PX #4 p. 29)

Petitioner was continued off work on September 14, 2017 for two weeks. Petitioner was re-examined by Midwest Orthopedic Center on September 28, 2017. (PX #4 p. 17) She reported that she had been weight bearing as tolerated and kept her leg in the knee immobilizer. *Id.* She stated that when she actually bent her knee, it caused her pain. *Id.* Continued conservative treatment was recommended with re-evaluation in two weeks for physical therapy. *Id.* Petitioner was returned to work the following week light duty for five hours maximum per day. (PX #4 p. 16)

On October 12, 2017, Petitioner returned for follow up. (PX #4 p. 5) She was instructed to discontinue the knee immobilizer and bear weight as tolerated. *Id.* There was no range of motion restrictions and she was given a physical therapy prescription. *Id.* At that time, she reported she was not comfortable working more than five hours a day. *Id.* Petitioner was advised to come back in a month to discuss her return-to-work status at that point. Petitioner was a no-show for her November 9, 2017 appointment.

Petitioner testified that she still has stiffness, mild pain and difficulty kneeling on that knee. (Tr. p. 22)

CONCLUSIONS OF LAW

IN SUPPORT OF THE ARBITRATOR'S FINDINGS RELATED TO (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT WITH RESPONDENT, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

The Arbitrator finds that Petitioner's trip and fall on August 29, 2017 arose out of and in the course of her employment with the Respondent. The Arbitrator finds Petitioner and her testimony regarding her trip and fall to be credible. The Arbitrator finds that the varied flooring surfaces and pattern approaching the top of the stairway placed Petitioner at an enhanced risk for sustaining a fall such as occurred on August 29, 2017. Petitioner's Exhibits #8 & #9 support her allegation that her shoe got stuck on the edge between the rectangular tile pattern and the larger irregular shaped piece of tile as there appears to be a difference in height between the various surfaces. Therefore, the Arbitrator finds and concludes that Petitioner sustained accidental injuries arising out of and in the course of her employment with Respondent.

IN SUPPORT OF THE ARBITRATOR'S FINDINGS 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 notes that medical records from OSF Saint Francis Medical Center show Petitioner sustained a minimally displaced comminuted fracture of her patella along with a large lipohemarthrosis immediately following her fall at work. (PX #3 pp. 32-33) The Arbitrator finds and concludes that Petitioner's current condition of ill-being in her right knee is causally related to the patella fracture she sustained as a result of the fall on August 29, 2017.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (J), WERE THE MEDICAL SERVICES PROVIDED TO PETITIONER REASONABLE AND NECESSARY, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

The Arbitrator finds and concludes that Petitioner's post-accident medical bills with Saint Francis Medical Center and the Midwest Orthopedic Center as submitted as Exhibit 11 totaling $7,541.70 were reasonable, necessary, and causally related to her fall. Wherefore, the Arbitrator finds and concludes that Respondent is liable for post-accident medical bills contained in Petitioner's Exhibit #11. Respondent shall receive a credit under 8(j) for all causally related medical payments made by group health.

IN SUPPORPORT OF THE ARBITRATOR'S DECISION RELATING TO (K), IS TEMPORARY TOTAL DISABILITY DUE AND OWING, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

The Arbitrator finds and concludes that Petitioner was held off work from August 30, 2017 through September 28, 2017 by her treating physicians. Therefore, Respondent shall pay Petitioner temporary total disability benefits of $359.11/week for 4 and 2/7th weeks, commencing 8/30/2017 through 09/28/2017, as provided in Section 8(b) of the Act.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (L), THE NATURE AND EXTENT OF PETITIONER'S INJURIES, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

Section 8.1b of the Illinois Workers Compensation Act requires consideration of the following enumerated factors in determining an employee's permanent partial disability:

(i) The reported level of impairment pursuant to an American Medical Association Impairment Rating;

(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.

Section 8.1b further provides no single factor shall be the sole determinant of disability. In accordance with Section 8.1b, the relevance and weight of any factors used in reaching a conclusion in this matter are set forth below.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. Therefore, the Arbitrator gives no weight to this factor.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no opinion comporting with the specific requirements of §8.1b(a) was submitted into evidence. However, the Arbitrator has considered Petitioner's treatment records from Midwest Orthopaedic as a factor in the evaluation of Petitioner's permanent partial disability as required by §8.1b(b)(i). Dr. Chujwunenye Osuji diagnosed Petitioner with a minimally displaced right patella fracture. Due of the nature of the injury, the Arbitrator gives *greater* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 59 years old at the time of the accident. Since Petitioner was able to return to work after recovering from the accident, the Arbitrator therefore gives *little* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner was eventually released to work without restrictions and returned to her employment. Because of the release without restrictions, the Arbitrator therefore gives *little* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner's CT scan demonstrated a comminuted and mildly displaced right patella fracture with lipohemarthrosis. (PX #3 p. 32) Petitioner's injury was treated nonoperatively with knee immobilizing brace. (*See* PX #4) Petitioner testified that she continues to experience difficulty with kneeling, stiffness and soreness in her right knee. Due to the nature of Petitioner's injury, the Arbitrator therefore gives *greater* weight to this factor.

Wherefore, based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 12.5% loss of use to the right leg pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC019180
Case Name	Marsha Miner v. Southern Illinois University Herrin Hospital
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0474
Number of Pages of Decision	23
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Brian Smith, Kevin L. Mechler

DATE FILED: 12/12/2022

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARSHA MINER,

Petitioner,

vs. NO: 20 WC 19180

SOUTHERN ILLINOIS UNIVERSITY HERRIN HOSPITAL,

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 causation, temporary total disability benefits, medical expenses 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, but makes a clarification as outlined below.

The Commission corrects a scrivener's error contained in the first sentence under "(v) Disability" on page 17 of 17 of the Arbitrator's decision. The sentence reads: "The Petitioner testified that she still experiences pain in her left shoulder and some in her right because of having to compensate for the inability to use her right arm for a long period ot time." The Commission corrects the sentence to read: "The Petitioner testified that she still experiences pain in her left shoulder and some in her right because of having to compensate for the inability to use her left arm for a long period ot time."

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 24, 2021 is hereby affirmed and adopted with the correction as noted above.

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.

December 12, 2022

/s/ *Maria E. Portela*

MEP/dmm
O: 110122
49

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC019180
Case Name	MINER, MARSHA v. SIH HERRIN HOSPITAL
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Aaron Chappell
Respondent Attorney	D. Brian Smith

DATE FILED: 11/24/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 23, 2021 0.07%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

Marsha Miner
Employee/Petitioner

v.

SIH Herrin Hospital
Employer/Respondent

Case # **20** WC **19180**

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **June 15, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **February 13, 2020**, 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 $**59,154.44**; the average weekly wage was $**1,137.59**.

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

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

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

Respondent shall be given a credit of $**1,193.28** for TTD, $**n/a** for TPD, $**n/a** for maintenance, and $**6,825.50** for an advance on PPD, for a total credit of $**n/a**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 1, as provided in § 8(a) and § 8.2 of the Act. Respondent shall be given credit for medical benefits that have been paid, if any, 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 § 8(j) of the Act.

Respondent shall pay temporary total disability benefits for a period of 18 3/7ths weeks for Petitioner's disability from September 21, 2020 through January 28, 2021.

Respondent shall pay Petitioner the sum of $**682.55**/week for a further period of **71.63** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **10% loss of use of the body as a whole** attributable to her left shoulder injury, **1% loss of use of the body as a whole** attributable to her right shoulder injury, **2% loss of use of the body as a whole** attributable to her neck injury, **1% loss of use of the left arm** attributable to the left elbow neuropathy and **1% loss of use of each hand** attributable to her hand and wrist contusions.

Respondent shall pay Petitioner compensation that has accrued from 4/13/21 through 6/15/21, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

NOVEMBER 24, 2021

PROCEDURAL HISTORY

This matter proceeded to trial on June 15, 2021. The issues in dispute are: 1) the causal connection between the accident and the Petitioner's current condition; 2) liability for medical bills; 3) entitled to TTD benefits from September 21, 2020, through January 28, 2021; and 4) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident, the Petitioner, who was 53 years old, was employed by the Respondent as a supervisor of sterile processing. (AX1, T. 10) On February 13, 2020, she was assisting in decontamination taking empty caskets from a cart to the cart wash when her foot caught on a floor mat and she "went flying." (T. 11) She said she tried to catch herself and hit the concrete floor hands first, slid into the cart washer, bounced over and landed on her right side against the side of the cart. (T. 11-12) Her left shoulder immediately began hurting, and she needed help to get off the floor because she could not put her hands down and apply pressure to lift herself up. (T. 12) She then experienced pain on both sides, with the pain radiating down the left more than the right. (T. 14)

That day, the Petitioner filled out an accident report in which she described starting to fall, hitting her hands on the ground, flipping and hitting her shoulder on the cart washer. (PX10) For injured body parts, the Petitioner listed right shoulder, neck, wrist and hand and left wrist and shoulder, but more on the right side. (Id.) Ramona Doering, a coworker of the Petitioner, testified that she witnessed the accident and gave a description similar to the Petitioner's. (T. 49) She said that when the Petitioner hit the floor, she slid back, and her left arm hit the rack washer. (Id.) The Petitioner testified that at the time she wrote the accident report, she did not know that Ms. Doering had seen her fall. (T. 56)

The Petitioner had a prior rotator cuff tear in her right shoulder in 2013 that was surgically repaired. (PX7, PX9) She had a retear of the same rotator cuff, and another surgery was recommended but not performed. (PX7) The Petitioner testified that she opted not to have the surgery and decided to "live with" it. (T. 43-44) She said that at the time of the accident, she was able to live with the symptoms in her right shoulder. (T. 43-44) But after the accident, she was unable to live with the symptoms in her left shoulder. (T. 44)

Also on the day of the accident, the Petitioner and went to the emergency room at Southern Illinois Healthcare Herrin Hospital, where she reported the fall and was directly quoted as stating: "I ended up hitting my shoulder." (PX3) The emergency room report also said the Petitioner said she hit her right shoulder an hand against a rack, was having pain in her right "home" and can feel the pain radiating down her arm from the right shoulder. (Id.) Physician Assistant Morgan Echols reported examining the Petitioner's right wrist and right shoulder and her cervical, thoracic and lumbar back. (Id.) The Petitioner underwent X-rays of her right shoulder and right hand that showed mild osteoarthritis in the shoulder. (T. 13) The Petitioner testified that she inquired about taking X-rays on the right side only, and was told that was what the doctor ordered. (T. 14-15) She stated that she had prior surgery on the right shoulder but never had problems with the left shoulder before the work accident. (T. 15-16) At the emergency room, the Petitioner was diagnosed with contusions of the right hand and wrist and right shoulder joint sprain. (PX3)

The emergency room doctor referred the Petitioner to Southern Illinois Healthcare Workcare, where she had an occupational medicine clinic visit on February 14, 2020. (T. 16, PX4) She reported the fall, stating that she fell forward on her hands and fell to the ground. (Id.) A history of present illness said: "located in the right shoulder" and that the Petitioner was also noting pain along the neck, left shoulder and left wrist. (Id.) An examination of the left shoulder

showed good strength with the supraspinatus but pain to palpation along the medial border of the scapula, and an examination of the cervical showed limited range of motion and tenderness to touch along the trapezius. (Id.) The Petitioner underwent X-rays of the cervical spine, left wrist and left shoulder, which were normal except mild loss of disc heights in the cervical spine with moderate endplate osteophyte formation. (Id.) Physician Assistant Kimberly Lashway diagnosed the Petitioner with neck muscle, facia and tendon strain and contusions of both wrists and shoulders, instructed her to use ice and heat and gave work restrictions for the Petitioner's right shoulder. (Id.)

On February 17, 2020, the Petitioner saw her primary care physician, Dr. Adam Henson at Southern Illinois Healthcare Logan Primary Care, for a pain medication refill. (PX5) She reported that she hurt her left shoulder at work. (Id.) Dr. Henson examined the Petitioner's right shoulder and noted decreased range of motion, pain and tenderness. (Id.) He did not examine her neck or left shoulder. (Id.) He diagnosed chronic right shoulder pain. (Id.)

The Petitioner followed up with Physician Assistant Daniel Sherwood at Workcare on February 18, 2020. (PX4) At this visit, history of present illness stated that the Petitioner's primary problem was pain in the right arm, cervical region, left arm, left wrist and right wrist. (Id.) Regarding the left shoulder, an examination revealed limited abduction due to pain, inability to abduct overhead and tenderness to palpation over the anterior aspect of the shoulder. (Id.) The diagnosis and work restrictions were unchanged, and PA Sherman ordered an MRI, gave the Petitioner injury management training and directed her to begin physical therapy. (Id.)

At another follow-up visit on February 18, 2020, the Petitioner's history of present illness stated that her primary problem was pain in the cervical region and both shoulders. (Id.) The Petitioner reported that her pain was improving slightly. (Id.) Diagnoses and treatment plan were

unchanged, and restrictions were maintained but directed at the neck instead of the right shoulder. (Id.)

On February 26, 2020, the Petitioner underwent a cervical MRI at Cedar Court Imaging. (PX6) Radiologist Elliot Wagner found: 1) broad-based posterior herniation at C4-5 and C3-4, causing mild narrowing of the central canal and mild to moderate bilateral neural foramina narrowing with mild facetal and uncovertebral arthropathy; 2) broad-based posterior herniation at C5-6, causing mild narrowing of the central canal and bilateral neural foramina (right more than left) with mild facetal and uncovertebral arthropathy; 3) broad-based posterior herniation at C6-7, causing mild narrowing of the central canal and mild to moderate narrowing of bilateral neural foramina (left more than right) with mild facetal and uncovertebral arthropathy; 4) broad-based posterior and left paracentral herniation at C2-3, causing mild narrowing of the central canal and bilateral neural foramina (left more than right); 5) mild diffuse bulge at C7-T1 without any significant central canal or neural foraminal narrowing. (Id.)

The Petitioner began physical therapy at Logan Primary Care on February 28, 2020. (PX5) Physical Therapist Jared Johnston evaluated the Petitioner and found decreased cervical active range of motion, decreased shoulder strength, decreased scapular strength, decreased cervical, tenderness to palpation and postural deviations. (Id.) PT Johnston's notes stated that the Petitioner reported hitting her right shoulder and pain radiating down her left arm. (Id.) The Petitioner had four more therapy sessions through March 9, 2020, and reported pain on her right side worse than the left at two of the visits. (Id.)

On March 12, 2020, the Petitioner returned to Workcare. (PX4) Her history of present illness stated that her primary problem was pain in the cervical region and left arm. (Id.) Diagnoses, treatment plan and restrictions were unchanged, and the Petitioner was referred for

evaluation and treatment to Dr. Jeffrey M. Jones, a neurosurgeon at the Orthopaedic Center of Southern Illinois. (Id.) PA Sherman wrote that the Petitioner's diagnosis was not yet clear and further testing may have been necessary. (Id.) Although he directed the Petitioner to continue physical therapy, he stated that he talked to Physical Therapist Jared Janie (sic), who reported that the Petitioner was not progressing as he expected and was having difficulty completing physical therapy. (Id.) At a visit on March 26, 2020, work restrictions were continued, and PA Lashway put a hold on physical therapy because the Petitioner had plateaued. (Id.) On April 22, 2020, the Petitioner was discharged from Workcare due to Dr. Jones taking over treatment. (PX4)

The Petitioner saw Physician Assistant Angela Arnold at Dr. Jones's office on April 7, 2020, and complained of cervical spine pain that was chronic and non-traumatic. (PX7) She described the pain as aching, burning, discomforting, tingling, shooting and stabbing occurring in her neck equally on both sides equally and radiating to her left hand. (Id.) Later in PA Arnold's report, she stated that the Petitioner had an acute onset of posterior neck pain and bilateral shoulder discomfort that was greater on the left than right that began after the fall at work. (Id.) PA Arnold reported reviewing an MRI that showed diffuse cervical spondylosis with multilevel degenerative changes but no several canal stenosis nor foraminal narrowing. (Id.) She stated that the most significant findings from her examination were decreased range of motion of the left shoulder with positive impingement signs and mild weakness. (Id.) She noted tenderness over the proximal biceps and tenderness anteriorly. (Id.) She recommended an evaluation by an orthopedic doctor for left shoulder rotator cuff injury prior to considering any further aggressive treatment of the cervical spine but discussed with the Petitioner future cervical epidural steroid injections if radicular symptoms continued. (Id.)

On April 9, 2020, the Petitioner saw Dr. Treg Brown, an orthopedic surgeon at the Orthopaedic Institute of Southern Illinois, who had performed Petitioner's prior right rotator cuff surgery. (Id.) The Petitioner reported that after that surgery, she was able to return to her normal activities but had occasional mild pain that was manageable. (Id.) At the time of her visit to Dr. Brown, the Petitioner said the pain in her right shoulder was moderate to severe, sharp and achy in nature and increased with chest-high or above activities. (Id.) She stated that the left shoulder had similar but "more profound" symptoms – her pain was greater and she had weakness and inability to perform chest-high or above activities, as well as numbness and tingling that radiated down her arm into her hand. (Id.) Examination of both shoulders revealed impingement signs, tenderness on palpation of the pectoralis muscle extending into the anterior joint line region. (Id.) She had mild proximal biceps tenderness on the left but no crepitus. (Id.)

Dr. Brown had concerns that the Petitioner had a rotator cuff tear and recommended an MRI. (Id.) He wrote that after the MRI, he would discuss with the Petitioner whether to proceed with formal physical therapy and a possible cortisone injection versus proceeding with surgery. (Id.) Regarding the right shoulder, Dr. Brown stated that the Petitioner aggravated her preexisting injury but was optimistic that it would improve with time, activity modification and physical therapy. (Id.) He put the Petitioner on light duty restrictions that included up to 10 pounds lifting and no activities chest high or above. (Id.)

The Petitioner testified that on July 5, 2020, she fell when carrying groceries into her home, landing on her right side and having her left arm stuck between the door and her body. (T. 21-22) Until that time, the pain in her left shoulder was the same as it was at the time of the work accident. (T. 22) She saw Dr. Brown the following day and reported that she tripped, tried to catch herself from falling and felt a tearing sensation in her left shoulder with immediate severe pain. (PX7)

She said that before the fall, she was able to perform light duties at work but after the second fall, she had difficulties with activities of daily living. (Id.) Dr. Brown revealed that the MRI he requested in April was not performed because it was not approved by work comp. (Id.) A physical examination of the left shoulder showed decreased range of motion, but Dr. Brown was unable to perform impingement testing due to guarding. (Id.) He believed the Petitioner had a complete rotator cuff tear and possible biceps tendon tear. (Id.) He continued to recommend an MRI and restricted the Petitioner from any work until July 13, 2020. (Id.)

The left shoulder MRI was conducted on July 9, 2020, by radiologist Dr. Vernon Duncan. (Id.) He found: 1) a small focal tear (9 mm) and tendinosis of the distal supraspinatus tendon but no retraction or muscle atrophy; 2) a Hill-Sachs type fracture of the posterolateral humeral head with mid flattening; 3) slightly blunted appearance of the inferior labrum and some laxity of the anterior joint capsule, but a labral tear was not fully excluded; 4) moderate to large fluid in the subacromial/subdeltoid bursa; and 5) mild degenerative change of the acromioclavicular joint. (Id.)

On July 14, 2020, the Petitioner returned to Dr. Brown complaining of fairly severe pain in her left shoulder. (Id.) She continued to have limited range of motion due to pain and had positive impingement signs. (Id.) Dr. Brown reviewed the MRI and determined that the Petitioner had a small tear of the supraspinatus, a significant amount of fluid in the subacromial/subdeltoid region and effusion. (Id.) Surgery was discussed, but the Petitioner did not feel she was able to proceed due to other issues. (Id.) Dr. Brown performed a subacromial cortisone injection and kept the Petitioner off work for the remainder of that week, allowing the Petitioner to return to work after that with restrictions of waist-level activities and a 10-pound weight limit. (Id.)

The Petitioner testified that she continued performing light duty work after the second fall. (T. 37) She said that about two weeks after the fall at home, her pain returned to the same level and type as before that fall. (Id.) She testified that after the injection, her pain eased up "tremendously," but the pain returned, and she was having trouble lifting her arm. (T. 24)

The Petitioner saw Dr. Brown again on August 11, 2020, and reported that physical therapy and medications did not help her pain. (PX7) They decided to proceed with surgery, which was performed on September 21, 2020, and consisted of left shoulder arthroscopic rotator cuff repair and biceps tendon tenotomy. (PX7, PX8)

At a follow-up visit on October 13, 2020, the Petitioner reported she was slowly improving and was sent to physical therapy. (Id.) On November 9, 2020, the Petitioner reported developing pain in the left elbow and ring finger with wrist stiffness. (Id.) At a visit on November 17, 2020, Physician Assistant Daniel Cutler ordered the Petitioner off work. (Id.) On December 29, 2020, the Petitioner reported improvement in her range of motion and strength but continued pain in the left shoulder and numbness/tingling of her fourth and fifth fingers of the left hand. (Id.) She also reported a popping sensation in her shoulder with active range of motion. (Id.) PA Cutler recommended a nerve conduction study and continued the off-work orders. (Id.) Dr. Tennyson Lee, a pain management specialist at the Orthopaedic Institute of Southern Illinois, conducted an EMG of the left upper extremity on January 19, 2021, and found no evidence of median or ulnar neuropathy nor cervical radiculopathy, but he suspected cervical radiculitis, given the Petitioner's history and physical examination. (Id.)

On January 28, 2021, the Petitioner saw Dr. Brown with continued complaints of left shoulder and occasional numbness/tingling of the fingers on her left hand, but she also reported making slow, steady progress with her left shoulder. (Id.) Dr. Brown gave her work restrictions

of a 15-pound weight limit for lifting, pushing and pulling to waist level and 5-10-pound limit for lifting, pushing and pulling overhead. (Id.) He allowed the Petitioner to return to work full duty with no restrictions beginning February 22, 2021. (Id.) On March 9, 2021, the Petitioner saw PA Cutler and reported that she was tolerating full-duty work but that was aggravating the numbness and tingling in her fingers. (Id.) She reported residual soreness in the left shoulder. (Id.) She reported continued improvement on April 13, 2021, and had full range of motion, good rotator cuff strength and negative impingement tests on the left shoulder. (Id.)

The Petitioner underwent physical therapy from September 24, 2020, through February 18, 2021 for 40 sessions. (Id.) She reported improvement during the course of therapy. (Id.) The Petitioner testified that the surgery went "fine," and the physical therapy helped. (T. 25)

On February 9, 2021, Dr. George Paletta, an orthopedic surgeon at The Orthopedic Center of St. Louis, performed a records review for the Respondent. (RX1) Dr. Paletta previously performed a Section 12 evaluation of the Petitioner's right shoulder in 2016. (Id.) Dr. Paletta opined that the Petitioner's left shoulder condition was not causally related to her work accident but was related to her fall at home. (Id.) He explained that the records did not show debilitating shoulder pain or significant dysfunction prior to her fall at home in July 2020. (Id.) He noted that the emergency room records after the work accident did not document evidence of left shoulder complaints and pointed to the pain diagram that indicated only pain in the right shoulder and wrist. (Id.) He said that the fall at home resulted in severe debilitating shoulder pain, and the subsequent MRI showed a small rotator cuff tear without retraction and no findings to suggest a chronic rotator cuff tear. (Id.) He explained that if the tear had occurred five months earlier, it was more likely that there would have been retraction of the rotator cuff tissue or evidence of some atrophy of the

supraspinatus. (Id.) He opined that the work accident resulted in a contusion of the right shoulder and right wrist that had fully resolved at the time of his records review. (Id.)

Dr. Paletta reported that irrespective of the cause of the left shoulder injury, the treatment she received, including the surgery performed by Dr. Brown, was reasonable and necessary. (Id.) Dr. Paletta believed no additional treatment was required for the Petitioner's right shoulder or bilateral arms, wrists or hands but at that time, further therapy and post-operative visits were reasonable for the left shoulder. (Id.)

Dr. Brown testified consistently with his reports at a deposition on April 20, 2021. (PX9) Because he had suspected a rotator cuff tear after the work accident, he felt that the second fall had aggravated the Petitioner's existing injury from the work accident. (Id.) He also opined that the work accident aggravated her right shoulder condition, but it appeared to respond to time and conservative measures. (Id.) He also believed that the Petitioner's ulnar nerve symptoms in her left elbow were the result of the Petitioner's arm being in a sling with her elbow flexed for several weeks. (Id.)

Dr. Brown testified that he disagreed with Dr. Paletta's opinion that the rotator cuff tear was recent and not related to the work accident. (Id.) He said a small tear was less likely to show the type of retraction Dr. Paletta described in such a brief period of time. (Id.) He explained that retraction can only occur if there is a large tear, while a small tear can't retract because it is still attached in the front and back of the tear, so the structure is still there. (Id.) He analogized a small rotator cuff tear to a small hole in the knee of a pair of jeans that doesn't open up, while a large hole will lead to the wearer's whole knee sticking out of the hole. (Id.) Regarding the absence of atrophy, Dr. Brown similarly explained that a small tear that hasn't retracted will not result in atrophy as often as a large tear. (Id.) Dr. Brown also said that the fluid that was present on the

MRI that Dr. Paletta attributed to an acute injury could also occur with having a previous rotator cuff tear for which the Petitioner was trying to compensate and deal with. (Id.) He said that another injury would exacerbate the prior injury, creating a new inflammatory response that resulted in fluid accumulation. (Id.)

On cross-examination, Dr. Brown was questioned about the Petitioner's emergency room records that showed no complaints of left shoulder pain, no left shoulder physical examination nor left shoulder abnormalities. (Id.) Dr. Brown, stated that he had not reviewed those records, but those records "would be something to take note of." (Id.) He also admitted that the Petitioner's left shoulder symptoms were worse after the second fall but attributed that to aggravation of her work injury. (Id.) Regarding the fact that he had not yet recommended shoulder surgery before the second accident but did afterwards, Dr. Brown said that following the work accident he wanted to get an MRI at that time and likely would have required surgery if the MRI showed the rotator cuff tear he had suspected. (Id.) When asked if the likelihood for surgery increased following the second fall, Dr. Brown replied that the role the second fall played was difficult to determine but noted that the Petitioner had not improved in the months before the second fall. (Id.)

Regarding the mechanism of the Petitioner's rotator cuff tear from the work accident, Dr. Brown said the impact of the Petitioner's hands or elbows onto the ground or a wall in trying to catch her fall would have been the main mechanism of injury. (Id.) He said whether the Petitioner struck her shoulder did not concern him as much as her arms or elbows hitting in catching herself going down. (Id.) During the deposition, Dr. Brown read the Petitioner's injury report and her description of the incident to Workcare and said those description were was consistent with the mechanism of injury to the Petitioner's left shoulder. (Id.)

On April 28, 2021, Dr. Paletta testified consistently with his reports at a deposition. (RX2) He said that after the fall at home, there was a distinct change in the status of the Petitioner's shoulder and reiterated that the MRI showed indicators of an acute or more recent injury. (Id.)

On cross-examination, Dr. Paletta admitted that although the emergency room report did not note left shoulder pain, it did not show that the Petitioner specifically denied such pain. (Id.) Dr. Paletta testified that at the time of his records review, he had not read the Petitioner's accident report. (Id.) He then read it at the deposition and acknowledged that it showed the injured body parts included the left wrist and shoulder. (Id.) He agreed that the positive impingement sign in Dr. Brown's examination and the pain the Petitioner complained of can be caused by rotator cuff tears and that someone can tear a rotator cuff by falling on outstretched hands. (Id.) Regarding lack of retraction of the rotator cuff tear as an indicator of acute injury, Dr. Paletta admitted that not all tears retract and that large tears are more likely to retract than smaller tears. (Id.) He also agreed that it is "not uncommon" for neck and shoulder symptoms to overlap. (Id.)

Dr. Paletta pointed to drawbacks in conducting a records review instead of a full examination – not being able to get a more detailed history and ask questions that would offer further clarification. (Id.) Dr. Paletta said that the records he reviewed did not include any intraoperative photographs or video that would have been beneficial to his inquiry. (Id.)

The Petitioner testified that although her left shoulder was better than what it was after the injury but was not "100 percent." (T. 28) She said she feels pinching and pain with heavy lifting. (T. 28-29) She stated that she has been having problems with her right shoulder because she used her right arm to compensate for her left. (T. 30)

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below.

CONCLUSIONS OF LAW

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

It is undisputed that the Petitioner suffered contusions to her right hand and wrist and a right shoulder sprain. In her accident report, the Petitioner also wrote that she injured her left wrist and shoulder, but the emergency room did not examine these. The Respondent wants to attribute this to the Petitioner not suffering injuries to these parts. This explanation ignores the rest of the evidence. The day after the accident the Petitioner reported to Workcare the same injuries as she wrote in her accident report the day of the accident. Throughout her treatment, the Petitioner complained of left shoulder pain. On February 14, 2020, PA Lashway diagnosed the Petitioner with neck muscle, facia and tendon strain and contusions of both wrists and shoulders. Based on the records as a whole and the Petitioner's testimony, the Arbitrator finds that, at the bare minimum, the suffered a neck strain and contusions to both wrists and shoulders that were caused by the work accident. The neck, wrist and right shoulder conditions resolved with minimal treatment.

The main issue is whether the Petitioner suffered a rotator cuff tear from the work accident or whether this was the result of the intervening fall at home on July 5, 2020.

Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury. *Nat'l Freight Indus. V. Ill. Workers' Comp. Comm'n*, 2013 Ill.App (5th) 120043WC, ¶26, 933 N.E.2d 473, 373 Ill.Dec. 167 (5th Dist. 2013). Under an independent intervening cause analysis, compensability for an ultimate injury or disability is based upon a finding that the employee's condition was caused by an event that would not have occurred "but

for" the original injury. (*Id*.) As long as a "but-for" relationship exists between the original event and the subsequent condition, the employer remains liable. *International Harvester Co. v. Industrial Commission*, 46 Ill.2d 238, 263 N.E.2d 49 (1970). See also *Vogel v. Industrial Commission*, 354 Ill.App.3d 780, 821 N.E.2d 807, 290 Ill.Dec. 495 (2d Dist. 2005),

The issue could have been decided easily had the Respondent approved the MRI Dr. Brown requested on April 9, 2020 – when two medical providers suspected a rotator cuff tear. However, the Arbitrator has only the MRI performed after the second fall and the doctors' opinions as to whether the injury shown on that MRI occurred at the time of the work accident.

Both Dr. Paletta and Dr. Brown's explanations as to the timing of the rotator cuff tear are plausible. However, Dr. Paletta's opinion was simplistic – no retraction and the presence of fluid means the second accident caused the tear. Dr. Brown's explanation of the lack of retraction and the presence of fluid support his opinion. Furthermore, Dr. Paletta conceded that those explanations were plausible. Lastly, Dr. Paletta did not personally meet with the Petitioner to pose questions that may have given him a different view of the injury. On the other hand, Dr. Brown was treating the Petitioner over the course of both accidents, was more familiar with her continuing condition and saw her injury first-hand in the surgery. He was in a better position to determine whether the rotator cuff tear was caused by the work accident. Therefore, the Arbitrator gives greater weight to Dr. Brown's opinions.

Also, the totality of the evidence points to the tear existing before the second fall – the Petitioner's shoulder pain had not resolved before the second fall, and she testified that about two weeks after the fall at home, the condition of her left shoulder returned to where it was before that fall. The Petitioner's reports and testimony were consistent throughout, and the Arbitrator finds her to be credible. Lastly, the debate as to whether the Petitioner's left shoulder struck anything

in her first fall is resolved by both Dr. Brown and Dr. Paletta's statements that falling on outstretched hands can cause a rotator cuff tear.

Thus, the Arbitrator finds that the second fall did not break the causal connection between the Petitioner's condition and the work accident. As Dr. Brown stated, it appears the second fall aggravated her left shoulder injury. Her condition would not have occurred "but for" the work accident.

Regarding the Petitioner's left elbow condition, there was no evidence to rebut Dr. Brown's opinion that the Petitioner experienced ulnar neuropathy as a result of having her arm in a sling for a long period of time. Thus, the Arbitrator finds this condition was causally related to the work accident.

Therefore, the Arbitrator finds that the Petitioner has met her burden of proving by a preponderance of the evidence that the accident of February 13, 2020, caused her neck, bilateral shoulder, bilateral hand and wrist and left elbow conditions.

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?

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const*., 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 327 Ill.Dec. 883 (2009). A claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 534, 758 N.E.2d 18, 259 Ill.Dec. 173 (1st Dist. 2001).

Regardless of his causation opinion, Dr. Paletta confirmed that the treatment the Petitioner received was reasonable and necessary. Therefore, the Respondent is ordered to pay the medical

expenses contained in Petitioner's Exhibit 1 pursuant to Section 8(a) of the Act and in accordance with medical fee schedules.

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

The parties dispute temporary total disability benefits from September 21, 2020, through January 28, 2021. An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Id.* at 121.

Dr. Brown had the Petitioner off work after the surgery on September 21, 2020, until releasing her to light duty on January 28, 2021. Therefore, the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 18 and 3/7 weeks from September 21, 2020, through January 28, 2021.

Issue K: What is the nature and extent of the Petitioner's injury?

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (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. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** No AMA impairment ratings were produced, therefore the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner is working the same job with the same physical demands that require use of her upper extremities. Therefore, the Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 53 years old at the time of the injury and has many work years left during which time she will need to deal with the residual effects of the injury. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner testified that she still experiences pain in her left shoulder and some in her right because of having to compensate for the inability to use her right arm for a long period of time. However, she is able to perform her work duties and daily activities. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 10 percent of the body as a whole as it pertains to the Petitioner's left shoulder, 1 percent of the body as a whole for the right shoulder, 2 percent of the body as a whole for the neck strain, 1 percent of the left arm for the ulnar neuropathy and 1 percent of each hand for the contusions.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC009713
Case Name	Delilah D Smith v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0475
Number of Pages of Decision	19
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Richard Victor
Respondent Attorney	Laura Hartin

DATE FILED: 12/12/2022

/s/Marc Parker, Commissioner

Signature

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

Delilah Smith,

Petitioner,

vs. No. 19 WC 009713

Chicago Transit Authority,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, and 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 11, 2022, is hereby affirmed and adopted.

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the

Commission. 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.

December 12, 2022
MP:mcp
o-12/8/22
68

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC009713
Case Name	SMITH, DELILAH D v. CHICAGO TRANSIT AUTHORITY
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Richard Victor
Respondent Attorney	Laura Hartin

DATE FILED: 4/11/2022

/s/Steven Fruth, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 5, 2022 1.11%

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

Delilah Smith Case # **19 WC 009713**
Employee/Petitioner

v.

Chicago Transit Authority
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 **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **10/6/2021**. 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 **3/20/2019**, 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 $51,480.00; the average weekly wage was $990.00.

On the date of accident, Petitioner was **36** 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.

ORDER

The Arbitrator finds that Petitioner failed to prove that she sustained accidental injuries that arose out of and in the course of her employment with Respondent on March 20, 2019, therefore Petitioner's claim for benefits under the Illinois Workers' Compensation Act 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 **April 11, 2022**

Delilah Smith v. Chicago Transit Authority
19 WC 009713

INTRODUCTION

This matter proceeded to hearing on October 6, 2021 in Chicago, Illinois before Arbitrator Steven Fruth. The disputed issues were: ***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 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 temporary total disability benefits? ***L:*** What is the nature and extent of the injury? *See* Arbitrator's Exhibit #1 (ArbX #1).

FINDINGS OF FACT

Petitioner Delilah Smith testified that she had worked part time for Respondent Chicago Transit Authority for 4 to 5 years as a bus operator prior to the date of the accident at issue. She testified that on March 20, 2019 she was involved in a motor vehicle accident while working for Respondent. Petitioner was driving a bus and was stopped at a bus stop at 63rd and Lowe in Chicago, allowing passengers to disembark. At that time, she witnessed 3 different vehicles coming at her. Vehicle 1 was driving northbound and ran a stop sign, striking Vehicle 2, which was traveling eastbound. This caused Vehicle 2 to hit the bus Petitioner was operating. Vehicle 2 struck the bus on the front driver's side causing a "light impact" on the bus according to Petitioner. Petitioner testified that as she saw the accident unfolding, she felt "petrified" and "stressed to death". As Vehicle 2 came in contact with the bus, Petitioner gripped the steering wheel "really hard" and pressed on hard on the brake.

Petitioner testified that she took her seatbelt off and tried to get up but couldn't move. She put her head down on the steering wheel. She felt stuck, in a state of shock, and heard the passengers asking if she was OK. Petitioner testified that she contacted CTA Control from her seat.

Then after a few minutes, she jumped out of her seat, could not stop moving and could not sit down. She reported that at first, she felt fine. But after about 15 to 20 minutes she began to feel pressure on her head and shoulders. Petitioner reported she did need an ambulance. Her blood pressure was taken at the scene and was found to be very high and Petitioner was taken by ambulance to the emergency room at St. Bernard Hospital.

She testified that at the St. Bernard Hospital ER she could not stand up straight, felt pain standing up and was stuck in a hunched-up position. Petitioner testified that she reported head, shoulder, upper back, and neck pain. Petitioner reported that at the time in the ER she had

headaches, which she still has to this day. After she was released from the hospital, she was still in pain but went to Respondent's garage to fill out paperwork.

Medical records from St. Bernard Hospital (PX #1) note that Petitioner had elevated/high blood pressure (187/90) and that she told hospital staff she had been diagnosed with hypertension but was "noncompliant" with her medications for years. At trial Petitioner denied a history of high blood pressure prior to the accident. Petitioner reported to the St. Bernard Hospital there had been a motor vehicle accident. On exam she had upper and lower back pain and mild low lumbar tenderness. The records note that Petitioner was ambulating without a limp and there was no mention of Petitioner being hunched over.

Petitioner was diagnosed with a back strain and chronic hypertension (PX #1). She reported her pain improved at the hospital and was discharged that day. The St. Bernard Hospital medical records do not document any reports of neck injury, head injury, or shoulder injuries, or pain in these body parts. There were no reports of dizziness or sensory or motor deficits. There are no reports of panic, stress, or anxiety. X-rays of the heart and lower back were normal. Petitioner denied loss of conscious, headaches, or dizziness. The ER records reflect "she feels fine."

Petitioner then sought treatment at Chicago Pain and Orthopedic Institute ("Chicago Pain") as of March 25, 2019 (PX #5). Petitioner reported for the first time of "being in shock at the time of the accident, panicking and calling control, feeling faint, not like herself and having anxiety and flashbacks." For the first Petitioner complained of pain in her scapular region, both sides of her neck, and mid back. She reported she had hypertension since the accident but did not report her history of noncompliance with her high blood pressure medication. However, high blood pressure, numbness in arms, legs, back and neck are listed in past medical history. This was also the first-time reporting numbness and tingling in her extremities.

On exam, Petitioner was guarded, had tenderness to palpation, had pain with range of motion, and weakness due to pain. Petitioner was taken off work, referred to get MRI scans, X-rays, and physical therapy (PX #5) Petitioner began physical therapy at the Bone and Joint Clinic on March 29. 2019 (PX #3).

The April 2, 2019 cervical spine MRI impression indicates: "C4-5 and C5 disk bulge with disk-osteophyte complexes causing foraminal stenosis, C6-7 disk bulge and foramen magnum mass- recommend contrast study (MRI brain)" (PX #5). Petitioner returned to Chicago Pain on April 8, 2019 with significant pain along her neck, as well as headaches (PX #5). This is the first documented report of headaches. She further reported that "she was having some mild headaches prior to the accident due to another accident but they were much aggravated by the most recent injury on March 20, 2019." She reported the current headaches are consistent and

severe. She also described being very stiff in the morning and unable to bend. The imaging was reviewed noted that disc bulges and disc osteophyte complexes causing foraminal stenosis and a foramen magnum mass. Petitioner was referred to pain management and a neurosurgeon and told to remain off work.

At trial Petitioner denied having prior head pain or headaches before the bus incident. Petitioner testified she had no accidents prior to the work accident of March 20, 2019. However, Petitioner also testified that she had a subsequent car accident in February 2021. She testified that she injured her neck, head, and back when another vehicle rear ended her, although she said the pain was the same and not worsened. At trial, Petitioner denied prior neck, bilateral shoulders or back injuries, pain or treatment prior to the bus incident of March 20, 2019. Petitioner admitted having hypertension prior to the date of accident.

Petitioner was seen by Dr. Dixon at Chicago Pain on April 24, 2019 (PX #5). Petitioner reported that "immediately after the accident she felt significant pain and heaviness in her head, neck, and arms." Since her initial treatment, Petitioner reported having frequent daily headaches that were worse when she bent over. Dr. Dixon reviewed the cervical MRI, noting disc protrusions causing lateral recess and foraminal stenosis and possible nerve root compression (which was not noted by the radiologist). Dr. Dixon noted "an extra axial mass adjacent to the dens and clivus in the anterior spinal canal" that "does appear to deflect her cervical spinal cord upon its exit through the foramen magnum."

Dr. Dixon recommended an MRI of the brain and an EMG and kept Petitioner off work. Dr. Dixon also noted that "the patient has been definitive in stating that she was having none of the symptoms that she currently complains of prior to her accident" and that he "reassured her that despite the fact that there may be an underlying mass, that interpretation of her evaluation and treatment is appropriate under worker's compensations rules, as worsening or increased symptomatology of an underlying condition caused by a work-related accident is considered worker's comp."

The April 29, 2019 MRI of the brain without contrast shows the clinical history as "work related injury, headaches". The impression is "unremarkable", "no acute intracranial process detected."
The April 29, 2019 EMG/NCV report noted patient complaints of "neck pain radiating down both arms, worse on the right, into proximal shoulder, left hand tingling and numbness in the morning" (PX #5). The findings were "abnormal" with right-sided C6 and C7 radiculopathies as well as left-sided C7 radiculopathy.

On May 8, 2019, Dr. Dixon reviewed the MRI and EMG results. The doctor noted the

EMG findings of bilateral C6 and left C7 radiculopathies correspond with the cervical MRI. The MRI with contrast was read as normal despite the mass. Petitioner was sent for another MRI of the brain, with and without contrast. Petitioner was still kept off work.

On May 29, 2019, Dr. Dixon noted that he believed the mass was "contributing to her symptomology, specifically the upper extremity weakness, easy fatigue, headaches, and dizziness." He felt the mass needed to be investigated further before treating the cervical spondylosis and radiculopathy, due to concern of working of symptoms related to the mass. Petitioner was kept off work and told to "hold off on PT."

Petitioner consulted with Dr. Joseph Rabi, MD at Chicago Pain on June 27, 2019, for her neck pain complaints (PX #5). Petitioner reported constant neck pain radiating down right arm to the fifth digit, worsened with range of motion. Dr. Rabi diagnosed cervical radiculopathy, cervical facet syndrome, myofascial pain, and a foramen magnum mass in the brain. Dr. Rabi recommended physical therapy and additional medications, as well as cervical epidural steroid injections at C6-7, but noted Petitioner will need clearance from the neurosurgery due to the brain mass. He also referred Petitioner back to Dr. Dixon to consider a cervical laminectomy at C5, C6, and C7.

On July 9, 2019 Dr. Rabi performed a C6-7 cervical epidural steroid injection to Petitioner's neck. Petitioner reported that "the procedure went very well and she feels "as though she is improved with regard to her neck pain". At a further follow up with Dr. Rabi, Petitioner reported "70% pain relief" but continued to have numbness and tingling down the right arm. Petitioner reported some improvement to Dr. Dixon, but she reported that she had lost 15 pounds and that physical therapy was exacerbating her pain.

Dr. Dixon discussed a plan to remove the cranial cervical junction meningioma, because he thought it was "symptomatic and contributing to her symptoms." He recommended restarting physical therapy after surgery. Dr. Rabi also noted that the MRI showed a C5-6 and C6-7 severe disc herniations. He scheduled Petitioner for pre-op clearance on August 1, 2019 and continued to keep her off work.

Petitioner was referred to the University of Illinois neurosurgery department ["UIC"] and was first seen on August 7, 2019 by Dr. Charbel (PX #2). Petitioner reported having a motor vehicle collision while operating a CTA bus in March 2019. The records also reflect "while she was operating a bus, a multi car collision occurred, involving the bus; this occurred in March and was preceded by another collision in February." The records further read "after the February event, she noticed new headache symptoms and after the March event she noticed worsening neck pain, neck stiffness and pain, and numbness radiating down her right arm with occasional weakness of hand muscles. She also has a pain radiating down her right leg."

Past medical history lists hypertension and headaches for approximately 6 months and family history lists Petitioner's grandmother who had a history of malignant brain tumor. Dr. Charbel reviewed the images and found them consistent with a foramen magnum tumor with displacement of the medulla posteriorly, but with no evidence of T2 signal change suggesting medullary edema. A review of the cervical spine imaging reveals multilevel stenosis from degenerative disc disease. Dr. Charbel recommended monitoring the tumor and more physical therapy as "surgical intervention is not indicated at this time for the asymptomatic lesion."

On August 8, 2019, Petitioner returned to Dr. Rabi and reported 70% pain relief from the injection, but still had numbness and tingling down the right arm into the 5th digit (PX #5). Dr. Rabi recommended an FCE to set Petitioner restrictions and considered a repeat injection. Dr. Rabi still thought Petitioner may benefit from seeing another spine surgeon for a cervical spinal stenosis and disc herniation.

On August 27, 2019, Petitioner underwent an FCE (deemed valid) at ATI, giving her light duty restrictions with limits of lifting 7 to 25.8 pounds, which was below the Medium Demand level for a bus driver (PX #6). The FCE Summary report includes a diagnosis of "neck pain" and the "case specifics section" reports "client denies having had any injuries prior to hurting her neck." Petitioner's capabilities included "sitting or standing 1 to 2 hours for 20/25 minute increments, occasionally walking moderate distances up to 3-4 hours and a 4 hour work day.

On August 29, 2019, Petitioner underwent a second epidural steroid injection at C6-C7. On September 5, 2019, Petitioner reported 90% relief from the injections. She reported weakness in the hands, with some numbness and tingling down the right arm with pain levels at 2 out of 10 (PX #5) Dr Rabi noted the FCE restrictions would make it difficult to work. Petitioner could not operate machinery and could not operate a bus for more than 1 hour. The injections were helping, but Dr. Rabi thought the pain would be permanent without surgery, specifically a cervical decompression. Petitioner was released from care and released to work per the FCE restrictions.

As of October 17, 2019, Petitioner returned to Dr. Rabi, reporting 2/10 pain but that she was doing better since her FCE (PX #5). She informed the doctor that she is putting surgery on hold because the epidurals helped. Petitioner declined her last recommended visits with a spine surgeon. Dr. Rabi reported that she might need a cervical spinal decompression in the future, if the pain recurred but that it may not recur. Petitioner was released again to work with the FCE restrictions.

On November 20, 2019, Petitioner attended a §12 exam with neurosurgeon Dr. Jerry Bauer (RX #2 & RX #3). Petitioner complained of pain in her neck that radiated up and to the

back of her head, down between her shoulder blades towards both shoulders, down the right arm to the elbow. She also reported intermittent numbness in the 4th and 5th digits of the right hand and occasional numbness in the right 5th toe.. She reported that both arms felt weak but had overall improvement since her second injection. She also reported weakness in the right leg, which had resolved. Petitioner reported she had no prior neck injuries prior to this accident but did have some left arm pains during 2014 or 2015, but they resolved with medication.

Petitioner described the accident as gripping the steering wheel with both hands and pushing down the brake with her right foot. She reported that she was stuck in this position and unable to get out of her seat for 1 or 2 minutes. She also reported that she had a funny feeling in her head and was unable to support her head with her left hand and had to rest on the steering wheel. Petitioner reported that she also felt fine after calling in the accident, but about 15 minutes later, felt neck and shoulder pain as well as feeling faint. This is the first documented report of being "stuck" in the seat or inability to hold up her head immediately after the accident. Petitioner reviewed her treatment with Dr. Bauer. She reported improving from the injections and how she has not taken ibuprofen since her last injection in August 2019 (RX #2).

On physical exam Dr. Bauer noted that Petitioner sat rigidly, avoiding movement of her head and neck. She walked without a limp. She had a positive Tinel's on both her right and left at the wrist but none at the volar aspect of the right wrist. Strength testing was incomplete due to lack of effort in both arms, but Dr. Bauer found no atrophy or muscle spams. Reflexes were symmetric. She had reduced sensation on her right 1st, 2nd, and 5th digits, compared to normal on the left side. Dr. Bauer noted that Petitioner's cervical range of motion was limited, and she had mild tenderness. Dr. Bauer reviewed Petitioner's medical records, X-rays, and MRI images (RX #2).

Dr. Bauer also reviewed video of the accident. Dr. Bauer noted that there was no impact on Petitioner or passengers seen on video. Dr. Bauer noted there was minimal, if any, motion to the hanging hand supports. At the time of presumed impact, passengers can be seen reacting by getting up and looking out the driver side windows. He observed Petitioner move with no apparent distress or difficulty after the accident. She is seen walking and holding her cell phone with both her right and left hand. Dr. Bauer noted that Petitioner could move her head and neck without any apparent discomfort or hesitation. Throughout the video, Petitioner did not exhibit any distress or appearance of being uncomfortable.

Dr. Bauer diagnosed pre-existing degenerative disc disease in her neck, which was not "caused by, exacerbated, and/or accelerated" by the work accident as there was no evidence of any impact or any distress on video. Dr. Bauer further noted that the imaging was not consistent with an acute injury; there was no herniated disc, ligamentous injury, or fracture found. (Px2) He also noted the asymptomatic tumor seen at the base of Petitioner's skull, presumably a

meningioma. Dr. Bauer noted that the tumor and brain stem compression was not impacted by the accident. Dr. Bauer noted that Petitioner admitted there was very little impact during the accident. Petitioner claimed for the first time in the records/reports to Dr. Bauer that the injury was from bracing and turning her head to the left.

Dr. Bauer was unable to identify an injury as a result of the accident (RX #2) He felt that Petitioner's pre-existing degenerative disc disease in her cervical spine had continued to degenerate over time and was not impacted by the incident. Dr. Bauer noted that Petitioner attributes her current complaints to her work injury, but these complaints cannot be explained as a result of the accident, nor is there any objective basis on which to substantiate her complaints were aggravated by the work accident. Dr. Bauer felt Petitioner had no work restrictions related to the accident and that MMI would not apply due to a lack of an injury (RX #2).

Petitioner returned to Dr. Rabi on October 8, 2020 (PX #5) At trial, Petitioner testified this was due to a recurrence of pain while driving a bus. When Petitioner returned to Dr. Rabi, she reported that due to the improvements from the injections, she had been permitted to return to work. But she was starting to have range of motion and pain complaints upon return. She was recommended for another injection.

On October 22, 2020, Petitioner had a third cervical epidural injection at C6-7 and placed on light duty for the next two months (PX #5). On November 12, 2020, Petitioner returned to Dr. Rabi, reporting that she was doing OK, only having pain while looking side to side, with 3/10 pain. Dr. Rabi placed Petitioner on light duty for the next 2 months.

On January 14, 2021, Petitioner returned to Dr. Rabi for the last time, reporting continued head, neck, and back pain. She was referred back to Dr. Dixon to consider cervical spine surgery. The records do not reflect that Petitioner followed up with Dr. Dixon. Petitioner testified that she also returned to Bone and Joint for more therapy from February through April 2021.

Overall, Petitioner had 3 brain MRIs: April 29, 2019, May 15, 2019, and February 7, 2020.

Petitioner underwent therapy with a chiropractor at Bone and Joint Clinic from March 29 through April 8, 2019, from July 3 through July 16, 2019, and from February 23 through April 7, 2021. However, Petitioner testified she underwent physical therapy from March through July 2019, which is not reflected in the therapy records. The July 16, 2019 PT discharge note reflects Petitioner still reporting 4/10 neck pain, 3/10 low back pain, 5/10 right shoulder pain, and 4/10 left shoulder pain. Petitioner reported she was doing better since the last office visit but that her "problems were aggravated when she does nothing since it is always there, bends, drives, flexes, extends, lifts, sleeps, getting dressed, turning, and pulling. Pain is relieved when she rests, uses a brace, and takes prescription pain medication" (PX #3A). The chiropractor records (PX #3B)

reflect Petitioner reported being rear ended on February 6, 2021 and that this was a new injury to her low back and neck. Petitioner was diagnosed as having cervicalgia, radiculopathy of cervical and lumbar spine, as well as low back pain. She was released from care "PRN" when treatment completed in April 2021.

Petitioner testified she was off work, per the instructions of the physicians at Chicago Pain, from March 21, 2019 through March 8, 2020. However, the Chicago Pain records reflect Petitioner was taken off work by Chicago Pain from March 25, 2019 through September 4, 2019 and released PRN to light duty permanent restrictions per the FCE as of September 5, 2019. Petitioner testified that she returned to work as a bus operator on light duty as of March of 2020 and worked through October 11, 2020. Petitioner testified she has been off work since October 12, 2020, discharged by the Employer since February 2021, but is now trying to start her own business.

In the Molecular Imaging records dated March 2, 2021 (included with Petitioner's Exhibit #5), Petitioner reports a new date of injury of February 6, 2021, as well as neck and back pain following a rear end motor vehicle crash. The cervical spine MRI impression indicates:

" 1. Straightened cervical curvature suggesting muscle spasm.
2. At C4-5 level: a 2-3mm diffuse posterior disc bulge/small osteophyte complex with mild bilateral neural compromise more at left side.
3. At C5-6 level: a 3-4mm diffuse posterior disc bulge/small osteophyte complex with moderate bilateral neural compromise more at left side.
4. At C6-7 level: a 2-3mm diffuse posterior disc bulge slightly inclined to the left side with mild bilateral neural compromise slightly more at the left side.

There is also a thoracic spine MRI from the same date showing "T10-T11 level: posterior disc bulge with mild bilateral neural compromise."

At trial, Petitioner testified that she was rear ended while driving in February 2021. The medical records indicate this happened on February 6, 2021. She reported all the pain returned and she had to get treatment. She reported that the pain was focused on her back and head and at the same pain level as her prior pain.

Petitioner had pain in the back of her neck which radiated up the back of the right side of her head. Pain radiated down between her shoulder blades. Pain went down right arm into elbow and there is numbness in some of her right-hand fingers, as well as right leg weakness and some numbness in right toes.

Petitioner testified that her original injuries were not worsened by her February 2021 accident. She testified the pain was about the same in all of the affected areas.

Petitioner testified everything is now different following the March 20, 2019 bus incident and that her life is changed with pain in her head, shoulders, neck, and spine. She has ongoing headaches. She still takes gabapentin and puts ointment on neck and back.

Petitioner is seen every six months by UIC with follow-up MRIs of her brain for the tumor.

During trial, Respondent entered a video recording taken from the bus Petitioner was driving on the day of the accident (RX #4). At trial, Petitioner confirmed the recordings were taken from the bus she was operating and that they accurately represent the events on the date of the accident. Petitioner identified herself for the record. The recordings show 4 different camera viewpoints: Camera 1 shows the front door of the bus; Camera 2 is overhead the bus operator; Camera 3 shows the fare-box angle as well as the bus driver; Camera 4 points to the back into the passenger area of the bus.

The videos begin at 9:10 AM. Passengers can be seen standing and exiting the bus. The bus is stopped but traffic, but on Camera 3, traffic can be seen moving slowly past the bus. At approximately 7 seconds into the videos, Petitioner can be seen reacting to an event happening outside of her side window (Cameras 2 &3). Vehicle 2 can be seen coming slowly across into the lane next to the bus, facing the wrong direction (Camera 3). Petitioner turns the steering-wheel while watching the events outside of her side window (Camera 2 and 3). Vehicle 2 appears to strike the back of a yellow vehicle next to Petitioner's bus, shaking the yellow vehicle and then comes to a stop at or near the bus (Camera 3) Impact appears to occur at approximately 9 seconds into the video. The Arbitrator notes that at the time of the impact, there is a passenger standing behind Petitioner's seat, near the yellow line to exit the bus. She is holding 2 bags and personal belongings and not holding onto anything for support. She does fall or drop anything at the assumed time of impact (Camera 3). At the same time, passengers can be seen, both standing and sitting, reacting to the events outside of the bus. No other passengers appear jolted or moved by the impact (Camera 4). Petitioner does not move at all at the time of impact, she continues to hold the steering wheel for approximately 10 seconds or so, watching the events outside of the bus (Cameras 2 & 3). There is nothing to indicate Petitioner is gripping the steering wheel more tightly at the time of the impact. Within 8 seconds, Petitioner’s left hand opens off the steering wheel and Petitioner is not observed turning her head, neck, or body quickly in response to the accident.

After impact, passengers are seen looking around and moving closer to the windows to view the events (Cameras 3 & 4). At 24 seconds into the video, Petitioner can be seen leaning

slightly forward onto the steering-wheel, still watching the events outside of the bus. At this time, the drivers of the 2 vehicles seen outside of the bus have exited their vehicles and are walking around (Camera 3). At 29 seconds, Petitioner is no longer holding the wheel and is reaching towards the left side of her seat. At 54 seconds into the video, Petitioner, who has been moving around in her seat to watch the events unfold outside of the bus, takes off her seatbelt and gloves and presses something above the driver's seat (Cameras 2 & 3). There is no indication that she is stuck or unable to get out of her seat. (Cameras 2 & 3). Up to this point, she has not been seen interacting with any passengers. Passengers are still watching the drivers involved in the accident but are exiting the bus.

At approximately 1 minute and 13 seconds into the video, Petitioner leans completely forward, lifting herself out of the seat, while remaining in driver's area. At 1 minute and 26 seconds into the video, Petitioner opens the bus shield, but remains in her seat (Cameras 2 &3). At 1 minute and 43 seconds, Petitioner is seen using a cell phone, while leaning forward onto the steering-wheel. At this point, a passenger is seen touching Petitioner to get her attention and talking to her. Petitioner responds by turning her head all the way to the right to speak with the man and then quickly turning her head to the left to look out the driver side window and use the cell phone. Petitioner is not shown on video unable to support her head at this time or using her hands to support her head. At 2 minutes and 4 seconds into the video, Petitioner can be seen holding the phone up to her ear with her right hand (Cameras 2 and 3). At 2 minutes and 23 seconds, Petitioner switches the phone to her left hand and ear, swings her legs to the right side of her seat and drops a single glove. She quickly gets off the elevated bus driver's platform. Petitioner immediately bends down to pick up her dropped glove. She is not observed having any difficulty in jumping down from her seat or bending all the way over to pick up the glove. (Cameras 2 & 3). At 2 minutes and 31 seconds, Petitioner begins walking towards the back of the bus then back towards the front, still on the phone. (RX #4, all Cameras). Petitioner appears calms, and her movement does not indicate she is in pain, is stiff or is panicking.

Respondent entered into evidence the "Injured-on Duty" packet into evidence (RX #1). The packet consists of a Special Occurrence Report, Interview Record, Accident Report, Contact with Vehicle Report, Employee's Report of Injury on Duty, Condition of Employee report, Supervisor's Report of Employee Injured on Duty, Video Chain of Custody Form, and Incident Report. Petitioner testified that she filled out the Employee's Report of Injury on Duty form herself and identified her signature. Petitioner signed and dated the form. In the report she confirmed that the vehicle struck the bus on the left side behind the front wheel. She also reported injuries of upper and lower back, both shoulders and her neck. She reported minor damage and scratches to the left side of the bus behind the front wheel.

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 that Petitioner failed to prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent on March 20, 2019. The CTA videos, RX #4, clearly show there was an event involving the bus Petitioner was operating. However, despite evidence of some contact with Petitioner's bus by another vehicle the Arbitrator finds that Petitioner did not sustain accidental injuries that arose out of and were in the course of Petitioner's employment with Respondent. The Arbitrator further finds the Petitioner did not sustain an aggravation of any pre-existing condition due to the bus incident. The contact between the vehicle and bus happened so slowly and lightly that it is hard to even determine from the videos when the impact occurred. Petitioner did not exhibit any indication that she was in pain, or was unable to move, or was having any limitation, or anything else to indicate she was injured, experiencing pain or discomfort, or was affected in any way by what was a minuscule event incapable of causing injury.

Petitioner verified that the accident was accurately captured in the videos admitted in evidence. The videos show no movement or jolting of Petitioner or passengers depicted within the bus at the time of impact. There is no jolt, shake, or shudder anywhere on the videos, including those passengers seen standing without support. While the Petitioner is seen moving her head to look and turning the steering wheel in anticipation of impact, there is no indication that the movement is involuntary, sudden, sharp, or pained. At trial, Petitioner suggested her injuries were due to bracing against the steering-wheel and turning her head to see the accident. Petitioner appears calm and just sitting in her seat, not bracing for impact. After the impact, the Petitioner is also seen moving normally with no indication of pain or discomfort. Petitioner's testimony that she was "stuck" in her seat, paralyzed, panicked, stressed to death, are not supported by what was plainly evident on the videos. Petitioner's attempt to cast the videos as her needing to support her head with her hand, while also reporting upper extremity weakness, is unconvincing. Petitioner only briefly leans on her arm/hand while making a phone call in a normal position.

In addition, Petitioner lacked credibility as well. She testified that she did not have a prior work incident, injuries, accidents, etc., but told her doctors of an incident in February 2019, a month before the work incident at issue. Further, Petitioner testified she never had headaches before the bus incident at issue, when again she told her doctors of prior headaches, specifically a history to UIC, PX #2, of "while she was operating a bus, a multi car collision occurred, involving the bus; this occurred in March and was preceded by another collision in February." The records further read "after the February event, she noticed new headache symptoms and after the March event she noticed worsening neck pain, neck stiffness and pain, and numbness radiating down her right arm with occasional weakness of hand muscles. She also has a pain radiating down her right leg." Past medical history lists hypertension and headaches for approximately 6 months and family history lists Petitioner's grandmother who had a history of malignant brain tumor. This history differs from what Petitioner testified to and what she told her other doctors at Chicago Pain.

The Arbitrator finds there was no compensable accident. Compensation is denied.

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

The Arbitrator adopts his conclusions with respect to the findings that this alleged accident did not arise out of Petitioner's employment and further finds the Petitioner's injuries are not causally related to the event involving the bus on March 20, 2019. As such, this issue is moot.

However, the Arbitrator notes, and is persuaded by, Dr. Bauer's opinions, who also reviewed video of the accident. Dr. Bauer noted that there was no impact on Petitioner or passengers seen on video. Dr. Bauer noted there was minimal, if any motion to the hanging hand supports. He observed Petitioner moves after the accident with no apparent distress or difficulty. Dr. Bauer noted that Petitioner could move her head and neck without any apparent discomfort or hesitation. Throughout the video, Petitioner did not exhibit any distress or appearance of being uncomfortable.

Dr. Bauer diagnosed Petitioner with pre-existing degenerative disc disease in her neck, which was not "caused by, exacerbated, and/or accelerated" by the work accident as there was no evidence of any impact or any distress on video. Dr. Bauer further noted that the imaging was not consistent with an acute injury; there was no herniated disc, ligamentous injury, or fracture found. He also noted the asymptomatic tumor seen at the base of Petitioner's skull, presumably a meningioma. Dr. Bauer noted that the tumor and brain stem compression was not impacted by the accident. Dr. Bauer noted that Petitioner admitted there was very little impact during the accident. Dr. Bauer noted that Petitioner attributes her current complaints to her work injury, but these complaints cannot be explained as a result of the accident, nor is there any objective basis on which to substantiate her complaints were aggravated by the work accident.

Based on the above, the Arbitrator finds Dr. Bauer's opinion persuasive, that there is no objective evidence that this motor vehicle accident could have caused, contributed to, or aggravated Petitioner's condition as there no impact on Petitioner or the other passengers inside the bus at the time of impact.

The Arbitrator also notes that Petitioner's records indicate there are two other unrelated accidents involved in this matter. First, there is an accident in February 2019. Petitioner told some of her treating doctors that her headaches began after this accident and/or she had headaches for 6 months before the bus incident. It is unclear what treatment Petitioner sought, if any, after this initial and unrelated accident. This is further complicated by Petitioner's testimony where she denies there was a prior accident. This is clearly contradicted by her various admissions in Petitioner's treatment records. Secondly, there is an intervening accident in February 2021. She testified that she was rear-ended and this resulted in the return of her symptoms. Petitioner was working and not in active treatment at the time of this accident. As a result of this second accident, she began treating again for her neck as well as new complaints in her thoracic spine. Petitioner has not returned to work as a result of this second accident.

Additionally, the Arbitrator notes that Petitioner's treating doctors' belief that the work accident caused or contributed to Petitioner's current condition is based on incomplete information. None of the treating records indicate that any of the doctors viewed or had access to any video

recordings of the incident which showed the true extent of the event. Petitioner consistently reported to her treating doctors that she was in a motor vehicle accident, but there is no mention of the light impact or other specifics of the mechanism for claimed injury.

Petitioner's testimony that her injury was related to bracing herself again the steering wheel, turning her head to the left, and pushing on the brakes is not mentioned anywhere in her treating records. Most of Petitioner's treating doctors were unaware that she self-reported a prior accident in February 2019 and that her headaches began at that time, in additional to having a 6 months history of headaches prior to the march bus incident. Petitioner reported the February accident to both PA Coderre and UIC physicians. But there is no indication that her primary care doctors, Drs. Rabi and Dixon, were aware of this prior accident or history of headaches.

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

The Arbitrator adopts his conclusions with respect to the above findings that this alleged accident did not arise out of Petitioner's employment and is not causally connected to Petitioner's current condition and for those reasons finds that Petitioner is not entitled payment of medical bills relating to the alleged work injury.

K: Is Petitioner entitled to temporary total disability benefits?

Petitioner claims TTD from March 21, 2019 through March 7, 2020, and from October 12, 2020 through February 6, 2021, totaling 67 & 2/7 weeks.

The Arbitrator adopts his conclusions with respect to the above findings that this alleged accident did not arise out of Petitioner's employment and is not causally connected to Petitioner's current condition and therefore this issue is moot. For those reasons denies compensation and finds that Petitioner is not entitled to Temporary Total Disability benefits.

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

The Arbitrator adopts his conclusions with respect to the above findings that this alleged accident did not arise out of Petitioner's employment and is not causally connected to Petitioner's current condition and therefore this issue is moot. For those reasons the Arbitrator need not decide this issue.

Steven J. Fruth, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000686
Case Name	Dominic Sriwichian v. State of Illinois - IYC Harrisburg
Consolidated Cases	21WC000687;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0476
Number of Pages of Decision	10
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 12/12/2022

/s/ Deborah Baker, Commissioner

Signature

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

DOMINIC SRIWICHIAN,

Petitioner,

vs. NO: 21 WC 00686

STATE OF ILLINOIS,
ILLINOIS YOUTH CENTER HARRISBURG,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's 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. This case was consolidated for hearing with case number 21 WC 00687.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 22, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $619.43 per week for a period of 5.06 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 2% loss of use of the left arm.

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.

Pursuant to Section 19(f)(1), this decision is not subject to judicial review.

December 12, 2022

/s/ *Deborah J. Baker*

DJB/lyc

O: 11/23/22

43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000686
Case Name	SRIWICHIAN, DOMINIC v. STATE OF ILLINOIS/ILLINOIS YOUTH CENTER HARRISBURG
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 2/22/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 15, 2022 0.77%

/s/Linda Cantrell, Arbitrator

Signature

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

February 22, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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
NATURE AND EXTENT ONLY

DOMINIC SRIWICHIAN
Employee/Petitioner

v.

STATE OF ILLINOIS/ILLINOIS YOUTH CENTER HARRISBURG
Employer/Respondent

Case # **21** WC **000686**

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 **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **November 8, 2021**. By stipulation, the parties agree:

On the date of accident, **2/2/2020**, 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 $**53,684.00**, and the average weekly wage was $**1,032.38**.

At the time of injury, Petitioner was **31** years of age, ***single*** with **0** dependent children.

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

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

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 $**619.43**/week for a further period of **5.06** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused permanent partial disability to the extent of **2% loss of the left arm**.

Respondent shall pay Petitioner compensation that has accrued from **8/19/21** through **11/8/21**, 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.

_____ **FEBRUARY 22, 2022**

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

DOMINIC SRIWICHIAN,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 21-WC-000686
	)	
STATE OF ILLINOIS/ILLINOIS YOUTH CENTER HARRISBURG,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on November 8, 2021 on all issues. In September 2021, Petitioner filed an Amended Application for Adjustment of Claim alleging injuries to his bilateral elbows, left knee, back, and body as a whole as a result of restraining combative inmates on February 2, 2020. (Case No. 21-WC-000686). In September 2021, Petitioner filed an Amended Application for Adjustment of Claim alleging injuries to his right knee as a result of restraining combative inmates on December 25, 2020. (Case No. 21-WC-000687). The cases were consolidated on 8/12/21. The sole issue in dispute in Case No. 21-WC-000686 is the nature and extent of Petitioner's injuries. The parties stipulate that on February 2, 2020, Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent and that Petitioner's current condition of ill-being is causally connected to his injury. All other issues have been stipulated. The Arbitrator has simultaneously issued a separate Decision in Case No. 21-WC-000687.

TESTIMONY

Petitioner was 31 years old, single, with no dependent children at the time of accident. Petitioner was employed by Respondent as a Juvenile Justice Specialist. He is currently employed by AISIN Manufacturing as an Advanced Launch Engineer. Petitioner testified that on February 2, 2020 he injured his left elbow while breaking up a fight between youth inmates. He stated that while restraining one of the inmates he was pulled to the ground and his coworker and the other inmate landed on top of him across his back. As the altercation continued, Petitioner struck both elbows and his left knee on the ground. Petitioner completed an incident report and documented bruising and swelling to his left knee and left elbow. A witness report completed by a fellow officer noted Petitioner "hit to [sic] floor hard multiple times in an effort to separate the fighting aggressive youth." Another witness noted Petitioner "hit his knee on the floor repeatedly, as well as his elbow . . ." Petitioner testified he had not injured his left elbow prior to

2/2/20. He used one service-connected day and one sick day following the accident and returned to light duty work for one week. Petitioner returned to full duty work and continued to work full duty until a second work accident on 12/25/20.

Petitioner testified he has pain with full extension of his left arm, lifting weights, and cold weather. Petitioner testified he sustained a second work accident on 12/25/20 resulting in injuries to his right knee. He ultimately found new employment in a less physically demanding desk job. He testified he chose to leave his employment with Respondent for higher wages, better schedule, a desk job, and to avoid dangerous environments.

MEDICAL HISTORY

On 2/3/20, Petitioner was examined by his primary care physician Dr. Brett Jones at SIH Harrisburg Primary. He provided a history of accident and stated he fell twice during the altercation, striking his left medial knee and left elbow directly on the ground. Petitioner reported improved swelling in his left elbow, pain and bruising in his left knee, and lower right back pain when bending over. Petitioner stated he had difficulty climbing stairs despite icing his injuries. X-rays of the left knee were negative for fracture but showed evidence of a prior surgery and probable trace joint effusion. Dr. Jones diagnosed acute pain of the left knee, left elbow pain, and a lumbar strain. Petitioner felt he required work restrictions due to back and knee pain; therefore, Dr. Jones released Petitioner to light duty work of no lifting over 15 pounds and no standing longer than 20 minutes. He ordered Petitioner to follow up in one week.

On 2/12/20, Petitioner returned to Dr. Jones and reported improvement in his left knee pain and less swelling, with persistent bruising. Petitioner reported occasional popping in his knee with movement. Petitioner's left elbow pain increased in the olecranon region medially. He reported popping with extension and decreased range of motion. Petitioner advised he had no prior history of left elbow problems and expressed concern about his level of pain. X-rays of Petitioner's left elbow were normal. Dr. Jones prescribed Prednisone for Petitioner's left knee and left elbow and allowed Petitioner to return to full duty work. Dr. Jones stated if Petitioner's left knee popping did not improve, he would refer him for orthopedic evaluation.

Petitioner sustained a second injury at work on 12/25/20 involving his right knee (Case No. 21-WC-000687). On 2/22/21, while treating with Dr. Matthew Bradley for his right knee condition, Petitioner reported his injury of 2/2/20. Petitioner stated his left elbow was fully extended and he sustained a hyperextension-type injury causing pain near the insertion of the triceps tendon. He described the pain as mild-to-moderate and persistent for the past year. Home exercises and anti-inflammatories have not improved his symptoms. Dr. Bradley noted his pain was present at terminal extension and did not affect his ability to perform daily living or work activities. X-rays of the left elbow were negative for fracture, dislocation, or degenerative changes. Physical examination was suggestive of olecranon fossa impingement. Dr. Bradley recommended home exercises for four weeks and an MRI if his symptoms failed to improve.

On 4/5/21, Dr. Bradley noted Petitioner's left elbow was more bothersome than painful. He noted sight improvement and that Petitioner's right knee was his greatest concern. No additional treatment was recommended for his left elbow.

On 8/19/21, Dr. Bradley noted Petitioner's posterior left elbow pain persisted though it had not gotten significantly worse. X-rays of the left elbow revealed a loose body near the tip of the olecranon without evidence of significant degenerative disease within the elbow joint proper. Dr. Bradley concluded Petitioner likely suffered a small fracture of the tip of the olecranon. He administered an intraarticular corticosteroid injection to improve inflammation of scar tissue inside Petitioner's elbow. Dr. Bradley noted that five minutes following the injection Petitioner was able to fully extend his elbow without significant pain. He opined that further intervention would not reliably or predictably improve Petitioner's function or outcome. He placed Petitioner at maximum medical improvement with respect to his left elbow. Dr. Bradley opined that the accident on 2/2/20 caused, contributed, or aggravated Petitioner's left elbow condition.

CONCLUSIONS OF LAW

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of §8.1b of the Act; (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. 820 ILCS 305/8.1b. The Act further provides that "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither party submitted an AMA Impairment Rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner obtained new employment in a less physically demanding position. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 31 years old at the time of accident. Petitioner must live and work with his disability for an extended number of years. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record. The Arbitrator places some weight on this factor.

(v) **Disability**: Petitioner was examined on two occasions by his primary care physician for left elbow, left knee, and lumbar spine pain. Pain was noted in the olecranon region of Petitioner's left elbow and x-rays were normal. Petitioner was prescribed Prednisone and released to full duty work on 2/12/20. Petitioner did not treat again for left elbow symptoms until after his second work accident on 12/25/20. On 2/22/21, Dr. Bradley noted pain at terminal extension of the left elbow that did not affect Petitioner's ability to perform daily living or work activities. X-rays of the left elbow were negative for fracture, dislocation, or degenerative changes. Dr. Bradley suspected olecranon fossa impingement and recommended home exercises. A repeat x-ray revealed a loose body near the tip of the olecranon. Dr. Bradley's final diagnosis was a possible fracture of the tip of

the olecranon. Petitioner underwent an intraarticular corticosteroid injection that allowed Petitioner to fully extend his elbow without significant pain. Dr. Bradley did not believe further intervention would reliably or predictably improve Petitioner's function or outcome and placed him at MMI without restrictions on 8/19/21.

Petitioner testified he still has pain with full extension, lifting weights, and cold weather. The Arbitrator places greater weight on this factor.

Based upon the foregoing factors and the record taken as a whole, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 2% loss of the left arm pursuant to Section 8(e) of the Act.

Linda J. Cantrell, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000687
Case Name	Dominic Sriwichian v. State of Illinois - IYC Harrisburg
Consolidated Cases	21WC000686;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0477
Number of Pages of Decision	13
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 12/12/2022

/s/ Deborah Baker, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DOMINIC SRIWICHIAN,

Petitioner,

vs. NO: 21 WC 00687

STATE OF ILLINOIS,
ILLINOIS YOUTH CENTER HARRISBURG,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner sustained an accidental injury arising out of and occurring in the course of his employment on December 25, 2020, whether timely notice was provided, whether Petitioner's right knee condition of ill-being is causally related to the work injury, entitlement to temporary disability benefits, entitlement to incurred medical expenses, and the nature and extent of Petitioner's 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. This case was consolidated for hearing with case number 21 WC 00686.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 22, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $688.25 per week for a period of 3 5/7 weeks, representing April 14, 2021 through May 9, 2021, 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 the reasonable, necessary and causally related medical expenses incurred in the care and treatment of Petitioner's right knee injury as detailed in Petitioner's Exhibit 1, pursuant to §8(a) and subject to §8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $619.43 per week for a period of 53.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 25% loss of use of the right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that 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.

Pursuant to Section 19(f)(1), this decision is not subject to judicial review.

December 12, 2022

/s/ *Deborah J. Baker*

DJB/lyc

O: 11/23/22

43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000687
Case Name	SRIWICHIAN, DOMINIC v. STATE OF ILLINOIS/ILLINOIS YOUTH CENTER HARRISBURG
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 2/22/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 15, 2022 0.77%

/s/Linda Cantrell, Arbitrator

Signature

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

February 22, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

DOMINIC SRIWICHIAN
Employee/Petitioner

v.

STATE OF ILLINOIS/
ILLINOIS YOUTH CENTER HARRISBURG
Employer/Respondent

Case # **21** WC **000687**

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 **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **November 8, 2021**. 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 **December 25, 2020**, 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 $**53,684.00**; the average weekly wage was $**1,032.38**.

On the date of accident, Petitioner was **32** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

Respondent shall pay the medical expenses outlined in Petitioner's Exhibit 1, as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and indemnify and hold Petitioner harmless from any claims arising from the expenses for which it receives credit. The parties stipulate that Respondent shall receive credit for any medical bills paid through its group medical plan, under Section 8(j) of the Act.

The parties stipulated on the record that Petitioner has reached maximum medical improvement and agreed to try the case on all issues, including the nature and extent of Petitioner's injuries. Therefore, the Arbitrator finds Petitioner is not entitled to prospective medical care.

Respondent shall further pay Petitioner temporary total disability benefits of $**688.25**/week for the period **4/14/21 through 5/9/21**, representing **3-5/7th** weeks.

Respondent shall further pay Petitioner the sum of $**619.43**/week for a period of **53.75 weeks,** as provided in Section 8(e) of the Act, because the injuries sustained caused permanent partial disability to the extent of **25%** loss of the right knee/leg.

Respondent shall pay Petitioner compensation that has accrued from 8/19/21 through 11/8/21, and shall pay the remainder of the award, if any, in weekly payments.

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

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

FEBRUARY 22, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) **SS**
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DOMINIC SRIWICHIAN,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 21-WC-000687
	)	
STATE OF ILLINOIS/ILLINOIS YOUTH CENTER HARRISBURG,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on November 8, 2021 on all issues. In September 2021, Petitioner filed an Amended Application for Adjustment of Claim alleging injuries to his bilateral elbows, left knee, back, and body as a whole as a result of restraining combative inmates on February 2, 2020. (Case No. 21-WC-000686). In September 2021, Petitioner filed an Amended Application for Adjustment of Claim alleging injuries to his right knee as a result of restraining combative inmates on December 25, 2020. (Case No. 21-WC-000687). The cases were consolidated on 8/12/21. The issues in dispute in Case No. 21-WC-000687 are accident, notice, causal connection, medical bills, temporary total disability benefits, and the nature and extent of Petitioner's injuries. All other issues have been stipulated. The Arbitrator has simultaneously issued a separate Decision in Case No. 21-WC-000686.

At arbitration, Respondent made an oral motion to continue the proceeding to obtain intraoperative photographs taken by Dr. Bradley on 4/14/21. This case was set for trial on 9/16/21 and continued at the request of Respondent to obtain the deposition of Section 12 examiner Dr. Timothy Farley on 9/21/21. Respondent's motion to continue was granted and the case was reset for trial on 10/28/21. Dr. Matthew Bradley's deposition was taken on 10/27/21. Immediately following Dr. Bradley's deposition, Respondent requested a continuance of the trial scheduled on 10/28/21 to obtain the above-mentioned intraoperative photos and submit them to Section 12 examiner Dr. Farley for review. Respondent argued that the photos are material to the issues of accident and causation and were relied upon by Dr. Bradley to rebut the testimony of Dr. Farley. Respondent further argued that the photos were not mentioned in the operative report and therefore it was not aware they existed. Petitioner argued that it was not in possession of the photos and they were not offered as exhibits at Dr. Bradley's deposition. Petitioner further argued that Petitioner underwent surgery on 4/14/21, the operative report was sent to Respondent on 4/28/21 that detailed a tear of the ACL, the photos only confirm Dr. Bradley's intraoperative

findings which are contained in his operative report, and that Respondent had ample time to submit the report to Dr. Farley prior to his Section 12 examination on 5/11/21 and his addendum report authored on 8/19/21. On 10/27/21, the Arbitrator granted Respondent's request for continuance and rescheduled the trial for a date certain hearing on 11/8/21.

On 11/4/21, Respondent requested a third continuance of the date certain trial scheduled on 11/8/21. Respondent stated it received the intraoperative photos and had "put into works for Dr. Farley to review and opine if necessary". The Arbitrator notes that Dr. Farley stated in his Section 12 report dated 5/11/21 that he would like to review the intraoperative arthroscopy pictures prior to rendering a causation opinion. Respondent's argument that it had no knowledge the intraoperative photos existed until Dr. Bradley's deposition on 10/27/21 is not well taken given that Respondent's independent medical examiner requested the photos in May 2021. On 11/4/21, the Arbitrator denied Respondent's request for a continuance and this case proceeded to trial on all issues on 11/8/21.

TESTIMONY

Petitioner was 32 years old, single, with no dependent children at the time of accident. Petitioner was employed by Respondent as a Juvenile Justice Specialist. He is currently employed by AISIN Manufacturing as an Advanced Launch Engineer. Petitioner testified that on 12/25/20 he attempted to restrain a combative inmate and was forcibly pulled to the ground. He stated he twisted his right knee and struck it on the ground.

Petitioner testified he injured his right knee in 2017 playing recreational basketball and underwent surgery to repair a torn meniscus. Petitioner is 6'8" tall and played varsity basketball for community colleges in Illinois and Missouri. He stated that following the 2017 surgery he had no issues with his right knee until his work accident on 12/25/20. He had never been diagnosed with an ACL injury until 12/25/20.

Dr. Matthew Bradley performed an ACL reconstruction on 4/14/21. Petitioner worked light duty for Respondent until the day before surgery. Petitioner testified he used two weeks of pre-approved vacation time while he was recovering from surgery. He returned to work for another employer on 5/10/21 and performs a desk job that is less physically demanding. Petitioner stated he voluntarily terminated his employment with Respondent for higher wages, better schedule, a desk job, and to avoid dangerous environments.

Petitioner testified he has pain in his knee when he engages in outdoor activities, such as playing basketball and running, and with cold weather. He stated he has not played full contact basketball since his work accident because he has not been medically released as of the date of arbitration. He is able to shoot hoops at his house. Petitioner testified he has shotgun tags for deer and intends to hunt this season. He went bow hunting yesterday and climbed a double ladder stand 15 feet off the ground. He takes Tylenol or Ibuprofen for his symptoms.

Petitioner testified he filled out a report of injury and it was accurate to the best of his knowledge. He has reviewed the surveillance video of his accident and stated it accurately depicts what occurred. He identified himself in the video and testified that his left knee is facing the camera and his right knee is on the inside, facing away from the camera. He identified the

exact time on the video that he felt pain in his knee, which was marked 13:10 (military time). He stated he did not feel pain in his right knee until after the incident because of his adrenaline during the altercation. He stated he initially felt knee pain when he was walking to the armory immediately following the incident.

MEDICAL HISTORY

On 12/25/20, Petitioner completed an Employee's Notice of Injury stating he was "pulled to the ground by youth and hit ([r]ight) knee hard." He reported the inside of his knee hurt and was clicking when he straightened it. On 12/28/20, a Notification of Injury was completed stating Petitioner was attempting to separate two inmates when he was pulled to the ground and struck his right knee on the concrete floor. He described clicking and popping, swelling, and pain when he tried to straighten his leg. The report states that Petitioner went to the emergency room and was told to follow up with his primary care physician. Petitioner's co-worker that assisted in the altercation completed a witness report stating Petitioner went to the ground hard while attempting to separate the inmates. The Initial Workers' Compensation Medical Report dated 12/26/20 documented a traumatic injury to the right knee and diagnosis was right knee pain. An MRI was recommended to rule out meniscus and soft tissue injuries.

A surveillance video of Petitioner's accident was admitted into evidence. The video starts at 13:10:05 with Petitioner sitting in the left portion of the screen with his hands on his head. The altercation starts at 13:10:11 and Petitioner arrives at the scene at 13:10:19. An inmate is seen lying on the floor with another inmate on top of him. Petitioner is seen bending over the inmates while another officer pulls the top inmate away. Petitioner immediately straddles the remaining inmate by placing his right leg over the inmate's body and pins him between his legs while Petitioner's knees are on the floor. The video clearly depicts Petitioner struck his right knee on the concrete floor with all of his weight as his left knee was not yet on the floor when his right knee made contact. Petitioner's body mechanics reveal a forceful impact when his right knee touched the floor. Petitioner restrained the inmate and took ten steps before the video terminated.

On 12/26/20, Petitioner presented to Harrisburg Medical Center with complaints of right knee pain and popping and clicking when walking and straightening his leg. He reported he was injured breaking up a fight at work. The note states Petitioner fell and landed on his right knee. Petitioner reported his 2017 meniscus injury that resulted in surgery. He stated he had minimal to moderate improvement in his post-accident symptoms with medication, but increased pain and popping with walking. X-rays were negative for acute fracture or dislocation. It was recommended that he follow up with his primary care physician to obtain an MRI.

On 12/28/20, Petitioner presented to his primary care physician at Harrisburg Primary Care. Petitioner reported being pulled to the ground and his right knee made contact with the floor on the left lower side. He stated that at the end of his shift he had difficulty moving his knee and had clicking and popping throughout the day. Swelling was noted. Petitioner further stated that his co-worker pulled the inmate off him but there was a twisting component to the injury. An MRI was ordered and anti-inflammatory pain relievers and muscle relaxers were prescribed. Petitioner was placed on light duty restrictions of no inmate contact, no lifting greater than 5 pounds, and no standing for greater than 30 minutes, squatting, or extensive bending.

On 1/4/21, Petitioner was examined by Dr. Matthew Bradley. The history provided states Petitioner fell and landed directly on his right knee, and then in an attempt to get into a full mount position, he suffered a secondary twisting type injury to his knee. Dr. Bradley noted Petitioner experienced immediate pain and crepitus after the injury and later in the day. Dr. Bradley noted a small meniscus tear in 2017 that was treated with a partial medial meniscectomy. Petitioner reported no pain or symptoms since his prior surgery and worked full duty until his work accident on 12/25/20.

Physical examination was positive for residual effusion, pain to palpation of the medial joint line and medial patella, medial pain with McMurray testing, pain and crepitus with patella compression testing, and 50% translation and moderate pain with patellar apprehension. Dr. Bradley believed Petitioner's complaints and mechanism of injury were consistent with a medial meniscus tear, and Petitioner's pain to the medial aspect of the patella was suggestive of lateral dislocation. X-rays demonstrated normal alignment, no significant bowing, or pathology. Dr. Bradley ordered an MRI and placed Petitioner off work. He opined that the accident on 12/25/20 was at least a precipitating factor in Petitioner's current pain and etiology and the need for further medical workup and potential treatment.

The MRI was completed on 1/11/21, accompanied by arthrogram study, and demonstrated "presumed post-op changes" of the posterior horn of the medial meniscus, with significant thinning of the posterior horn towards the meniscal root ligament with slight displacement of the meniscus towards the medial cutter, and diffuse increased signal in the ACL without tear. Petitioner was allowed to perform light duty work beginning 1/14/21 and restricted from inmate contact beginning 1/20/21.

Petitioner returned to Dr. Bradley on 1/25/21 and reported mild-to-moderate pain with significant instability. Petitioner stated that any time he tried to pivot, his knee buckled and caused him to stumble. Dr. Bradley noted Petitioner suffered no intervening trauma or interval injury to his right knee. He conducted a pivot shift test which was abnormal and positive for asymmetry. Dr. Bradley noted that the most concerning MRI finding was the "significant edema of the ACL." He stated the edema coupled with instability with pivoting was "indicative of an incompetent ACL". Dr. Bradley reported that although the MRI did not show a definitive ACL tear, it did not mean the ACL was functioning properly. Dr. Bradley recommended maximization of non-operative care followed by a rehabilitation protocol targeted towards ACL recovery. He also administered a corticosteroid injection to Petitioner's right knee.

On 2/22/21, Petitioner returned to Dr. Bradley and reported his knee was better overall. He continued to have catching, clicking, and instability. Dr. Bradley continued to recommend conservative care.

In April 2021, Petitioner reported persistent instability and difficulty with any type of twisting/turning activity. Dr. Bradley noted Petitioner had a history of ACL reconstruction in his left knee, and Petitioner reported that his right knee felt the same as his left knee did prior to surgery. Dr. Bradley reiterated that the instability and pivot shift testing clearly showed Petitioner's ACL was dysfunctional and recommended an ACL reconstruction.

On 4/14/21, Dr. Bradley performed a right anterior cruciate ligament reconstruction utilizing tibialis anterior allograft. Intraoperative findings revealed a right ACL tear wherein the ACL was completely incompetent and torn off the femoral attachment with only some posterolateral fibers remaining intact. Dr. Bradley also noted a small tear to the anterior horn of the medial meniscus, wearing of the central portion of the trochlear groove without full thickness fissuring, and notably "pristine" cartilage in the medial and lateral joint space. Post-operatively, Petitioner could bear weight tolerated with his leg locked in full extension with a brace and was scheduled to begin therapy in one week.

On 4/29/21, Petitioner reported marked improvement in stability and he was doing exceptionally well. Petitioner continued to follow up with Dr. Bradley and underwent an ACL rehabilitation program. Dr. Bradley released Petitioner at MMI on 8/19/21.

On 5/11/21, Petitioner was examined by Dr. Timothy Farley. The history he took noted, "he had a direct impact on his knee during the altercation and in attempting to get up and further subdue someone, he felt his knee twist." Dr. Farley reviewed Petitioner's records up to 4/5/21, shortly before Petitioner's surgery, and performed a physical examination. Dr. Farley noted pseudolaxity, residual swelling of the right knee, and residual bruising along the right calf towards his foot.

Dr. Farley noted the MRI report revealed signs of a previous partial medial meniscectomy and an intact ACL with a fluid signal along its course consistent with a possible strain. Dr. Farley noted that the MRI report indicated the ACL was "intact but there was moderate signal tracking along the entire ACL." He noted changes of the posterior horn of the medial meniscus with significant thinning of the posterior horn to the meniscal root attachment and slight displacement from the medial gutter, along with diffuse and moderate signal increase within the ACL which tracked along the entire ACL. He also noted articular cartilage height loss consistent with moderate levels of degenerative joint disease.

Dr. Farley noted Petitioner complained of residual pain and swelling but his instability had resolved following surgery. Dr. Farley stated he was somewhat confused at the rationale behind ACL reconstruction as there was an intact ACL on the MRI. He stated he had not reviewed the MRI study or intraoperative photographs but was not convinced the ACL had been injured at the time of the work injury. He was unable to state whether Petitioner's ACL reconstruction was reasonable, necessary, or causally related to his work accident at that time. He stated Petitioner would not reach MMI from the reconstruction for approximately eight months. His prognoses was guarded given the changes present within Petitioner's knee and the significant loss of meniscus present prior to the accident and the tunnel positioning of the ACL reconstruction. He noted that if there was a meniscal root tear that was not repaired, "then acceleration of this degenerative change on the right knee could occur." Dr. Farley opined that Petitioner should stay out of combative situations and perform desk work for the time being with no more than 30 minutes of walking per hour until approximately six months following surgery.

On 8/19/21, Dr. Farley produced an addendum report after having reviewed the MRI image. He stated the MRI did not demonstrate evidence of ACL tearing and could be seen at its

insertion site on the tibia on series 9, image 19 of 36. The ACL remained in continuity all the way up to series 9, image 24 of 36 where it shows it was attached to the femur. He stated there were no expected lateral compartment bone contusions from a pivot shift type injury two weeks following the accident. Dr. Farley opined Petitioner sustained no objective injury as it related to the work accident of 12/25/20. He believed Petitioner suffered from a degree of chronic meniscal insufficiency related to a previous injury and previous surgery, and ganglion cyst formation and distortion of the contour of the ACL. Dr. Farley opined that no further treatment or restrictions were necessary and Petitioner reached MMI.

Dr. Timothy Farley testified by way of evidence deposition on 9/21/21. He is a board-certified orthopedic surgeon who primarily specializes in knees, shoulders, and elbows. Dr. Farley testified he reviewed x-rays and an MRI report of Petitioner's right knee prior to his examination. He noted there were signs of moderate levels of degenerative disc disease in Petitioner's bilateral knees, worse on the right, likely related to his previous partial meniscectomy which can lead to the development of degenerative arthritis. Dr. Farley subsequently reviewed the MRI film and found no evidence of ACL tearing. He noted the ACL fibers were seen to span fully from the tibia to the femur. He stated an acute ACL tear will lead to bone bruises within the knee which were not evident on the MRI. He stated there was no collateral damage typically seen with an ACL reconstruction. Dr. Farley had the MRI reviewed by another board-certified musculoskeletal radiologist who did not see any evidence of ACL tearing. Dr. Farley felt Petitioner's pain was related to his previous meniscus resection which led to degenerative arthritis. He also opined he did not find any relationship between his diagnosis and the 12/25/20 incident, nor did he see any relationship between the subsequent treatment and surgical procedure.

On cross-examination, Dr. Farley acknowledged he did not possess any of the prior operative records, photographs, or diagnostic studies from Petitioner's 2017 surgery. He admitted he had no evidence that Petitioner suffered symptoms or complaints in his right knee from the time he was released following his 2017 surgery up until the work accident of 12/25/20. Dr. Farley could not recall if he reviewed the operative report from Dr. Bradley's ACL reconstruction. At the time of his deposition in September 2021, the record from 4/5/21 was still the most recent treatment record in his possession. He was unaware of whether Petitioner improved following surgery on 4/14/21. Dr. Farley stated he had not seen the surveillance video of the accident and he had no information to rebut Petitioner's reported mechanism of injury.

Dr. Matthew Bradley testified by way of evidence deposition on 10/27/21. Dr. Bradley's practice focuses on treatment of degenerative and acute injuries to the hip, knee, and shoulder, including joint replacement. He testified that Petitioner reported he fell and struck his right knee while attempting to get into a full mounting position and suffered a twisting-type injury. He noted Petitioner disclosed his 2017 injury and was working full duty at the time of the work accident on 12/25/20. Dr. Bradley testified that Petitioner's mechanism of injury and complaints were consistent with his physical findings. He opined that Petitioner's condition was related to his accident as Petitioner had no pain, swelling, or instability until the incident, and there were no other explanations for the injury.

Dr. Bradley explained that the lack of a definitive tear on the MRI did not mean Petitioner's had an appropriately functional ACL. He stated it was possible for an ACL tear to be present but not visible on MRI, as the studies possess an approximate 10% rate of error. Dr. Bradley noted Petitioner's physical examination was consistent with an ACL tear and an ACL reconstruction was appropriate as Petitioner failed to improve with conservative treatment. Dr. Bradley opined that Petitioner's work accident was at least a contributing factor in his current condition of ill-being. He described Petitioner as being healthy, active, and in good shape. Petitioner was able to perform his job duties of restraining inmates and breaking up fights without any instability or problems to his knee until the accident. Since the accident, Petitioner had instability with no evidence of other trauma.

Dr. Bradley testified that intraoperatively he discovered a majority of Petitioner's ACL was torn off his femur which was not appreciated on the MRI scan but was consistent with his physical examination and Petitioner's complaint of instability. Dr. Bradley took intraoperative photos of the ACL tear, which confirmed his clinical diagnosis. He noted Petitioner improved following surgery, which indicated the procedure was reasonable and necessary.

Dr. Bradley testified that he reviewed the reports of Dr. Farley and agreed the MRI failed to show a clear tear of the ACL. Dr. Bradley maintained there were a number of indications that Petitioner's ACL was abnormal as it showed a lot of fluid, inflammation, and edema in and around the ACL. He pointed out that the PCL behind the ACL was also abnormal in appearance, specifically it exhibited looseness, which was also indicative of a torn ACL.

On cross-examination, Dr. Bradley was asked whether the injury mechanism and force of impact from Petitioner's accident was sufficient to create an ACL tear of the type Petitioner suffered. He explained that an anterior and posterior directed force with a twisting-type injury would certainly create an ACL injury. He testified that twisting injuries or forcing the front of the knee can cause ACLs tears. Dr. Bradley opined that in Petitioner's case it was probably force to the front of the knee that caused his ACL injury because the ACL was 75-80% torn and the tear was to the front part of the ACL and the back was still intact. He stated that would be a force where the tibia is being pushed backwards enough to tear 75% of the ACL, but not the entire ligament. Dr. Bradley further testified that Petitioner's height may have played a role in increasing the intensity of his fall to ground level, noting his height at approximately 6'8". He did not know what Petitioner fell onto with his right knee during the accident and he did not review the surveillance video of the accident.

CONCLUSIONS OF LAW

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

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366-67, 5 Ill.Dec. 854, 362 N.E.2d 325 (1977). "A compensable injury occurs 'in the course of' employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment." *Wise v. Indus. Comm'n*, 54 Ill. 2d 138, 142, 295 N.E.2d 459

(1973). An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and the accidental injury. *Orsini v. Indus. Comm'n*, 509 N.E.2d 1005 (1987). A risk is incidental to an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Caterpillar Tractor*, 129 Ill. 2d at 58, 133 Ill.Dec. 454, 541 N.E.2d 665; see also *The Venture—Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n*, 2013 IL 115728, ¶ 18, 376 Ill.Dec. 823, 1 N.E.3d 535; *Sisbro*, 207 Ill. 2d at 204, 278 Ill.Dec. 70, 797 N.E.2d 665; *McAllister v. Illinois Workers' Comp. Comm'n*, 2020 IL 124848, 2020 WL 5668970.

Petitioner was clearly in the course of his employment and performing a task incidental to employment by breaking up a youth inmate fight. All of Petitioner's medical records document that Petitioner fell and injured his right knee during an altercation with inmates. The surveillance video shows Petitioner's right lower extremity made contact with the ground. The medical records likewise repeatedly document Petitioner struck his knee on the ground causing his knee to become symptomatic. The incident and witness reports corroborate Petitioner's account of the injury. The Arbitrator and both physicians, Dr. Bradley and Dr. Farley, found Petitioner to be credible. Therefore, the Arbitrator finds that Petitioner suffered an accidental injury to his right knee that arose out of and in the course of his employment with Respondent.

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

Section 6(c) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(c)(2) states that "no defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." *820 ILCS 305/6(c)*.

On 12/25/20, Petitioner completed an Employee's Notice of Injury stating he was "pulled to the ground by youth and hit ([r]ight) knee hard." He reported the inside of his knee hurt and was clicking when he straightened it. On 12/28/20, a Notification of Injury was completed stating Petitioner was attempting to separate two inmates when he was pulled to the ground and struck his right knee on the concrete floor. The report reflects that Petitioner sought emergent treatment. Petitioner's co-worker that assisted in the altercation completed a witness report stating Petitioner went to the ground hard while attempting to separate the inmates. The Initial Workers' Compensation Medical Report dated 12/26/20 documented a traumatic injury to the right knee and diagnosis was right knee pain.

Therefore, the Arbitrator finds that Petitioner provided timely notice of his work injury to Respondent.

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

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982). A claim is not denied because a claimant suffers from a preexisting condition; but rather, if a preexisting condition or need for treatment is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Schroeder v. Illinois Workers' Comp. Comm'n*, 2017 IL App (4th) 160192WC, 79 N.E.3d 833 (2017); *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003); *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967), 37 Ill. 2d 123; see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 66 Ill. 2d 234, 362 N.E.2d 339 (1977). The law holds that accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003). [Emphasis added]. "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill. App. 3d 1037, 723 N.E.2d 846 (2000).

The evidence shows Petitioner was not receiving care or treatment for his right knee at the time of the accident and was working full duty. Petitioner testified he underwent a right partial medial meniscectomy in 2017 and has not had any issues or difficulty with his knee since being released from surgery. No medical records related to Petitioner's 2017 surgery were admitted into evidence. Petitioner reported right knee pain immediately after the accident that persisted through the remainder of his work shift. Petitioner completed an Employee's Notice of Injury stating he was "pulled to the ground by youth and hit ([r]ight) knee hard." He reported the inside of his knee hurt and was clicking when he straightened it. On 12/28/20, a Notification of Injury was completed stating Petitioner was attempting to separate two inmates when he was pulled to the ground and struck his right knee on the concrete floor. He described clicking and popping, swelling, and pain when he tried to straighten his leg. The report states Petitioner went to the emergency room and was told to follow up with his primary care physician. Petitioner's co-worker that assisted in the altercation completed a witness report stating Petitioner went to the ground hard while attempting to separate the inmates. The Initial Workers' Compensation Medical Report dated 12/26/20 documented a traumatic injury to the right knee and diagnosis was right knee pain. An MRI was recommended to rule out meniscus and soft tissue injuries. The surveillance video of Petitioner's accident was consistent with his testimony and the history provided in his medical records.

The Arbitrator notes that the MRI study revealed diffuse increased signal in the ACL without tear. Petitioner attempted light duty work and his knee symptoms progressed to instability. Dr. Bradley conducted a pivot shift test which was abnormal and positive for asymmetry. Dr. Bradley noted significant edema of the ACL on the MRI and the development of instability suggested an incompetent ACL. Petitioner exhausted conservative treatment,

including medication, a corticosteroid injection, and therapy prior to undergoing a right anterior cruciate ligament reconstruction.

The Arbitrator finds the opinion of Dr. Bradley more persuasive than that of Dr. Farley. Dr. Bradley testified that Petitioner's mechanism of injury and complaints were consistent with his physical findings. Petitioner had no difficulties with his right knee until he struck it on the concrete floor on 12/25/20, which resulted in pain, swelling, and instability. As described by Dr. Bradley, Petitioner was healthy, active, and in good shape prior to the work accident. He was able to perform his job duties of restraining inmates and breaking up fights without any instability or problems to his knee until his accident.

Dr. Bradley testified it is possible for an ACL tear to be present but not visible on MRI. Intraoperatively, Dr. Bradley noted the ACL was completely incompetent and torn off the femoral attachment with only some posterolateral fibers remaining intact. Dr. Bradley also noted a small tear to the anterior horn of the medial meniscus and wearing of the central portion of the trochlear groove without full thickness fissuring. Dr. Bradley's intraoperative findings confirmed his clinical diagnosis and the surgery improved Petitioner's condition, which indicated the procedure was reasonable and necessary. Dr. Bradley opined that in Petitioner's case it was probably force to the front of the knee that caused his ACL injury because the ACL was 75-80% torn and the tear was to the front part of the ACL and the back was still intact. He stated that would be a force where the tibia is being pushed backwards enough to tear 75% of the ACL, but not the entire ligament.

Dr. Bradley testified that an ACL reconstruction was appropriate as Petitioner failed to improve with conservative treatment. He opined that Petitioner's work accident was at least a contributing factor in his current condition of ill-being. Petitioner's medical records support his testimony that he noted marked improvement following surgery.

Dr. Farley reviewed the MRI study and did not appreciate an ACL tear. He testified that Petitioner had moderate bilateral degenerative disc disease, worse on the right, likely related to his previous partial meniscectomy in 2017, which was the cause of Petitioner's symptoms. Dr. Farley acknowledged he did not possess any of the prior operative records, photographs, or diagnostic studies from Petitioner's 2017 surgery. He admitted he had no evidence that Petitioner suffered symptoms or complaints in his right knee from the time he was released following his 2017 surgery up until the work accident of 12/25/20. Dr. Farley could not recall if he reviewed the operative report from Dr. Bradley's ACL reconstruction. At the time of his deposition in September 2021, the record from 4/5/21 was still the most recent treatment record in his possession. He was unaware of whether Petitioner improved following surgery on 4/14/21. Dr. Farley stated he had not seen the surveillance video of the accident and he had no information to rebut Petitioner's reported mechanism of injury.

Based upon the record as a whole, the Arbitrator finds Petitioner sustained his burden in proving that his current condition of ill-being in his right knee is causally related to his work accident.

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?

Based on the above findings as to accident, notice, and causation, the Arbitrator finds Petitioner is entitled to reasonable and necessary medical benefits. Respondent shall therefore pay the medical expenses outlined in Petitioner's Exhibit 1, as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and indemnify and hold Petitioner harmless from any claims arising from the expenses for which it receives credit. The parties stipulate that Respondent shall receive credit for any medical bills paid through its group medical plan, under Section 8(j) of the Act.

The parties stipulated on the record that Petitioner has reached maximum medical improvement and agreed to try the case on all issues, including the nature and extent of Petitioner's injuries. Therefore, the Arbitrator finds Petitioner is not entitled to prospective medical care.

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

The law in Illinois holds that "[a]n employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit." *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill. 1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill., 1990) citing *Ford Motor Co. v. Indus. Comm'n*, 126 Ill. App. 3d 739, 743, 467 N.E.2d 1018, 1021 (1984).

Based on the above findings as to accident, notice, and causal connection, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits for the claimed period 4/14/21 through 5/9/21. Petitioner testified he worked light duty through 4/13/21, the day prior to his surgery. He testified he started working for another employer on 5/10/21.

Respondent shall therefore pay temporary total disability benefits for the period 4/14/21 through 5/9/21, representing 3-5/7 weeks.

Issue (L): What is the nature and extent of Petitioner's injuries?

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of §8.1b of the Act; (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. 820 ILCS 305/8.1b. The Act further provides that "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither party submitted an AMA Impairment Rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner obtained new employment in a less physically demanding position. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 32 years old at the time of accident. Petitioner must live and work with his disability for an extended number of years. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record. The Arbitrator places some weight on this factor.

(v) **Disability**: On 4/14/21, Petitioner underwent a right anterior cruciate ligament reconstruction utilizing tibialis anterior allograft. Intraoperative findings revealed a right ACL tear wherein the ACL was completely incompetent and torn off the femoral attachment with only some posterolateral fibers remaining intact. On 4/29/21, Petitioner reported marked improvement in stability following surgery and he was doing exceptionally well. He was released at MMI on 8/19/21. Petitioner testified he returned to work for another employer on 5/10/21 and performs a desk job that is less physically demanding. He continues to have pain in his right knee when he engages in outdoor activities, such as playing basketball and running, and with cold weather. He takes Tylenol or Ibuprofen for his symptoms. The Arbitrator places greater weight on this factor.

Based upon all of the foregoing factors and the record taken as a whole, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 25% loss of the right knee/leg pursuant to Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 8/19/21 through 11/8/21, and shall pay the remainder of the award, if any, in weekly payments.

Linda J. Cantrell, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002887
Case Name	Adelberto Melendez v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0478
Number of Pages of Decision	10
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Jason Coffey
Respondent Attorney	Kenton Owens

DATE FILED: 12/12/2022

/s/ Christopher Harris, Commissioner

Signature

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

ADALBERTO MELENDEZ,

Petitioner,

vs. NO: 21 WC 2887

STATE OF ILLINOIS,
CHESTER MENTAL HEALTH 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 issue of permanent partial disability (PPD), 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 15, 2022, 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.

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

December 12, 2022

CAH/tdm
d: 12/8/22
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002887
Case Name	MELENDEZ, ADELBERTO v. STATE OF ILLINOIS/CHESTER MENTAL HEALTH CENTER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Jason Coffey
Respondent Attorney	Kenton Owens

DATE FILED: 6/15/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 14, 2022 2.16%

/s/ Linda Cantrell, Arbitrator

Signature

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

June 15, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Adalberto Melendez
Employee/Petitioner

v.

State of Illinois/Chester Mental Health Center
Employer/Respondent

Case # **21** WC **002887**

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 **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **3/25/22**. By stipulation, the parties agree:

On the date of accident, **9/2/20**, 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 $**70,198.77**, and the average weekly wage was $**1,349.98**.

At the time of injury, Petitioner was **56** years of age, ***married*** with **0** dependent children.

The parties stipulate that Respondent shall pay all reasonable and causally connected medical expenses directly to the medical providers pursuant to the medical fee schedule or PPO agreement, whichever is less. The parties stipulate that all temporary total disability benefits have been paid and Respondent is entitled to a credit for all TTD and nonoccupational indemnity disability benefits paid. The parties further stipulate that Respondent shall receive credit for all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act.

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 $**809.99**/week for a period of **43** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused permanent partial disability to the extent of **20% loss of Petitioner's right leg/knee.**

Respondent shall pay Petitioner compensation that has accrued from **7/9/21** through **3/25/22**, 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.

JUNE 15, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

ADALBERTO MELENDEZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 21-WC-002887**
	)	
STATE OF ILLINOIS/CHESTER MENTAL HEALTH CENTER,	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on March 25, 2022. The parties stipulate that on September 2, 2020, Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent and that his current condition of ill-being is causally connected to the injury. The parties stipulate that Respondent shall pay all reasonable and causally connected medical expenses directly to the medical providers pursuant to the medical fee schedule or PPO agreement, whichever is less. The parties stipulate that all temporary total disability benefits have been paid and Respondent is entitled to a credit for all TTD and nonoccupational indemnity disability benefits paid. The parties further stipulate that Respondent shall receive credit for all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act. The sole issue in dispute is the nature and extent of Petitioner's injuries.

TESTIMONY

Petitioner was 56 years old, married, with no dependent children at the time of accident. Petitioner was employed by Respondent as a Public Safety Officer for thirty years. Petitioner testified that Respondent's facility had a bad mole problem and while walking the outside perimeter on 9/2/20 he stepped in a hole. Petitioner twisted his right knee and fell to the ground. Petitioner initially thought he sprained his knee and continued working. Petitioner ultimately sought treatment and underwent a right meniscectomy. He was released at MMI on 7/12/21. Dr. Wood told Petitioner he was at a higher risk for long-term arthritis.

Petitioner testified his right knee is still sore and stiff when he wakes in the morning. He has to do stretching exercises before he gets out of bed. He has soreness with prolonged walking that develops into a limp. He has daily pain and takes Tylenol and Ibuprofen.

Petitioner testified he retired from employment on 12/1/21. He has not returned to Dr. Wood since being released at MMI. He agrees he told Dr. Wood that his knee was quite painful when he returned to work but it markedly improved. He was released to return to work without restrictions. Petitioner does not take prescription medication for his knee symptoms.

MEDICAL HISTORY

An MRI of Petitioner's right knee revealed a complex tear of the medial meniscus body posterior horn junction with incomplete radial component, an inner margin tear of the posterior horn root junction, mild tricompartmental chondrosis, and effusion with synovitis. (PX1)

On 10/9/20, Petitioner presented to Dr. John Wood at the Orthopaedic Institute of Southern Illinois with complaints of right knee pain, crepitus, swelling, and instability. (PX2) Dr. Wood diagnosed a complex tear of the medial meniscus and recommended surgery.

On 3/23/21, Dr. Wood performed a right knee arthroscopy with partial meniscectomy and an injection with 8mg of Decadron. Intraoperatively, Dr. Wood appreciated a large acute medial meniscal tear involving the posterior horn and body of the medial meniscus and he removed 33% of the meniscus.

On 4/2/21, Petitioner reported aching and throbbing pain. Physical examination revealed stiffness and swelling. Dr. Wood referred Petitioner to physical therapy.

On 5/14/21, Petitioner reported improvement but noticed his knee tired after walking for more than 30 minutes. Dr. Wood recommended continued physical therapy and light duty restrictions of no running. On 6/11/21, Petitioner reported persistent pain and Dr. Wood recommended work conditioning. Petitioner completed work conditioning and was observed to have given fair effort and met 75% of his reported job demands.

On 7/9/21, Petitioner described aching pain in his knee which Dr. Wood believed would be permanent. Dr. Wood noted Petitioner's knee had markedly improved and overall he was doing well. Petitioner was released to full work duty without restrictions. Dr. Wood noted Petitioner was at higher risk for long-term arthritis as a result of his injury.

CONCLUSIONS OF LAW

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (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. 820 ILCS

305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither party submitted an AMA rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner returned to full duty work without restrictions in his pre-accident position with Respondent. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 56 years old at the time of accident. Petitioner voluntarily retired on 12/1/21. Dr. Wood noted that the achiness in Petitioner's knee is likely permanent, and he is at higher risk for long-term arthritis. Petitioner must live with his symptoms for a number of years. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: There is no evidence that Petitioner's earning capacity was affected by his undisputed accidental injuries. Petitioner returned to full duty work in his pre-accident position and voluntarily retired on 12/1/21. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of his undisputed accidental injuries, Petitioner underwent a right partial meniscectomy. Dr. Wood noted a large acute medial meniscal tear involving the posterior horn and body of the medial meniscus and he removed 33% of the meniscus. Petitioner was released at MMI on 7/9/21, at which time he continued to complain of achiness in his knee. Dr. Wood noted that overall Petitioner made a marked improvement, but the achiness was likely permanent, and Petitioner was at a higher risk for long-term arthritis. Petitioner was released to full work duty without restrictions.

Petitioner testified that his right knee is still sore and stiff when he wakes in the morning. He has to do stretching exercises before he gets out of bed. He has soreness with prolonged walking that develops into a limp. He has daily pain and takes Tylenol and Ibuprofen. The Arbitrator places greater weight on this factor.

Based upon the aforementioned factors, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 20% loss of use of the right leg, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 7/9/21 through 3/25/22, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC024545
Case Name	Ashley Eyrse v. Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0479
Number of Pages of Decision	8
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Bradley Defreitas

DATE FILED: 12/12/2022

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

☒ 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

ASHLEY EYRSE,

Petitioner,

vs. NO: 18 WC 24545

STATE OF ILLINOIS,
ILLINOIS DEPARTMENT OF CORRECTIONS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of permanent partial disability (PPD), 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 11, 2022, 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.

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

December 12, 2022
CAH/tdm
d: 12/8/22
052

/s/*Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC024545
Case Name	Ashley Eyrse v. Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	5
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Bradley Defreitas

DATE FILED: 7/11/2022

THE INTEREST RATE FOR THE WEEK OF JULY 6, 2022 2.50%

/s/ Kurt Carlson, Arbitrator
Signature

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

July 11, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

- ☐ 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

Ashley Eyrse
Employee/Petitioner

v.

Illinois Department of Corrections
Employer/Respondent

Case # **18** WC **024545**

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 **Kurt Carlson**, Arbitrator of the Commission, in the city of **Bloomington**, on **May 27, 2022**. By stipulation, the parties agree:

On the date of accident, **7/17/2018**, 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 $**62,149.36**, and the average weekly wage was $**1,195.18**.

At the time of injury, Petitioner was **31** years of age, ***single*** with **0** dependent children.

Necessary medical services benefits have been provided by Respondent.

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

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

Per the stipulations of the parties the Respondent shall pay Petitioner 7.29 weeks at the rate of $797.19 per week for the date range of 07-17-18 to 09-06-18.

Respondent shall pay Petitioner the sum of $717.11 for 7.5 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused 1.5% loss of person as a whole.

Respondent shall pay reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act and per the stipulation of the parties.

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.

Kurt A. Carlson

Arbitrator

JULY 11, 2022

Ashley Eyrse v Illinois Department of Corrections
18-WC-024545

Findings of Facts

Petitioner was the only witness at trial. Petitioner testified as to her injury, her treatment, and current complaints. The only issue in dispute is the nature and extent of Petitioner's right hip injury.

Petitioner testified that she is currently employed as a case worker for the Illinois Department of Human Services. She then testified that on the date of injury, July 17, 2018, she was employed as a correctional officer with the Illinois Department of Corrections.

On that day she was assigned to take inmates to court. She described what happened as "I went to get into the van…and when I stepped on the milk crate to step into the van, the milk crate shifted; and I instantly felt like a sharp pain in my right hip." TX at 9-10. Petitioner further noted that they used milk crates to get into the vehicles that were higher off the ground.

Petitioner testified about her previous service in the Army. While in the army she testified that she fell and hurt her hip. Id. Immediately after the incident Petitioner was transported back to the facility before an ambulance was called. She was transported then to Abraham Lincoln Memorial Hospital.

On that day Petitioner was given restrictions of no weight bearing of the right hip. She testified that she went back to work with restrictions on September 6, 2018. Id at 12.

She further testified that she was referred to Dr. DeJong who performed an MRI, ordered therapy, and performed an injection. Petitioner also testified that Dr. DeJong kept her on restrictions until December 3. Id at 13.

On cross-examination Petitioner testified that she hurt her hip twice while in the Army with the first time being in 2007 and the second time in 2010. Id at 14-15. She further testified that the MRI from Dr. DeJong came back as normal.

In regard to her current position with DHS she testified that she makes more money than she did with IDOC. She further testified that Dr. DeJong did give her a full duty release with no restricitons.

Petitioner's exhibits

The records from Abraham Lincoln Memorial Hospital were entered as Petitioner's exhibit 1. These records reflect that Petitioner underwent an x-ray and CT scan that were normal on the date of injury. The records further show that she injured her right hip when stepping up into a van. PX 1 p.8.

The records from Memorial Physician Services were entered as Petitioner's exhibit 2. These records reflect that Petitioner was seen first on July 20, 2018 where she complained of right hip pain. Her restrictions were continued on that initial visit. She continued to follow up with her doctor until she was referred to Dr. DeJong.

The records from Springfield Clinic were entered as Petitioner's exhibit 3. These records reflect that Petitioner was first seen by Dr. DeJong on September 13, 2018 for continued complaints of right hip pain. Dr. DeJong diagnosed her with right hip girdle pain status post injury. He recommended physical therapy and MRI arthrogram of the right hip. PX 3 p. 20-21. Dr. DeJong reviewed that MRI which came back completely normal and he continued her restrictions and physical therapy. Id at 16-17. These records

reflect that Petitioner was last seen on December 3, 2018 where she was nearly 100 percent with sporadic pain. At that visit she was released without restrictions. Id at p.6. The bills from Abraham Lincoln Memorial Hospital were entered as Petitioner's exhibit 4.

Respondent's exhibits

The employee notice of injury was entered as Respondent's exhibit 1. Petitioner stated that "I stepped onto milk crate to get into van…[w]hen stepping up a sharp pain went through my hip into my right leg." RX 1 p.1. The supervisor report of injury was entered as Respondent's exhibit 2. The supervisor's report matches the Petitioner's report of injury.

Conclusions of Law

As an initial matter the Arbitrator notes Petitioner has the burden of proving all of his case by a preponderance of the evidence. Chicago Rotoprint v. Industrial Comm'n, 157 Ill.App.3d 996, 1000, 509 N.E.2d 1330, 1331(1st Dist. 1987).

Issue (L): What is the Nature and Extent of the injury?

As Section 8(d) has two options for permanent partial disability awards then an analysis for a PPD award is necessary. With respect to disputed issue (L), pertaining to the nature and extent of Petitioner's injury, and consistent with 820 ILCS 305/8.1b, permanent partial disability shall be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1b of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. No single enumerated factor shall be the sole determinant of disability. Id.

With regard to subsection (i): The Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. Therefore, the Arbitrator gives no weight to this factor.

With regard to subsection (ii): the occupation of the employee: the Petitioner was employed as a correctional Sergeant and now is employed as a case worker for DHS. The job duties were not testified to by Petitioner, but she did testify that she has no current restrictions and is able to perform all her job duties. Therefore, the Arbitrator gives little weight to this factor.

With regard to subsection (iii): the Arbitrator notes that Petitioner was 31 years old at the time of the accident. The Petitioner is young and still has a significant amount of time left in the labor force, the Arbitrator gives moderate weight to this factor.

With regard to subsection (iv): Petitioner's future earnings capacity: Petitioner testified that her new position with DHS has a higher pay than her position with IDOC. Therefore, the Arbitrator places little weight on this factor.

With regard to subsection (v): evidence of disability corroborated by the treating medical records: the Arbitrator notes Petitioner underwent one injection and physical therpay. She underwent an x-ray, CT scan, and MRI that all came back normal. She was released with no restrictions less than 6 months after the injury and the only diagnosis was right hip girdle pain status post injury. Therefore, the Arbitrator gives this factor greater weight.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 1.5% loss of person as a whole, pursuant to §8(e) 9 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC009127
Case Name	Eugene De Vivo v. Apco Packaging
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0480
Number of Pages of Decision	61
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Susan Fransen
Respondent Attorney	Zane Thompson

DATE FILED: 12/12/2022

/s/ Christopher Harris, Commissioner

Signature

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

EUGENE DeVIVO,

Petitioner,

vs. NO: 16 WC 9127

APCO PACKAGING,

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 (TTD) benefits and permanent partial disability (PPD) 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 Commission modifies the Arbitrator's Decision to state that Petitioner is entitled to an award of, and Respondent shall pay, all reasonable and necessary medical charges related to the left shoulder and cervical spine incurred as a result of the August 13, 2015 work accident, and as detailed in Petitioner's Exhibits 1, 4, 7, 8, 10, 11, 14, 19, 21, 22, 24, 25 and 29. With respect to the BCBS lien, as itemized in Petitioner's Exhibit 29, there is no evidence that Respondent made any insurance contributions either wholly or partially pursuant to Section 8(j) of the Act. Thus, the Commission awards Petitioner the reasonable and necessary charges indicated on the BCBS lien, and as it relates to the left shoulder and cervical spine, but awards no credit to Respondent under Section 8(j) of the Act.

The Commission further modifies the TTD award. By its Brief, Respondent did not contest that Petitioner was entitled to TTD benefits from August 14, 2015 through August 30, 2015, but instead argued that any lost time thereafter was not related to the work accident. In affirming the

Arbitrator's Decision that Petitioner's left shoulder and cervical spine conditions are casually related to the August 13, 2015 work accident, the Commission also finds that Petitioner is entitled to TTD benefits for an additional period from December 23, 2015 through May 23, 2017. Petitioner was off work per Dr. Schaible's instructions and was entitled to TTD benefits through the date Dr. Schaible determined that Petitioner reached maximum medical improvement (MMI) for his cervical spine condition. Petitioner is further awarded TTD benefits from December 4, 2018 through February 6, 2019, the period in which Petitioner was off work following his left shoulder surgery through his last visit with Dr. Chaudri as evidenced by the record. The Commission finds that Respondent is entitled to a credit of $10,351.84 for TTD benefits previously paid and as evidenced in its Exhibit 5.

Finally as to PPD benefits, the Commission modifies the Arbitrator's findings as it relates to the fourth and fifth factors. For the fourth factor, there is no evidence indicating that Petitioner's future earning capacity was affected by the work accident. Petitioner had reached MMI for his cervical spine condition in May 2017 and then stopped actively treating for his left shoulder condition in February 2019. Neither Dr. Schaible nor Dr. Chaudri indicated that Petitioner could not return to his former occupation. Dr. Schaible made no comment with respect to this and Dr. Chaudri simply stated that light duty restrictions were typical following a reverse total shoulder arthroplasty. The Commission finds the evidence insufficient to determine Petitioner's true earning capacity given his work-related injuries. Petitioner did not return to work for Respondent or any other employer after December 22, 2015 and considering his age and other unrelated ailments, the preponderance of the evidence does not support a finding that Petitioner sustained a diminished earning capacity as a result of the work accident. The Commission therefore modifies the weight given to this factor from greater weight to little weight.

The Arbitrator also afforded greater weight to the fifth factor. The Commission agrees with the weight assigned to this factor but modifies the Arbitrator's findings. As a result of the August 13, 2015 work accident, Petitioner underwent a decompressive cervical laminectomy from C3 through C6 with a posterior lateral fusion and a left reverse total shoulder arthroplasty with biceps tenotomy. Petitioner testified that he had a fairly decent recovery in his left shoulder, but still had issues with strength and lifting heavy things up higher than before. As to his neck condition, Petitioner stated that the side of his neck was a little stiff or sore.

The Commission therefore finds that an award of forty-two-and-a-half percent (42.5%) loss of use of the person as a whole is appropriate for the injuries sustained as a result of the August 13, 2015 work accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 28, 2022 is hereby modified as stated above and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay pursuant to Sections 8(a) and 8.2 of the Act, the reasonable and necessary medical charges related to the left shoulder and cervical spine incurred as a result of the August 13, 2015 work accident and as detailed in Petitioner's Exhibits 1, 4, 7, 8, 10, 11, 14, 19, 21, 22, 24, 25 and 29.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is not entitled to a credit under Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $883.33 per week for 85 5/7 weeks, from August 14, 2015 through August 30, 2015, from December 23, 2015 through May 23, 2017 and from December 4, 2018 through February 6, 2019, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit of $10,351.84 for TTD benefits previously paid to Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $755.22 per week for 212.5 weeks because the injuries sustained caused forty-two-and-a-half percent (42.5%) loss of use of the person as a whole pursuant to Section 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.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all other 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 the Circuit Court.

December 12, 2022

CAH/pm
O: 12/8/22
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC009127
Case Name	DEVIVO, EUGENE v. APCO PACKAGING
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	57
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Susan Fransen
Respondent Attorney	Zane Thompson

DATE FILED: 3/28/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 22, 2022 0.87%

/s/ Joseph Amarilio, Arbitrator

Signature

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

Eugene Devivo
Employee/Petitioner

v.

APCO Packaging
Employer/Respondent

Case # **16** WC **009127**

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 **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, on **12/16/2021**. 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 13, 2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**68,900.00**; the average weekly wage was $**1,325.00**.

On the date of accident, Petitioner was **65** 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 $**10,351.84** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**10,351.84**. Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay to Petitioner the sum of reasonable and necessary medical services of $ **191,356.42** as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any bills it previously paid. BlueCross BlueShield is also either to be reimbursed or paid to Petitioner.

Respondent shall pay Petitioner temporary total disability benefits of **$883.33/week for 245-3/7 weeks,** commencing on **8/14/2013 through 8/30/15** and **12/23/2015 through 8/18/2020**, as provided in Section 8(b) of the Act

Respondent shall pay Petitioner permanent partial disability benefits of **$755.22/week for 225 weeks**, because the injuries sustained caused the **42.5 % loss of Petitioner's person as a whole**, as provided in Section 8(d)2 of the Act.

Penalties pursuant to Section 19 (k) and 19(l) and attorney fees under Section 16 are denied and not 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.

/s/ *Joseph D. Amarilio*

MARCH 28, 2022

Signature of Arbitrator Joseph D. Amarilio

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EUGENE DEVIVO,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. **16WC 009127**
	)	
	)	
APCO PACKAGING	)	
	)	
Respondent.	)	

MEMORANDUM AND DECISION OF ARBITRATOR

This matter proceeded to hearing by agreement of the parties on December 16, 2021 in the city of Chicago and county of Cook before Arbitrator Joseph Amarilio. The issues in dispute were accident, causal connection, unpaid medical bills, temporary total disability, nature and extent of the injury and penalties. See Arbitrator's Exhibit "Arb. X 1". Mr. Eugene DeVivo testified in support of his claim. Mr. Steve Guptill was called to testify by APCO Packaging. Dr. Salman Chaudri and Dr. Keith Schaible testified by evidence deposition at the request of Mr. DeVivo and Dr. Jay Levin testified by evidence deposition at the request of APCO Packaging.

On August 13, 2015, Mr. Eugene DeVivo (hereinafter referred to as "Petitioner") was 65-year-old married man with no dependent children under the age of 18. (Arb X 1) Petitioner was employed by APCO Packaging (hereinafter referred to as "Respondent") located in Bridgeview, Illinois. Petitioner testified he worked for Respondent as a maintenance man. (T, 16.) Respondent is a packaging company that packages powders and liquids. (Id.) Petitioner testified he was responsible for keeping the machinery running. (Id.) More specifically, he testified his job duties

included taking care of the conveyor belts including taking them apart and putting them back together and changing motors. (T, 17.) He worked for Respondent for approximately thirteen (13) years prior to the accident of August 13, 2015. (T, 18.) He testified his supervisors were Tom, Steve Guptill (hereinafter referred to as "Mr. Guptill"), and Clarence. (T, 19.) Before the work accident involved herein, Petitioner testified that he was healthy. He had a hip replacement on the right, a hernia repair a few times, and some left knee problems before the accident. After the accident Petitioner ended up having a left knee replacement with Dr. Chaudri that is not a part of the case before the Commission. T at 11-13.

Petitioner specifically testified that he never had problems with his neck prior to the work accident of August 13, 2015, but did have problem with his left shoulder before, a dislocation in early April 2015. T at 13-14. Petitioner thought he had therapy after this April dislocation and treated with Dr. Wardell. He admitted he saw Dr. Wardell on August 12, 2015, the day before the accident involved herein. Petitioner specifically recalled he did not get a prescription for an MRI of his left shoulder, or he would have had it done. He went back to work after this dislocation for the Respondent. T at 14-16. He actually was only off about one week from work and when he went back to work, it was full duty. He remained on full duty until the accident of August 13, 2015 happened. T at 19-20. He did admit that while sleeping, he had sensations of his left shoulder falling out of its socket on occasion before his work accident. After the work accident in August 2015 Petitioner testified that his left shoulder was worse and one night the shoulder did actually pop out. Upon movement of his arm it around, it went back in. T at 26-28.

Petitioner worked as a maintenance mechanic for the Respondent, APCO, a company that took different products and packaged them in bottles and tubs. There were only two mechanics on the job and Petitioner was the lead mechanic. Petitioner worked from 6:00 a.m. to 3:00 p.m.

He worked overtime occasionally. It was stipulated that Petitioner's average weekly wage was $1,325.00. (T at 16-17)

. Other than one reprimand many years before the accident, Petitioner was an employee in good standing and had a good relationship with the owners and supervisors, Tom, Mr. Steve Guptill and Clarence. He even did side work for the owner. (T at 17-19)

Before his work accident, Petitioner enjoyed woodworking, umpiring for kids, carpentry, helping neighbors, tiling floors, and construction projects on his own home. (T at 20-21)

On August 13, 2015, Petitioner was working for the Respondent at a shaker station where one of its tubes wore out and had to be replaced. He went into the back storage room where the parts were kept, and he took a 3-step ladder to use to reach the tube he needed. While standing on the second step, he reached forward to grab the box needed and fell. As Petitioner fell off of the ladder, he let go of the box and landed on a tote under his arm. He felt his left shoulder popped out of place. Because his legs were under him, he could not move his arm He was stuck on the ground. (T at 21-23). Petitioner identified photographs in Petitioner's Exhibit 3 (hereinafter "PX 3, A, B, and C of the condition of the ladder after it broke and caused him to fall. The photographs did fairly and accurately depict the condition of the ladder after the accident. One of the legs of the ladder had buckled. The ladder appeared to be in working order before the accident. (T at 24-26)

Unable to get up, Petitioner reached for his mobile phone out of his back pocket and called the office. He asked the lady who answered to call Mr. Guptill to come and help him. Mr. Guptill came back, helped him up, and helped him walk to the front. Greg, the owner came out, and Eugene told him his left shoulder was dislocated and he needed to go to the hospital. Mr. Guptill

drove him to Palos Community Hospital. (T at pp. 28-29) He did not think Mr. Guptill stayed after he got him inside the emergency. (T at pp. 29-30)

When Petitioner was in the hospital room, he took his shirt off. As he was moving to get the shirt off, he felt his shoulder pop back in. It was a great relief for Petitioner when this happened as the pain instantly reduced. Other than his left shoulder, Petitioner also had pain in his back as he had scratches on it and also on his shin that was not bothersome. Eugene identified PX 31, A, B, and C, which fairly and accurately depicted the scratches he sustained after the work accident. (T at pp.30-32)

When Petitioner ultimately returned to work after this accident, he asked the Respondent for the ladder, and Greg agreed to let him take it and keep it. Both Petitioner and Mr. Guptill discussed this accident and Greg admitted this was a work accident. (T at pp. 33-34)

Petitioner was off work from August 14 through August 30, 2015. Dr. Wardell sent him to physical therapy for his left shoulder. (T at 34) After this work accident, Petitioner noticed a bump on the inside of his left knee that was some sort of water buildup. This did go away after a few months and never came back. (T at 35) After a short period of time, Petitioner experienced some pain in his neck that had never been there before the accident of August 13, 2015. He originally thought it was the muscles from his shoulder into his neck. However, symptoms started getting worse, especially when he was at work. He would be walking around and felt funny, wobbly and could not move his legs right. (T at 36)

Petitioner worked full duty from August 31, 2015 through December 22, 2015. While working again, Petitioner said he felt wobbly – like his balance was off. He had had no other accident of any kind after this August 13, 2015 accident at work. (T at 37) Over the course of a few months, these symptoms got worse, and Petitioner started to feel a numb or sensitive sensation

in his feet and hands. He even had his feet feel hot or feel cold at different times. Petitioner's primary care physician, Dr. Nicholas Rizzo, referred Eugene to Dr. Keith Schaible to treat and care for these problems. His first visit with Dr. Schaible was on December 21, 2015. Petitioner treated with Dr. Wardell into November 2015 but did not feel Dr. Wardell took care of his complaints as he only sent him for therapy and that did not fix anything. T at 38-40.

Petitioner started seeing Dr. Schaible, a neurosurgeon, for his neck symptoms. Dr. Schaible sent Petitioner for additional testing and ultimately performed surgery on Petitioner's neck on April 22, 2016. The surgery helped the progressing imbalance, the numbness and the tingling. While all did not disappear after the surgery, Petitioner felt a lot better. Petitioner still has some balance issues post neck surgery. (T at 40-41)

During the recovery from the neck surgery, Petitioner was still having left shoulder problems where it was popping out of the socket more often. He had stopped treating with Dr. Wardell, and began treating with Dr. Chaudri, a doctor referred by his son, on February 7, 2018. (T at 42-43) Petitioner testified that he really did not want to have shoulder surgery after the work accident, as he was somewhat afraid. T at 43-44. Petitioner was examined by Respondent's Section 12 examiner, Dr Jay Levin, in February 2016 for his left shoulder. Dr. Levin ordered an MRI which Petitioner obtained promptly as it was at Dr Levin's facility. All Petitioner recalled about this MRI was that Dr. Levin told him there was nothing wrong. This was a main reason Petitioner did not seek further treatment. Relying on Dr. Levin, he thought he just had to live with shoulder as is. (T at 44)

On December 4, 2018, Petitioner underwent a reverse shoulder replacement surgery on his left shoulder which as performed by with Dr. Chaudri, after undergoing testing prior for his neck

and shoulder. (T at 45) Petitioner is doing well considering he is missing 3 muscles. The left shoulder is not as strong as it should be but is better than it was.

After Petitioner was taken off of work by Dr. Schaible starting on December 23, 2015, he never worked again for the Respondent, or anyone. He was never released by any of his treaters to full duty work. (T at 46-47)

Before working for the Respondent, Petitioner worked at Chicago Metallic Corporation, which turned into Chicago Finished Metals. He worked for this company for almost 35 years. He never an issue doing his job during this time. (T at 47) At APCO, Petitioner never discussed retirement with the owner, who asked him to tell him if he intended to do so. Petitioner testified that he would probably still be working there if this work accident had never happened. (T at 48)

Petitioner had a medical visit for something in his eye on December 21, 2015. This was from welding on the job. The MRI facility had to verify that there was no metal in his eye before they did an MRI on him, so it was safe. Petitioner has not had any other accidents of any kind, after this work accident of August 13, 2015. (T at 49)

Petitioner testified that he currently takes Gabapentin as prescribed by Dr. Schaible, for shaking sensations in his body. This helps quite a bit. He never had this problem before his work accident. He also had an additional MRI of his neck after his surgery. He has no plans to have any other surgeries on his neck or shoulder. (T at 50-51) Petitioner is not claiming his carpal tunnel syndrome has anything to do with his work accident of August 13, 2015. (T at 52)

Petitioner has no scarring from the abrasion on his left leg. He is unaware if he has any scars from the abrasions on his back region from the ladder accident. As to his left shoulder, Petitioner stated that it is fairly decent in that it is usable. However, it is not at full strength and if he has to pick up something heavy, he can feel it. He also has limited overhead range of motion as he cannot

lift heavy objects above the shoulder level. Without anything in his hands, he can lift his arm overhead. Further, if he does a lot of small things here and there, his shoulder will ache which he tries to ignore. (T at 53-54) His left shoulder does not prevent Petitioner from performing his activities of daily living. (T at 54-55)

As to Petitioner's neck, it still gets sore, like it was when testifying. He stated he has a high pain tolerance and tries to ignore half of the stuff he feels. He still has numbness in his right hand, and to a lesser degree, in his left. He had this since shortly after the work accident, but it is better since the neck surgery. (T at 55-56) Petitioner still has balance issues since this work accident where he feels like something is pushing him forward. Other times, he will turn a little bit too quick and stumble. Finally, his walk is off in that he sometimes steps to the side. It is better since the surgery on his neck, but still there. (T at 56-57) Petitioner purchased a pair of shoes that he was wearing at the hearing that are specially designed for balance issues. (T at 57-58)

As to the hobbies Petitioner, he still is able to do woodworking and only needs to modify what he is doing if the project involves heavy wood pieces. As to tiling, helping neighbors, etc., Petitioner only has the problem with lifting heavy objects, but really has not tried doing it as he had a knee replacement. (T at 58-59)

Petitioner testified that his bills were paid through BlueCross/BlueShield, as indicated on PX 29. This insurance was not provided by the Respondent. (T at 60-61) He also stated that he continues to have stiffness and limited neck range of motion He demonstrated and had limited ability to look up and has to turn his body to look side to side. He was able to turn his head to an approximate 45-degree angle. (T at 61-62)

On Cross Examination Petitioner admitted that he is not claiming that his left knee and his CTS are related to his work accident. He weighed approximately 190-195 pounds on the date of

the accident. Petitioner stated that the ladder could probably hold up to about 330 pounds. (T at 62-63) Petitioner testified that Mr. Guptill was the first person on the scene, and he told him he could not get up and the ladder was not on top of him. The ladder fell to the right and Petitioner's body went to the left. (T at 64) He was in so much pain, Petitioner was not quite sure which direction the ladder went. (T at 65)

As to the accident itself, Petitioner looked at PX 3A, and testified that the ladder was facing the wall like it was facing the shelves at work when he reached for the box with the hoses in it. He was reaching with both hands for the box. (T at 65-66) Petitioner did not recall telling personnel at the hospital anything about the ladder when giving them his history except to say he fell off of one. [The hospital emergency department in fact recorded a history consistent with Petitioner' testimony and the accident report completed by his supervisor] He also did not recall telling Dr. Wardell that the bottom rung of a 2-step ladder broke off when the accident happened. Petitioner clearly stated that if Dr. Wardell wrote that down, that is incorrect as that is not what happened. (T at 66-67)

Petitioner testified that he did in fact ask Greg, the owner, if he could take the ladder home with him and he thinks his son was with him and helped him. (T at 69)

Petitioner stated that he is right hand dominant and believed that Dr. Wardell told him he should do therapy on April 8, 2015, when he first dislocated his left shoulder. Petitioner believed he did therapy. Petitioner acknowledged that if the records show that Dr. Wardell ordered x-rays on his left shoulder on August 7, 2015, than that is probably accurate. Petitioner did still have some symptoms on August 12, 2015 when he saw Dr. Wardell and truly did not recall if he in fact did therapy after the April dislocation, or if it even was prescribed. (T at 69 and 72-73)

Petitioner testified that his shoulder did pop back into place at the emergency room after the August 13, 2015 accident. (T at 73) Petitioner also worked full duty after he dislocated his left shoulder the first time in April 2015 for APCO, and did not recall ever being told to be on light duty. (T at 74-75.) When Petitioner returned to work after the August accident, he did work light duty but admitted his memory in general is not the best. He stated that if the records stated that he worked light duty till November 25, 2015 when Dr. Wardell released him, that would be correct. (T at 75-76)

Petitioner did not recall telling Dr. Levin, Respondent's Section 12 examining physician, that he had recently fallen recovering from an injury at home. Apparently he had a fresh abrasion on his right calf. (T at 76) He admitted after the Section 12 examination, he did not have further treatment on the left shoulder until February 2018 with Dr. Chaudri. (T at 77) Petitioner was not offered injections into his left shoulder by Dr, Chaudri and had finished physical therapy on March 8, 2019. (T at 78)

Petitioner did recall telling Mr. Guptill that his shoulder had popped out of the socket on the date of the accident. (T at 79) Further, when Petitioner returned to work on August 31, 2015, the Respondent did accommodate his restrictions. He had a good rapport with Greg and other workers there and would still be working there but for this accident and his balance issues. (T at 80-81)

On Redirect Examination Petitioner stated that he is not claiming his knee replacement as part of the work accident of August 13, 2015. He did however have an abrasion on it and a bump had formed as well. (T at 81-82) As to the CTS, Petitioner had this prior to the work accident and had the carpal tunnel release. The symptoms he felt from that, was different because it involved his hand and three fingers that always felt painful and throbbed. This disappeared after the CTS surgery. Now he only feels the sleepiness in the fingers from the neck injury. The CTS was the

index, middle and ring finger and now the numbness Petitioner has left came after the work accident and is different. (T at 82-84)

Petitioner unequivocally testified that the leg on the ladder is what broke, causing his work accident of August 13, 2015. A rung on the ladder did not break but Petitioner did fall off of the step or rung after the leg broke. (T at 84-85)

When Petitioner returned to work after his first dislocation in April 2015, he did work full duty. He knew the difference between light duty and full duty as light duty did not involve climbing ladders and full duty did. (T at 86-87)

As to his neck, Petitioner did complain about stiffness going up his back/shoulder into his neck to the therapist. (T at 87-88) Petitioner testified that Dr. Wardell never prescribed an MRI of his left shoulder after the work accident, and he was recovering from neck surgery during the time between shoulder treatments. (T at 88) Petitioner did not recall having any accident at home involving his shin. (T at 89)

On Recross Examination Petitioner stated he could work light duty without using ladders after the work accident, until he started feeling wobbly and funny when walking. T at 90.

On Redirect Examination Petitioner testified that Exhibit 3, A-G were taken within two weeks of the accident of August 13, 2015. (T at 91)

Mr. Guptill testified on behalf of the Respondent. He was and is an employee of the Respondent and currently has been the plant manager for five years. (T at 93-9) His job duties now include having two production managers that work underneath him that supervise the floor, shipping, receiving and the maintenance departments. On August 13, 2015, Mr. Guptill was the production manager and his duties included overseeing the maintenance department, the floor, and shipping/receiving. (T at 94) Mr. Guptill was familiar with Petitioner. He was an employee of the

Respondent and worked as a maintenance mechanic. This job included line changeovers, repairing lines, changing motor, conveyor, etc. Petitioner reported to Mr. Guptill, and he worked with him on a daily basis. (T at 94-95)

On August 13, 2015, Mr. Guptill and Petitioner were both at work and at about 9:00 a.m. Mr. Guptill received a page to go to maintenance. He went back there and heard someone yelling and found Petitioner on the floor. Petitioner said he could not get up. Mr. Guptill saw a ladder laying on the ground, saw no blood, and then assisted Petitioner off of the floor. Petitioner told Mr. Guptill that his arm was dislocated, and he could not move it. Petitioner also told Mr. Guptill something about his left shin and back and had some scrapes. (T at 95-96) When Mr. Guptill found Petitioner, the ladder was to the right of Petitioner and Petitioner was next to a plastic tote and in front of the shelving. (T at 97-98) After helping Petitioner up, Mr. Guptill walked him to the office and asked him some questions about the accident, gave him an ice pack and took him to the emergency room. After arriving at the emergency room, Mr. Guptill saw Petitioner's wife and did not stay. (T at 98-99)

Mr. Guptill identified Respondent's Exhibit 4, an accident report he filled out right after Petitioner's August 13, 2015 incident. This for the OSHA log. (T at 100-101) As part of this report, Mr. Guptill wrote that Petitioner stated that his arm was dislocated, and he had contusions or scrapes on his left shin and on his back. There was no mention of neck or knee pain in the report. (T at 102-103) Mr. Guptill was aware that Petitioner had a shoulder injury from skydiving prior to August 13, 2015. Mr. Guptill also testified that Petitioner returned to work after the ladder accident on August 31, 2015. (T at 103) He recalled Eugene being on light duty and he had instructed Petitioner not to do anything he could not do involving his left arm. He was also to tell

Mr. Guptill if he needed help with anything. He knew Petitioner was restricted from using ladders. (T at 104-105.)

Mr. Guptill testified that the company had a policy that employees who had a non-work related condition of ill-being needed a full duty release before coming back to work. However, the company would off light duty, accommodated work, for employees who had a work-related injury (T at 105)

The ladder that broke on the date of the accident was owned by the Respondent and Mr. Guptill was unaware of employees taking home ladders. An employee could ask to borrow tools and possibly take these home if allowed. (T at 106)

In light of Respondent's attorney cross examination of Petitioner noting some inconsistencies the medical records if the ladder rung broke versus a ladder leg breaking, the Arbitrator asked Mr. Guptill if he was disputing that the ladder leg bent in the accident of August 13, 2015, and the witness stated no. Mr. Guptill further testified that this was why the owner threw out the ladder as it was damaged. Mr. Guptill also admitted that everything about Petitioner's fall and work accident was consistent with the leg buckling on the ladder. (T at 106-107) Mr. Guptill finally testified that he was unaware of Petitioner ever requesting a return to work after December 22, 2015. If he did, light duty would have been made available. (T at 108)

On Cross Examination Mr. Guptill admitted that Petitioner's stated version of the accident was consistent with what he observed. He also saw an abrasion on Eugene's left shin, right under his knee. He had no opinions as to any injuries claimed after August 13, 2015. (T at 109-110) Mr. Guptill admitted he did not actually see the owner throw away the ladder involved in this accident. He also testified that after the skydiving incident, Eugene came back full duty as this did not

happen on the job and Petitioner worked full duty until the accident with the ladder happened. (T at 110)

Medical History:

Left shoulder:

On April 8, 2015, Petitioner presented to Dr. Wardell regarding his left shoulder. (Pet. Ex. 9, p. 5.) He reported he was a 66-year-old male who was at an indoor skydiving facility and leaned into the diving area, dislocating his left shoulder. He did not recall any other injury or fall. (Id.) Physical examination demonstrated minimal swelling. Normal neurovascular examination. Good overall alignment. He demonstrated no significant instability. X-rays of the left shoulder demonstrate relocated left shoulder**.** Dr. Wardell opined that no surgical intervention was warranted. He was prescribed physical therapy and given a sling and Mobic prescription was given, with instructions to return to work light duty, with no use of the left arm. Dr Wardell rendered a diagnosis of status post left shoulder dislocation. (Id. at p. 5-8.) It was noted he is right hand dominant. (Id. at p. 5.)

He returned to Dr. Wardell on August 12, 2015. Dr. Wardell noted that Petitioner was presenting for follow-up, approximately 5 years 2 months post right total hip arthroplasty. In addition, his left shoulder is noted to have continued discomfort, which has been slow to improve. X-rays were ordered for the left shoulder. (Id. at p. 12.) He reported his shoulder felt like it was coming out of position while sleeping. (Id.) He had not done the physical therapy that Dr. Wardell had ordered. (Id.) On examination, he had a positive apprehension test. (Id.) X-rays documented evidence of anterior subluxation of the humeral head without evidence of fracture or dislocation. (Id.) He was diagnosed with status post left (sic.) total hip arthroplasty and left shoulder anterior

instability, status post dislocation, and an MRI of the left shoulder was ordered. (Id.) It was noted that he was currently on Mobic. (Id., p. 14)

On February 15, 2016, Petitioner presented to Dr. Jay Levin for an examination at Respondent's request pursuant to Section 12 of the Act. (RX 1) In an addendum report, Dr. Levin diagnosed him with a left shoulder strain as a result of the alleged work accident, noting Petitioner had a pre-existing dislocation and development of a Hill-Sachs lesion in the left humeral head. (RX1, p. 105) An MRI completed at the examination did not demonstrate any acute findings as it related to an August 13, 2015, occurrence. (RX 1, p. 106.) He opined Petitioner was at maximum medical improvement. (RX, p. 107.)

Petitioner did not treat for the left shoulder again until February 7, 2018, relying upon the opinion of Dr. Levin that he has reached maximum medical improvement. while seeing Dr. Chaudri for his left knee. (Resp. Ex. 24, p. 27.) He did not discuss any history of left shoulder problems. (Id.)

He was diagnosed with a closed anterior dislocation of the left humerus, recurrent, and an MR Arthrogram was ordered. (Id. at p. 29.) The MRI demonstrated a chronic massive rotator cuff tear with advanced atrophy, advanced atrophy of the teres minor, complete tear of the intra-articular long head biceps tendon, anterior labral tear, and old small shallow Hill-Sachs impaction fracture.

Dr. Chaudri reviewed the imaging on March 21, 2018, as demonstrating a likely rotator cuff rupture, osteoarthritis of the glenohumeral joint, non-traumatic rupture of the left rotator cuff tendon, and rupture of the proximal biceps tendon. (Id. at p. 36.) He recommended a reverse total shoulder replacement. (Id.) It was at this appointment he noted Petitioner had a fall at work and experienced significant pain and recurrent dislocations. (Id. at p. 34.) The surgery was completed

on December 4, 2018. (PX 15, p. 111.) The HPI section notes Petitioner was previously offered surgery and refused and had received multiple injections. (Id. at p. 107, 112.) On January 9, 2019, at a re-check, Dr. Chaudri opined the shoulder surgery was related to the alleged work accident. (PX 24, p. 51.) On March 8, 2019, Petitioner was discharged from physical therapy. (PX 26, p. 5.)

Dr. Chaudri was deposed on August 24, 2020. (PX 27.) He is an orthopedic surgeon with a specialty in sports medicine. (Id. at p. 9.) He testified the last time he saw Petitioner regarding the left shoulder was June 3, 2020. (Id. at p. 11.) Petitioner first presented to him on June 14, 2017, for left knee pain. (Id. at p. 12.) At subsequent appointments on June 19, 2017, June 29, 2017, and July 6, 2017, the complaints and treatment were left knee related. (Id.) He testified the first time he saw Petitioner for the left shoulder was February 7, 2018. (Id. at p. 13.) He testified Petitioner first related the left shoulder condition to the work accident on March 21, 2018. (Id. at p. 17.)

Dr. Chaudri testified Petitioner was a candidate for surgery at that time given his report of recurrent dislocations. (Id. at p. 20.) He opined it was related to the alleged work accident. (Id. at p. 23.)

He testified he had not reviewed the February 15, 2016, MRI ordered by Dr. Levin. (Id. at 24.) By January 9, 2019, he testified Petitioner's range of motion was doing very well. (Id. at p. 28.) Following an appointment on February 6, 2019, at which time Petitioner was "doing well" he testified he did not see him again for the shoulder until June 30, 2020. (Id. at p. 30.) He testified he did not give any opinions regarding work while treating Petitioner for the left shoulder and could not recall whether Petitioner was working or retired. (Id. at p. 31.) Normally, he testified, a patient can return to light duty work 2-3 months after surgery, with full recovery 4-6 months after surgery. (Id. at p. 32.) He testified Petitioner's shoulder will have limitations for the rest of his life. (Id. at p. 35.)

On cross-examination, Dr. Chaudri could not recall Petitioner's preinjury job duties. (Id. at p. 37.) He testified if someone experienced a first shoulder dislocation, more likely than not they would need medical intervention to get the shoulder back into place. (Id.) He testified the MR arthrogram findings could have been present more than three years prior to the time of the study. (Id. at p. 38.) He testified as part of his treatment of Petitioner's left shoulder he did not review outside medical records. (Id. at p. 40.) He testified had he known Petitioner told Dr. Wardell the day before the alleged work accident that he felt like his shoulder was coming out of position while sleeping and had a positive apprehension test, it would affect his causation opinion. (Id.)

Dr. Levin was deposed by Respondent over two days, on August 25, 2020 (RX 1) and the deposition was completed on October 13, 2020 (RX 2) Dr. Levin testified he is an orthopedic and spinal surgeon. (RX 1, p. 6.) He treats for patients regarding cervical spine, lumbar spine, shoulder, hip, and knee complaints. (Id. at p. 9.) He testified regarding the history of accident Petitioner reported to him, involving climbing a two-step ladder, falling when the right leg of the ladder broke onto a tote, and getting his legs stuck in the ladder. (Id. at p. 15.) Petitioner reported an abrasion over his right calf was from a fall at his home when recovering from the alleged work accident. (Id. at p. 20.) Dr. Levin testified that following his examination on February 15, 2016, he recommended a left shoulder MRI. (Id. at p. 36.)

Regarding the August 12, 2015, appointment note from Dr. Wardell, Dr. Levin testified a doctor ordering an MRI is "absolutely not" discharging a patient from care. (Id. at p. 40.) He testified a shoulder dislocation makes a person more prone to subluxation or outright dislocations in the future. (Id. at p. 42.) He opined based on the x-rays taken on August 13, 2015, that Petitioner did not have a dislocated shoulder at that time. (Id. at p. 46.) The only left shoulder diagnosis causally related to the alleged work accident was a left shoulder strain. (Id. at p. 48.) He testified

the strain would not have accelerated the degeneration of the shoulder to the point Petitioner became a candidate for a total shoulder replacement. (Id. at p. 51.) He opined the alleged work accident did not prevent Petitioner from working. (Id. at p. 53.) He testified that as of his addendum report on March 8, 2016, Petitioner was at maximum medical improvement. (Id.) Between August 13, 2015 and August 26, 2015, Dr. Levin testified he would have restricted Petitioner's left arm work capabilities. (RX 2, p. 20.)

Cervical Spine/Neck:

When presenting to Palos Hospital emergency room on August 13, 2015, it was recorded that Petitioner did not report neck pain. (Pet. Ex. 2, p. 14.) On September 14, 2015, Petitioner complained of left-hand numbness at physical therapy. (Pet. Ex. 9, p. 51.) While in physical therapy for his shoulder on September 23, 2015, he reported some neck pain. (Id. at p. 64.) At therapy on September 25, 2015, he reported his left arm went numb over the weekend, but he shook it, and it went away. (Id. at p. 67.) On October 2, 2015, he reported a shooting pain when turning his neck wrong the day prior. (Id. at p. 78.) He told Dr. Rizzo on November 16, 2015; he was experiencing some neck pain from the fall. (PX. 6, p. 10.) An EMG was ordered due to the left-hand complaints, demonstrating moderate left carpal tunnel syndrome and severe right carpal tunnel syndrome, with no cervical radiculopathy. (Id. at p. 58-63.)

He presented to Dr. Schaible on December 17, 2015, which was incorrectly recorded as a work accident in October [Dr. Schaible subsequently corrected the date of accident] with persistent neck pain and unsteady balance since that time. (Pet. Ex. 11, p. 27.) Dr. Schaible was concerned for a cervical disc herniation and myelopathy and took Petitioner off work pending an MRI. (Id.) The MRI completed on December 21, 2015, demonstrated multilevel degenerative disc disease,

varying degrees of foraminal narrowing, and central stenosis at C4-5, C5-6, and C6-7. (PX 12, p. 31-32.)

Petitioner saw Dr. Levin for a Section 12 examination on February 15, 2016. (RX. 1.) Dr. Levin noted an EMG completed on November 10, 2015, did not provide strong evidence of cervical radiculopathy, consistent with the absence of cervical spine complaints following the alleged work accident. (RX 1, p. 104.) He opined Petitioner's cervical spine complaints were not related to the alleged work accident. (RX 1, p. 105.)

On April 22, 2016, Petitioner underwent an elective decompression, laminectomy C3-C6, posterior lateral fusion and local bone graft with Dr. Schaible. (PX 11, p. 31.) He began physical therapy for the neck on June 21, 2016. On August 16, 2016, Dr. Schaible ordered an MRI of the neck and brain due to complaints regarding balance by Petitioner. (PX. 12, p. 8.) He kept Petitioner off work. (Id.) The MRI of the brain completed on August 29, 2016, was normal. (Id. at p. 21.) The MRI of the cervical spine completed the same day demonstrated multi-level degenerative joint disease status post C3-6 spinal decompression and posterior fusion. (Id.)

On May 23, 2017, Dr. Schaible opined Petitioner had pre-existing cervical spondylosis but that the alleged accident "likely worsened, aggravated or made the condition become symptomatic necessitating surgery." (Id. at p. 5.) Petitioner next presented to Dr. Schaible on July 18, 2019, and an MRI was ordered, which Dr. Schaible read as demonstrating stable post-operative appearance of the spine with stable multilevel degenerative disc disease, interval development of the left thyroid nodule measuring up to two (2) centimeters. (PX 13, p. 10-11.) He recommended a new EMG for Petitioner's possible carpal tunnel symptoms. (Id.) The EMG was completed on January 27, 2020, demonstrating severe right and moderate left carpal tunnel syndrome. (Id. at p. 25-27.) On March 12, 2020, Petitioner underwent a right carpal tunnel release. (Id. at p. 30.)

On August 31, 2020, another cervical MRI was completed. Dr. Schaible reviewed the images on October 6, 2020, as demonstrating stable changes with persistent and stable degenerative changes at C6-C7, with no cord compression. (Id. at p. 5, 14.) He prescribed Neurontin. (Id. at p. 5.)

Dr. Schaible provided evidence deposition testimony on September 30, 2020. (Pet. Ex. 28.) He again opined the work fall aggravated/worsened the previous underlying degenerative disc disease. (Id. at p. 20.) He opined the surgery on April 22, 2016, was causally related to the alleged work accident. (Id. at p. 23.)

He testified the brain and cervical MRIs completed on August 29, 2016, did not demonstrate any explanation for Petitioner's balance issues. (Id. at p. 30.) He did not see Petitioner from May 23, 2017 until July 18, 2019. (Id. at p. 32.) That visit was regarding Petitioner's hands, not his neck. (Id.) As for the cervical MRI completed on August 31, 2020, he testified it demonstrated degenerative osteoarthritic changes, without cord pressure. (Id. at p. 34.) He testified he believed the neck treatment Petitioner has received would interfere with activities of daily living. (Id. at p. 35.) He testified he never released Petitioner back to work due to persistent complaints of neck pain. (Id. at p. 36.) He testified it was not uncommon for patient's to be off work 6-12 months after surgery and would not comment on Petitioner's ability to return to work after May 23, 2017. (Id. at p. 38.)

At the October 6, 2020, office visit Dr. Schaible recorded that Petitioner continued to complain of balance issues, but the Arbitrator is mindful that there is no evidence that Dr. Schaible ever related these issues to the cervical spine condition, or to the work accident. An MRI of the brain taken due to these complaints was interpreted to be normal. (PX 11, p. 21.)

On cross-examination at the deposition, Dr. Schaible testified he was in error when he wrote Petitioner's accident occurred in October of 2015. (Id. at p. 41.) He testified that at the appointment on May 23, 2017, it sounded like Petitioner's wife "may have been driving the bus in terms of the discussion for the causal connection between the accident and the need for surgery." (Id. at p. 47.) Regarding work restrictions, he testified the last time work status was discussed August 25, 2016, keeping Petitioner off work until a follow-up on September 13, 2016. (Id. at p. 48.) He testified the only description of job duties he had was a note referring to "medium work 50 pounds." (Id. at p. 49.) He testified he essentially released Petitioner from care at maximum medical improvement on May 23, 2017. (Id. at p. 50.) He testified he was not aware whether Respondent could have accommodated light duty restrictions between August of 2016 and May of 2017. (Id. at p. 52.)

Dr. Levin testified at his deposition that nothing in his review of the cervical MRI dated December 21, 2015, could be classified as acute. (Resp. Ex. 1, p. 29.) He testified the cervical findings were chronic. (Id.) The findings were more than four months old. (Id. at p. 30.) The x-rays of the cervical spine taken in office were consistent with chronic degenerative changes. (Id. at p. 33.) He reiterated there was no evidence of an injury to the cervical spine from the alleged work accident. (Id. at p. 47.) He opined Petitioner was not a candidate for the cervical spine surgery, and the surgery was not causally related. (Id. at p. 49.)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(b)3(d)*. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954).

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47. Credibility is the quality of a witness which renders his evidence worthy of belief. The arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award may not stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill.

2d 490 (1972). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission,* 79 Ill.2d 249, 253 (1980); *Hosteny v. Workers' Compensation Commission,* 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent with the record as a whole. He does not appear to be a sophisticated individual and any inconsistencies in his testimony are not attributed to an attempt to deceive the finder of fact. The Arbitrator finds the testimony of Respondent's witness to be straight forward, truthful, and consistent with the record as a whole with one glaring exception. His testimony regarding light duty work being available if Petitioner had requested it for the disputed TTD periods is totally inconsistent with the company policy. The Arborator finds the testimony of Petitioner's treating physicians to be credible and consistent with evidence. The Arbitrator is persuaded by their testimony. On the other hand, the Arbitrator did not find the findings and opinions and testimony of Dr. Jay Levin to be persuasive.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Petitioner met his burden and proved that he sustained an accident that arose out of and in the course of his employment with the Respondent. The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *McAllister v. Illinois Workers' Compensation Comm'n,* 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. Id. "The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." Id. at ¶ 36. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. Id. The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." Id. at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." Id. at ¶ 46. Here, Petitioner injury occurred while he was performing an activity in conjunction with employment and was confronted with a risk associated with hie employment Petitioner accident falls within the guidelines of *McAllister.*

The Petitioner worked as a maintenance mechanic for the Respondent for 13 years and testified that on August 13, 2015, he was working at a shaker station, when one of its tubes wore out, and he had to replace it. He went into the back storage room where all the parts were kept, and he took a 3-step ladder to use to reach the tube he needed. While standing on the second step, a leg of the ladder buckled and broke as reached forward to grab the box needed, causing him to fall. As Petitioner fell off of the ladder, he let go of the box and landed on a tote under his arm. As his legs were under him and he could not move his arm, he was stuck. He fell completely to the ground. See PEX 3 A-G, depicting the condition of the ladder after it broke and caused him to fall. The ladder did not break until Petitioner stepped on it.

Mr. Guptill ("Mr. Guptill") testified on behalf of the Respondent. He was the production manager on the day of the accident. On August 13, 2015, Mr. Guptill and Petitioner were at work and at about 9:00 AM. Mr. Guptill received a page to go to maintenance. He went back there and heard someone yelling and found Petitioner on the floor. Petitioner said he could not get up. Mr. Guptill saw a ladder laying on the ground. He saw no blood. He assisted Petitioner off of the floor. Petitioner told Mr. Guptill that his arm was dislocated, and he could not move it. Petitioner also told Mr. Guptill something about his left shin and back that had some scrapes. When Mr. Guptill found Petitioner, the ladder was to the right of Petitioner and Petitioner was next to like a plastic tote and in front of the shelving. After helping Petitioner up, Mr. Guptill walked him to the office and asked him some questions about the accident, gave him an ice pack and took him to the emergency room. Mr. Guptill filled out an accident report that contained the exact description of the accident as Petitioner testified to in the hearing and as recorded in the emergency room. See RX 4, an accident report completed by Mr Guptill right after Petitioner's August 13, 2015 incident.

The Arbitrator asked Mr. Guptill if he was disputing that the ladder leg bent in the accident of August 13, 2015, and he stated no. He also admitted that everything about Petitioner's fall and work accident was consistent with the leg bending on the ladder. (T at 106-107)

The Arbitrator notes that the Palos Community Hospital Emergency Department records record a history consistent with Petitioner's testimony. Moreover, the physical examination noted a few abrasions in his left leg, lateral posterior calf as well as his left back. The abrasions corroborate Petitioner's testimony and consistent with a fall.

The medical records of Dr. Steven Wardell of Parkview Orthopedic Group regarding the post-accident office visit on August 21, 2015 records that Petitioner who is recovering from a left shoulder dislocation which occurred earlier this year was at work on August 13, 2015 and provided a history of falling off a two-step ladder when the bottom rung broke and falling onto a plastic box injury his left shoulder. He felt as his shoulder "popped out of the socket" superiorly and subsequently spontaneously came back into place. (PX 7, p.21) Dr. Wardell noted Petitioner developed a large abrasion over the posterior aspect of the scapula and shoulder with the injury after falling off the two-step ladder. (PX 7, p. 22). Upon physical examination, Dr. Wardell noted that Petitioner's left shoulder demonstrated significant pain with range of motion of the left shoulder. He demonstrated evidence of discomfort with forward elevation. He has moderate swelling and healing longitudinal multiple abrasions over the posterior aspect of the lateral border of the scapula and latissimus posteriorly. He demonstrated positive impingement sign and tenderness over the AC joint. These findings are consistent with the work accident of August 13, 2015.

The Arbitrator finds as a matter of law that Petitioner has met his burden of proof by more than a preponderance of the evidence that he sustained an accident on August 13, 2015. The

Arbitrator further finds that Respondent's accident defense lacked merit. It was not supported by the evidence. It is contrary to Respondent's accident report, the photographic evidence, the testimony of Respondent's witness, the history of accident recorded by the emergency department, and even Respondent's own initial post-accident conduct. Respondent initially accepted the claim and would not have provided him with light duty work but for the fact that it believed an accident occurred.

Respondent assertion that it eventually denied the claim upon discovering that Petitioner had a prior shoulder dislocation is without merit. Respondent was aware of the prior dislocation and did not allow Petitioner to return to work until he could do so without restrictions. Respondent's witness testified that he knew of the earlier non-work-related dislocation. When Petitioner appeared in the emergency room on the date of accident, he volunteered that he had a prior shoulder dislocation. He volunteered that he had seen his physician the day before the accident. Petitioner did not attempt to cover up his pre-existing condition. Petitioner was truthful. And Petitioner appeared to be truthful while testifying. On the other hand, Respondent's accident defense totally inconsistent with the material facts. It is baseless and disingenuous. In conclusion, the Arbitrator finds that the Petitioner sustained an accident that arose out of and in the course of his employment with Respondent.

WITH RESPECT TO ISSUE ("F"), IS PETITIONER'S CURRENT CONDITION OF ILL BEING CAUSALLY RELATED TO THE INJURY? THE ARBITRATOR FINDS AS FOLLOWS:

"In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim." R & D Thiel v. Illinois Workers' Compensation Comm'n, 398 Ill. App. 3d 858, 867 (2010). "'[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment.'" *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, (2011), quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36, (1982). Further, "[e]very natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel v. Ill. Workers' Comp. Comm'n*, 354 Ill. App. 3d 780 (2005). "That other incident, whether work-related or not, may have aggravated the claimant's condition is irrelevant." *Vogel,* 354 Ill. App. 3d at 786.

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. 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. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278

Ill. Dec. 70 (2003). "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." *International Harvester v. Industrial Com.,* 93 Ill. 2d 59, 63 (1982).

In *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 853-54 (1996), the Appellate Court considered the applicability of this principle to a case involving a preexisting condition and reasoned as follows: "The employer also contends that the facts of the present case do not support the Commission's 'chain of events' analysis because [the claimant] had a preexisting condition. The employer cites no authority for the proposition that a 'chain of events' analysis cannot be used to demonstrate the aggravation of a preexisting injury, nor do we see any logical reason why it should not. The rationale justifying the use of the 'chain of events' analysis to demonstrate the existence of an injury would also support its use to demonstrate an aggravation of a preexisting injury." *Walquist Farm P'ship v. Ill. Workers' Comp. Comm'n*, 2021 IL App (5th) 190163 (Ill. App. Ct. 2021) This is a Rule 23 Illinois Appellate Court decision. However, since it was issued after January 1, 2021 the decision may be cited for its persuasiveness, but not as precedent.

Pursuant to the *Sisbro* case, it is clear that a work-related accident that aggravates or accelerates a pre-existing condition can be compensable under Illinois Workers' Compensation law. Further, based on the medical records and testimony, it is clear Petitioner had a preexisting left shoulder problem that became worse after falling off a defective ladder. Also, there is no evidence whatsoever that Petitioner had issues with his neck before the accident. Respondent's witness who worked with the Petitioner for years did not voice any complaints that Petitioner missed time off or requested any accommodation because of his pre-existing asymptomatic degenerative changes in his cervical spine. Respondent's own witness testified that Petitioner had

returned to work full duty before the accident. It is undisputed that Petitioner's job duties as a mechanic was physically demanding and taxing on the neck and shoulder. Prior to the shoulder dislocation earlier in the month of the accident, Petitioner worked without incident. After the first left shoulder dislocation, Petitioner returned to work full duty. The Arbitrator agrees with Petitioner's treating physician that the second dislocation made his shoulder worse and caused him to require surgery to cure and relieve him from the injury.

Petitioner has met his burden regarding causal connection and as a matter of law, the Arbitrator finds that Petitioner's current condition to neck and left shoulder are causally related to his work accident of August 13, 2015. Furthermore, the surgeries to Petitioner's neck and left shoulder are causally related to the work accident of August 13, 2015. The Arbitrator reaches this conclusion based on the chain of events and upon the causal opinions of Petitioner's treating physicians.

Petitioner did see Dr. Wardell on April 8, 2015, for a left shoulder dislocation from indoor skydiving. (PX 9, p. 5) He was told to have therapy, return to work light duty, and that no surgical intervention was warranted. Id. Interestingly enough, Dr. Wardell told the Petitioner to go to light duty, then stated in the work note that he was released to full duty, but then wrote that he cannot use the left arm. The Arbitrator notes this as it important to the accuracy of Dr. Wardell's records. Id at p. 8) Petitioner followed up with Dr. Wardell for his left shoulder on August 12, 2015, the day before the work accident herein. Upon examination there was evidence of a positive apprehension sign, and some instability, but otherwise a grossly normal neurovascular examination. Id at 12. He did indicate and appeared to order an MRI, but Petitioner refuted that this was discussed or that he was made aware that it was ordered. It is clear to the Arbitrator the

records are consistent with a busy practice that needs some improvement in communicating with patients. It is understandable that Petitioner elected to seek treatment elsewhere.

After the work accident on August 13, 2015, Petitioner was taken to Palos Community Hospital by Mr. Guptill, his boss. (PX 2) Petitioner gave the history of his fall consistent with his testimony and was x-rayed (PX2 at 19-20). He was ultimately diagnosed with a left shoulder sprain and multiple abrasions. (PX 2 at 8) He was to follow up with Dr. Wardell and was given a sling for his left arm. Id at 9.

Contrary to Respondent's assertions, Petitioner did report to the emergency room that he was on a three-step ladder at work when one of the legs collapsed and he fell and dislocated his left shoulder. He also gave a consistent history of dislocating this shoulder one time prior. The Arbitrator makes specific note that Petitioner told the ER that he had seen Dr. Wardell the day before for slight persistent pain in his left shoulder. The emergency department recorded that Petitioner stated he dislocated his left shoulder at work, and while waiting to be examined his shoulder popped back in. The records indicate "somehow", but Petitioner clearly stated it was taking his shirt off, i.e. that motion, that popped it back in. The ER also noted that Petitioner's pain was still sharp, stabbing and constant. Id at 10. Petitioner was given a prescription upon discharge for Ultram as needed for more severe pain, instructed again to wear the sling provided as needed, and again told to see his doctor asap. Id at 12 and 21.

Petitioner started treating for his work injury with Dr. Wardell on August 21, 2015. (PX 9 at 21-24) Dr. Wardell not only reported the accident wrong but reported when the shoulder popped back in wrong. These recording errors are not really material to the issues in this case. Dr. Wardell noted upon examination that Petitioner developed a large abrasion over the posterior aspect of the scapula and shoulder after falling. He also noted that there was evidence of discomfort with

forward elevation, there was moderate swelling, a positive impingement sign, and tenderness over the AC joint. There were also small irregularities demonstrated on the left shoulder x-ray. Id at 22. The Arbitrator notes that this examination is significantly different than the examination performed by the same doctor the day before this accident. There clearly was significant trauma to the Petitioner's left shoulder with his work accident of August 13, 2015. Petitioner was referred for therapy, was put on light duty, and placed on Mobic, Tramadol and tizanidine as a muscle relaxant. Id. It is also significant that Dr. Wardell did not mention an MRI at this time, while having prescribed it on August 12, 2015. It clearly appears to the Arbitrator Petitioner was not informed of the prior MRI order. The medical records clearly reflect that the Petitioner was seen over the years of a multitude of health issues and that he was compliant with his treatment recommendations.

Petitioner returned to Dr. Wardell on August 28, 2015 for follow-up, and improved range of motion was noted. Id at 31. He was still to be on light duty, but now was allowed to drive and would return to full duty as of August 31, 2015. Id. Therapy proceeded for Petitioner's left shoulder at Parkview and started on August 26, 2015. On the note from August 31, 2015, Petitioner had trouble reaching above shoulder level and "has noticed occasional numbness and tingling into his left hand. ". Id at 33. Crunching in Petitioner's left shoulder is documented on September 8, 2015. Id at 42. On September 14, 2015 there is a comment that Petitioner reported his left hand went numb this weekend for the first time since the initial injury. The therapist noted further that this is likely "coming from his neck due to joint stiffness causing impingement." Id at 51-52. Petitioner also discussed his hand numbness with his doctor who "was concerned" but didn't seem to know why his hand was going numb. Id at 54. There was obviously a progression of the numbness and tingling symptoms which ultimately supports the Petitioner's neck claim.

Petitioner returned to Dr. Wardell on September 16, 2015 for follow-up and the left hand numbness was discussed. He kept Petitioner on light duty. Id at 57. At therapy on September 21, 2015, it is noted that Petitioner had numbness in both hands the past weekend and it was bothersome to him. He was being treated for his left shoulder and neck at this time. Id at 61-62. Neck pain is also documented on September 23, 2015 and left arm numbness on September 25, 2015. Id at 64, 67.

On September 30, 2015, Petitioner returned for follow-up with Dr. Wardell who recommended Petitioner continue with Mobic and finish out therapy. There was no mention of the neck or numbness that Petitioner clearly still had going on. Id at 73. On October 2, 2015, it is noted that Petitioner had a shooting neck pain simply turning his neck, and had a burning pulling sensation with certain movements. Id at 78. He finished therapy on October 8, 2015 and was working full duty with bilateral soreness. Id at 88-89.

Petitioner saw Dr. Wardell on October 21, 2015 and his progressing neck problems are discussed. An EMG was recommended, and Petitioner was diagnosed with bilateral arm numbness neck pain, and post left shoulder injury. Id at 90. The EMG was done on November 10, 2015 at EXCEL (id at 95-99) with a follow-up with Dr. Wardell on November 25, 2015. Dr. Wardell noted that Petitioner had bilateral CTS and said he needed to see a hand surgeon, still had significant pain in his left shoulder, and discharged him. Id at 100-101.

Petitioner had therapy at Parkview, from June 21, 2016 through August 23, 2016 for his cervical spine after his surgery on April 22, 2016. (PX 9 at 127-220) It is noted throughout the records that Petitioner's balance was a concern. This correlates directly with Petitioner's testimony.

Dr. Nicholas Rizzo was Petitioner's primary care physician on the date of the work accident he sustained. (PX 6) He initially saw Dr. Rizzo on November 16, 2015 as it related to the work accident with complaints of neck pain. He was to do a trial with a neck pillow, was prescribed Meloxicam and to return for follow-up. Id at 10-12. Dr. Rizzo referred Petitioner to Dr. Keith Schaible. (Id at 71 and per Petitioner's testimony) On April 8, 2016, Petitioner saw Dr. Rizzo for a wellness exam and a pre-op workup for his neck surgery set for April 22, 2016. He was cleared. (PX 6 at 4-9)

Petitioner initially saw Dr. Keith Schaible, upon referral from Dr. Rizzo, on December 17, 2015, for evaluation of his neck. (PX 11) Petitioner's complaints after the work accident were persistent neck pain, pain on the left paraspinal, and left trapezius pain down the arm. He specifically said his arms felt weak. Finally Petitioner had pain in his hands with burning and unsteadiness of his balance. After examination, Dr. Schaible was concerned for myelopathy or herniation in the neck region and sent Petitioner for an MRI. Petitioner was taken off of work completely. Id at 27. On December 23, 2015, Petitioner returned for follow-up after his MRI and Dr. Schaible stated he had a mechanical problem with his neck. The MRI demonstrated fairly severe multilevel spinal stenosis with spondylosis. There was also evidence of left-sided lateral recess encroachment at C5-6. Conservative care was the plan. Id at 26.

On March 30, 2016, Petitioner returned to Dr. Schaible and his symptoms were severe and persistent. He wanted surgery. Id at 25. On April 14, 2016, Petitioner went to Palos Community Hospital for a pre-op evaluation upon referral from Dr. Keith Schaible. The Petitioner passed these tests and surgery was able to proceed on his neck. (PX 2 at 26-37)

Petitioner underwent surgery at Advocate Christ Medical Center on April 22, 2016. (PX 11 at 31 and PX 15) Dr. Schaible performed a decompressive cervical laminectomy at levels C3-C6

with posterior lateral fusion and posterior segmental instrumentation, lateral mass screws, and harvesting of local bone graft. Id. Petitioner followed up with Dr. Schaible on May 3, 2016, May 5, 2016, May 10, 2015, May 12, 2015, May 19, 2016, May 24, 2016, June 9, 2016, and July 7, 2016 post-op. There were drainage issues for the surgical site and a CT scan was done to confirm no other problems. Debridement was considered but ended up not necessary. Petitioner started physical therapy. (PX 11 at 17-24 and 28-29)

Petitioner returned to Dr. Schaible on August 16, 2016 for follow-up. While in therapy, Petitioner still noted his balance being off and an MRI of the neck and brain were prescribed. (PX 12 at 8 and 20-21) On September 9, 2016, Dr. Schaible documented basically normal findings other than the postoperative changes in the cervical spine. Id at 7. On October 27, 2016, Petitioner returned to Dr. Schaible and was making progress. Id at 6. Petitioner saw Dr. Schaible on February 21, 2017 for follow-up and May 23, 2017 and the work accident involved herein was discussed. (PX13 at 12-13) In February, the Petitioner reported that he had the balance issues still in that when he stands, he felt like he falls forward or is unsteady when walking. (PX 13 at 13) Dr. Schaible opined that as Petitioner had no previous problems with his neck, nothing to suggest radicular or myelopathic symptoms, but developed them after the fall at work, this accident likely worsened, aggravated or made his condition become symptomatic, necessitating surgery. Id at 12. The spondylosis preceded the accident, but was asymptomatic until Petitioner's August 13, 2015 accident at work (inadvertently stated as October in this note). Id.

On July 18, 2019, Petitioner returned to Dr. Schaible for persistent worsening numbness in his hands and feet, worse in the hands. An MRI was recommended. (PX 13 at 11) It was completed on July 26, 2019. Id at 28-29. Petitioner returned to Dr. Schaible on August 1, 2019 The findings were stable. An EMG was prescribed and done on January 27, 2020. Id at 10 and

25-27. On February 12, 2020 Petitioner saw Dr. Schaible and CTS was the diagnosis with surgery to be set up. Id at 9. The CTS is not part of the work accident of August 13, 2015, nor the follow-ups on March 26 and April 16, 2020. Id at 7-9.

On August 20, 2020, Petitioner returned to Dr. Schaible with complaints of recurrent pain in his neck and down his right arm, triceps, past the elbow to the forearm. Norco helped and an MRI was prescribed. (PX 13 at 6.) It was done on August 31, 2020. (PX 13 at 14) Petitioner's last follow-up with Dr. Schaible was on October 6, 2020 and the MRI did show some degenerative changes at C6-C7 but was otherwise unremarkable separate from the postoperative changes. Neurontin was prescribed. Id at 5. Petitioner testified that after this he has not treated (especially given the pandemic), and he just lives with the residual symptoms he has.

Petitioner submitted into evidence the exhibits from Advocate Christ Medical Center (PX 15, PX16, PX17, and PX18). Pertinent references are pages 34-36 of PX 15 (the 12/5/18 discharge summary), page 107 of PX 15 (physician documentation as to history of Petitioner), pages 111-113 of PX 15 (left shoulder rotator cuff arthropathy – operative report), pages 148-149 of PX 15 (X-ray shoulder prior to surgery), page 352 of PX 15 (discharge planning 12/5/18), pages15-16 of PX 16 (XR Fluoro Guide Injection non-spine), pages 17-18 of PX 16 (MRI left shoulder with contrast showing chronic massive rotator cuff tear involving the majority of the supraspinatus, infraspinatus, and subscapularis tendon, atrophy of teres minor, complete tear of the intra-articular long head biceps tendon, an anterior labral tear, old, small, shallow Hill-
Sachs impaction fracture, moderate synovitis and grade 2-3 chondrosis), page 15 of PX 17 (5/6/16 CT scan of the cervical spine), pages 106-108 of PX 18 (discharge summary report), pages 113-115 of PX 18 (operative report of 4/22/16 – the neck laminectomy with posterior fusion), and page 161 of PE 18 (discharge planning). PX 20 and PX 23 contain test results for easy referral.

Petitioner started treating with Dr. Salman Chaudri on March 21, 2018 for his left shoulder, the February 7, 2018 visit, which was essentially for Petitioner's left knee, the doctor did examine Petitioner's shoulder in significant detail, finding significant pathology (PX 27, p. 15-17). He had treated with Dr. Chaudri for his knee but this is not related. (PX 24) On the initial visit Petitioner gave a consistent history of his work accident in 2015 and brought MRI files. He denied any injuries to his left shoulder since this time. Id at 31. After significant positive findings on examination, Dr. Chaudri recommended a left reverse total shoulder arthroplasty and did state that his work accident of August 2015 could correlate with his continued pain and recurrent dislocations of the shoulder. Id a 32-34. Once cleared for surgery, this was done on December 4, 2018 at Advocate Christ Medical Center. PE 15 at 111-113 and PE 27. Petitioner had follow-ups with Dr. Chaudri on December 6, 2018, December 12, 2018 with x-rays as well, January 9, 2019, and February 6, 2019. It was a normal recovery from this surgery. Petitioner did have numbness on his right wrist and an EMG was ordered. (Px 24 at 40-52)

Petitioner had physical therapy at ATI for his left shoulder, from December 24, 2018 through March 8, 2019. PE 26. Upon discharge on March 8, 2019, it is noted that Petitioner attended 33 therapy sessions, had 80% overall improvement in functional abilities, and was discharged.

Dr. Salman Chaudri testified via an evidence deposition in this case. (PX 27) He is a licensed orthopedic surgeon, board certified in orthopedics and sports medicine, who practices in Oak Lawn, Illinois. Id at 6 and 10. He identified his curriculum vitae as Exhibit 1, and did have a recollection of the Petitioner, but not of all the care provided. He had to rely on his notes. Id at 7-8. He now works as Dupage Medical Group but at the time he treated Petitioner his practice was Southwest Orthopedics. Id at 11. He testified that he was not rendering any opinion on his treatment of Petitioner's left knee and whether it was from his work accident. Id at 13. For

Petitioner's left shoulder, Dr. Chaudri first saw Petitioner on February 7, 2018 even though the main purpose of the visit was for his left knee. He actually did complete an examination of the shoulder and there were many positive findings. Id at 13-15. Dr. Chaudri saw Petitioner for his left shoulder specifically on March 21, 2018 and he gave the doctor a history of a fall three years prior, at work, where he dislocated it. Id at 16-19. The doctor testified that there is a correlation between this and his current problems and dislocations. He also stated that when a person has one or more shoulder dislocations, there is a greater likelihood of recurrent dislocations. For someone who is the Petitioner's age, in his 60s, dislocations can cause torn labrums and torn rotator cuffs from the trauma. Id at 18-19. For Petitioner, he had dislocations and as a result, surgery was warranted. Id at 20. Specifically, Dr. Chaudri stated that the standard of care is that with patients over 25, surgery is indicated with two or more dislocations. Id. at 20.

Dr. Chaudri referred Petitioner for a MR Arthrogram and found two of four torn rotator cuffs, a partial tear of the subscapularis and the biceps, and muscular atrophy of the teres minor. This atrophy does not happen in a matter of months, this takes years. Id at 20-21. In simple terms, Dr. Chaudri found that Petitioner had a rupture of the rotator cuff and a rupture of the proximal biceps tendon. Dr Chaudri noted that 3 out of the 4 muscles in the shoulder were torn with atrophy. Id. 21

He recommended a reverse total shoulder arthroplasty. Id at 21- 22 He opined that this was reasonable and necessary medical care for the Petitioner and related to/because of, the work accident of August 13, 2015. Even if Petitioner had one dislocation before this work accident, Dr. Chaudri still believed that the fall could have worsened his preexisting condition. Id at 21-22.

Surgery on Petitioner was again on December 4, 2018 at Advocate Christ Medical Center as performed by Dr. Chaudri. (PX 27, PX 2 and at page 250) For post-op visits, Petitioner did well, and he was referred to physical therapy that was reasonable and necessary. Id at 28-29. Per Dr. Chaudri, the next visit (after his last 2/6/19 visit for follow-up) with Petitioner was December 9, 2019 and this was at Dupage Medical Group and not Southwest Orthopedics. This was basically for his knee. He saw Petitioner on June 30, 2020 for his left shoulder specifically and Petitioner was doing as expected as patients never get completely back as the muscles are technically dead. Id at 30-31. Petitioner specifically told Dr. Chaudri that he had a pinching pain in his left shoulder and pain at a level of 3 out of 10. Id at 33. Dr. Chaudri opined that Petitioner will have limitations in his left shoulder for the rest of his life. Id at 35.

On Cross Examination Dr. Chaudri testified that it was certainly possible that a second dislocation could spontaneously relocate. Id at 38. He also stated that the work accident certainly could have been the start of the serious atrophy shown on Petitioner's arthrogram. Id at 38. Finally, he stated that while Petitioner's dislocation prior to his work accident might have affected his opinions, the fact that this work accident caused another dislocation and considerable pain and problems, thereafter, indicated that there was at least an aggravation. Id at 40-42.

The Arbitrator is persuaded that surgery was indicated after Petitioner's second dislocation which occurred as a result of his work accident. The record is clear. Petitioner experienced two dislocations and, thus, surgery was warranted after the accident. The combination of Petitioner being concerned about shoulder surgery and Dr. Levin's telling Petitioner that he had reached maximum medical improvement was the primary cause of the delay in the shoulder surgery.

Dr. Keith Schaible testified in this matter. (PX 28) He is a neurosurgeon duly licensed in the state of Illinois and his office is right next to Christ Hospital in Oak Lawn. Id at 5. He identified

his CV which was marked as Exhibit 1 and stated that since 2007 his work is the same. Id at 5-6. Dr. Schaible is board certified in Neurological surgery. Id at 7. He is familiar with Dr. Nicholas Rizzo, a general practitioner, who refers him patients that require his expertise. Id at 9-10. Dr. Schaible recalled both Petitioner and is wife, but still needed notes on specific treatments rendered. Id at 12. The records of Dr. Schaible confirm the referral

Dr. Schaible testified that he performed a C3 through C6 fusion on Petitioner on April 22, 2016. He also did a carpal tunnel release on him in March of 2020 as well. Id at 13. He first saw Petitioner on December 17, 2015 who provided him with the history of his work accident of August 13, 2015 where he fell. Since that time, he had pain in his neck on the left paraspinal, left trapezius and down the left arm. Further, his arms felt weak and he had pain in his hands, burning pain and unsteadiness of his balance. Id at 14-15. Petitioner did not have neck problems prior to his work accident and this is significant to the doctor. Id at 16. He referred Petitioner for an MRI and went over the findings on the same being basically degenerative disk disease, osteoarthritis, wear and tear arthritis involving multiple disk spaces in his neck. Id at 17-18. While the accident Petitioner sustained on August 13, 2015 did not cause the findings on this MRI, Dr. Schaible opined that this accident aggravated and worsened his preexisting underlying degenerative disk disease. Id at 20.

Dr. Schaible saw Petitioner on March 30, 2016 and Petitioner was complaining of persistent neck pain and numbness in his hands. He reviewed an EMG that had been done on November 10, 2015 and this showed bilateral CTS. Id at 21. Dr. Schaible was not of the opinion that the CTS was a major factor in the symptoms that Petitioner presented to him. The problems were stemming from his neck. Id at 22. Petitioner decided to proceed with surgery at this time, and this proceeded again on April 22, 2016. The doctor opined that this was needed because of and as a result of, the

work accident Petitioner sustained on August 13, 2015. Id at 23-24. His report dated May 23, 2017 accurately reflects his opinions as well. (PX 28, PX 12)

The surgery performed by Dr. Schaible on Petitioner was a cervical laminectomy with fusion at the C3-C6 levels. PE 28, Exh. 3. Post-op Petitioner had some drainage of his surgical site and a few other complications, but otherwise his recovery was good. Id at 26-28. On June 9, 2020, Dr. Schaible referred Petitioner for therapy on his neck, and that was reasonable and necessary. Id at 28. Dr. Schaible also gave his opinion that Petitioner was authorized off of work and was not returned to work in general because of his ongoing problems. Id at 29. As time went on, Petitioner had significant balance issues, and the doctor did additional testifying for these complaints. The results were normal. Id at 29-30. Petitioner was again kept off of work and had ongoing serious balance issues during these follow-up visits into 2017. Id at 31-32.

On August 18, 2020 Petitioner returned to Dr. Schaible for recurrent pain in his neck and down his arm, tricep, and past the elbow to the forearm. He was sent for an MRI and had not returned when this deposition proceeded. Id at 33-34. However, the test demonstrated there was no pressure on the spinal cord yet Petitioner continues to show degenerative osteoarthritic changes. Id at 34. Dr. Schaible further testified that Petitioner had and will continue to have the same problems for the rest of his life, and this will interfere with activities of daily living. Id at 35. Finally, Dr. Schaible unequivocally testified that he never returned Petitioner to work in any capacity. Id at 36. As it related to Petitioner's work accident, his medical care provided is related to that. Further, Petitioner's conditions and problems are related at least into May 2017, for time off of work. Id at 37-38.

On Cross Examination Dr. Schaible testified that his note stating Petitioner's date of accident as October 2015 was a mistake and was corrected. Id at 40-41. Further, the last official work status

discussion with Petitioner was on September 13, 2016. Id at 48. Finally, the doctor stated that May 23, 2017 was the official MMI date for Petitioner's neck for about two years when he returned with complaints. Id at 49-50.

On Redirect Examination the doctor admitted that the report of May 23, 2017 did insinuate that causal connection had been discussed with Petitioner prior to this date. Id at 50-51. Finally, at least until May 23, 2017, it was reasonable to presume Petitioner was unable to return to work as it related to his neck. Id at 51.

Dr. Jay Levin is an orthopedic surgeon who has an office at 555 Corporate Woods Parkway, in Vernon Hills, Illinois. (PX 1, at 5-6) Interestingly enough, 50% of Dr. Levin's practice is performing "Independent Medical Examinations" and primarily for insurance companies. Id at 9-10. He examined the Petitioner for a Section 12 examination on February 15, 2016, and generated a report marked as Respondent Exhibit 2. He went over his findings on examination and had sent Petitioner for an MRI at 555 Corporate Woods Parkway, in Vernon Hills, Illinois, the same address as his office, which demonstrated thinning of the rotator cuff tendons with partial tears along the articular surfaces subscapularis, supraspinatus and infraspinatus tendons, type II acromion and mild superior subluxation humeral head with mild chondromalacia, a large effusion, and a blunting posterior inferior glenoid labrum. (PX 5 and RX 1) He opined as to the left shoulder that Petitioner likely had a subluxation versus a dislocation on the date of accident (RX 1 at 43-45) and/or a strain of the left shoulder. (RX 1 at 46) He further opined that Petitioner did not sustain a neck injury in the August 13, 2015 accident. Id at 46-47. Dr. Levin went so far as to say that the August 13, 2015 accident did not aggravate Petitioner's preexisting left shoulder dislocation. Id at 50-51. The Arbitrator is not persuaded by this opinion.

On Cross Examination Dr. Levin admitted he had not done surgeries for about 1 ½ years due to an injury and when he did surgeries prior to this, 10-15% of his practice was on shoulders and about 10-15% of his practice was on the cervical region. Id at 53-54. He was being paid $1,950.00 per hour for a two-hour minimum to testify. Id at 55. With the Section 12 examination and review of records, Dr. Levin made about $7,000.00 in income for his time from seeing Petitioner. Id at 55-56. He admitted it is not good to have a left shoulder injury after a dislocation like Petitioner had in April 2015 but falling like Petitioner did does not mean one gets injured. Id at 61-62. Dr. Levin totally failed to credibly address the large abrasion in the left upper back and scapular area due to the fall.

As to Petitioner's neck injury, Dr. Levin admitted that injured people might interchange neck and shoulder complaints as they are not medical providers. (PX 2 at 72) He testified that as of August 26, 2015 Petitioner had some sort of neck complaints and did not seem to think this was actually neck complaints. Id at 73-74. He also did not have any note that a fall while recovering from his work accident caused any injury to Petitioner's neck or shoulder. Id at 76. Further, Dr. Levin testified that he did not look into the possibility that Petitioner needed surgical intervention when he saw him about two months before Petitioner had it. Id at 79. The doctor stated that the physical therapy Petitioner had after his work accident was reasonable and necessary and related to the August 13, 2015 incident. Id at 81-82. He testified that he had no prior evidence or records that Petitioner had any preexisting problems with either his left knee or his neck region. Id at 84. He finally admitted that having an injury to the shoulder after a dislocation is not good. Id. The Arbitrator does not adopt the majority of Dr. Levin's opinions as he does not find him persuasive.

The Arbitrator finds as a matter of law that Petitioner's current conditions to the shoulder and neck are causally related to the work accident of August 13, 2015. This includes his surgeries

on his neck and left shoulder. The decision is based on the medical evidence and credible testimony of the Petitioner. The Respondent's Section 12 examiner findings are simply not persuasive. The Arbitrator finds that the findings and opinions of Petitioner's testifying treating physician, the findings and opinions contained the medical records and testimony of Petitioner's treating physicians to be more persuasive than that of Respondent' Section 12 expert, Dr. Jay Levin.

WITH RESPECT TO ISSUE ("J"), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES? THE ARBITRATOR FINDS AS FOLLOWS

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The Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for a majority of said treatment. The Respondent shall pay all outstanding medical bills for Petitioner's reasonable and necessary medical treatment for his left shoulder and neck pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission. Petitioner met his burden. Based on this, the following medical bills are awarded to Petitioner per the fee schedule:

Petitioner's Exhibit 1 – Medical bill from Palos Community Hospital in the amount of $306.00 only for the date of service 4/14/2016 as the emergency room bill from the date of the accident was paid by Respondent.

Petitioner's Exhibit 4 – Medical bill from Dr. Levin, the IME – paid;

Petitioner's Exhibit 7 - Medical bill from Parkview Orthopaedic Group for the cervical therapy in the amount of $6,563.00;

Petitioner's Exhibit 8 – Medical bills from PMI Diagnostic Imaging in the amount of $2,845.00 for the cervical spine only;

Petitioner's Exhibit 10 and Petitioner's Exhibit 11 pages 5-16 – Medical bill from Dr. Keith Schaible in the amount of $29,470.00;

Petitioner's Exhibit 14 – Medical bill from Advocate Christ Medical Center in the amounts of; $61,387.00 for dates of service 4/22/16-4/25/16; $2,120.00 for date of service 5/6/16; $4,636.00 for date of service 3/19/18; and $55,555.00 for dates of service 12/04/18-12/05/18;

Petitioner's Exhibit 19 – Payment printout from CVS Pharmacy - $53.76 – patient payments;

Petitioner's Exhibit 21 – Medical bill from High Tech – Palos Heights - $2,886.50;

Petitioner's Exhibit 22 – Medical bill from physician charges in the amount of $710.00;

Petitioner's Exhibit 24 – Medical bill from Southwest Orthopedics – Dr. Salman Chaudri in the amount of $9,240.00;

Petitioner's Exhibit 25 – Medical bill from ATI in the amount of $15,584.16; and,

Petitioner's Exhibit 29 – the BlueCross BlueShield of Illinois printout of payments made as a result of the accident of August 13, 2015 – to be reimbursed and/or paid to the Petitioner in the actual bills presented. The total, minus unrelated charges from June 14, 2017 through March 19, 2018, being $148,902.90.

Respondent shall pay to Petitioner the reasonable and necessary medical services listed above to wit: PX 1, PX7-1 PX8, PX 10, PX 14, PX 19, PX 21, PX 22, PX 24 and PX 25, for a total of $189, 236.42 as provided in Sections 8(a) and 8.2 of the Act. Respondent shall further pay to the Petitioner the BlueCross BlueShield of Illinois payments in the amount of $148, 236.42.

WITH RESPECT TO ISSUE ("K"), WHAT TEMPORARY BENEFITS ARE IN DISPUTE? THE ARBITRATIR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner was off of work as a result of this work accident from August 14, 2015 through August 30, 2015 and again from December 23, 2015 through August 18, 2020 for a total of 245 -3/7 weeks is supported by the record. In support of this award, the Arbitrator finds the medical records of Dr. Schaible credible, especially as each addressed Petitioner's work status on many occasions as contained in his records and evidentiary testimony. He also relies on Dr. Chaudri as far as the recommended time of six months to one year following surgery like Petitioner underwent. While the Respondent 's witness testified that it could accommodate light duty restrictions if work related, the Petitioner was never released to light duty after December 23, 2015. Petitioner did have a preexisting condition in that he had dislocated his left shoulder earlier in April of 2015. However, Petitioner testified that he was working full duty after the time of his accident. His testimony was supported by Respondent's witness, Mr. Guptill. Mr. Guptill testified he was aware of Petitioner having left shoulder issues prior to August 13, 2015. He testified that it was his understanding Petitioner had a previous injury while at indoor skydiving facility. He testified that it was company policy to only accommodated light duty such as pushing a broom for work related injuries. Company policy does not offer light duty work for non-work-related injuries. Employees must be able to work full duty. And Petitioner's job duties were physically demanding. The Arbitrator finds that Respondent eventually disputed the claim and, thus, according to Respondent's policy, would not and did not offer light duty work. Respondent did not provide a written light duty job offer.

WITH RESPECT TO ISSUE OF WHAT CREDIT, IF ANY, RESPONDENT IS ENTITLED TO RECEIVE, THE ARBITRATIR FINDS AS FOLLOWS:

The Arbitrator finds that Respondent is entitled to a credit in the amount of $10,351.84 per RE 5. Petitioner incorrectly added $5.00 to his total and Respondent inadvertently included $48.00 which clearly was money sent to the Petitioner for Section 12 travel expenses to Respondent's Section 12 examination with Dr. Jay Levin. The amount is stated as for the date February 15, 2016, which is the date of Petitioner's examination by Dr. Jay Levin. Respondent is not entitled to include litigation expenses for credit and thus, it should not be included in a credit. See also PX 4, Dr. Levin's bill for February 15, 2016.

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

As noted above, Petitioner sustained a work accident that has been found compensable herein and sustained acute significant injuries to his left shoulder and his neck. Petitioner did have a preexisting condition in that he had dislocated his left shoulder in early April of 2015. It was the second dislocation, the dislocation resulting from his work accident, that created the need for shoulder surgery.

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As to Dr. Levin, the Arbitrator finds Dr. Chaudri more reliable as to his opinions. It is clear that Petitioner had a serious neck surgery in April 2016 and had a long to recovery. He testified that he had fears of having shoulder surgery as well. When Petitioner starts treating with Dr. Chaudri, there were no other intervening accidents and the dislocations were happening more

regularly. Dr. Chaudri opined that Petitioner's left reverse total replacement was as the result of the accident Petitioner sustained on August 13, 2015. At the very least, this accident aggravated Petitioner's preexisting condition but still was the cause for the need for surgery. Petitioner still has problems with his range of motion with his left arm and has had to modify his activities to accommodate this. He cannot climb ladders and cannot go back to the job with Respondent he loved. As the latest visits with Dr. Chaudri showed, Petitioner still gets pain in his left shoulder. This all goes to Petitioner's permanent disability. Dr. Chaudri testified that when you have a surgery like this one, the shoulder is never the same and will always have weakness.

As to the abrasions on the back and shin of Petitioner. While these look bad from Exhibit 31, A-C, the Petitioner testified that these healed well and if there are scars, he does not pay attention to them. As to Petitioner's left knee, he testified that he developed a bump on the back of the leg after the work accident. This took months to go away.

As to Petitioner's neck injury, he has had residual problems and will for the rest of his life. Petitioner testified he cannot use a ladder, he has balance issues, numbness in his hands (not related to his CTS per Dr. Schaible), a very limited range of motion of his neck that he demonstrated for the Arbitrator, and still has pain. While doing better since the surgery on April 22, 2016, Petitioner had to return to the doctor many times for these ongoing problems and has had to keep having additional tests.

In determining permanent partial benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(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." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n,* 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence by either party. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. *See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n*, 2015 IL App (5th) 140445WC, ¶ 17. Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner was employed as mechanic on the date of accident. Petitioner worked in this physical occupation for 13 years for Respondent and 35 years before then, the Arbitrator therefore gives some weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 65 years old at the time of the accident, but Petitioner credibly testified that he wanted to continue working. The Arbitrator is also mindful that at his age injuries do have a more profound adverse effect. The Arbitrator gives some weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that following the cervical fusion and total left shoulder replacement Petitioner was not released to return to his former occupation, The Arbitrator therefore gives greater weight to this factor.

Under Section 8.1b(b)(v), evidence of disability corroborated by the treating medical records and the testimony of Petitioner's treating surgeons, the Arbitrator specifically looks to Petitioner's treating surgeons, Dr. Chaudri and Dr. Schaible for guidance. Dr. Chaudri opined that

based on the nature of the surgery and the significant atrophy, Petitioner would have permanent restrictions related to the left shoulder. Dr. Schaible also opined that since the Petitioner underwent a three-level cervical fusion, Petitioner would have permanent restrictions and he did not release the Petitioner to return to work. Because of Petitioner's permanent restrictions, ongoing credible complaints and impact on his life, the Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 40% loss of use of his person as a whole, pursuant to §8(d(2) of the Act which corresponds to 200 weeks of permanent partial disability (PPD) benefits at a weekly rate of $795.00 because the Petitioner has sustained injuries to his left shoulder and neck which incapacitate him from pursuing the duties of his usual and customary line of employment.

Next, Petitioner was credible. He sustained a work accident that has been found compensable herein and sustained acute injuries to his left shoulder, his neck with resulting upper extremity symptoms, his left knee, and his back and shin (with abrasions). Petitioner did have a preexisting condition in that he had dislocated his left shoulder in early April of 2015. However, Petitioner testified that he was working full duty after the time of this non- work-related injury. accident. His testimony was supported by Respondent's witness, Mr. Guptill who testified that company policy of only accommodating light duty for work related injuries, not non-work-related injuries like the Petitioner had earlier that month in April. While there is a visit the day prior to the accident herein, the Arbitrator believes the Petitioner when he stated he was never told to get an MRI, nor was he given a prescription by Dr. Wardell. This is bolstered when Dr. Wardell never

mentions the MRI after the work accident sustained by Petitioner. Would he not ask about it and if not taken, insist on this being done on the August 21, 2015 visit? Instead, Dr. Levin is the one that sent Petitioner for an MRI and Petitioner had it done. The Arbitrator does find it more likely that not that Dr. Wardell or his office failed to inform Petitioner of the order for an MRI.

As to Dr. Levin, the Arbitrator finds Dr. Chaudri more reliable as to his opinions. It is clear that Petitioner had a serious neck surgery in April 2016 and had a long to recovery. He testified that he had fears of having shoulder surgery as well. When Petitioner starts treating with Dr. Chaudri, there were no other intervening accidents and the dislocations were happening more regularly. Dr. Chaudri opined that Petitioner's left reverse total replacement was as the result of the accident Petitioner sustained on August 13, 2015. At the very least, this accident aggravated Petitioner's preexisting condition but still was the cause for the need for surgery. Petitioner still has problems with his range of motion with his left arm and has had to modify his activities to accommodate this. He cannot climb ladders and cannot go back to the job with Respondent he loved. As the latest visits with Dr. Chaudri showed, Petitioner still gets pain in his left shoulder. This all goes to Petitioner's permanent disability. Dr. Chaudri testified that when you have a surgery like this one, the shoulder is never the same and will always have weakness.

As to the abrasions on the back and shin of Petitioner. While these look bad from Exhibit 31, A-C, the Petitioner testified that these healed well and if there are scars, he does not pay attention to them. As to Petitioner's left knee, he testified that he developed a bump on the back of the leg after the work accident. This took months to go away.

As to Petitioner's neck injury, he has had residual problems and will for the rest of his life. Petitioner testified he cannot use a ladder, he has balance issues, numbness in his hands (not related to his CTS per Dr. Schaible), a very limited range of motion of his neck that he demonstrated for

the Arbitrator, and still has pain. While doing better since the surgery on April 22, 2016, Petitioner had to return to the doctor many times for these ongoing problems and has had to keep having additional tests.

In the alternative, and taking the above factors into consideration, Respondent shall pay the Petitioner the sum of $795.00 per week for 250 weeks, because the permanent injuries sustained caused 50% loss of use of MAW as provided in Section 8 of the Act.

WITH RESPECT TO ISSUE ("M"), SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT? THE ARBITRATOR FINDS AS FOLLOWS:

The Petitioner filed a Petition For Penalties a pursuant to Sections 19(k) and 19(l) and attorney fees pursuant to Section 16 were at issue. (PX 30). Respondent filed a response. (RX 6)

The imposition of Section 19(l) penalties requires the Petitioner to make a written demand or payment of benefits under Section 8(a) or Section 8(b). It also requires the Respondent to fail, neglect, refuse, or unreasonably delay the payment of benefits without good and just cause. See *820 ILCS 305/19(l).* Regarding the imposition of Section 19(k) penalties and Section 16 attorney fees, the Courts have confirmed that the imposition of these penalties is where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. These penalties are appropriate when the delay was vexatious, intentional, or merely frivolous. These penalties and fees require a higher standard of proof. See *McMahon v. Industrial Commission*, 183 Ill.2d 499, 515 (1998). It appears that during the pendency of the claim believed that it had a causal connection defense based on the opinion from Dr. Levin denying other than a shoulder strain. When the Respondent acts in reliance upon reasonable medical opinion or where there are conflicting medical opinions, penalties are not ordinarily awarded. *USF Holland, Inc. v. Industrial*

Comm'n, 357 Ill.App.3d 798, 805 (2005). In this case, the Arbitrator has not seen any evidence of when Petitioner provided work status reports, records, or medical expenses to Respondent or its carrier. However, the failure of tendering such evidence is not the basis to deny benefits.

Although the Arbitrator finds Respondent's accident dispute to be any without credible support. The Arbitrator also finds that Respondent's claim that it would have offered light duty work to be inconsistent with Respondent's policy of no light duty work being available on disputed claims. Respondent did in fact eventually deny the claim after initially accepting the claim. We do not, however, know when Respondent denied the claim. Respondent has failed to follow the Rules Governing Practice Before the Illinois Workers' Compensation Commission. Respondent failed to provide a written explanation of denial of benefits as required by Rule 9110.70, and, thus, is a basis for an award of Section 19 (l) penalties and attorney fees and costs pursuant to Section 16 of the Act (*See* Rule 9110.70 (e). The Respondent did not offer into evidence a written light duty job offer during the periods of time Petitioner was recovering from the neck and shoulder surgeries. However, based on the record as a whole, the Arbitrator finds that penalties and Section 16 attorney fee are not appropriate in this case and should not be imposed on Respondent.

Mr. Guptill testified Petitioner never requested a return the light duty work after December 22, 2015. He testified that if Petitioner had requested light duty accommodations, they would have accommodated them as previously done. The Arbitrator finds the testimony of Mr. Guptill to be credible. However, Mr. Guptill did not bring Petitioner's employment file. Respondent did not offer evidence of a written light duty job offer while Petitioner was recovering from his cervical and shoulder surgeries, and Mr Guptill appeared to not be aware that Respondent was disputing accident and disputing other aspects of the Petitioner's claim.

At trial Petitioner submitted a written motion for penalties. (PX 30) Respondent filed a response. (RX 6) The Arbitrator finds that there was no legitimate dispute regarding the accident itself. In addition to Mr. Guptill's testimony at trial which supported Petitioner on the issue of accident, Respondent introduced into evidence its internal injury report which was completed by Mr. Guptill. The accident report supports Petitioner's version of accident. Mr. Guptill noted that the "ladder broke" and that "leg of the ladder buckled." (RX 4, p. 2) Nor was there a legitimate dispute as to TTD or the medical bills other than liability. However, although the Arbitrator has found for Petitioner, Respondent did have a basis to dispute the causal connection of Petitioner's current condition of ill-being to his left shoulder and neck. The Arbitrator notes that Respondent paid TTD from August 14, 2015 through August 30, 2015, when Petitioner returned to work. (Resp. Ex. 5.) Also, Respondent paid TTD from December 23, 2015, through March 11, 2016. The Respondent alleges that following further investigation, Respondent discovered Petitioner presented for evaluation of his left shoulder on August 12, 2015, one day before the work accident, and that first recording in the medical records for cervical spine complaints was on August 26, 2015, 13 days after the accident and then on September 23, 2015, RX 2, p. 8). The investigation need not have been exhaustive. Petitioner informed the emergency room personnel of his prior shoulder dislocation and that he had seen his physician the day before. Respondent's witness testified that he was aware of Petitioner prior dislocation. Did the Respondent only dispute the claim when surgery was recommended? The record is not clear.

As noted above, Arbitrator has found that the shoulder and neck conditions of ill-being to be causally related. The Arbitrator found that the findings and opinions contained in the medical records and testimony of Petitioner's treating physicians to be more persuasive than that of Respondent' Section 12 expert, Dr. Jay Levin. Although, the Arbitrator has found in favor of the

Petitioner on the disputed issues, with the exception of accident. Respondent has raised concerns for which it had a right to demand proof by a preponderance of the evidence based on the facts and circumstances summarized above. Therefore, the Petitioner has failed to establish by a preponderance of the evidence that Section 19 (k), 19 (l) and Section 16 attorney fees should be imposed.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC015037
Case Name	Jose Madriz-Ocampo v. Pangea Ventures, LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0481
Number of Pages of Decision	17
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Jack Epstein
Respondent Attorney	W. Britt Isaly

DATE FILED: 12/12/2022

/s/Carolyn Doherty, Commissioner

Signature

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

JOSE MADRIZ-OCAMPO,

Petitioner,

vs. NO: 17 WC 15037

PANGEA VENTURES, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses, and prospective medical 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 October 25, 2021 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 $16,200.00. 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.

December 12, 2022
o: 12/08/22
CMD/ma
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC015037
Case Name	MADRIZ-OCAMPO, JOSE v. PANGEA VENTURES, LLC
Consolidated Cases	No Consolidated Cases
Proceeding Type	19(b) & 8(A) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Jack Epstein
Respondent Attorney	W. Britt Isaly

DATE FILED: 10/25/2021

THE INTEREST RATE FOR THE WEEK OF OCTOBER 19, 2021 0.06%

/s/Kurt Carlson, Arbitrator

Signature

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) & 8(A)

JOSE MADRIZ-OCAMPO
Employee/Petitioner
v.
PANGEA VENTURES, LLC
Employer/Respondent

Case # **17** WC **015037**

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 **August 17, 2021**. 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, **06/29/2015**, 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 $**30,290.52**; the average weekly wage was $**582.51**.

On the date of accident, Petitioner was **45** 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 $**14,129.32** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**14,129.32**.

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

ORDER

Respondent shall pay Petitioner temporary disability benefits of $ 388.34 per week from July 21, 2015 to November 24, 2015 or 18 & 2/7ths weeks as provided in Section 8(b) of the Act. No lost time benefits are awarded from September 27, 2017 to August 13, 2021. Respondent shall be given a credit of $ 14,129.32 for TTD benefits already paid.

Respondent shall pay reasonable and necessary medical services in the amount of $23,092.61, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall authorize the medical treatment recommended by Dr. Cary Templin, Dr. Jeffrey Wingate and Dr. Alexander Ghanayem in the form of a lumbar fusion at L4-5.

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.

KURT A. CARLSON

OCTOBER 25, 2021

Kurt A. Carlson

IN THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jose Madriz,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 17 WC 015037**
	)	
Pangea Ventures,	)	
	)	
Respondent.	)	

ARBITRATION DECISION

This case was heard by Arbitrator Kurt Carlson on August 17, 2021 under Sections 19(b) and 8(a) of the Act.

STATEMENT OF FACTS

An interpreter, Noel Cortez, was used for the Jose Madriz's ("Petitioner's") testimony, which was in Spanish.

The Petitioner testified that he currently resides at 13251 L Avenue, Chicago, Illinois. He had been working for Pangea Ventures ("Respondent") for two years prior to the June 29, 2015 accident in this case. The Respondent owns many properties and apartments in the City of Chicago and Cook County. When the tenants of the property vacate, Petitioner's job was to prepare the apartments so they are in rentable order: ready for the next tenant. His job duties for the Respondent included maintenance and remodeling, including the removal of trash left behind at Respondent's properties. He would repair whatever damage done to the property and then he would paint. He worked in a crew of three people. (T. 14) One co-worker would clean the kitchen, the other two would repair and repaint the apartment. (T. 14) Sometimes they would need to repair or replace the sinks, the toilets, the vanities, carpets, walls, ceilings, and floors. They may need to repair or replace the walls, doors and windows and then paint the entire apartment. (T. 15) A different company would come to clean the or replace the carpets. (T. 15) All the debris

and garbage was taken out to an alley near the property and placed into dumpsters, including discarded furniture. (T. 16) Frequently, he needed to lift up to 70 lbs. to 80 lbs. for each load, including lifting clothing, a sofa or a bed, all of which he would place into the dumpster. (T. 16)

Prior to June 29, 2015, he had no lower back problems. He had never seen a doctor, hospital, chiropractor, or had taken any medicine for his back. (T. 17) He never had a problem doing his job prior to June 29, 2015. (T. 17) Prior to June 29, 2015, he had never complained to a supervisor about any physical ailments related to his back. (T. 17-18)

On June 29, 2015, the Petitioner carried two garbage bags down carpeted stairs from an apartment. His left foot bent, got stuck and instead of falling forward, he fell backwards onto the stairs. (T. 18) When he fell on the, the middle of his low back just above the belt line struck the stair. (T. 18) Prior to falling on the stairs, before he fell, he had no trouble carrying two bags worth of debris downstairs. Here, the bags weighed a total of approximately 60 lbs. to 70 lbs. (T. 19) He immediately felt pain on his back after falling on the stairs and he could not walk correctly.

He reported this accident to his supervisor immediately. His back pain did not improve and so the following day he told his supervisor that he wanted to go to the doctor. (T. 20) The Respondent sent him to Concentra, where they gave him therapy for 20 days and then he was to returned to light duty. (T. 21) He continued to work in a restricted capacity until July 20, 2015. Then he was off work until the company called him back to light duty, on November 25, 2015. (T. 22) During the time he was off work, he was paid a portion of his salary, from August 22, 2015 through November 24, 2015. (T. 23, see ARB EX #1)

From November 25, 2015 through September 26, 2017 (nearly two years), Petitioner performed "lighter work." (T. 27) However, now he feels as though he can no longer work at all.

(T. 27) Petitioner testified that that Respondent has not offered him any light duty job since September 26, 2017. (T. 27–28) Petitioner is currently unemployed.

Petitioner continued to see the doctors at Concentra, but eventually decided to get a set of injections along with a course of physical therapy. (T. 23–24) His treatment gave him little relief. Since the June 29, 2015 accident, he has had constant pain. (T. 24)

Dr. Sean Salehi at Concentra treated him from July 28, 2015 through November 23, 2015. (T. 35) In the end, Dr. Salehi released him at MMI to MEDIUM work with restrictions under a valid FCE. (PX. #2, p.5) The FCE, showing consistent effort throughout, demonstrates that Petitioner can perform within the MEDIUM physical demand category or about 91% of his former HEAVY duties. Dr. Salehi never prescribed back surgery. (T. 36) Since November, 2015, he has not returned to see Dr. Salehi. Dr. Salehi told him that he could no longer do anything for him. (T. 36 – 37)

Petitioner has seen three other surgeons, Dr. Templin, Dr. Wingate and Dr. Ghanayem, have prescribed that he requires a low back fusion. (T. 24 – 25) (PX #2) Petitioner wants the surgery. (T. 25)

Regarding his medical bills, Petitioner did not know if the bills are paid or not. (T. 27)

Under cross-examination, Petitioner testified that he has worked for the same company from June 13, 2013 until the accident of June 29, 2015, always doing the same kind of work, which he described included cleaning out and repairing the rental units. (T. 29)

The Petitioner testified that his accident occurred when he was going down the stairs to throw out garbage and his left foot was caught on the carpeting in the stairway while still inside the building. (T. 29) The stairwell was carpeted. He took a total load of 60 lbs. to 70 lbs. of bags with him down the stairs when he fell. (T. 30) After the accident, it was time to quit for the day

so Petitioner went to see his supervisor. (T. 31) Petitioner continued to work for at least another week until July 21, 2015. However, he let his coworkers do the heavy work. (T. 31) When he finally returned to work from November 25, 2015 through September 26, 2017, he was working 40 hours a week, roughly 8 hours a day, but he was doing lighter duty work. (T. 33) He had permission to sit when he wanted during this period. (T. 33)

Today, the pain in his body goes from his foot to his left leg, to his low back. (T. 34)

Petitioner agreed that he was seen by Dr. Babak Lami for an independent medical evaluation requested by Respondent. (T. 37–38)

On re-direct, the Petitioner testified that he could not continue to work with restrictions and he needed someone to help and that is why he went to another doctor after seeing Dr. Salehi. (T. 39–40)

The Petitioner confirmed that while testifying at the arbitration hearing on August 17, 2021, he has been seated in a chair for approximately 1 hour and he has not stood up, out of the chair. except to show where on his back he had impacted with the stairs, and to show the location of pain in his body. (T. 43) He does not use any assistive walking device and wears no lumbar support. (T. 44) He currently takes no prescription pain medications. (PX #1 – 10)

CONCLUSIONS OF LAW

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

Petitioner was examined by several orthopedic experts and it is not surprising that there is little agreement about the cause of the Petitioner's medical condition. Dr. Ghanayem (petitioner's section 12 examiner) believes that Petitioner currently suffers from a condition known as "a pars defect fracture" in the L4-L5 level of his spinal vertebrae, but Dr. Cary Templin (treater) does not.

Likewise, Dr. Jeffrey Wingate (treater) did not diagnose a pars defect, instead finding a herniation at L3-4 and an annular tear at L5-S1. Dr. Wingate recommended a fusion, in agreement with Dr. Ghanayem and Dr. Templin (PX #2)

Following this June 29, 2015 accident, the Petitioner began treating with Dr. Sean Salehi, a neurosurgeon, through Concentra Medical Center. (*See* Px. 1) On July 31, 2015, during his initial consultation with Dr. Salehi, Dr. Salehi's diagnosed the Petitioner with lumbar disc disease and spondylosis at L4-5. (PX #1) Dr. Salehi believed the Petitioner had mechanical low back pain secondary to disc disease and spondylosis at L4-5 rendered symptomatic by the described work injury. The Petitioner was prescribed physical therapy for the lumbar spine along with Mobic for pain. (Id.)

Following a course of physical therapy, by October 9, 2015, Petitioner complained to Dr. Salehi of low back pain but without any radiation into his legs. He reported that the pain was mostly with movement or walking and he rated his pain as a 3/10. He was not taking any prescriptions for pain. (PX #1) By October, 2015, Dr. Salehi diagnosed the Petitioner with lumbosacral spondylosis, L4-L5 and opined that this was mechanical back pain secondary to facet arthropathy at L4-L5, which appeared to be improving. The Petitioner continued to deny any leg pain, paresthesias, leg weakness and did not take any pain medication. Dr. Salehi thought he should complete five sessions of work conditioning, then undergo an FCE and return to work at light duty capacity. (PX #1) By November 20, 2015, the Petitioner complained of 4/10 left lower back pain radiating to the buttock without any radiating leg pain. An FCE dated November 17, 2015, showing a consistent effort, placed him at the MEDIUM physical demand level. He was able to perform 91.2% of his job demands. (PX #2) Dr. Salehi diagnosed him with lumbosacral spondylosis at L4-L5 and returned him to work with restrictions outlined in the FCE, which he considered to be

permanent restrictions at a MEDIUM duty physical demand level and declared him to be at MMI. Dr. Salehi did not recommend any further aggressive treatment but noted that if the Petitioner was interested in getting a second opinion, he could. (PX #1)

The Petitioner was next seen for an examination at the Petitioner's expense on April 22, 2019 by Dr. Alexander Ghanayem. The Petitioner did not seek medical treatment from Dr. Ghanayem, only an examination. Dr. Ghanayem diagnosed the Petitioner with symptomatic spondylolisthesis with stenosis at L4-5 and a pars defect fracture. (PX #10) Dr. Ghanayem believes that spondylolisthesis can happen over time in the absence of the work injury, but in the Petitioner's case, Dr. Ghanayem believed that, at the minimum, the symptoms the Petitioner was suffering from were work related (PX #10) Dr. Ghanayem further testified that the Petitioner also suffered from a pars defect fracture at L4-L5, which is a fracture of the vertebrae, even though the MRI radiologist did not find it. (*Id.)* Dr. Ghanayem believes that "the radiologist missed the call in that, he [the radiologist] did not see the pars defect or the spondylolisthesis, both at L4-L5". (*Id.)* The radiologist recorded a bulging and mild to moderate stenosis at L4-L5, but Dr. Ghanayem believed they missed seeing the spondylolisthesis, as well as the pars defect fracture. (Id.) (See, PX #2) Regarding a pars defect fracture in the L4-L5 level vertebrae, Dr. Ghanayem went on to give an example of this kind of extension of the spine as being like the back injury suffered by offensive linemen in football, who have a high incidence of pars defect fractures. Likewise, female gymnasts have almost a 100% incidents of pars defect fractures due to their dismounts which force them to go into forced extension with the back flips. (*See*, PX #10, Dr. Ghanayem Dep., p. 19) This pars defect fracture of the vertebrae, which occur in offensive lineman in football and female gymnasts, Dr. Ghanayem believes, was caused, in the Petitioner's case, by falling backwards onto carpeted stairs.

Unlike Dr. Ghanayem, Dr. Cary R. Templin, Petitioner's treating physician, who saw him for treatment on July 17 and August 21, 2020, testified that he believes there was no pars defect fracture in this case. (PX #11, Dr. Templin Dep., p. 17) Dr. Templin diagnosed the Petitioner with spondylolisthesis along with facet arthropathy. Additionally, Dr. Templin did not see many abnormal findings during the examination, with the Petitioner straight leg raise being negative, 5/5 strength with intact sensation (PX #11, p. 21) The proposed surgery, according to Dr. Templin, would take care of the extension problem and Petitioner's pain. Different than the testimony of all other doctors in this case, Dr. Templin believes that the Petitioner's problem is the Petitioner's facet joint. Whether the Petitioner has a pars fracture or not, a facet arthropathy was there. (*Id.* at pp. 22-23)

The Respondent's Section 12 physician, Dr. Babak Lami, could not see an L4-L5 pars defect fracture on either 2015 or 2017 MRI films. (RX #1, Dr. Lami Dep., p. 15, 20). Dr. Lami instead saw degenerative changes at L4-5 and L5-S1 with mild degenerative changes at L3-L4. And such MRI findings were not unusual for the patient's age. He specifically found no neurocompressive pathology. (*Id.* at pp. 15-16) Specifically of interest, the Petitioner drew a pain diagram, marking the symptoms from his shoulder blade down to below his left knee, all behind his back. This was no dermatomal evidence of an injury to the L4-5-disc area. The pain from an L4-L5 injury would be expected to come from his buttock, turning sideways and going to the front of his leg to the top of his foot. (*Id.* at p. 23; Rx. 2, Dr. Lami's second Dep., p. 14, 17) The Arbitrator notes that such a radiating L4-L5 dermatomal pain complaint was not made by the Petitioner to any other doctor, including Dr.'s Salehi, Ghanayem or Templin.

The Arbitrator notes that Dr. Lami performs 200 IMEs per year, in addition to 3,000 to 4,000 patient visits within his own practice per year. Dr. Lami is a fellowship-trained board-

certified spinal surgeon with his own practice. (*Id.* at p. 8) (*Id.* at p. 29) In Dr. Lami's opinion, a fusion will not help Petitioner, since he saw no neurological deficit, and no radiculopathy in the L4-5 dermatomal area. And the FCE says he can lift 60 pounds, so Dr. Lami asks what would be the objective of a fusion? (*Id.* at p. 25) Dr. Lami, like Dr. Ghanayem, agrees that the pars defect fracture can happen to gymnasts, football players and people who fall from buildings who have an extreme and forceful extension in their back. But here, there are many reasons why there is no pars defect fracture, including radiographs which do not show it, the MRIs which do not show it, that the medical literature does not support a pars defect fracture being caused by a single extension, falling onto carpeted stairs onto his back, and also because Dr. Ghanayem contradicts himself, admitting it could either be a single traumatic pars defect fracture, or it was instead aggravated, but again, Mr. Madriz never had back or leg symptoms corresponding to L4-5 dermatome or back pain. (Rx. 1, Dr. Lami's first dep., pp. 12-14) Dr. Salehi also could not find complaints which correspond to the Petitioner's L4-5 spinal level. (*Id.* at p. 17) The pain diagram drawn by the Petitioner, and attached to Rx 1, Dr. Lami's deposition, as Deposition Exhibit 3, shows that he drew his pain diagram down the posterior side of his left leg to his thigh or knee, showing 70% of his pain coming from his back, 10% scapular pain, and 20% from leg pain. These pain intensities also do not match L4-L5 injuries. (Rx. 2, pp.18-19). If someone had an aggravation of back pain from the L4-L5 level, they would have significantly more leg pain than back pain and no scapular pain. (RX #2, p.19)

Despite the above, the Arbitrator finds that the Petitioner proved that he has lumbar condition that requires fusion surgery. The Arbitrator notes, perhaps in an oversimplified way, that Drs. Wingate, Ghanayem and Templin all recommend a lumbar fusion. In contrast, Dr. Sean Salehi (occupational medicine) and Dr. Babak Lami, the Respondent's Section 12 physician, disagree. It

should be noted that in some respects, Dr. Lami stands alone. The most compelling feature of the Petitioner's low back pain is its persistence. Petitioner has consistently sought medical care for his lumbar spine for the last six years and it has not improved. Of absolute vital note, there are no long gaps in medical treatment. In a way, Dr. Salehi's opinion has been diminished by time. He could not have appreciated the Petitioner's longstanding pain and there is no evidence of malingering or symptom magnification in the record. In contrast, there is a positive EMG and Petitioner underwent two epidural injections that did not provide lasting relief. Taking the above into account, Dr. Lami is outnumbered by three other medical doctors that have similar credentials.

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?

Taking into account the above, the Arbitrator award all medical listed in ARB EX #1 in the amount of $23,092.61.

K. Is Petitioner entitled to any prospective medical care?

The Arbitrator finds that Petitioner is entitled to undergo a lumbar fusion. The medical opinion that seems the most sensible is Dr. Cary Templin, in that he did not appreciate a pars defect, but agreed that the Petitioner needed a lumbar fusion and that Petitioner's work restrictions were consistent with FCE performed in 2015. Likewise, Dr. Wingate recommended to "go ahead and proceed with surgery base on his long clinical radiculopathy." (PX #2)

L. What temporary total disability benefits are in dispute?

Petitioner claims entitlement to TTD for two periods of time. The first is from July 21, 2015 to November 24, 2015.

The Arbitrator awards TTD from July 20, 2015 to November 24, 2015, representing 18 2/7 weeks, when the Petitioner was placed off work by Dr. Salehi before reaching maximum medical improvement pursuant to a valid FCE.

The second period of time; Petitioner claims TTD benefits is from September 27, 2017 to August 13, 2021.

Petitioner worked MEDUIM duty until on or about September 26, 2017, a period of nearly two years. During this lengthy period, Respondent accommodated the FCE restrictions and allowed the Petitioner to take breaks and work at his own pace. (T. 33) At trial, Petitioner stated that he could no longer work with the restrictions. (T. 24 & 39) But he also stated that Respondent would no longer accommodate them.

On October 5, 2017, Dr. Chunduri acknowledged that Petitioner was working, but then placed him completely off work as he thought the Petitioner's condition had worsened. (PX #2)

On January 18, 2017, Dr. Wingate wrote that the employer has "been extremely cooperative and protective, maintaining the permanent work restrictions that Dr. Salehi recommended two years previously," but then placed the Petitioner completely off work, as he thought the Petitioner's condition had worsened as well. (PX #2)

Petitioner remained off work for nearly four years.

On July 17, 2020, Dr. Cary Templin examined the Petitioner and wrote that Petitioner needed a lumbar fusion but could work pursuant to the old FCE. An MRI at that time showed moderate stenosis at L4-5 and mild stenosis at L5-S1. The grade 1 anterolisthesis of L4 on L5 was considered "mild." Dr. Templin was more impressed with the "severe facet arthropathy' (a

degenerative condition) but the arbitrator notes that finding doesn't match the MRI report, which characterize the stenosis at that level to be moderate, not severe. (PX #2)

Of note, Petitioner was last consulted by physician's assistant, Kelly Diamond who wrote on October 23, 2020, that Petitioner's lumbar pain was "equivocal" and stated he could return to work pursuant to the FCE of 2015. (PX #2) The arbitrator notes that the definition of the word "equivocal" is "open to more than one interpretation; ambiguous." In the arbitrator's view, this observation most fairly represents the Petitioner's lumbar condition.

Considering the above, the Arbitrator will not award nearly five years of lost-time benefits. In truth, the Petitioner's MRIs were never compelling and the weight of the medical evidence neither demonstrates a "pars defect," nor "severe facet arthropathy." In any event, there is a plurality of medical opinion about performing the lumbar fusion that's chiefly based on Petitioner's longstanding pain complaints, non-responsiveness to conservative care and not much else. In that, the trier fact will abide. However, as it relates to his lost-time benefits, the record shows that Petitioner worked for Respondent for years after the accident and Respondent was willing to accommodate those restrictions.

At trial, Petitioner stated three things about his lost time. First, he could no longer work with the restrictions. (T. 39) Second, "I can't do light work anymore." (T 24). Finally, they no longer offered light duty. No date was given in reference to the claim that Respondent was unwilling accommodate. The weight of record states otherwise. From a chronological standpoint, it appears Petitioner took himself off work before a doctor ever did so. The most credible evidence is that Respondent was willing to accommodate his restrictions and as a result, no TTD is awarded.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC008682
Case Name	Jimmie Wright v. VS Trucklines Inc/Saso Angelovik & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0482
Number of Pages of Decision	24
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Karolina Zielinska
Respondent Attorney	Kasia Nowak, Rachel Peter, Saso Angelovik

DATE FILED: 12/13/2022

/s/Carolyn Doherty, Commissioner

Signature

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: Penalties	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JIMMIE WRIGHT,

Petitioner,

vs. NO: 18 WC 8682

VS TRUCKLINES, INC., SASO ANGELOVIK, and MIKE FRERICHS, ILLINOIS STATE TREASURER and EX-OFFICIO CUSTODIAN of The INJURED WORKERS' BENEFIT FUND

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent Saso Angelovik herein and notice given to all parties, the Commission, after considering the issues of *ex parte* hearing, employer-employee relationship, accident, notice, causal connection, average weekly wage, medical expenses, prospective medical care, and penalties, and being advised of the facts of 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 thereof.

The Commission affirms the Decision of the Arbitrator with respect to all issues except penalties. The award of penalties is vacated as the penalties were not properly assessed against Respondent Saso Angelovik.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated March 30, 2022 is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of penalties is vacated as the penalties were not properly assessed against Respondent Saso Angelovik.

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 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-Employers to pay the benefits due and owing the Petitioner. In the event the Respondent-Employers fail to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to §§5(b) and 4(d) of this Act. Respondent-Employers shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employers that are paid to the Petitioner from the Injured Workers' Benefit Fund.

Bond for the removal of this cause to the Circuit Court 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.

December 13, 2022
o: 12/8/22
CMD/kcb
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC008682
Case Name	WRIGHT, JIMMIE v. VS TRUCKLINES, INC., SASO ANGELOVIK AND MIKE FRERICHS, IL STATE TREASURE AND EX-OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Karolina Zielinska
Respondent Attorney	Rachel Peter

DATE FILED: 3/30/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 29, 2022 1.05%

/s/ Antara Nath Rivera, Arbitrator

Signature

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

Jimmie Wright
Employee/Petitioner

v.

VS Trucklines, Inc., Saso Angelovik, and Mike Frerichs, IL State Treasurer and ex-officio custodian of the Injured Workers' Benefit Fund
Employer/Respondent

Case # **18** WC **008682**

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 **Antara Nath Rivera**, Arbitrator of the Commission, in the city of **Chicago**, on **2/1/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **11/16/17**, 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 $**3,060.00 over 2 weeks**; the average weekly wage was $**1,530.00**.

On the date of accident, Petitioner was **50** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

Respondents shall pay reasonable and necessary medical services of $150,976.03, as provided in Sections 8(a) and 8.2 of the Act.

Respondents shall pay Petitioner temporary total disability benefits of $1,020.00/week from November 17, 2017, through June 21, 2018, for a total of 31 weeks as provided in Section 8(b) of the Act.

Respondents shall pay Petitioner PPD benefits of $790.64/week for 200 weeks, because the injuries sustained caused the 40% loss of use of the person as a whole as provided in Section 8(d)2 of the Act.

Respondent Angelovik shall pay to Petitioner penalties of $27,289.69, as provided in Section 16 of the Act; $56,022.82, as provided in Section 19(k) of the Act; and $n/a, as provided in Section 19(l) of the Act.

Injured Workers' Benefit Fund

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.

MARCH 30, 2022

Signature of Arbitrator

PROCEDURAL HISTORY

This action was pursued under the Illinois Workers' Compensation Act ("Act") by employee Jimmie Wright ("Petitioner") seeking relief from employer VS Trucklines, Inc. ("Respondent VS Trucklines"), Saso Angelovik, ("Respondent Angelovik"), and the Illinois State Treasurer as *ex-officio* custodian of the State of Illinois, Injured Workers' Benefit Fund ("IWBF").

On February 1, 2022, a hearing was held whereby Petitioner was represented by attorney Karolina Zielinska, the IWBF was represented by Assistant Attorney General Rachel Peter, of the Illinois Attorney General's Office. Neither Respondent VS Trucklines nor Respondent Angelovik was present. There were no representatives for either Respondent present at the hearing as well. Ms. Zielinska provided sufficient proof that proper notice was given to Respondent VS Trucklines and Respondent Angelovik of the February 1, 2022, hearing date. Arbitrator Nath Rivera proceeded to hearing ex-parte, without Respondents, after finding that adequate notice was given to Respondent VS Trucklines and Respondent Angelovik via mail and telephone. (PX 8)

Additionally, the Arbitrator finds that the National Council on Compensation Insurance ("NCCI") certification tendered by Petitioner demonstrates that on November 16, 2017, Respondents lacked workers' compensation insurance. (PX 5)

STATEMENT OF FACTS

Employment

Petitioner is a 54-year-old man who was employed by Respondent VS Trucklines working as an over-the-road truck driver. (Transcript "T." 28-29) Petitioner testified that as a truck driver, his responsibilities were to pick up, deliver, and haul freight, specifically United States ("US") mail. (T. 29) Petitioner described the mail as bulk mail, from R.R. Donnelley, which is delivered to various US post office locations. (T. 69-70)

Petitioner testified that he first found out about the job with Respondent VS Trucklines from his nephew, who was also a truck driver. (T. 68) Petitioner testified that he began his employment with Respondent VS Trucklines sometime at the end of September 2017. *Id*. Petitioner testified that he was hired by Respondent Angelovik, owner of Respondent VS Trucklines. (T. 30) He testified that he met with Respondent Angelovik, in person, at his office in Villa Park sometime in September 2017, filled out an application, and interviewed for a truck driver job. (T. 30-31) Petitioner testified that he was compliant with the Department of Transportation ("DOT") driving requirements. (T. 31) Petitioner testified that he passed the drug test prior to his employment. (T. 31) Petitioner did not sign an employment contract, an independent contractor/truck driver agreement, or a lease agreement with Respondent VS Trucklines. (T. 31-32, 34, 69) When asked whether anyone else was present at the office on the day he met with Respondent Angelovik, Petitioner testified that the Safety Director, Sally (no last name given), was also present. (T. 69)

Petitioner testified that Respondent Angelovik owned the truck and that Respondent VS Trucklines owned the trailers that Petitioner drove. (T. 34-35) Petitioner testified that the decals and logos stated "VS Trucklines, Inc." (T. 35) He further testified that Respondent Angelovik performed the maintenance on the truck, paid for the gas, paid for the tolls, and paid for the truck licenses. *Id*. Petitioner testified that he

did not have to present proof of insurance prior to driving a truck. (T. 34) He testified that he was not required to purchase any workers' compensation or liability insurance. (T. 36) Petitioner testified that he did not own his own truck at any time while working for VS Trucklines nor did he operate his own trucking company while working for VS Trucklines. (T. 37-38)

Petitioner testified that Respondent Angelovik, and another individual whose name he could not remember, were his direct supervisors/dispatchers for his job. (T. 32) Petitioner testified that Mr. Angelovik would dispatch Petitioner by texting him the pick-up and drop-off details including location and time. (PX 8; T. 36-37) Petitioner testified that he was not responsible for unloading any of the US mail that he hauled once he arrived at his drop-off destination. (T. 37) Petitioner was not allowed to have someone else take his place for any of his deliveries while employed by Respondent VS Trucklines. (T. 37) Petitioner testified that he was usually paid by direct deposit, but one time paid through Western Union at Walmart. (T. 32; PX 9) Petitioner's average weekly wage was $1,530.00. (T. 22) Petitioner testified that he earned $1,000.00, $640.00, and $1,420.00 for the loads he hauled in his first two weeks of work, for total earnings of $3,060.00. (T. 33-34; PX 9) Petitioner was a 1099 employee. (T. 79) Petitioner testified that he has been a truck driver for 30 years. *Id*.

Accident

Petitioner testified that on November 16, 2017, Petitioner was 50 years old, married, with no dependents. (T. 28-29) Petitioner testified that on November 16, 2017, he was working, and on duty, and driving Respondent VS Trucklines' truck. (T. 39-40) Petitioner testified that he was in Arkansas on his way to Texas with a load. (T. 40-41) Petitioner testified that he took a 10-hour break at a rest stop because the weather was bad, the roads were foggy, and he couldn't see anything. (T. 40) Petitioner testified that he woke up at approximately 4:00 a.m., did his logbook, and began driving. *Id*. Petitioner testified that just after a few miles, he drove over a cliff. *Id*. Petitioner testified that the state trooper told him that the only reason he did not go farther down the cliff was because the truck and trailer were wedged between two trees. *Id*. He testified that the roads in Arkansas were foggy and curvy. (T. 41) Petitioner stated that he did not have any recollection of driving off the cliff. *Id*. Petitioner testified that his only recollection was that he hit the windshield, that he could not see anything, that his hand was completely shattered, and that he was disoriented. (T. 41-42) Petitioner testified that he recalled seeing the moon and a lot of trees. (T. 42) He testified that he "kind of had an out of body experience,…" (T. 44)

Petitioner testified that he inched his way out onto the windshield and eased himself down the side of the truck. Id. He testified that he grabbed a hold of the frame and mirror and let his foot down easy as he did not know what he was stepping into. *Id*. He further testified that he was able to climb out of the window. (T. 43) Petitioner testified that he had a large laceration on his face and that he was taken to St. Vincent Hospital in Hot Springs, Arkansas. *Id*. Petitioner testified that he was taken to St. Vincent by ambulance. (T. 45)

Petitioner testified that he was not under the influence of drugs or alcohol at the time of the accident. (T. 83) Petitioner testified that the state trooper informed Petitioner that the logbooks were gone. (T. 85) He testified that the state trooper told him that Petitioner only got five miles form the rest area and opined that Petitioner did not fall asleep from there to the scene of the accident. *Id*. Petitioner testified his

brother and sister drove to Arkansas from Chicago upon learning of his accident and his brother took photographs of the truck involved in his accident the day after the accident occurred. (T. 43-44; PX 7)

Notice

Petitioner testified that Respondent Angelovik was notified of the accident by the state trooper. (T. 48) Petitioner testified that the state trooper was mandated to notify the employer of the accident due to the fact that the trailer was hauling US federal mail. (T. 49) Petitioner testified that the state trooper may have gotten Respondent Angelovik's number from the truck or looking it up on his squad unit. (T. 48) Petitioner testified that he learned that Respondent Angelovik called the hospital and asked the hospital to run a drug screen on Petitioner. (PX 1 at 27-28; T. 48-49)

Petitioner also testified that he spoke with Respondent Angelovik on November 23, 2017, after arriving back in Illinois. (T. 64) Petitioner testified that Respondent Angelovik only wanted to talk about insurance and insisted that Petitioner speak with Respondent Angelovik's insurance company to determine if the truck was salvageable and if he could get any money back. *Id*. Petitioner further testified that Respondent Angelovik asked how he was doing but was more concerned about the insurance. (T. 65) Petitioner testified that because of Respondent Angelovik's concern about insurance, Respondent Angelovik never discussed compensation for medical bills with Petitioner. (T. 101)

Medical Treatment

St. Vincent Hospital

On November 16, 2017, Petitioner was taken to the emergency room at St. Vincent Hospital. (PX 1 at 46) The records indicated that Petitioner suffered a cervical spine C3 transverse foramen fracture and fractures involving the right medial and lateral pterygoid plates and left medial pterygoid plate. (*Id*. at 33) Petitioner suffered extensive facial fractures of the nasal bones, anterior wall of the left maxillary sinus right zygomatic arch, walls of the right maxillary sinus and right orbit. (*Id*. at 35) Additional injuries included a right eye periorbital edema, loss of visual acuity, and a laceration in the lateral eyebrow. (*Id*. at 77, 138) A CT scan of the head showed no hemorrhaging but did show acute intracranial abnormality and facial fracture. (*Id*. at 121) A CT scan of the cervical spine showed nondisplaced fracture in the left medial pterygoid plate as well as nondisplaced fracture to the anterior and posterior walls of the left transverse foramen at C3. (*Id*. at 123) A CT scan of the facial bones indicated bilateral nasal bone fractures, nondisplaced fracture in the anterior wall of the left maxillary sinus, displaced fracture in the right zygomatic arch, comminuted fracture in the lateral wall of the right orbit, comminuted displaced right lamina papyracea fracture, mildly displaced fracture in the right orbital floor just medial to the infraorbital canal, minimally displaced fractures in the bases of the right medal and lateral pterygoid plates. (*Id*. at 127)

On November 19, 2017, Petitioner underwent surgery comprising of an open reduction internal fixation of his facial fractures with multiple plates and screws implants. (PX 1 at 86-87) Petitioner was discharged on November 21, 2017, and advised to follow up with his doctor in Chicago. (PX 1 at 53) Petitioner testified that after he was discharged, he went back to Chicago, with his sister, by train because he was not allowed to fly on a plane due the pressure that would be put on the hardware in his face. (T. 50)

Stroger Cook County Health

On November 22, 2017, after a 21-hour train ride, Petitioner testified that he was immediately admitted to Stroger Cook County Health. (PX 3a at 871–875; T. 50) He presented to the trauma unit for continued care after his accident on November 16, 2017. (PX 3a) Petitioner presented with right eye periorbital edema with a recent, healing 3cm surgical scar in the lateral eyebrow and a 3cm scar in the superior maximally rim with chemosis and drainage; cervical spine tenderness; right lower rib and flank tenderness. *Id.* The notes indicated he also sustained injuries consisting of a cervical spine C3 transverse foramen fracture, a right complex orbital wall fracture, a Lefort type 1 Right complex zygomatic arch fracture, and a questionable rib fracture. *Id.* It was noted he underwent surgery on November 19, 2017, for his orbital wall fracture. *Id.*

Extensive radiology and scanning were conducted at admission, including chest and pelvis x-rays as well as CT scans of Petitioner's brain, cervical spine, neck, facial bones, chest, thoracic spine, lumbar spine, and sacrum. (PX 3a at 876) The testing confirmed a transverse, non-displaced fracture through the left transverse process of C3 as well as a complex right ZMC (zygomatic) fracture with a right pterygoid plate. *Id.*

On November 24, 2017, Petitioner presented to ophthalmology with complaints of constant pain in his right eye. (PX 3a at 827) Bacitracin was prescribed. (PX 3a at 831)

On November 28, 2017, Petitioner presented to oral surgery for a follow up. (PX 3a at 807-809) The notes indicated the CT of his facial bones showed adequate reduction of the fractures. *Id.*

Clinician's Family Health Center

On December 14, 2017, Petitioner presented to his primary care doctor, at Clinician's Family Health Center, with complaints of low back pain and a history of a motor vehicle accident in which he suffered extensive face fractures. (PX 2 at 5-7) Petitioner complained of double vision as well. *Id.* Petitioner was referred to pain management and advised to follow up with his maxillofacial and eye specialists regarding ongoing care. *Id.* Petitioner was also given an off work note for six months in order to recover from his injuries before returning to driving. (PX 2 at 7) The doctor noted that barring any complications, she expected Petitioner would make a gradual recovery, although due to the severity of his injuries, there may be residual limitations to his normal work activities post recovery. *Id.*

Stroger Cook County Health

On December 12, 2017, Petitioner was evaluated by an oral surgeon at Stroger Cook County Health. (PX 3a at 732-733) He complained of double vision stemming from an accident four weeks ago as well as problems with his jaw. *Id.* He was diagnosed with visual acuity, diplopia (double vision on right eye), trismus (jaw remains closed due to spasms of jaw muscles after trauma). *Id.* He was referred to physical therapy for his trismus and future surgeries were discussed. *Id.*

On December 13, 2017, Petitioner presented to ophthalmology complaining of ongoing diplopia. (PX 3a at 711)

On December 14, 2017, Petitioner presented to the pain clinic advising that his recent motor vehicle accident on November 16, 2017, in Arkansas aggravated his back pain. (PX 3a at 677) The notes indicated that Petitioner last underwent lumbar spine injections in 2015. (PX 3a at 678) Petitioner was diagnosed with sacroiliitis, facet arthritis of lumbar region and myofascial pain. (PX 3a at 679) He underwent a left lumbar paraspinal muscle injection and was prescribed gabapentin and tramadol. *Id.*

On January 9, 2018, Petitioner presented with an allergic reaction to the right orbital fracture plating/hardware. (PX 3a at 611-613) He also had continued eye swelling and double vision. (PX 3a at 588)

On January 16, 2018, Petitioner presented to an oral surgeon to discuss the status of his right-side facial swelling, diplopia, recent allergic reactions, and future surgeries to his face and jaw. (PX 3a at 567-569)

On February 7, 2018, Petitioner presented to the pain clinic complaining of severe low back pain. (PX 3a at 539) Petitioner noted that his injection from December 14, 2017, helped him but his pain had since returned. Petitioner obtained an additional left lumbar paraspinal muscle injection. (PX 3a at 543)

On February 14, 2018, Petitioner presented to ophthalmology complaining of diplopia. A repeat CT scan of his head and facial bones was ordered. (PX 3a at 511, 516)

On March 28, 2018, Petitioner presented to the Emergency Room Department ("ER"), at Stroger Cook County Health, complaining of shortness of breath on exertion for the last few months." (PX 3a at 302-303, 308, 314) The notes indicated that Petitioner was admitted through March 29, 2018, in order to evaluate for possible "CAD." *Id.* at 305. Petitioner noted that he had trouble with stairs. *Id.* at 312. Chest x-rays were taken indicating no acute cardiopulmonary process. *Id.* at 326. A stress test was performed indicating normal myocardial perfusion. *Id.* at 327-328. An echocardiogram was performed. *Id.* at 332-348. Petitioner likewise presented for an oral surgery follow up appointment for facial pain on March 28, 2018. *Id.* at 488.

On April 5, 2018, and April 25, 2018, Petitioner presented for follow ups with ophthalmology. (PX 3a at 273, 218) No surgical intervention was recommended at that time. *Id.* at 222. Petitioner also followed up with the pain clinic on April 25, 2018, and underwent trigger point injections at left paraspinal lumbar for his myofascial pain. *Id.* at 235.

On May 3, 2018, Petitioner presented to the ER due to shortness of breath, dizziness, dyspnea, and sinus pain with liquids running back into his sinuses for the past week. This has been ongoing since his surgery/accident in November. (PX 3a at 139)

On June 3, 2018, Petitioner presented to the ER for right eye swelling and discharge following his accident in November with associated facial and orbital fractures. (PX 3a at 109)

On July 25, 2018, Petitioner presented to ophthalmology with a painful bump on his right upper eye. (PX 3a at 40). He continued to complain of diplopia. *Id.* Petitioner also presented to the pain clinic and underwent trigger point injections at the left paraspinal lumbar for his myofascial pain. *Id.* at 63.

On August 15, 2018, Petitioner followed up with ophthalmology regarding the bump on his right upper eyelid as well as worsening of his diplopia. (PX 3a at 7)

On October 2, 2018, Petitioner presented to occuplastics for a follow up regarding the scarring in his right zygomatic area. (PX 3b at 623) He indicated the Lyrica is helping, but minimally. *Id.* Petitioner discussed surgical options with his doctor and surgery was scheduled for October 29, 2018. *Id.* at 625.

On October 3, 2018, Petitioner presented with neck pain following a motor vehicle accident which occurred about 5 days prior when he was t-boned on his driver side while traveling 20-25 mph. (PX 3b at 589) A CT of his spine was performed and returned negative for any acute findings. *Id.* at 592. Petitioner did not demonstrate any midline tenderness nor cervical loss of motion from this accident. *Id.* The notes likewise indicated that Petitioner had increased low back pain following this motor vehicle accident in 2018. *Id.* at 534.

On October 29, 2018, Petitioner underwent a second facial surgery consisting of a Right Malar Scar Revision and Abdominal Fat Graft (PX 3b at 449, 456-458) He attended post-surgical follow-ups on November 2, 2018, and November 6, 2018. (PX 3b at 363, 344)

On November 27, 2018, Petitioner presented with bilateral shoulder pain that "began 2 days ago." (PX 3b at 307) Petitioner denied any activity that may have caused the pain and claimed it occurred suddenly. *Id.* He indicated that he suffered from arthritic pain around his body. *Id.* Left shoulder x-rays were taken. *Id.* at 309. Petitioner also presented with pain during urination and groin pain. *Id.* at 307, 296.

On December 4, 2018, Petitioner presented to the pain clinic complaining of low back pain and neck pain. (PX 3b at 244-245 The medical notes indicated that Petitioner's pain was exacerbated by his October 2018 accident. *Id.* at 245. Petitioner was recommended bilateral shoulder injections and a referral for acupuncture. *Id.* at 249.

On December 5, 2018, Petitioner presented for a follow up with ophthalmology regarding his diplopia. (PX 3b at 187)

On February 22, 2019, Petitioner presented for a pulmonary test due to his ongoing shortness of breath. (PX 3b at 78-98)

On March 6, 2019, Petitioner returned to ophthalmology for a checkup for his diplopia. (PX 3b at 57)

On March 18, 2019, Petitioner presented to the pain clinic for his neck and low back pain and bilateral shoulder pain. (PX 3b at 27)

On April 16, 2019, Petitioner presented to orthopedics to review his shoulder MRIs and begin bilateral shoulder care. (PX 3b) The notes indicated that he had bilateral shoulder pain following a 2007 motorcycle accident and a truck accident in 2007. (PX 3b at 6-7)

On September 9, 2019, Petitioner presented to the pain clinic for a follow up regarding his neck and back pain. (PX 3c at 1313) The notes indicated that Petitioner "[h]ad a CT of the cervical spine which

showed facet arthropathy. CLBP (chronic low back pain) and chronic neck pain exacerbated from this accident." *Id.*

On October 29, 2019, Petitioner presented to oral surgery complaining of swelling on the right side of his face as well as draining in his malar region. (PX 3c at 1229) Petitioner also noted his double vision had gotten worse. *Id.* A CT was ordered of his face. *Id.* at 1230.

On November 6, 2019, Petitioner underwent a CT scan of his face which showed mild thickening and enhancement of the right sclera as compared with the left, suggesting scleritis. (PX 3c at 1213)

On November 7, 2019, Petitioner presented to oral surgery for a follow up regarding his face swelling and the results of his CT. (PX 3c at 1171) The CT scan was non-conclusive for infected hardware fluid collection. *Id.* at 1172. Petitioner also complained of worsening double vision. *Id.*

On November 21, 2019, Petitioner presented to ophthalmology for dacryocystitis (an infection under his eye). (PX 3c at 1147)

On February 14, 2020, and January 25, 2021, Petitioner continued to follow up with ophthalmology for routine visits/check-ups, regarding his chronic vertical binocular diplopia on upgaze since sustaining facial fractures from the November 16, 2017, work accident. (PX 3c at 1085, 952)

On March 25, 2021, Petitioner presented to maxillofacial surgery complaining of increased pain in his right orbital floor edge. (PX 3c, 913) He continued to have a right facial deformity since his November 16, 2017, work accident. *Id.* at 914. Petitioner was diagnosed with right neuropathic pain of the right infra-orbital nerve. *Id.* He was given recommendations for care including seeing pain management, cutting the nerve surgically, or doing nothing. *Id.*

On March 25, 2021, March 29, 2021, and April 30, 2021, Petitioner also presented to the pain clinic for multiple complaints including right sided facial pain, lumbar pain, and bilateral shoulder pain. (PX 3c at 869, 824, 809)

On June 7, 2021, Petitioner was seen at Stroger Hospital for arthritis in his back, neck, ankles, and hands. He reported left thumb pain most of the time and that he sees the pain clinic for his shoulder, face, and neck pain for ketamine infusions. (PX 3c at 605)

On September 16, 2021, Petitioner presented to ophthalmology for a follow up for his diplopia post his November 16, 2017, accident and facial fractures. (PX 3c at 137, 144) Petitioner was advised to follow up in six months for continued monitoring. *Id.* His next follow-up appointment is scheduled for March 2022. *Id.*

On October 14, 2021, Petitioner presented to the pain clinic for a ketamine infusion due to his neuropathic pain. (PX 3c at 92) He also underwent shoulder steroid injections. *Id.*

On November 29, 2021, Petitioner presented for a follow up post ketamine infusion for his low back and shoulder symptoms. (PX 3c at 73) He ranked his low back and shoulder pain as the most painful. *Id*.

Prior Medical History

Petitioner testified that he was involved in a motorcycle accident in 2007 which caused severe injuries to his left leg requiring approximately seven surgical procedures to correct. (T. 93-95) Petitioner testified that his left leg was not re-injured during his November 16, 2017, accident. (T. 110) Petitioner further testified that he had some back problems before the November 16, 2017, accident for which he underwent two injections sometime in 2015. (T. 92-93) Petitioner testified that his back problems were aggravated by the November 16, 2017, truck accident at work. (T. 92-93; PX 3a, 677)

Petitioner's Testimony Regarding His Current Complaints

Petitioner testified that his whole face was shattered in the November 16, 2017, work accident. (T. 87) Petitioner testified that he is living with permanent hardware and screws in his face which cause him daily discomfort and pain. (T. 47, 59-60) Petitioner further testified that he gets headaches and has severe nerve damage all over his face. (T. 59-60) Petitioner testified that he continues to have facial pain and takes Lyrica and other pain medication every day for his injuries. (T. 60) Petitioner also testified that he undergoes ketamine injections through an IV drip in order to help with his right sided facial pain. (T. 96-97) Petitioner testified that he continues to see his maxillofacial surgeon and oral surgeon every six months or so for continued care and management. (T. 59) Petitioner testified that there are no future facial surgeries currently being discussed or scheduled. (T. 59)

Petitioner testified that he suffers from diplopia (double vision) as a result of his accident on November 16, 2017. (T. 60) Petitioner testified that this prevents him from safely driving and he has been advised by his doctors to wear an eye patch when driving. (T. 61, PX 3c, 1001-1002) Petitioner testified that he did not have problems with double vision before his work accident. (T. 51) Petitioner testified that after his work accident, he continues having trouble when looking up or to the side. (T. 102) Petitioner further testified that the doctors offered him another surgery but advised that he would still have double vision. (T. 102-103) Additionally, Petitioner testified that he thought it was too risky and too major of a surgery to undergo. *Id*. Petitioner testified that his double vision is a permanent condition. (T. 60) Petitioner testified that he continues to see his ophthalmologist approximately every six months for continued care and management. (T. 57)

Petitioner testified that he did not have problems with shortness of breath before his accident of November 16, 2017. (T. 55) Petitioner testified that after sustaining his injuries to his face, including his nose/nasal canal and ribs, he now has trouble with shortness of breath on exertion. (T. 54-55) Petitioner testified that he has trouble when walking up and down stairs and that he has two flights of stairs to get to his home. (T. 55) Petitioner testified that he continues to have shortness of breath due to his fractures. (T. 61) Petitioner further testified that he has an inhaler that was prescribed to help him with his breathing. (T. 62) Petitioner also testified that his neck continues to hurt and that he has trouble turning his head due to that pain and the fracture. (T. 58, 61)

Petitioner testified that his lower back is always in pain. (T. 58) Petitioner testified that he was getting trigger point injections for his back following his November 16, 2017, accident but stopped because the injections turned him diabetic. (T. 92; PX 3a at 679, 543, 235) Petitioner testified that he continues actively treating with pain management for his lumbar spine and is now getting ketamine or

lidocaine injections instead of trigger point injections. (T. 92-93) Petitioner testified that he had back pain prior to his November 16, 2017, accident, but that the truck accident severely aggravated his back pain. (T. 92-93) Petitioner testified that his last injections prior to sustaining his November 16, 2017, accident were performed a couple years before his accident. (T. 93)

Petitioner testified that his life has changed due to his accident on November 16, 2017. (T. 61-63) Petitioner testified that he used to be very active and be able to go bike riding, bowling, and fishing before the accident. (T. 62) Petitioner testified that he is now prevented from enjoying those hobbies and activities due to the pain and physical limitations caused by his accident of November 16, 2017. (T. 61-63) Petitioner testified that he has trouble cooking for himself as well as with cleaning and doing household chores. (T. 63) Petitioner testified that he cannot walk up and down the stairs without problems. (T. 62-63) He also testified that it is difficult for him to drive due to the limitations in his neck and in turning his head. (T. 61)

Petitioner's Time Off Work and Temporary Total Disability

Petitioner testified that he has not been formally released to work by any of his physicians at Stroger Cook County Health since the date of the accident. (T. 58) Petitioner testified he was kept off work for six months by his doctor at Clinicians Family Health Center. (PX 2 at 7; T. 52) Petitioner testified that his physicians at Stroger Cook County Health did not provide him with work slips. (T. 100) Petitioner testified that he was not paid any temporary total disability ("TTD") benefits since his date of accident. *Id.* He was awarded Social Security Disability Income ("SSDI") almost immediately after his November 16, 2017, accident. (T. 99) Petitioner testified that he followed the doctor's order and that he never returned to work. (T. 66, 99)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Statement of Fact in support of the Conclusions of Law set forth below.

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission,* 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well

as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and found him to be a credible witness. Petitioner was calm, well-mannered, composed, and spoke clearly. The Arbitrator took notice of Petitioner's facial expressions and facial movements, and occasionally lack thereof, and found them consistent with Petitioner's testimony. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

WITH RESPECT TO ISSUE (A), WAS RESPONDENT OPERATING UNDER AND SUBJECT TO THE ILLINOIS WORKERS' COMPENSTATION OR OCCUPATIONAL DISEASES ACT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner claims that on such fate, Petitioner and Respondents VS Trucklines and Angelovik were operating under the Act, and that the relationship was one of employer and employee. ("Arbitrator's Exhibit (AX) #1, line 1) The Arbitrator finds that Respondents were operating under the Act, §3(3), "[c]arriage by land, water or aerial service and loading or unloading in connection therewith, including the distribution of any commodity by horsedrawn or motor vehicle where the employer employs more than 2 employees in the enterprise or business." The Arbitrator notes that Respondents' business of moving US mail by truck constitutes such service as defined under the Act. Additionally, Petitioner testified to other employees, present at Respondent VS Trucklines, who were employed by Respondents.

Based on these facts, the Arbitrator finds that Respondents Angelovik and VS Trucklines, operated under the Act on November 16, 2017.

WITH RESPECT TO ISSUE (B), WAS THERE AN EMPLOYEE-EMPLOYER RELATIONSHIP, THE ARBITRATOR FINDS AS FOLLOWS:

The existence of an employment relationship is a prerequisite for any award of benefits under the Act. Under Illinois law, distinguishing an employer-employee relationship from that of an independent contractor is a fact-specific determination based on multiple factors. See *Ware v. Indus. Comm'n*., 318 III. App. 3d 1117, 1122 (1st Dist. 2000); *Roberson v. Industrial Comm'n*, 225 Ill.2d 159, 174-75 (2007). The seven factors the courts have relied on to determine whether an employee-employer relationship exist are as follows: (1) whether the employer may control the manner in which the person performs the work; (2) whether the employer dictates the person's schedule; (3) whether the employer pays the person hourly; (4) whether the employer withholds income and social security taxes from the person's compensation; (5) whether the employer may discharge the person at will; (6) whether the employer supplies the person with materials and equipment; and (7) whether the employer's general business encompasses the person's work. See *Roberson*, Ill. 2d at 175. No single factor is determinative and finding an employer-employee relationship rests upon the totality of the circumstances. *Id*.

Based on Petitioner's testimony, the Arbitrator finds that an employee-employer relationship existed between Petitioner and Respondents VS Trucklines and Angelovik. The Arbitrator noted that Petitioner followed Respondent's instructions as to where and when to pick up and deliver his loads, rather than making his own arrangements with Respondent's customers. (T. 32, 36-37; PX 8) Petitioner

was told the time and location of each pick up and drop off via dispatch. (T. 36-37) Petitioner testified that he was the only truck driver that transported the mail, and that Petitioner was not allowed to let anyone drive for him. (T. 36-37) Additionally, Petitioner testified that Respondent would text Petitioner when he would need to be at a certain location at a certain time to pick up or drop off a load. (T. 36)

Furthermore, Petitioner testified that Respondent Angelovik owned the truck and that Respondent VS Trucklines owned the trailers that Petitioner drove. (T. 34-35) Petitioner testified that the decals and logos stated "VS Trucklines, Inc." (T. 35) He testified that Respondent Angelovik performed the maintenance on the truck, paid for the gas, paid for the tolls, and paid for the truck licenses. *Id*. Petitioner testified that he did not have to present proof of insurance prior to driving a truck. (T. 34) He testified that he was not required to purchase any workers' compensation or liability insurance. (T. 36) Petitioner testified that he did not own his own truck at any time while working for VS Trucklines nor did he operate his own trucking company while working for VS Trucklines. (T. 37-38)

Based on these facts, the Arbitrator finds that Respondents VS Trucklines and Angelovik exercised a right to control Petitioner's work. Thus, Petitioner has proven there was an employee-employer relationship on November 16, 2017.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

After hearing the testimony of Petitioner and upon review of the corroborating evidence contained in PX 1, the Arbitrator finds that Petitioner gave Respondent timely notice of his accident. Petitioner testified that the state trooper was mandated to notify Respondent VS Trucklines of the accident due to the fact that the trailer was hauling US federal mail. (T. 49) Petitioner testified that the state trooper notified Respondent Angelovik the same day the accident occurred. (T. 48) Petitioner testified that Respondent Angelovik called the hospital, that same day the state trooper called Respondent Angelovik, and asked the hospital to run a drug screen on Petitioner. (PX 1 at 27-28; T. 48-49) This is corroborated by the medical records from St. Vincent Hospital. (PX 1 at 27-28)

Additionally, Petitioner testified that he also gave verbal notice of his accident to Respondent Angelovik, on or about November 23, 2017, when the two of them spoke on the telephone after Petitioner was released from medical care at Stroger Cook County Health. (T. 63-64). As such, the Arbitrator finds timely notice was given.

WITH RESPECT TO ISSUE (F), IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CASUALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner bears the burden of proving, by a preponderance of the evidence, every element of the claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). To obtain compensation under the Illinois Workers' Compensation Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. 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. Causation between the work-related accident and condition of ill-being can be established by showing prior history of good health, followed by a work-related accident in which petitioner is unable to perform his physical duties. *Kawa v. Illinois Workers' Comp. Comm'n*, 991 N.E.2d 430, 448 (2013).

The parties do not dispute that Petitioner sustained an accident arising out of and in the course of his employment at Respondent on November 16, 2017. After hearing the testimony of Petitioner and reviewing Petitioner's medical records, the Arbitrator finds Petitioner's current condition of ill-being is causally related to the accident of November 16, 2017, in part, and not causally related, in part, as follows:

Face: The Arbitrator finds Petitioner's current condition as it relates to his face is causally related to his work accident of November 16, 2017. Petitioner sustained multiple injuries to his face as a result of his November 16, 2017, accident, including fractures involving the right medial and lateral pterygoid plates and left medial pterygoid plate (PX 1 at 33), extensive facial fractures of the nasal bones, anterior wall of the left maxillary sinus right zygomatic arch, walls of the right maxillary sinus and right orbit (PX 1 at 35), and facial lacerations to the cheek and lateral eyebrow which required sutures. (PX 1 at 77, 138) Petitioner underwent two surgeries to his face as a result of his accident. Petitioner first underwent surgery comprising of an open reduction internal fixation of his facial fractures with multiple plates and screws implants on November 19, 2017. (PX 1 at 86-87) Petitioner then underwent a second surgery consisting of a right malar scar revision and abdominal fat grafting in order to fill out his face and assist with his vision and reduce his pain. (PX 3b at 449, 456-458) Petitioner was not living with a facial deformity prior to November 16, 2017. As the Arbitrator finds that Petitioner's face condition is causally related to his work accident.

Eyes: The Arbitrator finds Petitioner's condition as it relates to his eyes, including his right eye swelling, right eye infections and ongoing diplopia (double vision) is causally related to his work accident of November 16, 2017. Petitioner testified credibly that he did not have problems with double vision before his work accident. (T. 51) After his work accident, he continues having trouble when looking up or to the side. (T. 102) The medical records from Stroger Cook County Health support Petitioner's testimony. Petitioner was evaluated by an oral surgeon at Stroger Cook County Health on December 12, 2017, and complained of double vision stemming from an accident four weeks ago. (PX 3a at 732-733) Petitioner was diagnosed with visual acuity, diplopia (double vision on right eye), trismus (jaw remains closed due to spasms of jaw muscles after trauma). *Id.* On December 13, 2017, Petitioner was referred to an ophthalmologist to address his diplopia. (PX 3a at 711) Petitioner has also treated for right eye swelling (PX 3a at 109) and infections (PX 3c at 1147) as a result of his orbital fractures. Since that time, Petitioner has been in regular, ongoing medical care for these issues with his most recent appointment taking place in September of 2021. (PX 3c at 137, 144) He has been diagnosed with chronic vertical binocular diplopia on upgaze since his November 16, 2017, work accident. (PX 3c at 1085, 952) The evidence submitted supports a finding that Petitioner's diplopia started after sustaining facial fractures in his work accident. As such, the Arbitrator finds his eye condition to be causally related to his work accident of November 16, 2017.

Shortness of Breath: The Arbitrator finds Petitioner's shortness of breath is causally related to his work accident of November 16, 2017. Petitioner testified that he did not have problems with shortness of breath before his accident of November 16, 2017. (T. 55) After sustaining the injuries to his face, including his nose/nasal canal and ribs, Petitioner testified he now has trouble with shortness of breath on exertion, most notably when walking up and down the two flights of stairs he has at home. (T. 54-55) The Arbitrator notes that the medical records support Petitioner's testimony. The records indicated that these issues with his shortness of breath have been ongoing since his surgery/accident in November. *Id.* at 139. Petitioner continued to have problems with shortness of breath through 2019. Specifically, on February 22, 2019, Petitioner presented for a pulmonary test due to his ongoing shortness of breath. (PX 3b at 78-

98) Petitioner testified he continues having trouble with shortness of breath and has been prescribed an inhaler to help with his breathing. (T. 61-62) The Arbitrator finds this condition to be casually related to Petitioner's accident of November 16, 2017.

Cervical Spine: The Arbitrator finds Petitioner's current condition as it relates to his cervical spine is in part causally related to his work accident of November 16, 2017. Specifically, the Arbitrator finds Petitioner's C3 fracture was a direct result of his work accident of November 16, 2017. This is evidenced by his immediate medical care at St. Vincent's Hospital as well as Stroger Cook County Health. (PX 1; PX 3a at 870) However, the Arbitrator finds Petitioner's cervical spine condition as of October 3, 2018, and onward is no longer related to his work accident because Petitioner re-injured and aggravated a prior, chronic neck condition in an unrelated motor vehicle accident at that time. Following October 3, 2018, Petitioner's medical records reflect his personal, unrelated motor vehicle accident as the cause of his chronic and ongoing neck complaints. (PX 3b at 589, 534) The records do not indicate any ongoing treatment for the specific C3 fracture which was sustained in the accident of November 16, 2017. Rather, Petitioner's CT of his cervical spine taken on October 3, 2018, indicated disc space narrowing at multiple levels, greater at the C5-C6 level. (PX 3b at 537) As such, the Arbitrator finds only Petitioner's C3 fracture is related to his work accident.

Lumbar Spine: The Arbitrator finds Petitioner's current condition as it relates to his lumbar spine is in part causally related to his work accident of November 16, 2017. Based on the medical records from April of 2017 until the date of accident, November 16, 2017, Petitioner did not undergo any medical care for his low back in the seven months leading up to his November 16, 2017, work accident. (PX 3a at 883 - 1052) Following his November 16, 2017, work accident, Petitioner complained of increased low back pain at his November 22, 2017, visit at Stroger Cook County Health. (PX 3a at 883) The notes from December 14, 2017, stated Petitioner aggravated his low back pain following his November 2017 accident. (PX 3a at 677) He was diagnosed with sacroiliitis, facet arthritis of lumbar region and myofascial pain. (PX 3a at 679) Petitioner underwent a trigger point injection on December 14, 2017, to treat his aggravated back condition. *Id.* Petitioner returned to the pain clinic on February 7, 2018, with reoccurring, severe low back pain. (PX 3a at 539) His lumbar spine CT indicated disc bulging at L3-S1. (PX 3a at 542) Petitioner underwent another trigger point injection on February 7, 2018. (PX 3a at 543) Petitioner underwent another injection on April 25, 2018. (PX 3a at 235) The Arbitrator finds Petitioner's lumbar spine condition and medical care from November 16, 2017, through October 3, 2018, was causally related to his work accident.

However, the Arbitrator notes Petitioner presented to the pain clinic on October 3, 2018, complaining of increased low back pain following a personal motor vehicle accident that occurred approximately five days prior when he was t-boned on his driver side while traveling 20-25 mph. (PX 3b at 589, 534) Petitioner's personal, superseding motor vehicle accident broke the chain of causation. As such, Petitioner's current low back condition and any medical treatment following October 3, 2018, is not related to his work accident of November 16, 2017.

Bilateral Shoulders: The Arbitrator finds Petitioner's bilateral shoulder condition is not causally related to his work accident of November 16, 2017. The Arbitrator relies on the lack of any corroborating medical records detailing any left or right shoulder symptoms/treatment in the days, weeks, and months following Petitioner's accident of November 16, 2017. Specifically, the records from St. Vincent Hospital did not mention any injuries to Petitioner's shoulders (PX 1) and neither did Clinicians Family Health.

(PX 2) Stroger Cook County Health also did not note any shoulder problems for the first 12 months following Petitioner's accident. (PX 3a; PX 3b) It was not until November 27, 2018, that shoulder complaints were first noted in Petitioner's records. Specifically, on that date, Petitioner presented with bilateral shoulder pain stating that his pain "began 2 days ago." (PX 3b at 307) The Arbitrator finds this medical evidence significant. All of Petitioner's medical care regarding his bilateral shoulders took place after November 27, 2018–a full year following his work-related accident of November 16, 2017. For these reasons, the Arbitrator notes that Petitioner's bilateral shoulder condition and medical care from 2018 through the present is not causally related to his work accident of November 16, 2017.

Thus, the Arbitrator finds that Petitioner's current condition of ill-being with respect to Petitioner's face, eyes, shortness of breath, cervical spine, and lumbar spine (until October 3, 2018) were casually related to the November 16, 2017, work-related accident.

WITH RESPECT TO ISSUE (J), WERE MEDICAL SERVICES THAT WERE PROVIDED TO PETITION REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Consistent with the Arbitrator's finding that Petitioner's current condition of ill-being was causally related to the November 16, 2017, work related accident, the Arbitrator finds the following medical bills (PX 4) were reasonable, necessary, and causally related to Petitioner's November 16, 2017, work accident:

1. CHI St. Vincent's Hospital for DOS November 16, 2017, through November 21, 2017, totaling $80,619.54 (PX 4 at 6-15); and
2. Clinicians Family Health Center for DOS December 14, 2017, totaling $377.70 (PX 4 at 3); and
3. Stroger Cook County Health for DOS November 21, 2017, through November 30, 2017, totaling $69,978.79 representing all dates of service listed under Stroger Cook County Health in PX 4 except for the specific dates of service for unrelated medical care listed below (PX 4 at 16-139).

Furthermore, the Arbitrator notes that Respondents have not paid any of these medical bills. No evidence or testimony has been presented to the contrary. The Arbitrator therefore finds that Respondents shall pay all reasonable, necessary, and causally related medical expenses incurred in the care and treatment relating to Petitioner's causally related injury, on November 16, 2017, pursuant to §8(a) and §8.2 of the Act.

WITH RESPECT TO ISSUE (K), WHAT TEMPORARY TOTAL DISABILITY BENEFITS ARE IN DISPUTE, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner testified that he was kept off work for six months by his doctor at Clinicians Family Health Center. (PX 2 at 7; T. 52) The note from Clinicians Family Health Center dated December 21, 2017, supports Petitioner's testimony that his doctor recommended he remain off work for six months (through approximately June 21, 2018) in order to heal from his injuries and fractures. (PX 2 at 7).

Petitioner testified that he has not been formally released back to work by any of his physicians since the date of the accident. (T. 58) Petitioner's physicians at Stroger Cook County Health did not provide him with work slips. (T. 100) The medical records from Stroger Cook County Health support

Petitioner's testimony showing a lack of any work status notes or documentation of any release to work slips in any of the records. (PX 3a, 3b, and 3c) Petitioner testified he has not returned to work. (T. 66, 69) Petitioner was never paid any TTD benefits. Additionally, The Arbitrator notes that Petitioner was approved for Social Security Disability as of December 2017. (T. 99)

Thus, Respondents shall Petitioner TTD benefits of $1,020.00/week from November 17, 2017, through June 21, 2018, for a total of 31 weeks as provided in §8(b) of the Act.

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

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability ("PPD") for accidental injuries occurring on or after September 1, 2011:

(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.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that an American Medical Association ("AMA") impairment rating was not performed in this case. As such, the Arbitrator relies on the other four factors of PPD.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a truck driver at the time of the accident, a job that required him to be on the road everyday driving eleven hours per day. Petitioner is not able to return to work in his prior capacity as a result of said injury. The Arbitrator assigns significant weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 50 years old at the time of the accident. Prior to his accident, Petitioner was employed in a long-time trade as an over-the-road truck driver. Petitioner had been employed in the truck driving industry for 30 years. (T. 79). It is reasonable to expect he would have remained in the workforce for an additional 15-17 years before retiring. The Arbitrator assigns significant weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner sustained injuries which partially incapacitate him from pursuing the duties of his usual and customary line of employment and have resulted in an impairment of earning capacity. Petitioner's facial fractures led to his developing double vision (diplopia) from which he never suffered prior to the accident. He now has a difficult time with upgaze and this has prevented him from safely

returning to work as a truck driver. Moreover, he is required to wear an eye patch which likewise impairs his ability to return to his long-time trade. Lastly, due to his C3 fracture, it is also difficult for him to drive due to the limitations in his neck and in turning his head. (T. 61) All of these injuries have partially incapacitated Petitioner from pursuing the duties of his usual and customary line of employment and have resulted in diminished future earning capacity. Petitioner testified that he is no longer working and has been on Social Security Disability since December 2017. (T. 90) The Arbitrator assigns significant weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Pursuant to Section 8(d)2, Petitioner sustained serious and permanent injuries not covered by paragraphs 8(c) and 8(e) of this Section which resulted in physical impairment. As a result of the November 16, 2017, work related accident, Petitioner sustained injuries to his face, eyes, neck, and low back. He suffered multiple facial fractures which required two major surgeries. Petitioner is living with permanent hardware and screws in his face which cause him daily discomfort and pain. (T. 47, 59-60) He gets headaches and has nerve damage all over his face. (T. 59-60) In addition to taking Lyrica and other daily pain medications for his injuries, (T. 60), Petitioner also undergoes ketamine infusions to deal with his right-sided neuropathic pain caused by his facial fractures. (T. 96-97 and PX 3c, p. 913 and 92) Petitioner will continue to live with this facial neuropathic pain for the remainder of his life and will continue to see his maxillofacial surgeon and oral surgeon every six months or so for ongoing care and management. (T. 59)

In addition to his facial fractures, Petitioner also suffered a C3 cervical spine fracture as well as an aggravation of pre-existing lumbar spine sacroiliitis and facet arthritis of the lumbar region. Petitioner also now suffers from shortness of breath and has to use an inhaler to assist him with breathing while exerting himself. He did not have problems with shortness of breath before the accident. He testified he used to be active and enjoyed going bike riding, bowling, and fishing before the accident. (T. 62) Petitioner is now prevented from enjoying those hobbies and activities due to the pain and physical limitations caused by his accident of November 16, 2017. (T. 61-63) He has trouble cooking for himself as well as with cleaning and doing household chores. (T. 63) He cannot walk up and down the stairs without problems. (T. 62-63)

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Respondent shall pay Petitioner PPD benefits of $790.64/week for 200 weeks, because the injuries sustained caused the 40% loss of use of the person as a whole as provided in Section 8(d)2 of the Act.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Respondent Angelovik, owner of Respondent VS Trucklines, is liable for §19(k) penalties and §16 attorney fees under the Act.

§19(k)

§19(k) provides for substantial penalties where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. The assessment of penalties under 19(k) is discretionary. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515 (1998) citing *Smith v. Industrial Comm'n*, 170 Ill. App. 3d 626, 632 (1988).

The Arbitrator, having considered the procedural history of this case along with Petitioner's testimony and respective reports, finds that Petitioner's injuries are causally related to his work accident of November 16, 2017, and that he was taken off work for a specified amount of time while recovering from these injuries. (PX 2 at 7; T. 58, 66, 69, 100) The Arbitrator noted that this case was motioned up on several dates. (PX 6) Respondent Angelovik did not appear in court for most hearing dates, did not appear on February 1, 2022, and did not provide any defenses. Respondent Angelovik was given sufficient notice of the February 1, 2022, hearing date. (PX 8)

As such, the Arbitrator finds Respondent Angelovik's refusal to pay TTD and medical benefits as required by 820 ILCS 305/8[a] is dilatory, punitive, retaliatory, and objectively unreasonable based on the facts of this case, the reliable objective medical evidence, and the totality of circumstances.

A balance of $151,176.03 remains unpaid in medical services which totals $80,425.65 utilizing a 53.2% fee schedule for Petitioner's related medical treatment. (PX 4) Additionally, Petitioner is owed $31,620.00 in TTD benefits from November 17, 2017, through June 21, 2018. As such, Respondent Angelovik's conduct warrants the imposition of penalties equal to $56,022.82 (representing 50% of the $31,620.00 owed in TTD and 50% of the $80,425.65 owed in related medical expenses) under 820 ILCS 305/19(k) on account of the Respondent Angelovik's failure to pay such benefits in a timely manner. The Arbitrator finds that this award of penalties is solely against Respondent Angelovik.

§16

Pursuant to §16, Respondent Angelovik shall pay attorneys' fees calculated upon 20% of the unpaid medical expenses to date and 20% of the §19(k) award. (See *Tom Keenan v. Chief Construction*, 04WC 059927, 6 IWCC 1037 (2006) and *Kevin Kreger v Bergenson's Property Service/Administaff*, 06WC 49437, 09 IWCC 1172). The total unpaid medical expenses equal $80,425.65. 20% of $80,425.65 equals $16,085.13. The total in §19(k) penalties equal $56,022.82. 20% of $56,022.82 equals $11,204.56. As such, Respondent Angelovik's conduct warrants the imposition of attorney's fees and costs of $27,289.69 pursuant to 820 ILCS 305/16. The Arbitrator finds that this award of penalties is solely against Respondent Angelovik.

The Arbitrator clarifies that this award of penalties and fees is solely against Respondent Angelovik, not the IWBF.

Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC006611
Case Name	Michael R Setters v. State of Illinois - Illinois Dept of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0483
Number of Pages of Decision	9
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Brenton Schmitz, Matthew Jones
Respondent Attorney	Alyssa Silvestri

DATE FILED: 12/13/2022

/s/Carolyn Doherty, Commissioner

Signature

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: PPD rate, Medical Expense Payee	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL SETTERS,

Petitioner,

vs. NO: 19 WC 6611

ILLINOIS DEPARTMENT OF TRANSPORTATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, average weekly wage, medical expenses, temporary total disability, permanent partial disability, and credits, and being advised of the facts of 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 thereof.

The Commission affirms the Decision of the Arbitrator with respect to the issue of causal connection, average weekly wage, medical expenses, temporary total disability, permanent partial disability, and credits, and modifies the Decision of the Arbitrator to correct clerical errors in the calculation of the permanent partial disability benefit rate and to specify the proper payee for the awarded medical expenses.

Regarding the permanent partial disability benefit rate, the parties stipulated that Petitioner's average weekly wage was $1,009.61. Petitioner is entitled to 60% of the employee's average weekly wage pursuant to section 8(b)(2.1) of the Act, resulting in a permanent partial disability rate of $605.77. Petitioner was awarded permanent partial disability benefits representing a 25% loss of use of a person as a whole under section 8(d)(2) of the Act. Accordingly, the Commission modifies the Decision of the Arbitrator to order that Respondent shall pay permanent partial disability benefits of $605.77 per week for 37.5 weeks, because the

injuries sustained caused a 25% loss of use of a person as whole, as provided in Section 8(d)2 of the Act.

Regarding the medical expenses, the Commission modifies the Decision of the Arbitrator to clarify that this award shall be paid to the Petitioner, not directly to the medical providers.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated June 23, 2022 is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum representing all reasonable and necessary medical services provided by: Midwest Orthopedic Consultants for $69,333.00; Northwestern Medicine for $245,104.26; and KSB Amboy for $91,782.11, subject to the fee schedule as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit for medical benefits that have been paid and for any medical paid through group insurance, 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.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay permanent partial disability benefits of $605.77 per week for 37.5 weeks, because the injuries sustained caused a 25% loss of use of a person as whole, as provided in Section 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.

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.

Pursuant to section 19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

December 13, 2022
o: 12/8/22
CMD/kcb
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC006611
Case Name	SETTERS, MICHAEL v. ILLINOIS DEPARTMENT OF TRANSPORTATION
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Matthew Jones
Respondent Attorney	Alyssa Silvestri

DATE FILED: 6/23/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 22, 2022 2.39%

/s/ Gerald Granada, Arbitrator
Signature

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

June 23, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

22IWCC0483

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

Michael Setters
Employee/Petitioner

v.

Illinois Department of Transportation
Employer/Respondent

Case # **19** WC **006611**

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 **Geneva, IL**, on **April 20, 2022.** 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 **November 15, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**52,500.00**; the average weekly wage was $**1,009.61.** On the date of accident, Petitioner was **56** 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 $**32,730.57** for TTD, $**0** for TPD, $**0** for maintenance, and $**3,156.32** for medical expenses, for a total credit of $**35,886.89**.

Respondent is entitled to a credit for any benefits paid through its group insurance under Section 8(j) of the Act.

ORDER

Respondent shall pay all reasonable and necessary medical services of Midwest Orthopedic Consultants for $69,333.00, Northwestern Medicine for $245,104.26, KSB Amboy for $91,782.11, subject to the Fee Schedule as provided in Sections 8(a) and 8.2 of the Act.

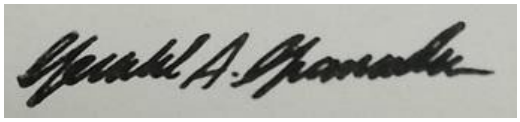
Respondent shall be given a credit for medical benefits that have been paid and for any medical paid through group insurance, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the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

Respondent shall pay Petitioner temporary total disability benefits of $673.01/ week for 85 5/7 weeks commencing 12/27/18 through 8/17/20, as provided in Section 8(b) of the Act.

Respondent shall pay permanent partial disability benefits of $755.36/week for 37.5 weeks, because the injuries sustained caused a 25 % loss of use of a person as 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 Gerald Granada

JUNE 23, 2022

FINDINGS OF FACT

This case involves Petitioner Michael Setters, who alleges to have sustained injuries while working for the Respondent Illinois Department of Transportation on November 15, 2018. Respondent disputes Petitioner's claim, with the issues being: 1) causation; 2) medical expenses; 3) TTD; and 4) nature and extent.

Petitioner worked for Respondent as a highway maintainer since June 18, 2018. He testified that on November 15, 2018, he was picking up barricades and sandbags, which he loaded onto a trailer and subsequently onto the back of a dump truck. He would later help unload the barricades and sandbags that were handed down to him from the truck while Petitioner stood on the ground level. He carried a sandbag in each arm and after about ten minutes he had taken ten to twelve sandbags when he began to feel weakness in his shoulders and arms, particularly as he was lowering the sandbags. Petitioner testified that the barricades weighed between forty to fifty pounds and the sandbags typically weighed between thirty to sixty pounds, but weighed more because they were wet on this day. He finished his shift that day but continued to feel weakness and fatigue throughout the rest of his work day. Petitioner testified that when he returned home from work on November 15, 2018, he attempted to shower when he couldn't raise his arms up to wash his head. He testified that he had no issues like that previously and that he took Ibuprofen and iced that night. The following morning, his arms felt stiff.

He reported what happened to him the next day. This was confirmed by Breann Walker, the IDOT Workers Compensation Coordinator who testified on behalf of the Respondent that she was familiar with Petitioner's claim and that Petitioner called the appropriate "800" number on November 16, 2018 to report his claim. She testified that Petitioner filled out the Work Comp packet when he first presented for medical treatment on December 14, 2018. Walker confirmed that Petitioner was placed at light duty from December 14, 2018 until December 28, 2018 when Respondent could no longer accommodate Petitioner's work restrictions.

When Petitioner returned to work on November 16, 2018, he performed lighter duties including sweeping, cleaning bathrooms, taking out garbage that month between the work accident and his first treatment date on December 14, 2018. Petitioner testified that he sought treatment because he contacted headquarters regarding his issues and was told to seek treatment.

On December 14, 2018, Petitioner went to Physicians Immediate Care. PX2. The record notes that Petitioner had weakness in both shoulders. He was diagnosed with a left shoulder sprain, placed on work restrictions, and the record noted "strongly suspect rotator cuff pathology." He continued to follow up with this medical provider and was given a left shoulder injection. An MRI of his left shoulder was performed on January 4, 2019 revealing: (1) complete tears of the supraspinatus and infraspinatus tendons with retraction of the fibers to the glenoid process region with resulting cephalad subluxation of the humerus and resulting marked narrowing of the acromial humeral space; (2) partial tear and/or fraying of the cephalad fibers of the subscapularis tendon; (3) fraying of the posterior glenoid labrum; and (4) moderately large joint effusion and/or hemorrhage as described. Petitioner continued his follow up with this provider and also underwent physical therapy. He was eventually referred to an orthopedic specialist.

On January 22, 2019, Petitioner saw Dr. Michele Glasgow at Midwest Orthopaedic Institute with mild pain at rest with increased pain of activity with the left shoulder and low level of pain with the right shoulder. PX3. Dr. Glasgow reviewed the MRI and diagnosed Petitioner with a massive left shoulder rotator cuff tear, and also likely rotator cuff tearing on the right. Dr. Glasgow noted that Petitioner had a very heavy job and recommended surgical repair of the left rotator cuff, with the right shoulder to be evaluated at a later date.

On March 14, 2019, Petitioner underwent an independent medical evaluation at the request of Respondent by Dr. Stephen Weiss. RX4. Dr. Weiss diagnosed Petitioner with a pre-existing full thickness retracted

supraspinatus and infraspinatus tears with a partial subscapularis tear and rotator cuff arthropathy on the left shoulder; and a probable pre-existing supraspinatus and infraspinatus tear of the right shoulder. Dr. Weiss opined that Petitioner sustained a temporary exacerbation of the pre-existing left shoulder condition and found no evidence that any fresh tears occurred at the time of work accident. Dr. Weiss found all treatment to be reasonable and necessary, and found that Petitioner required surgery for his left shoulder. Dr. Weiss placed Petitioner on work restrictions, although he opined unrelated to the work accident. Dr. Weiss testified via evidence deposition on April 1, 2020 and his testimony was consistent with his reports and his opinions that Petitioner's shoulder conditions were not work-related as they pre-existed his work accident. Dr. Weiss testified that his opinions were based on his reliance of Wisconsin's definition of a permanent aggravation versus a temporary aggravation.

On May 1, 2019, Petitioner underwent a left shoulder arthroscopy, debridement, subacromial decompression, coplane clavicle, biceps tenodesis, and massive rotator cuff repair by Dr. Glasgow at Northwestern. PX5. After the surgery, Petitioner continued to follow up with Dr. Glasgow. On July 13, 2019, Dr. Glasgow authored a narrative report in which she opined that Petitioner's left shoulder disability "was at the very least contributed to by the repeated overhead lifting required in the course of his job." Dr. Glasgow further indicated that Petitioner was not cleared to use his left shoulder for activity at that time and would be unable to return to any tasks requiring lifting with his left arm until at least six months from surgery. Petitioner underwent physical therapy at KSB Amboy for his left shoulder. PX4.

On September 20, 2019, Petitioner underwent the MRI of his right shoulder that revealed: (1) complete full-thickness tear supraspinatus and infraspinatus tendons; (2) moderately severe subscapularis tendinosis; (3) mild to moderate long head bicipital tenosynovitis; and (4) moderately severe acromioclavicular degenerative change. Dr. Glasgow noted that the right shoulder injury was associated with the work accident and the right shoulder treatment was delayed due to the left shoulder being significantly injured and requiring surgery.

On November 6, 2019, Petitioner underwent the right shoulder arthroscopy, debridement, subacromial decompression, biceps tenodesis, double speedbridge massive rotator cuff repair performed by Dr. Glasgow at Northwestern. PX5. Petitioner continued to follow up with Dr. Glasgow post surgery and attended physical therapy at KSB Amboy. PX4. He was ultimately released to return to work full duty on August 17, 2020. Dr. Glasgow placed Petitioner at maximum medical improvement on November 9, 2020. Dr. Glasgow testified via evidence deposition on February 21, 2020 and opined that Petitioner's shoulder conditions were related to his November 15, 2018 work injury, in particular, his repetitive heavy lifting.

Petitioner testified that Respondent was unable to accommodate his restrictions as of December 27, 2018 as he needed to have the ability to drive a snowplow. He did not return to work for Respondent until August 17, 2020 and did not work for any other employer during that time. He is currently able to perform his job for Respondent, but has to approach it differently for both shoulders, i.e., drag one tree branch instead of two, and he still has difficulty performing above shoulder work since the work accident. Petitioner testified that he still has difficulty sleeping and his shoulders become fatigued from performing household chores such as raking or carrying groceries. He takes Ibuprofen when the shoulder symptoms flare up, and he avoids golfing and bicycling as a result of his shoulder injuries. Petitioner confirmed that he did receive some TTD payments while he was off work and that some of his medical expenses were paid through his group health insurance.

CONCLUSIONS OF LAW

1. Regarding the issue of causation, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's unrebutted testimony and the medical evidence from Petitioner's various medical providers that show Petitioner sustained injuries to both shoulders following his undisputed November 15, 2018 work accident. The Arbitrator finds persuasive the opinions Petitioner's treating surgeon Dr. Glasgow on this issue: that Petitioner's bilateral shoulder conditions are causally related to the heavy, repetitive nature of Petitioner's work. Although Respondent disputes this issue primarily on the opinions of their IME Dr. Weiss, the Arbitrator notes that Dr. Weiss found Petitioner sustained a temporary aggravation of a pre-existing condition based on Wisconsin's definition of a permanent aggravation versus a temporary aggravation – a factor that gives his opinion lesser weight as this case hinges on Illinois law. Accordingly, the Arbitrator concludes that the Petitioner's bilateral shoulder conditions are causally connected to his November 15, 2018 work accident.

2. With regard to the issue of medical expenses, the Arbitrator finds that the Petitioner's medical expenses related to his shoulder conditions have been reasonable and necessary in addressing his work-related conditions. As such, the Arbitrator awards the Petitioner the medical expenses set forth in Petitioner's Exhibits, subject to the Fee Schedule . As some of these bills may have been paid either by Respondent directly or by Petitioner's group insurance carrier, any co-payments made by Petitioner are awarded by the Arbitrator and payment of any outstanding, related bills shall be paid by Respondent directly to the medical providers. 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 for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

3. Regarding the issue of TTD, the Arbitrator finds that the Petitioner was temporarily totally disabled from December 17, 2018 through August 17, 2020. In support of this finding, the Arbitrator relies on the testimony of both Petitioner and Ms. Walker, and the Petitioner's medical evidence. The medical evidence shows that the Petitioner's treating physicians either completely took Petitioner off work or gave him work restrictions which Respondent did not or could not accommodate during this time period. Accordingly, the Arbitrator awards Petitioner TTD for the time period indicated above. Respondent shall receive a credit for any TTD it has already paid.

4. Regarding the issue of the nature and extent of the Petitioner's injuries, the Arbitrator applies the factors set forth in Section 8.1b of the Act and notes the following: (i) no impairment rating was submitted into evidence and the Arbitrator gives no weight to this factor; (ii) Petitioner was a highway maintainer and was ultimately released to return to work without restrictions following this accident - a factor to which the Arbitrator gives significant weight; (iii) Petitioner was 56 years old at the time of injury - a factor to which the Arbitrator gives some weight; (iv) there was no evidence of future earnings due to this injury, and the Arbitrator gives no weight to this factor; (v) there was evidence of disability which show that the Petitioner sustained an injury to both shoulders resulting in a rotator cuff tears, for which Petitioner received surgical intervention and physical therapy, and from which Petitioner still experiences discomfort with everyday activities that require Petitioner to take over the counter medication and limit some of his activities - the Arbitrator gives great weight to this factor. Based on the factors above, the Arbitrator concludes the injuries sustained by Petitioner caused a 25% loss of use of the person as a result of the November 15, 2018 work incident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC019428
Case Name	Gerald R Jensen v. Grecian Delight Food Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0484
Number of Pages of Decision	9
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Philip Blomberg
Respondent Attorney	James Moran

DATE FILED: 12/13/2022

/s/Christopher Harris,Commissioner
Signature

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

GERALD R. JENSEN,

Petitioner,

vs. NO: 19 WC 19428

GRECIAN DELIGHT FOODS, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and permanent partial disability (PPD) benefits, 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 27, 2022 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 the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $44,200.00. 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 the Circuit Court.

December 13, 2022

CAH/pm
d: 12/8/22
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC019428
Case Name	JENSEN, GERALD R. v. GRECIAN DELIGHT FOOD, INC.,
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Philip Blomberg
Respondent Attorney	James Moran

DATE FILED: 5/27/2022

THE INTEREST RATE FOR THE WEEK OF MAY 24, 2022 1.53%

/s/ Raychel Wesley, Arbitrator

Signature

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

GERALD R. JENSEN, Case # **19 WC 19428**
Employee/Petitioner
v.
GRECIAN DELIGHT FOODS, 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 **RAYCHEL WESLEY**, Arbitrator of the Commission, in the city of **CHICAGO**, on **March 24, 2022**. 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, 2019, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$36,830.04**; the average weekly wage was **$708.27**.

On the date of accident, Petitioner was **58** years of age, ***single*** with **1** dependent child.

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

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

Respondent shall be given a credit of **$6,800.36** for TTD, **$2,470.48** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of $**9,270.84**.

ORDER

Credits: Respondent shall be given a credit of **$6,800.36** for TTD, **$2,470.48** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of $**9,270.84**.

Temporary Total Disability: The parties stipulated that all benefits have been properly paid.

Medical benefits: Respondent shall pay the outstanding charges of $200.00 to Core Orthopedics, $6,679.11 Adco Billing Solutions, and $65.95 for out-of-pocket expenses. The Arbitrator also finds the $200.00 charge to Dr. Murray reasonable and necessary. Regarding the balance of $6,679.11 to Adco Billing Solutions, the arbitrator finds the VPSC kit, lidocaine patch and baclofen to be reasonable and medically necessary. Finally, the $65.95 in out-of-pocket medical expenses are awarded.

Permanent Partial Disability: Person as a whole: Respondent shall pay Petitioner permanent partial disability benefits of **$424.96**/week for **87.5** weeks, because the injuries sustained caused the **17.5**% 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.

/s/ Raychel A. Wesley **MAY 27, 2022**

Signature of Arbitrator

FINDINGS OF FACT

The Petitioner testified he began work with Respondent on August 20, 2018 as a delivery truck driver. He testified he had no prior injuries to his back or right shoulder.

The petitioner testified his job duties consisted of picking orders, loading a vehicle with pita, bread, and other Greek food items weighing from 10 to 50 pounds, and delivering those items. He testified that he utilized electric dollies to load the truck. He also testified to the use of pallet jacks. He testified that he would make 5 to 10 stops where he would drop off and stock product.

The Petitioner testified that on January 31, 2019 he was the helper for an injured worker who was the driver. That meant the petitioner did the physical work. He testified he slipped and fell on an icy dock and fell on his right shoulder and back and injured both. He testified that he reported his injury by phone.

The petitioner testified he was sent to Walgreens for some bio cream but then went to Amita Health. He testified he underwent x-rays and was placed on light-duty restrictions.

The petitioner testified that in February 2019, he was referred from Amita to Core Orthopedics. He testified he was examined by Dr. Murray on February 11, 2019. Dr. Murray recommended an MRI.

On February 15, 2019, the petitioner underwent an MRI of the lumbar spine which showed evidence of herniation L3-4 and L5-S1 with a possible minor compression fracture at L1. His shoulder MRI showed a rotator cuff tear.

On April 23, 2019, the petitioner underwent surgery consisting of arthroscopy of the rotator cuff and biceps tenodesis, subacromial decompression, and distal clavicle excision.

On October 31, 2019, Dr. Hsu found the petitioner's spine was at maximum medical improvement, that he needed no further treatment, and that he could work full duty.

On January 16, 2020, Dr. Biafora examined the patient and stated his right shoulder was at maximum medical improvement, needed no further treatment, and he could work full duty.

On February 19, 2020, the petitioner was examined by his treating physician, Dr. Murray, who likewise found the petition was at maximum medical improvement, could work full duty, and needed no further treatment.

The petitioner testified that he returned to Dr. Murray on August 5, 2020, and that Dr. Murray again found him at maximum medical improvement, placed no restrictions on the petitioner and needed no further treatment.

As of the date of trial, the petitioner credibly testified that his right shoulder was painful. He testified that it was hard to lift overhead. He testified to pain with the activities of daily life. He credibly stated his back was in constant pain and that this pain altered his gait.

Regarding the issues of Section (F), whether the petitioner's condition of ill-being is causally related to the injury, the arbitrator finds as follows:

The arbitrator finds that the Petitioner's condition is causally related to his January 31, 2019 accident. The petitioner suffered a torn rotator cuff tear for which he underwent surgery, and also suffered a soft tissue back injury. Although the Petitioner testified to a number of complaints not specifically addressed in the medical records, the Arbitrator found this testimony to be credible.

Regarding the issue of whether medical services that were provided to petitioner were reasonable and necessary, and whether the respondent paid all appropriate charges for all reasonable and necessary medical services, the arbitrator finds as follows:

The arbitrator finds respondent is liable for the payment of the following additional medical bills: The outstanding balances of $200.00 to Core Orthopedics, $6,679.11 Adco Billing Solutions, and $65.95 for out-of-pocket expenses. The Arbitrator also finds the $200.00 charge to Dr. Murray reasonable and necessary. Regarding the balance of $6,679.11 to Adco Billing Solutions, the arbitrator finds the VPSC kit, lidocaine patch and baclofen to be reasonable and medically necessary. Finally, the $65.95 in out-of-pocket medical expenses are awarded.

Permanent Partial Disability with 8.1b language (For injuries after 9/1/11)

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a delivery truck driver at the time of the accident and that he was able to return to work in his prior capacity as a result of said injury. The Arbitrator gives *great* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 61 years old at the time of the accident. Because of the age of the Petitioner, the Arbitrator gives *great* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that because of the nature of the work of the petitioner and limitations of the Petitioner due to his age, greater weight is given to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that the Petitioner has limitations and was returned to full duty. The Arbitrator has carefully considered this in the evaluation of disability and gives this factor some weight.

Regarding the issue of Section (L), the nature and extent of the Petitioner's injuries, the arbitrator finds as follows:

The petitioner suffered an undisputed accident resulting in a torn rotator cuff and a soft issue back injury requiring approximately one year of treatment. The arbitrator notes that all medical professionals released the petitioner to full duty, found him at maximum medical improvement, and found he did not need any further treatment. After carefully considering the medical records and the Petitioner's credible testimony, the Arbitrator finds that the Petitioner has suffered permanent partial disability to the extent of 17.5% loss of use of the whole person.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC006581
Case Name	Rhonda L Fandrey v. Elkay Manufacturing Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0485
Number of Pages of Decision	13
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Kylee Miller
Respondent Attorney	Andrew Rane

DATE FILED: 12/13/2022

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ROCK ISLAND)

☒ 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

Rhonda L. Fandrey,

Petitioner,

vs. NO: 19 WC 6581

Elkay Manufacturing 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 medical, fees and penalties and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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 6, 2021, 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 $10,000.00. 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.

December 13, 2022
o11/23/22
DLS/rm
046

/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/*Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC006581
Case Name	FANDREY, RHONDA L v. ELKAY MANUFACTURING INC
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Kylee Miller
Respondent Attorney	Andrew Rane

DATE FILED: 8/23/2021

/s/Bradley Gillespie, Arbitrator

Signature

INTEREST RATE WEEK OF AUGUST 3, 2021 0.05%

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)
X None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Rhonda Fandrey
Employee/Petitioner

v.

Elkay Manufacturing, Inc.
Employer/Respondent

Case # **19** WC **006581**

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 **Bradley Gillespie** Arbitrator of the Commission, in the city of **Rockford**, on **7/14/21**. 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. **X** Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. **X.** Other **Is Petitioner Entitled to Additional Medical Treatment**

FINDINGS

On the date of accident, **June 23, 2018**, 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 right hand and wrist condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**29,910.40**; the average weekly wage was $**680.00**.

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

ORDER

Petitioner's right hand and wrist condition are causally related to the June 23, 2018 work accident. Her left hand and wrist complaints are not found to be causally related.

Petitioner is entitled to prospective medical treatment. Respondent shall authorize and pay for the treatment recommended in Dr. Mann's November 19, 2019 office note. (*See* 19(b) Decision of Arbitrator attached hereto)

Penalties and attorney fees are denied.

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

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

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

/s/ *Bradley D. Gillespie*
Signature of Arbitrator

August 6, 2021

ICArbDec19(b)

ILLINOIS WORKERS' COMPENSATION COMMISSION

RHONDA FANDREY,	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 19 WC 06581**
	)	
ELKAY MANUFACTURING,	)	
Respondent.	)	

19(b) DECISION OF THE ARBITRATOR

This matter proceeded to hearing on July 14, 2021 in Rock Island, Illinois (Arb. 1). The following issues were in dispute:

- Causal Connection
- Prospective medical treatment
- Penalties

FINDINGS OF FACT

On June 23, 2018 Rhonda Fandrey (hereinafter "Petitioner") was 49 years of age and employed by Elkay Manufacturing, Inc. (hereinafter "Respondent") as a Grade 3 Assembler. She had worked for Respondent for approximately one and half years prior to the accident. Her duties included checking parts, braising, and inspecting parts. A week prior to the accident, Petitioner's coworkers had manufactured metal basins incorrectly. Petitioner reported the incorrect configuration and was instructed to fix them. On June 23, 2018, Petitioner was working with the poorly constructed basins, attempted to bend back a tube with her right hand and felt immediate pain in her hand. Petitioner is right hand dominant. Petitioner testified the pain felt as if her right hand had "exploded." Petitioner reported the injury to her supervisor, Todd, who completed an accident report. Petitioner was instructed to follow up with the company's occupational medicine provider, Clinton Occupational Health, for evaluation.

Petitioner was evaluated by Clinton Occupational Health on June 25, 2018. (PX #2 p. 9) Kimberly Mulholland, ARPN, performed a physical examination and recorded Petitioner's history of injury while working. *Id*. Nurse Mulholland noted a limited range of motion in Petitioner's right wrist and pain to palpation to the thumb and radial wrist area. (PX #2 p.11) She was given a soft splint to wear at work and at bedtime. *Id*. An x-ray taken on June 25, 2018, that was interpreted as normal. *Id.*

On July 2, 2018, Petitioner followed up with Clinton Occupational Health. (PX #2 p. 19-21) Nurse Mulholland observed pain to palpation of the thumb and radial wrist. (PX #2 p. 21) Petitioner reported that her right thumb was weak. (PX #2 p. 19) Petitioner could flex and extend her wrist without pain but reported thumb and radial wrist pain with or without use. *Id*. She was placed on restrictions of occasional lifting no greater than twenty pounds and pushing and pulling of no greater than 30 pounds, and occasional firm grasping with the right hand. (PX #2

p. 21) Physical therapy was recommended. *Id.* Petitioner testified Respondent was able to accommodate her restrictions.

On July 24, 2018, Petitioner returned to Clinton Occupational Health. (PX #2 p. 23) Petitioner advised that she was scheduled for her first physical therapy appointment on that date. *Id.* Petitioner continued to voice complaints of pain with and without movement of her wrist. *Id*. Her diagnosis was strain of the long flexor muscle, fascia, and tendon of the thumb at the wrist and hand level. (PX #2 p. 25) She was given a new soft thumb spica wrist splint to wear. *Id.*

Petitioner attended physical therapy at Rock Valley Physical Therapy from July 24, 2018, through October 11, 2018. (PX 4). While at Rock Valley PT, the therapist noted that her symptoms were consistent with a work-related overuse strain and right sided DeQuervain's syndrome of the right wrist/thumb. (PX #4 p. 131-32). Petitioner was instructed to follow-up with Clinton Occupational to confirm.

On August 7, 2018, Petitioner returned to Clinton Occupational Health. (PX #2 p. 29) Petitioner continued to have pain complaints in her right thumb and wrist. Dr. Camilla Fredrick noted that Petitioner had a positive Phalen, Tinel, and Finkelstein test. Dr. Fredrick suspected Petitioner may be suffering from DeQuervain's syndrome and provided an injection into her right wrist. (PX #2 p. 31)

On August 12, 2018, Petitioner reported to Nurse Mulholland that she could pinpoint the pain along the right medial wrist area and that it shoots up and down her thumb. (PX #2 p. 35) She reported the injection a week earlier had helped as had her physical therapy. *Id.* On exam, there was slight swelling to the radial/volar wrist area, tenderness over the dorsal compartment, and positive Phalen, Tinel, and Finkelstein tests. (PX #2 p. 37) She was given another injection to the tendon. *Id.*

On September 11, 2018, Petitioner reported to Clinton Occupational Health for follow-up. (PX #2 p. 40) She reported that the second injection was not beneficial. *Id.* She described constant sharp pain in her wrist that radiated up into the forearm. *Id*. She was given a third injection. (PX #2 p. 42)

When she returned to Clinton Occupational Health on September 25, 2018, Petitioner reported some relief from the third injection in her wrist but none in her thumb. (PX #2 p. 46) She stated that the injection only helped for a brief period. *Id.* On exam, Dr. Frederick noted slight swelling of the radial/volar wrist area. Phalen and Tinel's were negative and Finkelstein test was positive. (PX #2 p. 48) Petitioner was instructed to wear her orthoplast splint at work and was restricted to no use of the right arm. (PX #2 p. 45). Petitioner testified Respondent was able to accommodate her restrictions.

Clinton Occupational Health referred Petitioner to Dr. Tobias Mann at ORA Orthopedics for treatment. On October 9, 2018, Petitioner reported pain, catching, numbness, instability, tingling, swelling, weakness and stiffness. (PX #6 p. 256) Dr. Mann performed a physical examination finding positive Tinel's of the median nerve, positive median nerve compression test, positive Phalen's, positive wrist flexion thumb extension, tenderness to palpation over the

first dorsal compartment, positive Finkelstein test, and tenderness to palpation over the first CMC joint. (PX #6 p. 256). He diagnosed DeQuervain's stenosing tenosynovitis, right 1st CMC joint synovitis, and right carpal tunnel syndrome. *Id.* at 256-57. Dr. Mann performed an injection of the right first dorsal compartment. (PX #6 p. 257) He provided work restrictions of wearing a brace, no grip, grasp or lifting. *Id.*

On October 16, 2018, Clinton Occupational recommended Petitioner undergo an EMG and CT of the right wrist. (PX #2 p. 54) On November 9, 2018, Dr. Mann noted Petitioner's complaints of numbness and tingling in her fingers had improved but she continued to have pain over the dorsal aspect of the wrist radiating into the thumb and forearm. (PX #6 p. 251) He continued the restrictions of no gripping, grasping, or lifting with the right upper extremity. *Id.* at p. 252.

Petitioner underwent an MRI of the wrist on December 18, 2018, which showed trace fluid in the distal radioulnar joint with no obvious TFCC. (PX #6 p. 248) On January 7, 2019, Petitioner followed up with Dr. Mann who recommended Petitioner undergo surgery. (PX #6 p. 245) Petitioner underwent a right 1st dorsal compartment release and right radial sensory nerve block on April 18, 2019. (PX #7 pp. 260-61) Following surgery, Petitioner was placed in a cast and given a five-pound weight restriction. (PX #6 p. 264) She underwent a second course of physical therapy at Rock Valley Physical Therapy from May 24, 2019, through July 3, 2019. (PX #5).

During this time Petitioner testified that she worked on small machine parts with her left hand exclusively. These parts required forceful gripping and twisting. She began to develop pain in her non-dominate left hand as well. She reported these problems to her supervisor who completed an accident report. She was examined by her primary care physician who recommended she splint her left hand as well.

On May 14, 2019, Petitioner returned to Dr. Mann reporting that physical therapy had not yet been approved. (PX #7 p. 266) Dr. Mann restricted Petitioner to brace as needed with a five-pound lifting restriction. *Id.* Petitioner followed up with Dr. Mann on June 14, 2019 reporting increased pain in her dorsal wrist. (PX #7 p. 268) Dr. Mann performed another injection and fitted Petitioner with a new thumb spica brace. *Id.* On follow up on July 15, 2019 Dr. Mann recorded Petitioner did not experience lasting relief from the injection. (PX #7 p. 270) He recommended an immobilization cast for one month. *Id.*

Petitioner's last medical visit with Dr. Mann was on November 19, 2019. (PX #8 p. 292) Petitioner reported no lasting relief from an injection performed in her left side. *Id.* Petitioner reported pain in her right thumb MP joint as well as her first dorsal compartment again. *Id.* It appears from this office note that Petitioner was seen in September by Dr. Mann and that he had recommended an MRI of the right thumb which had not been approved. No note for the September visit was included in the exhibits. Petitioner's November 19, 2019 examination revealed a well-healed surgical incision, sensation grossly intact to light touch, full extension of her fingers and the ability to make a composite fist. (PX #8 p. 292) Dr. Mann noted tenderness over the first dorsal compartment as well as pain with Finkelstein testing, but negative wrist flexion and thumb extension test. *Id.* He also noted tenderness over the A1 pulley which she had

not had in the past. *Id.* Dr. Mann stated that he could not determine the etiology of Petitioner's ongoing pain. (PX #8 p. 293) He again recommended an MRI of the thumb MP joint. *Id.* Dr. Mann stated that if the MRI came back largely normal, he would consider a thumb MP joint injection. *Id.* He also indicated that if she failed to gain relief with the injection, he would likely send Petitioner for a functional capacity evaluation. *Id.* Dr. Mann recommended Petitioner continue to wear her brace and continue with the five-pound lifting restriction. (PX #8 p. 293) Dr. Mann noted that Petitioner walked out of the office without receiving her work note or scheduling the MRI. *Id.*

Petitioner testified that following her November 2019 visit, the MRI and any additional treatment for her wrists was not approved by workers compensation despite repeated requests. Petitioner did not know why treatment for an accepted work injury was not authorized. Respondent presented no evidence at the hearing and offered no reason for denial of Petitioner's MRI and medical treatment following November 2019.

The records indicate the petitioner has not seen a physician for this condition since November of 2019.

At trial, Petitioner testified that she was still having the same symptoms. She reported pain in the right wrist and thumb area of a moderate nature. At the time of her testimony, Petitioner was no longer employed with Respondent. Petitioner testified that she stopped working for Respondent after the pain in her hands became too great. She last worked with Elkay in September of 2019, roughly twenty-one months prior to her testimony. Petitioner worked for Swiss Colony as a customer service agent for a month and then began working for VIP Desk Connect. At the time of her testimony, she was working for VIP Desk Connect in the customer service department. She indicated she began working for that company in April of 2021. She is in the customer service department and her work involves data entry on a daily basis. Petitioner indicated that her symptoms do not interfere with her ability to work for VIP Desk Connect. She testified she can perform this work without much use of her wrists. Petitioner testified she continues to wear her wrist braces up to nine hours during the day and at night.

She testified that she continues to have pain in her right hand. Petitioner testified that she understood the course of her treatment following the November 2019 visit was to include an additional MRI and possible referral to pain management. Petitioner testified no MRI has ever been performed on her whole hand. Petitioner testified she would like to undergo the MRI and additional evaluations to see if her hand/wrist injury can be improved.

CONCLUSIONS OF LAW

WITH REGARD TO ISSUE (F), IS PETITIONER'S CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

Neither party disputes Petitioner sustained accidental injuries to her right hand and wrist on June 23, 2018, which arose out of and in the course of her employment with Respondent. Petitioner credibly testified that she felt an immediate onset of pain in her right hand and wrist

while attempting to bend a tube in the course of her work for Respondent. Petitioner testified that she had not had any prior symptoms in her right wrist and hand before the work injury. She also testified that she had no hobbies of a repetitive nature and had not injured the wrist after June 23, 2018. Petitioner proved by a preponderance of the credible evidence that she suffered a work accident on June 23, 2018 involving her right hand and wrist. She timely reported the incident to Respondent and immediately sought medical treatment for her injuries. Petitioner treated with Respondent's occupational medicine provider, Clinton Occupational Health, who documented the injury. (PX #2 p. 9) Petitioner continued to follow up with Clinton Occupational Health throughout her course of treatment. (*See* PX #2) Eventually, she was referred to Dr. Tobias Mann at ORA Orthopedics for evaluation and treatment. (PX #6 p. 256)

Dr. Mann diagnosed DeQuervain's stenosing tenosynovitis, right 1st CMC joint synovitis, and right carpal tunnel syndrome. (PX #6 pp. 256-57) Dr. Mann attempted conservative treatment through December 2018. (PX #6 p. 248) On January 7, 2019, Petitioner followed up with Dr. Mann who recommended Petitioner undergo surgery. (PX #6 p. 245) Petitioner underwent a right 1st dorsal compartment release and right radial sensory nerve block on April 18, 2019. (PX #7 pp. 260-61) Following her surgery, Petitioner continued to complain of pain in her right wrist and hand. (*See* PX #6, PX #7, PX #8)

At Petitioner's last medical visit with Dr. Mann on November 19, 2019, Petitioner reported no lasting relief from an injection performed on her left side. (PX #8 p. 292) Petitioner reported pain in her right thumb MP joint as well as her first dorsal compartment again. *Id.* It appears from this office note that Petitioner was evaluated in September by Dr. Mann and that he had recommended an MRI of the right thumb which had not been approved. No note for the September visit was included in the exhibits. Petitioner's November 19, 2019 examination revealed a well-healed surgical incision, sensation grossly intact to light touch, full extension of her fingers and the ability to make a composite fist. (PX #8 p. 292) Dr. Mann noted tenderness over the first dorsal compartment as well as pain with Finkelstein testing, but negative wrist flexion and thumb extension test. *Id.* He also noted tenderness over the A1 pulley which she had not had in the past. *Id.* Dr. Mann stated that he could not determine the etiology of Petitioner's ongoing pain and again recommended an MRI of the thumb MP joint. (PX #8 p. 293) Dr. Mann stated that if the MRI came back largely normal, he would consider a thumb MP joint injection. *Id.* He also indicated that if she failed to gain relief with the injection, he would likely send Petitioner for a functional capacity evaluation. *Id.* Dr. Mann recommended Petitioner continue to wear her brace and continue with the five-pound lifting restriction. (PX #8 p. 293) Dr. Mann noted that Petitioner walked out of the office without receiving her work note or scheduling the MRI. *Id.*

The treatment rendered by Clinton Occupational Health, Nurse Practitioner Mulholland, Dr. Camilla Frederick, ORA Orthopedics, Dr. Tobias Mann and Rock Valley Physical Therapy through November of 2019 was reasonable, necessary, and causally related to her diagnosis. (*See* PX #2, PX #3, PX #4, PX #5, PX #6, PX #7, PX #8) There was no evidence offered to suggest Petitioner's treatment through November of 2019 was related to anything other than the claimed work accident.

Respondent argues that any treatment after November 19, 2019 is not causally related to Petitioner's work accident. Respondent cites Dr. Mann's statement that, "I am not clear as to the etiology of this pain" to mean that he is not certain of the cause of Petitioner's condition. Thus, no additional testing or treatment is necessary. However, this seems to misapprehend the next two sentences of the note. After noting that, "[h]er x-rays of this area before have been negative," Dr. Mann goes on to state "I would, therefore, like to obtain an MRI of the thumb MP joint." (PX #8 p. 293) The Arbitrator notes that Respondent provided no contrary opinion as to the need for the MRI, did not send Petitioner for an Independent Medical Evaluation, and has not provided any explanation for not authorizing the MRI recommended by Dr. Mann. Wherefore, the Arbitrator finds and concludes that recommended MRI is causally related to the work injury.

In addition, Petitioner appears to be claiming a left wrist injury as a result of overuse activity. Clearly, it is the petitioner's opinion that her symptoms in the left hand and wrist are related to her work activities and overuse. Petitioner did testify that working with her left hand while on restricted duty led to symptoms in her left hand. However, the Arbitrator fails to find any medical opinion from a treating physician or evaluating physician that supports that finding. The Arbitrator could not find any specific opinion offered by Dr. Tobias Mann, Dr. Camilla Frederick, or any physician that offers a causal connection opinion with respect to the left hand and wrist. In the absence of same, the Arbitrator finds the petitioner failed to prove that her left hand/wrist condition is related to her work accident/activities or overuse syndrome.

There has been no break in the causal chain, therefore the Arbitrator find Petitioner's condition of ill-being for the right hand and wrist remain casually connected to her accident of June 23, 2018.

WITH REGARD TO ISSUE (K): IS PETITIONER ENTITLED TO PROSPECTIVE MEDICAL TREATMENT, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

As set forth above, Dr. Mann has recommended Petitioner undergo an MRI of the right hand to determine the etiology of her ongoing post-surgical pain complaints. Respondent has offered no opinion or any evidence to demonstrate that the MRI is not necessary.

Respondent argues that the twenty-month gap in medical treatment should be sufficient to break the causal chain and deny further medical treatment. That argument is, at best, disingenuous. Petitioner's inability to seek out medical treatment was a direct result of Respondent's refusal to authorize treatment. Respondent offered no reason for this refusal. Petitioner testified she would have undergone additional treatment in a timely manner had it been authorized. Respondent questioned why Petitioner did not seek out medical care using her recently acquired private insurance. The fact Petitioner has private insurance is irrelevant to her need for prospective medical treatment. The Act requires Respondent to pay for all medical treatment to cure or alleviate the work-related injury.

Having found that Petitioner's condition of ill-being remains casually connected to her work-place accident of June 23, 2018, the Arbitrator finds that Respondent is responsible to

authorize and pay for the treatment set forth in Dr. Mann's November 19, 2019 office note as needed to cure and/or relieve Petitioner's condition.

WITH REGARD TO ISSUE (M), SHOULD PENALTIES OR FEES BE IMPOSED ON RESPONDENT, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

The Arbitrator notes that Petitioner is seeking penalties and/or attorneys' fees with respect to this litigation. However, the parties stipulated that there were no issues with respect to any interim benefits due and owing at this time. The parties stipulated that the petitioner has received all temporary total disability benefits due and owing through the date of trial, July 14, 2021. There is no allegation in any way that any such benefits were delayed unreasonably.

Similarly, the parties have stipulated that any and all medical bills incurred to date have been paid. There is no claim for any unpaid medical bills at this time. Again, there is no allegation that the medical bills were not paid in a timely fashion.

Accordingly, there was no denial of benefits or benefits due and owing at this time upon which penalties or fees under Sections 16 or 19(k) of the Act could be awarded. Moreover, the Penalties Petition submitted as Petitioner's Exhibit #9 specifically requests penalties regarding treatment for the left hand. The left hand was not found to be causally connected to the June 23, 2018 work accident. Because of that fact, Petitioner's claim for penalties and attorneys' fees is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC022450
Case Name	Jaime Chavez-Gutierrez v. VIM Recyclers
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0486
Number of Pages of Decision	19
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Daniel Orenstein

DATE FILED: 12/13/2022

/s/ Thomas Tyrrell, Commissioner

Signature

22IWCC0486

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jaime Chavez-Gutierrez,

Petitioner,

vs. NO: 17 WC 22450

VIM Recyclers,

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 causal connection, medical expenses, prospective medical treatment, temporary total disability ("TTD") benefits, and nature and extent and being advised of the facts and law, modifies the Decision of the Arbitrator. The Commission modifies the TTD benefits awarded by the Arbitrator and corrects certain scrivener's errors. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Findings of Facts

As an initial matter, the Commission notes that the parties proceeded to hearing pursuant to Section 19(b) of the Act. However, the parties stipulated that if the Arbitrator determined Petitioner was not entitled to prospective medical care, the Arbitrator would address the question of the nature and extent of Petitioner's injury.

After carefully considering the evidence, the Commission affirms the Arbitrator's conclusion that Petitioner's current condition of ill-being is not causally related to the May 15, 2017, work incident. The Commission affirms the Arbitrator's conclusion that Petitioner reached maximum medical improvement ("MMI") on October 13, 2017—the date of Dr. Phillips' Section 12 examination. The Commission affirms the Arbitrator's conclusion that Petitioner is not entitled to the requested prospective medical treatment and affirms the Arbitrator's conclusion that only medical treatment Petitioner received by October 13, 2017, was reasonable, necessary, and causally related to Petitioner's work injury. The Commission also affirms the Arbitrator's conclusion that Petitioner sustained a 6% loss of the whole person as a result of the work accident. However, the Commission modifies the Arbitrator's award of TTD benefits and corrects certain

scrivener's errors.

In the interest of efficiency, the Commission relies on the detailed recitation of facts in the Arbitration Decision. The Arbitrator determined that Petitioner met his burden of proving an entitlement to TTD benefits from June 16, 2017, through October 13, 2017. After considering the totality of the evidence, the Commission must modify this award.

It is axiomatic that a claimant is temporarily and totally disabled from the time a work injury incapacitates them from work until such time that they are "…as far recovered or restored as the permanent character of [their] injury will permit." *Shafer v. Ill. Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC at ¶45. To prove an entitlement to TTD benefits, a claimant must prove that they did not work and that they were unable to work. *See e.g.*, *Freeman United Coal Mining Co. v. Indus. Comm'n.*, 318 Ill. App. 3d 170 (2000). When determining whether a claimant is entitled to TTD benefits, "…the dispositive inquiry is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement." *Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n*, 236 Ill. 2d 132, 142 (2010) (citation omitted).

On the Request for Hearing form, Petitioner claimed an entitlement to TTD benefits from May 30, 2017, through September 1, 2019. Petitioner first sought medical care on the date of accident; however, the medical provider did not take Petitioner off work. Instead, the Nurse Practitioner prescribed work restrictions. Respondent apparently accommodated these restrictions. When Petitioner returned to the clinic on May 23, 2017, doctor once again prescribed work restrictions. On May 30, 2017, the clinic doctor placed Petitioner at MMI and cleared Petitioner to return to work full duty without any restrictions. Later that same day, Petitioner first sought treatment with Dr. Rivera. After examining Petitioner, Dr. Rivera restricted Petitioner from all work. This is the first evidence of any provider taking Petitioner completely off work. However, the Commission's inquiry does not end simply with a medical opinion that Petitioner is unable to perform any work. Instead, Petitioner must also prove that he did not work during the claimed period of TTD benefits. The credible evidence reveals that Petitioner continued to work for Respondent until June 5, 2017. On that date, Petitioner visited both the clinic and Dr. Rivera and reported worsening symptoms while he performed his work duties that morning. Thus, it is clear that Petitioner worked for Respondent on June 5, 2017. Consequently, Petitioner did not meet the requirements for receiving TTD benefits until June 6, 2017. That is the first day that Dr. Rivera restricted Petitioner from working *and* that Petitioner did not work. After carefully considering the evidence, the Commission finds Petitioner met his burden of proving an entitlement to TTD benefits from June 6, 2017, through October 13, 2017, for a total of 18-4/7weeks.

Finally, the Commission corrects certain scrivener's errors in the Arbitration Decision. On page seven (7) of the Decision, the Arbitrator refers to "Dr. Phillips causation opinion…" and "…Dr. Phillips exam findings. On page eight (8) of the Decision, the Arbitrator twice refers to "…the date of Dr. Phillips examination…" These are clerical errors. The Commission thus modifies the above-referenced sentences to read as follows:

> Dr. Phillips**'** causation opinion is based upon a mechanism of injury consistent with Petitioner's trial testimony. (pg. 7 of the Decision)

> The Arbitrator finds the MRIs, EMG, and Dr. Phillips' exam findings support his causation opinion. (pg. 7 of the Decision)
>
> The Arbitrator finds Petitioner proved by the preponderance of the evidence the medical treatment through October 13, 2017, the date of Dr. Phillips' examination, was reasonable and necessary to cure or relieve Petitioner from the effects of his accidental injury. (pg. 8 of the Decision).
>
> Petitioner reached MMI as of October 13, 2017, the date of Dr. Phillips' examination and, as such, Petitioner failed to prove by the preponderance of the evidence that Respondent is responsible for Petitioner's medical treatment after October 13, 2017. (pg. 8 of the Decision).

Lastly, on page nine (9) of the Decision, the Arbitrator wrote: "The Arbitrator finds Petitioner proved he was entitled to receive TTD benefits from May 15, 2017 through October 13, 2017, the date of Dr. Phillips examination." The Commission hereby strikes this sentence in its entirety from the Decision.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on December 20, 2021, is modified as stated herein.

IT IS FURTHER ORDERED that Petitioner's current condition of ill-being is not causally related to the work accident. Petitioner's condition of ill-being was causally related to the work accident until October 13, 2017.

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner temporary total disability benefits of $319.00/week for 18-4/7 weeks, commencing June 6, 2017, through October 13, 2017, as provided in Section 8(b) of the Act. Pursuant to stipulation by the parties, Respondent is entitled to a credit pursuant to Section 8(j) of the Act for disability benefits Respondent previously paid to Petitioner relating to this work accident.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical charges, as provided in Sections 8(a) and 8.2 of the Act. Respondent is not liable for any expenses for medical treatment provided after October 13, 2017. Respondent shall be given a credit for medical expenses that have been previously paid, and Respondent shall hold Petitioner harmless from claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner permanent partial

disability benefits of $319.00/week for 30 weeks, because the injuries sustained caused the 6% loss of the person as a whole, pursuant to Section 8(d)2 of the Act.

IT IS FURTHER ORDERED that the requested prospective medical treatment is hereby denied.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $6,200.00. 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.

December 13, 2022

d: 10/18/22
TJT/jds
51

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC022450
Case Name	CHAVEZ, JAIME v. VIM RECYCLERS
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Daniel Orenstein

DATE FILED: 12/20/2021

/s/Frank Soto; Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 14, 2021 0.13%

3STATE OF ILLINOIS)
)SS.
COUNTY OF **Dupage**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jaime Chavez
Employee/Petitioner

v.

VIM Recyclers
Employer/Respondent

Case # **17** WC **022450**

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 **Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **October 12, 2021**. 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 **Medical Treatment**

FINDINGS

On **May 15, 2017**, 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 $**23,400.00**; the average weekly wage was $**450.00**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **2** 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 $**19,309.54** for other benefits, for a total credit of $**19,309.54**

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $319.00/weeks, commencing June 16, 2017 through October 13, 2017, as provided in Section 8(b) of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein. Respondent is entitled to a credit, pursuant to Section 8(j) of the Act, for disability benefits Respondent previously paid Petitioner, based upon the stipulation of the parties.

Respondent shall pay the reasonable and necessary medical services through October 13, 2017, pursuant to the medical fee schedule, Section 8.2 and 8(a) of the Act. Respondent shall be given a credit, pursuant to Section 8(j) of the Act, for medical services which Respondent previously paid. Respondent shall hold Petitioner harmless for medical bills which Respondent claims a Section 8(j) credit, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Petitioner's request for prospective medical care is hereby denied, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 6% loss of use of a person as a whole for the back injury pursuant to Section 8(d)2 of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Respondent shall pay Petitioner compensation that has accrued from May 15, 2017 through October 13, 2017, and shall pay the remainder of the award, if any, in weekly payments.

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

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

By: */o/ Frank J. Soto*

Arbitrator

December 20, 2021

Procedural History

This case proceeded to trial on October 12, 2021. The disputed issues are whether Petitioner's current condition of ill-being is causally connected to his injury; whether Respondent is liable for unpaid medical bills; whether Petitioner is entitled to TTD benefits and prospective medical treatment. (Arb. Ex. #1). The parties stipulated that if prospective medical treatment is not awarded, the Arbitrator should decide the nature and extent of Petitioner's injury. (T. 7). The parties further stipulated that Respondent is entitled to an 8(j) credit. (T. 8).

Findings of Fact

On May 15, 2017, Jaime Chavez (hereinafter referred to as "Petitioner") was working for VIM Recyclers (hereinafter referred to as "Respondent"). (T 14). Petitioner testified, on that day, he bent over to pick up some stacks of food which fell to the ground and, as he bent over to pick up the stack, he felt something in his back. (T. 15, 16). Petitioner testified at the time he lifted and pulled up to dump the stack into the box when he felt it. (T. 16). Petitioner further testified as he started lifting and pulling up, he felt a popping type sensation and a ping in his back located in the center of his mid and lower back. (T. 17).

Petitioner testified he sought medical care at Physicians Immediate Care which placed him on light duty for two weeks. Petitioner testified after being released from care by Physicians Immediate Care he went to Dr. Rivera of RNS Physical Therapy who took him off all work. (T. 19). Petitioner testified Dr. Rivera's treatment provided little relief. Petitioner testified Dr. Rivera refereed him to Suburban Orthopedics where he received an injection from Dr. Novoseletsky, which did not help, and another injection, which helped a little. Thereafter, Dr. Novoseletsky referred Petitioner to Dr. McNally, who recommended surgery. (T. 19-21).

Petitioner testified in September of 2019, he started working for Surge Staffing. (T. 21). Petitioner testified he worked full duty at Surge Staffing and after working for two or three months, at Surge Staffing, he suffered a fractured his left foot after being struck by a forklift. (T. 22, 23). Petitioner testified after being struck by the forklift, his back hurt for a couple of days. (T. 24). Petitioner testified his back pain went away but his waist areas pain remained. (T. 25). Petitioner also testified that after a few days the pain lowered and felt as he did before. (T. 26). Petitioner testified after the forklift accident, his back felt bad for a few days but returned to normal. (T. 37, 38).

Petitioner's Medical Treatment

Petitioner initially treated at Physicians Immediate Care. Petitioner was diagnosed with a lumbar spine sprain and he was issued light duty restrictions consisting of no bending over, no prolonged twisting and no lifting greater than 20 pounds. On June 5, 2017, Petitioner returned to Physicians Immediate Care and his condition was found to had improved. At that time, Petitioner was released to return to full duty work and found to be at maximum medical improvement (Px. 1).

Petitioner treated at RNS Physical Therapy May 30, 2017 through November 8, 2017 before being referred to Drs. Novoseletsky and McNally, of Suburban Orthopeadics. On June 13, 2017, Petitioner underwent an MRI which showed mild to moderate facet arthropathy at L4-5 resulting in mild to moderate foraminal stenosis and sacral neve root sheath cysts. (Px. 2, pg. 584 and Px. 9). Petitioner underwent a second MRI on May 9, 2018 which showed possible transitional vertebrae at L5-S1 and no evidence of focal herniation or stenosis (Px 2, pg. 403). On June 1, 2018 Petitioner underwent an EMG which was normal with no indication of neuropathy, lumbar radiculopathy or radiculitis. (Px. 2, pgs. 389-392).

Dr. Novoseletsky diagnosed lumbar radiculopathy, sacroiliac joint dysfunction, lumbar degenerative disc disease, spinal stenosis of the lumbar spine, lumbar spondylosis, cervical radiculopathy, cervical degenerative disc disease, cervical spondylosis and myofascial pain syndrome. Dr. Novoseletsky recommended physical therapy and injections. Dr. Novoseletsky opined that Petitioner's current condition was related to his work injury and took Petitioner off all work. (Px 2).

Thereafter, Dr. Novoseletsky referred Petitioner to Dr. McNally who diagnosed a transitional vertebra, spinal stenosis of the lumbar region with radiculopathy, strain of muscle, fascia and tendon of lower back. Dr. McNally opined Petitioner's condition was related to work and he kept the Petitioner off work. Dr. McNally indicated Petitioner may be a surgical candidate so he referred Petitioner to Dr. Thomas McGivney for a second opinion. (Px 2). On December 21, 2018, Petitioner consulted with Dr. Pelinkovic who diagnosed lumbar foraminal stenosis and recommended a lumbar decompression surgery. (Px. 2).

On October 13, 2017, Petitioner underwent a Section 12 examination with Dr. Frank Phillips who diagnosed a lumbar sprain/strain. Dr. Phillips found Petitioner reached maximum

medical improvement and could return to work full duty. Dr. Phillips opined the physical therapy treatment was reasonable and appropriate but the epidural injection was not. Dr. Phillips further opined that no further medical treatment was warranted. (Rx. 3).

On July 13, 2018, Dr. Phillips performed a second Section 12 examination. At that time, Dr. Phillips noted that both MRIs were normal, the EMG confirmed the absence of any radiculopathy. Dr. Phillips opined that Petitioner had no evidence of any ongoing lumbar issues. Dr. Phillips found Petitioner's subjective complaints outweighed the objective findings. Dr. Phillips opined surgy was not warranted because, based upon the review of the studies, it was not certain what level or type of surgical procedure could be entertained. Dr. Phillips opined Petitioner was maximum medical improvement and he found an impairment rating of zero. (Rx. 4).

Testimony of Dr. Thomas McNally, treating physician

Dr. Thomas McNally testified he first examined Petitioner on May 1, 2018. At that time, Petitioner complained of low back and right leg pain since a work accident on May 15, 2017, Petitioner reported lifting a 50 pound bag when he lost his grip almost dropping the bag but as he caught the bag he felt experienced pain. Dr. McNally examined Petitioner and found decreased range of motion, decreased sensation to light touch on the right at L5. Dr. McNally testified the MRI, dated June of 2017, showed mild to moderate facet arthropathy at L4-5 resulting in mild to moderate foraminal stenosis. Dr. McNally diagnosed a lumbar sprain and radiculopathy. (Px 10, pgs. 6-9).

Dr. McNally testified foraminal stenosis is a narrowing of the foramen caused by wear and tear and the facet arthropathy is degenerative arthritis. (Px 10, pgs. 8,9). Dr. McNally testified Petitioner noted some improvement with the L5-S1 injection which showed possible nerve irritation. Dr. McNally diagnosed radiculopathy from stenosis. (Px. 10, pg. 11).

Dr. McNally reviewed the second MRI, dated June 1, 2018, which, he said, showed mild to moderate facet arthropathy at L4-5 resulting in mild to moderate foraminal stenosis. Dr. McNally recommended surgery consisting of a bilateral L4-5 laminotomies with possible laminectomy. (Px. 10, pgs. 13-17).

Dr. McNally opined the symptoms that caused the need for surgery were related to Petitioner's work accident. (Px. 10, pg. 17). Dr. McNally testified Petitioner was asymptomatic prior to his accident and the stress of lifting the 50 bag and almost dropping it caused stress and intra-abdominal and muscular pressure increasing the narrowing and irritation on the nerve roots.

(Px. 10, pgs. 17,18). Dr. McNally opined the medical treatment performed by Drs. Rivera and Novoseletsky was reasonable and necessary. (Px 10, pg. 21).

On cross examination, Dr. McNally testified that he did not review Petitioner's prior treatment records from May 15, 2017 through the date of his exam on May 1, 2018. Dr. McNally also testified that given Petitioner's age and weight the finding of facet arthropathy on an MRI would not be usual. Dr. McNally also testified that Dr. Phillips was one of his mentors at the University of Chicago and he did not review the report authored by Dr. Phillips dated October 13, 2017. (Px. 10, pgs. 22-24).

Testimony of Dr. Frank Phillips, Section 12 Examiner

Petitioner was examined by Dr. Frank Phillips on October 13, 2017. Petitioner reported to Dr. Phillips he bent over to lifting a heavy bag that fell and as he bent over he developed back pain. (Rx. 3, pg. 11). The examination showed a negative straight leg test, normal reflexes, and good range of motion. Dr. Phillips noted no obvious Weddell signs and that Petitioner reported mild tenderness to palpation at the Buttocks. Dr. Phillips reviewed the MRI, dated June 13, 2017, which he interpreted as normal. (Rx. 3, pgs. 12, 13). Dr. Phillips noted that his examination showed no radicular symptoms and no evidence of radiculopathy. (Rx. 3, pgs. 15, 16). Dr. Phillips testified the MRI showed no obvious nerve compression. (Rx. 3, Pg. 16).

Dr. Phillips testified the MRI did not show facet arthropathy or any stenosis. (Rx. 3, pg. 14). Dr. Phillips testified disagrees with the findings of Dr. McNally and the radiologist regarding the presence of facet arthropathy and stenosis on the June 13, 2017 MRI. Dr. Phillips testified it is not unusual for individuals to differ when interpretating an MRI depending upon ones focus upon nuances differences which do not amount to a significant finding. (Rx. 3, pgs. 14,15). At that time, Dr. Phillips opined Petitioner reached maximum medical improvement, could return to work full duty and that no further treatment was warranted. (Rx. 3, pgs. 18, 18). Dr. Phillips also opined that medical branch blocks were not warranted because there was no evidence that Petitioner sustained a facet injury. (Rx. 3, pg. 17).

Dr. Phillips reexamined Petitioner on July 13, 2018, pursuant to Section 12 of the Act. At that time, Petitioner reported right back pain, right hip pain, right thigh pain, tingling on the bottom of his foot and back pain radiating up toward the neck. (Rx. 3, pg. 20). Dr. Phillips noted Petitioner's symptoms were dramatically different than at the first visit. The exam noted 2 out of 3 Waddell signs, tenderness to superficial palpation, diminished sensation through the entire

right leg in a non-dermatomal pattern, positive strength leg raise on the right, and limited lumbar range of motion. (Rx. 3, pg. 22).

Dr. Phillips testified he reviewed the EMG, dated June 1, 2018, which, he said, confirmed the absence of radiculopathy. Dr. Phillips testified he reviewed and compared the May 9, 2018 MRI with the prior MRI and both MRIs showed no significant findings nor were there any differences between the MRIs. (Rx. 3, pgs. 23-26).

Dr. Phillips opined that Petitioner sustained a strain/sprain with no structural injury to his spine and Petitioner could return to work full duty. Dr. Phillips opined that Petitioner's subjective complaints outweighed his objective exam findings and his symptoms were disproportionate which could not be anatomically explained on any objective basis. Dr. Phillips further opined no additional medical treatment was warranted and that he disagrees surgery would improve Petitioner's symptoms. Dr. Phillips testified there are inconsistent findings, no pathology that can be fixed with surgery based upon the MRI, EMG, and exam findings. (Rx. 3, 28-31).

Testimony of Petitioner's current condition

Petitioner testified he would like to proceed with the surgery recommended by Dr. McNally. (T. 21). Petitioner testified he continues to experience pain when seated for a long period of time. Petitioner testified his back hurts when he sweeps or mops and, on occasion, his leg feels weak mostly the right leg. (T. 29).

The Arbitrator does not find the Petitioner's testimony credible.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With Respect to Issue (F), Whether the Petitioner's Current Condition of Ill-being is Causally Related to the Injury, the Arbitrator Finds as follows:

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally-connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing

condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill.Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill.Dec. 70,797 N.E.2d 665, (2003).

The Arbitrator finds Petitioner sustained a lumbar sprain/strain while working for Respondent on May 15, 2017 but that Petitioner failed to prove by the preponderance of the evidence that his current condition of ill-being is causally related to his work injury.

Petitioner was initially diagnosed with a lumbar sprain/strain at Physicians Immediate Care and he underwent a course of conservative treatment, physical therapy and was released to return to work full duty on June 5, 2017. (RX 2). The Arbitrator finds that Petitioner reached maximum medical improvement on October 13, 2017, the Date of the Section 12 examination.

Petitioner was examined by Dr. Frank Phillips on October 13, 2017. Dr. Phillips examination found that the straight leg test was negative, Petitioner had normal reflexes, and good range of motion. Dr. Phillips testified his examination showed no radicular symptoms nor evidence of radiculopathy. (Rx. 3, pgs. 15, 16). Dr. Phillips reviewed the MRI, dated June 13, 2017, which he interpreted as normal and showed no obvious nerve compression. (Rx. 3, pgs. 12, 13, 16). At that time, Dr. Phillips opined Petitioner reached maximum medical improvement, could return to work full duty and that no further treatment was warranted. (Rx. 3, pgs. 18, 18).

Dr. Phillips reexamined Petitioner on July 13, 2018, pursuant to Section 12 of the Act. Dr. Phillips testified he reviewed the May 9, 2018 MRI and compared it to the prior MRI. Dr. Phillips testified that both MRIs showed no significant findings and there were no differences between the MRIs. (Rx. 3, pgs. 23-26). Dr. Phillips testified he also reviewed the EMG, dated June 1, 2018, which confirmed the absence of radiculopathy. Dr. Phillips opined that Petitioner sustained a strain/sprain with no structural injury to his spine and Petitioner could return to work full duty. Dr. Phillips opined that Petitioner's subjective complaints outweighed his objective

exam findings and his symptoms were disproportionate which could not be anatomically explained on any objective basis. (Rx. 3, 28-31).

The Arbitrator finds the history Petitioner provided to Dr. Phillips to be more consistent with his trial testimony than the history Petitioner provided to Dr. McNally. At trial, Petitioner testified he bent over to pick up some stacks of food that had fallen to the ground and as he bent over, he felt something in his back. (T. 15, 16). Dr. McNally testified that Petitioner reported lifting a 50-pound bag losing his grip and, as he caught the falling bag, he experienced back pain.

The Arbitrator notes that Dr. McNally's causation opinion is based, in part, upon the stress of catching a falling bag caused intra-abdominal and muscular pressure which increased the narrowing and irritation on the nerve roots. (Px. 10, pgs. 17,18). However, Petitioner did not catch a falling 50 bag when he experienced the onset of low back pain. Petitioner testified the bag had fallen to the ground and, as he bent over to pick it up, he experienced low back pain. As such, the mechanism of the injury Dr. McNally relied upon to support his causation opinion is inconsistent with Petitioner's trial testimony. Dr. McNally did not proffer any opinions regarding whether or not the act of bending over or picking up a bag that had fallen to the ground could have caused stress and intra-abdominal and muscular pressure necessary to increase the narrowing and irritation on the nerve root. To make such an assumption would be nothing more than guess, surmise, or conjecture. It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reasons given for it and expert opinion cannot be based on guess, surmise or conjecture. *Wilfert v. Retirement Board*, 318 Ill.App.3d 507, 514-15 (First. Dist. 2000).

The Arbitrator finds the opinions of Dr. Phillips more persuasive then the opinions of Drs. McNally and Novoseletsky.[1] Dr. Phillips causation opinion is based upon a mechanism of injury consistent with Petitioner's trial testimony. The Arbitrator finds the MRI's, EMG and Dr. Phillips exam findings support his causation opinion. The Arbitrator also notes that Dr. McNally testified, he did not review Petitioner's prior treatment records and that facet arthropathy and foraminal stenosis is, in most cases, caused by wear and tear.

[1] The Arbitrator notes Dr. McNally was a mentee of the Respondent's IME physician, Dr. Frank Philips, and testified that Dr. Phillips is a qualified orthopedic surgeon (Px 10).

With Respect to Issue "J", Whether Respondent is liable for Medical Expenses, the Arbitrator Finds as Follows:

Section 8(a) of the Act states a Respondent is responsible "…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…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See *Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

The Arbitrator finds Petitioner proved by the preponderance of the evidence the medical treatment through October 13, 2017, the date of Dr. Phillips examination, was reasonable and necessary to cure or relieve Petitioner from the effects of his accidental injury. As such, Respondent shall pay the reasonable and necessary medical services through October 13, 2017, pursuant to the medical fee schedule, Section 8.2 and 8(a) of the Act. The Arbitrator notes the parties stipulated Petitioner received benefits and that Respondent is entitled to Section 8(j) credit for medical bills which Respondent previously paid. Petitioner reached maximum medical treatment as of October 13, 2017, the date of Dr. Phillips examination and, as such, Petitioner failed to prove by the preponderance of the evidence Respondent is responsible for Petitioner's medical treatment after October 13, 2017.

With respect to issue "K" whether Petitioner is entitled to TTD benefits, the Arbitrator finds as follows:

"The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, "*i.e.,* until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, i.e., reached MM.I. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at 28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *Gallentine*, 201 Ill. App. 3d at 887; *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

Petitioner claims to be entitled to TTD benefits from May 30, 2017 through September 1, 2019. The Arbitrator finds Petitioner proved he was entitled to receive TTD benefits from May 15, 2017 through October 13, 2017, the date of Dr. Phillips examination. Petitioner reached maximum medical improvement as of October 13, 2017. As such, Respondent shall pay Petitioner temporary total disability benefits from June 16, 2017 through October 13, 2017, as provided in Section 8(b) of the Act. Based upon the stipulation of the parties, Respondent is entitled to a credit, pursuant to Section 8(j) of the Act, for disability benefits Respondent previously paid Petitioner.

With Respect to Issue (O), Prospective Medical Treatment, the Arbitrator Finds as Follows:

Section 8(a) of the Act entitles a claimant to compensation for all necessary medical, surgical and hospital services "thereafter incurred" that are reasonably required to cure or relieve the effects of injury. Procedures or treatment that have been prescribed by a medical service provider are "incurred" within the meaning of the statute, even if they have not yet been paid. *Plantation Mfg. Co. v. Industrial Comm'n*, 294 Ill.App.3d 705, 710 (Ill. App. 2nd Dist. 1997).

Petitioner seeks prospective medical treatment recommended by Dr. McNally. As set forth above, the Arbitrator found Petitioner failed to prove that his current condition of ill-being is causally related to his work injury of May 15, 2017 and, therefore, the Arbitrator further finds Petitioner failed to prove by the preponderance of the evidence that he is entitled to prospective medical care.

The Arbitrator also notes Dr. Phillips opined Petitioner does not need lumbar surgery and based upon the MRIs and EMG he could not contemplate what surgery could even be considered.

With respect to issue "L," the nature and extent of Petitioner's injuries, the Arbitrator makes the following conclusions:

Section 8.1b of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. 820 ILCS 305/8.1b (LEXIS 2011). Specifically, Section 8.1b states:

> 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. *Id.*

Considering these factors in light of the evidence submitted at trial, the Arbitrator addresses the factors delineated in the Act for determining permanent partial disability.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that a permanent partial disability impairment report found zero impairment. The Arbitrator notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making such a disability evaluation. As such, the Arbitrator therefore gives some weight to this factor in determining permanent partial disability.

With regard to subsection (ii) of §8.lb(b), the occupation of the employee, the Arbitrator notes that Petitioner was employed in the recycling industry and he was required to perform physically demanding work. Petitioner now works as a forklift driver which also involves physically demanding work. As such, the Petitioner gives some weight to this factor in determining permanent partial disability.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 42 years old at the time of the accident and Petitioner has presented no evidence as to how his age might affect his future earnings or disability. Still, the Arbitrator views Petitioner as a younger individual who, from a statistical perspective, would be expected to remain in the workforce for more than

20 years. As such, the Arbitrator gives some weight to this factor in determining permanent partial disability.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, there is no evidence presented that Petitioner's future earning capacity has been impacted by the accident. As such, the Arbitrator gives little weight to this factor in determining permanent partial disability.

With regard to subsection (v) of §8.lb(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner sustained a low back strain/strain, was released to return to work without restrictions and reached maximum medical improvement as of October 13, 2017. Petitioner testified to ongoing pain and discomfort which he contributes to the accident. The Arbitrator notes that Petitioner returned to work full duty and that he continues to work full duty. As such, the Arbitrator gives some weight to this factor in determining permanent partial disability.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 6% loss of use of the person for the back injury, pursuant to §8(d)(2) of the Act.

By: */o/ Frank J. Soto*
Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC031535
Case Name	Enrique Alvarado v. Midwest Manufacturing
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0487
Number of Pages of Decision	13
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Adam Rosner
Respondent Attorney	Jesse Lanshe

DATE FILED: 12/13/2022

/s/ Thomas Tyrrell, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

☐ 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

Enrique Alvarado,

Petitioner,

vs. NO: 19 WC 031535

Midwest Manufacturing,

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 medical expenses, prospective medical care, and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as set forth below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission corrects a scrivener's error in the Arbitrator's Decision on page 8, section 10, the second sentence should read, "He testified that he even rented from Petitioner…"

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 28, 2021, is modified as stated herein, and is otherwise affirmed and adopted.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical expenses, subject to §8(a)/§8.2 of the Act, of RNS Physical therapy, $1,982.73; Suburban Orthopaedics, $6,019.49; and Prescription Partners, LLC, $514.51.

IT IS FURTHER ORDERED that Respondent shall receive a credit of $35,871.01 for medical expenses already paid pursuant to Respondent's Exhibit 2, page 9.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorize and pay for the recommended surgical procedures (L4-L5 bilateral laminotomies) as recommended by Dr. Thomas McNally.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $8,600.00. 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.

December 13, 2022

o: 11/1/2022
TJT/ahs
51

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC031535
Case Name	ALVARADO, ENRIQUE v. MIDWEST MANUFACTURING
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Adam Rosner
Respondent Attorney	Jesse Lanshe

DATE FILED: 6/28/2021

THE INTEREST RATE FOR THE WEEK OF JUNE 22, 2021 0.05%

/s/ Jessica Hegarty, Arbitrator
Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ENRIQUE ALVARADO Case # **19** WC **31535**
Employee/Petitioner

v.

MIDWEST MANUFACTURING
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 **JESSICA HEGARTY**, Arbitrator of the Commission, in the city of **CHICAGO**, on **4/29/2021**. 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 **PROSPECTIVE MEDICAL**

FINDINGS

On the date of accident, **8/16/19**, 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 $**39,984.36**; the average weekly wage was $**768.93**.

On the date of accident, Petitioner was **48** 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 not entitled to a credit under Section 8(j) of the Act, but is awarded a credit of $35,871.01 for medical expenses already paid (pursuant to Respondent's Trial Exhibit 2, page 9).

ORDER

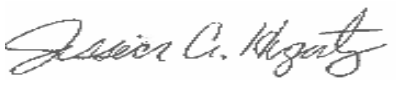
Medical Benefits
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of RNS Physical Therapy, $1,962.73; Suburban Orthopaedics, $6,019.49; Prescription Partners, LLC, $514.51.

Prospective Medical
The Arbitrator orders Respondent to authorize and pay the recommended surgical procedures (L4-L5 bilateral laminotomies) as recommended by Dr. Thomas McNally

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

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

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



Signature of Arbitrator

JUNE 28, 2021

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
IN THE STATE OF ILLINOIS

ENRIQUE ALVARADO,	)	
	)	
Petitioner,	)	
	)	No: **19 WC 31535**
vs.	)	
	)	
MIDWEST MANUFACTURING,	)	
	)	
Respondent.	)	

ADDENDUM TO THE DECISION OF THE ARBITRATOR

The following issues are in dispute: causal connection, unpaid medical bills, and prospective medical treatment. (Arb. 1).

Petitioner, Enrique Alvarado, has been employed by Respondent, Midwest Manufacturing, for approximately 19 years as of the date of trial. (Tx8). Petitioner testified his duties included operating a forklift truck and lifting various objects. (Id. 8-9). He typically works Monday through Friday, 6:00 A.M. to 3:30 P.M.

Petitioner testified that he felt very good when he started his shift on August 16, 2019. (Id. 9).

The parties stipulated that on Friday, August 16, 2019, Petitioner (then 48-years-old) sustained accidental injuries that arose out of and in the course of his employment with Respondent. (Id.). Petitioner testified that at 3:00 p.m., while helping two coworkers, he was bent forward using a crowbar to lift a 200 lb. skid when he felt a stretching sensation in his middle lower back. (Id. 9-10). He continued working for the remaining 30 minutes of his shift. He did not notify his supervisor that day as he believed the sensation would go away with medicine. (Id. 11). Over the weekend, Petitioner's back pain persisted and when he returned to work the following Monday, he reported the accident to his supervisor, Juan. (Tx13, 25). At that time, Petitioner's supervisor did not send Petitioner out for treatment. (Id. 13). Instead, Petitioner sought treatment on his own. (Id.).

On August 21, 2019, Petitioner presented for initial consult at RNS Physical Therapy where Dr. Gabriel Rivera noted an accident history consistent with Petitioner's testimony. (Px1). Petitioner complained of persistent, sharp, non-radiating lumbar back pain since the work accident of August 16, 2019. (Id.). X-rays of Petitioner's lumbar spine showed rotational malposition and postural alterations due to soft tissue injury. (Id.). On physical examination, Dr. Rivera noted antalgic gait, guarded movements when walking, moderate edema in the low back and muscle spasms in the bilateral thoracic and lumbar erectors. Pain with both the straight leg and Kemp's test were noted. Dr. Rivera opined that Petitioner's condition was causally related to his work accident on August 16, 2019. The doctor referred Petitioner for physical therapy, three times per week for 4 weeks and instituted light duty work restrictions. (Id.). Petitioner continued to work for Respondent. (Tx14).

Petitioner participated in physical therapy for approximately two weeks, with minimal improvement. (Px1, Tx16). Dr. Rivera then referred Petitioner for an MRI and to Dr. Novoseletsky at Suburban Orthopaedics for pain management. (Px1).

On September 17, 2019, Petitioner underwent a lumbar spine MRI which showed a left eccentric annular tear and disc protrusion at L4-L5 extending into the left neural foramen resulting in moderate left foraminal stenosis, other shallow disc displacements, and bilateral renal lesions. (Px6).

On September 19, 2019 Petitioner presented for initial consult at Suburban Orthopaedics where Dr. Dmitry Novoseletsky noted a history of an August 16, 2019 lower back injury where Petitioner was at work bending forward to lift a skeet when he suddenly felt a tight shooting pain across his back. Petitioner reported constant sharp pain and lower back stiffness. (Px2). Petitioner denied radiating pain, numbness or tingling. He further reported some swelling on his right leg. On exam, limited range of motion and lumbar muscle/facet tenderness was noted. (Id.). Fortin finger and FABER/Patrick's tests were positive bilaterally. (Id). Dr. Novoseletsky diagnosed a disc protrusion with annular tear at L4-5, sacroiliitis, and facet syndrome. He recommended continued physical therapy and a lumbar epidural steroid injection. (Id.). Light duty work restrictions were continued. (Id.).

On October 2, 2019 Dr. Rivera, on exam, noted moderate pain bilaterally but greater on the left lumbo-sacral joint, acro-iliac joint and sciatic notch to thigh at 50 degrees with radiation. Kemp's test performed bilaterally noted moderate segmental level pain at L4, L5, sacrum and left pelvis with radiation. (Id.). The doctor noted a diagnosis of "L/Spine IVD w/Radiculopathy". (Id.).

Petitioner continued to report complaints of sharp pain in his low back and left leg in October 2019 to his physical therapist. Dr. Rivera maintained his diagnosis of "L/Spine IVD w/Radiculopathy". (Id.).

On October 4, 2019 Petitioner's physical therapist noted radiating pain present on the left with straight leg and Kemp's testing. Dr. Rivera noted Petitioner's overall disability level had increased by 22%. The doctor, noting Petitioner's lack of progress and improvement in his outcome assessment and physical exam, recommended that Petitioner receive a lumbar Epidural Steroid Injection ("ESI") (Id.).

On November 26, 2019 Petitioner underwent his first lumbar ESI, administrated by Dr. Novoseletsky. (Id.). In a follow-up appointment, Petitioner reported relief for about four days after the injection. (Px2, Tx17). Petitioner complained that his back pain was constant with a "burning/achy" sensation that radiated down the back of his bilateral legs, reaching his ankles. (Id.). On physical examination, Dr. Novoseletsky noted bilateral positive Fortin finger and FABER/Patrick's test. Dr. Novoseletsky again recommended Petitioner undergo a lumbar epidural steroid injection, which Petitioner underwent on January 15, 2020. (Id.).

On February 6, 2020, Petitioner reported to Dr. Novoseletsky that his pain returned four days after his second injection. (Px2, Tx17). Petitioner continued to have sharp pain in his lower back with pain radiating down the right leg, stopping at the back of his calf. (Px2). On exam, Dr. Novoseletsky again noted bilateral positive Fortin Finger test and FABER/Patrick's test. (Id.). Dr. Novoseletsky recommended another injection, which was administered on March 11, 2020. (Id.).

On February 26, 2020, Dr. Singh performed an independent medical examination ("IME") pursuant to Respondent's request. (Rx3b). On review of Petitioner's MRI, Dr. Singh noted a left L4-L5 disk protrusion without stenosis. He diagnosed Petitioner a lumbar muscular strain and a left L4-L5 protrusion. Further, he noted that the lumbar muscular strain was causally related to the work accident and that the disk protrusion was an incidental finding and asymptomatic. Dr. Singh reasoned that the disk protrusion was asymptomatic because "the patient has no lower extremity dysesthesias in an L5 distribution along with a normal neurological examination…" Dr. Singh concluded that Petitioner may return to work, full duty, and was at maximum medical improvement. (Id.).

On March 27 and April 24, 2020 Petitioner followed up with Dr. Novoseletsky. During both visits, Dr. Novosoletsky noted positive Fortin Finger tests and Faber/Patrick's tests. (Px2). On April 24, 2020, Petitioner continued to complain of middle lower back pain with pain radiating bilaterally to his calves and feet. (Id.). As Petitioner had only transient relief from conservative treatment, Dr. Novoseletsky referred him for a spine surgery consultation. (Id.).

On June 10, 2020, Petitioner presented to Dr. Pelinkovic at Suburban Orthopaedics pursuant to the above-mentioned referral. (Id.). Petitioner complained of pain from his back down his posterior thighs and calves, extending into his heels on both sides. (Id.). On physical examination, Dr. Pelinkovic noted midline tenderness mid at L4-S1 and a positive straight leg raise on left for pain radiating down the posterolateral thigh and calf. (Id.). Dr. Pelinkovic opined that it was more likely than not Petitioner's condition was casually related to the work accident on August 16, 2019. (Id.).

Dr. Pelinkovic recommended Petitioner undergo another MRI of his lumbar spine and follow up to discuss surgical options. (Id.).

On June 16, 2020, Petitioner underwent a second MRI of his lumbar spine. At L4-L5 a "slight annular bulge with asymmetric extends into the floor of the left foramen. There is mild displacement of perineural fat but no direct nerve root compression. Dr. Douglas Amson's impression noted mildly bulging discs with no frank stenosis or direct nerve root compression. (Px7). The MRI was grossly similar to that of the previous one on September 17, 2019. (Id.).

On June 19, 2020, Petitioner followed up with Suburban Orthopaedics, where his continued complaints of lower back pain radiating down his bilateral lower extremities was noted. (Px2). At that time, Petitioner was notified that Dr. Pelinkovic was no longer with the practice and that Petitioner would treat with Dr. McNally following an EMG. (Id.).

On July 14, 2020, Petitioner underwent an EMG/NCV of his bilateral lower extremities. (Px8). Dr. Alexander Goldvekht's impression noted the "isolated reinnervated motor unit potentials observed in the TA muscle on EMG and reduced left peroneal CMAP may indicate chronic left L5 radiculopathy. (Px8.). Dr. Goldvekht's impression further noted "[m]uscle fiber membrane electrical instability identified in this patient's left VL muscle should be considered in the determination of whether these EMG findings correlate with early and mild left L4 radiculopathy vs. femoral neuropathy".

On July 28, 2020, Petitioner presented to Dr. Thomas McNally at Suburban Orthopaedics. (Px2). On physical examination, Dr. McNally noted tenderness at midline L4-5 and a positive straight left leg raise. (Id.). Dr. McNally opined the L4-5-disc protrusion present on MRI was consistent with Petitioner's subjective complaints of back pain and bilateral leg pains and Petitioner's current condition was related to the work accident on August 16, 2019. (Id.). Dr. McNally discussed surgical options with Petitioner and recommended bilateral L4-5 laminotomies. (Id.).

Petitioner's last visit with Dr. McNally was on August 25, 2020, when his persistent complaints of low back pain radiating down the right leg was noted. (Id.). On physical examination, Dr. McNally again noted tenderness at midline L4-5 and positive straight leg test on the left lower extremity. Dr. McNally noted Petitioner had failed twelve months of non-operative treatment, including physical therapy, multiple pain medications, and multiple lumbar injections with interventional pain management. Dr. McNally again recommended Petitioner undergo bilateral laminotomies. (Id.).

During Dr. McNally's deposition, he explained in detail his reasoning for recommending this surgery to Petitioner. (Px5).

On August 31, 2020, Petitioner underwent a second independent medical examination with Dr. Singh at the request of Respondent. (Rx3c). Dr. Singh noted Petitioner continued to complain of low back pain and denied bilateral lower extremity dysesthesias. (Id). Dr. Singh interpreted the EMG as normal. Dr. Singh did not change any of his opinions from his initial IME and found Petitioner suffered a soft tissue muscular strain. (Id). On November 24, 2020, Dr. Singh authored an addendum report. (Rx3d). Dr. Singh disagreed with Dr. McNally's surgical recommendation, "as the patient presents with non-anatomic pain complaints presented with a normal neurological examination on his IME dated August 31, 2020…" (Id.).

Respondent presented plant manager, Charles Tomblinson who testified Petitioner's job duties include using a forklift, unloading trucks, and occasionally having to lift heavier items with the assistance of coworkers. (Id. 38-39). Mr. Tomblinson was aware of Petitioner's work restrictions and testified he did not see Petitioner in pain while working nor did he hear any complaints from Petitioner since the date of the accident. (Id. 40-41). Mr. Tomblinson testified that approximately ninety percent of Petitioner's job duties prior to the accident can be done post-accident. (Id. 41). Mr. Tomblinson testified Petitioner had previously owned his own business renting tables, chairs, and bounce houses. (Id. 42). He testified that Petitioner does not currently operate that business but did operate it after the accident. (Id). Finally, Mr. Tomblinson testified that he never witnessed Petitioner in pain while working for Respondent following the accident and that he saw him laughing with coworkers. (Id. 43-44). On cross examination, Mr. Tomblinson admitted he supervises eighty-five employees including Petitioner and that the building he supervises is approximately 600,000 square feet. (Id. 47).

Regarding his current condition, Petitioner testified that throughout his treatment, he had pain in his lower back and pain radiating down both his legs. (Id. 20). His right leg is worse than his left and some days his complaints were worse than others. (Id.). Activities such as mowing the lawn or shoveling snow would make his pain worse. (Id. 21). Petitioner has an eight-year-old son, and that his condition affects his ability to play and interact with him. (Id. 22). Prior to the accident, had no issues regarding his back.

He still wishes to proceed with the bilateral laminotomies as recommended by Dr. McNally. (Id. 21).

CONCLUSIONS OF LAW

(F) IS PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO HIS WORK ACCIDENT?

The Arbitrator incorporates the foregoing findings of fact as though fully set forth therein.

Based on a preponderance of the credible evidence contained in the record, the Arbitrator finds Petitioner's current condition of ill-being is causally related to the undisputed accident at issue.

The Arbitrator notes the following in support:

1. The Arbitrator had the opportunity to personally observe the Petitioner during his testimony and found him to be a credible witness. His facial expressions, body language, the tone of his voice, his overall demeanor, left the Arbitrator with the impression that Petitioner is an honest, trustworthy individual. Petitioner's testimony at the hearing concerning his work-related accident and his subsequent complaints and treatment

is uncontradicted and corroborated by the treating medical records in evidence. There is no evidence of symptom magnification or malingering in Petitioner's medical records or his Section 12 exam. Accordingly, the Arbitrator places a great deal of weight on the Petitioner's credible testimony;

2. There is no evidence that Petitioner had a low back condition, or treatment for low back pain before lifting the skid at work. While lifting the skid at work, Petitioner experienced the immediate onset of low back discomfort that persisted through the weekend causing him to seek medical treatment three days after the occurrence;

3. Three days after the accident, x-rays of Petitioner's lumbar spine showed rotational malposition and postural alterations due to soft tissue injury. On physical examination, Dr. Rivera noted antalgic gait, guarded movements when walking, moderate low back edema and muscle spasms in the bilateral thoracic and lumbar erectors. Pain with both the straight leg and Kemp's test were noted. Dr. Rivera opined that Petitioner's condition was causally related to his work accident on August 16, 2019. The doctor referred Petitioner for physical therapy, three times per week for 4 weeks and instituted light duty work restrictions;

4. Petitioner's consistent complaints of low back pain are well documented in his medical records and are clinically corelated by diagnostic testing (September 17, 2019 and June 16, 2020 lumbar MRI's and July 14, 2020 EMG/NCV of Petitioner's bilateral lower extremities);

5. The medical opinions and diagnoses set forth by Dr. Rivera, Dr. Novoseletsky, Dr. Pelinkovic, and Dr. McNally. The Arbitrator adopts the credible medical opinions set forth by Dr. McNally which are supported by the evidence contained in the record. Dr. McNally, in recommending Petitioner undergo surgery, noted the failure of twelve months of conservative treatment, including physical therapy, multiple pain medications, several lumbar ESI's along with interventional pain management, to alleviate Petitioner's pain complaints and disability;

6. Dr. McNally supported his opinions and recommendation for surgery by, not only explaining in words in detail, but also utilized the actual MRI images to point out the disk herniations and narrowing at L4-L5, comparing such with the other normal spinal segments visible on MRI;

7. The Arbitrator found the opinions of Dr. Singh less persuasive. Although he agreed that Petitioner was injured in the work-related accident at issue, his conclusion that Petitioner suffered only a lumbar muscular strain and a left, asymptomatic, L4-L5 protrusion ignores Petitioner's treating medical history that documents a consistent history of leg pain and radiculopathy beginning approximately 6 weeks after the work accident. Thereafter, Petitioner's complaints of radicular low back pain radiating into Petitioner's lower bilateral extremities are consistent and well documented (i.e. November 26, 2019, February 6, 2020, June 10, 2020, June 19, 2020, and August 25, 2020). Dr. Singh fails to consider any of this evidence in formulating his opinions;

8. Dr. Singh's assertion that stenosis is not present on MRI is contrary to the opinion of Dr. Resham Mendi, who interpreted the September 18, 2019 MRI. In his report, Dr. Mendi noted a left eccentric annular tear and disc protrusion at L4-L5 extending into the left neural foramen resulting in moderate left foraminal stenosis, other shallow disc displacements, and bilateral renal lesions;

9. Regarding Respondent's witness Mr. Tomblinson, the Arbitrator places little weight on his testimony. Although this witness testified Petitioner never complained of back pain or "grimaced" when he was

working following the accident, Mr. Tomblinson admitted that he supervises over eighty-five employees in a 600,000 square feet manufacturing space. The Arbitrator would be surprised if Mr. Tomblinson were to recall each employee's "grimace" throughout the day as he supervises eighty-five employees in that large of a space. Further, Petitioner testified that he did not complain about his back pain and restrictions to Mr. Tomblinson, but rather to Juan, the assistant plant manager, as Juan spoke Petitioner's native language. Petitioner testified that he could not explain his pain to Mr. Tomblinson, due to his limited English. Additionally, Mr. Tomblinson testified that he had witnessed Petitioner laughing with coworkers at work after the date of accident. The notion that one is unable to laugh if injured is nonsensical as that implies that one has to be depressed or unable to portray joy while dealing with a long-standing injury;

10. On direct examination, Mr. Tomblinson testified that Petitioner operated a separate business renting chairs, tables, etc. He testified that he even rented to Petitioner and that Petitioner operated the business subsequent to the injury. However, Mr. Tomblinson never mentioned what Petitioner's role in the business was. He never testified what Petitioner's specific activities were related to that business or whether Petitioner had others working for him. The Arbitrator should note Respondent fails to create a connection between Petitioner's former business and his current condition as there is no indication of what Petitioner's role was in the business;

11. Finally, Mr. Tomblinson testified on direct examination that approximately ninety percent of Petitioner's work for Respondent can be done with light duty restrictions. This supports Petitioner's position, as Petitioner was able to work without any claims of lost time from this injury. Petitioner testified that he was in pain while working and during certain activities but was able to continue working. Since ninety percent of Petitioner's work can be performed light duty, it is reasonable that Petitioner was able to continue to work without lost time. This does not mean that Petitioner did not suffer pain while working, only that he was able to perform his job duties without having to take off work;

12. The Arbitrator further finds that Petitioner did not sustain any intervening injuries relative to his current condition throughout the course of his treatment. Petitioner's testimony and medical records are absent of any indication of an intervening injury to Petitioner's current condition.

(J) WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY?

Based on a preponderance of the credible evidence in the record, the Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary. This is supported by Petitioner's medical records from Dr. Rivera, Dr. Novoseletsky, Dr. Pelinkovic, and Dr. McNally.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule:

RNS Physical Therapy	$1,962.73
Suburban Orthopaedics	$6,019.49
Prescription Partners, LLC.	$514.51.

(K) IS PETITIONER ENTITLED TO PROSPECTIVE MEDICAL CARE?

The Arbitrator has already found that Petitioner's current condition of ill-being is causally related to the work accident at issue. Based on the credible evidence contained in the record, including the treating medical records, the credible testimony of Petitioner and Petitioner's treating physician, Dr. McNally, the Arbitrator finds Petitioner is entitled to the prospective medical treatment (including the surgery recommended by Dr. McNally) as such is reasonable, necessary, and causally related to the work accident at issue. The Arbitrator relies on the medical records and Petitioner's testimony regarding the necessity of the surgeries at this time. The Arbitrator does not find Dr. Singh's independent medical examinations and addendum report persuasive on this issue. Therefore, the Arbitrator orders the Respondent to authorize and pay for the recommended surgery and associated care.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC035556
Case Name	Janet K Benson v. McLean County Unit District 5
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0488
Number of Pages of Decision	26
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Jean Swee
Respondent Attorney	James Manning

DATE FILED: 12/14/2022

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JANET BENSON,

Petitioner,

vs. NO: 19 WC 35556

MC LEAN COUNTY UNIT DISTRICT #5,

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, accident date, causal connection, medical expenses, prospective medical care, temporary total disability (TTD) benefits, permanent partial disability (PPD) benefits and benefit rates, and being advised of the facts and applicable law, reverses the Decision of the Arbitrator for the reasons stated below:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner testified that she had been a special needs teacher for nearly 35 years and had worked for Respondent for more than 25 years. (T.12). Petitioner retired at the end of the school year in 2019 but agreed to perform substitute teaching work for Respondent in the fall of that same year. (T.12-13; T.38). Petitioner also performed parapro work for Respondent which involved one-on-one support for a student with special needs. (T.13).

Petitioner was working as a parapro on September 19, 2019. (T.13). She was assigned to a student on that date and to a classroom at Evans Junior High. (T.13-14). Petitioner had taught at Evans Junior High for eight years. She described what happened on September 19, 2019:

> I was escorting a young man with special needs to his general ed classroom on the second floor. So he and I left the room I was in on the first floor. I was carrying my bag and my folder and keeping an eye on my student, and we navigated up the stairs, deep stairs and then up the next set of stairs, and when I turned the corner, I fell. (T.14; T.21-22).

Petitioner testified that when she reached the top of the stairway, she turned left and her shoe became stuck on the floor. Petitioner fell forward and braced her fall with her hands. (T.15).

Petitioner completed an incident report and informed the school nurse that her shoe had gotten stuck. (T.15; T.23; T.27). Petitioner explained that the school waxed the floors in August and humidity would sometimes make the floor sticky. She stated that it was humid on September 19, 2019. (T.15-16; T.65-66). Petitioner testified that the flooring she fell on was tile and that same flooring was in her classroom. (T.16-17). Prior to the September 19, 2019 incident, Petitioner had noticed that the tile flooring in her classroom was sticky and she had instances where the stickiness caught her shoes. (T.17). Petitioner was wearing Skechers shoes on September 19, 2019 and she recalled that her Skechers shoes would stick to the floor prior to the accident date. (T.19).

Respondent sent Petitioner to see Dr. Mary Yee-Chow at OSF Occupational Medicine on September 19, 2019. (T.23; PX6; RX2). The history noted was: "while walking to class she tripped on her tread of her shoes, sts landed on her left knee and braced herself with both arms, sts lay on the floor until assistance came to help her up . . ." (PX6; RX2). The medical record stated that Petitioner could not write due to pain. She had bilateral arm pain with increased pain when she twisted her forearms. Petitioner was unable to drive to the medical facility and needed assistance to remove her clothes for the exam. Petitioner did not have a strong grip with both hands. She had no pain with palpation to her shoulders and bilateral upper arms. Her left knee was bruised but Petitioner was able to walk and march without difficulty. The record further noted that Petitioner's injury had occurred at work. (PX6; RX2).

X-rays of both forearms, hands and wrists were taken on September 19, 2019 and revealed no acute fractures or dislocations. (T.23; PX6; RX2). Dr. Chow's assessment was bilateral hand contusions, left knee contusion and bilateral forearm muscle/tendon injury. (PX6; RX2). Dr. Chow prescribed a cockup splint for both wrists and she prescribed prednisone. (T.23; PX6; RX2). Petitioner was taken off work through the next day and then given restrictions of limited use of both wrists, forearms and hands. (PX6; RX2).

Petitioner followed-up with Dr. Chow on September 26, 2019. (T.23-24; PX6; RX2). Dr. Chow noted that Petitioner had bruising in both upper arms and Petitioner reported shooting pain and throbbing from her elbows down to her fingertips with numbness and tingling in both hands. The wrist braces and tramadol did not help. Petitioner indicated that her arms hurt the most when she rotated both forearms and when she had her arms dangling at her sides while walking. Petitioner stated that her knees were doing well and she did not have problems with the prednisone prescription. (PX6; RX2). Dr. Chow ordered physical and occupational therapy, prescribed a second course of prednisone as well as cyclobenzaprine and gave Petitioner restrictions of limited use of both arms, wrists and elbows. (T.24; PX6; RX2).

Petitioner also sought treatment with her family doctor, Dr. Katherine Fitzgerald, on October 2, 2019. Dr. Fitzgerald noted that Petitioner fell at work two weeks prior and that she was experiencing continued pain with turning and twisting of the forearms. Petitioner also reported shooting pain into her thumbs. She did not have swelling of the hands or wrists, but there was bruising on the posterior right arm. Dr. Fitzgerald provided toradol and ordered physical therapy

as well as repeat x-rays to rule out any possible fracture that was not identified during Petitioner's initial evaluation. (T.24; PX9).

On October 7, 2019, Petitioner saw Dr. Maureen O'Marro, D.O., at the Advocate Medical Group in Bloomington, Illinois. (T.24; PX7). The history noted on October 7, 2019 was: "While on her way to work one morning she caught the sole of her right shoe, presumably due to the weakness she experienced in the right lower extremity secondary to her L4-L5 radiculopathy, then stumbled and fell landing on her elbows bilaterally." (PX7). The office visit note stated that since Petitioner's fall, she continued to experience a burning sensation in the mid-upper arms that extended down the lateral dorsal aspect of the lower arms. Petitioner reported feeling this sensation when twisting the upper extremities. Bruising was noted over the dorsal aspect of the lower and upper arms surrounding her elbows. (PX7).

Dr. O'Marro suspected Petitioner had bilateral carpal tunnel syndrome and/or radial tunnel syndrome and ordered an EMG/NCV study. (T.25; PX7). Physical therapy and gabapentin were recommended and Petitioner was told to continue her current pain regimen. Follow-up with Dr. Li was also recommended. (PX7). Petitioner testified that she had been treating with a Dr. Li for an unrelated condition in the face called trigeminal neuralgia. Petitioner testified that she had informed Dr. Li about her work injury. (T.24-25; PX7).

Petitioner's Exhibit 13 are the medical records from Advanced Rehab and Sports Medicine. Petitioner commenced therapy for both arms on October 8, 2019 and was discharged on October 28, 2019 pending her appointment with the orthopedic physician. The October 8, 2019 Physical Therapy Initial Examination record stated that Petitioner fell on both elbows while at work. Petitioner complained of radiating pain from her elbows to her thumb. She had decreased elbow and cervical range of motion, decreased grip and elbow strength and tenderness in both elbows laterally. The record also stated: "Patient demos sx reproduction with radial nerve tension testing and possible C6 radiculopathy." (PX13).

Petitioner underwent the EMG/NCV study on October 15, 2019. The impression indicated that the EMG findings were most consistent with chronic C7 radiculopathy on both sides and possible C6 radiculopathy on the left. Clinical correlation was recommended. Dr. Fang Li, a neurologist at the Advocate Medical Group in Bloomington, Illinois, reviewed the results of the EMG study of both upper extremities on October 15, 2019 and also noted Petitioner's fall at work. Petitioner reported arm pain, constant tingling up and down in her arms. Petitioner indicated that over the last day or two, her neck began to hurt and she could not fully flex her right arm. Dr. Li further noted that when Petitioner fell, she landed on both elbows and her chin. (T.24-25; PX7). Dr. Li believed Petitioner's bilateral upper extremity pain with sensory symptoms was due to cervical radiculopathy. She indicated that Petitioner had a history of cervical disc disease. Dr. Li ordered continued physical therapy and flexeril as needed. She also ordered an MRI of the cervical spine and right elbow and recommended orthopedic consultation. Dr. Li stated in the office visit note that there was nothing suggestive of radial nerve pathology on the EMG study. (T.25; PX7).

Petitioner completed the MRI of the right elbow on October 18, 2019. The impression was a non-displaced, non-angulated, non-impacted, complete transverse fracture of the radial neck. Signal characteristics were consistent with a month-old (subacute) injury. There was also a large

evolving hemarthrosis. (PX4; PX10). Petitioner also completed an MRI of the cervical spine on October 18, 2019. The study revealed congenital segmentation anomaly with partial fusion of C2 and C3. There were also multilevel degenerative changes with stenosis most significant at the C5-6 level. (PX14).

Petitioner sought treatment at the emergency room of St. Joseph's Medical Center on October 19, 2019 after the MRI revealed that her right elbow was broken. The hospital record noted Petitioner's complaints of bilateral elbow pain and her fall a month prior. "Patient states she had MRI performed yesterday, was called by the radiologist stated that she had fracture to her elbow, was recommended to come to the ED." (PX8). Examination of both elbows indicated normal range of motion, no swelling or effusion, no deformity or laceration, but she had tenderness in the radial head and olecranon process. Petitioner also underwent x-rays of both elbows at the hospital which revealed bilateral radial head fractures. Petitioner denied any subsequent injury. She was placed in bilateral elbow slings and advised to follow-up with her orthopedic physician. (T.25-26; PX8).

Petitioner next saw Dr. Joseph Newcomer's physician assistant, Lucas Roth, on October 21, 2019 at McLean County Orthopedics. The record stated that Petitioner presented one month status post fall at work with bilateral radial head fractures. (T.27; PX10). Petitioner received a referral for occupational therapy which Petitioner commenced at McLean County Orthopedics on October 25, 2019. Physician Assistant Roth also gave Petitioner restrictions of limited lifting, pushing and pulling activities. He recommended that Petitioner follow-up in two weeks with Dr. Newcomer for repeat x-rays. (PX10).

Petitioner returned to work on October 31, 2019. (T.27-28). Petitioner could not write. She is right-handed. (T.28-29; T.36). At that time, Petitioner also experienced difficulty driving, lifting her purse, washing her hair and opening a jar. (T.28). She testified that as a substitute teacher she was required to write a lot and leave comprehensive notes for the teacher especially in Special Ed classrooms. After returning to work on October 31, 2019, Petitioner stated that she had to turn down some substitute teaching work because her arms hurt and she could not leave good notes for the teachers. (T.29).

Petitioner returned to Dr. Newcomer on November 7, 2019. (T.29-30; PX10). The history noted that Petitioner had an incident while at work as a substitute teacher "who was climbing up some stairs and had her arms full. She got her foot caught on a waxed floor and went down bracing herself landing on both upper extremities." (PX10). Dr. Newcomer further noted Petitioner's treatment to date and reviewed x-rays that revealed radial neck fractures in both elbows. Petitioner was tender to palpation of both elbows with diminished range of motion. Dr. Newcomer stated that Petitioner had a palpable and painful click with motion in the left arm but was "neuro intact in the hand and fingertips." (PX10).

Dr. Newcomer diagnosed Petitioner with bilateral radial neck fractures with delayed healing and with no evidence of callus. He recommended use of a bone stimulator for both elbows and that Petitioner avoid any kind of weightbearing, lifting or pushing off with her arms. Dr. Newcomer put physical therapy on hold for now until he saw evidence of healing. (T.30; PX10).

On December 12, 2019, Dr. Newcomer noted that x-rays of the left elbow showed a little bit of ossific healing and resorption at the fracture site. Petitioner was symptomatic on the right side and had difficulty writing. Dr. Newcomer wanted Petitioner to use the bone stimulator for another four weeks and then follow-up with him. If there was no further healing, Dr. Newcomer would consider proceeding with a CT scan. They also discussed performing a radial head replacement versus excision. (PX10).

Petitioner saw Dr. Newcomer again on January 9, 2020. He indicated that the x-rays did not show a lot of healing or change. Petitioner lacked a few degrees to full extension in the right elbow. She complained of right elbow soreness when writing. The left elbow appeared to be doing relatively well. Petitioner requested holding off on any definitive management of both elbows. Dr. Newcomer recommended that Petitioner continue using the bone stimulator. (PX10). Petitioner testified that Dr. Newcomer referred her to his partner, Dr. Jerome Oakey, a hand and arm specialist at McLean County Orthopedics. (T.30).

Petitioner consulted with Dr. Oakey on January 13, 2020 and reported overall improvement in her pain but was still experiencing pain with daily activities such as cleaning, writing and cooking. Petitioner's right arm was worse than her left as she was right-handed. Dr. Oakey noted that Petitioner had previously tried immobilization as well as a bilateral bone stimulator for more than 50 days. Dr. Oakey indicated that Petitioner had bilateral radial neck nonunions following her fall at work. He recommended continued observation as Petitioner was still functioning at a high level despite the pain. Dr. Oakey suggested that Petitioner return in two months and they would complete repeat x-rays of both elbows at that time. Petitioner could return to work full duty. (T.30; PX10).

Petitioner followed-up with Dr. Oakey on March 6, 2020. Dr. Oakey noted that Petitioner was progressively healing from her bilateral radial neck fractures. He wanted Petitioner to return in two months. Petitioner could continue working full duty. (PX10).

Petitioner completed a CT scan of the right elbow on June 18, 2020. The study revealed a transversely oriented fracture at the distal neck/base of the head of the radius. There was also significant bony resorption along the fracture line with no bony union noted. (PX3).

Dr. Oakey authored a letter to Petitioner's family physician, Dr. Fitzgerald, on June 25, 2020. The letter stated that Petitioner's CT results indicated bilateral elbow radial neck fractures. Petitioner had reported mild aching pain in both elbows when aggravated by repetitive and extended use. The letter further stated:

> Her injury was in the fall of 2019 and she has failed conservative measures including a bone stimulator. She understands the next step, which is likely given her nonunion and daily pain, is that her symptoms will get to the point where she wishes to proceed with a radial head excision. She understands that there is no time limit on this and I will see her back on an as-needed basis. She does not need any work restrictions. (PX2; PX11).

On August 18, 2020, Dr. Oakey wrote: "I do believe the fall she described on 9/19/2019 is causally connected to the bilateral radial neck fractures that I ultimately cared for. Throughout the course of treatment, her left radial neck fracture ultimately healed, however the most recent CT scan of the right elbow demonstrated a non-union . . ." (PX1). Dr. Oakey recommended surgery by way of a radial head resection and an implant arthroplasty. (PX1).

Petitioner saw Dr. Oakey again on March 1, 2021. He noted that Petitioner had chronic pain at the elbows with a nonunion of the right radial neck as a result of the 2019 fall. Clinical examination demonstrated excellent range of motion, more medial-sided soreness laterally and x-rays revealed complete healing of the left. Dr. Oakey recommended a steroid injection before proceeding with a radial head excision on the right, but Petitioner wanted to hold off on that recommendation. Dr. Oakey stated he would see Petitioner on an as-needed basis. (PX12).

Petitioner denied having any problems or having ever treated for any condition related to either of her arms, wrists or elbows prior to September 19, 2019. Petitioner testified that her right arm was worse than the left arm because it had not healed correctly. (T.34). As of the date of arbitration, Petitioner noticed that her arms ached especially with the weather. Petitioner also lived alone and had difficulty carrying groceries, showering, vacuuming and driving. (T.35). Her elbows hurt during extension and lifting and she had frequent stiffness. Petitioner confirmed that she was 59 years old on the date of accident. (T.36). She planned on returning to substitute work for Respondent in the fall. (T.36-37).

During cross-examination, Petitioner confirmed that Respondent's Exhibit 1, the Incident Report, accurately reflected what she had reported to the school nurse and that her signature was at the bottom. (T.42-44; RX1). The Incident Report was dated September 19, 2019 and stated that Petitioner's right shoe got stuck on the tile floor and Petitioner tripped and fell and braced her fall with both arms. Petitioner reported pain in both arms and wrists and decreased strength in both hands. (RX1). Petitioner testified that the bag she was carrying with her right arm was a tote bag and she could not recall if it was in her hand or on her shoulder. (T.46-47). She further stated that the folder and tote bag she had been carrying did not cause her to fall. (T.47). Petitioner also confirmed that she did not fall on the stairs and she had been walking on a completely flat surface. (T.48).

Petitioner again recalled that it was hot, sunny and humid on September 19, 2019. (T.50). She did not think she was in a rushed state at the time of the fall. (T.51). Petitioner stated that she was not holding onto the student as she helped him get to the classroom. (T.53). She additionally confirmed that she was wearing rubber sole sneakers on September 19, 2019. (T.53).

Petitioner was shown a video of the fall at arbitration – Respondent's Exhibit 4. (T.56; RX4). Petitioner confirmed that the video depicted her and the area in which she fell on September 19, 2019, shortly after 11:00 a.m. (T.57-59; T.63). It did not appear that Petitioner was carrying the tote bag in the video and she had difficulty identifying the student she was accompanying in the video. Petitioner testified that it was too dark, she could not see and she believed the boy in the red T-shirt was the student she was with at the time of the fall, but she was not sure. (T.59-61). According to the video, the student appeared several steps ahead of her "carrying his laptop. Maybe he has my bag." (T.61-62).

Jason Pascal testified as Respondent's witness. He is employed by Respondent as the head custodian at Evans Junior High School. Mr. Pascal has worked approximately eight years for Respondent and has been head custodian for four to five years. (T.71-72). He confirmed that he was the head custodian at Evans Junior High in September 2019 and he knew Petitioner. Mr. Pascal first became aware that Petitioner had fallen at the school only after she returned to the school. (T. 72; T.75-76). He was not notified of Petitioner's fall on September 19, 2019. (T.76).

Mr. Pascal testified that the floors were scrubbed and waxed every year around mid-to-late July. He stated that he scrubbed the floors and a new coat of wax was applied. (T.73-74). Mr. Pascal further testified that the wax did not make the floor particularly slippery and that it took a few days for the wax to fully cure. (T.74). He also stated that particularly humid days could affect the wax on the tile floors. "I mean, if I'm pushing a broom on it, I would notice that it maybe is pushing a little harder. It's not something you notice." (T.74-75). He also acknowledged that the school had air conditioning which would help with the humidity. (T.75). Mr. Pascal denied there would be any change in the condition of the tile floor on September 19 if it was hot and humid outside and that the floor did not become slippery nor did the wax become slick. (T.75). Mr. Pascal testified that he would be notified immediately if there was a foreign substance, debris, fluid or a liquid on the floor and he would get the wet floor sign and clean the area with a mop. (T.76).

On cross-examination, Mr. Pascal agreed that if it was humid, he would notice that his broom would stick more. This would happen any time of year. (T.78). He was not sure if the wax product was what caused his broom to stick. (T.78). Mr. Pascal did not notice his feet sticking on the waxed floor. (T.78-79). He denied hearing anyone else talking about their feet sticking to the floor. (T.79).

The Commission notes that the Petitioner timely filed her Petition for Review taking exception to the issues of accident, accident date, causal connection, medical expenses, prospective medical care, TTD and PPD benefits. However, the parties did not dispute the accident date or causal connection at arbitration. The Request for Hearing indicated that the parties stipulated that Petitioner was an employee of Respondent on September 19, 2019, that timely notice of the accident was provided to Respondent and that Petitioner's condition of ill-being was causally connected to the accident. The parties also made no argument with respect to these issues in their Briefs. As such, the Commission finds these specific issues waived for purposes of Review.

Further, the Commission finds no genuine dispute between the parties that Petitioner was in the course of her employment when she fell. In other words, Petitioner's injury "generally must occur within the time and space boundaries of the employment." *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 203 (2003). Respondent offered no evidence to rebut Petitioner's testimony that she was at work on September 19, 2019, in her capacity as a parapro for Respondent and escorting a special needs student to his classroom when she fell. The parties' primary dispute is whether Petitioner's injury arose out of her employment.

The Arbitrator determined that Petitioner failed to prove this prong, specifically, that Petitioner was exposed to a neutral risk but not to any greater extent than that of the general public.

The Arbitrator noted Respondent's Exhibit 4, the videotape of Petitioner's fall, and stated that there was no apparent debris, defect or other hazard present when Petitioner fell.

The Commission is not bound by the Arbitrator's findings. Our Supreme Court has long held that it is the Commission's province "to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *City of Springfield v. Indus. Comm'n*, 291 Ill. App. 3d 734, 740 (1997) (citing *Kirkwood v. Indus. Comm'n*, 84 Ill. 2d 14, 20 (1981)). Interpretation of medical testimony is particularly within the province of the Commission. *A.O. Smith Corp. v. Indus. Comm'n*, 51 Ill. 2d 533, 536-37 (1972). The Commission has considered all the testimony, exhibits, pleadings, and arguments submitted by the parties.

Petitioner testified that her fall was caused by the condition of the employer's premises, specifically that her right shoe became stuck on the waxed floor and she fell forward while bracing herself with her hands. By itself, the act of walking across a floor at the employer's place of business does not establish a risk greater than that faced by the general public. *First Cash Financial Services v. Indus. Comm'n*, 367 Ill. App. 3d 102, 105 (2006). Accordingly, for an injury caused by a fall to arise out of the employment, a claimant must present evidence which supports a reasonable inference that the fall stemmed from a risk associated with her employment. Employment related risks associated with injuries sustained as a consequence of a fall are those to which the general public are 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 some work related task which contributes to the risk of falling. *Id.* at 106.

The Commission finds credible Petitioner's testimony regarding the cause of her fall. Her testimony was corroborated by Respondent's incident report and the medical records in evidence. Petitioner testified that the school would wax the floors in August and humidity would make the floor sticky. She stated that it was humid on September 19. Petitioner also testified that she had worked at this specific school for Respondent for the past eight years. She explained that the flooring she fell on was tile and that her classroom had the same flooring. Prior to the September 19, 2019 incident, Petitioner had noticed that the tile flooring in her classroom was sticky and she had instances where the stickiness caught her shoes.

Respondent did not successfully rebut Petitioner's testimony regarding the waxed floor. Respondent's head custodian, Jason Pascal, testified that the tile floors were scrubbed and waxed in July. He further testified that on particularly humid days, he would notice that it was a little harder to push his broom across the floor but also testified that it was something you did not notice. When asked if on September 19 it had been hot and humid outside would that affect the floor, Mr. Pascal denied any change in the condition of the tile floor. Mr. Pascal testified that the floor did not become slippery nor did the wax become slick. However, on cross-examination, Mr. Pascal again agreed that if it was humid, he would notice that his broom would stick more. This would happen any time of year.

Mr. Pascal additionally testified that he would have been notified on September 19 if there had been a substance on the floor and no one called him on that date to clean the area. The Commission notes, however, the substance in this claim was a sticky floor due to wax and not

debris or fluid that had to be swept or mopped. There was essentially nothing for Mr. Pascal to clean up.

Mr. Pascal also indicated that the school's air conditioning could have helped with the humidity. Although it is a reasonable inference, the Commission finds the evidence lacking in this regard and speculative as to the degree the air conditioning system helped with the humidity.

Based on the preponderance of the evidence, the Commission finds that Petitioner was in the course of her employment on September 19, 2019 when she fell. Her injury also arose out of her employment due to the defect or hazardous condition of the sticky, waxed floor which caused her to fall. Petitioner sustained bilateral elbow radial head/neck fractures which the Commission finds causally related to the September 19, 2019 work accident based on the parties' stipulation.

The Commission next addresses Petitioner's benefit rates. This was an issue at arbitration but was rendered moot based on the Arbitrator's finding of no accident. The Arbitrator provided no detailed findings and conclusions other than what was listed on Page 2 of the Decision: "In the year preceding the injury, Petitioner earned $71,881.18; the average weekly wage was $250.00." The parties argued this issue in their Briefs even though Petitioner did not check off "Benefit Rates" on the Petition for Review.

In the 52 weeks preceding the work accident [September 19, 2018 through September 18, 2019], Petitioner had worked as a teacher for special needs students until her retirement at the end of the school year in 2019. She agreed to perform substitute teaching work for Respondent in the fall of 2019 and she was working as a parapro on the accident date of September 19, 2019. Both parties agreed that the average weekly wage (AWW) should be based on her earnings as a substitute teacher/parapro rather than her prior status as a full-time teacher. Both parties cited to *ABF Freight Sys. v. Ill. Workers' Comp. Comm'n*, 2015 IL App (1st) 141306WC which cited to the provision in Section 10 of the Act:

> The compensation shall be computed on the basis of the 'Average weekly wage' which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately preceding the date of injury, illness or disablement excluding overtime, and bonus divided by 52; but if the injured employee lost 5 or more calendar days during such period, whether or not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed. *820 ILCS 305/10*.

ABF Freight Sys. analyzed the meaning of "the actual earnings of the employee in the employment in which he was working at the time of the injury" and determined that it meant the particular job a claimant was engaged in at the time of an injury rather than the continuous period of employment with a single employer. 2015 IL App (1st) 141306WC, ¶ 27, ¶ 30. As such, Petitioner's AWW should reflect her earnings as a substitute teacher/parapro which was her position at the time of her injury. Respondent's Exhibit 3 – Petitioner's wage records – demonstrated that Petitioner earned $250 over two weeks. Utilizing the "weeks and parts" method under Section 10 of the Act, the Commission finds that Petitioner's AWW is $125.00.

The Arbitrator considered the issues pertaining to benefits moot. Respondent made no specific argument in its Brief with respect to medical bills but claimed that it paid $23,973.13 in medical bills through its group carrier. Respondent did not provide any evidence explaining this amount but Petitioner did provide a copy of a lien from Conduent on behalf of Health Alliance who paid most of Petitioner's bills. (PX15; PX16). The claimed amount indicated $21,802.06 and the benefit amount stated $8,709.75. Petitioner testified that she paid a premium for her health insurance and Respondent did not make any contributions because she retired at the end of the 2019 school year. (T.37-38). Section 8(j) of the Act provides that:

> In the event the injured employee receives benefits, including medical, surgical or hospital benefits under any group plan covering non-occupational disabilities contributed to wholly or partially by the employer, which benefits should not have been payable if any rights of recovery existed under this Act, then such amounts so paid to the employee from any such group plan as shall be consistent with, and limited to, the provisions of paragraph 2 hereof, shall be credited to or against any compensation payment for temporary total incapacity for work or any medical, surgical or hospital benefits made or to be made under this Act. . .
>
> . . . This paragraph does not apply to payments made under any group plan which would have been payable irrespective of an accidental injury under this Act. Any employer receiving such credit shall keep such employee safe and harmless from any and all claims or liabilities that may be made against him by reason of having received such payments only to the extent of such credit. *820 ILCS 305/8(j)*.

The Commission finds no evidence in the record herein that establishes the criteria set forth in Section 8(j) of the Act, *i.e.*, that any group plan, contributed to wholly or partially by the employer, paid medical benefits and that the policy precluded payments for medical expenses associated with work-related conditions of ill-being. As such, Respondent has not met its burden of proving it is entitled to Section 8(j) credit. The Commission therefore awards Petitioner the lien amount and medical bills detailed in Petitioner's Exhibits 15 and 16 with no credit due Respondent. The Commission finds these charges reasonable, necessary and causally related to the September 19, 2019 work accident.

The Commission further finds that although Petitioner raised an exception on the Petition for Review regarding prospective medical care, this was not at issue at the final arbitration hearing. The parties also made no arguments on this issue in their Briefs. The Commission finds this issue waived.

With respect to TTD benefits, Petitioner claimed TTD benefits from September 20, 2019 through October 30, 2019. Although Petitioner was given restrictions beginning September 21, there is no indication that she returned to work for Respondent or that Respondent provided light duty work. Petitioner testified that she returned to work on October 31, 2019. Respondent made no arguments in its Brief with respect to TTD benefits. The Commission therefore finds that Petitioner is entitled to TTD benefits from September 20, 2019 through October 30, 2019, or 5 6/7 weeks.

The Commission next awards PPD benefits of 12.5% loss of use of the left arm and 17.5% loss of use of the right arm pursuant to Section 8(e) of the Act. The Commission has considered the five factors under Section 8.1b of the Act:

(i) Impairment Rating: The parties did not offer any impairment rating into evidence. The Commission gives this factor no weight.

(ii) Occupation of Injured Employee: Petitioner has returned to her regular duties with Respondent as a substitute teacher. The Commission gives this factor some weight.

(iii) Petitioner's Age: Petitioner was 59 years old on the accident date; neither party submitted evidence into the record which would indicate the impact of the Petitioner's age on any permanent disability resulting from the September 19, 2019 accident. Nonetheless, the Commission finds that Petitioner must still live with this disability and gives some weight to this factor.

(iv) Petitioner's Future Earning Capacity: There is no evidence in the record as to reduced earning capacity. The Commission gives this factor no weight.

(v) Evidence of Disability: Evidence of Petitioner's disability is corroborated by the treating medical records. As a result of the September 19, 2019 work accident, Petitioner sustained bilateral elbow radial head/neck fractures. She received treatment by way of bilateral elbow slings, physical therapy and a bone stimulator. Petitioner's right arm was worse than her left as she was right-handed.

By August 18, 2020, Dr. Oakey stated that Petitioner's left radial neck fracture ultimately healed, but that a recent CT scan of the right elbow demonstrated a non-union. Dr. Oakey recommended surgery by way of a radial head resection and an implant arthroplasty, but Petitioner wanted to hold off on that recommendation. Dr. Oakey stated he would see Petitioner on an as-needed basis.

Petitioner continues to experience symptoms in her elbows. She testified that her arms ached especially with the weather. Petitioner also lived alone and had difficulty

carrying groceries, showering, vacuuming and driving. Her elbows hurt during extension and lifting and she had frequent stiffness. The Commission gives this factor great weight.

In light of the foregoing, with no single enumerated factor being the sole determinant of disability, the Commission finds that Petitioner is entitled to PPD benefits of 12.5% loss of use of the left arm and 17.5% loss of use of the right arm pursuant to Section 8(e) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed on December 14, 2021, is hereby reversed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable, necessary, and related medical bills as evidenced in Petitioner's Exhibits 15 and 16 pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is not entitled to a credit under Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $125.00 per week for 5 6/7 weeks, from September 20, 2019 through October 30, 2019, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $125.00 per week for 75.9 weeks because the injuries sustained caused twelve-and-a-half percent (12.5%) loss of use of the left arm and seventeen-and-a-half percent (17.5%) loss of use of the right arm pursuant to Section 8(e) 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 other amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Under Section 19(f)(2) of the Act, no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. 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 the Circuit Court.

December 14, 2022

CAH/pm
O: 12/1/22

052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC035556
Case Name	BENSON, JANET K v. MCLEAN COUNTY UNIT DISTRICT 5
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Jean Swee
Respondent Attorney	James Manning

DATE FILED: 12/14/2021

/s/Bradley Gillespie, Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 14, 2021 0.13%

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

Janet Benson
Employee/Petitioner

v.

McLean County Unit District #5
Employer/Respondent

Case # **19** WC **035556**

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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Peoria**, on **5-27-21**. 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 **9-19-19**, 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 $**71,881.18**; the average weekly wage was $**250.00**.

On the date of accident, Petitioner was **59** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

Accident
The Arbitrator finds that Petitioner has failed to prove that she sustained an accidental injury arising out of her employment with Respondent. Therefore, all benefits are denied and all other issues rendered moot.

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.

Bradley D. Gillespie

Signature of Arbitrator

December 14,2021

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JANET BENSON,	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 19 WC 035556**
	)	
MCLEAN COUNTY UNIT DISTRICT #5,	)	
Respondent.	)	

ADDENDUM TO DECISION OF THE ARBITRATOR

This matter proceeded to hearing on May 27, 2021 in Bloomington, Illinois (Arb. 1). The following issues were in dispute:

- Accident
- Petitioner's earnings
- Reasonableness and Necessity of Medical Bills
- TTD
- Nature and Extent of Injuries

FINDINGS OF FACT

Petitioner testified that she was employed as a substitute teacher for special needs students at Evans Junior High on 9-19-19. Petitioner said that she had been a special needs teacher for Respondent for 25 years before she retired in June of 2019. Petitioner testified that she applied as a substitute teacher for Respondent in the fall of 2019 and that she obtained her certification to substitute teach on 9-3-19.

Petitioner testified that Respondent called her to substitute teach for the first time on 9-13-19 and that she substituted on 9-13-19, 9-16-19, and 9-19-19. Respondent's Exhibit 3 reflects that Petitioner received $145 for work on 9-13-19, $105 on 9-16-19, and $40 on 9-19-19 (RX# 3).

Petitioner testified that as a substitute teacher, she would sometimes work teaching the special needs class and sometimes she would work doing para-pro work where she would assist a student one-on-one in the special needs class. Petitioner testified that on 9-19-19, she was hired to work as a para-pro and was assigned to a special needs student with emotional difficulties. Petitioner said that on 9-19-19, the special needs student remained in the special needs class until 11 a.m. At that time, Petitioner escorted the student to the second floor of Evans Junior High so that he could attend a science class with other non-special needs students.

Petitioner testified that the student she was assisting required special attention and that she tried to keep her eyes on him at all times. Petitioner said that she and the student walked up to the second floor which consisted of two 20-step flights of stairs. Petitioner said that when they got to the top of the stairway, she turned to the left and began walking down the hallway. Petitioner said that there were students in the hallway and that she kept her eyes and attention on the student while she was walking. Petitioner said that as she was walking, her right shoe stuck to the floor and that she fell onto her outstretched arms. Petitioner said that she experienced immediate pain in both arms, hands, and elbows.

Petitioner said that at the time she fell she was wearing Sketcher shoes with rubber bottoms. Petitioner testified that the floor consisted of tiles and that the school district had applied a fresh coat of wax on the tiles over the summer. Petitioner said that Respondent waxed the tile floors every August before school started. Petitioner said that 9-19-19 was a warm and humid day. Petitioner said that she thought that her foot stuck on the tile because the floor had been recently waxed and because it was humid.

Petitioner said that the classroom that she taught in at Evans Junior High for 8 years before she retired had a tile floor like the tile floor in the hallway she fell on. Petitioner said that every fall after school resumed, she found that the floor in her classroom was sticky when the weather was humid and warm. Petitioner said that she had worn some sandals to work in past years that had stuck on her classroom floor during warm and humid autumn weather after the floors had been waxed. Petitioner said that after the school year progressed, the floors lost their stickiness.

Petitioner testified that at the time of the accident, she was carrying the student's folder in one hand and that she was carrying a tote which contained her purse with her other arm. Petitioner said that she was watching the student when she fell.

Petitioner testified that she immediately reported her injury to the school nurse. Petitioner said that she could not leave her student unattended and that he accompanied her to the nurse's office. The nurse took a history that, "right shoe got stuck on tile floor and tripped and fell bracing fall with both arms," (RX# 1).

Respondent referred Petitioner to OSF Occupational Health on 9-19-19. Dr. Chow took a history that Petitioner fell injuring both arms. Dr. Chow took a history that while walking to class, Petitioner tripped on the tread of her shoes and landed on her left knee and braced herself with both arms. Dr. Chow diagnosed Petitioner with left and right hand acute contusions, a left knee

contusion, and left and right acute forearm injuries. Dr. Chow prescribed cock-up splints for both wrists. Dr. Chow ordered x-rays of Petitioner's wrists, forearms and hands which were read as negative (RX# 1, p.p. 1-5, PX# 8).

On 9-26-19, Dr. Chow treated Petitioner and stated that she had bruises above her elbows with shooting pain and throbbing from the elbows to the fingertips. Dr. Chow stated that the wrist braces did not help. Dr. Chow prescribed Prednisone and prescribed restrictions including limited use of both arms, wrists and elbows (RX# 2).

Petitioner treated with her family doctor, Dr. Fitzgerald, on 10-2-19. Dr. Fitzgerald took a consistent history of accident. Dr. Fitzgerald stated that steroids had not helped and that Petitioner's bilateral arm pain was debilitating. Dr. Fitzgerald ordered x-rays and prescribed physical therapy (PX# 9).

On 10-7-19, Petitioner sought treatment with Dr. Li, a neurologist, for her pre-existing trigeminal neuralgia. Dr. Li took a consistent history of accident and noted traumatic injuries to her elbows bilaterally (PX# 7, p. 12). Dr. Li stated that Petitioner was experiencing a persistent burning sensation into her lower arms and thumbs. Dr. Li diagnosed possible radial tunnel syndrome and bilateral carpal tunnel. Dr. Li ordered an EMG, (PX# 7, p. 17). The EMG findings of 10-15-19 were negative for radial tunnel and carpal tunnel and were consistent with chronic C-7 radiculopathy (PX# 7, p. 19). Dr. Li ordered an MRI of Petitioner's neck and right arm and referred Petitioner to an orthopedic surgeon (PX# 7, p. 33).

On 10-18-19, Petitioner underwent an MRI to her right elbow and to her cervical area. The radiologist, Dr. Rosengarten, stated that Petitioner had a non-displaced, non-angulated, non-impacted, complete transverse fracture of the radial neck and a large evolving hemarthrosis (PX# 4).

On 10-19-19, Petitioner treated at St. Joseph Medical Center in the emergency room. Dr. Lau took a history that Petitioner fell one month ago and that she has been having persistent bilateral elbow pain since that time. Dr. Lau stated that Petitioner had an MRI yesterday and that the radiologist called Petitioner and recommended that she treat at the emergency room (PX# 8, p. 2). Dr. Lau took x-rays of Petitioner's elbow and diagnosed her with bilateral radial head fractures (PX# 8, p. 5).

On 10-21-19, Petitioner treated with Lucas Roth, PA-C, at Dr. Newcomer's office. Mr. Roth diagnosed Petitioner with bilateral elbow radial head fractures. Mr. Roth prescribed occupational therapy as well as restrictions limiting her lifting and pulling, activities (PX# 10, p. 196).

Petitioner testified that she returned to work as a substitute teacher on 10-31-19. She said that a large part of her job substituting included writing notes about the students so that the teachers have a good record to refer to in her absence. Petitioner said she is right handed and that after she resumed substitute teaching on 10-31-19, she had functional difficulty and pain in her right arm when she tried to write the notes on the students. Petitioner said that she turned down some of the substituting jobs after 10-31-19 because of the increased right elbow and arm pain she experienced while writing.

On 11-7-19, Petitioner treated with Dr. Newcomer. Dr. Newcomer took x-rays of both elbows which showed radial neck fractures with no evidence of callus or healing. Dr. Newcomer kept Petitioner off formal therapy until he saw evidence of healing. Dr. Newcomer ordered a bone stimulator for both elbows (PX# 10, p.p. 192, 193).

On 11-21-19, Mr. Roth, PA-C, stated in his record that Petitioner learned that workers' compensation had denied her case and that they denied the bone stimulator. Mr. Roth noted that Petitioner's symptoms had begun to increase radiating distally. Mr. Roth took bilateral elbow x-rays of the radial heads which showed no significant callous formation (PX# 10, p.p. 189, 190).

On 12-12-19, Dr. Newcomer took bilateral x-rays again. Dr. Newcomer stated that the left showed some ossific healing, but the right did not. Dr. Newcomer stated that Petitioner was symptomatic on the right side and had difficulty writing for the last three months. Dr. Newcomer recommended a CT scan and discussed radial head replacement versus excision (PX# 10, p. 187).

Dr. Newcomer referred Petitioner to his partner, Dr. Oakey, a hand and arm specialist. On 1-13-20, Dr. Oakey stated that Petitioner's diagnosis was bilateral neck non-unions following a fall at work. Dr. Oakey stated that Petitioner was still having pain, but functions at a high level. Dr. Oakey released Petitioner to return to work full duty (PX# 10, p. 182).

On 3-6-20, Dr. Oakey ordered bilateral arm x-rays which showed displaced fracture of the neck of the right radius and a displaced fracture of the neck of the left radius (PX# 10, p. 175).

On 6-18-20, Petitioner underwent a CT of her right elbow which the radiologist read as a transversely oriented fracture of the distal neck/base of the head of the radius, significant bony

resorption along the fracture line with no bony union noted, and degenerative changes of the adjacent distal humerus (PX# 3, p. 2).

In an 8-18-20 report, Dr. Oakey stated that as a result of Petitioner's 9-19-19 accident, she sustained bilateral radial neck fractures. Dr. Oakey stated that ultimately Petitioner's left radial neck fracture healed, but the most recent CT Scan of the right elbow demonstrated a non-union. Dr. Oakey opined that Petitioner's injuries will likely become symptomatic enough that she will likely require surgery with options including both radial head resection as well as implant arthroplasty (PX# 1).

On 3-1-21, Petitioner treated with Dr. Oakey complaining of mild aching pain in bilateral elbows which are aggravated by repetitive and extended use. Dr. Oakey stated that Petitioner had associated stiffness and that alleviating factors included rest and activity modification. Dr. Oakey stated that the pain in the elbows is chronic and that she has a non-union of the right radial head as a result of the fall. Dr. Oakey stated that Petitioner might benefit from a steroid injection and that he would begin with that prior to doing a radial head excision on the right (PX# 12, p. 3).

Petitioner identified PX# 17 as being her W-2 form from Respondent for the year 2018. Petitioner earned $62,344.11 in Medicare wages and tips for that year. Petitioner testified that she had a 6% increase between the 2017 to 2018 academic year and the 2018 to 2019 academic year.

Petitioner testified that before her 9-19-19 accident, she did not have any problems with either one of her arms, wrists or elbows and that she had never treated medically for these conditions. At the time of arbitration, Petitioner testified that her right arm hurt worse than her left on a daily basis. However, she stated that both arms hurt, they fatigue easily, they throb, and that she sometimes takes Advil to help control symptoms. Petitioner testified that she has increased pain when she is shopping or lifting and that weather, especially rainy, cold, damp days affect her pain levels. Petitioner said that carrying groceries hurt her arms and that driving causes a lot of fatigue in her arms. Petitioner said that she is right-handed and that it hurts to lift her right arm up high enough to wash her hair.

Petitioner testified that Health Alliance has paid for some of her medical bills. Petitioner said that she pays her own premiums for Health Alliance and that she has done so since her retirement.

Respondent introduced a videotape of the accident as an exhibit. (RX# 4) The camera was located at a distance down the hallway from where Petitioner fell. The video shows Petitioner

entering a hallway, turning left and walking towards the camera. The video shows that Petitioner had what appears to be a file folder in one hand. The video shows a black male student walking a few steps in front of Petitioner slightly to her right. The video shows other students walking in the hallway. The video shows Petitioner falling to the floor, however the view is blocked in part because of the students in the hallway and in part because of the distance from the camera to the Petitioner. The video shows Petitioner getting up off the floor. The video also shows that the floor Petitioner fell on was shiny and that the sunlight through the windows reflected off from it (RX# 4).

Respondent's witness, Jason Pascal, testified that he was the head custodian for Evans Junior High. Mr. Pascal testified that every summer in mid to late July, he scrubs, but does not strip, the tile floor and that they apply a coat of wax. Mr. Pascal testified that the wax fully adheres in a few days. Mr. Pascal testified that after waxing the tile floors, he notices that while brooming on a humid day, the broom sticks more.

Respondent's wage statement shows that Petitioner earned $3,112.66 bi-monthly through 8-30-19. The wage statement shows that Petitioner substituted on 9-13-19 and earned $145, that she substituted on 9-16-19 and earned $105, and that she substituted on 9-19-19 and earned $40 (RX 3). The rest of the exhibit is for earnings after the injury.

CONCLUSIONS OF LAW

IN SUPPORT OF THE ARBITRATOR'S FINDINGS RELATED TO (C) DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS THE FOLLOWING:

The parties stipulated that Petitioner was an employee of Respondent on September 19, 2019 and that timely notice of her injury was provided to Respondent. The Arbitrator finds that Petitioner failed to prove that she sustained an accidental injury on 9-19-19 that arose out of and in the course of her employment with Respondent.

In order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: (1) that the injury occurred in the course of claimant's employment and (2) that the injury arose out of claimant's employment, *Sisbro, Inc. v Industrial Comm'n,* 207 Ill.2d 193, 203 (2003), as cited in *McAllister v Illinois Workers' Compensation Comm'n,* 2020 IL 124848 (2020) at ¶ 32. The phrase "in the course of

employment" refers to the time, place, and circumstances of the injury. *Scheffler Greenhouses, Inc. v Industrial Comm'n,* 66 Ill.2d 361, 366-67 (1977), as cited in *McAllister* at ¶ 34, "A compensable injury occurs 'in the course of' employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment." *Wise v Industrial Comm'n,* 54 Ill.2d 138, 142 (1973), as cited in *McAllister* at ¶ 34. In the instant case, Petitioner was within the

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro,* 207 Ill.2d at 203, as cited in *McAllister* at ¶ 36. A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *Orsini v Industrial Comm'n,* 117 Ill.2d 38, 45 (1987), as cited in *McAllister* at ¶ 36. To determine whether a claimant's injury arose out of his or her employment, we must categorize the risks to which the claimant was exposed, *Dukich v Illinois Workers' Compensation Comm'n,* 2017 Ill.App (2d) 160351 WC, ¶ 31; *Mytnik v Illinois Workers' Compensation Comm'n,* 2016 IL App (1st) 152116WC, ¶ 38; *Baldwin v Illinois Workers' Compensation Comm'n,* 409 Ill.App.3d 472, 478 (2011); *First Cash Financial Services v Industrial Comm'n,* 367 Ill.App.3d 102, 105 (2006), as cited in *McAllister* at ¶ 36.

Generally, all risks to which a claimant may be exposed fall within one of three categories. The three categories of risks recognized by the case law are " (1) risks directly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." *Illinois Institute of Technology Research Institute,* 314 Ill.App.3d at 162; *Baldwin,* 409 Ill.App.3d at 478; *First Cash Financial Services,* 367 Ill.App.3d at 105, as cited in *McAllister* at ¶ 38.

The first category of risks involves risks that are distinctly associated with employment. Examples of employment-related risks include "tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related tasks which contributes to the risk of falling." *First Cash Financial Services,* 367 Ill.App.3d at 106, as cited in *McAllister* at ¶ 40. Injuries resulting from a risk distinctly associated with employment are deemed to arise out of the claimant's employment and are compensable under the Act. *Steak 'n Shake v*

Illinois Workers' Compensation Comm'n, 2016 Il App (3d) 150500WC, ¶ 35, as cited in *McAllister* at ¶ 40.

The second category of risks involves risks personal to the employee. "Personal risks include nonoccupational diseases, injuries caused by personal infirmities such as a trick knee, and injuries caused by personal enemies and are generally non compensable." *Illinois Institute of Technology Research Institute,* 314 Ill.App.3d at 162-163, as cited in *McAllister* at ¶ 42. "Injuries resulting from personal risks generally do not rise out of employment. An exception to this rule exists when the work place conditions significantly contribute to the injury or expose the employee to an added or increased risk of injury," *Rodin v Industrial Comm'n,* 316 Ill.App.3d 1224, 1229 (2000), as cited in *McAllister* at ¶ 42.

The third category or risks involves neutral risks that have no particular employment or personal characteristics, *Illinois Consolidated Telephone Co.,* 314 Ill.App.3d at 353, as cited in *McAllister* at ¶ 44. "Neutral risks include stray bullets, dog bites, lunatic attacks, lightning strikes, bombings, and hurricanes." *Illinois Institute of Technology Research Institute,* 314 Ill.App.3d at 163, as cited in *McAllister* at ¶ 44. "Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public." *Springfield Urban League,* 2013 IL App (4th) 120219WC, ¶ 27, as cited in *McAllister* at ¶ 44. "Such 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." *Metropolitan Water Reclamation District of Greater Chicago v Illinois Workers' Compensation Comm'n,* 407 Ill.App.3d 1010, 1014 (2011), as cited in *McAllister* at ¶ 44.

The first step in risk analysis is to determine whether the claimant's injuries arose out of an employment-related risk – a risk distinctly associated with the claimant's employment, *Mytnik,* 2016 Ill App (1st) 152116WC, ¶ 39; *Steak 'n Shake,* 2016 Ill App (3d) 150500 WC, ¶ 38, as cited in *McAllister* at ¶ 46. A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Caterpillar Tractor Co. v Industrial Comm'n,* 129 Ill.2d 52, 58 (1989), as cited in *McAllister* at ¶ 46.

In the case at hand, the Arbitrator finds that Petitioner's activities were incidental to and causally connected to her job duties as a substitute teacher/para-pro worker for Respondent as they were acts that she was reasonably expected to perform incident to her assigned duties. Petitioner's uncontroverted testimony was that she was performing acts she was instructed to do by her employer as she was escorting a special needs student through the hallway to attend a science class with other non-special needs students at the time of her accident.

However, this cannot be the endpoint of the analysis. To conclude otherwise would require the adoption of the positional risk doctrine. While Petitioner was engaged in activities she was instructed to perform, had a duty to perform or could reasonably have been expected to perform, this fact alone establishes only that she was in the course of her employment at the time of her unfortunate fall. "[T]he mere fact that the duties take the employee to the place of the injury and that, but for the employment, he [or she] would not have been there, is not, of itself, sufficient to give rise to the right to compensation." *Caterpillar Tractor Co. v. Indus. Comm'n*, 129 Ill. 2d 52, 63 (Ill. 1989) (citing *State House Inn v. Industrial Comm'n* (1965), 32 Ill.2d 160, 163; *Schwartz v. Industrial Comm'n* (1942), 379 Ill. 139, 145.) The claimant has the burden of establishing, by a preponderance of the evidence, some causal relation between the employment and the injury. *Id at* 63 (citing *Quality Wood Products Corp. v. Industrial Comm'n* (1983), 97 Ill.2d 417, 423; *Horath v. Industrial Comm'n* (1983), 96 Ill.2d 349, 356).

As described above, Petitioner sustained a fall while escorting a special needs student to another classroom. Petitioner testified that as she was walking, her right shoe stuck to the floor and that she fell onto her outstretched arms. Her testimony is corroborated by the incident report completed after the fall (RX #3) as well as the history provided to OSF Saint Joseph Medical Center which recounts "while walking to class she tripped on her tread of her shoes." (RX #2) Petitioner testified that she was wearing Sketcher shoes with rubber bottoms at the time of the fall. Petitioner testified that at the time of the accident, she was carrying the student's folder in one hand and that she was carrying a tote which contained her purse with her other arm. Respondent offered a video of the incident which showed Petitioner carrying a folder in her left hand, but nothing is noted in her other hand or arm. (RX# 4) Regardless, Petitioner admitted that nothing she was carrying contributed to her fall. Petitioner said that she was watching the student when she fell. Petitioner identified a boy in the video as the student whom she was escorting at the time of the incident. (RX# 4) The student was noted to be slightly in front of Petitioner at the time of

her fall. *Id.* The Arbitrator notes that Petitioner was not holding the student's hand or otherwise guiding the student at the time of her fall. Other students are present at the time of Petitioner's fall but the hall is not overly crowded. (RX# 4) The Arbitrator observes that none of the other individuals shown in the video appear to have any difficulty traversing the floor in question.

Petitioner stated that the hallway flooring was tile and that the school district had applied a fresh coat of wax on the tiles over the summer. Petitioner said that Respondent waxed the tile floors every August before school started. Respondent called Jason Pascal, the head custodian of Evans Junior High, as a witness on behalf of Respondent and he verified that the tile floors were scrubbed and waxed in July of 2019 before the school year began. Petitioner said that 9-19-19 was a warm and humid day and that she thought that her foot stuck on the tile because the floor had been recently waxed and because it was humid. However, Petitioner admitted that the school is air conditioned which calls into question whether the humidity was elevated on the date in question. Mr. Pascal testified that the humidity has no effect on the stickiness or tackiness of the tile floors other than the brooms used to sweep the floors might have a little more resistance. Petitioner said that she taught at Evans Junior High for 8 years before she retired and that her classroom had a tile floor like the floor in the hallway. Petitioner claimed that every fall after school resumed, she found the floor in her classroom was sticky/tacky when the weather was humid and warm. Petitioner said that she had worn sandals to work in past years that had stuck on her classroom floor during warm and humid autumn weather after the floors had been waxed. Petitioner said that after the school year progressed, the floors lost their stickiness. Mr. Pascal stated that he had never heard of students or staff having any issues walking on the tile floors.

Petitioner did not testify that there was a specific defect in the flooring, or that any foreign substance was present which caused the floor to be sticky. The Arbitrator notes that the floor in the video appears shiny but there does not appear to be any debris, defect or other hazard present when Petitioner fell. The hallway in which the fall occurred is shared by faculty and students alike. This shared use is depicted in the video. The Arbitrator concludes that the risk to which Petitioner was exposed was a neutral risk to which Petitioner was not exposed to a greater extent than the general public. There is nothing about the conditions of the employer's premise or her specific job duties that caused Petitioner's fall in the instant case. Petitioner simply mis-stepped, tripped and fell. As such, the Arbitrator finds and concludes that Petitioner failed to establish that she sustained an accident which arose out of and in the course of her employment with Respondent. Having so found, the remaining issues are rendered moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC006247
Case Name	Michael Jones v. Southwest Airlines
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0489
Number of Pages of Decision	12
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Kyle Tulley
Respondent Attorney	Natalie Bagley

DATE FILED: 12/14/2022

/s/Marc Parker, Commissioner

Signature

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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL JONES,

Petitioner,

vs. NO: 20 WC 006247

SOUTHWEST AIRLINES,

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 sole issue of medical expenses, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

In her Decision, the Arbitrator ordered Respondent to pay to Petitioner the outstanding amount, $4,476.42 claimed by Illinois Orthopedic Network ("ION"), and "to bear the burden of resolving any billing or payment disputes directly with Illinois Orthopedic Network." The Commission finds that Respondent has paid in full ION's charges and vacates the portion of the Arbitrator's order requiring Respondent to resolve the billing dispute with that provider.

The disputed medical bill referenced ION's charges for Petitioner's arthroscopic surgery on April 2, 2019 and included three CPT codes: 29827RT (arthroscopic rotator cuff repair), 2982351 (extensive arthroscopy) and 29826RT (arthroscopic decompression). The first two codes are listed in the Commission fee schedule applicable to ION as an Ambulatory Surgical Treatment Center, but the final code is not. The total amount charged by ION for the three CPT code procedures was $32,755.46. Respondent reimbursed ION $17,425.91, or 53.2% of the charged amount.

Commission Rule 9110.90(e)(2) provides that where the fee schedule does not set a specific fee for a procedure, the amount of reimbursement shall be at 53.2% of the actual charge. 50 Ill. Adm. Code 9110.90(e)(2). Rule 9110.90(h)(1)(G) provides that surgery services under this schedule shall be reimbursed in accordance with the provisions of the payment guide in the

instructions and guidelines attached to the fee schedule. Rule 9110.90(h)(1)(C) provides, "The schedule is a partial *global reimbursement* schedule in that all charges rendered during the operative session are subject to a single fee schedule amount." 50 Ill. Adm. Code 9110.90(h)(1)(C) (emphasis added). Global reimbursement does not involve line-item dollar amounts but provides for payment for the surgery as a whole. If one procedure on the bill is not included in the fee schedule, the entire bill for that surgery defaults to 53.2% of the total charged amount.[1]

The Commission therefore finds the ION bill for Petitioner's arthroscopic rotator cuff repair was fully satisfied by Respondent's payment of 53.2% of the total charge. The Arbitrator's order requiring Respondent to pay Petitioner an additional $4,476.42 is hereby vacated.

The Arbitrator further ordered Respondent to "bear the burden of resolving any billing or payment disputes directly with Illinois Orthopedic Network." The Commission finds the Arbitrator lacked statutory authority to impose this requirement upon Respondent. Having found that Respondent has fully satisfied ION's bill and finding no support for placing the burden of resolving the billing dispute on Respondent, the Commission also vacates this portion of the Arbitrator's order.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 27, 2022, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's order requiring Respondent to "bear the burden of resolving any billing or payment disputes directly with Illinois Orthopedic Network" is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's order requiring Respondent to pay directly to Petitioner reasonable and necessary medical services of $4,476.42 related to ION's charges is hereby vacated.

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.

[1] See Example 5, IWCC Medical Fee Schedule Instructions and Guidelines for treatment on or after 9/1/11, p. 25. Where one of the surgical procedures included on a bill is not listed in the applicable fee schedule, the entire bill defaults to 53.2% of the charged amount. The fee schedule is concerned with total charges on a bill ("global reimbursement") rather than line-item dollar amounts.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $48,500.00. 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.

December 14, 2022

/s/ *Marc Parker*
Marc Parker

mp/dak
o-12/8/22
068

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC006247
Case Name	JONES, MICHAEL v. SOUTHWEST AIRLINES
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Kyle Tulley
Respondent Attorney	Natalie Bagley

DATE FILED: 5/27/2022

THE INTEREST RATE FOR THE WEEK OF MAY 24, 2022 1.53%

/s/ Raychel Wesley, Arbitrator

Signature

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

Michael Jones
Employee/Petitioner

v.

Southwest Airlines
Employer/Respondent

Case # **20** WC **006247**

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 **Raychel A. Wesley**, Arbitrator of the Commission, in the City of **Chicago**, on March 24, 2022. 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. [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 _____

FINDINGS

On November 14, 2018, 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 $**53,664.00**; the average weekly wage was $**1,032.00**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**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 directly to Petitioner reasonable and necessary medical services of **$4,927.77**, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of $**0.00** for temporary total disability benefits that have been paid.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 15.5% loss of use of Person As A Whole pursuant to § 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.

/s/Raychel A. Wesley

Signature of Arbitrator

MAY 27, 2022

FINDINGS OF FACT

At the time of injury on November 14, 2018, Michael Jones (hereinafter "Petitioner") was a 43-year-old employee at Southwest Airlines (hereinafter "Respondent"). He had worked for Respondent since December 2002 as an Aircraft Appearance Technician. (Tx p. 12-13). His job duties consisted of taking care of the airport trash, cleaning and disinfecting the interior of the planes, and participating in gate calls. (Tx p. 13-14). Specifically, Petitioner would have to push and pull garbage cans that weigh approximately 50 – 100 pounds. (Tx p. 13).

Accident

On November 14, 2018, Petitioner began his shift at approximately 2:30 PM. (Tx p. 16). He was pushing and pulling garbage cans when he began to feel pain in his right shoulder. (Tx p. 16-17). Petitioner testified the pain felt like a "pop" followed by a throbbing and tingling sensation in his shoulder that radiated down to his fingertips. (Tx p. 17). Although he was in pain, Petitioner was able to complete the remainder of his shift. (Tx p. 18). The following day, Petitioner reported his injury to his manager, Shaneta Jones, at the start of his shift. (Tx p. 18).

Medical Treatment

Petitioner presented to Respondent's company clinic, Concentra, on November 15, 2018. (Px 1). He complained of right shoulder pain for one day. (Px 1, p. 5). Petitioner reported he had been experiencing right shoulder pain after pushing garbage cans the day before. (Px 1, p. 5). Dr. Daniel Davison diagnosed Petitioner with a strain of the right shoulder. (Px 1, p. 4). Petitioner was instructed to apply cold packs for fifteen (15) minutes four (4) times per day, he was prescribed Naprosyn, and was instructed to begin physical therapy. (Px 1, p. 4). He was given a note for modified work duty consisting of occasional lifting up to fifteen (15) pounds, occasional pushing/pulling up to twenty (20) pounds, and no reaching above the shoulder and head with the [right arm] affected extremity. (Px 1, p. 4-5).

Petitioner returned to Concentra for follow up appointments with Dr. Davison five (5) separate times between November 19, 2018 – December 17, 2018. (Px 1, p. 10-44). Petitioner's diagnosis, treatment program, and work restrictions remained the same. (Px 1, p. 10, 19-20, 28, 35-36, 44). Additionally, Dr. Davison administered a betamethasone injection into Petitioner's bursa during his following up appointment on December 10, 2018. (Px 1, p. 38).

Petitioner returned to Concentra on December 28, 2018. (Px 1, p. 56). Petitioner complained of above the shoulder pain and reported his symptoms had not improved. (Px 1, p. 57). Dr. Davison noted Petitioner had been tolerating physical therapy well, but he had not demonstrated functional improvement. (Px 1, p. 57). Petitioner's diagnosis and work restrictions remained the same. (Px 1, p. 57). Additionally, Dr. Davison recommended Petitioner continue physical therapy as well as undergo an MRI of the right shoulder. (Px 1, p. 56).

Petitioner underwent an MRI of the right shoulder without contrast on January 8, 2019. (Px 3, p. 2). The MRI indicated the following: (1) small glenohumeral joint effusion and subacromiodeltoid bursitis, (2) mild subacromial impingement of the rotator cuff, (3) chronic focal erosions on the anterolateral aspect of the humeral head, (4) articular surface partial thickness tear in the anterior portion of the distal supraspinatus tendon, and (5) biceps tenosynovitis. (Px 3, p. 3).

Petitioner returned to Concentra on January 11, 2019, to review his MRI results. (Px 1, p. 72-73). Dr. Davison diagnosed petitioner with a right shoulder strain as well as internal impingement of the right shoulder. (Px 1, p. 72). Petitioner was provided a referral to an orthopedic specialist. (Px 1, p. 72). He was given a note for

modified work duty consisting of occasional lifting up to twenty (20) pounds, occasional pushing/pulling up to thirty (30) pounds, and no reaching above the shoulder and head with the [right arm] affected extremity. (Px 1, p. 73).

Petitioner presented to orthopedic surgeon, Dr. Thomas Poepping, at Respondent's clinic, Concentra, on January 16, 2019. (Px 1, p. 79). He reported he was pushing garbage cans and felt acute pain in the right shoulder. (Px 1, p. 79). Dr. Poepping diagnosed Petitioner with (1) right shoulder partial-thickness rotator cuff tear, (2) right shoulder subacromial bursitis, and (3) right shoulder biceps tendinitis. (Px 1, p. 83). Dr. Poepping recommended Petitioner continue physical for at least another month pending re-evaluation. (Px 1, p. 83). However, Dr. Poepping also opined Petitioner is most likely to need surgical treatment in the future due to the degree of the tearing seen on his MRI. (Px 1, p. 83).

Petitioner returned to Dr. Poepping on February 13, 2019. (Px 1, p. 110). It was noted Petitioner continued to have pain in the right shoulder that limited his work abilities. (Px 1, p. 113). Dr. Poepping opined Petitioner was a good candidate for right shoulder arthroscopy, likely a rotator cuff repair, subacromial decompression and debridement. (Px 1, p. 113). Dr. Poepping recommended Petitioner keep his current work restrictions and continue physical therapy while he waited to have surgery. (Px 1, p. 113).

Petitioner underwent surgery on April 2, 2019, at Illinois Orthopedic Network. (Px 2, p. 3). Dr. Poepping performed a right shoulder arthroscopic rotator cuff repair as well as a subacromial decompression and extensive debridement which required the implantation of two (2) Mitek Versaloc anchors and two (2) Mitek Healix BR anchors. (Px 2, p. 3). Both Petitioner's pre-operative and post-operative diagnosis consisted of (1) right shoulder partial thickness rotator cuff tear and (2) right shoulder extensive synovitis. (Px 2, p. 3). Petitioner was to remain off work following the procedure and follow up with Dr. Poepping in approximately one (1) week. (Px 2, p. 5).

Petitioner returned to Dr. Poepping on April 10, 2019. (Px 1, p. 128). It was noted Petitioner was doing well post-operatively and that he had his sutures removed. (Px 1, p. 131). Dr. Poepping recommended Petitioner continue sling immobilization, begin physical therapy, and continue taking his Percocet. (Px 1, p. 131). Petitioner was instructed to remain "off work." (Px 1, p. 131).

Petitioner returned to Dr. Poepping for follow up appointments six (6) separate times between May 15, 2019 – September 18, 2019. (Px 1, p. 156-301). Petitioner remained on restricted work and continued his physical therapy as well as his medication. (Px 1, p. 159, 169, 192, 218, 263, 301). Petitioner returned to Dr. Poepping on October 23, 2019. (Px 1, p. 343). Dr. Poepping recommended Petitioner remain on restricted work and begin work conditioning as well as continue to take his medication. (Px 1, p. 345). Petitioner returned to Dr. Poepping on November 13, 2019. (Px 1, p. 385). Dr. Poepping released Petitioner to full duty work and instructed him to return on an as-needed basis. (Px 1, p. 390).

Petitioner completed two programs of physical therapy at Concentra from November 16, 2018 – March 12, 2019 and April 16, 2019 – October 4, 2019. (Px 1). Petitioner also completed a work conditioning program at Concentra from October 7, 2019 – November 12, 2019. (Px 1).

Petitioner was evaluated by Dr. M. Bryan Neal on October 29, 2020, at the request of Respondent. (Rx 2). The Independent Medical Examination took place to obtain an AMA impairment rating regarding Petitioner's right shoulder. (Rx 2, p. 1). Dr. Neal assigned Petitioner with a rating of 5% upper extremity impairment which is equivalent to 3% whole person impairment. (Rx 2, p. 12).

Deposition of Brian O'Connor

Brian O'Connor testified by evidence deposition on November 10, 2021. (Rx 1). She is a workers compensation specialist employed by Respondent's workers' compensation carrier, Sedgwick. (Rx 1, p. 5-7). On direct, she testified Illinois Orthopedic Network was paid the correct amount, per the Illinois Fee Schedule, for their rendered services on April 2, 2019. (Rx 1, p. 25). However, Ms. O'Connor testified on cross examination that she did not personally process the medical bills for the medical services rendered on April 2, 2019. (Rx 1, p. 27-28).

TTD Payment

Petitioner testified Respondent was able to accommodate his modified work restrictions prior to his surgery. (Tx p. 25-26). Therefore, Respondent did not owe Petitioner any TTD payments during that period of time. Following his surgery, Petitioner testified he was "off work" because Respondent was unable to accommodate his work restrictions that were provided to him by Dr. Poepping. (Tx p. 27). Petitioner testified Respondent paid him TTD benefits, in full, up through November 13, 2019, which was the day Dr. Poepping discharged him from care. (Tx p. 27). The parties stipulated Petitioner is not entitled to any additional TTD payments. (Arbitrator's Exhibit 1; Tx p. 7-8). Furthermore, the parties stipulated Respondent is not owed a credit pursuant to Section 8(j) of the Act. (Arbitrator's Exhibit 1; Tx p. 8).

ANALYSIS

With respect to issue "J," whether the medical services 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 as follows:

Petitioner treated with the following providers after his November 14, 2018, accident: (1) Concentra, (2) Illinois Orthopedic Network, (3) Chicago Ridge Medical, and (4) Midwest Specialty Pharmacy. The following medical bills remained outstanding at the time of hearing:

Illinois Orthopedic Network	$4,476.42 (Px 4, p. 177-178)
Midwest Specialty Pharmacy	$451.35 (Px 4, p. 180-181)
Total Outstanding Balance:	$4,927.77 (Px 4, p. 2)

The parties stipulated Petitioner's accidental injuries from November 14, 2018, arose out of and in the course of his employment. (Arbitrator's Exhibit 1). Additionally, Respondent failed to offer any evidence to dispute the reasonableness and necessity of Petitioner's medical care. Therefore, the Arbitrator finds Petitioner's medical care was both reasonable and necessary. Thus, the Arbitrator finds Respondent liable for all of Petitioner's medical care and expenses as set forth above and contained in Px 4.

Respondent contests the unpaid medical bills, specifically the $4,476.42 unpaid balance associated with Illinois Orthopedic Network from date of service April 2, 2019. On this date, Petitioner underwent surgery with Dr. Poepping, Respondent's company doctor. Respondent relies on the testimony of Ms. O'Connor that Illinois Orthopedic Network was paid in full. (Rx 1). However, Illinois Orthopedic Network continues to assert an unpaid balance of $4,476.42 (Px 4, p. 177-178). Again, the parties stipulated Petitioner's accidental injuries from November 14, 2018, arose out of and in the course of his employment. (Arbitrator's Exhibit 1). Respondent also failed to offer any evidence to dispute the reasonableness and necessity of any of Petitioner's medical care.

Therefore, Respondent shall pay any and all unpaid and related medical expenses pursuant to the fee schedule

provisions of the Act, and Respondent shall bear the burden of resolving any billing or payment disputes directly with Illinois Orthopedic Network.

With respect to issue "L," as to the nature and extent of Petitioner's injuries, the Arbitrator finds as follows:

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

With regard to subsection (i) of Section 8.1b(b), the Arbitrator notes an AMA impairment rating was performed on this case by Dr. M Bryan Neal on October 29, 2020. Dr. Neal opined Petitioner suffered a 3% whole person impairment. (Rx 2, p. 12). However, Dr. Neal's report does not account for the approximate seventeen (17) month time lapse between the date of his impairment evaluation and the date of this trial. Since the date of Dr. Neal's impairment evaluation, Petitioner has experienced frequent lingering issues related to his right shoulder that will be explained in further detail below. Therefore, the Arbitrator gives *lesser* weight to this factor.

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes the record reveals Petitioner was employed as an Aircraft Appearance Technician at the time of the accident. The Arbitrator also notes Petitioner was able to return to work in his prior capacity as a result of said injury. However, the Arbitrator also notes Petitioner had to modify his job duties since returning to work following his MMI date of November 13, 2019. Specifically, Petitioner testified he was able to push and pull two garbage cans at once while using one hand per garbage can prior to his accident. (Tx p. 29). Now, Petitioner is only capable of pushing and pulling one garbage can at a time because he requires the use of two hands for one garbage can. (Tx p. 29-30). These garbage cans can weigh approximately 50 – 100 pounds. (Tx p. 13). Additionally, Petitioner testified credibly that he continues to experience discomfort in his right shoulder while performing his job. (Tx p. 28). Specifically, he will feel an achy tingling sensation as well as sharp jolting pains. (Tx p. 28-29). These sensations and feelings of pain will increase if he has to work either more than eight (8) hours or overtime. (Tx p. 29). Although overtime is voluntary the majority of the time, sometimes it is mandatory and required by Respondent. (Tx p. 37). Nevertheless, when Petitioner begins to feel an achy tingling sensation or a sharp jolting pain, he needs to take a "step back" or a short break. (Tx p. 29). Lastly, Petitioner testified he sometimes requires over-the-counter pain reliever such as Tylenol, Advil, or Aleve to help ease his pain and discomfort within his right shoulder. (Tx p. 31). Therefore, the Arbitrator gives *considerable* weight to this factor.

With regard to subsection (iii) of Section 8.1b(b), the age of the employee at the time of injury, the Arbitrator notes Petitioner was 43 years old at the time of the accident. He is currently only 47 years old and has a work expectancy of approximately twenty (20) more years. Additionally, Petitioner testified he is now the most senior Aircraft Appearance Technician at his job. (Tx p. 33). Although neither party presented direct evidence as to how Petitioner's age impacts any disability, the Arbitrator notes Petitioner may reasonably be expected to live and work with the effects of his injury for a longer time than an older individual. Therefore, Petitioner's permanent partial disability may be greater than that of an older individual. Thus, the Arbitrator gives *considerable* weight to this factor.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, Petitioner testified he has returned to work in his same job position and is able to work overtime as well. (Tx p. 27-28). He also testified he believes he may have received a raise since he returned to work. (Tx p. 36). Therefore, the Arbitrator gives *some* weight to this factor.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner sustained a right shoulder partial thickness rotator cuff tear and right shoulder extensive synovitis. (Px 2, p. 3). Petitioner underwent a right shoulder arthroscopic rotator cuff repair as well as a subacromial decompression and extensive debridement which required the implantation of two (2) Mitek Versaloc anchors and two (2) Mitek Healix BR anchors. (Px 2, p. 3) Petitioner also underwent physical therapy from November 16, 2018 – March 12, 2019 and April 16, 2019 – October 4, 2019, as well as work conditioning from October 7, 2019 – November 12, 2019. On November 13, 2019, Dr. Poepping released Petitioner to full duty work and instructed him to return on an as-needed basis. (Px 1, p. 390). Therefore, the Arbitrator gives *greater* weight to this factor.

The Arbitrator also notes Petitioner credibly testified to some subjective complaints that are not corroborated by the medical records. Specifically, Petitioner testified he was capable of bench pressing approximately 300 pounds prior the accident, but now he is only capable of bench pressing approximately 185-190 pounds. (Tx p. 30). Furthermore, Petitioner testified sometimes he experiences a jolting or tingling sensation in his right shoulder during the night that wakes him up from his sleep. (Tx p. 31-32). The Arbitrator gives *some* weight to these subjective complaints.

In assessing the extent of disability, the Arbitrator finds the Commission decision of *Terina Green v. PPG Industries, Inc.*, 14 IWCC 0912 (partial thickness rotator cuff repair involving a 39-year-old with an AMA impairment rating of 5% whole person) applicable to the facts contained herein.

Based on the above, the Arbitrator finds that Respondent shall pay Petitioner permanent partial disability benefits of $619.20/week for 77.50 weeks because the injuries sustained caused 15.50% loss of use of Petitioner's body or man as a whole as provided in Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC011269
Case Name	James T Hill v. Bevel Granite & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0490
Number of Pages of Decision	14
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Jeffrey Alter
Respondent Attorney	Charlene Copeland

DATE FILED: 12/15/2022

/s/Maria Portela, Commissioner

Signature

22IWCC0490

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

JAMES T. HILL,

Petitioner,

vs. NO: 16 WC 11269

BEVEL GRANITE, and
ILLINOIS 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 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.

We initially note that the Arbitrator did not analyze the five permanency factors under §8.1b(b) of the Act. The decision is also inconsistent as the Order section indicates an award 25% loss of use of the right hand (*Dec. 4*) yet, the Conclusions of Law section reflects an award of only 5% loss of use of the right hand. *Dec. at 8.* In any event, we find that Petitioner failed to prove that he is entitled to a permanency award for the right hand and, instead, find that he is entitled to an award for the loss of use of the right ring finger.

Regarding which fingers were involved in Petitioner's accident, the Arbitrator wrote:

Petitioner continued to testify that as he was lifting the headstones to prop onto the back of the flatbed truck, the headstone shifted and it smashed down onto his hand, smashing his right ring **and middle** finger between the headstone and the truck. Petitioner testified that

he had immediate pain in the tip of his ring finger up through his arm. Petitioner also testified that he is right hand dominant.

Dec. 5 (Emphasis added). However, Petitioner testified:

THE WITNESS: Lifting one of the stones to prop it up onto the flatbed of the truck. And when I had put it on top of the bed, the flatbed, **it came back down on my finger and smashed my finger.**

…

Q. How much did the headstone weigh?
A. About 150 pounds.

…

Q. So which -- first, which finger on which hand?
A. It would be my right. And it would be my ring finger.

…

Q. And what did you notice about yourself as that happened, or after that happened?
A. A great amount of pain.
Q. Where was the pain?
A. The tip of -- well, mainly the tip of my finger, but it went all the way down my arm.
Q. And of which finger?
A. The ring finger. *T.34-35.*

Therefore, since Petitioner did not testify that his middle finger was injured and the medical records do not support such an injury, we modify the decision to strike the phrase "and middle" on page 5 as identified above.

We next clarify which fingers were involved in the surgery that Petitioner underwent. The Arbitrator wrote, "The records reflect that Petitioner underwent surgery consisting of an open reduction and internal fixation with hardware in the right ring finger for a nondisplaced fracture, as well as avulsion of the nail, and an open wound to the right little finger, without nail avulsion." *Dec. at 8*. This suggests that Petitioner underwent surgery to both the right ring finger and the little finger. However, the evidence reflects that the surgery on April 1, 2016 was solely to the ring finger.

At the hearing, Petitioner did not testify that his right little finger had been lacerated in the work incident and only mentioned the ring finger. *T.34-35*. Interestingly, the first medical record by Dr. Akbar dated March 30, 2016, does not mention any laceration to the little finger at all. However, Dr. Kung's record later that same day does mention a ½ centimeter laceration on the radial tip of the little finger without damage to the nail. This wound, along with the right finger, was irrigated and Dr. Kung planned to irrigate and debride ("I and D") the "ring/small fingers with possible ORIF [open reduction internal fixation]." This surgery was performed the next day, on April 1, 2016, but only involved the right ring finger. *Px2, T.112*. Therefore, other than the irrigation of the little finger laceration on March 30th, there is no evidence of any surgery to the little finger.

Finally, we find that the evidence supports a permanency award for the loss of use of the

right ring finger based on the following analysis of the five factors in §8.1b(b):

(i) AMA impairment report: None submitted = No weight

(ii) Occupation: "Laborer. Crane Operator. Deliverer." T.26. = Some weight

Petitioner testified that he has returned to work in the labor and construction industry doing "restoration work," which is "physical labor work" and involves his right hand. *T.50-51, 57*. Petitioner testified that he currently has no restrictions. *T.58*. He testified that since his work injury, "My finger tends to lock up my hand, especially in the cold. Sometimes I get shooting pains through it. It's harder to grip things. And it gets stuck in a fist sometimes." *T.51*. He later clarified that "the hardware that I deal with for work has a tendency to vibrations and stuff like that. It tends to lock my finger up. It gets stiff." *Id*. In his job, Petitioner uses hammers, saws and jacks. *T.58*. He testified, "In the cold, I'll have to put a glove on or something, let it warm and slowly try to open it. If I ever get a pain or something, I stop what I'm doing and wait until the pain goes away. I get fatigued in the finger, too, as well." *T.52*. This occurs "maybe seven times a month." *Id*. However, as discussed below under factor (v), the medical records do not support Petitioner's testimony that his hand or finger "locks up" or has fatigue. We give this factor some weight.

(iii) Age: 19 = Significant weight

Petitioner will have to live with the effects of this injury for the remainder of his working career, to which we assign significant weight.

(iv) Future earning capacity: No evidence of diminishment = No weight

(v) Disability corroborated by treating medical records: Very little evidence = Little weight

In addition to Petitioner's complaints related to his symptoms while working, he also testified, "if it's the cold or something and I'm shoveling or if I'm inside, say, grabbing a cup of something, coffee, anything that's grasping with my hand, it either has a fatigue or, like I said, it has a -- it locks." *T.52-53*.

At his last medical visit on May 2, 2016, Dr. Kung noted that Petitioner had some stiffness of the finger distal interphalangeal (DIP) joint but good range of motion in the proximal interphalangeal (PIP) joint with "routine healing." At that time, Petitioner was given 10-pound lifting restrictions, but we do not find the need for those restrictions to be persuasive in determining permanency since Petitioner never returned for the recommended follow up visit in two weeks and Petitioner testified that he returned to physical work with no restrictions. Therefore, the medical records do not reflect the ultimate outcome of his treatment. Further, the medical records do not support Petitioner's testimony that his hand locks into a fist. Even if there was such a reference in the records, there is no medical opinion to explain how a healed, non-

displaced distal right ring finger fracture could be causally related to "locking" of his hand into a fist. We give this factor little weight.

Based on a thorough review of all the evidence and a consideration of the five permanency factors, we find that Petitioner failed to prove that his injuries on March 30, 2016 resulted in any permanent disability to his hand and, instead, he is entitled to an award of 25% loss of use of the right ring finger. As for the right little finger, Petitioner never testified about any current disability related to the ½ cm laceration noted in the medical records, which seems to have healed completely. Therefore, we find that Petitioner has failed to prove any permanent partial disability related to the right little finger.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $232.63 per week for a period of 4-5/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act, with Respondent receiving a credit in the amount of $930.52 for benefits paid, resulting in a net benefit owed to Petitioner in the amount of $166.16.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $220.00 per week for a period of 6.75 weeks, as provided in §8(e)(4) of the Act, for the reason that the injuries sustained caused the 25% loss of use of the right ring finger.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner $7,155.40 in medical expenses under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

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

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

Injured Workers' Benefit Fund

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $9,000.00. 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.

December 15, 2022

/s/ *Maria E. Portela*

SE/
O: 11/22/22
49

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC011269
Case Name	HILL, JAMES T. v. BEVEL GRANITE AND STATE TREASURER AS EX-OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Jeffrey Alter
Respondent Attorney	Charlene Copeland

DATE FILED: 5/27/2022

THE INTEREST RATE FOR THE WEEK OF MAY 24, 2022 1.53%

/s/ Raychel Wesley, Arbitrator

Signature

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

JAMES T. HILL Case # **16** WC **011269**
Employee/Petitioner
v.
1) Bevel Granite,
2) State Treasurer and 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 **Raychel Wesley**, Arbitrator of the Commission, in the city of **Chicago**, on **April 27, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On March 30, 3016, 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 $**18,144.84**; the average weekly wage was $**348.94**.

On the date of accident, Petitioner was **19** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**930.52** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**930.52**.

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

This claim was filed for more than three years when it appeared on the status call in February 2022 and received a trial date of February 28, 2022. It was continued at that time for hearing to April 27, 2022. Respondent Bevel Granite failed to appear by its officers or a representative at the status call in February 2022. The Petitioner presented evidence on April 27, 2022, of a notice on March 3, 2022, of this hearing date, time, and location to Respondent Bevel Granite to their last known address and its Registered Agent/Officer via regular and certified U.S. mail and moved to proceed *ex parte* against them.

The Petitioner received a certification of no workers' compensation insurance coverage for March 30, 2016, for Respondent Bevel Granite. The Petitioner amended his Application to seek benefits from the Injured Workers' Benefit Fund pursuant to Section 4(d) of the Act.

The Respondent Injured Workers' Benefit Fund through the State Treasurer, the *ex-officio* custodian of the Injured Workers' Benefit Fund, was represented by the Illinois Attorney General's office.

Respondent Bevel Granite did not appear or request a continuance and a hearing was conducted *ex parte* with regard to Respondent Bevel Granite.

ORDER

The Respondent shall pay Petitioner temporary total disability benefits of $232.63/week for 4-5/7 week from March 31, 2016 through May 2, 2016, which is the period of temporary total disability for which compensation is payable, with Respondent receiving a credit in the amount of $930.52 for benefits paid, resulting in a net benefit owed to Petitioner in the amount of $166.16.

Respondent shall pay Petitioner permanent partial disability benefits of $220.00/week (the minimum rate for the date of injury) for 51.25 weeks, because the injuries sustained caused 25% loss of use of the right hand, as provided in Section 8(e) of the Act.

The medical care rendered to Petitioner at Premiere Orthopedic and Hand Center, Harvey Anesthesiologist and Radiology Partners, as reflected in Petitioner's Exhibit #7, was reasonable and necessary and the Respondent shall pay the medical bills in accordance with the Act and the medical fee schedule.

Injured Workers' Benefit Fund

This 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, Bevel Granite, to pay the benefits due and owing the Petitioner. The Respondent/Employer, Bevel Granite, shall reimburse the Injured Workers' Benefit Fund for any of their compensation obligations 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.

/s/ Raychel A. Wesley
Signature of Arbitrator

MAY 27, 2022

FINDINGS OF FACT

Petitioner testified that on March 30, 2016, he was working for Respondent Bevel Granite, located in Merrionette Park, Illinois. Petitioner testified that his date of birth was May 13, 1996, and was single with no dependents at that time. Petitioner testified that he started working for Bevel Granite about a year or two prior to March 30, 2016. He testified that he worked as a laborer, working on headstones and delivering headstones to various locations for Bevel Granite. Petitioner testified that he was hired by James Rogan, the President of Bevel Granite.

Petitioner testified that he was hired to work 40 hours per week, at $10 per hour for Bevel Granite. Petitioner also testified that his job duties including loading the delivery trucks with headstones, and that he would cut the headstones using sharp cutting tools and operate a boom lift/crane to move the headstones. He testified that he was required to lift 50 to 100 pounds to perform his job duties, as he was required to lift the headstones to load onto the delivery trucks.

Petitioner testified that he would make deliveries throughout Illinois and Indiana and that he was paid directly by Bevel Granite on a weekly basis. Petitioner identified Petitioner's Exhibit #5, which was a copy of the letter from Bevel Granite, signed by the President, James Rogan, reflecting the payroll records from April 2015 through March 2016. Petitioner's Exhibit #5 reflects that Petitioner's average weekly wage was $348.94. Petitioner testified that the information contained in Exhibit #5 was accurate. He explained that some months he earned more than others depending the work available.

Petitioner testified that on March 30, 2016, he reported to work for Bevel Granite and was assigned to work at the job site on Kedzie Avenue in Merrionette Park, Illinois. He was directed to report to that job site by James Rogan. Petitioner testified that he started work that day at 7:00 a.m. and was not having any physical issues or difficulties and was capable of performing his full job duties for Bevel Granite. He testified that he was required to load the truck with headstone on March 30, 2016, with a coworker. He testified that the headstones that he was lifting to load the truck weighed about 100 pounds.

Petitioner continued to testify that as he was lifting the headstones to prop onto the back of the flatbed truck, the headstone shifted and it smashed down onto his hand, smashing his right ring and middle finger between the headstone and the truck. Petitioner testified that he had immediate pain in the tip of his ring finger up through his arm. Petitioner also testified that he is right hand dominant.

Petitioner testified that he immediately reported the injury to James Rogan, the President of Bevel Granite, but was not given an accident report to complete. Petitioner testified that he was never provided with an accident report to complete by Bevel Granite.

Petitioner testified that he immediately sought medical care and was taken to the clinic by a sales representative of Bevel Granite by the name of Tony at the direction of Mr. Rogan. The records reflect that Petitioner presented to Ingalls Occupational Medicine Clinic, with a history of "picking up a stone and it fell against R hand" while an employee of Bevel Granite. The record further reflects that Petitioner sustained an injury to his right ring finger with an avulsed nail with underlying proximal bleeding and swelling. The diagnosis was a laceration of the right ring finger

with damage to the nail. At that time, the Petitioner was released to return to work with restrictions of no use of the right hand and was referred to go to an orthopedic surgeon. The record also reflects that the cause of the problem was related to work activities. (PX#1).

Petitioner testified that he was taken home after leaving Ingalls and then went back to the job site with his mom to talk to the President of Bevel Granite, James Rogan, about the injury. Petitioner testified that when he arrived at the job site and went to discuss the injury with James Rogan, that he was fired. Petitioner testified that he did not know why he was fired.

Petitioner testified and the records reflect that he then presented to an orthopedic surgeon, Dr. Kung, later that same day on March 30, 2016. (PX#2). The records reflect that Petitioner presented with an injury to his right ring and small finger since earlier that day when a stone dropped on his right hand. X-rays reflected a right ring finger distal phalanx fracture, non-displaced. At that time, it was recommended Petitioner undergo surgery. (PX#2).

Petitioner testified and the records reflect that he was admitted to Ingalls Memorial Hospital on April 1, 2016, where he underwent a right ring finger irrigation, debridement as Petitioner had an open fracture to the bone of the distal phalanx, right ring fingernail bed repair, and right ring finger distal phalanx open fracture, open reduction and internal fixation. (PX#3).

Petitioner testified that he was released to return to work with no use of his right hand and that he sent a copy of the work status note, via regular mail, to the attention of James Rogan at Bevel Granite. Petitioner testified that he was not offered work within his restrictions and that he was unable to perform his job duties with his restrictions.

Petitioner testified and the records reflect that he returned to see Dr. Kung on April 4, 2016, and that Dr. Kung recommended physical therapy and continued work restrictions. Petitioner testified that he mailed a copy of his work restrictions to James Rogan at Bevel Granite and that he was not offered work within his restrictions.

The records reflect that Petitioner started the recommended therapy at Premiere Orthopedic on April 6, 2016, and that he continued in the therapy through April 20, 2016. (PX#2). The records reflect a follow-up visit with Dr. Kung on April 13, 2016, with the diagnosis remaining a non-displaced fracture of the right ring finger with damage to the nail bed and an open wound to the right little finger without damage to the nailbed. (PX#2). Petitioner was provided with restrictions to return to work with no lifting over 5 pounds, which Petitioner testified that he provided a copy of the restrictions to Bevel Granite and they could not accommodate his restrictions.

Petitioner returned to see Dr. Kung on April 27, 2016, and the record reflects that Petitioner continued to have limitation of use of the joint of his right ring finger and that Dr. Kung attempted to take out the surgical pin in his finger, but was unable to do so. As a result, Dr. Kung indicated that the pin needed to be removed under anesthesia by himself or his partner, Dr. Labana. (PX#2). Petitioner testified that the pin removal was scheduled for April 29, 2016, with Dr. Labana. Dr. Kung continued Petitioner's work restrictions, which were not accommodated by Bevel Granite.

The records reflect that Petitioner underwent the recommended hardware removal at Ingalls Memorial Hospital on April 29, 2016, with Dr. Labana. (PX#3). Petitioner testified that

after the hardware was removed, he followed-up with Dr. Kung on May 2, 2016. The record reflects that Petitioner continued to have limitation of use of the joint of the right ring finger, with stiffness of the distal interphalangeal joint. (PX#2). At that time, Dr. Kung recommended that Petitioner undergo a home exercise program and to continue the work restrictions of no lifting over 10 pounds. Petitioner testified that it was his last visit with Dr. Kung.

Petitioner testified that he received one check from Bevel Granite while he was off of work for his injury between March 30, 2016, and May 2, 2016. Petitioner testified that Petitioner's Exhibit #6 accurately reflected his payment of benefits from Bevel Granite in the amount of $930.52. Petitioner also testified that some, but not all, of his medical bills relating to his injury were being paid. Petitioner identified Petitioner's Exhibit #7 as the medical bills that remained outstanding as a result of his work injury.

Petitioner indicated that he found alternative work about one year later and that he is currently performing restoration work that includes installing and working with drywall, as well as general labor duties, with Rainbow International. Petitioner testified that his ring finger tends to lock up on occasion and sometimes he has a shooting pain in his hand causing him to have difficulty grasping items. Petitioner also testified that he has sensitivity in his hand to the cold weather. Petitioner testified that he is not currently receiving medical treatment and that he has no permanent restrictions for his hand.

CONCLUSIONS OF LAW

A) **Was the Respondent operating under and subject to the Illinois Workers' Compensation Act?, the Arbitrator finds as follows**:

The Arbitrator finds that Bevel Granite was a business that utilizes sharp edged cutting tools and machinery, loading and unloading of heavy materials, as well as manufacturing goods. Thus, based upon the evidence presented, this falls under the automatic coverage of Section 3 of the Act.

B) And G) Was there an employee-employer relationship?, and What were the Petitioner's earnings?, the Arbitrator finds as follows:

The Petitioner worked for Bevel Granite for about one year prior to the injury. Petitioner's Exhibit #5 is a letter from the President of Bevel Granite, James Rogan, reflecting payments tendered to Petitioner for work performed. Thus, the Arbitrator finds that an employee/employer relationship existed at the time of the accident on March 30, 2016, and that the Petitioner earned $18,144.84 in the 52 weeks prior to his work injury, resulting in an average weekly wage of $348.94.

C) and D) Did an accident occur that arose out of and in the course of the Petitioner's employment by Respondent? and What was the date of the accident?, the Arbitrator finds as follows:

On March 30, 2016, the Petitioner was loading a heavy headstone into a flatbed truck with a coworker, when the headstone fell and smashed Petitioner's right ring and little finger between the headstone and the flatbed truck. The Petitioner's testimony is confirmed by the medical records of how and when the accident occurred. Thus, based upon the testimony and evidence presented, the

Arbitrator finds that the injury arose out of and in the course of his employment on March 30, 2016.

E) Was timely notice of the accident given to the Respondent?, the Arbitrator finds as follows:

Petitioner testified that immediately after his injury, he verbally notified the President of Bevel Granite, James Rogan, of his injury and that the President had another employee, Tony, transport him to the urgent care at Ingalls. Thus, the Arbitrator finds that timely notice of the accident was provided to Bevel Granite.

F) and L) Is the petitioner's present condition of ill-being causally related to the injury and what is the nature and extent of injury?, the Arbitrator finds as follows:

By this reference, the Arbitrator adopts the Findings of Fact herein. Based upon the testimony and the evidence presented, the Petitioner proved that this current condition of ill-being to his right hand (right ring finger and right little finger) is causally related to the work injury of March 30, 2016. The records reflect that Petitioner underwent surgery consisting of an open reduction and internal fixation with hardware in the right ring finger for a nondisplaced fracture, as well as avulsion of the nail, and an open wound to the right little finger, without nail avulsion. The Petitioner underwent a second procedure to remove the hardware from the right ring finger. Petitioner testified that he is currently employed and has no permanent restrictions, but continues to have some difficulty with the use of his right hand, including stiffness and difficulty grasping items, as well as sensitivity to cold weather. Thus, the Arbitrator finds that the Petitioner sustained a **5% loss of use of the right hand** pursuant to **Section 8(e)(9)** of the Act.

J) Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?, the Arbitrator finds as follows:

The medical care rendered to Petitioner as testified to and as reflected in the medical records was reasonable and necessary for any and all treatment through May 2, 2016. The Respondent shall pay the following medical bills in accordance with the Act and appropriate fee schedule:

1) Premier Orthopedic And hand Center—	**Outstanding balance**	**$ 6220.40**
2) Harvey Anesthesiologist (in collection) --	**Outstanding balance**	**$ 875.00**
3) Radiology Partners --	**Outstanding balance**	**$ 60.00**
	Total	**$ 7155.40**

K) and N) What temporary benefits are in dispute? And Is Respondent due any credit?

The Petitioner was temporarily totally disabled from March 31, 2016, up to and including May 2, 2016, or 4-5/7 weeks. The Respondent shall pay the Petitioner temporary total disability benefits in the amount of $232.63 /week for 4-5/7 weeks, as referenced above, and as provided in Section 8(b) of the Act, as the injuries sustained caused the disabling condition of the Petitioner. The Respondent is also entitled to a credit in the amount of $930.52 for benefits paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC007388
Case Name	James Ledbetter v. State of Illinois – Big Muddy River Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0491
Number of Pages of Decision	11
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 12/16/2022

/s/Stephen Mathis, Commissioner

Signature

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

James Ledbetter,

Petitioner,

vs. NO. 19WC007388

State of Illinois/Big Muddy River Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both parties herein and notice given, the Commission, after considering the issue(s) of nature and extent and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 10, 2022 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.

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

December 16, 2022

SJM/sj
o-11/9/2022 44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC007388
Case Name	LEDBETTER, JAMES v. STATE OF ILLINOIS/BIG MUDDY RIVER C.C.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 5/10/2022

THE INTEREST RATE FOR THE WEEK OF MAY 10, 2022 1.38%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

May 10, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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
NATURE AND EXTENT ONLY

JAMES LEDBETTER
Employee/Petitioner

v.

STATE OF ILLINOIS/BIG MUDDY RIVER C.C.
Employer/Respondent

Case # **19** WC **007388**

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **December 8, 2021**. By stipulation, the parties agree:

On the date of accident, **January 11, 2019**, 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 $**77,599.21**, and the average weekly wage was $**1,492.29**.

At the time of injury, Petitioner was **49** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of **all paid** for TTD, $**-** for TPD, $**-** for maintenance, and **any extended benefits paid** for other benefits, for a total credit of **all 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 $**813.87**/week for a further period of **200** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **the 40% loss of his body as a whole**.

Respondent shall pay Petitioner compensation that has accrued from **July 8, 2021,** through **December 8, 2021**, 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.

Jeanne L. AuBuchon

Signature of Arbitrator

MAY 10, 2022

PROCEDURAL HISTORY

This matter proceeded to trial on December 8, 2021, on all disputed issues. The sole issue in dispute is the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident on January 11, 2019, the Petitioner was 49 years old and was attacked and assaulted by an inmate while working as a corrections officer for the Respondent and injured his spine. (AX1, RX1, T. 10-11) The Petitioner first sought treatment from chiropractor Dr. Marty Moffett at MRM Chiropractic, where he received spinal adjustments, ultrasound, electrical stimulation, decompression, therapeutic exercises, trigger point therapy, manual therapy and mobilization with manual traction and myofascial release. (PX3) On January 18, 2019, he also began treating with Dr. Matthew Gornet, an orthopedic surgeon at The Orthopedic Center of St. Louis. (PX4) A cervical MRI showed disc protrusions, annular tears, and herniations from C3-C7. (Id.) Dr. Gornet prescribed continued chiropractic care with Dr. Moffett, medications and steroid injections at C5-6 and C6-7. (Id.) He ordered the Petitioner off work. (Id.) Dr. Helen Blake, a pain management physician at Pain and Rehabilitation Specialists of St. Louis, performed an interlaminar epidural steroid injection at C5-6 on February 19, 2019, and at C6-7 on March 19 2019. (PX6)

Petitioner returned to Dr. Gornet on March 21, 2019, and reported that the injections gave only minimal relief. (PX4) An MRI of the Petitioner's lumbar spine showed a central annular tear and disc pathology at L5-S1. (Id.) Dr. Gornet elected to proceed with cervical spine surgery first. (Id.) The Petitioner had undergone chiropractic treatment from January 11, 2019, through April

22, 2019, for a total of 31 visits. (PX3) On May 24, 2019, Dr. Gornet performed disc replacements at C3-4, C4-5, C5-6 and C6-7. (PX4, PX9)

At follow-up visits after surgery, the Petitioner's neck improved, but his low back pain continued. (PX4) On July 8, 2019, Dr. Gornet prescribed medication and a steroid injection at L5-S1, which was performed by Dr. Blake on July 23, 2019. (PX4, PX6) The injection did not provide any sustained relief. On September 5, 2019, Dr. Gornet recommended MRI spectroscopy and CT discogram. (PX4) The tests performed on September 17, 2019, showed a mildly provocative disc at L5-S1, along with painful chemicals at the same level. (Id.) Another MRI showed disc pathology at L5-S1. (Id.) Rather than move to surgery, Dr. Gornet recommended six weeks of chiropractic care to ascertain whether the conservative treatment could assist the Petitioner's symptoms. (Id.) The Petitioner had another round of chiropractic treatment from November 8, 2019, through December 23, 2019, for a total of 18 visits. (PX3)

The Petitioner underwent a Section 12 evaluation on November 6, 2019, by Dr. David Robson, an orthopedic surgeon at St. Louis Spine and Orthopedic. (RX2) Dr. Robson recommended a brief course of physical therapy for the Petitioner's low back. (Id.) He did not believe the Petitioner required any further work restrictions regarding his cervical spine. (Id.)

The Petitioner returned to Dr. Gornet on January 23, 2020, with symptoms of ongoing back pain. (PX4) Because Dr. Robson released him to work full duty, the Petitioner did not believe he could continue to work, so he retired. (Id.) Dr. Gornet placed a 30-pound lifting limit on Petitioner's activities with alternating between siting and standing as needed. (Id.) On April 20, 2020, Dr. Gornet recommended formal physical therapy to see if this would assist with his symptoms. (Id.) Dr. Gornet believed that if conservative treatment did not help him, his only other option would be surgery. (Id.) The Petitioner underwent physical therapy at Athletico from April

27, 2020, through June 8, 2020, for a total of 18 visits. (PX11) Therapy notes indicated that although the Petitioner progressed with core strength and treadmill time, limitations remained, and he had range of motion deficits in all planes of motion. (Id.) On June 18, 2020, Dr. Gornet found that conservative treatment had failed and recommended proceeding with surgery. (PX4) On July 8, 2020, Dr. Gornet performed an anterior decompression and disc replacement at L5-S1 (PX4, PX9) At follow-up visits with Dr. Gornet, the Petitioner improved significantly. (PX4) At his last visit with Dr. Gornet was July 8, 2021, the Petitioner reported he continued to do well with his neck, and his low back was also improved. (Id.) But he still had some limitation with increased activity. (Id.) Dr. Gornet placed the Petitioner at maximal medical improvement but gave him a 25-pound lifting limit. (Id.)

The Petitioner testified that before the surgeries, he was experiencing extreme pain in his neck radiating down both arms and extreme pain in his low back shooting down his legs. (T. 13) He stated that the surgeries and rehabilitation afterwards helped his conditions. (T. 13-14)

At the time of arbitration, the Petitioner was self-employed, running an automotive restoration business specializing in Corvettes. (T. 9-10) He said he is able to run his business with the help of jacks, lifts and an employee. (T. 14) He does not lift anything weighing more than 25 pounds. (T. 20) However, he still experiences pain and stiffness in his neck and headaches with quick movements. (T. 15-16) He continues to take Tramadol on the days he is hurting. (T. 16) Regarding his low back, he experiences stiffness with prolonged sitting or walking. (T. 17) He testified that he had to give up his activities with the Shriners' motor patrol and competition shooting because of his injuries. (T. 17-18) He said he no longer hunts. (T. 19)

CONCLUSION

Issue 10: What is the nature and extent of the Petitioner's injury?

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (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. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

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

(ii) **Occupation.** The Petitioner retired as a corrections officer. He now owns and operates an automotive restoration business. The Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 49 years old at the time of the injury. He has many work years left during which time he will need to deal with the residual effects of the injuries. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner has permanent restrictions on his activities and relies on an employee to perform the lifting duties at work. He continues to experience neck pain and stiffness, headaches and low back stiffness, for which he takes prescription medication. He has

had to give up certain hobbies due to the injuries. The Arbitrator puts significant weight on this factor.

Based on the foregoing evidence and factors, the Arbitrator finds that the Petitioner sustained serious and permanent injuries that resulted in the 40% loss of his body as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	06WC007696
Case Name	Billy S Carney v. State of Illinois – Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	22IWCC0492
Number of Pages of Decision	10
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	John Popelka
Respondent Attorney	Charlene Copeland

DATE FILED: 12/16/2022

/s/Maria Portela, Commissioner

Signature

22IWCC0492

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

BILLY S. CARNEY,

Petitioner,

vs. NO: 06 WC 7696

ILLINOIS YOUTH CENTER – ILLINOIS DEPARTMENT OF CORRECTIONS,

Respondent.

DECISION AND OPINION OF SECTIONS 19(h), 8(a) and PENALTIES and FEES (§19(k), §19(l), §16) PETITIONS

This matter comes before the Commission on Petitioner's Petitions pursuant to Section 19(h), alleging a material change in condition, additional temporary total disability benefits due to an alleged destabilization of the condition and Section 8(a) seeking vocational rehabilitation. Petitioner also filed a Penalties and Fees Petition pursuant to Sections 19(k), 19(l) and 16 for alleged failure to timely pay outstanding medical bills.

Notice was given to all parties and a hearing on the Petitions was held before Commissioner Maria E. Portela on September 8, 2021 and a record was made. The Commission denies Petitioner's Petitions pursuant to Sections 19(h), 8(a) and penalties under Section 19(k). The Commission grants Petitioner's Petition pursuant to Sections 19(l) and 16.

BACKGROUND

Petitioner alleges he sustained a work-related injury on May 3, 2005 when he was attempting to break up a fight between youths and fell to the ground. On January 31, 2006 he underwent lumbar decompression, discectomy and a fusion at L5/S1 and subsequent surgery for hardware removal on January 22, 2008. (Px1) Both procedures were performed by Dr. DePhillips. Petitioner's last visit with Dr. DePhillips took place on February 25, 2009 at which time the doctor prescribed additional physical therapy but did not issue any work restrictions.

This matter first proceeded to an arbitration hearing before Arbitrator Hennessey pursuant to a §19(b) Petition. Respondent stipulated to accident and causal connection in that proceeding. Arbitrator Hennessey found Petitioner was entitled to temporary total disability benefits for the period from May 4, 2005 through May 2, 2008 and also awarded penalties pursuant to §§19(k) and 19(l). Neither party filed a review of the decision.

Petitioner was subsequently incarcerated on a felony and went to prison on or about May 22, 2008.

This matter was subsequently tried before Arbitrator Granada on October 19, 2014, the issues in dispute being causation, temporary total disability and the nature and extent of Petitioner's injuries. As Petitioner was incarcerated on the date of the hearing, he testified via evidence deposition taken on June 20, 2012.

Arbitrator Granada issued a decision on November 14, 2014 finding that Petitioner's condition of ill-being was causally related to the work accident of May 4, 2005, as per stipulation of the parties at the initial arbitration hearing before Arbitrator Hennessey and under the law of the case. The Arbitrator also found Petitioner failed to prove he was entitled to additional temporary total disability beyond the period awarded in the prior 19(b) hearing. Regarding the nature and extent of permanent disability, the Arbitrator found Petitioner sustained injuries resulting in a 20% loss of the person as a whole. Petitioner filed a review of Arbitrator Granada's decision and the Commission issued a decision on November 3, 2015 affirming same.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission incorporates by reference herein the findings of fact and conclusions of law set forth in the above-referenced decisions.

Petitioner's 19(h) Petition

Pursuant to Section 19(h), Petitioner seeks modification of the previous award of 20% loss of use of the person as a whole under Section 8(d)2 and alleges Petitioner is now permanently and totally disabled.

§19(h) states in pertinent part:
However, as to accidents occurring subsequent to July 1, 1955, which are

> covered by any agreement or award under this Act providing for compensation in installments made as a result of such accident, such agreement or award may at any time within 30 months, or 60 months in the case of an award under Section 8(d)1, after such agreement or award be reviewed by the Commission at the request of either the employer or the employee on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended.
> *820 ILCS 305/19*

Noting the precedential definition of disability is limited to physical or mental disability, the *Murff* Court explains the previous holdings:

> Based upon the holding in *Petrie*, we conclude that the Commission did not err in finding that the term "disability" as used in section 19(h) of the Act, refers to physical and mental disabilities, not economic disabilities. See also *United Airlines v. Workers' Comp. Comm'n*, 407 Ill.App.3d 467, 471 (2011) (noting that a change in economic circumstances is not a proper basis for modification of an award pursuant to section 19(h)); *Cassens Transport Co. v. Industrial Comm'n*, 354 Ill.App.3d 807, 810, (2005) (the term "disability" in section 8(d)(1) refers to physical and mental disability).
> *Murff v. Ill. Workers' Comp. Comm'n*, 2017 Ill.App. (1st) 160005WC, ¶21.

To determine whether the disability has "recurred, increased, diminished, or ended" since the time of the original decision, the *Gay* Court defines the disability standard and considerations required to make the determination:

> To warrant a change in benefits, the change in a petitioner's disability must be material. (*United States Steel Corp. v. Industrial Comm'n*, 133 Ill.App.3d 811 (1985)) 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 v. Industrial Comm'n*, 89 Ill.2d 428, 433 (1982))
> *Gay v. Industrial Comm'n*, 178 Ill.App.3d 129, 132 (4th Dist. 1989)

At the time of the Arbitration hearing before Arbitrator Granada, Petitioner testified via evidence deposition on June 20, 2012 that he had nerve damage in the left leg, all the way down the left buttock and the back of the leg. (6/20/12 dep, pp. 7-8) Petitioner also testified that he had major pain in his back and his left foot, had to hang his foot off the bed and it could not be touching anything because it hurts and this would happen every night, all night long. (6/20/12 dep, p. 14) Petitioner further testified that he had a sharp stabbing pain in the lower back and down his tailbone with activity. (6/20/12 dep, p. 18) Petitioner also complained of numbness and tingling down the bottom half of his left foot and leg, atrophy of the leg and a limp. (6/20/12 dep, pp. 18-25)

In comparing Petitioner's complaints at the time of the hearing before Arbitrator Granada on October 19, 2014 and his testimony at the hearing on September 8, 2021 his complaints

and/or symptoms are virtually identical. (9/8/21 hearing, T. 23-26)

Specifically, in regard to Petitioner's allegation that he suffers from a limp, of which he complained both at the time he testified at the hearing before Arbitrator Granada and the hearing before Commissioner Portela, this finding is not wholly supported by the medical evidence. (6/20/12 dep, p. 20 and 9/8/21 hearing T. 25)

Dr. Abusharif's office visit note dated January 18, 2020 indicates that his exam indicated a normal gait. This same finding was also reflected in Dr. Abusharif's office visit notes dated April 18, 2020, July 21, 2020, August 27, 2020 and November 20, 2020. (Px2) At the time of Petitioner's office visit to Dr. Abusharif on February 8, 2021 and May 6, 2021, Dr. Abusharif noted Petitioner's gait was only "mildly" antalgic. (Px2)

It is also significant that at Petitioner's visit with Dr. Abusharif on October 22, 2020, Dr. Abusharif opined "Mr. Carney is under my care since January 31, 2019. He presented to me with low back pain radiating to the left lower extremity. This is consistent with a post laminectomy syndrome from his previous surgeries. Since being under my care his condition has been stable. It has not worsened nor improved." (Px2)

Petitioner's only new complaint pertained to the right hip but there are no medial records in evidence subsequent to the hearing on arbitration on October 19, 2014 which mentions this body part. (9/8/21 hearing, T. 25)

There has been no change in Petitioner's diagnosis since the date of the Arbitration hearing on October 19, 2014 and the September 8, 2021 hearing. In his report dated February 8, 2012, Dr. Coe stated that Petitioner suffered from post laminectomy syndrome also known as "failed back syndrome." (11/26/12 deposition of Dr. Coe, p. 42) At the time Petitioner initially saw Dr. Darwish on September 21, 2018 the diagnosis was also post-laminectomy syndrome. On May 21, 2019, the date on which Dr. Phillips conducted a Section 12 examination of Petitioner, he re-iterated the diagnosis of failed back surgery syndrome.

Furthermore, there has been no change in the medical treatment recommended to the Petitioner since the Commission issued its Decision on November 3, 2015, and the hearing on September 8, 2021.

At the time the Commission issued its decision, Petitioner had already been diagnosed with failed back surgery syndrome and both a back brace and a spinal cord stimulator trial had been recommended as well as ongoing treatment for his chronic condition. During the course of his evidence deposition on November 26, 2012 Dr. Coe echoed the treatment suggestion of Petitioner's prior physician, Dr. Patel, which included medication, diagnostic and therapeutic injection and a trial of a spinal cord stimulator. (11/26/12 deposition of Dr. Coe, p. 44) Those treatment modalities are no different than those being recommended and which Petitioner has been receiving since he was released from prison in 2018.

Petitioner has not proven any change in his complaints and/or symptoms, diagnoses or treatment since the time the Commission's Decision issued. There is also no opinion by any

physician indicating that there has been a material change in Petitioner's condition. Accordingly, Petitioner has failed to prove that he sustained a material change in his condition and the Petition pursuant to Section 19(h) is denied.

Additionally, Petitioner relies on *Poore v. Industrial Comm'n (Auto Parts Unlimited)*, 298 Ill.App.3d 719 (1998), in support of his assertion that he is entitled to additional temporary total disability benefits in a Section 19(h) proceeding.

The Court in *Poore* held that pursuant to Section 19(h), Petitioner must prove his permanent disability has materially increased to qualify for an increase in permanent partial disability but does not have to prove an increase in permanent disability to be entitled to temporary total disability benefits. (*See World Color Press v. Industrial Comm'n*, 249 Ill.App.3d 105, 109 (1993)) Petitioner noted the Court stated claimant must only show that the disability destabilized and required more treatment or recovery time and that consequently, he was temporarily and totally disabled.

Petitioner alleges that his condition has destabilized to the extent that he received ongoing pain management, he has not had any relief from his condition, he underwent a failed trial of a spinal cord stimulator and he is incapable of any work activity as he has been held off work by Doctors Darwish and Abusharif since September 21, 2018.

Regarding Petitioner's argument that his condition has destabilized because he receives ongoing pain management, pain management was prescribed as an appropriate form of treatment prior to the time of the Commission Decision in 2015. The pain management treatment Petitioner was prescribed prior to the original decision having issued is the same type of pain management subsequently prescribed. Therefore, this argument fails to support Petitioner's assertion that his condition has destabilized. Petitioner also argues that he has not had any relief from his condition. His complaints before the original decision issued and thereafter have remained essentially the same and the medical records do not support that there has been any destabilization of Petitioner's condition.

With respect to Petitioner's argument that a failed trial of a spinal cord stimulator is evidence that Petitioner's condition has destabilized, the logical inference is that the treatment modality was unsuccessful in providing Petitioner relief. That does not equate to a finding that his condition destabilized.

Lastly, Petitioner contends that his condition has destabilized to the extent that he is incapable of any work activity. At the time of the Commission Decision in 2015, Petitioner had not been issued any permanent work restrictions by any physician and for all practical purposes, he could not work because he was incarcerated. Accordingly, the Arbitrator concluded that there was insufficient medical evidence to support Petitioner's claim that he was entitled to temporary disability beyond the period awarded in the prior hearing. In the 19(b) hearing before Arbitrator Hennessey temporary total disability benefits were awarded for the period from May 4, 2005 through May 2, 2008. The Petitioner did not undergo a Functional Capacities Evaluation prior to being incarcerated.

Subsequent to Petitioner's release from prison, he first sought treatment with Dr. Darwish on September 21, 2018. (Px1) Although the Petitioner alleges he was taken off work by Dr. Darwish at this time, there is no indication of same in this office visit note. Petitioner was first taken off work by Dr. Darwish on January 15, 2019 and deemed unable to return to work until his first visit with Dr. Abusharif who would continue with the work statuses. (Px9)

On January 31, 2019 Petitioner first saw Dr. Abusharif who indicated Petitioner was unable to return to work until further specified.

Petitioner ultimately underwent a Functional Capacities Evaluation (FCE) on March 29, 2021. The FCE reads:

> Capacity Overview: workday: 3 hours. Sit: 1-2 hours (15 minute duration); stand 1-2 hours (10 minute duration); walk 2-3 hours (occasional short distance)

Petitioner testified that Dr. Abusharif reviewed the FCE. (T. pp. 7-8). However, a review of Dr. Abusharif's records fails to indicate the FCE was reviewed by him. (Px3) The Commission assigns the FCE no weight as there is no evidence in the record that any physician has reviewed it and deemed it an appropriate measure of Petitioner's work capabilities. Moreover, as Petitioner was not issued any permanent work restrictions nor did he undergo an FCE prior to being incarcerated and his current work capabilities remain undetermined, any measure of destabilization cannot be determined by utilizing this criteria.

Petitioner's 8(a) Petition

Regarding Petitioner's Motion for vocational rehabilitation benefits pursuant to Section 8(a), the Commission denies same. A claimant is generally entitled to vocational rehabilitation where a work-related injury has caused a reduction in earning capacity and there is evidence that rehabilitation will increase earning capacity. *Greaney v. Industrial Comm'n* 358 Ill.App.3d 1002, 1019 (2005). Moreover, an injured employee is generally not entitled to vocational rehabilitation where the evidence shows that he or she does not intend to return to work, although able to do so. *Euclid Beverage v. Illinois Workers' Compensation Comm'n,* 2019 IL App (2d) 180090WC ¶29. Vocational rehabilitative services are not mandatory unless the claimant can establish that rehabilitation is appropriate. *Euclid Beverage*, 2019 IL App (2d) 180090, ¶31.

In this instance, Petitioner failed to seek employment after his release from prison. There is no evidence in the record to indicate vocational rehabilitation will be of benefit to him. Additionally, Petitioner has failed to prove a material change in his condition and was previously found to have reached maximum medical improvement by Dr. Robson as noted in the Commission's Decision issued on November 3, 2015. Therefore, the Commission denies Petitioner's Petition for Vocational Rehabilitation.

Petitioner's Penalties Petition pursuant to Sections 19(k), 19(l) and 16

The Petitioner alleges the following bills remain outstanding:

1) Laser Spine Surgical Solutions: $18,536.66
(Date of service: August 21, 2020 representing charges for the spinal cord stimulator trial) (Px3, Px7). This bill was dated June 7, 2021 and submitted to the Respondent by Petitioner on June 9, 2021. (Px7)

2) Pain Treatment Center of Illinois: $769.00
(Office visits to Dr. Abusharif for dates of service on January 31, 2019, March 14, 2019 and April 4, 2019) (Px3, Px7). This bill was dated June 7, 2021 and submitted to the Respondent by Petitioner on June 9, 2021. (Px7)

3) Laser Spine Center of Chicago: $630.69
(Office visits to Dr. Abusharif for dates of service on October 22, 2020 ($147.09), May 6, 2021 ($241.65) and June 4, 2021 ($241.65).) (Px3, Px7) This bill was sent to the Respondent by Petitioner on June 9, 2021. (Px7)

4) ATI: $3,009.44
(Date of Service: March 29, 2021 for FCE. (Px6) This bill was submitted to the Respondent by Petitioner on May 25, 2021. (Px7)

5) Hinsdale Orthopedics: $3,024.00
(Date of service of December 22, 2018 (MRI) and office visit to Dr. Abusharif on January 15, 2019. (Px7) This bill was submitted to the Respondent by Petitioner on November 20, 2020. (Px7)

The Commission finds the Petitioner's medical rights remain open by virtue of his having tried his case on October 19, 2014. Respondent agreed that medical was not in dispute. (T. 6) Accordingly, the Commission awards the outstanding medical bills in the amount of $25,969.49 subject to the fee schedule.

Section 19(l) states:

> (l) If the employee has made written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d). In case the employer or his or her insurance carrier shall without good and just cause *fail, neglect, refuse, or unreasonably delay* the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission ***shall*** allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay.

Emphasis added.

The Commission notes the bill from Hinsdale Orthopedics in the amount of $3,024.00 was submitted to the Respondent for payment by the Petitioner via email and letter dated

November 20, 2020, nearly 9 months before the hearing on September 8, 2021. (Px7) The period from November 20, 2020 (date bill submitted to Respondent for payment) through September 8, 2021 (date of hearing) x $30 per day for 292 days equals $8,760.00. The bill from ATI in the amount of $3,009.44 was submitted to Respondent for payment by the Petitioner via email and letter dated May 25, 2021, 3 1/2 months before the September 8, 2021 hearing. (Px7) The period from May 25, 2021 (date bill submitted to Respondent for payment) through September 8, 2021 (date of hearing) x $30 day for 106 days equals $3,180.00. The remainder of said bills were submitted to Respondent for payment by June 9, 2021, approximately three months prior to the hearing on September 8, 2021 at which time it appears all of the bills were still unpaid. (Px7). There is no evidence in the record indicating that the Respondent provided a written reason for the delay in payment.

As the penalty for non-payment of the Hinsdale Orthopedics and ATI bills, alone, equals $11,940.00, the maximum $10,000.00 penalty pursuant to Section 19(l) shall apply.

Accordingly, the Commission grants Petitioner's Petition for Penalties pursuant to Section 19(l) and awards penalties in the amount of $10,000 on the afore-referenced unpaid bills.

Pursuant to Section 16 of the Act, the Commission further awards attorney's fees on the unpaid medical bills in the amount of $5,193.90 ($25,969.49 x 20%).

The Commission denies Petitioner's Petition seeking an award of penalties pursuant to Section 19(k) as it does not find Respondent's failure to pay said bills was unreasonable or vexatious.

Finally, the Commission finds that the Respondent is entitled to a credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petitions pursuant to Sections 8(a)/19(h), as well as the Petition for Penalties pursuant to Section 19(k) of the Act, are denied. Petitioner's Petition for Penalties pursuant to Section 19(l) and attorney's fees pursuant to Section 16 is granted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $25,969.49 for medical expenses under §8(a) of the Act, subject to the fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $10,000.00 in penalties, pursuant to §19(l) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay $5,193.90 in attorney's fees pursuant to §16 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.

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

December 16, 2022

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

MEP/dmm
O: 101822
49

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC018352
Case Name	Darrell Straughter v. Proviso Township High School (East)
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0493
Number of Pages of Decision	30
Decision Issued By	Maria Portela, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Kyle Tulley
Respondent Attorney	W. Britt Isaly

DATE FILED: 12/16/2022

/s/Maria Portela, Commissioner

Signature

DISSENT: /s/Kathryn Doerries, Commissioner

Signature

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

DARRELL STRAUGHTER,

Petitioner,

vs. NO: 21 WC 18352

PROVISO TOWNSHIP HIGH SCHOOL EAST,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of penalties and attorney's fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes clarifications regarding the rationale as outlined 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 Arbitrator found that Petitioner's injury was compensable because he was a traveling employee and was injured while engaging in an activity that was "reasonable and foreseeable." *Dec. at 9-11*. Alternatively, the Arbitrator also found that Petitioner's injury arose out of a risk "distinctly associated" with his employment under *McAllister v. IWCC*, 2020 IL 124848. *Id. at 11*. As explained below, we disagree with the Arbitrator's finding that Petitioner was a traveling employee but agree that his injury arose out of a distinctly employment risk.

Petitioner alleges that he injured his right knee while getting into a Respondent-owned pickup truck, which required him to "step up and grab the latch to pull yourself into the truck." *T.20*. Petitioner testified that, on June 1, 2021, he attended a morning meeting with his supervisor, Al McDonald who told Petitioner that he would be working outside that day. *T.26*. We note that it is unclear where (i.e., what building) this first meeting took place.

Petitioner testified that, after that first meeting, he was getting into the work truck to go to the laundry room where Claude Brown (who "oversees the groundsman work") gives the specific outdoor job assignments. *T.27-29*. Again, it is unclear where (i.e., what building) the laundry room was. As Petitioner was pulling himself up into the truck, his knee popped. *T.27*.

The Arbitrator focused on Petitioner's testimony that his job required him to perform certain functions such as going to Sam's Club, the post office, dumping debris, and moving materials (water, paper, desks, lawn equipment, etc.) from one school building to another. *T.14-26*. The Arbitrator found:

> There is really no dispute that travel was an essential element of Petitioner's employment. While Petitioner was classified as a "custodian," he was certainly not tethered to a school building, particularly as of June 1, 2021, more than a year into the pandemic. He did much more than arrange desks and sweep hallways. He regularly used several Respondent-owned trucks to drive to various locations for Respondent's benefit. Some of these locations were on the Proviso East campus while others were not. He routinely left the campus to drive to the Maywood dump, Sam's Club and the other two schools in the district. His supervisor acknowledged that the trips to Sam's Club increased markedly during the year preceding the accident, due to the pandemic. He also conceded that using Respondent's trucks made it "easier" for Petitioner to perform his job.

Dec.10-11. The Arbitrator also found, "While Petitioner acknowledged that he did not drive off campus every day, that fact does not defeat his claim. In Hoffman, 109 Ill.2d 194 (1985), the Supreme Court upheld the finding that the claimant, a director of nursing employed by a school district, was a traveling employee even though she drove to various schools only three days a week." *Id. (Underline in original).*

With respect to the Arbitrator, we believe the citation to *Hoffman* is misapplied in this case. In *Hoffman*, the claimant was injured off of the employer's premises while engaging in an alleged errand for the employer and tripped on a cord at a Goldblatt's Department Store. *Id. at 198*. Significantly, the Court affirmed the appellate court, which found that, although the claimant was a traveling employee, her injury did not arise out of her employment because she failed to prove that the errand was work-related. *Id. at 200-01*. The Court also held:

> However, a finding that a particular claimant is a traveling employee does not exempt the claimant from proving that an injury arose out of and in the course of employment, and some injuries, even when incurred by traveling employees, are not compensable under the

> Act. See, e.g., U.S. Industries v. Industrial Com. (1968), 40 Ill. 2d 469 (injuries suffered as the result of midnight pleasure drive into the mountains not compensable under the Act).
>
> In each instance where this court has considered whether a particular injury arose out of and in the course of employment, it has emphasized that the Act was not intended to insure employees against all accidental injuries.

Id. at 199.

Therefore, although *Hoffman* does stand for the proposition that an employee who travels to various schools three days a week is considered a traveling employee, it does not really help Petitioner's claim because there is no evidence that Petitioner was even in the process of attempting to "travel" on the day of his accident. Yes, he was entering his work truck to attend a work meeting, but there is no evidence that he was required to leave Respondent's property to attend that meeting. In other words, it is unclear whether Petitioner was required to go from his first meeting with Al McDonald to the second meeting with Claude Brown by traversing any public streets. If Petitioner was simply getting into the truck to cross a parking lot on Respondent's property to a different building (also on Respondent's property) without going onto or across a public street, then he was not engaging in "travel" at the time.

The Arbitrator acknowledged this point when she wrote:

> Petitioner was not injured while driving to any of his typical off-campus destinations but his conduct at the time of the injury was certainly reasonable and foreseeable. He was pulling himself up into one of the work trucks, with the intention of driving to a laundry room to get his assignment for the day, when he injured his right knee. There was nothing reckless or unpredictable about his conduct. Respondent had every reason to foresee that he would use the truck to get to a work meeting.
>
> Applying this analysis, the Arbitrator finds that Petitioner was a "traveling employee" as of June 1, 2021 and that his conduct on that day was reasonable and foreseeable. Petitioner established a compensable accident under a traveling employment analysis. Kertis v. IWCC, 2013 IL App (2d) 120252WC.

Dec. at 11 (Underline in original).

To paraphrase, the Arbitrator seems to have found "once a traveling employee, always a traveling employee." In other words, although Petitioner was not in the process of "driving to any of his typical off-campus destinations," he was "driving to a laundry room to get his assignment for the day." *Id. at 11*. We disagree with this analysis because, again, there is no evidence that Petitioner had to leave Respondent's property to get to that laundry room. Using an analogy, if the employer was a large factory that covered a square mile and an employee used a work pickup truck to visit various buildings on the employer's property throughout the day, that would not make

the employee a "traveling employee." If that employee remained on the employer's premises the entire time, there would be no "travel" even though the employee may have driven a pickup truck instead of walking to the various buildings.

Therefore, we believe the important missing element of a traveling-employee analysis in the case at bar is that Petitioner failed to prove he was "traveling" or even in the process of preparing to travel when he entered the pickup truck. The Arbitrator appears to have expanded the concept of traveling employee from a person who has to leave the employer's workplace into a person who uses a vehicle on the employer's property, which we find to be an inappropriate extension of the traveling employee doctrine.

We also believe the Arbitrator's citation to *Kertis* is misapplied in this case as well. In *Kertis*, the appellate court reversed the Commission's finding that the claimant was not a traveling employee and agreed with the dissenting Commissioner (Mason) on that issue. *2013 IL App (2d) 120252WC at 10, 18-19*. The big difference between *Kertis* and the case at bar is the claimant in *Kertis*, a bank branch manager, was injured stepping into a pothole in a municipal parking lot (i.e., off of the employer's premises) while traveling from one bank branch to another. In other words, he was actually traveling off of the employer's premises at the time of his injury. In contrast, there is no evidence that Petitioner was in the process of traveling or even intended to travel off of Respondent's premises at the time of his injury.

Accordingly, we reverse the Arbitrator's finding that Petitioner was a traveling employee at the time of his injury. Based on the above analysis, we also disagree with the Arbitrator's finding that it was unreasonable for Respondent to have disputed Petitioner's status as a traveling employee. We find that Respondent's legal and factual position on that issue was reasonable and not vexatious under the circumstances of this case. Nevertheless, we agree with the Arbitrator that Respondent's position that Petitioner's accident did not arise out of his employment was unreasonable and vexatious in light of the Supreme Court's decision in *McAllister v. IWCC*, 2020 IL 124848, which, as the Arbitrator pointed out, was issued more than a year before the hearing in this case. *Dec. 13*.

Respondent argues that Petitioner's use of Respondent's pickup truck was not incidental to his job duties" but was provided "as a convenience to get to another meeting." *R-brief at 4*. We find this argument untenable. It would be like an employer who performs concrete demolition services arguing it provides a jackhammer to its employees only as a convenience, or a landscaping company hiring someone to mow lawns but claiming that it only provides lawnmowers as a convenience. We also believe it is disingenuous for Respondent to imply that Petitioner should have just walked to the second meeting and that he was not required to drive the truck (even though he had done so regularly). It does not take much imagination to foresee that, if Petitioner had walked to the second meeting and was injured while walking, Respondent would likely be arguing that it was Petitioner's personal choice to walk instead of taking the pickup truck, which had been provided to him.

To be clear, we find Petitioner was exposed to a risk distinctly associated with his employment when he got into the pickup truck to go from one work meeting to another. It was also unreasonable for Respondent to deny the claim based on its argument that Petitioner was not engaged in a distinctly employment-related risk. Therefore, we affirm the award of penalties under §19(l), §19(k) and attorney's fees under §16 of the Act.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 24, 2022 is hereby affirmed and adopted with the clarifications noted above.

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.

December 16, 2022

/s/ *Maria E. Portela*

SE/
O: 10/18/22
49

/s/ *Thomas J. Tyrrell*

DISSENTING OPINION

I agree with my colleagues regarding their modification of the Arbitrator's Decision and their finding that Respondent's legal and factual position disputing that Petitioner was a traveling employee was reasonable and was not vexatious under the circumstances of this case. Petitioner did not prove he was a traveling employee. However, I dissent from the majority's opinion affirming the Arbitrator's award of §19(k) and §19(l) penalties and §16 attorney's fees and find that an imposition of penalties and fees for essentially applying the wrong risk analysis is draconian.

The majority affirms the Arbitrator's award of §19(k) and §19(l) penalties and §16 attorney's fees which will likely exceed $30,000.00, depending upon the final fee schedule reduction to the $31,552.00 awarded in medical bills. The award states:

> For the reasons set forth in the attached decision, the Arbitrator finds that Respondent acted *in an objectively unreasonable manner, under all of the existing circumstances,* in disputing accident and causation in this case and refusing to pay any benefits under the Act. (emphasis added) (Arb. Dec., Order, p. 2)

Further, in awarding penalties and fees, the majority agreed with the Arbitrator, "it was perilous to ignore *McAllister,* a decision that the Supreme Court issued more than a year before the hearing in this case." (Dec. 13) The majority's position regarding the application of *McAllister* to this set of facts is premised on Petitioner's satisfying his burden of proving that he was injured while performing his job duties and his injury had its origin in some risks connected with, or incidental to, employment so as to create a causal connection between the employment and the accidental injury, presumably that was by getting into the F-150 pickup truck. While the *McAllister* decision was issued one year prior to the subject hearing, by no means did it, or does it, stand for the proposition that every employee accident that occurs at work is compensable and should be accepted by employers or they will be subject to penalties and fees. If risk analysis was that clear, employers would be strictly liable for every accident that occurs at work. In other words, there would be no distinction between the two prongs that Petitioner is presently required to satisfy to meet Petitioner's burden of proving accident, i.e. the arising out of and in the course of components required by the Act. *820 ILCS 305/1(d)* (West 2014). I do not believe that was the intent of the Supreme Court when they issued *McAllister*.

The Incident Report completed by Petitioner states "getting into pickup truck and my nee (sic) had a pop." (PX5) Initially, the claims adjuster denied the case based upon a neutral risk analysis, on grounds that there was no greater risk to the Petitioner than the general public when getting into a flatbed pickup truck, aka the Ford F-150. (PX2, 146) The Exhibit that was admitted into evidence on Respondent's behalf, containing the pictures of the vehicle which Petitioner alleged he was getting into when he was injured, could justify a denial of benefits. (RX1) Petitioner testified that the pictures in Respondent's Exhibit 1 are of a Ford F-150. (T. 48) It is patently obvious that Respondent, knowing that it is Petitioner's burden of proving his accident occurred in the course of and arising out of his employment, relied upon those pictures as a good faith defense because the truck is no larger or higher than thousands of similar pickup trucks that are owned by individuals everywhere in the United States. Further, Petitioner was merely headed to a meeting and not yet working, at the beginning of his workday. Thus, Respondent took the position that Petitioner satisfied the "in the course of" prong, however, not "the arising out of" prong that Petitioner must satisfy to meet his burden of proof.

In following the *Caterpillar Tractor* line of cases, the *McAllister* Court provided the following framework:

> *Caterpillar Tractor* prescribes the proper test for analyzing whether an injury "arises out of" a claimant's employment, *when a claimant is injured performing job duties* involving common bodily movements or routine everyday activities. (emphasis added) *Sisbro* and *Caterpillar Tractor* make it clear that common bodily movements and everyday activities are compensable and employment related if the common bodily movement resulting in an injury had its origin in some risks connected with, or incidental to, employment so as to create a causal connection between the employment and the accidental injury. *Sisbro*, 207 Ill. 2d at 203 (citing *Caterpillar Tractor*, 129 Ill. 2d at 58). *Caterpillar Tractor* does not require a claimant to provide additional evidence establishing that he was exposed to the risk of injury, either qualitatively or quantitatively, to a greater degree than the general public, once he has presented proof that he was involved in an employment-related accident. *Caterpillar Tractor*, 129 Ill. 2d at 58. *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848, P63, 181 N.E.3d 656, 672, 2020 Ill. LEXIS 561, *26-27, 450 Ill. Dec. 309, 320.

This accident date is only nine months after *McAllister* was decided and the hearing was a little more than one year after *McAllister* was decided. At the time of this hearing, sufficient time had not passed for many Appellate Decisions to issue since *McAllister* was decided. Employers and insurance carriers had only begun to ferret out what the Supreme Court's application of the *Caterpillar* line of cases meant exactly in the context of being "injured *performing job duties* involving common bodily movements or routine everyday activities" and "risks connected with, or incidental to, employment" such that the *McAllister* decision does not abolish the distinction between the "in the course of" and the "arising out of" prongs required by Statute to prove accident. *820 ILCS 305/1(d)* (West 2014).

Further, the Petitioner in *McAllister* had been on the floor searching when he "stood up from that kneeling position and injured his knee." *McAllister v. Ill. Workers' Comp. Comm'n,* 2020 IL 124848, P51. The *McAllister* Court decided in favor of Petitioner, in part, specifically because he was performing job duties. The Court relied upon a line of cases which emphasized that Petitioner was performing his job duties by helping another co-worker:

> It is generally recognized that an employee who sustains an injury while rendering reasonably needed assistance to a coworker in furtherance of the employer's business is considered to have suffered an injury arising out of and in the course of employment when the act performed is within the reasonable contemplation of what the employee may do in the service of the employer. *Wright v. Beverly Fabrics, Inc.*, 95 Cal. App. 4th 346, 115 Cal. Rptr. 2d 503, 509-10 (Ct. App. 2002) (citing *Scott v. Pacific Coast Borax Co.*, 140 Cal. App. 2d 173, 294 P.2d 1039, 1044 (Cal. Ct. App. 1956) (collecting cases)); see, *e.g., Peel v. Industrial Comm'n*, 66 Ill. 2d 257, 260, 362 N.E.2d 332, 5 Ill. Dec. 861 (1977) ("since the accidental injury was sustained while [claimant] was assisting in the removal of the

> vehicle which was blocking the only usable entrance to the company's property, it plainly was incidental to his employment"); see 99 C.J.S. *Workers' Compensation* § 407 (2000) (titled "Acts for benefit of coemployee").
>
> Stated otherwise, "injuries sustained while extending ordinary courtesies to fellow employees are within the reasonable incidents of the employment." 99 C.J.S. *Workers' Compensation* § 454, at 502-03 (2013). "The modern rule brings within the course of employment any activity undertaken in good faith by one employee to assist a co-employee in the latter's performance of his work." Larson, *supra* § 27.01[1], at 27-2 (titled "Helping Co-Employee With His Work"). As Professor Larson's treatise explains: "The reason for this holding is simple: it would be contrary not only to human nature but to the employer's best interests to forbid employees to help each other on pain of losing compensation benefits for any injuries thereby sustained." Larson, *supra* § 27.01[2], at 27-3 to 27-4. *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848, P48-P49, 181 N.E.3d 656, 668, 2020 Ill. LEXIS 561, *16-17, 450 Ill. Dec. 309, 316.

In this case, Respondent's denial was based, in part, upon the premise that Petitioner was not injured performing job duties. Petitioner was at work and headed to a meeting by getting into a common flatbed pickup truck but not actually working, thus a neutral risk analysis was not "objectively unreasonable" as the majority asserts.

On redirect examination, Petitioner testified:

Q. Darrell, I kind of want to run through the timeline of that day. So you stated that your shift started 7:30 in the morning, correct?
A. Yes.
Q. Once your shift started, you then proceeded to have your meeting with Al McDonald, correct?
A. Yes.
Q. At that time Al told you that you would be needed for groundwork that day; is that correct?
A. Yes.
Q. At that point you then have to go meet with Claude Brown because Claude Brown then assigns the job duties or job assignments for the grounds work, correct?
A. Yes.
Q. So in between that meeting with Al and that meeting with Claude, you proceeded to walk to the F-150 truck, correct?
A. Yes.
Q. And this F-150 truck does not have a step rail like the other trucks may have; is that correct?
A. Yes.

Q. So there is no assistance in getting into the truck? You have to open up the door and pull yourself up; is that correct?
A. Yes.
Q. And while pulling yourself up into the F-150 truck, that's when you heard a pop in your knee and felt immediate pain in your knee; is that correct?
A. Yes.
Q. You then still continued to proceed to go meet with Claude Brown, is that accurate?
A. Yes.
Q. And then at that time when you are meeting with Claude, that's when Claude told you that your job for the grounds duty that day would be to spray weeds; is that correct?
A. Yes.
Q. But you didn't know what specific job assignment or job task you were going to have before you met with Claude Brown that day; is that correct?
A. Yes. (T. 64-65)

The incident report (PX5) stated he was getting into the truck and his "(k)nee had a pop." The operative report said he was stepping into pickup and he felt his knee pop. (T. 528). So he was getting into, pulling himself into or stepping into the truck. Petitioner testified that put his right leg into the cab first, and at the time he was pulling himself up, he heard the pop, then felt pain. (T. 50-51) It must be noted that Petitioner injured his right knee entering the truck, not the left knee which would have been supporting his weight as he got into the truck. Although Petitioner's testimony was more specific than his incident report, in no way did he explain how his getting into the truck caused his knee to pop. A close inspection of Respondent's Exhibit 1 depicts a regular Ford flatbed pickup truck with no impediment from entering the driver's seat. The Petitioner did not testify that there was pressure on his leg, or that he twisted or that any mechanism of injury caused his knee to pop; he testified he *heard* his knee pop while he was "pulling himself" into a vehicle. There is certainly a question regarding the majority's assumptions about the mechanism of injury or how or why the age of the F-150 truck or the absence of the step rail are causes of the Petitioner's right knee injury when the Petitioner's testimony and incident report are vague and the pictures belie that anything about the truck cab caused the injury.

In *Greater Peoria Mass Transit District*, the Illinois Supreme Court held that to be entitled to benefits under the Workers' Compensation Act more is required than the fact of occurrence at the employee's place of work. *Smith's Transfer Corp. v. Industrial Comm'n.* (1979), 76 Ill. 2d 338, 350-52. *Greater Peoria Mass Transit Dist. v. Industrial Comm'n*., 81 Ill. 2d 38, 43, 405 N.E.2d 796, 798, 1980 Ill. LEXIS 333, *6, 39 Ill. Dec. 817, 819. The difficulty reconciling *McAllister* and *Greater Peoria Mass Transit District* is obvious, and the plethora of litigation on risk analysis is not likely to end with *McAllister*. Even in the context of this Arbitrator's analysis, the majority believes the application of the alternative risk analysis under the traveling employee exception was erroneous. The majority's award of penalties and attorney's fees, however, suggests that Respondents will be penalized for getting a risk analysis wrong despite the fact that risk analysis

is so incredibly complex that *McAllister* cites innumerable previous decisions. To suggest that the holding in *McAllister* is so crystal clear that penalties and fees should be awarded if a defense is wrong changes the standard. The Respondent's denial in this case is not objectively unreasonable.

The Appellate Court recently determined that the Commission properly analyzed a case according to neutral risk principles when the Petitioner's knee popped walking down the hall at work to go to speak to the Deputy Chief after he had already responded to a call, jumped up onto the engine truck and on his return to the firehouse conducted a training session. (see *Buckley v. Ill. Workers' Comp. Comm'n,* 2022 IL App (2d) 210055WC-U, 2022 Ill. App. Unpub. LEXIS 1000) Similarly, this Petitioner's getting into a vehicle to go to a meeting before he does his actual work might be viewed as no different. Like the fireman, Petitioner had a prior surgery to the right knee when he was young. (PX2, 29) The fireman in *Buckley* was at work, but the Appellate Court determined that the Commission properly analyzed the claim according to neutral risk principles noting that the claimant's injury had no particular employment characteristics. When an employee is merely getting into a vehicle, with nothing more, it is not unreasonable to find the injury had no particular employment characteristics.

It also cannot be said that the defense in this case was frivolous or vexatious such as the ones recently reviewed in *McDonald's v. Il Workers' Compensation Comm'n,* (citation) The *McDonald*'s Court examined *Residential Carpentry, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 975, 983, 910 N.E.2d 109, 331 Ill. Dec. 36 (2009). In *Residential Carpentry*, a decision related to delay in payments, the court noted that generally a reasonable and good faith defense tactic does not subject an employer in most cases to liability for penalties under the Act. The standard to make the determination is if it is objectively reasonable. *Id.* If an employer possesses facts that would justify its position, fees and penalties are usually inappropriate. *Id.* The corollary is that if an employer possesses facts supporting but one finding, which facts are contrary to the position taken by the employer, penalties and fees are appropriate.

It cannot be said this employer possesses such facts supporting but one finding. After all Petitioner was getting into a vehicle to go a meeting to determine what job duties he was assigned the day of the accident.

The *McDonald's* Court then looked at *Oliver v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 143836WC, ¶ 41. In *Oliver,* relating to notice, albeit in a different manner, an employer refused to accept the employee's notice of the accident and denied the claim because it was not given on the day of the accident. *Oliver v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 143836WC, ¶ 41. The *Oliver* Court found the employer's conduct unreasonable, as it had no legitimate basis to deny benefits based on lack of notice. *Id.* Specifically, the employer had no factual or medical basis to deny the claim. It simply did so because the employee reported the claim six days after the injury. *Id.* The *Oliver* Court further noted penalties and fees under sections 16 and 19(k) are intended to address deliberate conduct, or that which is undertaken in bad faith or for an improper purpose. *Id. ¶* 49.

The *McDonald's* Court further explained another way of determining a good-faith defense:

> We can also look generally to the rules of our supreme court for guidance. Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018) provides in pertinent part:
> "The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and *belief formed after reasonable inquiry* it is *well grounded in fact* and is warranted by existing law or a *good-faith argument for the extension*, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." (Emphases added.)
> Thus, the supreme court has also sought to discourage parties from taking positions that are not undertaken in good faith, or are not well grounded in fact. In short, the court seeks to discourage the same type of conduct the legislature does in sections 16 and 19(k) of the Act.
> ***The gist of the foregoing is that, in our context, an employer must have a reasonable basis to take a position. In other words, there must be some legitimate purpose served by an employer's litigation tactics." *McDonald's v. Ill. Workers' Comp. Comm'n*, 2022 IL App (1st) 210928WC, P66-P74, P66-P74, 2022 IL App (1st) 210928W, 2022 Ill. App. LEXIS 292, *23-27.

In this case, Respondent had a reasonable basis to take the position that the Petitioner was at work, but not yet working when he did nothing more than get into a vehicle; not a semi- truck or trailer, but a common pickup truck. Petitioner was going to a meeting and got into a flatbed truck similar to those used by the general public every day. Even if the risk analysis used by Respondent is deemed incorrect by the reviewing court, does that equal "objectively unreasonable" and does that warrant punitive penalties and attorney's fees? I think not and thus must respectfully dissent from my colleagues.

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC018352
Case Name	STRAUGHTER, DARRELL v. PROVISO TOWNSHIP HIGH SCHOOL (EAST)
Consolidated Cases	
Proceeding Type	19(B)/8(A) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Molly Mason, Arbitrator

Petitioner Attorney	Kyle Tulley
Respondent Attorney	W. Britt Isaly

DATE FILED: 1/24/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 19, 2022 0.37%

/s/Molly Mason, Arbitrator

Signature

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)/8(A)

Darrell Straughter Case # **21** WC **18352**
Employee/Petitioner

v.

Proviso Township High School (East)
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 **Molly C. Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **11/19/21**. 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, **6/1/21**, 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 $**63,172.99**; the average weekly wage was $**1,214.87**.

On the date of accident, Petitioner was **56** 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 $**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 $**11,951.95** under Section 8(j) of the Act. The parties further agree that any additional amounts paid by Respondent's group carrier will be applied as a credit to Respondent under Section 8(j). Arb Exh 1.

ORDER

Respondent shall pay Petitioner's medical bills totaling $31,552.00 ($3,442.00 Elmhurst Center for Health; $43.00 Elmhurst Radiologist; $1,295.00 G & T Orthopaedics and Sports Medicine; $24,072.00 Loyola Medicine; $2,700.00 Bright Light Imaging) per fee schedule directly to Petitioner as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $809.91/week for 24-2/7 weeks, commencing 6/3/21 through 11/19/21, as provided in Section 8(b) of the Act.

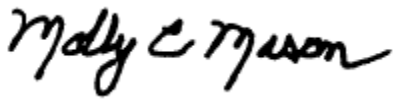
Respondent shall authorize and pay for prospective care in the form of return visits to Dr. Evans, Petitioner's knee surgeon, and post-operative knee therapy.

For the reasons set forth in the attached decision, the Arbitrator finds that Respondent acted in an objectively unreasonable manner, under all of the existing circumstances, in disputing accident and causation in this case and refusing to pay any benefits under the Act. The Arbitrator finds Respondent liable for Section 19(l) penalties in the amount of $5,100.00. This amount represents $30.00 per day multiplied by the 170 days from June 3, 2021 through November 19, 2021. With respect to the awarded temporary total disability benefits, which total $19,669.47 the Arbitrator awards Section 19(k) penalties in the amount of $9,834.74 (representing 50% of $19,669.47) and Section 16 attorney fees in the amount of $3,933.09, representing 20% of $19,669.47. With respect to the awarded medical expenses, the Arbitrator notes there is no evidence as to the amounts owed pursuant to the fee schedule. The Arbitrator views those amounts as the measure of Respondent's medical liability. The Arbitrator awards Section 19(k) penalties and Section 16 attorney fees equivalent to 50% and 20%, respectively, of the awarded bills, once those bills have been reduced per the 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.



Signature of Arbitrator

JANUARY 24, 2022

ICArbDec19(b)

Darrell Straughter v. Proviso Township High School (East)
21 WC 18352

Summary of Disputed Issues

Petitioner is a longtime high school custodian with varied duties, some of which required the use of Respondent-owned trucks to travel around and off campus. Petitioner claims he injured his right knee on June 1, 2021, when pulling himself up into the oldest of these trucks, an F150 pick-up. Unlike the newer models, this truck lacked a step rail. His intention at the time of the injury was to drive the truck to a work meeting to obtain his assignment for the day.

Petitioner's supervisor, who appeared on behalf of Respondent, acknowledged that Petitioner used the trucks both on campus and to travel off campus to drop off debris at a dump, pick up supplies at a Sam's Club and do the "mail run," which involved driving to Proviso "West" and the Proviso Math and Science Academy. The supervisor volunteered that, since the pandemic, Respondent employees had made "many more trips" to Sam's Club to buy water and other items.

Respondent disputed accident as well as causation and paid no benefits under the Act. Respondent did not obtain a Section 12 examination. Respondent's admitted documentary evidence consisted of photographs of the truck in question. RX 1.

Petitioner used his group health coverage to pay for a meniscal repair performed in October 2021. As of the hearing, Petitioner was participating in post-operative physical therapy.

The other disputed issues include medical expenses, temporary total disability, penalties/fees and prospective care in the form of post-operative physical therapy.

Procedural Note

At the hearing held on November 19, 2021, Petitioner moved to voluntarily dismiss a companion case numbered 21 WC 18028. The Arbitrator granted this motion.

Arbitrator's Findings of Fact

Petitioner testified he is currently 57 years old. T. 12. He began working as a custodian for Respondent in September 2001. He started off as a night custodian and later began working during the day. T. 13. He works five days a week, eight hours a day. T. 18. His indoor duties include moving desks, fixing doors and collecting garbage. T. 13. His outdoor duties include cutting grass, "weed whacking", trimming bushes, raking leaves and collecting debris. T. 13-15. If he has to move desks or other equipment from one side of the school building to the other, he uses a truck. T. 14. He is based at Proviso "East" but travels to and from the other two

schools in the district. Those schools are Proviso "West" and Proviso Math & Science Academy, which is known as "PMSA". The Proviso "East" campus is split into two parts. The school grounds are on one side of First Avenue and the athletic fields are on the other. T. 25.

Petitioner testified he and three other day custodians routinely use three Respondent-owned trucks to perform certain work tasks. T. 16-17, 19-20. He uses the trucks each workday. T. 19. Each truck bears Respondent's logo. T. 17-18. Petitioner testified the trucks are essential to his job. T. 18. He uses the trucks to:

* transport desks and equipment;

* deliver items such as weed whackers and paint to athletic fields that are one to three blocks away from the Proviso "East" school building;

* take discarded items and debris to dumpsters and sometimes to a dump that is five blocks away:

*deliver items such as paper and water to other schools within the district;

*procure items at a Sam's Club store where Respondent has an account; and

*do "mail runs" to principals and treasurers at the other schools.

Petitioner testified that, on the days he uses trucks at work, he steps in and out of a truck between five and fifteen times, depending on his assigned duties. T. 19. The truck he got into immediately prior to his injury was an older "F150" pick-up model. He testified that you have to step up and grab a latch in order to pull yourself into this truck. T. 20.

Petitioner acknowledged injuring his right knee when he was fourteen. He underwent surgery following this injury. T. 40. He denied undergoing any right knee treatment between the time he recovered from this surgery and the work accident of June 1, 2021. T. 40. As of that accident, he was not having any right knee problems.

Petitioner testified he started work at 7:30 AM on June 1, 2021. T. 26. He initially attended a customary morning meeting with his supervisor, Al McDonald. At these meetings, McDonald would tell him whether he would be working indoors or outdoors. On June 1, 2021, McDonald told him he would be working outdoors. T. 26. Following the meeting, he approached his assigned work truck with the goal of driving to the laundry room, where he would meet with Claude Brown and learn exactly what tasks he would be performing. Claude Brown oversees the grounds work. T. 27. As he got into the truck and "pulled up", his right knee popped and he felt pain. T. 29. When he got into the truck he did not know whether he would need the truck to perform his duties. T. 28. Some of the assignments he received from Claude Brown required truck usage. T. 28-29.

Petitioner testified that, despite his knee pain, he managed to drive to the laundry room and meet with Claude Brown. Brown assigned him to the task of operating a John Deere vehicle known as a "Gator" and spraying weed killer. T. 30. He reported his injury to both McDonald and Brown. He performed his assigned duties, using the "Gator", and finished his shift. T. 30.

Petitioner testified he first sought medical treatment on Thursday, June 3, 2021. T. 30. [Petitioner also completed an accident report that day. PX 5.] Al McDonald drove him to the Emergency Room at Elmhurst Hospital that day. McDonald told him that Elmhurst Hospital is the facility that Respondent uses. T. 31. The purpose of the hospital visit was twofold: drug testing and knee treatment. T. 31.

Petitioner testified he informed hospital personnel of his work accident and was diagnosed with a sprain. The doctor imposed restrictions which Respondent was unable to accommodate. T. 41.

Records in PX 1 reflect that Petitioner saw Dr. Nowak at Elmhurst Occupational Health on June 3, 2021. The doctor recorded a consistent history of the accident, noting that Petitioner was "climbing up into his truck when he felt a pop in his right knee with subsequent 7 out of 10 pain and swelling." The doctor also noted that Petitioner had undergone right knee surgery as a teenager "secondary to cartilage injury." On right knee examination, he noted a small effusion, mild diffuse tenderness to palpation, stability to stress testing and a full range of motion. He described Petitioner as walking with a mild limp. He obtained right knee X-rays which showed no acute findings, a suspect small effusion and moderately severe degenerative narrowing of the lateral joint space. Px 1, p. 14. He diagnosed a right knee sprain. He prescribed Ibuprofen and range of motion exercises. He released Petitioner to "75% seated work" with no lifting, pushing or pulling over 20 pounds, no squatting or kneeling, no ladder usage, no driving of company vehicles. He directed Petitioner to return on June 10th. PX 1, pp. 8-10. In a work status report dated June 3, 2021, Dr. Nowak characterized Petitioner's right knee sprain as work-related. PX 1, p. 11.

Petitioner returned to Elmhurst Occupational Health on June 10, 2021 and again saw Dr. Nowak. The doctor noted that Petitioner felt somewhat better but was still experiencing intermittent 3/10 right knee aching and difficulty walking. On right knee re-examination, the doctor noted a mild effusion with tenderness over the medial joint line, some limitation in flexion and stability to stress testing. He prescribed physical therapy and continued the previous restrictions. He directed Petitioner to return on June 17th. PX 1, pp. 17-19.

On June 11, 2021, a claims examiner affiliated with Respondent's workers' compensation carrier wrote to Petitioner and informed him his claim was being denied:

> "We have completed our review of the circumstances surrounding your injury of 06/01/2021. It is our decision that the injury is not compensable under the Illinois Workers' Compensation Act as you

are at no greater risk than anyone else getting into a company vehicle."

The claims examiner recommended that Petitioner submit a claim for short-term disability benefits "through any applicable program" and submit his medical bills to his group carrier. PX 2, p. 46.

Petitioner saw Dr. Nowak again on June 17, 2021. The doctor noted that Petitioner was still experiencing pain along the medial and lateral sides of his right knee, especially with stair usage. He also noted that Petitioner was off work and awaiting his first therapy appointment. He described Petitioner's right knee as slightly swollen compared to the left. He continued the work restrictions and directed Petitioner to begin therapy as scheduled. He also instructed Petitioner to return on July 1, 2021. PX 2, pp. 20-23.

Petitioner underwent an initial physical therapy evaluation at Loyola on June 10, 2021. The evaluating therapist recorded the following history of the work accident: "R knee popped while stepping up and into work truck. Notes work truck does not have step into truck." PX 3, p. 17. Petitioner continued participating in therapy following the evaluation. PX 3, pp. 48, 57.

Petitioner next saw Dr. Nowak on July 1, 2021, having completed three therapy sessions in the interim. The doctor noted that Petitioner was still experiencing 3-4/10 right knee pain with activity. His examination findings were essentially unchanged. He continued the work restrictions and directed Petitioner to see Dr. Tu or one of his partners on July 6th. PX 1, pp. 27-31.

Petitioner testified he ended up seeing Dr. Tu's partner, Dr. Giannoulias, on July 6, 2021. T. 33. He told Dr. Giannoulias he injured his right knee while getting into a work truck. T. 33. The doctor noted that Petitioner was bending his right knee while getting into a work truck when he felt a loud pop and pain. He also noted that Petitioner had experienced a knee problem "several years ago that resolved." On right knee examination, he noted an effusion, tenderness over the medial and lateral joint lines, a limited range of motion and a positive McMurray's with circumduction. He indicated that Petitioner's X-rays showed lateral compartment arthrosis. He suspected an acute meniscus tear and ordered an MRI. PX 2, p. 6. He released Petitioner to light duty with no lifting over 10 pounds, no repetitive kneeling or crouching and no use of commercial vehicles. PX 2, p. 39. He directed Petitioner to continue physical therapy. PX 2, p. 44.

The right knee MRI, performed without contrast on July 13, 2021, showed a trace effusion, no acute fracture or dislocation, a near complete radial tear of the body near the root of the medial meniscus, a "markedly diminutive entire lateral meniscus" that potentially correlated with the history of the prior surgery and a Grade 1 to 2 sprain of the proximal medial collateral ligament. PX 2, pp. 29-30. PX 4.

On July 15, 2021, Dr. Giannoulias informed Petitioner of the meniscal tear and noted that Petitioner wanted to try to avoid surgery. The doctor administered a Kenalog injection and

indicated that Petitioner would be a candidate for an arthroscopy if his symptoms persisted. PX 2, p. 5. He took Petitioner off work. PX 2, p. 21. T. 34.

On July 22, 2021, Petitioner's counsel served Respondent's counsel with a petition for penalties and fees. In the petition, Petitioner asserted that Respondent acted in bad faith in disputing accident. PX 7.

Records in PX 3 reflect that Petitioner underwent an unrelated left carpal tunnel release at Loyola on August 3, 2021.

Petitioner returned to Dr. Giannoulias on August 17, 2021 and reported that the knee injection helped for only a week and that his symptoms had recurred. The doctor's examination findings were unchanged. He recommended an arthroscopy and noted that Petitioner wanted to proceed. PX 2, p. 4. He continued to keep Petitioner off work and scheduled the surgery for October 12th. PX 2, pp. 15-16.

On August 31, 2021, a member of Dr. Giannoulias's staff contacted the workers' compensation carrier and asked the claims examiner if she had reviewed a previous request for surgical authorization. PX 2, p. 12. The claims examiner responded on September 7th, indicating that the claim had been denied and that the doctor would "need to file under [Petitioner's] BCBS coverage for surgery approval." PX 2, p. 10. T. 36.

Petitioner testified he transferred his knee treatment to Dr. Evans at Loyola because neither Dr. Giannoulias nor Elmhurst Hospital would accept his group coverage with Blue Cross/Blue Shield. T. 35. He first saw Dr. Evans on September 20, 2021. The doctor recorded a history of the work accident and subsequent care by Dr. Giannoulias. On right knee examination, he noted tenderness over the medial and lateral joint lines and mild crepitus with active extension. He obtained repeat X-rays which showed mild tricompartmental arthritis. He reviewed the MRI images. He recommended that Petitioner undergo an arthroscopic partial medial meniscectomy and debridement. He indicated Petitioner "may ultimately require knee replacement." PX 3, pp. 457-458.

Dr. Evans operated on Petitioner's right knee at Loyola on October 1, 2021. T. 37. The doctor performed an arthroscopic partial medial meniscectomy, an arthroscopic partial lateral meniscectomy, an arthroscopic extensive debridement chondroplasty and a manipulation under anesthesia. PX 3, pp. 520-522. He resumed therapy postoperatively. PX 3, p. 657. He is continuing to see Dr. Evans and also performs knee exercises at home. T. 37. He began a strengthening regimen at physical therapy the day before the hearing. T. 38. He continues to experience 4/10 pain and uses a cane to walk. His pain increases with activity. He sometimes has difficulty sleeping due to pain. T. 39. He takes Ibuprofen 600 mg on an "as needed" basis for his pain. T. 38. He is scheduled to return to Dr. Evans on December 13th or 14th. T. 39. He wants to continue undergoing care for his right knee.

Petitioner testified that Dr. Evans has not released him to work of any kind. T. 41. PX 3, p. 855. While he was on light duty, in June and July 2021, Respondent did not accommodate his restrictions. T. 41. He has received no temporary total disability benefits to date. Workers' compensation did not pay his medical bills. T. 41. His group carrier paid some of his medical bills. He had to pay out of pocket for some of his doctor visits. Some of his bills remain unpaid. T. 42.

Records in PX 3 reflect that Petitioner returned to Dr. Evans on November 2, 2021 and rated his pain at 4/10. The doctor noted that Petitioner was still using one crutch for ambulation. He directed Petitioner to continue attending therapy and discontinue the crutch when he felt able to do so. PX 3, pp. 778-779. He instructed Petitioner to return in six weeks. PX 3, p. 780.

Under cross-examination, Petitioner reiterated that, before he met with Claude Brown on June 1, 2021, he was not sure whether he would need a work truck to perform his duties that day. T. 43. He used a truck five days a week when performing the "mail run". He also used a truck periodically to go to Sam's Club. T. 43. On the morning of the accident, he knew he would be on the "grounds crew" but It was not until after he met with Brown that he knew exactly what his duties would be. He and the other custodians "use trucks every day concerning grounds work." T. 44. At the meeting, Brown assigned him to spray weeds on Respondent's property across First Avenue. Petitioner clarified that, as of the time of his accident, he used a work truck five days per week to do the mail run when he was assigned to mail run duty. T. 44-45. He was typically the first employee to be assigned to do the mail runs but another employee would perform the mail run when he was assigned to grounds. T. 45. On the day of the accident, he knew he would not be using the truck to drive off campus. T. 46. His job that day entailed spraying weed killer. He used the John Deere "Gator" while spraying the weeds. T. 46.

After looking at an array of photographs marked as Respondent's Group Exhibit 1, Petitioner testified that the photographs accurately depicted the truck that he got into at the time of his injury. The truck is a Ford F150 pick-up. T. 48. The photographs show the F150 parked on a grassy area near the teachers' parking lot on Madison, on Respondent-owned property. T. 59. Respondent's two other work trucks are also Fords. The newest one is a F250 or F350. It is bigger and higher than the F150. T. 53. The other is a dump truck. T. 49, 52. When he got into the F150 on June 1, 2021, he pulled himself in using a handle near the windshield. [This handle can best be seen in the photographs marked as "3" and "4". RX 1.] He put his right leg into the cab first and then pulled himself up. It was at this point that he felt his knee pop. He was not carrying anything and was not in a rush. T. 51-52. He was wearing his work uniform, which consists of pants and a shirt. His uniform is not tight. T. 51. He typically used the F250 to dump debris, either at the dumpsters or the dump. The F250 has a step rail but the F150 does not. The Proviso East campus is three to four blocks long, north to south, and two to three blocks long, east to west. T. 54. He would sometimes drive the F250 off campus to the dump in Maywood. It depended on the season and the type of debris he was

dumping. During a summer month, he would typically make five to twenty visits to the Maywood dump. T. 55.

Petitioner testified he injured his right knee at age fourteen, when he tripped while playing basketball in a gym. T. 57. He underwent right knee surgery at age fourteen. He had some lasting pain following this surgery but the pain resolved while he was still a teenager. T. 57-58. He did not reinjure his right knee thereafter until the work accident of June 1, 2021. T. 58. He has filed other workers' compensation claims against Respondent but none of them involved his right knee. T. 58.

Petitioner testified that Claude Brown's job title is "equipment manager." T. 59. He would typically initially meet with his supervisor, Al McDonald. McDonald would tell him whether he was assigned to the mail run and whether he was working inside or outside. If McDonald told him he would be working outside, he would then meet with Claude Brown, who would give him his exact assignment. Employees other than the day custodians sometimes performed the mail run but he (Petitioner) did it more than anyone else. T. 62. He or a co-worker would make the trip to Sam's Club, depending on the assignment made by Al McDonald. T. 62.

On redirect, Petitioner reiterated that, after he met with Al McDonald on June 1, 2021 and learned he was assigned to grounds, he had to meet with Claude Brown because Brown is "the grounds guy." T. 63. After he met with McDonald, he walked toward the F150. Unlike the other Respondent-owned trucks, the F150 is not equipped with a step. T. 64. It was while he was pulling himself up into the F150 that he felt a pop and pain. He nevertheless continued on to the meeting with Claude Brown. T. 64. Brown assigned him to the task of spraying weeds. Before he met with Brown, he did not know his specific assignment. T. 65. He used an apparatus/vehicle known as a "Gator" to spray the weeds. He got in to the "Gator" and drove across First Avenue to go to Respondent's athletic field. T. 65-66. If he had not injured his knee, it is possible he would have used the truck later that day. T. 67. Various employees did the mail run but he did it the most. It was when he was assigned to grounds that he did not do the mail run. T. 67-68.

Under re-cross, Petitioner testified he has used the Respondent-owned F150 truck for about seventeen years. T. 70. After he was hired, in 2001, he initially worked as a night custodian at Proviso West. After three years, he began working as a day custodian at Proviso East. T. 70. Prior to June 1, 2021, he did not ever sustain an injury while getting into the F150. T. 70.

Alfred McDonald, Jr. testified on behalf of Respondent. McDonald testified he works for District 209 and is assigned to Proviso East High School. T. 73. He began working as a night custodian in November 2005. T. 74. He later worked as a "para fireman" at both Proviso East and West. A "fireman", in school parlance, is a boiler room engineer. T. 75. He returned to Proviso East as a fireman and boiler room engineer. In July 2020, he became the building and grounds supervisor. T. 75. He knows Petitioner. T. 75. He currently supervises twenty-five

people working on three shifts. He was in his office at the time of Petitioner's accident. T. 76. Petitioner worked "the grounds" that day. T. 77.

McDonald testified he is familiar with the F150 pick-up truck Petitioner got into on June 1, 2021. The photographs in RX 1 accurately depict this truck. T. 78. He has driven this truck. He does not know when Respondent purchased it or whether the truck has been altered. T. 79. It does not come with kits to make it higher off the ground. T. 79. He is 5 feet, 10 inches tall. He has never had any issues getting into the driver's side of the cab of this truck. T. 79. He gets into the truck by putting his leg in, grabbing a bar and then getting in. T. 79-80.

McDonald testified that Respondent allows its custodians to use the F150 truck "as a convenience to them." T. 80. Petitioner's duties were "on campus" unless he had to go to another building. T. 80. In a "normal year", Petitioner would drive the F150 truck to Sam's Club twelve times with the goal of getting supplies. T. 81. Since the pandemic started, however, employees have had to go to Sam's Club "many times." T. 81. Respondent used to have an employee who was in charge of going to Sam's Club but that employee was promoted in 2021. T. 81-82. After the promotion, a custodian or other maintenance employee started going to Sam's Club. T. 82. Petitioner would go two to three times per week unless he was needed outside. T. 82. Petitioner also went to the post office as part of the mail run. T. 83. In the past, the district chauffeur typically did the mail run but the district chauffeur was promoted to transportation manager in April or May 2021. Now the lead fireman does the mail run. T. 85. No one at Proviso East has done the mail run since August 2021. T. 85-86. Petitioner also had to drive to the Maywood dump but he would use a different truck to do this. T. 86.

McDonald testified that, on June 1, 2021, he drove Petitioner to Elmhurst Hospital for treatment. Petitioner told him he heard his knee pop when he got in the truck. T. 86-87.

McDonald testified that Claude Brown gave Petitioner his work assignment on June 1, 2021. Petitioner used the "Gator" to spray weeds. There was no indication that day that Petitioner would be leaving the property. T. 88-89.

Under cross-examination, McDonald testified that the custodians use two of four Respondent-owned vehicles. T. 89. Claude Brown is the head groundsman. He (McDonald) supervises Brown. T. 90. On June 1, 2021, he told Petitioner he would be on grounds and to see Claude Brown. T. 90. He (McDonald) completed an incident report. PX 5. He drove Petitioner to Elmhurst because Respondent uses this as a walk-in medical facility. T. 91. You have to grab a handle to get into the F150. The F150 is not equipped with a step ladder. T. 92. He is not sure whether the dump trucks are F250s or F350s. Respondent also owns a newer F150. The newer F150 is equipped with a step ladder. T. 92. Petitioner was using the older F150 on June 1, 2021. T. 93. A truck is not essential to Petitioner's duties because Respondent owns "Gators." Custodians are allowed to use Respondent's trucks because the trucks make their job easier. T. 93-94. He (McDonald) has never had issues with the F150. More trips to Sam's Club are required at the beginning of the school year. T. 94. A transit vehicle is used for the mail run. If Petitioner was assigned to the mail run he would use that vehicle. Since August

2021, the lead fireman at PMSA has done the mail run. T. 95. The mail run assignments changed after Petitioner's June 1, 2021 injury. T. 96.

In addition to the photographs (RX 1), Respondent offered into evidence an article concerning sales of pick-up trucks in 2020. RX 2. The Arbitrator sustained Petitioner's foundational and hearsay objections to this article and marked it as a rejected exhibit.

Arbitrator's Credibility Assessment

Petitioner was a calm witness who answered questions in a straightforward manner. His lengthy tenure with Respondent weighs in his favor, credibility-wise. The Arbitrator found him very believable.

Respondent contends that Petitioner testified inconsistently under cross-examination, initially stating he used a work truck five days per week to do the "mail run" and later indicating he used the truck with this frequency only when assigned to "mail run" duty. T. The Arbitrator does not view Petitioner as backtracking, given his testimony on direct examination that it would "mainly" be him performing the "mail run" but that someone else would perform this task if he was needed "on the grounds." T. 24.

Petitioner's supervisor, Al McDonald, was also very credible. He did not dispute Petitioner's testimony that he used Respondent's trucks on and off campus to perform certain duties. He actually expanded on that testimony by indicating that in 2021, due to the pandemic, Petitioner and others were required to make many more trips to Sam's Club to get water and other supplies.

Arbitrator's Conclusions of Law

Did Petitioner sustain an accident on June 1, 2021 arising out of and in the course of his employment?

There is really no dispute that the accident of June 1, 2021 occurred in the course of Petitioner's employment. The phrase "in the course of" refers to the time, place and circumstances of the injury. Scheffler Greenhouses, Inc. v. Industrial Commission, 66 Ill.2d 361, 366-67 (1977). Petitioner credibly testified that the accident occurred after his shift started and while he was on Respondent's property, preparing to drive his work truck to a meeting to get his assignment for the day.

The question at hand is whether the accident "arose out of" Petitioner's employment. An injury is said to "arise out of" one's employment if its origin is in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the injury. McAllister v. IWCC, 2020 IL 124848. A risk is incidental to the employment when it belongs to or is connected with the activity the employee has to perform in fulfilling his job duties. Id. At 38. To determine whether an injury arose out of employment, it is necessary

to categorize the risk to which the employee was exposed. Illinois courts have recognized three categories of risk: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks. Id. at 38.

Petitioner asserts that his claim is compensable under either a "traveling employment" analysis or a risk analysis. Respondent concedes that Petitioner regularly used its trucks to perform aspects of his job and was getting into such a truck at the time of his injury but asserts that the injury is not compensable because Petitioner did not require the truck to perform the weed-related task that Claude Brown later assigned to him. Respondent also contends that, immediately prior to the injury, Petitioner faced the same risks as anyone getting into a pick-up truck. It is agreed that, subsequent to the injury, Petitioner drove the truck to a laundry room where Brown met with him and told him to distribute weed killer in the fields on campus. Petitioner used a John Deere "Gator" to perform this task. Petitioner testified that, when he got into the truck and injured his knee, he did not know what task Brown was going to give him or whether he would need the truck to get the task done. Petitioner also testified that some of the assignments he received from Brown required him to use the truck. T. 28-29. Respondent's witness did not contradict this testimony.

The Arbitrator finds that Petitioner established a compensable claim under both a traveling employment analysis and a risk analysis.

The Arbitrator initially finds that Petitioner is a traveling employee. The determination of whether an injury to such an employee arose out of and in the course of employment is governed by different rules than are applicable to other employees. Hoffman v. Industrial Commission, 109 Ill.2d 194, 199 (1985). A "traveling employee" is one whose work requires him to travel away from his employer's office or premises. Hoffman v. Industrial Commission, 128 Ill.App.3d 290, 293 (1984), *aff'd,* 109 Ill.2d 194 (1985). It is not necessary for an individual to be a traveling salesman or a company representative who covers a large geographic area in order to be considered a traveling employee. *Id.* Rather, a traveling employee is any employee for whom travel is an essential element of his employment. Urban v. Industrial Commission, 34 Ill.2d 159, 163 (1966). An injury sustained by a traveling employee arises out of his employment if he is injured while engaging in conduct that is reasonable and foreseeable, i.e., conduct that "might normally be anticipated or foreseen by the employer." Robinson v. Industrial Commission, 96 Ill.2d 87, 92 (1983). The conduct resulting in the injury need not be work-related travel to be considered reasonable and foreseeable. For example, claims have been upheld for traveling employees who were injured while engaging in recreational activities, so long as those activities were reasonable and foreseeable.

There is really no dispute that travel was an essential element of Petitioner's employment. While Petitioner was classified as a "custodian," he was certainly not tethered to a school building, particularly as of June 1, 2021, more than a year into the pandemic. He did much more than arrange desks and sweep hallways. He regularly used several Respondent-owned trucks to drive to various locations for Respondent's benefit. Some of these locations were on the Proviso East campus while others were not. He routinely left the campus to drive

to the Maywood dump, Sam's Club and the other two schools in the district. His supervisor acknowledged that the trips to Sam's Club increased markedly during the year preceding the accident, due to the pandemic. He also conceded that using Respondent's trucks made it "easier" for Petitioner to perform his job. While Petitioner acknowledged that he did not drive off campus every day, that fact does not defeat his claim. In Hoffman, 109 Ill.2d 194 (1985), the Supreme Court upheld the finding that the claimant, a director of nursing employed by a school district, was a traveling employee even though she drove to various schools only three days a week.

Petitioner was not injured while driving to any of his typical off-campus destinations but his conduct at the time of the injury was certainly reasonable and foreseeable. He was pulling himself up into one of the work trucks, with the intention of driving to a laundry room to get his assignment for the day, when he injured his right knee. There was nothing reckless or unpredictable about his conduct. Respondent had every reason to foresee that he would use the truck to get to a work meeting.

Applying this analysis, the Arbitrator finds that Petitioner was a "traveling employee" as of June 1, 2021 and that his conduct on that day was reasonable and foreseeable. Petitioner established a compensable accident under a traveling employment analysis. Kertis v. IWCC, 2013 IL App (2d) 120252WC.

Alternatively, the Arbitrator finds that Petitioner established a compensable accident under a risk analysis. His injury arose out of his employment because, at the time of his injury, he was "at work performing an act his employer might reasonably expect him to perform incident to his assigned job duties." The injury resulted from his pulling himself up into an older work truck so that he could drive to a meeting to obtain his assignment for the day. At no point during his testimony did McDonald suggest that Petitioner did not need to use the truck to get to the meeting or that Petitioner was doing anything that was not in furtherance of his job. In fact, McDonald agreed that using the work trucks made Petitioner's job easier. He also testified that the older F150 model Petitioner used at the time of the accident lacked a step while a newer F150 owned by Respondent was equipped with such a step. T. 92. The use of the older F150 truck was a risk "distinctly associated" with Petitioner's employment and the age and configuration of the truck enhanced that risk.

Did Petitioner establish a causal connection between the accident of June 1, 2021 and his claimed current post-operative right knee condition of ill-being?

The Arbitrator finds that Petitioner established a causal connection between his June 1, 2021 accident and his claimed current post-operative right knee condition of ill-being. In so finding, the Arbitrator relies on the following: 1) Petitioner's credible testimony concerning the right knee surgery he underwent at age fourteen; 2) Dr. Nowak's note of June 3, 2021, confirming that Petitioner underwent right knee surgery many years earlier, as a teenager (PX 1, p. 9); 3) Petitioner's credible testimony that he recovered from the surgery he underwent as a teenager and was not having any right knee problems prior to the accident of June 1, 2021; 4)

Petitioner's credible testimony that he heard his right knee pop and felt an immediate onset of pain after pulling himself up into his assigned work truck on June 1, 2021; 5) Dr. Nowak's June 3, 2021 opinion that Petitioner's right knee injury was work-related (PX 1, p. 11); 6) the right knee MRI, which demonstrated a medial meniscal tear and a medial collateral ligament strain (PX 2, pp. 29-30; PX 4); and 7) Dr. Giannoulias's opinion that Petitioner's right knee medial meniscal tear is work-related (PX 2, p. 16). The Arbitrator also notes that Respondent did not obtain a Section 12 examination or otherwise offer any evidence touching on the issue of causation.

Is Petitioner entitled to reasonable and necessary medical expenses?

Petitioner claims various unpaid medical bills totaling $31,552.00. [The tally in PX 6 reflects a total of $30,038.00 but the correct outstanding balance is $31,552.00.] The parties stipulated that Respondent is entitled to Section 8(j) credit in the amount of $11,951.95 for medical payments made by its group carrier. They also agreed that Respondent is entitled to Section 8(j) credit for any additional amounts paid by that carrier. Arb Exh 1.

Respondent disputes liability for the claimed bills based on its accident and causation defenses. The Arbitrator has previously found in Petitioner's favor on the issues of accident and causation. Respondent did not offer any evidence suggesting that Petitioner's treatment was unreasonable or unnecessary. Petitioner benefited from the knee surgery and was undergoing post-operative therapy as of the hearing.

The Arbitrator awards the claimed medical expenses totaling $31,552.00, subject to the fee schedule and the stipulated Section 8(j) credit.

Is Petitioner entitled to temporary total disability benefits?

Petitioner claims he was temporarily totally disabled from June 3, 2021 (the date of his first medical treatment) through the hearing of November 19, 2021, a period of 24 2/7 weeks. Respondent disputes this claim based on its accident and causation defenses. The parties agree that Respondent paid no temporary total disability benefits prior to the hearing. Arb Exh 1.

The Arbitrator has previously found in Petitioner's favor on the issues of accident and causation. Petitioner credibly testified that Respondent did not provide him with accommodated work in June or July 2021, at which point Dr. Nowak was imposing various restrictions. Respondent's witness did not contradict this testimony. Petitioner also credibly testified that, as of the hearing, he was off work and undergoing therapy at Dr. Evans' direction. The Arbitrator views Petitioner's post-operative right knee condition as unstable as of the hearing. Interstate Scaffolding v. IWCC, 236 Ill.2d 132 (2010). As noted earlier, Respondent did not obtain a Section 12 examination or offer any other evidence suggesting that Petitioner did not require right knee surgery or was capable of resuming full duty.

The Arbitrator finds that Petitioner was temporarily totally disabled from June 3, 2021 through the hearing of November 19, 2021, a period of 24 2/7 weeks.

Is Petitioner entitled to prospective care?

Petitioner seeks prospective care in the form of post-operative right knee therapy and follow-up visits to his surgeon, Dr. Evans. Respondent disputes this claim based on its accident and causation defenses. The Arbitrator has previously found in Petitioner's favor on the issues of accident and causation. The Arbitrator awards prospective care in the form of additional right knee therapy and return visits to Dr. Evans.

Is Respondent liable for penalties and fees?

Petitioner filed a petition for penalties and fees on July 22, 2021. PX 7. The Arbitrator granted Respondent leave to address this petition in its proposed findings.

The intent of Sections 19(l), 19(k) and 16 of the Act "is to implement the Act's purpose to expedite the compensation of industrially injured workers and to penalize an employer who unreasonably, or in bad faith, delays or withholds compensation due an employee." Avon Products, Inc. v. Industrial Commission, 82 Ill.2d 297, 301 (1980).

The standard for awarding penalties under Section 19(l) differs from the standard for awarding penalties and fees under Sections 19(k) and 16. McMahan v. Industrial Commission, 183 Ill.2d. 499, 514-15 (1998). Penalties imposed under Section 19(l) are "in the nature of a late fee." Id. At 515. The award of such penalties is mandatory "if the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay." The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. Jacobo v. IWCC, 2011 IL App (3d) 100807WC. The employer bears the burden of justifying the delay and its justification is sufficient only if a reasonable person in the employer's position would have believed the delay was justified. Board of Education of the City of Chicago v. Industrial Commission, 93 Ill.2d 1, 9-10 (1982).

The Arbitrator finds that Respondent acted in an objectively unreasonable manner, under all of the existing circumstances, in disputing accident in this case. It was unreasonable to dispute Petitioner's "traveling employee" status. Respondent's sole witness did not merely endorse Petitioner's travel-related testimony. He actually enhanced it by indicating that the pandemic changed Respondent's supply needs and brought about the need for more frequent trips to Sam's Club. It was also unreasonable to claim that Petitioner faced the ordinary risk that any pick-up truck owner faces (PX 2, p. 46), in light of the frequency of usage and the fact that the F150 was an older model that lacked a step rail. Finally, and perhaps most significantly, it was perilous to ignore McAllister, a decision that the Supreme Court issued more than a year before the hearing in this case.

The Arbitrator further finds that Respondent acted in an objectively unreasonable manner, under all of the existing circumstances, in disputing causation in this case. It is not as if Respondent relied on "responsible medical opinion", or even "conflicting medical opinions", in so doing. It did not obtain a Section 12 examination or records review. Petitioner did have knee problems in the past but those problems were in the remote past, when Petitioner was a young teenager. Petitioner credibly testified he recovered from those problems and was able to successfully perform his job for Respondent for many years without any subsequent difficulties until he pulled himself up into the F150 on June 2, 2021. His supervisor did not contradict this testimony. The fact that Petitioner might have been more susceptible to injury, given his previous knee surgery, does not defeat his claim. The Illinois courts have repeatedly held that employers take employees as they find them and that the "chain of events" principle does not apply solely to workers in pristine health. See, e.g., St. Elizabeth's Hospital v. Industrial Commission, 371 Ill.App.3d 882, 888 (2007) and Schroeder v. IWCC, 2017 IL App (4th) 160192WC.

The Arbitrator finds Respondent liable for Section 19(l) penalties in the amount of $5,100.00 (representing $30/day for 170 days from June 3, 2021 through November 19, 2021). The Arbitrator also finds Respondent liable for Section 19(k) penalties and Section 16 attorney fees. With respect to the awarded, unpaid temporary total disability benefits, which total $19,669.47, the Arbitrator awards Section 19(k) penalties in the amount of $9,834.74, representing 50% of $19,669.47, and Section 16 attorney fees in the amount of $3,933.89, representing 20% of $19,669.47. The calculation with respect to the awarded medical expenses [$31,552.00] is more problematic since those expenses have not been reduced pursuant to the fee schedule. The Arbitrator views the statutorily reduced amounts as the true measure of Respondent's medical liability. The Arbitrator awards Section 19(k) penalties in the amount of 50% of the awarded expenses, once fee scheduled, and Section 16 attorney fees in the amount of 20% of the awarded expenses, once fee scheduled.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC013609
Case Name	Christina Holder v. State of Illinois - Illinois Veterans' Home
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0494
Number of Pages of Decision	13
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	PHILIP BARECK
Respondent Attorney	Kayla Koyne

DATE FILED: 12/16/2022

/s/ Thomas Tyrrell, Commissioner

Signature

22IWCC0494

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

☐ 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

Christina Holder,

Petitioner,

vs. NO: 16 WC 13609

Illinois Veterans' Home,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and nature and extent, and being advised of the facts and law, partially modifies the Section 8.1b analysis in the Decision of the Arbitrator. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

In the interest of efficiency, the Commission relies on the Arbitrator's detailed recitation of facts. After carefully considering the evidence, the Commission affirms the Arbitrator's conclusion that Petitioner's current condition of ill-being is causally related to the December 20, 2015, work incident. The Commission also affirms the Arbitrator's conclusion that Petitioner sustained an 18% loss of use of the right hand due to the work incident. However, the Commission partially modifies the Arbitrator's Section 8.1b analysis.

In his examination of the first factor of the Section 8.1b analysis, the Arbitrator wrote that "…no opinion comporting with the specific requirements of §8.1b(a) was submitted into evidence. However, the Arbitrator has considered Dr. Sudekum's opinion(s) as a factor in the evaluation of Petitioner's permanent partial disability as required by §8.1b(b)(i)." The Arbitrator then assigned lesser weight to this factor. The Commission agrees with the Arbitrator's conclusion that neither Dr. Sudekum's opinion nor his report qualify as a proper impairment rating pursuant to Section 8.1b(a) of the Act, and further finds the Arbitrator should not have given any consideration to Dr. Sudekem's opinion(s) as a factor in the evaluation of Petitioner's permanent partial disability as required by Section 8.1b(b)(i). Therefore, as neither party submitted a qualifying impairment rating in this matter, the Commission modifies the Arbitrator's analysis and assigns no weight to this factor.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 9, 2022, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner permanent partial disability benefits of **$481.19**/week for **36.9** weeks, because Petitioner's injuries caused an **18%** loss of use of the right hand, as provided for in §8(e)(9) of the Act.

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

December 16, 2022

d: 11/1/22
TJT/jds
51

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC013609
Case Name	HOLDER, CHRISTINA v. ILLINOIS VETERANS HOME
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Philip Bareck
Respondent Attorney	Kayla Koyne

DATE FILED: 5/9/2022

THE INTEREST RATE FOR THE WEEK OF MAY 3, 2022 1.42%

/s/ Edward Lee, Arbitrator
Signature

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

May 9, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Christina Holder
Employee/Petitioner

v.

Illinois Veterans Home
Employer/Respondent

Case # **16** WC **13609**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Quincy**, on **April 6, 2022**. 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 **December 20, 2015**, 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 $**41,702.99**; the average weekly wage was $**801.98**.

On the date of accident, Petitioner was **34** years of age, ***married*** with **2** 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 $**all paid per stipulation** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**all TTD paid**.

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

ORDER

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no opinion comporting with the specific requirements of §8.1b(a) was submitted into evidence. However, the Arbitrator has considered Dr. Sudekum's opinion(s) as a factor in the evaluation of Petitioner's permanent partial disability as required by §8.1b(b)(i). The doctor noted a zero permanent partial disability of the right upper extremity due to the work-related injury, however, he admitted he was not certified to perform impairment ratings, misnamed the American Medical Associations' "Guides to the Evaluation of Permanent Impairment" and was unable to correctly distinguish between impairment versus disability pursuant to §8.1b(a). Because of the aforementioned, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a Certified Nursing Assistant (CNA) at the time of the accident and that she *is* able to return to work in her prior capacity as a result of said injury. The Arbitrator notes that the Petitioner's CNA duties required constant use of her right hand in a physical and consistent nature. Because Petitioner is required to utilize her right wrist/hand regularly to perform her occupation, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 34 years old at the time of the accident. Because of her youthful age, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner was released to return to work with no restrictions, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner testified in a credible and believable fashion regarding her ongoing residual pertaining to her right wrist injury which included a right carpal tunnel release, partial tear of the dorsal radiotriquetral ligament and contusion of the anterior lip of the distal radius. Because

Petitioner's complaints and symptomatology are supported by the treating records, the Arbitrator therefore gives *greater* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 18% loss of use of her right, dominant hand pursuant to §8(e)9 of the Act and awards her 36.90 weeks of compensation at a rate of $481.19/week.

See Appendix A – Findings of Fact and Conclusions of Law, Attached

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.

___ED LEE_____ **MAY 9, 2022**

Signature of Arbitrator

Christina Holder v. Illinois Veterans Home
Case No. 16 WC 13609
Appendix A

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

On December 20, 2015, Petitioner testified that she worked for Respondent as a Certified Nursing Assistant (CNA) and had been employed for nine years. Petitioner testified that she was right hand dominant. As a CNA, Petitioner testified that she is responsible for the daily needs of the residents which included dressing, peri-care, bathing, feeding, appointments and toileting. She noted that her job duties required the constant use of both hands and arms.

The parties stipulated to Petitioner's accident which she described as follows: on December 20, 2015, Petitioner was caring for a resident who had soiled himself. She was working with a co-worker, Lindsay Crossman, and she attempted to turn over the resident who was approximately 6 feet, 2 inches tall and weighed between 189 and 200 pounds. Petitioner testified that her right hand was positioned behind his back and she was attempting to roll him towards the wall but he resisted. As she wrestled to maneuver him, her right wrist hyperextended and she noticed an immediate numbness and pain in her right hand/wrist and a "pop". Prior to the accident, Petitioner testified that she had no problem with her right wrist, had never seen a physician for her right wrist, never had restrictions for her right wrist nor any numbness or symptomatology. The Arbitrator notes that Petitioner's incident report, Employer's report, TriStar's supervisor's report and TriStar's Workers' Comp Notice of Injury Report were entered into evidence and comports with Petitioner's description of the accident. (PX1, PX2, PX3, PX4, RX1, RX2).

On December 21, 2015, Petitioner testified she continued to have right hand pain/numbness and was seen at the Quincy Medical Group. According to the Quincy Medical Group office note, on December 20, 2015 Petitioner was noted to be turning over a resident when her wrist "popped" and she felt immediate onset of numbness, tenderness in her wrist and denied any previous injury to her wrist. (PX5). Dr. Raj diagnosed a right wrist sprain and prescribed Prednisone and a wrist splint. (PX5). Petitioner was provided restrictions of no lifting, pushing or pulling over five pounds with her right wrist. (PX3).

On December 28, 2015, Petitioner testified she followed up with Dr. Raj's office but saw his partner, Dr. Childress. The Visit Summary – reason for visit was "Recheck WC R wrist vets home". According to the office note, Petitioner continued to have right wrist pain with increasing discomfort and right wrist guarding. (PX5). She was again diagnosed with a right wrist sprain/strain and was provided a wrist immobilizer and ongoing restrictions. (PX5).

On January 4, 2016, Petitioner followed up with Dr. Raj. The Visit Summary noted "F/U WC R WRIST INJURY, NUMBNESS ET TINGLING, TROUBLE GRASPING ONTO ANYTHING". (PX5). Dr. Raj noted that Petitioner's neurological symptoms were the result of the soft tissue swelling and impingement on her nerve. (PX5). She continued to complain of right wrist pain and numbness along with weakness in her hand/wrist. (PX5).

On January 18, 2016, Dr. Raj noted the appointment was a follow up for the right wrist/hand injury. (PX5). The doctor noted her ongoing pain and right hand neuropathy and recommended an EMG/nerve conduction test. (PX5).

On March 15, 2016, Petitioner underwent a nerve conduction test. (PX5). The history notes that Petitioner complained of right hand numbness, referenced that she is a diabetic and on thyroid medication and that she injured her right wrist on December 20, 2015. (PX5). The EMG test revealed moderate carpal tunnel syndrome. (PX5).

On April 4, 2016, Dr. Raj's records indicate that Petitioner had begun dropping items with her right hand and noticed that her wrist was tender to palpation. (PX5). He provided work restrictions of limited use with the right extremity and referred her to a surgeon. (PX5).

On June 16, 2016, Petitioner testified she began her treatment with Dr. Greatting. According to Dr. Greatting's records, Petitioner was right hand dominant with right wrist pain along with numbness and tingling in her right hand. (PX6). She was noted to have insulin-dependent diabetes and sustained a "right wrist injury, December 20, 2015." (PX6). Dr. Greatting's records reveal that she had diminished sensation and tenderness with a positive Tinel and Phalen test. (PX6). The doctor noted that her symptoms were severe and recommended an MRI test. (PX6). On July 21, 2016, Dr. Greatting noted that Petitioner's right wrist injury was related to her December 20, 2015 accident when she was trying to roll a patient who was holding onto the bedrail which caused her to hyperextend her wrist and she felt a "pop". He reviewed the MRI results finding a partial tear of the dorsal radial triquetral ligament, contusion and possibly a small fracture and opined these conditions were related to her injury. (PX6 @ p. 20).

On August 9, 2016, Petitioner underwent pre-operative testing. According to the Springfield Clinic records, Petitioner sustained right carpal tunnel syndrome which Dr. Greatting noted was related to her injury. (PX6). On August 29, 2016, Petitioner testified that she underwent a right carpal tunnel release performed by Dr. Greatting. (PX6).

On October 11, 2016, Petitioner testified that Respondent set up an independent medical examination with Dr. Sudekum and she attended the evaluation. According to Dr. Sudekum's report, Petitioner was performing peri-care on a patient on December 20, 2015 and attempted to roll the patient and felt a "pop" in her right radial wrist and her hand "went numb". (RX4 @ p.

3). Concerning the objective findings, Dr. Sudekum noted a fracture, ligamentous injury and carpal tunnel syndrome but did not believe that the incident on December 20, 2015 would "normally cause" these conditions. (RX4 @ p. 25). Dr. Sudekum noted that there was a well healed surgical incision over the right proximal palm from the recent right carpal tunnel surgery and felt she had full range of motion with her right wrist and hand. (RX4 @ p. 25). Concerning the causal relationship question, Dr. Sudekum noted that Petitioner had non-work-related wrist factors which would predispose her to the development of carpal tunnel syndrome "including female sex, age over 35, chronic, long-standing insulin-dependent diabetes, mellitus type I, hypothyroidism, cervical disk disease, and possible radial impaction syndrome." (RX4 @ p. 27). Dr. Sudekum agreed that the medical treatment was reasonable and necessary. (RX4 @ p. 28). Dr. Sudekum's report noted a zero percentage permanent partial disability "due to the work-related injury" pursuant to the AMA Guides to Permanent Disability, Sixth Edition. (RX @ p. 29). The Arbitrator notes that pursuant to the statute, the impairment rating should be based upon the American Medical Association's "Guides to the Evaluation of Permanent Impairment" under Section 8.1b(a) of the Act.

Petitioner testified that she continued to treat with Dr. Greatting through November 9, 2016. According to Dr. Greatting's records, Petitioner was released on November 9, 2016 and her numbness had resolved and she had "pretty good" strength. (PX6). The office note indicated ongoing tenderness in the palm toward the thumb and that she had reached maximum medical improvement. (PX6).

On October 21, 2019, Dr. Greatting completed a narrative report indicating that her December 20, 2015 accident strained her wrist, which caused swelling in the carpal region resulting in the carpal tunnel syndrome condition. (PX7, Deposition Exhibit). The doctor further wrote that the partial tear of the dorsal radiotriquetral ligament and contusion of the anterior lip of the distal radius and nearby lunate occurred "at the time of her injury". (PX7, Deposition Exhibit).

Dr. Greatting was deposed on behalf of Petitioner. Dr. Greatting testified that 100% of his practice dealt with the treatment of upper extremity malodies and Petitioner was referred by Dr. Raj at the Quincy Medical Group. (PX7 @ pp. 7, 10). Dr. Greatting testified that on July 21, 2016, he received a history that Petitioner was injured when she was trying to roll a patient who was holding onto the bedrail and when she tried to roll the patient, the patient held on and her wrist and thumb were hyperextended and she felt a pop in her right wrist. (PX7 @ pp. 12, 13). Dr. Greatting opined that Petitioner was diagnosed with carpal tunnel syndrome and a sprain/torn ligament in her wrist, partial tear and possibly a small fracture on the end of her radius bone. (PX7 @ p. 13). Dr. Greatting testified, based upon a reasonable degree of medical certainty, that these diagnoses were related to the December 20, 2015 work accident. (PX7 @ p. 15). Dr. Greatting was also presented a hypothetical based upon the facts admitted into evidence in this case, and reiterated that the work accident contributed to her right wrist diagnoses. Dr. Greatting explained that the "pop" she felt in her right wrist was "likely related to the partial ligament tear and also likely related to the small fracture or bone contusion she sustained at the accident or

injury". (PX7 @ p. 18). On cross-examination, Dr. Greatting admitted that Petitioner smoked but didn't find any ulnar variance that would correlate with her conditions. (PX7 @ p. 26).

Dr. Sudekum was deposed on behalf of Respondent. Dr. Sudekum testified that he examined Petitioner on behalf of Respondent. (RX5 @ p. 10). Dr. Sudekum indicated that he received a summary of the history from Petitioner which indicated that on December 20, 2015, "she was cleaning a patient. When she went to roll the patient, he grabbed the siderail" and Petitioner felt a pop in her radial wrist and her hand immediately went numb. (RX5 @ pp. 16, 17). Dr. Sudekum opined that Petitioner had a very significant underlying congenital anomaly in her right wrist which he felt could lead to a condition of avascular necrosis of the lunate/Kienbock's disease. (RX5 @ p. 21). Dr. Sudekum felt that rolling the patient was a "benign activity" and he did not believe she sustained an injury to her wrist in the accident of December 20, 2015. (RX5 @ pp. 27, 28, 34). Based upon his examination, Dr. Sudekum noted mild tenderness over the carpal tunnel scar, no swelling, no atrophy and no gross deformity. (RX5 @ p. 44). Dr. Sudekum testified that it was his opinion that she sustained a zero percent permanent partial disability of the right upper extremity due to the work-related incident on December 20, 2015. (RX5 @ pp. 47, 48). On cross-examination, Dr. Sudekum admitted that he was unaware of the size or weight of the patient Petitioner rolled over at the time of the accident. (RX5 @ pp. 55, 51). Concerning his impairment rating, Dr. Sudekum admitted that he does not have a certification to perform impairment ratings, failed to correctly distinguish the difference between "impairment" and "disability" as defined by the AMA Guidelines, and he admitted that he didn't know what the regional grid or grade modifiers were pursuant to the AMA Sixth Edition and never had Petitioner complete a Quick-Dash form. (RX5 @ pp. 52, 53, 54). Dr. Sudekum further acknowledged that he did not have the operative report pertaining to the August 29, 2016 surgery when he rendered his report, never reviewed any medical records after July 21, 2016, nor had the December 28, 2015 note from the Quincy Medical Group before rendering his opinions. (RX5 @ pp. 55, 72).

At arbitration, Petitioner testified that Respondent paid all of the related medical expenses pertaining the right wrist treatment and also paid all of her lost time benefits/TTD benefits. Concerning her right wrist condition at work, Petitioner testified that she notices that her right hand/wrist is not as strong as it was prior to the accident. She testified she continues to have pain and tingling depending on the daily lifting activities she's involved in at work. She noted that she takes Ibuprofen and periodically ices her wrist at work depending on the number of lifts in a given day. Petitioner described ongoing pain and numbness on the radial portion of her wrist extended to the right thumb region. Concerning outside activities, Petitioner testified that she has two boys who are very active and her right hand condition impacts on her activities such as shooting a basketball and farm activities such as hammering in nails and driving in posts. She testified that she continues to do farming with animals but doing any sort of physical farming activities is more difficult. She testified that she continues to ride a horse and owns several horses. Finally, she notices that when the weather changes, she gets a tingling, throbbing and numbness in her wrist, especially in cold weather. Petitioner testified she has not returned to Dr. Greatting for treatment, has not been prescribed any medications for her wrist injuries and has improved since the surgery. She continues to use tobacco/smoking and does not wear any braces

or protective devices on her wrist. She admitted on cross-examination that she continues to get positive evaluations at work and is able to perform all of her job duties.

After reviewing all of the evidence presented, the Arbitrator makes the following conclusions of law:

In regards to "F" –Is Petitioner's current condition of ill-being causally related to the injury?, the Arbitrator finds the following facts:

On December 20, 2015, Petitioner was performing peri-care/CNA activities at which time she was rolling over a resistant resident and felt a "pop" in her right wrist and immediate pain and numbness. This accident is well documented and stipulated to by Respondent. Petitioner's symptomatology is noted in the accident reports completed contemporaneous to her accident. The following day she was seen by Dr. Raj at the Quincy Medical Group who noted the accident and diagnosed a right wrist sprain and provided her with right wrist restrictions and a splint. She continued to treat at the Quincy Medical Group and Dr. Raj who documented that her right wrist symptomatology and neurological symptoms were the result of the soft tissue, swelling and nerve impingement from the right wrist injury. On March 15, 2016, Dr. Sullivan performed the EMG test and his records indicated that this was as a result of the injured wrist which occurred on December 20, 2015. Thereafter, Petitioner was seen by Dr. Greatting, who documented in his medical records the causal relationship, completed a narrative report reiterating the causal relationship and testified that Petitioner's right carpal tunnel syndrome condition, partial ligament tear and small fracture/contusion were all directly related to the December 20, 2015 accident. The only doctor to question causation was Dr. Sudekum. However, Dr. Sudekum never reviewed the operative report, did not have the December 28, 2015 office note nor any records after July 21, 2016 and seemed to acknowledge that this accident caused Petitioner's symptoms but claimed they could not have been due to this "benign" accident although he didn't know the size or weight of the resident. The Arbitrator finds Dr. Sudekum's opinions to be inconsistent and less credible than the opinions from Drs. Greatting and Raj. Moreover, Illinois courts have recognized the validity of the "chain of events" analysis of causation. See Price v. Industrial Commission, 278 Ill.App. 3d 848, 854 (1996). There is no evidence in the record that Petitioner had any prior right hand/wrist symptoms/condition, sustained the December 20, 2015 accident and developed immediate symptoms and began her treatment. The "chain of events" analysis in this case supports the treating physicians' opinions finding causation. Therefore, the Arbitrator concludes, based upon a preponderance of the evidence presented, that Petitioner's current right wrist condition is causally related to the December 20, 2015 work accident.

In regards to "L" – What is the nature and extent of the injury, the Arbitrator finds the following facts:

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no opinion comporting with the specific requirements of §8.1b(a) was submitted into evidence. However, the Arbitrator has considered Dr. Sudekum's opinion(s) as a factor in the evaluation of Petitioner's permanent partial disability as required by §8.1b(b)(i). The doctor noted a zero permanent partial disability of the right upper extremity due to the work-related injury, however, he admitted he was not certified to perform impairment ratings, misnamed the American Medical Associations' "Guides to the Evaluation of Permanent Impairment" and was unable to correctly distinguish between impairment versus disability pursuant to §8.1b(a). Because of the aforementioned, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a Certified Nursing Assistant (CNA) at the time of the accident and that she *is* able to return to work in her prior capacity as a result of said injury. The Arbitrator notes that the Petitioner's CNA duties required constant use of her right hand in a physical and consistent nature. Because Petitioner is required to utilize her right wrist/hand regularly to perform her occupation, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 34 years old at the time of the accident. Because of her youthful age, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner was released to return to work with no restrictions, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner testified in a credible and believable fashion regarding her ongoing residual pertaining to her right wrist injury which included a right carpal tunnel release, partial tear of the dorsal radiotriquetral ligament and contusion of the anterior lip of the distal radius. Because Petitioner's complaints and symptomatology are supported by the treating records, the Arbitrator therefore gives *greater* weight to this factor.

Petitioner is right hand dominant. Petitioner underwent an MRI which revealed a partial tear of the radiotriquetral ligament, small fracture/contusion and carpal tunnel syndrome related to the accident/injury. Petitioner underwent surgery on August 29, 2016. She has been released to return to work full duty but testified to ongoing weakness, numbness and pain based upon her activities. The Arbitrator finds that Petitioner testified in a credible and believable fashion as to her right hand symptoms and limitations including weakness, pain and tingling, as supported by the records. After applying the permanent partial disability factors listed in Section 8.1b, noted above, the Arbitrator finds that Petitioner sustained a 18% loss of use to her right hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC020884
Case Name	Edwynne M Griffin v. Aramark Uniform & Career Apparel
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0495
Number of Pages of Decision	11
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Kylee Miller
Respondent Attorney	Brian Koch

DATE FILED: 12/20/2022

/s/ Thomas Tyrrell, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

☒ Affirm and adopt (no changes)	☐ 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

EDWYNNE GRIFFIN,

Petitioner,

vs. NO: 16 WC 20884

ARAMARK UNIFORM & CAREER APPAREL,

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, medical expenses, causal connection, nature and extent, total temporary 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 24, 2021 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.

December 20, 2022

o: 12/13/22
TJT/ldm
51

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Deborah L. Simpson*
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GRIFFIN, EDWYNNE
Employee/Petitioner

Case# **16WC020884**

ARAMARK MANAGEMENT SERVICES
Employer/Respondent

On 3/24/2021, 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 0.04% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0529 TUITE LAW
KYLEE D MILLER
119 N CHURCH ST SUITE 407
ROCKFORD, IL 61108

2027 WIEDNER & McAULIFFE LTD
JEFF SALISBURY
1111 S ALPINE RD SUITE 503
ROCKFORD, IL 61108

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Edwynne Griffin
Employee/Petitioner

v.

ARAMARK Management Services
Employer/Respondent

Case No. **16 WC 20884**

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 **Paul Seal**, Arbitrator of the Commission, in the city of **Rockford**, on **October 27, 2020.** 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 **2/26/16**, 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. (Moot issue; see attached.)

Petitioner's current condition of ill-being ***is*** causally related to the accident. (Moot issue; see attached.)

In the year preceding the injury, Petitioner earned $; the average weekly wage was $. (Moot issue; see attached.)

On the date of accident, Petitioner was 56 years of age, ***single*** with 0 dependent children.

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

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

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

Respondent is entitled to a credit of $ **N/A** under Section 8(j) of the Act. (Moot issue; see attached.)

ORDER

Petitioner failed to prove by a preponderance of evidence that she suffered an accidental injury arising out of and in the course of her employment on 2/26/16 for which compensation is payable. All benefits under the Illinois Workers' Compensation Act are hereby denied. All other disputed issues are moot.

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 10, 2021
Date

MAR 24 2021

FINDINGS OF FACTS

Petitioner testified that she worked for Aramark starting in 2000 and as of 2016 had worked for approximately 16 years. In 2016, petitioner worked as a garment folder for respondent. Her workstation was according to petitioner's testimony over by the back doors at the docking area. In order for trucks to load or unload, the dock doors would be opened and closed during the work shift, causing petitioner to be exposed to colder temperatures during the winter months. During that time, petitioner testified she was able to wear long johns and more than one pair of socks.

Petitioner testified that she had bunion surgery before the alleged date of injury, February 26, 2016. According to the treatment records of the Veterans Administration, this surgery occurred on February 13, 2015. Petitioner was off work a period of time, although she did not recall the exact period.

Petitioner had a second surgery to the foot on February 26, 2016. Records from the Veterans Administration offered as petitioner's exhibit indicate the petitioner had an arthrodesis of the first great toe with hardware and arthroplasty of the second toe. Although the operative report references hardware removal, it is clear that hardware was placed to assist in the arthrodesis, as a subsequent surgical report indicates the hardware was removed.

Petitioner testified that as of February 26, 2016, she was off work and participated in follow up care at the VA. In March of 2016, the petitioner experienced more problems with the foot ultimately leading to yet another surgery on April 4, 2016 for amputation of the great toe and second toe. This surgery also occurred at the Veterans Administration after claimant had developed dry gangrene first diagnosed by the Veterans Administration in March 2016. Petitioner testified that after this surgery, her toes curled up and she was required to wear special footwear. Petitioner testified that physical therapy did help and as of August 2016, she was released from the Veterans Administration. Petitioner returned to work in 2016, with no change in her workstation. Subsequently, she switched locations and now performed work as a mender, not at the same station and not in a cold environment. Petitioner testified to wearing an orthotic in her shoe but has been advised she needs no further care for her foot. She does notice other problems and cannot wear open-toed shoes or high heels.

Petitioner testified the video offered by respondent was accurate but did not show her exact workstation. Petitioner testified the time dock doors are open varied but was not more than half the day.

Petitioner testified that her work area required standing and limited walking. Petitioner testified that she had no responsibility to work in or on the dock area. Petitioner testified that she was able to wear heavier clothes during cooler weather and always wore socks and shoes at work. With regard to what happened on February 26, 2016, petitioner testified she had surgery on that date at the Veterans Administration Hospital. Petitioner was off work after surgery on February 26, 2016, through the date she had the amputation surgery on April 4, 2016, and thereafter until returning to work in August 2016. Petitioner confirmed that the diagnosis of

scleroderma was first made at the Veterans Administration during the course of her treatment at that facility.

Debi Prebula testified on behalf of respondent. Ms. Prebula testified that, based on a conversation she had with petitioner, she authored a note or letter dated January 25, 2016, indicating that the petitioner had requested LOA (leave of absence) paperwork because the foot hurt, and the petitioner denied "it" happened at work.

Ms. Prebula also testified that she was the individual walking through the work area documented in the video offered by respondent as respondent's Exhibit No. 12.

A number of exhibits were offered by both parties, including extensive progress notes from the Veterans Administration/William S. Middleton Memorial Veterans Hospital; an August 23, 2016, letter from Dr. Susan Hylland, Chief of Rheumatology at the VA Hospital; the October 13, 2016, section 12 report from Dr. Holmes; the March 23, 2017, addendum report of Dr. Holmes; and a physical demands analysis with compact disk/video from Genex dated September 26, 2016, and October 6, 2016. The letter authored by Dr. Hylland and dated August 23, 2016, is relatively brief and states:

> "Ms. Edwynne Griffin established care as a rheumatology patient 3/17/16 at the William S. Middleton VA Hospital, where she is receiving care for limited cutaneous systemic sclerosis (scleroderma). Her disease has been characterized by clinical symptoms of raynauds phenomenon (a medical condition that is very well documented to be exacerbated by cold exposure) and digital ischemia of fingers and toes worsened by cold exposure. She reports having raynauds phenomenon for the past 6 years.
>
> Following left foot surgery 2/26/16, she developed critical ischemia of the left first and second toes of the left foot which ultimately progressed to dry gangrene resulting in amputation. This was an unexpected response to surgery and was related to small vessel vasospasm secondary to limited cutaneous systemic sclerosis.
>
> Ms. Griffin has been employed at Aramark Uniform Service, 215 18th Avenue, Rockford, IL 61104. Based upon the description of her work environment, with exposure to cold temperatures outside of her control, her raynauds has been and would certainly continue to be triggered by cold exposure at work. I have suggested that she not return to her prior employment since she is unable to control the temperature of her work environment."

Records from the Veterans Administration offered by petitioner document three surgeries to the petitioner's foot consisting of a bunionectomy, osteotomy, and metatarsal osteotomy of the second metatarsal with PIPJ arthrodesis on February 13, 2015. Those records further document surgery on February 26, 2016, (the date of alleged injury) for arthrodesis of the first great toe with hardware and arthroplasty of the second toe. (Again, it should be noted the operative report

references hardware removal, but that is clearly at odds with the subsequent treatment records and operative report from amputation on April 4, 2016.)

The records of the VA show that the petitioner developed dry gangrene of the second digit in March 2016 and had a rheumatology workup in March 2016 at which time it was determined she was suffering from limited scleroderma. Petitioner had a rheumatology consult with Dr. Bucci under the direction of Dr. Susan Hylland on March 29, 2016. Petitioner had noted Raynaud's with regard to her hands for about four years that made it difficult to work because her workstation was "frequently exposed to cool air." Petitioner had painful ulcerations on the hands associated with Raynaud's and currently [at the time of the examination] had one on the left hand. An addendum prepared by Dr. Hylland and dated March 30, 2016 indicates, among other things, that petitioner "appears to have had an ischemic event, likely triggered by surgery and potentiated by the icing of her toes that she performed post-operatively." The addendum also indicates: "Since Ms. Griffin has a likely trigger (surgery followed by icing her foot) for her digital ischemia, and IgA antibodies are not strongly associated with APL syndrome, I think that the benefit of adding full anticoagulation is not established and the potential benefit does not clearly outweigh the risk for harm."

The Arbitrator has reviewed all exhibits including the physical demands analysis prepared by Genex which, among other things, indicates the dock doors were open in the morning and afternoon for 30 minutes, twice for two trucks to load. The docks were approximately 33 feet to the right of the folding station (at which petitioner worked). The physical demands analysis also references a heater mounted on the ceiling about 33 feet to the left of the folding station, the heater was set at 65 degrees, and would "kick on automatically." In that section of the report, the report also indicates that individuals were encouraged to wear additional clothing to keep warm during colder months.

That there is distance between the dock area and the petitioner's workstation is apparent from reviewing respondent's Exhibit No. 12, a video which appears to follow Debi Prebula from the petitioner's work area to the dock area. As noted above, the petitioner did not work in the dock area proper.

Respondent's Exhibits 4 and 5 consist of the independent medical examination report of Dr. Holmes dated October 13, 2016, and the subsequent addendum dated March 23, 2017. In the initial report dated October 13, 2016, Dr. Holmes apparently had few medical records to review and his report is generally limited to physical exam findings and discussion of a number of questions that were proposed to him including questions about information provided by Ms. Griffin regarding her foot surgeries and information about causation. According to this report, Ms. Griffin did not discuss in any great detail the symptoms she experienced prior to her left foot surgery on February 26, 2016, which surgery was performed in order to correct the recurrent problem of the previous bunion surgery. Ms. Griffin did state that she had some complaints of temperature variation prior to the surgery while she was at work standing in a doorway where the temperatures were cold and alternately warm. Dr. Holmes concluded the diagnosis that resulted in foot surgery was not related to Raynaud's phenomena or other condition of the foot. Dr. Holmes noted that petitioner was a smoker and smoking is very detrimental to Raynaud's phenomena. With regard to the issue of alleged extreme cold exposure, Dr. Holmes' report

indicates that there would not be any permanent aggravation of Raynaud's disease with changes in weather or temperate at the worksite.

The addendum dated March 23, 2017, appears to include reference to progress reports and operative notes of the VA from November 17, 2014, through a visit on June 22, 2016, along with reference to a physical demand analysis report and summary of records of the VA. Dr. Holmes indicated that in his original IME, he opined that the diagnoses and resultant foot surgery were not related to the work condition. His review of the additional medical records he reviewed were in support of that original opinion. "To be more specific, it is my opinion that there is not a causal connection between the claimant's work environment and condition for which she was treated and the numerous surgeries that were performed on her foot."

CONCLUSIONS OF LAW

On the disputed issue (C) whether petitioner sustained accidental injuries arising out of and in the course of employment on February 26, 2016, the Arbitrator finds as follows:

None of petitioner's testimony can be characterized as establishing a traumatic or specific injury on February 26, 2016, or at any date prior thereto. Petitioner's testimony could be characterized as establishing repetitive exposure to relatively colder temperatures at work due to the dock doors located some distance from petitioner's workstation being open periodically for loading or unloading of trucks. However, neither party offered evidence of the temperatures to which petitioner was exposed. None of the exhibits specifically referenced any temperature exposure and petitioner acknowledged that, consistent with the exhibits offered by respondent, she was able to and did wear warmer clothing during the colder months of the year. Furthermore, petitioner acknowledged wearing socks and shoes at all times during her employment which would have provided relative warmth from the alleged exposure.

Treatment records are equally devoid of any reference to specific temperatures and only generally or relatively discuss exposure to cold temperatures.

The Arbitrator notes that the Application for Adjustment of Claim alleges injury on February 26. 2016. However, that date coincides with surgery at the VA Hospital and there was no evidence presented by petitioner of a causal connection between alleged repetitive cold exposure and the surgery performed on February 26, 2016. To the extent the letter of Dr. Hylland dated August 23, 2016, might address causation, that letter can only be construed to suggest there might be some causation between the development of critical ischemia of the left first and second toes of the left foot after the foot surgery on February 26, 2016. Furthermore, that letter indicates, "This was an unexpected response to surgery and was related to small vessel vasospasm secondary to limited cutaneous systemic sclerosis." The letter does offer advice given to Ms. Griffin that based on the subjective description of the work environment, petitioner could experience Raynaud's and Dr. Hylland suggested that the petitioner not return to the prior employment since she was unable to control the temperature of her work environment. Nowhere in that correspondence is there an opinion that any surgery performed at the VA was causally related to temperature exposure. Rather, that letter, if anything, establishes that Dr. Hylland though petitioner may suffer in the future from the alleged cold exposure. Finally, the Arbitrator

notes this letter seems to be in striking contrast to the addendum dated March 30, 2016, wherein Dr. Hylland indicates petitioner had an ischemic event triggered by surgery and potentiated by icing of the toes that was performed post-operatively.

The Arbitrator finds the opinions of Dr. Holmes more persuasive than the purported opinion of Dr. Hylland. Dr. Holmes concluded that there was a possibility exposure to extreme cold could exacerbate Raynaud's disease on a short-term basis, but there would be no permanent aggravation of the Raynaud's disease with changes of weather or temperature at the worksite. Dr. Holmes further concluded that the amputation surgery was not related to temperature issues at the worksite. The arbitrator finds that the petitioner failed to bear her burden of proof by the preponderance of the evidence that she sustained an accidental injury arising out of and in the course of her employment with the respondent for which compensation is payable. She failed to credibly establish exposure to temperatures and exposures for sufficient time to cause any condition of ill being.

On the disputed issue (E), (F), (G), (K) and (L), the Arbitrator finds as follows:

Having found that petitioner failed to prove by a preponderance of evidence that petitioner suffered any injury on February 26, 2016, all other issues are moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC011973
Case Name	Delfino Cervantes v. Freedman Seating Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0496
Number of Pages of Decision	31
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Jack Epstein
Respondent Attorney	Zachary March

DATE FILED: 12/21/2022

/s/ Deborah Simpson, Commissioner

Signature

22IWCC0496

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: causal connection medical expenses PPD	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DELFINO CERVANTES,

Petitioner,

vs. NO: 17 WC 11973

FREEDMAN SEATING COMPANY,

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 all issues and being advised of the facts and law, modifies the Decision of the Arbitrator as stated herein and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

I. Findings of Fact

At the hearing on December 20, 2021, Petitioner amended his Application for Adjustment of Claim to reflect that a specific incident, as opposed to a repetitive trauma injury, occurred on November 18, 2016. On the accident date, Petitioner was employed welding car seats for Respondent. Petitioner classified his job as heavy, since it required him to lift 75-pound bus seats 30 to 40 times a day from the ground onto a mold that was on a table more than three feet off the ground. After the seat was put on the table, Petitioner welded it with both his hands. Specifically, Petitioner used his left hand to move and hold the mold in place and his dominant right hand to perform the welding. Once it was welded, Petitioner then had to remove the seat from the mold and put it back on the ground. Petitioner performed these actions with 30 to 40 seats per day.

Petitioner alleged that on November 18, 2016, he injured his left arm, neck, and low back while picking up a seat. After the accident, Petitioner informed his supervisor that he had been hurt and was directed to the company clinic. Petitioner testified that the treatment providers at the company clinic checked his arm but did nothing for his neck or back. However, when questioned further on cross examination, Petitioner conceded that when he first sought treatment at Cicero Medical Clinica San Lazaro, he did not tell the doctor that he had low back or neck pain.

The treatment records confirm that on November 19, 2016, Petitioner presented to Cicero Medical Clinica San Lazaro with complaints of left arm pain and numbness. Dr. Rosaura Licea diagnosed Petitioner with left arm pain and left-sided chest pain. Dr. Licea recommended checking Petitioner's labs, following a heart heathy diet, limiting salt intake, and engaging in physical activity three to four times a week for 20 minutes. Dr. Licea suggested that walking and dancing were good options for such physical activity. After this treatment visit, Petitioner returned to performing his regular job duties the following Monday. Petitioner testified that he went back to work despite his injury, because he needed to pay rent and provide for his wife and four children.

The next treatment record submitted into evidence was dated May 19, 2017 from Dr. Lee De Las Casas of Grandview Health Partners. At this visit, Petitioner complained of cervical pain radiating into his bilateral upper extremities, thoracic pain, lumbar pain radiating into the buttocks, and left shoulder, elbow, and upper arm pain. Petitioner reported that on the accident date, he was welding steel components on a table that was higher than what he was used to at around three feet tall. Petitioner explained that he used his left arm to hold and move the chair components and his right arm to weld the parts. He stated that he welded four chairs per hour for six hours on the accident date and had to use more effort than usual to remove the chair parts from the molds on the table. Petitioner indicated that he used his whole body to perform the mold removals and that he was under pressure to perform such tasks at a more rapid pace than usual due to a high volume of work that date. He also reported that he had to lift the chair components that were in the molds onto the three-foot-high table, and to do so, he had to flex forward at the waist. Petitioner estimated that the chair components and molds weighed 70 to 75 pounds each. Petitioner reported that he began to feel pain after five-and-a-half hours of working rapidly. He also told Dr. De Las Casas that he had lifted 45-pound chair components 16 times that day.

Dr. De Las Casas diagnosed Petitioner with an unspecified injury of the left shoulder/upper arm, left elbow medial epicondylitis, cervical disc disorder with radiculopathy, lumbar intervertebral disc disorders with radiculopathy, and thoracic spinal enthesopathy. Dr. De Las Casas performed therapy, ordered a left shoulder MRI and upper/lower extremity EMGs, referred Petitioner to an orthopedist, and provided modified work restrictions. Petitioner returned to Dr. De Las Casas for therapy sessions numerous times throughout the remainder of May 2017. During this period, on May 25, 2017, a left shoulder MRI was obtained and revealed an intact rotator cuff, mild rotator cuff tendonitis and/or bursitis involving the distal supraspinatus tendon, and mild AC inferior hypertrophic spurring indenting the supraspinatus tendon with mild narrowing of subacromial space and probable impingement. Following the MRI, Petitioner continued to present for therapy with Dr. De Las Casas from May 26, 2017 through July 17, 2017, after which time he transitioned to work conditioning.

While participating in therapy, Petitioner also began treating with Dr. Axel Vargas at Delaware Physicians on June 1, 2017 upon referral from Dr. De Las Casas. Petitioner told Dr. Vargas that while repetitively lifting car seats from a mold at work on November 18, 2016, he began to experience neck and low back pain with radiating symptoms along with left upper shoulder swelling, pain, and dysfunction. Dr. Vargas diagnosed Petitioner with lumbosacral discogenic radiculopathy and pain syndrome, lumbar facet pain syndrome, cervical discogenic pain syndrome, cervical facet syndrome, and left shoulder pain with internal derangement. Dr.

Vargas also found that Petitioner's examination was consistent with cervical and lumbosacral spine radiculopathy. He recommended an MRI to confirm the central axis pathology and an orthopedic surgery consultation. In the interim, Dr. Vargas also ordered physical therapy and prescription medication. Lastly, Dr. Vargas opined that the symptoms for which Petitioner was being evaluated were directly related to the injury he had sustained.

On June 2, 2017, a cervical MRI revealed posterior disc protrusions/herniations at C3 through C7 indenting the thecal sac at those levels as well as generalized spinal stenosis and bilateral neuroforaminal narrowing at C5-C6. A lumbar MRI was also obtained on the same day and found L5-S1 mild anterolisthesis with a posterior disc herniation and a mildly extruded nucleus pulposus indenting the thecal sac, along with spinal stenosis and bilateral neuroforaminal narrowing exacerbated by facet arthrosis and ligamentum flavum hypertrophy. The MRI further noted bilateral pars interarticularis defects of spondylosis.

On June 15, 2017, Dr. Vargas reported that the cervical MRI had confirmed multilevel facet arthropathy and a C3 through C7 herniated disc, which resulted in various degrees of central canal and bilateral neuroforaminal stenoses more pronounced at C5-C6, as well as discogenic cervical radiculopathy. For Petitioner's low back pain and lower extremity radiculopathy, Dr. Vargas recommended physical therapy in combination with NSAIDs, oral non-opiate analgesics, muscle relaxants, and a trial of L5-S1 transforaminal epidural steroid injections. For Petitioner's cervical pain and upper extremity radiation, Dr. Vargas wanted to keep an eye on its clinical progression with the understanding that Petitioner could eventually need a series of cervical injections if the symptoms persisted. Dr. Vargas also kept Petitioner off work and refilled his prescriptions. He again opined that the symptoms for which Petitioner was being treated were directly related to the injury he had sustained.

Shortly thereafter, on June 20, 2017, Petitioner presented to Dr. Thomas Poepping of Delaware Physicians with complaints of left shoulder and elbow pain. Dr. Poepping reviewed Petitioner's left shoulder MRI and found that it showed mild rotator cuff tendonitis, bursitis, and AC joint hypertrophic spurring with a nonetheless intact rotator cuff. He diagnosed Petitioner with left elbow lateral epicondylitis, left shoulder impingement, and left shoulder AC arthrosis. Dr. Poepping offered Petitioner an injection at this visit, but Petitioner wanted to hold off and try a left elbow counter force strap instead.

Petitioner thereafter underwent his first and second bilateral L5-S1 transforaminal epidural steroid injections and selective nerve root blocks on June 23, 2017 and July 14, 2017. In between the injections, on July 12, 2017, Petitioner also presented for a bilateral upper extremity EMG/NCS with Dr. Rizwan Arayan upon referral from Dr. De Las Casas. The EMG/NCS yielded essentially normal results with no electrodiagnostic evidence of a left-sided cervical radiculopathy, a left upper extremity median nerve injury, or a distal left upper extremity radial sensory nerve injury.

On July 17, 2017, Dr. De Las Casas recommended transitioning Petitioner into work conditioning and functional rehabilitation. Petitioner participated in an initial round of work conditioning from July 18, 2017 through September 8, 2017. During this period, on August 1, 2017, Petitioner also presented for a functional capacity evaluation that placed his capabilities within the medium physical demand level, and as such, below his full duty work. The evaluator

determined the functional capacity evaluation was valid, since Petitioner gave a full and consistent effort throughout.

On August 7, 2017, Petitioner returned to Dr. Vargas and reported experiencing a complete clinical improvement of his low back pain and lower extremity radiation symptoms, all to nil levels after his injections. Petitioner rated his overall improvement at a 90% to 95% relief of symptoms compared to his initial visit. Dr. Vargas confirmed that aside from intermittent residual symptoms like back stiffness, most of Petitioner's initial symptoms had resolved. Dr. Vargas further indicated that Petitioner's neck pain had also decreased steadily to nil levels and had resolved for the most part aside from some intermittent stiffness. However, despite the improvement in Petitioner's low back and neck conditions, his left shoulder symptoms persisted. For this, Dr. Vargas noted that Petitioner was being evaluated by an orthopedic surgery service, specifically Dr. Poepping. Given Petitioner's improved lumbar and cervical conditions, Dr. Vargas placed him at MMI from his interventional pain management service standpoint and discharged Petitioner from his care to the orthopedic surgery service for further disposition.

Petitioner next followed with Dr. Poepping for his left shoulder and elbow on August 29, 2017. Dr. Poepping reported that physical therapy had helped Petitioner and that his pain was much improved, although he still became achy with repetitive movements. Dr. Poepping continued Petitioner's restrictions and added an anti-inflammatory to his medication regimen.

On September 6, 2017, Dr. Jay Levin performed a §12 examination concerning Petitioner's cervical spine, thoracic spine, lumbar spine, left shoulder, and left elbow. Petitioner reported to Dr. Levin that on November 18, 2016, he was welding 75-pound items and had to apply a lot of pressure to get them out of their mold. Petitioner explained that it was hard for him to get the pieces out of the mold, because the height of the three-and-a-half-foot table that he worked on was higher than his waist-level. Petitioner stated that while he was getting the large items out of the mold, he felt left wrist pain radiating into his shoulder, left-sided neck pain, midback pain, low back pain, and left arm weakness and tingling. Petitioner also informed Dr. Levin that he had returned to work the Tuesday after November 18, 2016 with no restrictions and continued to work with pain until May 2017, at which time the pain increased in Petitioner's low back and he saw Dr. Vargas. At the time of the §12 examination, Petitioner was working light duty with a ten-pound restriction.

After examining Petitioner, obtaining his own radiographs, and reviewing the medical records, Dr. Levin opined that the current conditions of Petitioner's cervical spine, thoracic spine, lumbar spine, and left shoulder and elbow were not causally related to the work accident. In so finding, Dr. Levin placed significance on the medical record from November 19, 2016, which was one day after the accident date. Dr. Levin noted that the diagnostic impression from that treatment date was only left arm pain, and that no injury to the cervical, thoracic, or lumbar spine was diagnosed at that time. He further emphasized that at that visit, the examination revealed that Petitioner's extremities had full range of motion, no deformity, no edema, or no erythema. Dr. Levin stated that even though Petitioner complained of left arm pain, his physical examination did not include any objective findings showing acute injuries to that body part. Dr. Levin then emphasized that the next assessment on May 19, 2017, which fell six months after the accident, contained complaints that were inconsistent with the November 19, 2016 treatment note. He

believed that the medical record and physical examination findings from one day post-injury were instead consistent with Petitioner requiring no medical care after November 19, 2016 for his injury on November 18, 2016.

Dr. Levin did not feel that Petitioner's subjective complaints correlated with his objective examination. He opined that the treatment Petitioner had received was not a direct result of this accident and recommended no additional treatment for Petitioner. Dr. Levin further opined that Petitioner was capable of working full duty, as any physical limitations Petitioner had were not related to an injury on November 18, 2016. Dr. Levin placed Petitioner at MMI within days of his accident as it related to his left arm pain, which he believed was consistent with Petitioner seeking no medical treatment after November 19, 2016 until May 19, 2017 and with the totality of information noted in Petitioner's November 19, 2016 assessment.

Following the §12 examination, on October 10, 2017, Dr. Poepping administered a left AC joint injection, which gave Petitioner good immediate relief of his pain. When he returned to Dr. Poepping on November 7, 2017, Petitioner reported that the left shoulder injection had helped quite a bit, although he still had some left shoulder and elbow pain. On December 5, 2017, Dr. Poepping then administered a left lateral epicondyle injection and recommended work conditioning for Petitioner's left upper extremity.

On December 18, 2017, Dr. De Las Casas reexamined Petitioner and estimated his overall improvement to be at 97%. His diagnoses for Petitioner remained an unspecified injury of the left shoulder/upper arm, left elbow medial epicondylitis, cervical disc disorder with radiculopathy, lumbar intervertebral disc disorders with radiculopathy, and thoracic spinal enthesopathy. Dr. De Las Casas administered therapy to Petitioner and recommended that he return for a follow-up visit in four weeks. In the interim, on January 2, 2018, Petitioner returned to Dr. Poepping and reported that he still had superior and lateral left shoulder pain. Dr. Poepping continued to recommend work conditioning. Petitioner then returned to Dr. De Las Casas on January 5, 2018, at which time his overall improvement was estimated to be at 95%. Dr. De Las Casas recommended four weeks of work conditioning with the goal of increasing Petitioner's strength and flexibility in his left upper extremity and preparing him for left shoulder surgery.

On January 30, 2018, Petitioner informed Dr. Poepping that even though work conditioning for his left upper extremity had been helping, he still had residual discomfort. Petitioner indicated that he did not feel as though he could perform his normal job at that time, but he still wished for his work restrictions to be lessened slightly. Petitioner returned to Dr. Poepping on April 10, 2018 with complaints of continued pain in the superior and lateral left shoulder radiating down his arm. Dr. Poepping noted that Petitioner's left upper extremity symptoms had been ongoing with no significant resolution from therapy, injections, work conditioning, activity modification, and medication. Dr. Poepping therefore opined that Petitioner's only remaining option was surgery in the form of a left shoulder arthroscopic subacromial decompression, distal clavicle excision, and debridement. He kept Petitioner on work restrictions as they awaited surgical authorization.

On July 3, 2018, Dr. Poepping reported that Petitioner's surgery had been denied, but his symptoms remained unchanged. Dr. Poepping's diagnoses at that time remained left shoulder AC arthrosis, left shoulder impingement, and left elbow lateral epicondylitis. He continued to

recommend surgery and ongoing work restrictions. When Petitioner returned to Dr. Poepping on May 7, 2019, he reported increased pain and fatigue in the left shoulder with a transient locking sensation particularly with overhead use. Dr. Poepping again recommended surgery and work restrictions. The May 7, 2019 note from Dr. Poepping was the last treatment record in evidence.

At the time of the hearing, Petitioner still worked for Respondent performing the same job that he did when he was injured. However, Petitioner testified that he can no longer run or move fast. Petitioner further testified that the back of his neck, his entire left arm, and his low back still hurt. The Arbitrator noted for the record that Petitioner indicated that he was experiencing arm pain from the shoulder at the base of his neck down his left arm. Petitioner confirmed that he had not yet had the recommended left arm surgery.

II. Conclusions of Law

Following a careful review of the entire record, the Commission affirms and adopts the Arbitrator's findings and award as it relates to Petitioner's causally related left shoulder and arm injuries. The Commission further affirms and adopts the Arbitrator's finding of no causation and denial of benefits for Petitioner's lumbar condition. However, for Petitioner's cervical condition, the Commission reverses the Arbitrator's finding of causation and vacates the award for medical expenses and permanent partial disability benefits for the cervical spine accordingly.

The medical records show that Petitioner failed to mention any cervical or low back complaints when he first sought treatment on the date following the accident at Cicero Medical Clinica San Lazaro. When Petitioner presented for this treatment on November 19, 2016, he complained of left arm numbness and pain only. This led to Dr. Licea diagnosing Petitioner with left arm pain. No complaints or diagnoses concerning Petitioner's neck or low back were made at this initial treatment visit. At the hearing, Petitioner confirmed that when he first sought treatment at Cicero Medical Clinica San Lazaro, he did not tell the doctor he had any neck or low back pain.

After the November 19, 2016 treatment visit, Petitioner went back to performing his regular job duties the following Monday and did not thereafter seek any additional medical care until May 19, 2017. During this period, Petitioner remained working at his regular full duty job, which he described as heavy work that involved lifting up to 75 pounds. Only when Petitioner presented for the treatment visit on May 19, 2017, approximately six months after the accident, did he raise his first complaints of cervical and lumbar pain.

These treatment records show that Petitioner had the exact same delay in reporting his cervical complaints as he did for his lumbar complaints. Given that Petitioner failed to raise any cervical complaints until six months after the accident and continued to work his regular heavy duty job during this period, the Commission finds that Petitioner failed to prove that his current cervical condition is causally related to the work accident on November 18, 2016. Consistent with this finding, the Commission vacates the award of reasonable and necessary medical expenses for the treatment rendered to Petitioner's cervical spine as well as the award of permanent partial disability benefits for his cervical condition. All workers' compensation benefits are therefore denied for Petitioner's alleged cervical injury. The Commission otherwise affirms and adopts the Arbitrator's findings as it relates to Petitioner's left shoulder, left elbow, and low back conditions.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 11, 2022 is modified as stated herein. For all other issues not specifically modified herein, the Commission affirms and adopts the Decision of the Arbitrator, including the Arbitrator's findings as to Petitioner's left shoulder, left elbow, and low back conditions.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner failed to prove that the current condition of his cervical spine is causally related to the work accident sustained on November 18, 2016. Accordingly, the Commission vacates the award of medical expenses and permanent partial disability benefits as it relates to Petitioner's cervical condition. All workers' compensation benefits for Petitioner's alleged cervical injury are hereby denied. The Commission otherwise affirms and adopts the Arbitrator's finding of causation and award of benefits for Petitioner's left shoulder and left elbow injuries.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $10,000.00. 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.

December 21, 2022

DLS/met
O- 11/9/22
46

/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/*Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC011973
Case Name	CERVANTES, DELFINO v. FREEDMAN SEATING COMPANY
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Jack Epstein
Respondent Attorney	Zachary March

DATE FILED: 4/11/2022

/s/ Joseph Amarilio, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 5, 2022 1.11%

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

Delfino Cervantes
Employee/Petitioner

v.

Freedman Seating Company
Employer/Respondent

Case # **17 WC 011973**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was provided to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, on **12/20/2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **11/18/2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**32,760.00**; the average weekly wage was $**630.00**.

On the date of accident, Petitioner was **38** years of age, ***married*** with **4** dependent children.

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

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

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

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

ORDER

The Arbitrator finds Petitioner proved a causal connection between his current condition of ill-being to his neck, left shoulder and left elbow and the accident but failed to prove a causal connection to his low back.

Respondent shall pay Petitioner permanent partial disability benefits of $378.00/week for 37.5 weeks, because the injuries sustained caused the 7.5 % loss of the person as a whole, as provided in Section 8(d)2 of the Act representing 5% for the neck injury and 2.5% for the left shoulder injury and Respondent shall pay Petitioner permanent partial disability benefits of $378.00/week for 6.325 weeks because the injuries sustained caused a 2.5% loss of use of the left arm as provided in Section 8(e)10 of the Act .

Respondent shall pay to Petitioner the sum of reasonable and necessary medical services for treatment rendered to the neck, left shoulder, and left elbow, as provided in Sections 8(a) and 8.2 of the Act. Respondent is not liable for medical services rendered to the low back.

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

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

/s/ *Joseph D. Amarilio*

Signature of Arbitrator Joseph D. Amarilio **April 11, 2022**

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DELFINO CERVANTES,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. **17 WC 011973**
	)	
FREEDMAN SEATING COMPANY,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION
FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Mr. Delfino Cervantes (Petitioner) caused to be filed an Application for Adjustment of Claim on April 24, 2017 alleging that he sustained accidental injuries as a result of repetitive trauma up to November 19, 2016 while working for Freedman Seating Company (Respondent). At the commencement of the hearing Petitioner's attorney requested and was granted leave to amend the Application for Adjust of Claim instanter and on its face and change the nature of the accident to a specific loss on November 18, 2016. (Tr. 10)

The following issues were in dispute: 1. Whether Petitioner gave notice of the accident within the time limits stated in the Act; 2. Whether Petitioner's current condition of ill-being is causally connected to his injury; 3. Whether the Respondent is liable for unpaid medical bills; and, 4. The nature and extent of the injury. (AX 1)

II. FINDINGS OF FACT

Petitioner testified in Spanish through an interpreter. Petitioner testified that he was employed by Freedman Seating Company on November 18, 2016. (Tr. 12). He testified that on November 18, 2016, he was working as a welder performing welding on car seats and bus seats. (Tr. 13, 15). Petitioner testified the seats weighed approximately 75 pounds, and he would lift the seat from the ground on to a mold on a table a little higher than 3 feet off the ground. (Tr. 14). Petitioner testified he would first put the 75-pound seat on the table, on the mold, weld it, then take it back off the table. He would lift on to the table 30-40 driver bus seats a work shift. It is a fast paced physically demanding job. (Tr. 14). Petitioner testified he is right-handed and performs welding with the right hand. (Tr. 16). With respect to Petitioner's left hand, he testified he only uses the left hand to hold the seat in place while he is welding it. (Tr. 16). Petitioner testified on November 18, 2016, he was performing these activities when he injured his left arm, neck, and lower back. (Tr. 17-18). When Petitioner was asked to explain how he got hurt on November 18, 2016, he testified that he injured himself performing his job duties of lifting, moving and welding 30-40 seats a day (Tr. 12- 17).

The Arbitrator notes that a well summarized mechanism of injury was recorded by Lee De Las Gasas, D.C. at Grandview Health Partners. The date of onset was noted to be 11/18/17. (Px 1, p.56)

Dr. Lee De Las Gasas recorded the mechanism of injury as follows: Patient worked as a welder for a factory that produces seats for vehicles. Patient welded the street components

on a table that was higher than what he was used to on the date of loss. The table height was approximately 3 feet high. Patient is 5'2" tall. He used his left arm to hold and move the chair components as he used his right upper extremity to weld the parts. He welded approximately four chairs per hour for six hours on the date of loss. Patient had to remove the chair parts from their respective molds that were also on the table. Removing the chairs from each mold required more effort than usual. He needed to use his whole body to perform the removal of the molds and the table. He states that he was under pressure to perform his tasks at a more rapid pace than usual due to the volume of work that day. He also has to lift the chair components that were in their molds onto the 3-foot-high table. He estimated that the average weight of a chair components and molds weighed between 70-75 lbs. (Px 1, p.56)

He began to feel pain in his regions of complaints after five and a half hours of work that day. He had also lifted sixteen 45 lbs. chair components that day. (Px 1, p.56)

He told his supervisor "Oscar" abut his pain and made an accident report with a security worker. (Px 1, p.56)

He went home because he felt too much pain. He went the [company] clinic the next day due to his pain that was not diminishing. He returned to work on 11/22/17 perfuming the same tasks at same intensity as before. His work duties exacerbated his pain. He continued working until May 18, 2017 with daily exacerbations. He stopped working on May 18th due to pain. He states that he has not seen any other doctors. (Px 1, p.56)

As of November 18, 2016, Petitioner was earning $630.00 per week, and testified he worked 70 – 80 hours every two-week pay period. (AX 1; Tr. 31). Petitioner testified he reported his accident to his supervisor named Oscar. (Tr. 19, AX 1).

Petitioner testified he first sought medical treatment at company clinic, Cicero Medical Clinica San Lazaro on November 19, 2016. (Tr. 30). Petitioner testified he was truthful with the doctor at this appointment and testified he told the doctor about all of the problems he was having on November 19, 2016. (Tr. 30). Petitioner reported complaints of left arm pain and numbness and left-sided chest pain. (RX 4, p. 2). Petitioner testified he did not tell the doctor he was having any low back pain. (Tr. 31). He further testified he did not tell the doctor he was having any neck pain. (Tr. 31). Petitioner was ultimately diagnosed with left-sided chest pain and pain in the left arm. (RX 4, p. 3).

Petitioner testified the injury on November 18, 2016, occurred on a Friday. (Tr. 22). Petitioner testified that he returned to regular full duty work on Monday, November 21, 2016. (Tr. 31).

On direct examination, Petitioner testified that after his appointment on November 19, 2016, he next sought medical care 3 or 4 months later with Dr. Vargas. (Tr. 24 - 25). Petitioner testified that he was referred to Dr. Vargas by "a therapy place on Fullerton." (Tr. 25). Petitioner testified he did not remember the name of the therapy clinic. (Tr. 25). He testified he went to therapy a total of three times before seeing Dr. Vargas. (Tr. 26). Petitioner testified that he eventually came under the care of Dr. Poepping who told him

he needed surgery for his left arm. (Tr. 27). Petitioner testified he has not had the surgery as of the date of trial. (Tr. 28). Petitioner also testified that prior to November 18, 2016, he had never had any injuries to his neck, left shoulder, or lower back. (Tr. 20).

On cross-examination, Petitioner testified that following the appointment for his left arm pain on November 19, 2016, he returned to full-duty work on November 21, 2016. (Tr. 31, 34). Petitioner testified that he did not seek any additional treatment until he presented to Grandview Health Partners 6 months later, on May 19, 2017. (Tr. 34). Petitioner testified that he did not seek any treatment, including with Dr. Vargas or Dr. Poepping, between his initial visit at the company clinic, the day after his accident of November 18, 2016, and May 19, 2017. (Tr. 36-37).

At Grandview Health on May 19, 2017, Petitioner was examined by Lee De Las Casas, DC. (RX 5, p.4). Petitioner testified that at this appointment, he reported complaints of low back pain and neck pain as a result of the incident on November 18, 2016. (Tr. 36). He further reported complaints of 6/10 thoracic spine pain, 7/10 left shoulder pain, 7/10 left elbow pain, and 7/10 left upper arm pain. (RX 5, p. 1). According to the treatment record from this appointment, Petitioner reported having a lumbar spine injury three years earlier from the same job. (RX 5, p. 1). Petitioner was ultimately diagnosed with an unspecified injury of the left shoulder and upper arm, left elbow medial epicondylitis, cervical disc disorder with radiculopathy, intervertebral disc disorders with radiculopathy of the lumbar region, and spinal enthesopathy of the thoracic region. (RX 5, p. 3). Petitioner was referred

to an orthopedic specialist and orders were placed for an MRI of the left shoulder, and an EMG/NCV for both the upper and lower bilateral extremities. (RX 5, p. 3).

At the request of Respondent, Petitioner was evaluated by Dr. Jay Levin for a Section 12 independent medical examination on September 6, 2017. (RX 1, p. 1). Petitioner told Dr. Levin that while he was getting large items out of the mold on November 18, 2016, he felt pain in his left wrist radiating up into his left shoulder, along with pain in the left side of his neck posteriorly, midback pain, and low back pain. (RX 1, p. 2). Dr. Levin diagnosed Petitioner with left arm pain. (RX 1, p. 7). Dr. Levin stated the medical record of November 19, 2016 (one day post-injury), including the physical examination findings, is consistent with Petitioner requiring no medical care or treatment following November 19, 2016, for an injury of November 18, 2016. (RX 1, p. 8). Dr. Levin stated Petitioner's treatment subsequent to November 19, 2016, for his cervical, thoracic, and lumbar spine, as well as for the left shoulder and left elbow was not causally related to the injury of November 18, 2016. (RX 1, p. 8). Finally, Dr. Levin determined Petitioner had reached maximum medical improvement "within days of that occurrence." (RX 4, p. 8).

Following Petitioner's return to full duty work on Monday, November 21, 2016, Petitioner testified he continued working his usual 70 – 80 hours per two-week pay period for the next six months, through May 19, 2017. (Tr. 32-34). Petitioner further testified that in January 2017, April 2017, and May 2017, he worked overtime hours in addition to working 80 regular hours every two-week pay period. (Tr. 33-34). As of the date of trial, Petitioner

testified that he is still actively working in the same job as he was on November 18, 2016. (Tr. 28).

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(b)3(d)*. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to affect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954).

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st)

133788, ¶ 47. Credibility is the quality of a witness which renders his evidence worthy of belief. The arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award may not stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission,* 79 Ill.2d 249, 253 (1980); *Hosteny v. Workers' Compensation Commission,* 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent with the record as a whole. He does appear to be an unsophisticated individual and any inconsistencies in his testimony are not attributed to an attempt to deceive the finder of fact.

In support of the Arbitrator's decision relating to "E," *was timely notice of an accident given to Respondent*, the Arbitrator makes the following conclusions of law:

The Respondent stipulated to accident but disputed notice within the time limits of the Act. The Arbitrator finds timely notice of the accident was provided to Respondent by Petitioner.

In support thereof, the Arbitrator relies on the credible testimony of Petitioner, the fact that Petitioner supervisor sent Petitioner to the company clinic and that Petitioner was seen at the company clinic the day after the accident.

Although Respondent disputed notice, it elected not to call Petitioner's supervisor or to introduce Petitioner's employment file to rebut Petitioner's testimony. Respondent did not attempt to rebut the fact that medical records noted that Petitioner gave notice of accident to his supervisor and that Respondent's security completed an accident report. And, yet Respondent did not produce a copy of the accident report. Respondent's failure to produce the accident report raises an inference that it is hiding something.

The Arbitrator notes that Petitioner gave a consistent history of notice of accident which was repeatedly corroborated the in the treatment records of the medical providers as well as the Section 12 medical examination report authored by Dr. Jay Levin.

Petitioner testified that he reported the accident to his supervisor named Oscar on November 18, 2016. (Tr. 19). Petitioner testified that after he told Oscar he was injured,

Oscar told him to seek treatment at the company clinic. And Petitioner was seen at the company clinic the very next day. (Tr. 22).

The Arbitrator finds that Respondent's notice defense is baseless and without any merit whatsoever. In light of the above, the Arbitrator concludes Petitioner provided prompt notice.

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 makes the following conclusions of law:

The Arbitrator concludes Petitioner proved that his current condition of ill-being his left arm and neck are causally related to the November 18, 2016 accident but not the low back condition of ill-being.

Respondent has stipulated to an accident with injuries which occurred on November 18, 2016, as contained in stipulation. (Arb. X. 1) It is the Respondent's position that an accidental injury occurred to Petitioner, but that it was strictly limited to the day of the accident and the day after where the Petitioner was directed to go to the company clinic, Cicero Medical Clinic. There it was recorded that he complained of left arm pain with numbness and chest pain.

The Petitioner testified that the company clinic checked his left arm and left side but did not examine his neck or back. The medical record of the company clinic corroborates that examination was not performed of the neck and back. Petitioner was instructed to go back

to work and that he should engage in physical activity 3-4 times a week for 20 minutes, to wit: "Walking, dancing are good options."

The Petitioner did just that. He returned to work the following Monday. However, it was not brought out if Petitioner adopted or followed the company clinic recommended dancing treatment plan. He testified that on that Monday he was back at work but did so in a lot of pain to his left arm, neck and lower back. He testified that he had been doing this heavy lifting job on a full-time basis since 2014. He testified that he needed this job because he supports four children and his wife. He cannot afford to be out of work. He testified that he continued to work with his injuries. Mr. Cervantes testified that he asked for more medical treatment, but that his requests fell on deaf ears, or as he testified "Insurance didn't want to help me."

Mr. Cervantes testified that he continued to work while injured because he needed the money and that he tried to see a doctor that his brother and wife have seen. Yet, without insurance authorization and little money, medical care becomes very difficult. Nevertheless, the Petitioner testified that he continued to work while injured because he needed to do so.

The Petitioner testified that his next medical care after the May 19, 2017 visit was on June 1, 2017, when he was referred by his lawyer to see Axel Vargas, M.D. The initial evaluation of Dr. Vargas of Delaware Physicians, L.L. C., however, indicates that was seen upon referral from Dr. Lee De Las Casas for an evaluation (Px 2, p. 10) The doctor examined him and recorded the injuries as neck pain, low back pain and left shoulder pain.

Dr. Vargas performed a full work up, charts a consistent history and listed his impressions as cervical, left shoulder and lumbar areas of concern and sends Mr. Cervantes for diagnostic studies. (PX 1, pp. 4-8).

On that first treatment date, Dr. Vargas takes a consistent history of the work accident which occurred on November 18, 2016, and thereafter opines: "It is my opinion that the patient's symptoms for which he is being evaluated are directly related to the injury he sustained" (PX 1, p. 8).

The Petitioner returns to Dr. Vargas on June 15, 2017, following the MRI evaluations that Petitioner underwent at the recommendation of Dr. Vargas. Dr. Vargas diagnosed Petitioner has having C-3-C7 disc herniations with a pronounced C5-C6 disc herniation in the cervical region and L5-S1 herniation in the lower back. (PX 1, p. 9). Dr. Vargas, again, opined that these herniations to the cervical and lumbar region of Petitioner's spine were "[i]t is my opinion that the patient's symptoms for which is being evaluated are directly related to the injury sustained." (PX 1, p. 11).

Dr. Vargas noted that his clinical presentation and physical findings are suggestive of left shoulder impingement syndrome as a result of the injury and that his symptoms remain despite physical therapy. Accordingly, Dr. Vargas also referred Petitioner to a shoulder specialist within his practice group at Delaware Physicians, L.L.C. On June 20, 2017, Dr. Thomas Poepping conducted a consultation with Petitioner for the left shoulder. His impression was left elbow lateral epicondylitis, Left shoulder impingement and left shoulder AC arthrosis. (Petitioner's Ex. 1, P. 13).

In addition to these medical consultations, the Petitioner has undergone a series of injections, therapies and various medications. He is not a surgical candidate for his cervical or lumbar disc herniations, but Dr. Poepping indicated in his April 10, 2018 report that the Petitioner "does not feel he can work normal and is not interested in permanent restrictions which leave him with only surgical treatment." Dr. Poepping goes on to say that "the left shoulder surgery would involve left shoulder arthroscopic subacromial decompression, distal clavicle excision and debridement." (PX 2, p. 7).

The Respondent's Section 12 examiner Dr. Jay L. Levin, confirms, but downplays the cervical disc bulging and lumbar disc herniation, but concedes the left shoulder injury. (RX 1).

The Arbitrator is mindful that there is a six-month gap in care between the initial treatment at Cicero Medical Clinica San Lazaro (on November 19, 2016) and the next date of treatment at Grandview Health Partners (on May 19, 2017). In addition, the Arbitrator is mindful that Petitioner's recorded symptoms changed as recorded from the first date of treatment to the second. The Arbitrator notes that the initial treatment is consistent with neck, shoulder and elbow as it was recorded that he had left arm pain and numbness. The Arbitrator further notes that company clinic record for the initial medical visit was remarkably and unusually sparse. There was no mention whatsoever of examination of the neck or spine disputed the complaint of left arm numbness. It is clear that the company clinic medial provider had no clue of the physically demanding nature of Petitioner's job duties, or the provider would not have suggested that the Petitioner take over the counter pain medication and go on 20-minute walks and go dancing as the accepted standard of care. It is clear to this Arbitrator that the company clinic performed a perfunctory

examination medical provider assumed Petitioner was engaged in sedentary work. The Arbitrator notes that Dr. Levin did not endorse walk and dance treatment plan. Dr. Levin simply opined that one company clinic visit was enough. The Arbitrator does not find Dr. Levin's treatment plan to be persuasive.

Petitioner testified that following the incident, he sought treatment the following day, November 19, 2016, at the company clinic, Cicero Medical Clinica San Lazaro. (Tr. 30). Petitioner testified he was truthful with the doctor at this appointment and testified he told the doctor about all of the problems he was experiencing at that time. (Tr. 30). Petitioner reported complaints of left arm pain and numbness and left-sided chest pain. (RX 4, p. 2). On direct emanation, Petitioner testified that he reported left arm, neck and low back complaints. However, on cross examination Petitioner testified he did not tell the doctor he was having any low back pain. (Tr. 31). He further testified he did not tell the doctor he was having any neck pain. (Tr. 31). Petitioner was ultimately diagnosed with left-sided chest pain and pain in the left arm. (RX 4, p. 3). Petitioner was not taken off work, nor was he provided work restrictions. (RX 4, p. 3). It was clear that on cross examination that the Petitioner simply said yes to the questions pose

When Petitioner was evaluated at Grandview Health Partners on May 19, 2017, where he reported complaints of low back pain and neck pain as a result of the on November 18, 2016. (Tr. 36). Petitioner was ultimately diagnosed with an unspecified injury of the left shoulder and upper arm, left elbow medial epicondylitis, cervical disc disorder with radiculopathy, intervertebral disc disorders with radiculopathy of the lumbar region, and

spinal enthesopathy of the thoracic region. (RX 5, p. 3). These diagnoses differ significantly from diagnoses made as a result of his initial visit on November 19, 2016. The Arbitrator does not place great weight on the initial medical records due to their clear lack of detail and clear lack of understanding of Petitioner's job duties.

The Arbitrator is mindful that Petitioner testified that he returned to regular full duty work on Monday, November 21, 2016. (Tr. 31). Following Petitioner's return to full duty work on Monday, November 21, 2016, Petitioner testified he continued working his usual 70 – 80 hours per two-week pay period for the next six months, through May 19, 2017. (Tr. 32-34). Petitioner further testified that in January 2017, April 2017, and May 2017, he worked overtime hours in addition to working 80 regular hours every two-week pay period. (Tr. 33-34). Petitioner testified that his job as a welder involves heavy lifting up to 75 pounds. (Tr. 13-14). He testified that in November of 2016, he would lift the 75-pound seats to the table 30 or 40 times per day. (Tr. 14). Petitioner testified that he would describe his job as fast-paced. (Tr. 15). As of the date of trial, Petitioner testified that he is still actively working in the same job as he was on November 18, 2016. (Tr. 28). Although at first blush such a work record is inconsistent with his condition of ill-being but is consistent with a non-English speaking worker who needs to work in order to support himself and his family.

Third, the Arbitrator does find the opinion of Dr. Levin as to the low back to be persuasive on the issue of causal connection between the accident and Petitioner's medical condition but not as to the left arm and neck. On September 6, 2017, Petitioner was evaluated by Dr. Jay Levin for a Section 12 examination. (RX 1, p. 1). As part of this examination, Dr. Levin

not only took a history from the Petitioner and conducted a physical examination, but he also reviewed the relevant medical treatment records. Dr. Levin ultimately diagnosed Petitioner with left arm pain and stated Petitioner's treatment subsequent to November 19, 2016, for his cervical, thoracic, and lumbar spine, as well as for the left shoulder and left elbow, was not causally related to the injury of November 18, 2016. (RX 1, pp. 7-8). Finally, Dr. Levin determined Petitioner had reached maximum medical improvement "within days of that occurrence" to be not persuasive. (RX 4, p. 8). Dr. Levin was aware of the physically demanding nature Petitioner's work and yet failed to persuasively address how such work could well exacerbate and aggravate a pre-existing asymptomatic condition of ill-being to the neck, shoulder and elbow. Dr. Levin failed to persuasively address why Petitioner left arm numbness was not caused by a neck injury.

In comparison, the Arbitrator notes the May 19, 2017 Grandview Health Partners recorded history to be credible and persuasive causal connection. The recorded history and job description as well as Petitioner's complaints as to his left arm and left sided neck pain has the ring on truth. Dr. Levin description of Petitioner job duties is consistent with description recorded by Grandview Health Partners. Petitioner's testimony and the job description is consistent with the employers' minimal job description.

Petitioner testified unrebutted and credibly that he requested additional treatment after the November 19, 2016 company clinic visit but was denied it by his employer. He credibly testified that he continued to work in pain to support this wife and four dependent children. He testified that he continued to work in pain until he could not do so anymore.

The Arbitrator is persuaded by Petitioner's treating physician that Petitioner work duties exacerbated his condition of ill-being left arm pain and numbness. His testimony makes sense. His injuries to his left arm and neck and back makes sense. His injuries are consistent with his job duties. His injuries are the type one would suffer from the mechanism of his work. The Arbitrator is unable to reach the conclusion that Petitioner's low back pain is causally connected to his work accident of November 18, 2016 when the first record of back pain was recorded six months post-accident. However, there is insufficient proof and no credible evidence that his low back pain is causally related to his work accident. The Arbitrator would have liked to have benefit of reviewing the accident report completed by security.

In support of the Arbitrator's decision relating to "J," *were the medical services provided to Petitioner reasonable and necessary and has Respondent paid all appropriate charges for all reasonable and necessary medical services*, the Arbitrator makes the following conclusions of law:

The Arbitrator finds that the treatment received for the neck, left shoulder, left arm and elbow were reasonable and necessary. The Arbitrator further finds that treatment received to the low back was not reasonable nor necessary Therefore, the Arbitrator finds Respondent liable for the unpaid bills with exception of those related to the low back. Therefore, the Respondent is not liable for the medical bills of River North Pain Management Consultants in the amount of $10,520.00. Furthermore, the Respondent is not liable for the majority of the medical bills of BHS/ Matrix Medical Supply but is liable for the amount of $269.00. (PX 3)

Respondent shall pay reasonable and necessary medical services related to the neck, left shoulder, left arm and elbow as provided in Section 8(a) and 8.2 of the Act.

In support of the Arbitrator's decision relating to "L," *what is the nature and extent of the injury*, the Arbitrator makes the following conclusions of law:

In determining permanent partial disability benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(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." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n,* 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence by either party. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. *See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n*, 2015 IL App (5th) 140445WC, ¶ 17. Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner was employed as welder on the date of accident. Petitioner worked in this heavy physical labor occupation for years for Respondent. The Arbitrator gives some weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 38 years old at the time of the accident in that he still had a work expectancy of about 29 years. The Arbitrator gives some weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes no evidence was introduced as to loss of earning capacity. Petitioner returned to his former occupation. The Arbitrator therefore gives some weight to this factor.

Under Section 8.1b(b)(v), evidence of disability corroborated by the treating medical records, the Arbitrator specifically looks to the records of the treating medical provider. Petitioner was diagnosed with cervical discogenic pain syndrome and cervical facet syndrome based on clinical examination and diagnostic studies by Dr Vargas. Dr. Vargas noted that MRI findings confirmed facet arthropathy and herniated disc from C3-C7 with a more pronounced disc at C5-6 with cervical discogenic radiculopathy. (PX 1, p. 10) Dr. Poepping diagnosed Petitioner with left elbow lateral epicondylitis, left shoulder impingement and left shoulder AC arthrosis base upon clinical examination and diagnostic studies. Since Petitioner has ongoing complaints related to his neck, shoulder and arm which have an impact on his life at work and his activities of daily living, the Arbitrator therefore gives greater weight to this factor.

.

Based on the above factors, the totality of the facts and circumstances and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 5 % of loss of his person for his cervical injury and 2.5 percent loss of his person for the left shoulder injury for a total of 7.5 % loss of use of his person as a whole, pursuant to §8(d(2) of the Act which corresponds to 37.5 weeks of permanent partial

disability (PPD) and 2.5 % loss of use of his left arm for his elbow injury which corresponds to 6.325 weeks of PPD benefits pursuant Section 8(e) 10 of the Act at a weekly rate of $378.00.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC030025
Case Name	Andrew Leigh v. Zentz and Associates, Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0497
Number of Pages of Decision	9
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Kylee Miller
Respondent Attorney	Kevin Luther

DATE FILED: 12/22/2022

/s/ Kathryn Doerries, Commissioner

Signature

22IWCC0497

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNABAGO)

☐ 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)
X Correction of scrivener's errors	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANDREW LEIGH,

Petitioner,

vs. NO: 18 WC 30025

ZENTZ & ASSOCIATES, 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, 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.

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, Findings of Fact, paragraph 1, to strike "9/14/18" to replace with "9/4/18".

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, Findings of Fact, paragraph 2, to strike "6/4/18" to replace with "9/4/18".

All else is affirmed and adopted. As Petitioner failed to establish accident and causal connection, all benefits are denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 4, 2022, is, otherwise, hereby, affirmed and adopted, all benefits denied.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, 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.

December 22, 2022

d-12/13/22
KAD/jsf

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC030025
Case Name	LEIGH, ANDREW v. ZENTZ AND ASSOCIATES, INC.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Kylee Miller
Respondent Attorney	Kevin Luther

DATE FILED: 3/4/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 1, 2022 0.67%

/s/ Paul Seal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ANDREW LEIGH
Employee/Petitioner

v.

ZENTZ AND ASSOCIATES, INC.
Employer/Respondent

Case # **18** WC **30025**

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 **Paul Seal**, Arbitrator of the Commission, in the city of **Woodstock**, on **1/05/22**. 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 **9/04/18**, 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 $**62,400.00**; the average weekly wage was $**1,200.00**.

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

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

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

Respondent shall 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

Denial of Benefits

The Arbitrator finds that the petitioner failed to bear his burden of proving by the preponderance of the evidence that he sustained an accident/exposure arising out of and in the course of his employment with the respondent. He failed to prove that his current condition of ill being is causally connected to an accident or exposure arising out of and in the course of his employment with the respondent. All 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.

MARCH 4, 2022

Signature of Arbitrator

FINDINGS OF FACT

The parties agreed that the Petitioner was an employee of the Respondent on the day of the occurrence, 9/14/18. The Petitioner testified that he had been working for the Respondent for approximately one and a half to two years before the occurrence.

On 6/04/18, the Petitioner claims that he was removing mold from a house that was being refurbished/remodeled. The Petitioner described seeing black, blue, and red and green areas that he believed looked like mold. He was in the basement, wearing a mask, and was using ZEP materials, which he used 90 percent of the time when cleaning out basements. The Petitioner testified that respirators are not required, and only a mask, which he was wearing. The safety glasses and masks were supplied by the Respondent. No evidence was introduced by either party verifying the presence of mold.

The Petitioner completed one day of removal in the basement. On the second day, he said it reminded him of like a "gas chamber" when he was in the service. He called the Respondent's representative to say that he was not feeling well. The Petitioner finished the project.

The next day, the Petitioner was driving his children to school when he noticed that he was having difficulty breathing (restricted). The Petitioner ended up going to Physicians Immediate Care for treatment. During this time, the Petitioner testified that his employment with the Respondent was terminated, as "We had a falling out."

The Petitioner outlined his medical treatment at OSF, Physicians Immediate Care, Swedish American Immediate Care, and the University of Wisconsin Health. Those exhibits were introduced as Exhibits 1 through 7. The Petitioner's medical bills were marked as Petitioner's Exhibit No. 8.

The Petitioner testified that after he stopped working for the Respondent in the fall of 2018, he was "self-employed." He stated that he was advertising for his own business, which was a remediation business, similar to the work that he was doing for the Respondent. Eventually, the Petitioner obtained employment with one of his prior employers called Petrotek. For Petrotek, he was a tank truck driver delivering fuel. Currently, the Petitioner is self-employed.

The Petitioner testified that his last treatment for his alleged condition of ill-being was in April of 2019 at Physicians Immediate Care.

The Petitioner testified that he uses an inhaler from time to time. The Petitioner confirmed that he smoked cigarettes for several years but claims that he quit five years before the occurrence. No future medical appointments are scheduled with any medical provider.

Petitioner's Exhibit No. 1 are the first set of OSF Medical Group medical records. Those show that the Petitioner appeared complaining of shortness of breath. On a 9/24/18 entry, it was noted that there were "12 possible causes" of this condition. Mold is not identified. It was noted on 3/04/19 that a CT scan of the lung, compared to an 11/16/18 CT, showed that the bronchial wall thickening was no longer seen.

Offered as Petitioner's Exhibit No. 2 are a second set of OSF Medical Group records. On 11/19/18, the Petitioner stated that he had symptoms of cough "ongoing for the past several

months." It was noted that he continues to do "power lifting at Peak," which is an exercise club. It was noted that he smoked cigarettes from age 16 to age 35.

Offered as Petitioner's Exhibit No. 4 are Physicians Immediate Care records. On 7/08/19, it was noted that the Petitioner meets CDL standards. He passed his physical examination for, presumably, his employment with Petrotek.

Offered as Respondent's Exhibit No. 2 are the Peak Fitness subpoena response. It noted that the Petitioner joined Peak Fitness on 4/15/16. The Petitioner actually checked in on 9/10/18, approximately six days after the occurrence. Starting in January of 2019, the Petitioner attended numerous workouts at Peak Fitness.

Offered as Respondent's Exhibit No. 1 is the evidence deposition transcript of Dr. Alfred Habel. Dr. Habel's deposition was taken on 7/26/21. Dr. Habel specializes in internal medicine and pulmonary critical care. He is board certified in these areas.
Dr. Habel noted that the Petitioner has a significant smoking history and also noted previous cocaine use. Dr. Habel noted that the Petitioner had fatigue and weight gain in June of 2017. (Respondent's Exhibit No. 1, p. 18.) Dr. Habel noted that X-rays of the chest were normal on 9/06/18 and that the oxygen level on that date was 100 percent. (Respondent's Exhibit No. 1, p. 20.) A pulmonary function test on 10/01/18 was normal. (Respondent's Exhibit No. 1, p. 22.)

During the physical examination on 9/06/18, Dr. Habel noted that the Petitioner's lungs were clear. (Respondent's Exhibit No. 1, p. 24.) A CT scan of the lungs on 11/16/18 noted scar tissue which pre-existed the alleged exposure. (Respondent's Exhibit No. 1, pp. 24-26.) At that time, the Petitioner's six-minute walk test was normal. (Respondent's Exhibit No. 1, p. 27.)

It was Dr. Habel's opinion that the Petitioner's condition was not work related. It was his opinion that the Petitioner's work for the Respondent, particularly on 9/04/18, did not cause or contribute to cause the Petitioner's vocal cord dysfunction or any other medical condition. He noted that the work exposure did not aggravate or cause the Petitioner's condition. He also agreed that ZEP exposure was not a cause for the Petitioner's alleged condition. It was his opinion that the Petitioner needed no future medical treatment and needed no physical restrictions. His report dated 3/15/19 was introduced into evidence at the evidence deposition. (Respondent's Exhibit No. 1, pp. 32-39.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

To recover for compensation of the Illinois Workers' Act, the Petitioner must prove that he suffers from an occupational disease or work-related injury and that a causal connection exists between his or her employment and his or her condition. *Anderson v. Industrial Comm'n*, 321 Ill. App. 3d 463, 467 (2001). The burden rests on the Petitioner to establish that he is suffering from a condition of ill-being caused or related to his or her employment. *Rockford Transit Corp. v. Industrial Comm'n*, 38 Ill. 2d 111-114-15 (1967). The mere possibility an employee may be afflicted with a disease in the course of employment is not sufficient to support an award. *Weekley vs. Industrial Comm'n*, 245 Ill. App. 3d 863 (2nd Dist. 1993).

In the current claim, the Petitioner did not introduce into evidence an opinion from any physician or expert that the Petitioner's condition was work related. Where the medical causal connection is one within the knowledge of science or medicine and not within the common knowledge of or comprehension of laypersons, expert testimony and opinion are necessary to show that a Petitioner's work activities caused the condition that is being complained of.

Interlake Steel Co. v. Industrial Comm'n, 136 Ill. App. 3d 740 (1995); *Johnson v. Industrial Comm'n*, 89 Ill. 2d 438 (1982).

The evidence introduced at arbitration shows that the Petitioner did not establish that he was previously in good health prior to this alleged exposure. For example, it was noted that the Petitioner had a cough for several months before the alleged occurrence. (See Petitioner's Exhibit No. 2, 11/29/18 note of OSF Medical Group where the Petitioner complained of symptoms of cough "ongoing for the past several months.") The Petitioner was a pack-a-day smoker from age 16 through age 35. (Petitioner's Exhibit No. 2, 11/29/18 Medical Record.)

Furthermore, the Petitioner did not establish that he was exposed to any "airborne mold." The Petitioner testified that he was wearing a mask and goggles. There were no samples or testing done of the work location introduced by the Petitioner. Furthermore, the Arbitrator notes that the Petitioner elected to start his own remediation business in November 2018, which presumably would include the removal of mold, even though he was claiming that exposure to mold caused the condition at that time. The only medical opinion introduced in evidence was from Dr. Habel, who testified that the Petitioner's condition of ill-being was not work related.

Accordingly, the Arbitrator finds that the Petitioner failed to establish accident and causal connection. All requests for workers' compensation benefits are denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC014640
Case Name	Jack Alpers v. State of Illinois/Illinois State University
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0498
Number of Pages of Decision	9
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	Bradley Defreitas

DATE FILED: 12/23/2022

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

☐ 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

JACK ALPERS,

Petitioner,

vs. NO. 17WC014640

STATE OF ILLINOIS/
ILLINOIS STATE UNIVERSITY,

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 issue of nature and extent of permanent partial disability of Petitioner, and being advised of the facts and law, affirms and adopts with correction as stated below, the Decision of the Arbitrator, which is attached hereto and made a part hereof.

On December 9, 2019, Arbitrator Rowe-Sullivan issued a Decision on a 19(b) Petition which stated, in pertinent part, "Petitioner's condition of ill-being *as it relates to the right-sided lower back and right lower extremity is not causally related to the accident,* but Petitioner's condition of ill-being as it relates to the left-sided lower back and left lower extremity is causally related to the accident."

Petitioner subsequently filed a Petition for Review on the issues of causal connection, temporary disability, and permanent disability. The Commission thereafter affirmed the Decision of the Arbitrator on July 6, 2020, with changes and remanded the case to the Arbitrator for further proceedings.

Further hearing was conducted by Arbitrator Kurt Carlson on May 27, 2022. The Arbitrator incorrectly stated that "Petitioner's current condition of ill-being is not related to his work injury as it relates to his left lower back and left lower extremity." Page 2, lines 3-4 of the first paragraph of the Order filed July 8, 2022.

The Commission hereby corrects the clerical error on page 2, first paragraph at line 4 of the Order part of the Arbitrator's Decision to reflect, consistent with the findings, that Petitioner's current condition of ill-being is not related to his work injury as it relates to his right lower back and right lower extremity. All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 8, 2022, is corrected to reflect that Petitioner's current condition of ill-being as it as it relates to his right lower back and right lower extremity are not causally related to the work injury as stated above. All else is affirmed.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner was found to be at maximum medical improvement for his left lower back and left lower extremity per the Commission Decision entered July 6, 2020. Therefore, medical bills that were incurred after November 20, 2018, are not owed by the Respondent. Petitioner's current condition of ill-being is not related to his right back and right lower extremity. Petitioner's right lower back and extremity were previously denied in the July 6, 2020, decision.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner partial disability benefits of $520.35 per week for 100 weeks, because the injuries sustained caused the loss of 20% of the person-as-a-whole, as provided in Section 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.

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. 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.

December 23, 2022

SJM/sj
o-11/23/2022
44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC014640
Case Name	Jack Alpers v. State of Illinois/Illinois State University
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	Bradley Defreitas

DATE FILED: 7/8/2022

THE INTEREST RATE FOR THE WEEK OF JULY 6, 2022 2.50%

/s/ Kurt Carlson, Arbitrator
Signature

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

July 8, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF MCLEAN)

☐ 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

Jack Alpers Case # **17** WC **014640**
Employee/Petitioner
v.
State of Illinois/Illinois State University
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 **Kurt Carlson**, Arbitrator of the Commission, in the city of **Bloomington**, on **05-27-22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **March 2, 2017**, 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 $**45,097.06**; the average weekly wage was $**867.25**.

On the date of accident, Petitioner was **56** 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 $**all amounts paid** under Section 8(j) of the Act.

ORDER

Petitioner was found to be at maximum medical improvement for his left lower back and left lower extremity per the Commission decision entered on July 6, 2020. Therefore, medical bills that were incurred after November 20, 2018 are not owed by Respondent. Petitioner's current condition of ill-being is not related to his work injury as it relates to the left lower back and left lower extremity. Petitioner's right lower back and right lower extremity were previously denied in that July 6, 2020 decision.

Respondent shall pay Petitioner permanent partial disability benefits of $520.35/week for 100 weeks, because the injuries sustained caused the 20% loss of 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.

Kurt A. Carlson

Arbitrator

JULY 8, 2022

Jack Alpers v Illinois State University
17-WC-014640

Findings of Fact

This matter was previously tried before Arbitrator Melinda Rowe-Sullivan on October 24, 2019 on a 19(b) petitioner. All issues were decided at that time except for nature and extent of Petitioner's injury. Arbitrator Rowe-Sullivan found that Petitioner's treatment through November 20, 2018 was causally related to the work accident. She further found that Petitioner's complaints as it related to his right side lower back pain was not related to his work injury and that Petitioner was not entitled to TTD after November 20, 2018.

This matter was heard by Arbitrator Carlson on May 27, 2022 to decide causal connection for Petitioner's current condition of ill-being, medical bills, and the nature and extent of the injury. Petitioner was the only witness at trial and he testified as to his injury, his current complaints, and his recent medical visits.

Petitioner's testimony

Petitioner testified that he has not worked since October 24, 2019 and that he will be officially retired as of June 1 of this year. He further testified that he has been on SERS disability because of his low back. He testified that his whole back has hurt since his injury.

He did note that the pain does not go into his left leg like it does on the right side. He testified that he has difficulties sitting for longer than an hour. TX at 11. He testified that at home he is not able to take care of the 6 acres that he lives on like he used to. Id at 12.

He testified that he continues to see Dr. Ji Li at Applied Pain Institute where he "go[es] in there for my whole lower back," to get pain medication. Id at 14-15.

Petitioner's exhibits

The Commission decision from the previous 19(b) was entered as Petitioner's exhibit 2. This decision reflects that the treatment and TTD benefits for Petitioner's work related injury were only awarded through November 20, 2018.

The records from Dr. Ji Li at Applied Pain Institute were entered as Petitioner's exhibit 3. These records reflect that Petitioner saw Dr. Li on June 6, 2019 for right SI joint pain and that the office would follow up with work comp for coverage of an SI joint injection to relieve pain. PX 3 at p. 25. Petitioner returned on September 9, 2019 where the history of present illness notes that "[h]e said his pain is the same…{[i]t is at his right low back in the right SI joint area." Id at 23. He returned again on December 2, 2019 where he again only complains of right SI joint pain. Id at 21. The records reflect that Petitioner's next visit was February 24, 2020 where he complained of pain "at his low back, mostly at his right SI joint with right buttock pain." Id at 19. There is an audio conference note from May 19, 2020 where Petitioner complained of low back without tingling into his legs. Id at 18. Petitioner followed up next on August 11, 2020 with complaints of right buttock pain from doing house work. Id at 16. Petitioner next followed up on August 25, 2020 where his pain was better but still complained of pain to his right SI joint. Id at 14. Petitioner's next visit was October 26, 2020 where he complained of "pain…still located at his right lower buttock without radiating." Id at 12. Petitioner presented again on January 18, 2021 and stated "that it is still located at his right SI joint without radiating to his legs." Id at 10. Petitioner presented next on April 12, 2021 where he stated that "his low back pain in his right SI joint is the same." Id at 8. Petitioner presented on August 9, 2021 with his first complaint of low back pain in these records where he

noted that "he started to have left low back pain in May of 2021…[it] is a local pain without radiating to his legs." Id at 6. Petitioner presented on November 8, 2021 with most of his pain located at his lower right back. Id at 4. Petitioner presented on January 31, 2022 with right SI joint pain and occasional radiation to his right buttock. Id at 2. The final note in the exhibit is from April 25, 2022 where Petitioner presented with right sided SI pain with no radiation into his legs. Id at 30.

Conclusions of Law

As an initial matter the Arbitrator notes Petitioner has the burden of proving all of his case by a preponderance of the evidence. Chicago Rotoprint v. Industrial Comm'n, 157 Ill.App.3d 996, 1000, 509 N.E.2d 1330, 1331(1st Dist. 1987).

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

The arbitrator finds that Petitioner was found to be at maximum medical improvement by the decision of Arbitrator Rowe-Sullivan, which was affirmed and adopted by the Commission, as of November 20, 2018. This is based on the opinion of Respondent Section 12 examiner, Dr. Butler, who found that Petitioner did not need further treatment for his left sided low back and left lower extremity injury.

Issue (J): Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

After finding that Petitioner's current condition of ill-being is not related to his work injury the Arbitrator finds that Respondent has paid all reasonable and necessary medical services as it relates to Petitioner's left lower back and left lower extremity. The Arbitrator does note that of the medical records submitted by Petitioner there is only one record with complaints of left lower back pain and that is from August 9, 2021. All other records specifically reference his right SI joint pain. The right lower back and right lower extremity were previously found not compensable by Arbitrator Rowe-Sullivan. Respondent does not owe for any of the bills contained in Petitioner exhibit 4.

Issue (L): What is the Nature and Extent of the injury?

As Section 8(d) has two option for permanent partial disability awards then an analysis for a PPD award is necessary. With respect to disputed issue (L), pertaining to the nature and extent of Petitioner's injury, and consistent with 820 ILCS 305/8.1b, permanent partial disability shall be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1b of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. No single enumerated factor shall be the sole determinant of disability. Id.

With regard to subsection (i): The Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. Therefore the Arbitrator gives no weight to this factor.

With regard to subsection (ii): the occupation of the employee: the Petitioner was employed as a groundskeeper by Respondent which required substantial physical labor. Petitioner testified that he was required to lift up to 100 pounds. Therefore the Arbitrator gives greater weight to this factor.

With regard to subsection (iii): the Arbitrator notes that Petitioner was 56 years old at the time of the accident. The Petitioner is less able than younger employees to establish marketable job skills therefore, the Arbitrator gives moderate weight to this factor.

With regard to subsection (iv): Petitioner's future earnings capacity: Petitioner testified he has not returned to work but has been on disability since the work injury. He did testify that he was retiring from the State on June 1 but there was no evidence that his pay or future pay was diminished by his time on disability or his retirement. Therefore, the Arbitrator places little weight on this factor.

With regard to subsection (v): evidence of disability corroborated by the treating medical records: the Arbitrator notes Petitioner's treatment records were included in the 19(b) decision. As noted above the records submitted at trial are almost exclusively for the right lower back so no evidence of disability is taken from those records. The Arbitrator notes that Petitioner underwent a microdiscectomy L5-S1, partial laminotomy, operating microscope for a pre and post-operative diagnosis of left S1 radiculopathy secondary to a large disc herniation, L5-S1 on the left. Therefore, the Arbitrator gives this factor greater weight.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 20% loss of person as whole, pursuant to §8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC016750
Case Name	Patty J Tillman v. State of Illinois - Warren G Murray Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0499
Number of Pages of Decision	32
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Robert Nelson
Respondent Attorney	Kenton Owens

DATE FILED: 12/27/2022

/s/ Thomas Tyrrell, Commissioner

Signature

22IWCC0499

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 Down (TTD, Nature and Extent)	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Patty Tillman,

Petitioner,

vs. NO: 17 WC 16750

State of Illinois / Warren G. Murray Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability ("TTD") and nature and extent, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Findings of Fact

In the interest of efficiency, the Commission primarily relies on the Arbitrator's detailed recitation of facts in the Arbitration Decision. Petitioner worked for Respondent for approximately 26 years. On the date of accident, her primary job duties included performing clothing and laundry duties. She testified that before the date of accident, she did not have any limitations or difficulties with either leg, and she could fully perform her job duties.

On January 23, 2017, Petitioner sustained an injury to her left leg and foot while at work. Regarding her mechanism of injury, Petitioner testified:

> "I was walking into the building. You have to go to one building…I have to sign in on the clipboard on Cherry. So I went in, and when I came back—I went up the ramp to go in, and then when I came out, I took the steps. And the last step was covered with leaves, and I didn't even—I couldn't—I didn't see it, and I fell onto my left side."

(Tr. at 24). Petitioner testified that she had traversed those steps in the past without any trouble. She testified that she could not see the last step because of the leaves covering it, and she missed

the step and fell. Petitioner testified that immediately after the fall her left leg began to swell from her calf to around six inches above her knee. She testified that this swelling has never completely resolved. She testified that her left leg swells more when she stands for prolonged periods. She testified that she was placed at maximum medical improvement ("MMI") on February 8, 2018, and that her condition has worsened since then. Petitioner testified:

> "Well, there's a lot of swelling, a lot of pain. I call it my weather leg…because during rain, it just throbs, and then I am usually under a blanket most of the day with heat to keep it warm."

(Tr. at 28).

Petitioner testified that she continues to suffer from pain and swelling in the left leg. She testified that the swelling and discomfort are constant. Petitioner testified that she takes Ibuprofen for the pain. She also uses a compression machine for one hour daily. Petitioner testified that she now wears a size 2X to accommodate the swelling in her left leg, when she otherwise would wear a size 1X. She testified that the compression machine reduces her pain a bit.

Petitioner testified that she is unable to kneel, squat, or climb a ladder. She testified that she can only sit for approximately one to one and a half hours before she must prop up her left leg. She testified that her leg is more swollen after she sits for a prolonged period. She testified that on a normal day she wakes up between 7:00 a.m. and 7:30 a.m. and plays on her phone while she remains in bed. She testified that eventually she gets up, makes breakfast, and washes the dishes. Petitioner will then start a load of laundry or any other task she needs to complete. She testified that she then lies down for a few hours and sometimes uses an ice pack on her left leg. At approximately 11:00 a.m. she gets up again, makes up her bed, continues to do laundry, and eats lunch. She testified that from around 1:30 p.m. to 5:00 p.m., she remains on her couch. She then folds and puts away clothes, starts dinner, and washes dishes. Petitioner testified that by 6:30 p.m. she is once again lying on the couch with her left leg propped up on pillows. She testified that her husband puts on the compression machine when he gets home from work.

Petitioner agreed that she was supposed to return to light duty work in October 2017. She testified her doctor released her to full duty with restrictions. She testified that Respondent initially accommodated her light duty restrictions. However, once her doctor cleared her to return to full duty with restrictions, Respondent placed her in her normal job with no accommodations. Petitioner testified that she could not properly perform her job duties with her prescribed restrictions and that her coworkers helped her. She testified she did not ask for light duty work or an accommodation before she decided to retire on December 18, 2017. Petitioner testified that her condition will never improve; instead, it will continue to worsen. She testified that her condition is worse now than it was when she returned to work in the fall of 2017. She testified that she retired at age 60 because she could no longer perform her job properly. Petitioner testified that Respondent never offered or told her about any other kinds of available work. Petitioner testified that she receives the normal retirement benefits—it is not a disability pension.

She testified that she is unable to lift anything heavier than a gallon of milk. She testified that she can barely stand long enough to take a quick shower. Petitioner estimated she can stand

for an hour before her left leg starts to swell and she must elevate it. Petitioner testified that she tries to work at a food pantry three days a month. She testified that she can only walk for around 15-20 minutes. Petitioner uses a wheelchair when she goes to places like Walmart. Petitioner also installed a banister over the three stairs in her house because she needs to hold on while navigating steps.

Under cross-examination, Petitioner agreed that she retired before Dr. Houle placed her at MMI in April 2018. She testified that Dr. Beaty examined her after Dr. Houle placed her at MMI. She testified that Dr. Beaty made suggestions such as doing water aerobics and special therapy designed to address her lymphedema condition. Petitioner testified that she still receives body massages which help. She testified that she was unable to find any therapists with the necessary training for the specialized therapy recommended by Dr. Beaty.

Petitioner testified that she walked up and down the steps where she fell every day at work. She agreed that the different buildings within the facility have similar entrances. They all have three or four concrete steps leading to the entrance, and all have a handrail. Petitioner testified that she was holding onto the handrail when she fell. She initially denied that there was anything wrong with the concrete on the steps when she fell, but later testified that she did not notice any defects in the concrete because the step was covered with leaves. She testified that she traversed those steps during the 26 years that she worked at the facility. Petitioner testified that she fell because she missed the step. She testified, "That's how thick the leaves were." (Tr. at 66). She denied that there was anything wrong with the handrail and denied slipping on the leaves.

Kristi Adams Testimony

Ms. Adams testified on behalf of Respondent. She works as an HR representative and is currently the facility's workers' compensation coordinator. She testified that she has worked at the facility for 31 years. Ms. Adams testified that to her knowledge, there was nothing wrong with the stairs or the handrail on the date of accident.

Ms. Adams testified that except for workers who were injured due to an altercation with a patient, injured workers receive TTD benefits. She testified that an injured worker also receives five service-connected days following an injury. These are the five working days after an injury when the injured worker receives their normal salary. Ms. Adams agreed that Petitioner received five service-connected days and two regular days off following her work accident and confirmed that Petitioner received her full salary during the first week following her injury. Respondent's Exhibit 1 is a wage statement identifying the service-connected days Petitioner received as January 24-27, 2017, and January 30, 2017. It identifies Petitioner's regular days off during that period as January 28-29, 2017.

Medical Treatment

Petitioner visited the ER within a few hours after her injury on January 23, 2017. (PX 1). Petitioner gave a history of missing a step outside of a building at work and falling to the ground. She reported that she landed on her left side and complained of left hip pain as well as throbbing pain in the left leg from the knee down. Petitioner rated her pain at 10/10. The examination

revealed no swelling or edema, however, there was tenderness. X-rays of the left foot and ankle revealed: osteopenia, calcaneal spurs, lateral malleolus spiral fracture, and soft tissue swelling. X-rays of the left hip and pelvis were normal. X-rays of the left knee revealed: mild to moderate osteoarthritis, mild soft tissue swelling, and no acute fracture, dislocation, or destructive process. The doctor diagnosed Petitioner with a fracture of the left distal fibula, lateral malleolus. Petitioner was given a splint and crutches as well as pain medication. She was to follow up with Dr. Stiehl, an orthopedic doctor. Subsequent x-rays of the foot showed the fracture healed without issue.

Dr. Stiehl first examined Petitioner on January 24, 2017. (PX 4). The doctor diagnosed a nondisplaced left distal fibula fracture and determined that it would be treated conservatively. On March 14, 2017, Dr. Stiehl determined that updated x-rays showed excellent callus consolidation and Petitioner only had mild pain on the outside of the ankle. He cleared Petitioner to ambulate as tolerated, but she had to wear a brace. On May 26, 2017, Dr. Stiehl wrote that Petitioner was improving and only had minimal pain in her left ankle. He also wrote:

> "She now has exquisite tenderness in her knee which comes from the posterior medial aspect. This most likely is a torn cartilage that may have arisen from the outset. We have not identified this problem as she has not actually not been ambulatory. However, I cannot disprove the fact that it was caused by her recent fall and injury."

(PX 4). The doctor ordered x-rays of the left knee and wrote that Petitioner most likely would require an arthroscopic procedure. A May 30, 2017, left knee x-ray revealed: no gross acute fracture, dislocation, or osseous erosion; mild decrease in medial joint space and mild tibial spine spurring; possible chondromalacia patella with mild degenerative change of the patella; and mild lateral joint space osteophyte with no joint effusion or foreign bodies. On June 2, 2017, Dr. Stiehl reviewed the updated x-rays and determined they were normal. He believed Petitioner's complaints of chronic pain were consistent with a torn medial meniscus and wrote that that diagnosis could "easily follow the type of injury that was described." (PX 4). Dr. Stiehl recommended Petitioner undergo a medial meniscectomy of the left knee.

Dr. Houle first examined Petitioner on June 28, 2017. Petitioner reported that she had left knee pain and noticed significant swelling of the calf and thigh after her injury. She reported that prior physical therapy helped her ankle, but the pain in her calf and posterior thigh remained persistent. Petitioner rated her pain at 9/10 and described it as sharp, aching, and stabbing. She also complained of weakness, locking, and catching. During the examination, Dr. Houle noted that the left calf and thigh looked larger than the right calf and thigh. There was no pain with palpation to the calf and posterior hamstring extension of the left knee. Petitioner had full flexion with tenderness. Dr. Houle interpreted left knee x-rays as showing a mild degree of osteoarthritis. The doctor ordered a Doppler scan to rule out DVT of the left calf and thigh due to immobilization as well as a possible tear of the left hamstring and posterior calf. He believed internal derangement of the knee was unlikely. Petitioner was to resume physical therapy to determine whether the pain was secondary to a muscular origin.

On July 21, 2017, Petitioner returned to Dr. Houle. He noted that the left leg still showed palpable area tenderness along the posterior calf and along the posterior femur. The knee exam

was normal. He interpreted the recent MRIs of the femur and calf as demonstrating no obvious abnormality except an apparent injury to the gastrocnemius muscle. The Doppler scan was also negative. Dr. Houle diagnosed a left leg medial gastrocnemius muscle injury.[1] Dr. Houle prescribed a thigh-high compression stocking to help with Petitioner's venous insufficiency and swelling. Petitioner began physical therapy on July 27, 2017.

On August 8, 2017, Petitioner told the therapist that her pain was a steady 4/10 due to soreness and that she had been walking a quarter mile to get exercise. On August 15, 2017, she rated her pain at 3-5/10 and reported that since she stopped walking and began wearing compression garments, her overall pain had decreased. However, two days later she reported pain at 7/10 in the left leg after her knee gave out the day before and she experienced immediate increased pain and swelling. On August 29, 2017, Petitioner rated her pain at 0/10 if her leg was elevated and 4/10 at its worst. Petitioner returned to Dr. Houle on September 18, 2017, with continued complaints of persistent left calf pain. The examination revealed some pain to palpation diffusely over the posterior gastrocnemius. Dr. Houle wrote Petitioner currently could only perform sedentary duty work and could not stand for any prolonged period. That same day, she rated her pain at 0-4/10 from best to worst to her physical therapist. She reported that her pain increased to 4/10 when she walked for three to four hours at a time. On September 20, 2017, Petitioner rated her pain at 0-5/10 best to worst with current pain rating 5/10 to the physical therapist. Petitioner reported that this was her first day back to work and she had already worked four hours. Petitioner reported that she was sitting and labeling clothes at work.

On October 23, 2017, Petitioner continued to complain of left calf pain to Dr. Houle. She reported that physical therapy helped, but the physical therapist recommended stopping formal physical therapy as Petitioner had reached a plateau. Petitioner reported feeling like her leg would give out when she was on steps or a ladder. Dr. Houle's examination revealed pain to palpation of the left medial gastrocnemius muscle. There did not appear to be effusion at the knee joint and Petitioner had full extension of the knee with close to normal flexion. Dr. Houle diagnosed persistent strain and pains secondary to a left ankle fracture. He wrote that Petitioner was to increase her work activities gradually. He restricted Petitioner from squatting, stooping, and climbing ladders. On November 29, 2017, Petitioner reported that her pain at times reached 10/10. Petitioner reported that since she returned to work, her pain had been persistent. Dr. Houle's exam revealed distinct tenderness to the proximal portion of the left calf. Dr. Houle recommended an MRI. He wrote, "As I would've expected her to feel better at this point. If [the MRI] does show a tear, and she persists in having pain. There are some physiatrists performing injections of cortisone into muscle…with some relief of pain and that could be potentially attempted." (PX 4). Petitioner's work restrictions were unchanged.

The December 28, 2017, left leg MRI revealed: 1) moderate focal fatty replacement inferior medial head left gastrocnemius muscle demonstrated, similar to the prior study; 2) mild edema in the inferior aspect of the lateral gastrocnemius muscle and medial aspect of the medial gastrocnemius muscle, likely reactive in nature; and 3) chronic changes. On January 31, 2018, Petitioner reported that at times she could not walk more than approximately 30 minutes. She also complained of continued periods of swelling below the calf and into the proximal thigh. Petitioner

1 The office visit note references the right leg; however, this is clearly an error and the doctor meant to refer to Petitioner's left leg.

rated her pain at 5-7/10 most of the time. Dr. Houle wrote that there was nothing further he could do for Petitioner. He suggested that she see a physiatrist to see if they could do anything to the muscle tissue to help, such as injections. The doctor recommended a functional capacity evaluation ("FCE") to determine Petitioner's capabilities.

The FCE took place on March 28, 2018. (PX 4). The therapist determined that Petitioner's overall capability fell within the medium range. The therapist determined that Petitioner was able to exert 20-50 pounds of force occasionally, and/or 10-25 pounds of force frequently, and/ up to 10 pounds of force constantly to move objects. The therapist also determined that Petitioner could work at a medium level for 8 hours a day for a total of 40 hours a week. The FCE was deemed valid. The therapist indicated that Petitioner self-limited on 11% of the 18 tasks; however, the report states that self-limiting for less than 20% of the tasks was within normal limits.

Petitioner returned to Dr. Houle on April 30, 2018. Dr. Houle reviewed a note from a physiatrist and wrote that the physiatrist said there is really nothing else they can do regarding Petitioner's gastrocnemius. He wrote that Petitioner had a residual lymphedema and had gained 50 pounds over the prior 15 months. He wrote: "They have noted that she is unable to work because…standing would cause her lymphedema to get worse. She did get her FCE and she could qualify for medium type work but unfortunately she is unable to stand, which is recurrent…She has now retired. She says she would only be able to do sedentary work because of her left leg hematoma." (PX 4). Dr. Houle referred Petitioner to a lymphedema clinic and wrote that there was nothing he could do orthopedically. He placed her at MMI for her left gastrocnemius tear. Dr. Houle's final work status note cleared Petitioner to work sedentary duty with no lifting of more than 10 pounds, no repetitive bending, twisting, lifting, or stooping, no standing more than 30 minutes, no more than three steps, and no squatting or kneeling.

Petitioner began physical therapy for her lymphedema on July 10, 2018. (PX 5). Petitioner complained of constant left knee pain ranging from 3-6/10. She reported that her pain increased with prolonged movement. In early August 2018, Petitioner reported that attending water aerobics at the YMCA twice a week made her legs feel much better. She reported her legs felt lighter. By mid-August 2018, the physical therapist noted that Petitioner was able to walk five laps without rest on the indoor track during their session and exercised on the "NuStep" machine. By the end of that month, Petitioner was comfortably using the recumbent bike during her physical therapy sessions. On August 27, 2018, Petitioner rated her pain at 0/10 and told the physical therapist that her legs felt great. On September 4, 2018, Petitioner reported that she no longer needed to take Tylenol for her pain and was exercising at the gym three times a week. On September 19, 2018, Petitioner rated her pain at 0/10 and reported exercising at least three times a week including water exercises. A few days later, Petitioner once again denied having any pain. She also reported that she was very pleased with her progress. The physical therapist noted that Petitioner ambulated independently with no assistive device and had a good gait pattern. The therapist determined that Petitioner had met all the identified short-term goals and had partially met all the identified long-term goals. The therapist recommended that Petitioner use a compression pump at home and for Petitioner to continue her aquatic exercises. Petitioner's final physical therapy appointment was on September 24, 2018. On that date Petitioner once again denied having any pain. The physical therapist discharged Petitioner and told her to continue following her home exercise program ("HEP") and using the home compression machine.

On March 9, 2020, Petitioner underwent a second FCE that was ordered by Dr. Beaty. (PX 11). The physical therapist determined that Petitioner's effort was consistent with high subjective complaints. The therapist determined that range of motion of the affected body part was consistent during the evaluation. However, she also wrote:

> "Subjective complaints of pain do not correlate with observed functional movement patterns. Kinesiophysical signs were absent in a preponderance of tasks which is indicative of client displaying less than maximal effort."

(PX 11). The therapist determined that Petitioner demonstrated functional ability in the light physical demand level. She wrote:

> "While client demonstrated functional ability in the physical demand level of a Laundry attendant, she was not able to meet the positional tolerances required to perform essential functions of the job. While there may be true dysfunction present, client displayed over all deconditioning, requiring seated rest breaks throughout evaluation."

(PX 11). The therapist further determined that Petitioner demonstrated an ability to occasionally lift up to 15 pounds. Regarding the main limiting factors, the therapist observed:

> "While the client may have some true dysfunction, the presence of [disproportionate] pain reports and reports of limited activity since injury has likely contributed to her current level of conditioning and functional tolerances."

(PX 11).

The therapist wrote that Petitioner requested the FCE to "see what her ability is before she settles the case." (PX 11). Petitioner told the therapist that she was retired and did not plan on returning to work. Petitioner reported the following pre-test subjective pain complaints: aching and numbness down the entire left leg; pins and needles in the left calf; aching along the left lateral abdominal area; numbness and aching in left arm shoulder down to mid-humerus. She reported her lowest functional pain score in the prior month was 4/10 and her worst score was 7/10. She rated her pain before the evaluation at 4/10. After the evaluation, Petitioner rated her pain at 7/10 and reported numbness and aching throughout the entire left leg and aching in the left shoulder and inner arm. In the summary of test performance section, the therapist rated Petitioner's performance as follows: consistency of effort—90%, quality of effort—44%, and reliability of pain—83%, for a combined total of 72%. On April 21, 2020, Dr. Beatty wrote a letter stating he agreed with the results of the March 2020 FCE.

Expert Opinions and Testimony

Dr. Thomas Upton—Petitioner's Vocational Evaluator

Dr. Upton evaluated Petitioner and prepared a vocational report at her attorney's request on August 22, 2019. (PX 9). His evaluation included reviewing records, administering tests, and completing a clinical interview of Petitioner. The doctor relied on the work restrictions prescribed by Dr. Houle in April 2018. Dr. Upton noted that Petitioner's normal job was medium-level duty. Dr. Upton opined that Petitioner had limited work opportunities due to her age, education, lack of transferable skills, and work limitations. He concluded, "[Petitioner's] age, education, lack of transferable skills, and physical limitation combine to the realization there is no reasonably stable labor market available for this individual." (PX 9).

Dr. Upton testified via evidence deposition on behalf of Petitioner on February 21, 2020. (PX 10). He is a professor at the Rehabilitation Institute of Southern Illinois University Carbondale which is now named the School of Health Sciences. Dr. Upton testified that he is familiar with the job market in southern Illinois. He testified that Petitioner didn't have any extensive education—she just graduated high school. He did not believe Petitioner had any computer training or special licenses or certifications. He did not believe Petitioner had any sales experience and didn't believe she had any knowledge or experience using office programs or machines. He testified that the results of Petitioner's cognitive tests results were at low levels for entry level work. When questioned about the impact of Petitioner's injury on her ability to find work, Dr. Upton testified:

> "Well, I think it limits how she can—how much walking she can do and that's an issue. I mean, that's a big problem in terms of pain and mood throughout the day that kind of minimize her pain. Her job was a very physical job. She was on her feet the entire day, and so now it's changed and her abilities have changed."

(PX 10 at 20). He testified that the results of the March 2018 FCE placed her at sedentary work. He testified:

> "Lifting no more than 10 pounds and—but the idea of moving around, that was a huge part of what she did for her entire livelihood. And I think it's just very difficult to—for a person to—she's a friendly person, very person—to find work when she doesn't have the knowledge, ability, or physical skills to do that."

(PX 10 at 21). Dr. Upton believed that Petitioner's use of the compression pump for an hour each day and her inability to stand for prolonged periods would "…further emphasize that this person is not really a viable candidate in any employment." (PX 10 at 25). He did not believe Petitioner was a good candidate for vocational rehabilitation and did not believe she would be hired if she applied for jobs in southern Illinois.

Dr. Gary Schmidt—Respondent's Section 12 Examiner

Dr. Schmidt examined Petitioner on February 1, 2018, at the request of Respondent. (PX 7). Dr. Schmidt recorded the following history: "She was leaving the building where she had to clock in. She describes the stairs as being slippery and covered with leaves. She slipped and fell down the steps." (PX 7). Petitioner reported that her ankle pain resolved after physical therapy; however, she complained of continued left knee pain that she rated at 8/10. Petitioner reported she could only stand for 30 minutes and could only walk one block. Petitioner reported being unable to squat or kneel and unable to carry anything over 10 pounds. Petitioner also reported difficulty getting in and out of her car. She told Dr. Schmidt that she had no plans to return to work and had already retired. Petitioner reported spending 8% of her day sitting or lying down.

Dr. Schmidt diagnosed status post lateral malleolar fracture. He opined that Petitioner's ankle fracture healed completely and required no further treatment. The doctor could not explain Petitioner's ongoing left knee complaints as those issues were outside the scope of his subspecialty.

Dr. Richard Johnston—Respondent's Section 12 Examiner

Dr. Johnston examined Petitioner on February 8, 2018, at Respondent's request. (PX 8). Petitioner reported a history of slipping on leaves, missing a step, and falling hard onto her left side on the date of accident. She reported her ankle fracture healed nicely and denied any ankle complaints. Petitioner complained of pain in the back inside portion of her left calf and knee since her injury. She reported that the pain worsened when she began to increase her activities. Petitioner complained of extensive swelling around the left knee and increased pain and swelling when she stood for a prolonged period. Petitioner told Dr. Johnston that she no longer worked at her job due to her ongoing left knee problems.

Dr. Johnston's examination of Petitioner's left knee revealed a marked area of swelling of the soft tissues especially medial to the knee joint when compared to the right knee. The doctor noted that Petitioner was very tender to touch over the swollen area and had tenderness along the medial gastrocnemius. There was no knee instability. Dr. Johnston diagnosed the following: rupture of the left gastrocnemius tendon; lymphedema of the left leg; and fracture of left fibula. He opined that Petitioner's condition was related to the work injury specifically including a tear of the left medial gastrocnemius muscle "which has subsequently [led] to muscle atrophy and significant lymphedema of the left leg centered around the left knee." (PX 8). Dr. Johnston wrote:

> "The tear of the gastrocnemius muscle has been treated extensively with physical therapy and is at the point of [MMI] and unlikely to have restoration of full function. The significant lymphedema of her leg may still have improvement with focused lymphedema therapy by a qualified lymphedema therapist. This would likely improve symptoms and level of function. She would probably need to have a home lymphedema pump to maintain improvements from therapy. At the current time I would recommend only sedentary type activities as the swelling in the leg will undoubtedly worsen with extended standing."

(PX 8).

Conclusions of Law

Petitioner bears the burden of proving every element of her case by a preponderance of the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). After carefully considering the totality of the evidence, the Commission affirms the Arbitrator's conclusion that Petitioner sustained an injury due to a compensable accident; however, the Commission modifies the Arbitrator's legal analysis. The Commission also affirms the Arbitrator's award of medical expenses. The Commission further affirms the Arbitrator's conclusion that Respondent is liable for prospective medical treatment regarding Petitioner's ongoing use of the compression device. Finally, the Commission modifies the Arbitrator's award of TTD benefits and the Arbitrator's award of permanent partial disability.

To meet her burden of proving her injury was the result of a compensable accident, Petitioner must show by a preponderance of the evidence that she sustained a disabling injury which arose out of and in the course of her employment. *Sisbro*, 207 Ill. 2d at 203. The phrase "in the course of employment" refers to the time, place, and circumstances surrounding the injury. *Id*. It is undisputed that Petitioner's left leg injury occurred in the course of her employment. To satisfy the "arising out of" prong of the analysis, Petitioner must show that her injury "had its origin in some risk connected with, or incidental to, the employment." *Id*. A risk is incidental to the employment "…when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties." *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848, ¶36. Illinois courts recognize the following three categories of risks: "1) risks distinctly associated with the employment; 2) risks personal to the employee; and 3) neutral risks which have no particular employment or personal characteristics." *Id*. at ¶38 (citations omitted). Quintessential examples of risks distinctly associated with the employment include "tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling." *Id*. at ¶39 (citations omitted).

After considering the credible evidence, the Arbitrator concluded that Petitioner's injury also arose out of her employment. The Arbitrator's analysis focused on whether Petitioner's injury occurred while she was performing an activity that Respondent reasonably could expect her to perform incidental to her work duties. In doing so, the Arbitrator analyzed whether Petitioner was required to enter the building where she fell, whether Petitioner was required to enter the building in a particular manner, and whether she sustained her injury while performing a job duty in an unexpected or unreasonable manner. The Arbitrator concluded Petitioner's injury arose out of her employment because "[t]here was no evidence that Petitioner deviated from the scope of her employment or that she performed an activity that Respondent did not expect her to perform incidental to her duties." (Arb. Dec. at 11).

While the Arbitrator correctly concluded that Petitioner's injury was the result of a risk distinctly associated with or incidental to her employment, the Commission finds Petitioner's injury was due to the presence of a defect, or hazardous condition, on Respondent's premises. Petitioner credibly testified that the last step was completely covered by leaves. Respondent presented no evidence contradicting this testimony. Petitioner credibly testified that her injury

occurred because she missed the last step because the leaves prevented her from seeing the step. Respondent also presented no evidence contradicting this testimony. Contrary to Respondent's characterization, this is not a case where the claimant merely missed a step while walking down stairs. Instead, Petitioner fell due to a hazardous condition or defect, *i.e.,* the thick layer of leaves obscuring the steps. Therefore, the Commission affirms the Arbitrator's conclusion that Petitioner's injury arose out of and was in the course of her employment.

After reviewing the credible evidence, the Commission must modify the Arbitrator's award of TTD benefits. The Arbitrator determined Petitioner proved an entitlement to TTD benefits from January 24, 2017, through September 20, 2017. The parties stipulated that Respondent previously paid $19,393.19 in TTD benefits to Petitioner and provided Petitioner with five service-connected days and two regular days off. Ms. Adams testified that due to Respondent providing Petitioner with five service-connected days and two regular days off, Petitioner received her full salary for the first week following her work injury. Furthermore, Respondent's Exhibit 1 identifies the days that Petitioner received full salary due to the service-connected days and two regular days off as January 24, 2017, through January 30, 2017. Thus, while Petitioner proved an entitlement to TTD benefits beginning on January 24, 2017, the Commission finds Respondent's liability for any TTD benefits began on January 31, 2017. After carefully reviewing the evidence, the Commission also finds Petitioner was not entitled to TTD benefits after September 19, 2017. On September 20, 2017, Petitioner told her physical therapist that she returned to work that day and had already worked four hours before attending her appointment. A claimant is no longer entitled to TTD benefits once they return to work. As such, the Commission finds Petitioner's entitlement to TTD benefits ended on September 19, 2017.

After Respondent's credit for the full salary Petitioner received from January 24, 2017, through January 30, 2017, is applied, the Commission finds Petitioner is entitled to TTD benefits from January 31, 2017, through September 19, 2017, or 33-1/7 weeks, for a total amount of $19,383.68. However, the Commission notes that once Respondent's credit for previously paid TTD benefits in the amount of $19,393.19 is applied, Respondent has paid an excess of $9.51 in TTD benefits. The Commission finds this overage shall be applied to Respondent's liability regarding the permanent partial disability awarded in this matter.

The Commission also modifies the Arbitrator's award of permanent partial disability. After considering the evidence and weighing the applicable factors pursuant to Section 8.1b of the Act, the Arbitrator determined Petitioner proved she sustained a 50% loss of use of the whole body due to the January 23, 2017, work incident. The Commission views the evidence somewhat differently and respectfully disagrees with the Arbitrator's assessment of the nature and extent of Petitioner's injury. The Commission agrees that Petitioner certainly sustained a significant amount of permanent disability due to the work incident. However, after carefully considering the totality of the evidence and weighing the applicable factors, the Commission finds Petitioner sustained a 40% loss of use of the whole person.

On December 18, 2017, Petitioner chose to retire from her employment with Respondent. (RX 4). Notably, when she retired no doctor had determined that Petitioner had achieved MMI. As of the date of her retirement, no doctor opined that Petitioner was permanently unable to return to her normal job or that Petitioner required permanent work restrictions due to her injury.

Additionally, the credible evidence supports a finding that Respondent continued to accommodate Petitioner's work restrictions until her retirement. Thus, the Commission agrees with the Arbitrator's conclusion that Petitioner voluntarily removed herself from the labor market when she chose to retire in December 2017. Because Petitioner chose to retire before receiving permanent restrictions or reaching MMI, it is unknown whether Petitioner could have successfully obtained a permanent accommodation or even a new position with Respondent through a specialized program such as the Alternative Employment Program ("AEP"). However, there is no question that Petitioner would not have been able to return to her normal work duties even if she had not chosen to retire. Dr. Houle, Petitioner's treating physician, and Dr. Johnston, Respondent's Section 12 examiner, both concluded that Petitioner was only able to perform sedentary work due to the limitations presented by her left leg lymphedema. Thus, the Commission finds Petitioner sustained a loss of trade due to the January 23, 2017, work incident.

The Commission agrees that the medical records reveal that Petitioner's lymphedema has affected her mobility and ability to engage in certain activities. However, there are significant discrepancies between Petitioner's testimony regarding her current physical condition and her condition when she last received treatment relating to her injury. The Commission believes consideration of these discrepancies is important to determining the amount of permanent disability Petitioner sustained due to the work injury. Notably, Petitioner testified that she was unable to attend the recommended physical therapy designed to address her lymphedema. Petitioner also testified that the pain in her left leg never resolved and that she has experienced constant discomfort since the date of accident. Furthermore, Petitioner implied that she did not receive a real benefit from participating in water aerobics. However, a careful review of the credible evidence paints a much different picture.

A review of the evidence reveals that Petitioner attended the prescribed specialized therapy addressing her lymphedema from July 2018 through September 2018. These physical therapy records reveal that Petitioner's physical condition markedly improved during this course of therapy. By the end of August 2018, Petitioner began reporting that she felt no pain in her leg and knee and told the physical therapist that her legs felt great. She was able to complete the exercises during her sessions including walking on the indoor track, using the recumbent bike, and using the NuStep machine without any issues. Petitioner was also attending water aerobics at the YMCA at least twice a week. Petitioner reported that water aerobics made her legs feel lighter. By September 19, 2018, Petitioner was exercising at least three times a week at the YMCA and continued to deny feeling any pain in her leg. Throughout the therapy records, the physical therapist noted Petitioner's motivation to improve her condition and her compliance with her home exercises. On September 24, 2018, Petitioner was discharged from physical therapy. On that date, she continued to deny feeling any pain in her left leg and knee. While she had not yet met all the identified long-term goals, the physical therapist wrote that Petitioner made progress towards accomplishing the goals and met all the identified short-term goals. Furthermore, although the lymphedema was still present, the physical therapist noted that the swelling was reduced. As part of her HEP, Petitioner was to continue her workouts, including the water aerobics, and was to use the prescribed compression device.

There are no further physical therapy records or office visit notes after the September 2018 physical therapy discharge. Thus, the March 2020 FCE is the first evidence of Petitioner's

condition following her discharge from the specialized physical therapy. Petitioner admittedly attended the FCE in anticipation of settling her workers' compensation claim. Petitioner's physical condition changed significantly between September 2018 and March 2020. While the March 2020 FCE was deemed valid, the physical therapist noted Petitioner's overall deconditioned state had a clear impact on the results. The therapist also wrote that Petitioner's subjective complaints of pain during the evaluation were not always consistent with the functional movement patterns the therapist observed. It was clear to the physical therapist that Petitioner suffered from a level of physical dysfunction; however, the therapist believed that Petitioner's disproportionate reports of pain as well as her limited amount of activity likely contributed to her low level of conditioning and functional tolerances evident in the FCE results. In the pre-evaluation documents completed before the FCE, Petitioner rated her left leg pain at 4/10 at best and 7/10 at its worst. This is in stark contrast to her reports of having no left leg or knee pain in September 2018.

The significant contradiction between the objective evidence of Petitioner's physical condition in September 2018 and her more recent subjective complaints is also evident when one examines Petitioner's testimony. Petitioner described her normal day and level of activity in detail. It is clear from her testimony that Petitioner no longer participates in water aerobics, or any other physical activity. While she performs certain tasks around her home, Petitioner testified that she now spends the majority of her day sitting or lying down. Petitioner also testified that she can barely stand long enough to take a brief shower and is only able to walk for approximately 15 minutes. The evidence does not contain any credible explanation regarding the contradiction between Petitioner's current subjective reports of experiencing constant and significant pain and discomfort in her left leg and her condition in September 2018. The Commission finds the objective evidence of Petitioner's residual symptoms and physical limitations revealed in her 2018 treatment records and the March 2018 FCE are more credible than her testimony regarding her residual symptoms and the results of the March 2020 FCE. At some point between September 2018 and March 2020, Petitioner appears to have lost all motivation to improve or manage her symptoms relating to the lymphedema. The Commission can not speculate as to what happened during those approximate 18 months. However, the unfortunate results of Petitioner's decreased motivation to continue to comply with the recommendations of Dr. Houle as well as her HEP are evident in her current deconditioned state.

After carefully considering the totality of the evidence, the Commission finds Petitioner suffered a loss of trade and sustained a 40% loss of use of the whole person due to the left leg lymphedema she developed as a result of the January 23, 2017, work incident. The Commission affirms the Arbitrator's conclusion that Petitioner also sustained a 10% loss of use of the left foot due to the work incident.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on October 21, 2021, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of **$584.85**/week for **33-1/7** weeks commencing **January 31, 2017**, through **September 19, 2017**, as provided in Section 8(b) of the Act. The parties stipulated and the evidence shows that Respondent paid Petitioner for five service-connected days and two regular days off immediately following the work incident. Therefore, Petitioner received her full salary from January 24, 2017, through January 30, 2017. Respondent shall receive a credit for TTD benefits previously paid to Petitioner in the amount of $19,393.19. The overage of $9.51 Respondent paid in TTD benefits shall be applied to Respondent's liability regarding the permanent partial disability award.

IT IS FURTHER ORDERED that Respondent shall pay directly to the medical providers reasonable and necessary medical expenses contained in Petitioner's Exhibit 17 pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall be given 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.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner permanent partial disability benefits of **$526.36**/week for **200** weeks, because the injuries sustained regarding the left leg lymphedema caused the **40**% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act. Respondent shall also pay Petitioner permanent partial disability benefits of $**526.36**/week for **16.7** weeks, because the injuries she sustained caused the **10**% loss of use of Petitioner's left foot, as provided in Section 8(e) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay for prospective medical care related to Petitioner's chronic condition of lymphedema, including, but not limited to, the ongoing utilization of a pneumatic compression device.

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

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

Pursuant to Section 19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review.

December 27, 2022

d: 11/1/22
TJT/jds
51

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC016750
Case Name	TILLMAN, PATTY v. STATE OF ILLINOIS/WARREN G. MURRAY CENTER
Consolidated Cases	No Consolidated Cases
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Robert Nelson
Respondent Attorney	Kenton Owens

DATE FILED: 10/21/2021

THE INTEREST RATE FOR THE WEEK OF OCTOBER 19, 2021 0.06%

/s/ Linda Cantrell, Arbitrator
Signature

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

October 21, 2021

/s/ Brendon O'Rourke
Brendan O'Rourke, Assistant Secretary
Illinois Workers' Compensation Commission

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

PATTY TILLMAN
Employee/Petitioner

v.

STATE OF ILLINOIS / WARREN G. MURRAY CENTER
Employer/Respondent

Case # **17** WC **016750**

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 **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon** on **August 11, 2021**. 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? Is Petitioner entitled to any prospective medical care?
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 **01/23/17**, 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 **$45,618.16**; the average weekly wage was **$877.27**.

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

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

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

Respondent shall be given a credit of $**19,393.19, plus 5 service-connected days and 2 regular days** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**19,393.19**.

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

ORDER

Respondent shall pay the medical expenses outlined in Petitioner's Group Exhibit 17 as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive a credit for medical bills paid through its group medical plan, if any, pursuant to Section 8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

Respondent shall pay for prospective medical care related to Petitioner's chronic condition of lymphedema, including, but not limited to, the ongoing utilization of a pneumatic compression device.

Respondent shall pay Petitioner temporary total disability benefits for the period **1/24/17** through **9/20/17**, representing **34-2/7th** weeks, at the rate of $**584.85**. Based on the Arbitrator's finds that Petitioner is not entitled to temporary total disability benefits from the date she returned to work on 9/21/17, at which time she began receiving full pay, through the date she voluntarily retired on 12/18/17, no further temporary total disability benefits are awarded herein.

Respondent shall pay Petitioner permanent partial disability benefits of $**526.36**/week for **16.7** weeks because the injuries sustained caused **10%** loss of use of Petitioner's left foot related to the nondisplaced fibula fracture, pursuant to Section 8(e)11 of the Act; and permanent partial disability benefits of $**526.36**/week for **250** weeks because the injuries sustained caused **50%** loss of use of the person as a whole related to Petitioner's lymphedema condition, pursuant to Section 8(d)2 of the Act.

Respondent is not entitled to a credit in the amount of $41,191.82 against any benefits awarded herein, as said amount represents normal pension retirement benefits paid to Petitioner as a result of her retirement on 12/18/17 and are wholly unrelated to Petitioner's workers' compensation claim.

Respondent shall pay Petitioner compensation that has accrued from 2/1/18, the date Dr. Gary Schmidt opined Petitioner reached MMI, through 8/11/21, related to Petitioner's left foot injury, and shall pay the remainder of the award, if any, in weekly payments. Respondent shall pay Petitioner compensation that has accrued from 4/30/18, the date Dr. Houle opined Petitioner reached MMI, through 8/11/21 related to Petitioner's lymphedema condition, and shall pay the remainder of the award, if any, in weekly payments.

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

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

OCTOBER 21, 2021

Arbitrator Linda J. Cantrell

ICArbD

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

PATTY TILLMAN,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 17-WC-016750
	)	
STATE OF ILLINOIS/	)	
WARREN G. MURRAY CENTER,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on August 11, 2021 on all issues. The issues in dispute are accident, causal connection, medical bills, prospective medical care, temporary total disability benefits, whether Respondent is entitled to a credit under Section 8(j) of the Act, and the nature and extent of Petitioner's injuries. All other issues have been stipulated.

TESTIMONY

Petitioner was 60 years old, married, with no dependent children at the time of the alleged accident. Petitioner was employed by Respondent for 26 years. She last worked as a Support Service Worker II for approximately seven years performing clothing and laundry duties. She testified that she arrived at work at 6:00 a.m. and started laundry in machines ten times larger than a household washer. She then went to the clothing room to sort and fold clothes and mark new clothing coming into the facility. Petitioner returned to the laundry room, removed the clothing from the washer and walked it to the dryer. She then refilled the washer. She stated she had to squat at times to clean out the dryer lint. Her job duties required her to stand and walk nonstop all day, except two 15-minute breaks and a 45-minute lunch break. She also shopped for 30 residents. She climbed ladders to store clothes for residents. She worked 37.5 hours per week and often volunteered for overtime on weekends as a mental health technician. She stated she put clothes away on Mondays which required her to kneel to access the bottom drawers of residents' closets.

Petitioner testified that on January 23, 2017 she walked up the ramp into the Cherry Building to sign in for work. When she exited the building, she descended the stairs and missed the last step that was covered in leaves. She fell onto her left side and sustained a spiral fracture of the left fibula. She testified she was familiar with the steps and had no issues ascending or

descending them in the past. She stated the steps are made of concrete and she was holding onto the handrail when she fell. She did not notice any defects in the step because it was covered in leaves. She stated there were no defects in the handrail. Petitioner testified she did not slip on the leaves covering the last step. She stated that at the end of her shifts she had to use the ramp or steps again to sign out at the Cherry Building. She agreed she could use the steps or ramp.

Petitioner testified she does not use a computer or type and is not familiar with computer software. She has never been employed in sales. She testified she retired from employment with Respondent due to her injuries. Her doctor placed her on light duty restrictions of no kneeling, bending, squatting, or climbing ladders, and limited standing. She stated she returned to full duty work in October 2017 within her light duty restrictions. She testified that Respondent did not offer light duty and she was working beyond her restrictions. Petitioner testified she had difficulty putting clothes away, removing clothing from the washer and dryer, and walking. Her co-workers had to assist her to perform her job duties. She testified she had a lot of leave time built up and often took off work at 11:00 a.m. to go home and ice her leg. She testified she did not request light duty prior to retiring on 12/18/17 because she had just gotten off of light duty. Petitioner testified that Respondent did not offer her a position within her light duty restrictions. Petitioner's retirement benefits are based on her earnings and not her disability. She began receiving her retirement pension in January 2018.

Petitioner testified she had immediate swelling in her left leg that has never completely gone away. The swelling in her left leg increases when standing longer than one hour. She stated the swelling and pain has worsened since being released at MMI. She has increased symptoms with weather changes and uses a blanket to keep her leg warm. Petitioner testified that her left calf is noticeably larger than her right calf and the swelling never goes away. The Arbitrator observed Petitioner's legs and noted her left leg is noticeably larger than the right, particularly above the knee and in the calf. Petitioner testified she has constant pain in her left leg/calf. She uses a compression machine every day for one hour to manage the pain and swelling and her husband has to assist her to get in the machine. She has used the machine since 9/24/18 and tried to go two days without using it before the swelling and pain became unmanageable. She has to wear one size larger in clothing due to the swelling in her leg. She testified she cannot kneel, squat, or climb ladders. Bending causes pain because it pulls the back of her leg. She has developed lymphedema since the accident and the pain has spread to her left hip. The swelling in her leg increases if she sits longer than 1-1/2 hours and she has to prop her leg up. She does not carry anything that weighs more than a gallon of milk. She can stand long enough to take a quick shower.

Petitioner testified that a normal day consists of waking around 7:00 a.m., making breakfast, washing dishes, and starting laundry. She then lays down for a couple of hours and props her leg. She then makes the bed, eats lunch, and is back on the couch by 1:30 p.m. until 5:00 p.m. with her leg propped. In the evening she folds clothes and puts them away, starts supper, washes dishes, and is back on the couch by 6:30 p.m. with her leg propped up. When her husband gets home from work he assists her into the compression machine which she wears for one hour. Petitioner testified that she rests more on Saturdays in preparation for church on Sundays. She sits sideways on the church pew and puts her leg on the bench. She props her leg on the couch the rest of Sunday afternoon. Petitioner testified she rarely leaves her home. When

she shops she uses a wheelchair. She volunteered at a food pantry doing paperwork three days per month after her injury which she states she can no longer do. She can walk 15-20 minutes before she has to sit. The farthest she drives is approximately 12 miles one way. A bannister was add to her stairway and she ascends one step at a time.

On cross-examination, Petitioner agreed she received TTD benefits through 9/20/17. Dr. Houle returned her to light duty work in September 2017 at which time she received full pay until she retired on 12/18/17. Petitioner denied informing Respondent she intended to retire prior to December 2017. Petitioner testified she did not request work accommodations because Respondent does not provide them after an employee is off of light duty. She agreed that her doctors did not know what was going on with her leg when she retired in December 2017 and Dr. Houle ordered an MRI in January 2018 for further evaluation. She did not inform Respondent that her position was beyond her full duty restrictions.

Respondent called Kristy Adams to testify. Ms. Adams has been Respondent's Human Resource Representative for three years and has worked in numerous positions for Respondent over the past 31 years. She is familiar with Respondent's property and testified there were no defects with the concrete stairs or handrail used by Petitioner at the time of her accident. Ms. Adams testified that if an employee is off work for an "act of aggression" they receive full pay and five service-connected days. Petitioner received full pay for two regular days and five service-connected days following her accident. Petitioner began receiving TTD benefits on 1/31/17.

Ms. Adams testified that Respondent offers light duty work and Petitioner could have marked clothing within her restrictions. She testified that a maximum of 180 days of light duty is allowed and if an employee has not received a full duty release, he/she goes back on service-connected leave and TTD benefits are reinstated. Ms. Adams is aware of the Alternative Employment Program but has not had an employee use it in her three years as HR Coordinator and she is not very familiar with the program. Ms. Adams agreed the programs finds employment with the State of Illinois for injured employees that cannot return to their pre-accident position. She is not aware that Petitioner applied for the AEP. She stated Petitioner retired before she reached MMI.

Ms. Adams testified there is no indication in Petitioner's employment file that she could not perform her job duties, but she was not the workers' compensation coordinator at the time. She testified that Petitioner's restrictions should have been honored, but she is not sure whether or not they were actually honored. She testified that Petitioner was a good worker and there were no criticisms about her job performance. She is not aware if any of the state's programs were offered to Petitioner or if Petitioner was aware of the AEP program.

On 1/23/17, Petitioner completed a Notice of Injury and reported she was walking down the steps at Cherry Cottage after signing in and she missed the last step because it was covered in leaves and fell on her left side. She reported a lot of swelling and bruising to her left hip, knee, ankle, and foot. A Supervisor Report of Injury was completed the same day by Stacy Nicholson. Ms. Nicholson wrote "leaves covering step" in describing unsafe acts or conditions which contributed to Petitioner's accident.

MEDICAL HISTORY

Petitioner presented to the emergency room at St. Mary's Hospital. X-rays revealed a nondisplaced spiral fracture of the left distal fibula. She was provided a splint and ordered to alternate Motrin and Tylenol and to follow up with Dr. James Stiehl. Petitioner was examined by Dr. Stiehl on 1/24/17 who recommended conservative treatment. On 1/31/17, a repeat x-ray was performed that showed a healing oblique fracture of the distal left fibula with the fracture fragment unchanged compared to the 1/23/17 study. Dr. Stiehl ordered Petitioner to remain non-weight bearing for three weeks. On 2/21/17, Dr. Stiehl noted no evidence of instability and ordered an additional three weeks of non-weight bearing. He continued Petitioner off work. A repeat x-ray was performed on 3/14/17 that showed excellent alignment with moderate soft tissue swelling. Petitioner had mild pain on the outside of her ankle. Dr. Stiehl allowed Petitioner to ambulate as tolerated and wear an ankle brace at all times. X-rays on 4/4/17 revealed the fracture line was not visible and alignment was near anatomic, with moderate soft tissue swelling. Dr. Stiehl noted no obvious issues and ordered Petitioner to use the CAM walker if she walked any distance. He recommended physical therapy and full weight bearing. On 5/26/17, Dr. Stiehl noted Petitioner had minimal ankle pain, but exquisite pain in her left posterior medial knee which he suspected to be torn cartilage related the accident. He advised Petitioner to ambulate as tolerated and ordered x-rays of Petitioner's left knee.

On 5/30/17, x-rays of Petitioner's left knee revealed a clinical history of a torn meniscus, mild decrease in the medial joint space with spine spurring, possible chondromalacia patella with mild degenerative changes with an intact patella, and mild lateral joint space osteophyte. On 6/2/17, Dr. Stiehl stated Petitioner's left knee x-rays were normal but she had chronic pain consistent with a torn medial meniscus. Dr. Stiehl opined her knee injury could easily follow the type of injury she described, and he recommended a medial meniscectomy.

On 6/28/17, Petitioner was examined by Dr. Benoit Houle for a second opinion. Petitioner complained of persistent left knee pain with significant swelling of the calf and thigh. She rated her pain 9 out of 10. Dr. Houle noted Petitioner's left thigh and calf looked bigger than the right. He assessed possible DVT secondary to immobilization and possible tear of the hamstring and posterior calf. Dr. Houle ordered a Doppler scan and physical therapy and ordered Petitioner off work. MRIs of Petitioner's left thigh and calf were performed on 7/13/17 that revealed a normal thigh and moderate focal fatty replacement of the inferior medial head of the left gastrocnemius muscle. On 7/21/17, Dr. Houle noted the Doppler scan was negative. He prescribed a compression stocking to assist with venous insufficiency and swelling and continued Petitioner off work. On 9/18/17, Petitioner reported the pain patches at physical therapy were helping. Dr. Houle ordered continued therapy and recommended sedentary work as Petitioner could not stand for long periods of time. On 10/23/17, Dr. Houle noted Petitioner had been working "partial duties" since her last visit. He diagnosed persistent strain and pains secondary to fracture of the left ankle. He recommended a gradual increase in work duties with regular work and no squatting/stooping/climbing ladders. On 11/29/17, Dr. Houle noted Petitioner rated her pain 10 out of 10 with persistent pain since she had returned to work. Examination revealed distinct tenderness to the proximal portion of the left calf. Dr. Houle ordered an MRI to further evaluate. The MRI was performed on 12/28/17 and revealed moderate focal fatty replacement of the gastrocnemius muscle, with mild edema in the inferior and medial

aspect of the lateral gastrocnemius muscle. On 1/31/18, Petitioner reported to Dr. Houle she has periods where she cannot walk more than 30 minutes and inquired about an FCE. Swelling was noted below the calf into the proximal thigh with significant tenderness. Dr. Houle advised there was nothing he could offer Petitioner and recommended a referral to a physiatrist for injections into the muscle tissue. He ordered an FCE.

On 2/1/18, Petitioner was examined by Dr. Gary Schmidt pursuant to Section 12 of the Act. Dr. Schmidt is an orthopedic foot and ankle surgeon. Petitioner rated her pain 8 out of 10 and Dr. Schmidt noted all of Petitioner's pain was in her left knee. He noted Petitioner feels she cannot stand for longer than 30 minutes and can walk only one block, she ascends stairs one step at a time, she cannot squat or kneel, she cannot carry anything over 10 pounds, and she has difficulty getting in and out of a car. Petitioner stated her leg is swollen above and below the knee at all times. Dr. Schmidt found the physical examination of Petitioner's left foot and ankle was normal and all of her treatment up the present was reasonable and necessary. He opined Petitioner did not require further treatment for her foot/ankle and she could return to full duty without restrictions as he understood her job duties as a clothing manager. Dr. Schmidt opined he was unable to explain the ongoing pains in Petitioner's knee, but this area was outside the scope of his subspecialty.

On 2/8/18, Petitioner was examined by Dr. Richard Johnston pursuant to Section 12 of the Act. Dr. Johnston reviewed Petitioner's medical records to date and his physical examination revealed marked soft tissue swelling and significant tenderness in the medial aspect of Petitioner's left knee. Dr. Johnston assessed rupture of the left gastrocnemius tendon, lymphedema of the lower left extremity, and a healed closed fracture of the left fibula. Dr. Johnston opined that within a reasonable degree of medical and surgical certainty, Petitioner's fibula fracture, hip contusion, left medial gastroc muscle tear, which has subsequently lead to muscle atrophy and significant lymphedema of the left leg centered around the knee, were all related to her work accident of 1/23/17. He opined that the significant lymphedema of her leg may still have improvement with focused lymphedema therapy by a qualified therapist, which would likely improve her symptoms and level of function. He recommended a home therapy lymphedema pump. Dr. Johnston recommended sedentary work as the swelling in Petitioner's leg will undoubtedly worsen with extended standing.

On 4/30/18, Dr. Houle diagnosed residual lymphedema and noted Petitioner gained 50 pounds over the last 15 months. He stated, "they have noted that she is unable to work because of standing would cause her lymphedema to get worse." The FCE revealed Petitioner could work in a medium physical demand level, but Dr. Houle noted Petitioner is unable to stand, which is recurrent. He noted Petitioner retired and she stated she would only be able to perform sedentary work because of her left leg. Dr. Houle referred Petitioner to a lymphedema clinic and advised he had nothing more to offer her from an orthopedic standpoint. He opined Petitioner was at MMI from her gastrocnemius tear. He released Petitioner with restrictions of sedentary work with no lifting more than 10 pounds, no standing more than 30 minutes, no more than three steps, no squatting/kneeling, and no repetitive bending/twisting/lifting/stopping.

On 7/10/18, Petitioner began a third round of physical therapy at Belleville Memorial Hospital for treatment of lymphedema of the lower left leg. She reported she retired in December

2017 because her job required climbing and lifting which she could not do. She completed therapy on 9/4/18 with some reduced tenderness and edema.

On 9/28/18, Petitioner was fitted and trained to use a pneumatic compression device with calibrated gradient pressure and limb garment prescribed by her primary care physician, Dr. Timothy Beaty. The device was prescribed to control swelling and pain caused by lymphedema.

On 8/22/19, Dr. Thomas Upton performed a vocational assessment. Dr. Upton opined that Petitioner's job duties in laundry required a medium level of exertion and was classified as unskilled work. Petitioner completed high school in 1976 and did not seek additional training. Dr. Upton administered the Wide Range Achievement Test, 4th Edition that revealed Petitioner tested at the 5.1 grade equivalency level in reading, 7.7 grade level in spelling, and 4.5 grade level in math. He could not identify any light duty work using transferable skills at the sedentary level. Petitioner advised she had limitations and was required to change positions throughout the day to minimize her pain. Dr. Upton opined that the permanent restrictions placed by Dr. Houle limit Petitioner to sedentary work. He reviewed a FCE that noted Petitioner has a great deal of difficulty standing and sitting without raising her leg. She needs to recline part of every day to elevate her leg. The FCE found Petitioner was consistent in her behavior and made a good faith effort. Dr. Upton concluded that based on Petitioner's age, education, lack of transferable skills, and physical limitations, there is no reasonably stable labor market available for her.

Dr. Thomas Upton testified by way of evidence deposition on 2/21/20. Dr. Upton is a professor at the Rehabilitation Institute of Southern Illinois University Carbondale. He is nationally certified as a rehabilitation counselor and performs vocational consulting for workers' compensation and social security. Dr. Upton trains undergraduate, master's, and Ph.D. level students that have specialized careers in rehabilitation counseling. Dr. Upton testified that the lymphedema pump that Petitioner used one hour per day as recommended by Dr. Johnston further emphasizes she is not a viable candidate in any employment. He opined that Petitioner is an excellent candidate for social security disability based on her age, education, and past relevant work. Dr. Upton opined Petitioner is not a good candidate for vocational rehabilitation to be retrained. Dr. Upton agreed that Petitioner informed him she was retired and voluntarily took herself out of the workforce.

On 3/9/20, Petitioner presented to Athletico Physical Therapy for a Job Specific FCE at the referral of her primary care physician, Dr. Timothy Beaty. It was determined to be consistent with Petitioner's high subjective complaints. Petitioner met 52.94% (9 out of 17) of the reported job demands required to function as a clothing/laundry attendant. She demonstrated a functional ability in the light physical demand level. Petitioner displayed overall deconditioning and required seated breaks throughout the evaluation. On 4/21/20, Dr. Beaty, adopted the FCE findings.

Petitioner offered into evidence two photographs depicting her left leg. The Arbitrator notes that the photographs show significant swelling in Petitioner's left leg, particularly at and above her knee and calf, as witnessed at arbitration. Petitioner also submitted two photographs of the pneumatic compression device she uses one hour every day. Petitioner submitted into

evidence the three steps she testified she uses at her home and the handrail that was installed subsequent to her accident.

CONCLUSIONS OF LAW

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

To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arouse out of and in the course of his employment with employment. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 203 (2003). An injury "arises out of" employment when "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id.* A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in order to fulfill his job duties. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶36.

Accordingly, an injury arises out of an employment-related risk (*i.e.*, a risk "distinctly associate with" and "incidental to" his employment) if, at the time of the occurrence, 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 incidental to his assigned duties." *McAllister*, 2020 IL 124848, ¶36; see also *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989).

In this case, Petitioner's injuries arose out of her employment because she was injured while performing an act that she was instructed to perform by her employer and one in which Respondent might reasonably expect Petitioner to perform incidental to her assigned duties. There is no dispute Petitioner was required to enter and exit Cherry Cottage to clock in at the start of her work shift. Employees could enter and exit the building using a ramp or stairs and there is no evidence Respondent instructed employees on which method to use in accessing the building. On 1/23/17, Petitioner entered the building by walking up the ramp and used the stairs upon her exit. Although Petitioner was employed by Respondent for 26 years and held the position of Support Service Worker II for approximately seven years, no evidence was presented as to how many times per day or how many years Petitioner traversed the stairs at Cherry Cottage. Nevertheless, Petitioner testified she was familiar with the stairs, which are similar to the stairs at other buildings on Respondent's premises. Despite Petitioner's familiarity with the stairs on which she fell, the bottom step was covered in leaves and she "missed" the step because it was not visible.

There was no evidence that Petitioner deviated from the scope of her employment or that she performed an activity that Respondent did not expect her to perform incidental to her duties. Therefore, the Arbitrator finds that Petitioner's accidental injuries arose out of and in the course of her employment with Respondent.

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

Petitioner was working full duty without restrictions prior to the accident. Petitioner testified she did not have any issues with her left leg prior to 1/24/17. She immediately presented to the emergency room after she fell and was diagnosed with a nondisplaced spiral fracture of the left distal fibula. She treated conservatively for four months, including wearing a walking boot, when she complained of significant swelling in her leg calf and thigh and exquisite knee pain. Petitioner's left ankle healed without complication and she was released to full duty work with no restrictions regard to that injury. Respondent's Section 12 examiner, Dr. Schmidt, opined that all of Petitioner's treatment related to her foot and ankle was reasonable and necessary. Dr. Schmidt stated he was unable to explain the ongoing pain in Petitioner's knee and that this area was not within his subspecialty.

Petitioner was ultimately diagnosed with lymphedema of the left leg which resulted in significant conservative treatment and permanent restrictions. Respondent's Section 12 examiner, Dr. Johnston, opined that Petitioner's fibula fracture, hip contusion, left medial gastrocnemius muscle tear, which subsequently lead to muscle atrophy and significant lymphedema of the left leg centered around the knee, were all related to her work accident of 1/23/17. He opined that the significant lymphedema of her leg may still have improvement with focused lymphedema therapy by a qualified therapist, which would likely improve her symptoms and level of function. He recommended a home therapy lymphedema pump. Dr. Johnston recommended sedentary work as the swelling in her leg would undoubtedly worsen with extended standing.

Based on the circumstantial evidence, Petitioner's medical records and testimony, and the expert opinions of Drs. Johnston and Schmidt, the Arbitrator finds that Petitioner's current condition of ill-being in her left ankle, and subsequent development of lymphedema in her left leg, is causally connected to her injury that occurred on 1/23/17.

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? Is Petitioner entitled to any prospective medical care?

Upon establishing causal connection and the reasonableness and necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

The Arbitrator finds that the care and treatment Petitioner received has been reasonable and necessary. The Arbitrator further finds Petitioner is entitled to receive the additional care recommended by Drs. Houle and Johnston. On 2/8/18, Dr. Johnston opined that focused therapy by a qualified therapist was necessary in the care and treatment of Petitioner lymphedema condition. He recommended a home therapy lymphedema pump. Likewise, Dr. Houle referred

Petitioner to a lymphedema clinic and advised he had nothing more to offer her from an orthopedic standpoint. On 9/28/18, Petitioner was fitted and trained to use a pneumatic compression device with calibrated gradient pressure and limb garment. The device was prescribed to control swelling and pain caused by lymphedema. Petitioner testified she uses the device daily.

All of Petitioner's treating physicians and Respondent's Section 12 examiners recommend ongoing treatment for the lymphedema condition. Petitioner continued her care and treatment with Dr. Beaty who provided medical information to Tactile Systems Technology in order for Petitioner to receive the pneumatic compression device. Petitioner was provided with a Flexitouch Plus controller and left and right leg garments. The Clinical Intake Form dated 9/20/18 indicates Petitioner requires the use of the pneumatic compression device for lifetime. The device requires to be programmed and calibrated to continually manage Petitioner's chronic lymphedema, without which could cause significant complications including serious infection, tissue damage, and loss of mobility, as stated in the records from Tactile Systems Technology.

Based on the evidence, the Arbitrator finds Petitioner is entitled to receive prospective medical care related to her chronic condition of lymphedema and the ongoing utilization of a pneumatic compression device.

Respondent shall therefore pay the medical expenses outlined in Petitioner's Group Exhibit 17 as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive a credit for medical bills paid through its group medical plan, if any, pursuant to Section 8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

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

Petitioner claims entitlement to temporary total disability benefits from 1/23/17 through 2/8/18. Respondent disputes Petitioner's entitlement to further TTD benefits after 9/20/17. Respondent claims it paid $19,393.19, plus five service-connected days and two regular days, from 1/24/17 through 9/20/17. Petitioner testified she received temporary total disability benefits from 1/24/17 through 9/20/17.

On 9/18/17, Dr. Houle released Petitioner to sedentary work as she could not stand for long periods of time; however, Dr. Houle did not recommend specific restrictions at that time. Petitioner testified she returned to work in her pre-accident position because Respondent did not offer a light duty position. She testified she was working beyond her restrictions when she returned to work and had difficulty performing her job duties. Nevertheless, Petitioner continued to work until she retired on 12/18/17 and received full pay for this period of time. She began receiving retirement benefits in February 2018 which was paid retroactive to 1/1/18.

The Arbitrator finds Petitioner is entitled to temporary total disability benefits for the period 1/24/17 through 9/20/17, representing 34-2/7th weeks, at the rate of $584.85. Petitioner is

not entitled to TTD benefits from the date she returned to work on 9/21/17, at which time she began receiving full pay, through the date she retired on 12/18/17. Petitioner voluntarily took herself out of the workforce when she retired and is not entitled to TTD benefits after 9/20/17.

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

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (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. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither party submitted an AMA rating. Therefore, the Arbitrator places no weight on this factor.

(ii) **Occupation**: Petitioner was employed as a Social Service Worker II performing clothing and laundry duties. Petitioner retired from employment with Respondent on 12/18/17. On 4/30/18, Dr. Houle diagnosed residual lymphedema and opined Petitioner would only be able to perform sedentary work because of her left leg. Dr. Houle referred Petitioner to a lymphedema clinic and released Petitioner at MMI with sedentary restrictions of no lifting more than 10 pounds, no standing more than 30 minutes, no more than three steps, no squatting/kneeling, and no repetitive bending/twisting/lifting/stopping.

On 8/22/19, Dr. Thomas Upton performed a vocational assessment and opined Petitioner's job duties in laundry required a medium level of exertion and was classified as unskilled work. He opined that based on Petitioner's age, education, lack of transferable skills, and physical limitations, there is no reasonably stable labor market available for her. However, Dr. Upton agreed that Petitioner voluntarily took herself out of the job market when she retired on 12/18/17.

The Arbitrator gives greater weight to this factor and concludes, based on the totality of the evidence, that Petitioner was not able to return to her pre-accident employment with Respondent; however, she voluntarily removed herself from the job market when she retired on 12/18/17.

(iii) **Age**: Petitioner was 63 years old at the time of arbitration. Given Petitioner's advanced age, it will not necessitate her to manage the effects of her injury for a longer period of time. Petitioner retired from employment on 12/18/17 is currently unemployed. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: Dr. Houle released Petitioner with permanent sedentary restrictions of no lifting more than 10 pounds, no standing more than 30 minutes, no more than three steps, no squatting/kneeling, and no repetitive bending/twisting/lifting/stopping. Dr. Upton opined that Petitioner's job duties in laundry required a medium level of exertion and was

classified as unskilled work. He opined that based on Petitioner's age, education, lack of transferable skills, and physical limitations, there is no reasonably stable labor market available for her. However, Dr. Upton agreed that Petitioner voluntarily took herself out of the job market when she retired on 12/18/17.

The Arbitrator gives greater weight to this factor and concludes, based on the totality of the evidence, that Petitioner was not able to return to her pre-accident employment with Respondent due to her permanent sedentary restrictions; however, she voluntarily removed herself from the job market when she retired on 12/18/17.

(v) **Disability**: Petitioner sustained a nondisplaced spiral fracture of the left distal fibula. She underwent conservative treatment include splinting, a CAM walker, and physical therapy. She was released at MMI without restrictions related to that injury. Petitioner was subsequently diagnosed with a rupture of the left gastrocnemius tendon and lymphedema of the lower left extremity. She was referred for lymphedema therapy and was fitted for a pneumatic compression device with calibrated gradient pressure to control the significant swelling and pain in her left leg. Dr. Houle released Petitioner at MMI on 4/30/18 with permanent sedentary restrictions of no lifting more than 10 pounds, no standing more than 30 minutes, no more than three steps, no squatting/kneeling, and no repetitive bending/twisting/lifting/stopping. Although Dr. Upton's vocational assessment determined there is no stable labor market available to Petitioner based on her age, education, lack of transferable skills, and physical limitations, Petitioner voluntarily retired from employment on 12/18/17.

Petitioner testified she continues to have significant swelling and pain in her left leg. The Arbitrator observed significant swelling and noted Petitioner's left leg is noticeably larger than her right leg, particularly at and above the knee and calf. Petitioner testified her symptoms have worsened since being released at MMI and the swelling and pain is constant. Her symptoms increase when standing for longer than one hour and weather changes. She uses the compression device daily for one hour. She attempted to go two days without using the machine and the swelling and pain was unmanageable. She has to wear one size larger in clothing due to the swelling in her leg. She testified she cannot kneel, squat, or climb ladders. Bending causes pain because it pulls the back of her leg. The swelling increases if she sits longer than 1-1/2 hours and she has to prop her leg up. She does not carry anything that weighs more than a gallon of milk.

Petitioner testified that a normal day consists of waking around 7:00 a.m., making breakfast, washing dishes, and starting laundry. She then lays down for a couple of hours to prop her leg. She then makes the bed, eats lunch, and is back on the couch by 1:30 p.m. until 5:00 p.m. in order to prop her leg. In the evening, she folds clothes and puts them away, starts supper, washes dishes, and is back on the couch by 6:30 p.m. with her leg propped. When her husband gets home from work, he assists her into the compression device for an hour. She rests more on Saturdays in preparation for church on Sundays. She sits sideways on the church pew and puts her leg on the bench. She props her leg up on the couch the rest of Sunday afternoon. Petitioner stated she rarely leaves her home and when she shops she uses a wheelchair. She can walk 15-20 minutes before she has to sit. The farthest she drives is approximately 12 miles one way. A bannister was add to her stairway and she ascends one step at a time. The Arbitrator therefore gives the greatest weight to this factor.

Based upon the above factors and the record taken as a whole, the Arbitrator orders Respondent to pay Petitioner permanent partial disability benefits of $**526.36**/week for **16.7** weeks because the injuries sustained caused **10%** loss of use of Petitioner's left foot related to the nondisplaced fibula fracture, pursuant to Section 8(e)11 of the Act; and permanent partial disability benefits of $**526.36**/week for **250** weeks because the injuries sustained caused **50%** loss of use of the person as a whole related to Petitioner's lymphedema condition, pursuant to Section 8(d)2 of the Act.

Issue (N): Is Respondent due any credit?

The parties stipulated that Respondent is entitled to a credit for temporary total disability benefits paid in the amount of $19,393.19, plus five service-connected days and two regular days, for the period 1/24/17 through 9/20/17.

Respondent claims entitlement to an additional credit in the amount of $41,197.82. The evidence supports that this amount represents net retirement/pension income Petitioner received from 2/23/18 through 7/19/21 as a result of her retirement from the State of Illinois on 12/18/17. Petitioner's pension income is not based on her disability, but her service with the State for 26 years. There was no testimony or evidence that Respondent paid occupational disability benefits. Petitioner testified she would have been entitled to the pension benefits regardless of her work injury. No evidence was presented to show that Petitioner's retirement benefits are not normal pension retirement benefits.

"An employer is not entitled to a credit against its obligation to pay benefits under the Act for pension payments received by a claimant since the pension payments were the result of normal pension retirement benefits wholly unrelated to the claimant's workers' compensation accident." *Wood Dale Electric v. IWCC*, 2013 IL App. (1st) 113394.

The Arbitrator finds Respondent is not entitled to a credit in the amount of $41,191.82 against any benefits awarded herein, as said amount represents normal pension retirement benefits paid to Petitioner as a result of her retirement on 12/18/17 and are wholly unrelated to Petitioner's workers' compensation claim.

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC007887
Case Name	Patricia Klima v. Walmart
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0500
Number of Pages of Decision	19
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Julie Schum

DATE FILED: 12/30/2022

/s/Stephen Mathis, Commissioner

Signature

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

Patricia Klima,

Petitioner,

vs. NO. 17WC 007887

Walmart,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both parties herein and notice given, the Commission, after considering the issues of benefit rates, penalties and fees, evidentiary issues, 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 June 7, 2022, 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.

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

December 30, 2022

SJM/sj
o-12/14/2022
44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC007887
Case Name	KLIMA, PATRICIA v. WALMART
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Julie Schum

DATE FILED: 6/7/2022

/s/Frank Soto, Arbitrator

Signature

INTEREST RATE WEEK OF JUNE 7, 2022 1.71%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Patricia Klima
Employee/Petitioner

v.

Walmart Inc.
Employer/Respondent

Case # **17** WC **7887**

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 **Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **4/12/22**. 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 **permanent total disability benefits**

FINDINGS

On **4/29/15**, 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 $**9,659.52**; the average weekly wage was **$173.89.**

On the date of accident, Petitioner was **67** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall 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**.

ORDER

Respondent shall pay to Petitioner the cost of the medical services identified in Petitioner's exhibits 2, 3, 4 and 8, pursuant to Section 8.2 and 8(A) of the Act and the Illinois Medical Fee Schedule, less amounts which Respondent previously paid, as identified in Respondent's Exhibit 5. Respondent shall hold Petitioner harmless for medical bills which Respondent claims an entitlement to a credit.

Respondent shall pay Petitioner temporary total disability benefits for 49 weeks, commencing 11/20/2018 through 10/29/2019, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent and total disability benefits weekly for life, commencing 10/30/2019, 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.

Petitioner's petition for penalties is denied.

Respondent shall pay Petitioner compensation that has accrued from April 29, 2015 through April 12, 2022 and shall pay the remainder of the award, if any, in weekly payments.

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

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

By: /o/ Frank J. Soto **JUNE 7, 2022**
Arbitrator

Findings of Fact

Patricia Klima (hereinafter referred to as "Petitioner") testified she was employed by Walmart (hereinafter referred to as "Respondent") as a cashier. (T. 9). Petitioner testified on April 29, 2015 she injured her left arm moving a 24-pack of water across the scanner. (T.10). Petitioner testified she reported the accident and sought medical treatment with Dr. Seeds. Petitioner testified she never had a problem with her shoulders before this accident. (T.11).

Petitioner testified she underwent treatment consisting of therapy and surgery on November 20, 2018. (T. 12). Prior to undergoing surgery, Petitioner continued to work with light duty restrictions. (T. 12). Petitioner was placed on a register which required her to scan using her right arm instead of her left arm. (T. 13). Petitioner testified her right arm started hurting so she told her boss, Lisa. (T. 13).

Petitioner underwent surgery on the left shoulder on November 20, 2018. (T.12). Petitioner never returned to work for Respondent after the surgery because her employment was terminated January 16, 2019 while she was still in therapy. (T.14). Petitioner completed treatment in October of 2019 and, at that time, the surgeon issued permanent lifting restriction of no lifting more than 10 pounds as well as pulling and pushing. (T.16). Thereafter Petitioner was evaluated by vocational specialist Laura Belmonte. (T.15).

Petitioner testified Respondent never paid any TTD benefits. (T.17). Petitioner testified she can't use her left arm to tuck her shirt into the back of her pants and her right arm also hurts because she uses it for everything. (T.18, 19). Petitioner testified her husband helps her pull on her left boot. Petitioner also testified she is unable to place a gallon of milk on the top shelf of the refrigerator with her left arm. (T.19, 20). Petitioner testified her left arm hurts when sleeping on the right side. (T.21, 22). Petitioner testified her left arm disrupted her sleep, limiting her to sleep to between four to six hours a night. (T.22). Petitioner testified she has become depressed about her condition and her primary care physician prescribed Alprazolam to calm her down at night. (T.23). Petitioner testified she takes ibuprofen or Advil in the morning, afternoon and at night each day. (T.24). Petitioner also uses a heating pad for her shoulder and her husband applies Icy Hot on her left shoulder. (T.25, 26). Petitioner testified because of her injury she is no longer able to play badminton or volleyball with her granddaughters and she is unable to do things requiring the elevation of the left arm. (T. 17, 18). Petitioner testified she is

unable to safely turn her bicycle to the left so she avoids bike riding and she is also unable to upon or close a car door with her left arm. (T.18, 28).

The Arbitrator found Petitioner's testimony to be credible.

Testimony of Dr. James Seeds, treating physician

Dr. Seeds testified that he is a board-certified orthopedic surgeon focusing mainly on shoulder and knee treatment. (PX1 p.5). Petitioner presented to Dr. Seeds on May 7, 2015 reporting left shoulder pain which she injured while lifting a case of water during work at Walmart. (PX1 p.6). Dr. Seeds initially diagnosed the condition as bursitis, tendonitis and impingement syndrome. (PX1 p.7). He sent her out for three separate MRIs while treating her. (PX1 p.7). His initial workup did not reveal anything which warranted surgery so he treated Petitioner's injury conservatively. (PX1 p.7). The initial MRI, performed on June 30, 2015, was limited due to motion artifact. (PX1 p.8). The radiologist did not note a full thickness rotator cuff tear but did not rule out a partial thickness tear or labral injury. (PX1 p.8-9). Petitioner's initial treatment consisted of injections and therapy. (PX1 p.9).

Dr. Seeds released Petitioner from care with work restriction but she continued to return reporting pain in the same location. (PX1 p.9). Dr. Seeds sent Petitioner for a second MRI in October of 2017. Dr. Seeks indicated the second MRI was of better quality than the first MRI with no reported motion artifact. (PX1 p.10). The new MRI revealed a partial thickness cuff tear of the posterior supraspinatus and anterior inferior supraspinatus at the footprint, moderate tendonitis, mild to moderate acromioclavicular joint changes, thinning of the glenohumeral articular cartilage, a subchondral marrow signal and trace subacromial bursitis. (PX1 p.10) Dr. Seeds causally related the MRI findings to Petitioner lifting and moving the water at work. Dr. Seeds described the mechanism of injury as a simple traction injury. (PX1 p.12).

In August of 2018, Dr. Seeds sent Petitioner for a third MRI which showed a slight worsening of the condition since the 2017 MRI. (PX1 p.12-13). Dr. Seeds related the damage on the third MRI to Petitioner's work accident explaining that the traction from lifting the water would have caused her injury. (PX1 p.14-15). Dr. Seeds operated on the shoulder in 2018, finding superior labral anteroposterior tear (SLAP tear), partial rotator cuff tear and arthritis. (PX1 p.15). During the surgery, Dr. Seeds corrected the SLAP tear and cleaned up the partial cuff tear and some of the arthritis. (PX1 p.15-16). The SLAP tear included a tendon

reattachment to stabilize the shoulder and to hopefully reduce the pain. (PX1 p.16). Dr. Seeds causally related the surgery to the work accident. (PX1 p.17).

Dr. Seeds testified Petitioner improved with surgery but that she experienced lingering discomfort. (PX1 p.18). Dr. Seeds testified five months after surgery Petitioner continued to experiencing pain at the deltoid insertion. (PX1 p.18, 19). Dr. Seeds opined Petitioner should reach maximum medical improvement between 8 and 12 months after surgery. (PX1 p.21). Dr. Seeds denied Petitioner had adhesive capsulitis and he testified no such findings was made during surgery. (PX1 p.21-22).

On May 17, 2016, Petitioner returned to Dr. Seeds reporting shoulder over the last couple of weeks. (PX1 p.29-30). At that time, Petitioner underwent cortisone injections. On October 10. 2017 Petitioner continued to report pain and weakness to her rotator cuff. (PX1 p.32). Dr. Seeds noted Petitioner's pain was in the shoulder near the deltoid insertion. (PX1 p.39).

Regarding the quality of the MRI images, Dr. Seeds testified the first MRI was limited by motion artifact but that it still detected fluid in the subacromial subdeltoid bursa which was an indication of recent trauma. (PX1 p.40). Dr. Seeds also testified despite the motion artifact the radiologist suspected a partial tear. (PX1 p.42). Dr. Seeds testified the glenohumeral joint effusion revealed inflammation and irritation related to a recent trauma to the structure. (PX1 p.42-43). Dr. Seeds testified the series of MRIs revealed a normal course of how a rotator cuff and shoulder injury progresses. (PX1 p.44).

Testimony of Dr. Bryan Neal, Section 12 Examiner

Dr. Neal, who performed the Section 12 Examination, diagnosed Petitioner with left shoulder adhesive capsulitis (AC) and opined that she only sustained a shoulder strain from her work accident. (RX1 p.16-17). Dr. Neal testified his opinion is based upon his experience treating shoulders, the relatively low-level energy of the accident mechanism, and the early diagnoses of a soft tissue diagnosis in the medical records. (RX1 p.18). Dr. Neal testified AC is an unusual musculoskeletal diagnosis and occurs when the shoulder loses laxity and becomes painful. (RX1 p.18-19). Dr. Neal opined the AC was not related to Petitioner's work accident. (RX1 p.20). Dr. Neal testified the AC diagnosis arose sometime after Petitioner's October 8, 2015 doctor's visit and, therefore, the condition is not related to Petitioner's April 2015 accident. (RX1 p.24). Dr. Neal testified AC conditions are associated with soft tissue connective conditions, rheumatological or serological conditions. (RX1 p.24). Dr. Neal testified

Petitioner's diverticulitis is proof she suffered from a rheumatological or connective tissue issues and probably why she had AC. (RX1 p.24-25). Dr. Neal testified AC is not well understood by the orthopedic community. (RX1 p.25)

Dr. Neal opined Petitioner reached maximum medical improvement for her shoulder strain no later than October 8, 2015. (RX1 p.26-27). Dr. Neal testified Petitioner would need treatment for AC going forward. (RX1 p.27). Dr. Neal testified Petitioner has not received treatment for her AC condition. (RX1 p.28-29). Dr. Neal opined no treatment for the AC condition would be related to Petitioner's work accident and that Petitioner could work full duty without any restrictions after October 8, 2015. (RX1 p.29-30). Dr. Neal opined Petitioner had a zero percent AMA Impairment Rating resulting from her work accident. (RX1 p.25).

On cross, Dr. Neal admitted he performed approximately 300 independent medical evaluations per year with the vast majority for the defense. (RX1 p.37). Dr. Neal testified his current fee for an IME is $1,350.00 and he performs between 24-30 depositions each year and charges $1,500.00 for two hours. (RX1 p.39, 40). Dr. Neal testified charged $3,200.00 for his work on Petitioner's case prior to the deposition. (RX1 p.41).

Dr. Neal admitted he is the only physician who has diagnosed the AC condition. (RX1 p.41). Dr. Neal denied MRIs are useful in detecting AC unless the test used dye. (RX1 p.42-43). Dr. Neal testified Petitioner's AC condition was related to diverticulitis because AC has been associated with chronic health conditions. (RX1 p.48). Dr. Neal testified that AC has an association with chronic health conditions and Petitioner has the chronic condition of diverticulitis. (RX1 p.48) Dr. Neal did not opine that Petitioner's AC was due to her underlying diverticulitis within a reasonable degree of certainty. (RX1 p.58). Dr. Neal testified the medical community doesn't really understand diverticulitis. (RX1 p.60). When asked if diverticulitis develops when naturally weak locations in the colon give way under pressure to wall protrusions and tears leading to inflammation and infection Dr. Neal responded he is not a diverticulitis specialist and has never treated the condition. (RX1 p.60-61). Dr. Neal testified he would not do a cortisone injection into the subacromial space for AC but he acknowledged that Petitioner received relief from cortisone injections into her subacromial space. (RX1 p. 73, 74). Dr. Neal agreed partial rotator cuff injuries could respond to cortisone injections and that cortisone injections are also appropriate for subdeltoid subacromial bursitis as identified in the MRIs.

(RX1 p.79, 86). Dr. Neal agreed that a partial thickness tear could very well have been the explanation for the symptoms he assessed during his Section 12 examination. (RX1 p.90-91).

Conclusions of Law

The Arbitrator adopts the finding of fact in support of the Conclusions of Law as Set forth below.

WITH RESPECT TO ISSUE (F) WHETHER PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE JANUARY 6, 20212 INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally connected to the work related injury and not simply the result of a normal degenerative process of a pre-existing condition. Caterpillar Tractor Co. v, Industrial Comm'n, 92. Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89. Ill.2d 432, 60 Ill. Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition in injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill.2d 193, 278 Ill. Dec. 70. 797 N.E.2d 665, (2003). Even though an employee has a preexisting condition which may make him 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 Co., v. Industrial Comm'n.,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). When 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' injury. *Shafer v. Illinois Workers' Compensation Comm'n,* 2011 Ill.App. (4th) 100505 WC. The chain of events principles has been applied where an accident is claimed to have aggravated a preexisting condition. See *Schroeder v. Illinois Workers' Compensation Comm'n*, 2017 IL. App. (4th) 160192WC.

The Arbitrator has carefully reviewed and considered all the evidence and finds Petitioner has proven by the preponderance of the credible evidence that her current left shoulder condition is causally related to her April 25, 2015 work accident, as set forth more fully below.

Petitioner had no problems with her left shoulder before injuring it while moving a case of water at work on April 25, 2015. Petitioner did not sustain any subsequent intervening injuries to her shoulder. Petitioner's left shoulder treatment started after her work accident as noted by Dr. Seeds. While the initial MRI was not a clear scan, it suggested some damage in the labrum (effusion) as well as a partial cuff tear. The later MRIs confirmed those findings and the treatment Dr. Seeds proscribed provided the expected relief. Dr. Seeds testified he treated Petitioner conservatively and her shoulder condition would improve but the relief would wear off and Petitioner would return for more treatment. The surgery provided Petitioner relief. Dr. Seeds testified during surgery he confirmed the suspected injuries and found zero evidence of AC. Dr. Seeds opined Petitioner's surgical findings were causally related to her work accident of lifting the water. (PX1 p.17). Dr. Seeds opined AC does not have anything to do with Petitioner's presentations.

The Arbitrator does not find the opinions of Dr. Neal to be persuasive. The Arbitrator notes Dr. Neal was the only individual who diagnosed AC related to diverticulitis. Dr. Neal admitted he was not a specialist regarding diverticulitis but testified the condition was related to Petitioner's AC condition. The Arbitrator notes the MRI scans and post-operative report does not support Dr. Neal's AC diagnosis. The Arbitrator further finds the relief Petitioner received relief from treatment including the subacromial injections supports the opinions of Dr. Seeds.

WITH RESPECT TO ISSUE (G) WHAT WERE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

Section 10 of the Illinois Workers' Compensation Act provides as follows:

> *The compensation shall be computed on the basis of the "Average weekly wage" which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately proceeding the date of injury, illness, or disablement excluding overtime, and bonus divided by 52; but, if the injured employee lost 5 or more calendar days during such period, whether or not in the same week, then the earnings for the remainder of the 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted… 820 ILCS 305/10.*

Petitioner testified she started working for Respondent in September 2011 and was specifically hired to work part-time, roughly 18 hours per week. She admitted her usual work schedule was Sundays, Mondays and Wednesdays and her regular hours worked was 5 hours

Sunday and Monday and 8 hours on Wednesday, for a total of 18 hours. Petitioner testified she was hired part-time so her earnings would not affect her SSI benefits/status.

A review of Petitioner's time clock report, while reflecting the time period after the work accident, from 12/2015 – 1/2018 corroborates and supports that Petitioner's usual work schedule was Sundays, Mondays and Wednesdays and her scheduled hours were approximately 18 for the three days a week she worked. (RX 6)

A review of Petitioner's pre-injury, 52-week wages, which Petitioner admitted was an accurate depiction of her earnings, shows, using the 52-week period of week ending 5/2/14 – 4/24/15 [weeks 26-77 on RX 4]):

1) Petitioner did not work overtime in any of the 52 weeks;
2) The most hours Petitioner ever worked in that period was 24.88 (week ending1/30/15 [week 65] with gross earnings of $245.19);
3) Of the specified 52-week period, Petitioner worked 20+ hours in only 7 of those weeks;
4) During November and December 2014, Petitioner averaged 17.3 hours per week, and,
5) The overall average of Petitioner's hours over the 52-week period was 16 hours per week (832.37 hours / 52).

The Arbitrator finds Petitioner worked in a part-time capacity. As such, pursuant to Section 10 of the Act, the appropriate method to calculate Petitioner's AWW is method 1, taking Petitioner's total earnings and dividing by 52. Utilizing the weeks referenced above, Petitioner total earnings were $9,042.36 and after divided that figure by 52, Petitioner's AWW/TTD/PPD rate is 173.89.

WITH RESPECT TO ISSUE (J) WHETHER THE MEDICAL SERVICES REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Under Section 8(a) of the Act, claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising our or and in the scope of employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury. *Absolute Cleaning/SVMBC v. Illinois Workers' Compensation Comm'n,* 409 Ill.App.3d 463, 470 (4th Dist. 2011).

Respondent denied payment of medical care based upon causation and not that the treatment provided was not reasonable or necessary. As stated above, the Arbitrator found

Petitioner's left shoulder condition causally related to her work injury. As such, the Arbitrator finds Petitioner has proven by the preponderance of the evidence that Respondent has not paid all appropriate charges for all reasonable and necessary medical services. Respondent shall pay to Petitioner the cost of the medical services identified in Petitioner's exhibits 2, 3, 4 and 8, pursuant to Section 8.2 and 8(A) of the Act and the Illinois Medical Fee Schedule, less amounts which Respondent previously paid, as identified in Respondent's Exhibit 5. Respondent shall hold Petitioner harmless for medical bills which Respondent claims an entitlement to a credit.

WITH RESPECT TO ISSUE (K) WHETHER PETITIONER IS ENTITLED TO TTD BENEFITS, THE ARBITRATOR FINDS AS FOLLOWS:

The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, *"i.e., until the condition has stabilized." Gallentine v., Industrial Comm'n,* 201 Ill.App.3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized (i.e., reached M.M.I.). *Sunny Hill of Will County v. Ill. Workers' Comp Comm's* 2014 IL App (3d) 130028WC at 28 (June 26, 2014, Opinion filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill.App.3fd 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *Gallentine,* 201 Ill.App. 3d at 887; see also *City of Granite City v. Industrial Comm'n*, 279 Ill.App. 3d 1087, 1090 (5th Dist. 1996).

Petitioner seeks TTD benefits for 49 weeks from November 20, 2018 through October 29, 2019. Respondent disputed TTD benefits based upon Petitioner's condition not being causally related to her work accident. As stated above, the Arbitrator found Petitioner's left shoulder condition to be causally related to her work accident. As such, the Arbitrator finds Petitioner has proven by the preponderance of the evidence that she is entitled to TTD benefits from November 20, 2018 through October 29, 2019 weeks, the date Dr. Seeds released Petitioner back to work with restrictions. Respondent shall pay Petitioner 49 weeks of TTD benefits from November 20, 2018 through October 29, 2019.

WITH RESPECT TO ISSUE (O) WHETHER PETITIONER IS ENTITLED TO PERMANENT TOTAL DISABILITY BENEFITS, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner claims to be permanently and totally disabled under the "odd-lot" category because of her work accident. "an employee is totally and permanently disabled when he is unable to make some contribution to the work force to justify the payment of wages. *Ceco Corp. v. Industrial Comm'n,* 447 N.E. 2d 842, 845 (Ill. 1985). A person is totally disabled when he or she is incapable of performing services except those for which there is no reasonable stable market. *Id*. If the disability is limited but not obvious, they may still be entitled to PTD benefits by proving they fit into the "odd-lot" category if they can demonstrate they will not be employed regularly in any well-known branch of the labor market. *Id*.; *Valley Mound & Iron Co. v. Industrial Comm'n*, 419 N.E.2d 1159 (Ill. 1981). An employee can prove they fall into the odd-lot category by either (1) showing a diligent but unsuccessful job search or (2) demonstrating that their disability coupled with their age, training, education and experience does not permit the employee to find gainful employment. *ABB C-E Serv. V. Industrial Comm'n*, 737 N.E.2d 682 (5th Dist. 2000). Once the employee makes this showing, the burden shifts to the employer. The employer must show more than a theoretical possibility of an available job and cannot rely on speculative testimony that the employee has the potential for employment. *Walliser v. Waste Mgmt. East,* 12 ILWC 2451 (Sept. 29, 2017).

The Arbitrator finds Petitioner has proven by the preponderance of the evidence that she is entitled to permanent total disability benefits within the "odd lot" category because she is not regularly employable in a well-known branch of the labor market due to her age, skills, training and work history. *See* also *Westin Hotel v IC*, 372 Ill.App.3d 527, 544 (2007).

Laura Belmonte, a rehabilitation counselor, and job development specialist with Vocamotive, opined Petitioner lost access to her position as a head cashier with Respondent. (PX7 p.5, 10). Ms. Belmonte based her opinion upon Petitioner's restrictions which include no lifting greater than 10-pounds as well as restrictions involving pushing, pulling and overhead lifting Dr. Seed. (PX7 p. 10, 11). The restrictions placed Petitioner in a sedentary capacity category. (PX7 p.11). Ms. Belmonte further opined Petitioner lost access to the majority of other cashiering positions due to her physical limitations. (PX7 p.11). Ms. Belmonte testified it wasn't clear that Petitioner is otherwise employable based upon her past work experience. (PX7 p.12).

Ms. Belmonte reviewed Petitioner's transferable skills and found some potentially transferable skills but that Petitioner had not used those skills for 15 years. (PX7 p.13). Ms. Belmonte testified Petitioner could not be easily placed with the transferable skills she has. (PX7 p.14).

Ms. Belmonte noted Petitioner's age, skill set and education would be significant barriers to her placement. (PX7 p.14). Petitioner was 72 years old at the time of her evaluation. Ms. Belmonte testified that persons of Petitioner's age have trouble adjusting to other work when they have significant physical limitations. (PX7 p.15). Ms. Belmonte testified Petitioner's computer skills were not at a level which would be marketable for potential employers. (PX7 p.16). Ms. Belmonte noted Petitioner had performed some clerical work more than 15 years ago but those skills were no longer current or relevant in the available job market because the computer programs Petitioner used 15 years ago were no longer in use. (PX7 p.17, 18). Ms. Belmonte testified Petitioner's past work experience did not involve much typing and her filing skills involved paper filing not electronic filing which is mostly used today. (PX7 p.18). Ms. Belmonte opined Petitioner's past clerical work would not transfer to the current job market. (PX7 p.19).

Ms. Belmonte testified, considering all the factors, Petitioner was potentially employable but it was unlikely she would be able to successfully place her in a job. (PX7 p.29). Ms. Belmonte offered some additional vocational evaluative factors for Petitioner such as aptitude testing to further define her available skillset. (PX7 p.30). Ms. Belmonte believed Petitioner would need keyboard training to get her up to a marketable production level and she would need to become competent with computer programs. (PX7 p.31). Ms. Belmonte noted that other training and evaluation could follow. Ms. Belmonte opined Petitioner would not be employable without additional training and professional vocational assistance. (PX7 p.34).

On cross examination, Ms. Belmonte admitted certain older people hold jobs but that those are situations where the people continue working and don't have gaps or haven't been out of the work force as Petitioner has. (PX7 p.51). Ms. Belmonte testified two significant factors will prevent Petitioner from obtaining employment which are her age and physical abilities. (PX7 p.56). The Arbitrator finds Petitioner established that she falls into the odd lot category thus shifting the burden to Respondent to prove Petitioner is employable in a stable labor market. See *Lenhart v IWCC*, 2015 IL App (3d) 130743WC *P34.

Respondent retained Julie Bose to perform a record review and complete a labor market survey. (RX 3, pg. 39). Respondent admitted Ms. Bose did not assess Petitioner but only conducted a response review of Petitioner's vocational expert and a labor market survey. (T.61-63).[1]

Ms. Bose opined Petitioner is employable within her restrictions and she did not require rehabilitation services. (Rx. 2, p. 19, 23). Ms. Bose testified that she disagreed with Ms. Belmonte regarding Petitioner's lack of transferable skills since she previously worked as a telemarketer and receptionist. (Rx. 2, pg. 20). Ms. Bose testified since Petitioner held jobs and had no trouble finding work, in the past, on her own, she doesn't need rehabilitation services. (Rx. 2 p. 23). Ms. Bose testified she never interviewed Petitioner nor had a conversation with her. (Rx. 3, p. 42). Ms. Bose also testified she does not know whether Petitioner could drive. (Rx. 3, p. 49). The Arbitrator notes that Ms. Bose did not test or assess Petitioner's skills.

[1] Petitioner objected to the admissibility of Respondent's Exhibit 2 and 3 which consists of the evidence deposition of Julie Bose. Petitioner asserts the Act does not permit litigants to purchase and present testimony from vocational experts who do not provide vocational services pursuant to Section 8 of the Act. (T. 60). Petitioner asserts Julie Bose was not retained pursuant to Section 8 of the Act and her opinions are nothing more than a retained expert not permitted under the Act. (T. 63). Respondent argues her vocational expert, Julie Bose, is no different than a Section 12 IME or Section 12 records review. (T. 61). Respondent further argued Julie Bose was retained to respond to Petitioner's vocational report. (T. 62). Respondent admits Julie Bose did not assess Petitioner and was only retained to perform a review of Petitioner's vocational report and to perform a labor market survey. (T. 63). At the time of the hearing, the Arbitrator reserved ruling on the admissibility of Respondent's exhibits 2 and 3. (T. 64). The Compensation Act "established a new system of liability without fault, designed to distribute the cost of industrial injuries without regard to common-law doctrines of negligence, contributory negligence, assumption of risk and the like. *Sharp v. Gallagher*, 95 Ill. 2d. 322, 326 (1983). In exchange for a system of no-fault liability upon the employer, the employee is subject to statutory limitations on recovery for injuries and occupational diseases arising out of and in the course of employment. The trade-off between employer and employee promoted fundamental purpose of the [Compensation] Act, which was to afford protection to employees by providing them with prompt and equitable compensation for injuries or death suffered in the course of employment. *Kelsay v. Motorola, Inc*., 74 Ill. 2d. 172, 180-81 (1978); see also *Pathfinder Co. v. Industrial Comm'n*, 62 Ill. 2d 556, 563 (1976). It is a well-settled principle that the Compensation Act is a remedial statue and should be liberally constructed to effectuate its main purpose to provide financial protection for injured workers until they can return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill.2d. 132, 146, 149 (2010). Worker's compensation is a statutory remedy and the Workers' Compensation Commission, as an administrative agency, is without general or common law powers. *Interstate Scaffolding, Inc.*, 236 Ill. 2d. at 145. The Commission is limited to those powers granted by the legislature. *Id*. Any action taken by the Commission must be specifically authorized by statue. *Id.* The Arbitrator herby admits Respondent's Exhibits 2 and 3 into evidence. The Arbitrator finds the testimony of Julie Bose to be proper evidence offered to rebut the testimony of the vocational expert retained by Petitioner. To exclude the evidence would create a denial of Respondent's due process rights since Respondent would be prohibited from the ability to attempt to satisfy their burden of proof after Petitioner established her prima facia showing of permanent total disability under the odd-lot category.

Ms. Bose performed a labor market survey in 2020 prior to Covid. (Rx. 3, p. 46). Ms. Bose acknowledged some types of jobs were affected by Covid. (Rx. 3, p. 47). Ms. Bose testified she does not keep statistics regarding job placement of workers over the age of 50. Ms. Bose testified she was not sure if some of the companies listed in her labor market survey remained in business after the Covid pandemic outbreak. (Rx. 3, p. 51). Ms. Bose also testified the labor market survey was not done for the purpose of providing job placement services and the survey only asked if the company had a hiring needs, had current openings, and the wage range for those openings. (Rx. 3, p. 53, 54). Ms. Bose explained the survey was seeking information of available jobs and the corresponding wages. As part of the job survey, the prospective employers were unaware of Petitioner's physical limitations, age, medication use, and ability to drive.

The Arbitrator does not find the opinions of Ms. Bose to be as persuasive as the opinions from Ms. Belmonte. Ms. Bose did not interview Petitioner nor perform any skills testing. Ms. Bose's employability opinion was based, in part, upon her belief Petitioner had transferrable skills. Ms. Belmonte did not believe Petitioner retained transferrable skills due to the 15-year gap in employment. Unlike Ms. Bose, Ms. Belmonte had the benefit of interviewing Petitioner and, therefore, was in a better position to assess Petitioner's skills. The Arbitrator does not find the labor market surveys persuasive because Ms. Bose acknowledge Covid adversely impacted some areas of employment and she did not offer an opinion as to whether or not the jobs identified in the labor market survey were adversely impacted by Covid. The Arbitrator finds the opinions of Ms. Bose to be based, in part, upon speculation. Without interviewing Petitioner and not assessing her skills Ms. Bose opinion regarding the viability of Petitioner's transferable skills after a 15-year employment gap to be speculative. The Arbitrator finds the labor market survey to also be speculative at best. The labor market survey was performed prior to the Covid pandemic and Ms. Bose failed to testify whether the nature of the jobs identified in the labor market survey continued to remain available during the Covid pandemic. The employer must show more than a theoretical possibility of an available job and cannot rely on speculative testimony that the employee has the potential for employment. *Walliser v. Waste Mgmt. East,* 12 ILWC 2451 (Sept. 29, 2017). Based upon the above, the Arbitrator finds Respondent failed to show Petitioner could be regularly employed in a well-known branch of the labor market.

WITH RESPECT TO ISSUE (M) SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent obtained a Section 12 medical examination and Respondent relied upon the opinions of the examiner to deny Petitioner's benefits. Consequently, the Arbitrator finds Petitioner failed to prove by the preponderance of the evidence an entitlement of fees and penalties pursuant to the Act.

By: /o/ Frank J. Soto — June 6, 2022
Arbitrator — Date